

BRAZIL

Moderate enforcement

1.1% of global exports

Investigations and cases

In the period 2016-2019, Brazil opened 24 investigations, commenced no cases and concluded three cases with sanctions.

Embraer, the aircraft manufacturer, entered settlements of foreign bribery allegations with US¹ and Brazilian authorities in 2016, concerning bribes paid to officials in the Dominican Republic, India, Mozambique and Saudi Arabia.² In 2018, 10 of its senior executives were criminally convicted in Brazil for foreign bribery in the Dominican Republic,³ with all but one appealing their convictions. In addition, a former Embraer executive was sanctioned by the Brazilian Securities and Exchange Commission (CVM) for not abiding by his fiduciary duty by participating in the bribery of a high-level official in the Dominican Republic.⁴ Also in 2018, Embraer was convicted by Dominican authorities and ordered to pay an additional US\$7 million in fines, double the amount paid in bribes to secure the sale of eight combat planes to the country's Air Force.⁵

In July 2018, the Brazilian conglomerate **Odebrecht** and the Office of the Comptroller General (CGU) and the Office of the Attorney General (AGU) concluded a leniency agreement relating to foreign bribery allegations.⁶ Odebrecht had previously entered into a global settlement in 2016 with US, Swiss and Brazilian authorities (the Brazilian Federal Prosecutor's Office) which provided for at least

US\$2.6 billion in global penalties, with 80 per cent to be paid to Brazil.⁷ As part of the global settlement, Odebrecht admitted to paying approximately US\$778 million in bribes to government officials, their representatives and political parties associated with more than 100 projects in 12 countries, including Brazil. The CGU/AGU agreement imposed a US\$10 million fine specifically for the foreign bribery allegations and included a provision that required the company to contact officials in 11 countries where wrongdoing took place and to settle those issues. Since then, according to Brazilian authorities, Odebrecht has signed agreements with seven countries, including Colombia, Dominican Republic, Guatemala, Mexico, Panama, Peru and another undisclosed country. Besides these seven, there is no public information about any agreements reached with five further countries mentioned in the 2016 global settlement: Angola, Argentina, Ecuador, Mozambique and Venezuela. Odebrecht's dealings in other countries, such as Portugal and El Salvador, have also been under investigation by the Operation *Lava Jato* Taskforce.⁸ (For more details, see the case study in the *Exporting Corruption Report 2018*.)

In 2018-19, the CGU and AGU signed leniency agreements with three other companies investigated by the *Lava Jato* Taskforce: **Andrade Gutierrez**, **Camargo Correa** and **Engevix/Nova Participações**.⁹ As the alleged foreign bribery involving these companies took place before the entry into force of the Anti-Corruption Law, they were not sanctioned for those offences. However, the leniency agreements require them to initiate settlement negotiations with the authorities in two other countries (not made public), and they may be sanctioned under the terms of the agreements if this obligation is not fulfilled. Camargo Correa has been mentioned in the media in connection with alleged bribes paid to officials in Argentina, Bolivia,

¹ <https://www.justice.gov/opa/pr/embraer-agrees-pay-more-107-million-resolve-foreign-corrupt-practices-act-charges>

² <http://www.mpf.mp.br/rj/sala-de-imprensa/noticias-rj/corrupcao-internacional-mpf-e-cvm-fecham-acordo-com-embraer>

³ <https://www1.folha.uol.com.br/mercado/2018/12/ex-executivos-da-embraer-sao-condenados-por-propina-na-republica-dominicana.shtml>

⁴ https://www.jota.info/paywall?redirect_to=//www.jota.info/tributos-e-empresas/mercado/cvm-condenar-embraer-corrupcao-11092018

⁵ <https://economia.uol.com.br/noticias/efe/2018/09/28/justica-dominicana-condena-embraer-em-us-7-mi-por-pagamento-de-propinas.htm>

⁶ <https://www.gov.br/cgu/pt-br/assuntos/noticias/2018/07/acordo-de-leniencia-com-a-odebrecht-preve-ressarcimento-de-2-7-bilhoes>

⁷ <https://www.justice.gov/opa/pr/odebrecht-and-braskem-plead-guilty-and-agree-pay-least-35-billion-global-penalties-resolve>

⁸ https://www.bbc.com/portuguese/noticias/2016/03/160318_lava_jato_portugal_mdb_mf
<https://www1.folha.uol.com.br/poder/2016/12/1838033-caixa-do-pt-bancou-aliado-em-el-salvador-diz-delacao.shtml>

⁹ <https://www.gov.br/cgu/pt-br/assuntos/responsabilizacao-de-empresas/lei-anticorruptcao/acordo-leniencia>

Peru and Venezuela.¹⁰ It is also under investigation in Andorra for secret bank accounts held in the **Banca Privada d'Andorra**, reportedly used to funnel bribes.¹¹ Andrade Gutierrez's business interests in Venezuela¹² and Peru¹³ and Engevix's in Peru¹⁴ have also been under scrutiny by the authorities.

