

Brazilian companies face new era of anti-corruption enforcement, says King & Spalding partner

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King & Spalding LLP government investigations partner Andrew Hruska explains why the Brazilian government may scrutinise local companies' compliance programmes in minute detail following the election of Jair Bolsonaro.

Brazilians have elected Jair Bolsonaro as their new president and in doing so communicated a clear desire for dramatic change in South America's largest country. A similar movement – in the opposite political direction – occurred in 2002 when Brazil elected Luis Inácio Lula da Silva in pursuit of a left-wing government. Now, Brazil has bought into Bolsonaro's promise to shift the nation back to a conservative government and continue an aggressive crackdown on corruption and other crime throughout the nation.

The Brazilian stock exchange reacted positively to Bolsonaro's election. This optimistic response can be attributed to several factors, including the hope that Bolsonaro will implement long-awaited tax and public pension reforms and privatise state-owned entities. Bolsonaro also promised to cut the number of government ministries down to shrink the state. He has already announced a potential redesign of the Ministry of Justice, which, if executed, would incorporate the Ministry of Public Safety and the Council for Financial Activities Control into the Ministry of Justice. There have also been talks about integrating the Ministry of Transparency into the Ministry of Justice; however, Bolsonaro announced recently that the current minister of the Ministry of Transparency, Wagner de Campos Rosario, will continue in that role. Rosario has a long history of public service in Brazil and has a strong relationship with the Federal Police and the Federal Attorney General's Office.

To lead his new Ministry of Justice, Bolsonaro selected federal judge Sergio Moro, the trial judge of the *Lava Jato* investigation, which has been the largest anti-corruption law enforcement effort in the country's history. This selection sent an unmistakable message. The decision to invite Judge Moro – widely known as a national symbol in the fight against corruption – to lead a robust Ministry of Justice fits into Bolsonaro's campaign promises of zero tolerance against corruption and a more robust law and order environment in Brazil.

Judge Moro is expected to have substantial budgetary resources devoted to increasing anti-corruption and other law enforcement efforts. He has already hit the ground running and announced that he will work on a package of bills to strengthen law enforcement resources. This package is related to a project led by the NGO International Transparency called New Measures Against Corruption. For instance, one of the measures requires a compliance programme for companies that intend to contract with the government. Judge Moro has also confirmed that he will bring certain members of his *Lava Jato* task force to the Ministry of Justice, which will add investigations experience to his team. Further, Judge Moro will appoint the next director general of the Brazilian Federal Police, who will be responsible for investigating all federal crimes.

Apart from the high-profile appointment of Judge Moro, other personnel changes are expected that will align with Bolsonaro's law and order campaign promises. Bolsonaro has the power to appoint the attorney general, the leader of the Federal Prosecution Office, and will do so at the end of current attorney general Raquel Dodge's mandate next autumn. Bolsonaro will also appoint the president of the Brazilian Central Bank as well as commissioners and directors in federal regulatory agencies, such as the Brazilian Securities and Exchange Commission and the Brazilian Antitrust Authority (CADE), as soon as those individuals' current tenures come to an end.

Each of these agencies has its own administrative proceedings and authority to investigate violations of the law as well as the ability to enter into leniency agreements with companies and individuals. At CADE, for example, Bolsonaro will be charged with replacing the CADE superintendent, CADE's attorney general, and four commissioners out of the group of seven that form CADE's Administrative Tribunal. It is expected that Bolsonaro's appointments to these agencies will implement his anti-corruption policies (including related enforcement priorities such as bid-rigging) with gusto. With respect to the Central Bank, Paulo Guedes is focused on maintaining the independence of the

institution from political pressures, but it remains to be seen who Bolsonaro's choice for the next president will be and what he or she will do.

In sum, while the specific law enforcement measures that Bolsonaro will implement are yet to be fully defined, the early signs demonstrate that anti-corruption and related enforcement activity will increase, not decrease, in the new administration. With years of investigations under their belts, law enforcement agencies in Brazil are more confident in their tools and abilities to get to the bottom of complex financial crimes. These agencies now have a staunch supporter at the very top, not to mention an anti-corruption celebrity at the helm of the Ministry of Justice. Brazil may well be entering a new phase in its fight against corruption and other crimes.

For businesses operating in Brazil, this is cause for both optimism and caution. More open markets combined with a strong law enforcement backdrop could be attractive for growth and expansion in the country. Companies that feared a breakdown in the rule of law in Brazil may now feel more confident. That said, more than ever, companies should be mindful of the importance of developing and maintaining strong anti-corruption controls and related procedures. Brazilian companies and multinationals operating in Brazil should expect tough scrutiny of their compliance programmes and practices by both domestic authorities and, in certain cases, foreign authorities such as the US, for years to come. In other words, with Bolsonaro in charge, what began as a simple car wash could become a downpour.

Andrew Hruska is a partner in King & Spalding's special matters and government investigations practice focusing on criminal and regulatory litigation and investigations. He served as chief assistant US attorney for the Eastern District of New York and as senior counsel to US Deputy Attorney General Larry Thompson. Hruska is based in New York.

Kyle Sheahen, Rafaela Calcena and Clarissa Moliterno, who are associates in King & Spalding's special matters and government investigations group, assisted in the preparation of this article.