

PUBLICATION

New Anti-Corruption Law to Take Effect in Brazil

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With the continued ongoing work to exploit the discoveries in the Lula (Tupi) field and the recently announced 2013 subsalt strike in the Campos and Santos basins off Brazil's southern coast, oil and gas exploration and production companies will continue active efforts to participate in the development of these resources. Oil field services providers, such as geophysical contractors, air transport providers and oilfield software purveyors will similarly continue to seek opportunities arising out of these developments. However, the international spotlight has begun to shine more brightly on Brazil over the past year, mainly due to the Brazil's upcoming role as host of the 2014 FIFA World Cup™ and the Rio 2016™ Summer Olympics, and the international scrutiny is bringing with it changes in Brazil's legal climate. One of those changes is directly targeted to addressing claims of corruption in Brazil's business culture, and this change will potentially have a direct effect on E & P and oil field services companies doing business in Brazil.

On August 1, 2013, Brazil enacted Law No. 12.846 (the "Law"), referred to as the Clean Company Law. The Law imposes strict civil and administrative liability on entities operating in Brazil. The Law becomes effective on January 28, 2014, and contains provisions both similar to and distinct from the U.S. Foreign Corrupt Practices Act (the "FCPA") and the UK Bribery Act 2010 (the "Bribery Act,") (the FCPA and Bribery Act collectively, the "Acts").

The Law prohibits the bribery of public officials and applies to both companies domiciled in Brazil and foreign companies having an office, branch or other representation in Brazil, even if such office, branch or representation is temporary. In general, the Law prohibits acts that are harmful to the public administration and targets direct and indirect acts of bribery or attempted bribery of Brazilian or public foreign officials or related third parties.

There are several key differences between the Law and the Acts. First, the scope of "harmful acts" under the Law is defined more broadly than the scope of acts prohibited under the Acts. Second, and importantly for US companies, the Law prohibits facilitation payments, which are permitted under the FCPA. Third, unlike the FCPA but similar to the Bribery Act, the Law is not limited to corruption involving foreign officials; the Law also extends to related third parties. Last, unlike the Bribery Act but similar to the FCPA, the Law does not reach acts of commercial bribery in the private sphere.

The Law has not yet come into force, and the application and interpretation of the Law remain uncertain. Details that might guide compliance are notably absent in many areas, and several key terms either lack definitions or are defined very broadly. Similarly, the degree of emphasis on enforcement is not known at this time. With current international attention focused so strongly on Brazil due to the 2014 FIFA World Cup™ and Rio 2016™, companies should assume that compliance with the Law will be monitored and enforcement may be visible and politicized.