The Operation *Lava Jato* investigations have also reached the international dealings of other Brazilian construction companies. **OAS** is under investigation for alleged payment of bribes to officials in Bolivia, Chile and Peru,¹⁵ while **Queiroz Galvão** and **UTC** have been investigated by Brazilian and Peruvian authorities on allegations of bribes paid in exchange for public contracts in Peru.¹⁶

Global Witness has claimed in a report that Brazilian infrastructure company **Asperbras** paid US\$50 million in bribes to the son of Denis Sassou-Nguesso, President of the Republic of Congo, in exchange for public contracts worth US\$675 million. Global Witness alleges that this was done through a series of shell companies registered in Cyprus by a Portuguese intermediary.¹⁷ The company has also been accused by a former Brazilian finance minister of bribing Brazilian officials to facilitate its entry into the Angolan market.¹⁸

Recent developments

There were several setbacks to Brazil's anti-corruption legal and institutional framework in 2019 and 2020, threatening efforts to combat corruption in general and foreign bribery in particular.¹⁹ These triggered concerned reactions from international organisations, including a public statement by the Financial Action Task Force (FATF) in October 2019²⁰ and a High-Level Mission to Brazil by the OECD WGB in November 2019.²¹

Some of the setbacks highlighted the vulnerabilities of institutional advances which had not been cemented into law. President Bolsonaro exercised allegedly politically motivated interference in virtually all anti-corruption bodies, including the Public Prosecutor's Office (MPF), the Federal Police, the Federal Revenue Services and the country's Financial Intelligence Unit (COAF).²² The COAF was also subject to immense institutional instability: within a year it was transferred to the Ministry of Justice, then to the Ministry of the Economy and, finally, to the Central Bank – a highly unusual institutional set-up.²³ Efforts against money laundering were also impacted by a provisional Supreme Court decision which severely restricted the sharing of information on suspicious financial transactions between the COAF and other law enforcement agencies. This decision was reversed in late 2019, but it paralysed money laundering investigations for months.²⁴

¹⁰ <https://www1.folha.uol.com.br/mundo/2018/09/operacao-no-brasil-expoe-nos-da-camargo-correa-na-america-latina.shtml>

¹¹ https://brasil.elpais.com/brasil/2018/05/25/politica/1527260854_168241.html

¹² <https://politica.estadao.com.br/blogs/fausto-macedo/delacoes-da-andrade-detalham-propina-em-contrato-indicado-por-lula-na-venezuela/>

¹³ <https://www1.folha.uol.com.br/poder/2017/01/1854126-andrade-gutierrez-e-queiroz-galvao-tambem-estao-sob-suspeita-no-peru.shtml>

¹⁴ https://brasil.elpais.com/brasil/2017/05/05/internacional/1494021386_280573.html

¹⁵ brasil.elpais.com/brasil/2019/09/16/politica/1568669762_784011.html

¹⁶ https://brasil.elpais.com/brasil/2017/02/18/internacional/1487438625_752332.html; <https://noticias.r7.com/brasil/presidente-peruano-citad-ou-outra-depoimento-da-lava-jato-em-2015-01032016>

¹⁷ <https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/sassou-nguessos-laundromat-a-congolese-state-affair-part-ii/>

¹⁸ <https://www1.folha.uol.com.br/mundo/2019/08/ong-aponta-empresa-brasileira-como-parte-de-esquema-de-corrupcao-na-africa.shtml>

¹⁹ https://www.transparency.org/whatwedo/publication/brazil_setbacks_in_the_legal_and_institutional_anti_corruption_frameworks

²⁰ <http://www.fatf-gafi.org/countries/a-c/brazil/documents/outcomes-plenary-october-2019.html>

²¹ <http://www.oecd.org/corruption/brazil-must-immediately-end-threats-to-independence-and-capacity-of-law-enforcement-to-fight-corruption.htmv>

