
THE ANTI-CORRUPTION ACT AND THE NEW RULES REGARDING THE LIABILITY OF COMPANIES INVOLVED IN CORRUPTION PRACTICES

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Abstract:

The recently promulgated Statute 12.846/2013, popularly known in Brazil as the "Anti-Corruption Act", introduced a new regime of liability for the companies involved in acts of corruption. The statute establishes a series of rules and onerous penalties that will force the companies to create new mechanisms of control and prevention of practices of corruption.

On January 29th 2014, the Statute 12.846/2013, also known as the "Anti-Corruption Act", which had been approved by President Dilma Rousseff in August 2013, entered into force.

The aforementioned statute modifies the rules regarding the liability of those involved in corruption practices against the Government, especially companies.

According to the new statute, any company associated with an act of corruption, such as the direct or indirect offer of undue advantages to public officials or fraud / manipulation of bidding processes, can be held objectively liable for such a crime, even if its fault or negligence for the unlawful act is not proven.

Before the enactment of the Anti-Corruption act, companies with proven involvement in corruption practices were not punished if they demonstrated that the act of corruption was not

known by them, and had been committed by one of its employees or a public official.

For the investigation of such acts, the Anti-Corruption act provides that the highest authorities of each agency or entity of the Executive, Legislative and Judiciary are allowed to file an administrative proceeding against those entities responsible for the corruption practices.

In the event a company is convicted in one of those administrative proceedings, it may suffer with onerous penalties imposed by the statute, which can affect not only its equity, but also its image and activities.

Among the penalties introduced by the new statute for convicted companies, we highlight: the total repair of the damage; the payment of a fine, which can go up to 20% of company's turnover; the disclosure of the decision in the

media, and even the compulsory dissolution of the company. The penalties may be implemented individually or cumulatively.

The liability of the convicted company may be mitigated by the Court if the company cooperated to the investigation of the acts and / or implemented mechanisms and preventive procedures and other measures (“compliance programs”). There is also the possibility of a settlement between the company and the Government agency if there is an effective collaboration in the investigation (“leniency procedure”).

In order to guide the companies with the aforementioned preventive mechanisms, the Anti-Corruption act determines the adoption of a regulation detailing the desirable actions to be implemented by the companies. The Office of the General Federal Controller (CGU) has already drafted a bill containing such rules. It occurs that the referred bill has not yet been approved.

Since the Anti-Corruption act is very recent, there are still several questions pending, especially in relation to those companies that wish to have their rights protected and to be better informed about the current prevention mechanisms.

Thus, Almeida Advogados and its specialized staff in the branch of Corporate Law, with extensive expertise in the area, makes itself available for any further information that may be necessary.