

Bribery and corruption

REDUCING BRIBERY RISKS IN CROSS-BORDER TRADE AND INVESTMENT DEALS

- ▶ As a Party to the OECD Anti-Bribery Convention and participant in the OECD Latin America Anti-Corruption Programme, Brazil has a leading role to play in the fight against foreign bribery for Latin America, emerging economies, and G20 countries that are not yet parties to the OECD Anti-Bribery Convention.
- ▶ Brazil has a solid legislative framework for its foreign bribery offence, but enforcement could be improved.
- ▶ Brazil should expand the scope of the fight against domestic corruption, and in particular aim to swiftly investigate and prosecute individuals and companies for bribes allegedly paid to foreign countries, including Parties to the OECD Anti-Bribery Convention.
- ▶ It is also recommended that Brazil continues to take steps to address a number of deficiencies that still remain in its legislative framework, including with respect to whistleblower protection and the statute of limitations.

What's the issue?

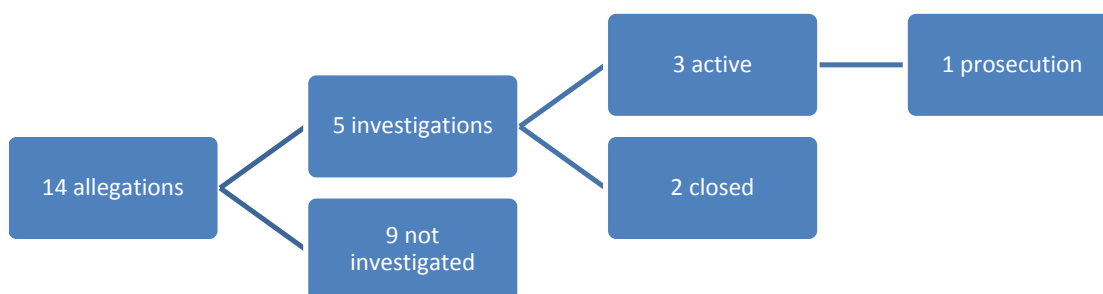
The OECD has concluded that Brazil has a solid legislative framework for its foreign bribery offence. In January 2014, Brazil took a significant step to reinforce its legislative framework by enacting the Clean Companies Law (Law 12,846) which allows Brazilian companies (and not just individuals) to be held liable for corruption offences. Corporate liability is an issue that has proven difficult for the Latin American region and this step is a sign of Brazil's leadership in this area.

Brazil could further improve the enforcement of its legislative framework related to foreign bribery offence.

At the time of its evaluation by the OECD Working Group on Bribery in October 2014, only 14 allegations of Brazilian individuals and/or companies bribing foreign public officials had surfaced. Out of the 14 allegations, only 3 were being investigated, and formal charges had been brought in only 1 case (see Figure). The Working Group on Bribery raised concerns that this was a low level of enforcement. The Working Group has made specific recommendations to Brazil to help it steadily improve its enforcement efforts.

The OECD Working Group on Bribery has also identified areas for improvement in Brazil's legislative framework. Brazil

▶▶ The enforcement of foreign bribery offence could be improved



Note: Status at the time of adoption of the Phase 3 Report in October 2014. Since then Brazil has taken some encouraging steps in enforcing the foreign bribery offence. New investigations have been opened although no cases have been concluded yet.

Source: OECD (2014), Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Brazil, OECD Publishing.

does not yet have whistleblower protection for private sector employees who report suspicions of foreign bribery, which could reduce its ability to detect bribery and corruption. Furthermore, the statute of limitations in Brazil is complex; its occasional loopholes open possibilities for defendants, particularly those with 'deep pockets', to appeal their case until the charges become time-barred. These shortcomings may impede Brazil's ability to enforce its foreign bribery offence.

Why is this important for Brazil?

Brazil's export sector is worth USD 242 billion (9.7% of GDP). In 2013, 60% of Brazil's exports and foreign direct investment (FDI) outflows were made in the manufacturing sector. Other prominent sectors include the extractives, construction, and transport/storage sectors. All four sectors have significant foreign bribery risks, making the government's efforts to combat bribery all the more important. According to the OECD's 2014 Foreign Bribery Report, these four sectors accounted for 57% of all foreign bribery cases concluded in all Parties to the OECD Anti-Bribery Convention between 1999 and 2014.

One particular feature of the Brazilian economy is the importance of the Bank of Economic and Social Development (BNDES), which provides financing to support the international expansion of Brazilian champion companies. The BNDES has put in place measures to detect foreign bribery, but additional measures could be taken to ensure foreign bribery allegations are reported to law enforcement by BNDES officials (e.g. providing formal guidance to BNDES employees on the conduct of due diligence on potential exporters and applicants and the disclosure of foreign bribery suspicions to law enforcement). Such measures will become increasingly important as Brazil's economy continues to develop and its share of world exports and investment grows, increasing its exposure to foreign bribery risks.

Addressing domestic corruption is also a priority for Brazil. Improving the country's foreign bribery enforcement and detection capabilities will enable it to better respond to domestic corruption concerns. For example, putting in place whistleblower protection for private sector employees would encourage reporting of corruption and enhance Brazil's ability to detect this offence. Similarly, a precise statute of limitations would allow adequate time and predictability for the completion of the full judicial process. Addressing these issues would improve Brazil's ability to enforce both domestic and foreign bribery.

What should policy makers do?

- ▶ Increase investigations and prosecutions of foreign bribery by ensuring sufficient resources, guidance and training are available to investigative and prosecutorial authorities, and consider the creation of specialised anti-corruption units within these authorities.
- ▶ Encourage and support the Office of the Comptroller General to actively and efficiently enforce its new corporate liability legislation and implementing rules.
- ▶ Put in place effective whistleblower protection for private sector employees.
- ▶ Reassess the statute of limitations to ensure that it allows adequate time for corruption investigations, prosecutions, and the completion of the full judicial process.



Further reading

OECD (2014), *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Brazil*, OECD Publishing. <http://www.oecd.org/daf/anti-bribery/Brazil-Phase-3-Report-EN.pdf>

OECD (2014), *Foreign Bribery Report: An Analysis of Crime of Bribery of Foreign Public Officials*, OECD Publishing. <http://www.oecd.org/corruption/oecd-foreign-bribery-report-9789264226616-en.htm>

OECD (2011), *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and Related Documents*, OECD Publishing. http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf

OECD-Latin America Anti-Corruption Programme website. <http://www.oecd.org/daf/anti-bribery/anti-briberyconvention/oecd-latinamericaanti-corruptionprogramme.htm>