²² <https://www.reuters.com/article/us-brazil-politics-prosecutor/brazils-bolsonaro-picks-top-prosecutor-who-agrees-with-him-on-environment-idUSKCN1VR000> <https://www.aljazeera.com/news/2020/04/bolsonaro-taps-family-friend-brazil-federal-police-chief-200429010421684.html>; <https://www.gazetadopovo.com.br/república/coaf-chefe-demissao-entenda/> <https://politica.estadao.com.br/noticias/geral,com-cargo-ameacado-delegado-da-receita-relata-em-carta-interferencia-de-forcas-externas,70002971995>

²³ <https://knowledgehub.transparency.org/helpdesk/financial-intelligence-units-fius-effective-institutional-design-mandate-and-powers>

²⁴ <https://voices.transparency.org/the-role-of-financial-intelligence-units-and-the-fight-against-corruption-in-brazil-e745f1c8e749>

In 2019, the Law on Abuse of Authority was introduced, with the goal of ensuring public officials who abuse their powers are sanctioned. While the country needs to address the problem of systemic abuse of authority, the 2019 law will potentially deter investigators, prosecutors and judges from pursuing corruption cases involving powerful public- and private-sector actors, due to the vague and undefined provisions in the law. These leave ample room for retaliation against justice officials. The OECD WGB had expressed concerns about the law prior to its approval.²⁵

Another significant development was the enactment of the Anti-Crime Law in December 2019. Regarding foreign bribery, the law fell well short of the necessary reforms to the country's enforcement system. It introduced a new feature to the Brazilian judicial system – the “investigating judge” – which, despite being praised as a necessary criminal justice reform, may result in even slower judicial proceedings and high costs.²⁶ The Anti-Crime Law also provides for extended confiscation in criminal cases, and modest improvement of the whistleblowing system in the public sector.

Transparency of enforcement information

There are no consolidated statistics on foreign bribery enforcement, partly due to decentralised enforcement mandates. The Department for Asset Recovery and International Legal Cooperation within the Ministry of Justice publishes monthly statistical reports on requests for mutual legal assistance (MLA).²⁷ Transparency International Brazil was also able to obtain information on MLA requests

specifically in the context of Operation *Lava Jato*.²⁸ The evidence of low levels of cooperation between authorities in Latin America – and the subsequent push to improve them – demonstrated the importance of transparency of enforcement data.

The MPF maintains a regularly updated, publicly accessible database of all ongoing procedures (investigations and cases), including those related to foreign bribery.²⁹ It also publishes information on leniency agreements and plea bargains signed with companies³⁰ and runs specific and user-friendly websites with information on high-profile cases, such as Operation *Lava Jato*.³¹ The CGU also provides a database with information on its proceedings to investigate and punish foreign bribery, though there is limited information on the details of each case.³² A list of opened proceedings,³³ as well as the leniency agreements signed between the CGU and companies, is also available.³⁴ Some information on different aspects of leniency agreements – such as fines and other penalties, enforcing authority, name of the company – are made available by the CGU and the MPF, but many remain completely or partially under seal, including the annexes where the foreign bribery conduct is described in detail. No public information is provided on the countries where bribes were paid, which may protect officials who were involved in corruption and remain in power.

Court decisions are published in full on courts' online systems and official gazettes, as long as there are no confidentiality issues.³⁵

Beneficial ownership transparency

²⁵ <https://www.oecd.org/brazil/abuse-of-authority-provisions-adopted-by-the-senate-raise-concerns-over-brazil-s-capacity-to-ensure-independence-of-prosecutors-and-judges-in-fighting-corruption.htm>

²⁶ <https://oglobo.globo.com/brasil/cnj-fez-estudos-em-2010-concluiu-que-juiz-de-garantias-era-inviavel-24181899>

²⁷ <http://www.justica.gov.br/sua-protecao/cooperacao-internacional/estatisticas>

²⁸ <https://www.jota.info/tudo-sobre/lava-jato-around-the-world>

²⁹ For most cases (except those deemed confidential), this includes the location of the proceedings, the type of proceedings (investigation, criminal case, etc.), case number, start date and details of its processing.
<http://aplicativos.pgr.mpf.mp.br/mapas/mpf/atuacao/index.php?UID=1448285810>

³⁰ <http://www.mpf.mp.br/atuacao-tematica/ccr5/painel-acordos>

³¹ <http://www.mpf.mp.br/grandes-casos/lava-jato/resultados>

³² <http://paineis.cgu.gov.br/corregedorias/index.htm>

³³ <https://cgugovbr.sharepoint.com/:x/s/oe-crg-direp-diretoria/EVslAxc9-b5Lpb-AVmbgDPQBHg8jFH1D8cPwITWd-telg?rttime=5YalRVf110g>

³⁴ <https://www.gov.br/cgu/pt-br/assuntos/responsabilizacao-de-empresas/lei-anticorrupcao/acordo-leniencia>

³⁵ <https://www.cnj.jus.br/programas-e-acoas/processo-judicial-eletronico-pje/>

Brazil has a central register of beneficial ownership information which is not accessible to the public. A beneficial ownership definition was introduced into the Brazilian legal framework in 2016 by the Federal Revenue Service's Ordinance n° 1.634, which also required all legal persons to provide information about their beneficial owners to the National Register for Legal Persons, maintained by the revenue service.³⁶ The information is accessible to law enforcement authorities, and the ordinance provided for it to be made public. This was expected in open-data format. However, in 2018, Ordinance n° 1.863 came into force, changing the legal framework to separate beneficial ownership data from other information kept by the Federal Revenue Service, so that the information on beneficial owners will not be available to the public.³⁷

Inadequacies in legal framework

While the country's anti-money laundering framework had for years been praised by the FATF, its efficacy is now in question due to recent events. Besides the above-mentioned Supreme Court decision halting the sharing among agencies of information on suspicious financial transactions, and changes to the COAF's institutional set-up, the COAF's director was also fired by President Bolsonaro in 2019. This instability coincides with the COAF's role in revealing a corruption and money laundering scheme allegedly involving the President's son, Senator Flavio Bolsonaro.³⁸

A recent change in Brazil's jurisprudence to bar imprisonment before all appeals have been exhausted is likely to seriously aggravate the long-standing impunity of white-collar crimes, especially considering the country's sluggish judicial system and the inadequate procedural rules on statutes of limitation.³⁹ Whistleblower protection in Brazil remains inadequate, especially in relation to the private sector. Even in the public sector, protections for whistleblowers are insufficiently detailed and clear.

³⁶ <http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?visao=anotado&idAto=97729>

³⁷ <http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?visao=anotado&idAto=97729#1954228>

³⁸ <https://www.bbc.com/portuguese/brasil-50211661>

³⁹ https://issuu.com/transparencyinternational/docs/brazil_annual_review_2019

⁴⁰ <https://www.transparency.org/en/publications/brazil-setbacks-in-the-legal-and-institutional-anti-corruption-frameworks>

⁴¹ <https://g1.globo.com/politica/noticia/2020/06/26/governo-exonera-delegada-que-integrava-forca-tarefa-da-lava-jato.ghtml>;
<https://g1.globo.com/rj/rio-de-janeiro/noticia/2020/03/05/ex-secretario-nacional-de-justica-e-suspeito-de-ajudar-na-fuga-do-empresario-rei-arthur.ghtml>

Inadequacies in enforcement system

While efforts and results in investigations, prosecutions and the recovery of assets related to grand corruption have improved, especially with Operation *Lava Jato*, it remains an open question whether the terms of leniency agreements between companies and the CGU/AGU will lead to effective and dissuasive sanctions in relation to foreign bribery offences. The provision that requires companies to contact officials in countries where wrongdoing took place and to settle those issues has had limited impact so far. There is a risk of perpetuating impunity in transferring the enforcement responsibility to foreign authorities who may have little interest in or capacity to investigate and prosecute these cases. The lack of transparency about the terms of these agreements is also problematic – their annexes, where the foreign bribery conduct is further detailed, remain under seal. Information about the negotiation of these settlements has been insufficient and there is little guarantee the agreements will be adequate and proportionate.

Beyond the setbacks to Brazil's anti-corruption legal and institutional frameworks mentioned in the previous sections, efforts to interfere politically with and dismantle the successful model of taskforces within the Federal Prosecutor's Office also threaten the country's ability to investigate and prosecute grand corruption and foreign bribery.⁴⁰

Sérgio Moro, the former judge of Operation *Lava Jato*, resigned in protest in 2020 after President Bolsonaro fired the Director of the Federal Police. Such high-level changes in the Ministry of Justice have once again raised questions about the ministry's central role in facilitating international cooperation and its vulnerability to political interference and leaks of information about investigations.⁴¹

Recommendations

- Improve transparency and publication of decisions and leniency agreements, including their annexes, related to major cases of foreign bribery and money laundering
- Approve legislation on beneficial ownership transparency, ensuring the register is publicly accessible
- Adopt and implement the bill related to whistleblower protection included in the “New Measures against Corruption”
- Ensure the independence and autonomy, with accountability, of Brazil’s anti-corruption bodies, including the Federal Police and the Public Prosecutor’s Office.