

BRIBERY & ANTI-CORRUPTION

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CORRUPTION IN A CONCRETE JUNGLE

Common Bribery Risks in São Paulo, Brazil

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 This article contains information regarding the following topics: **STRATEGY + LEADERSHIP + RISK MANAGEMENT** || || || || || || || ||

In early June 2013, protests sprung up in São Paulo, Brazil, after the city government raised bus fares. The size and cause of the protestors quickly expanded in the weeks that followed to include hundreds of thousands of Brazilians, spread across multiple cities, issuing “a broad challenge to political corruption” in the words of the New York Times. As of the date of submission of this article, the specific goals of the protesters are varied and the ultimate result of the demonstrations unknown. But one thing is clear. The underlying thread unifying the voices is a common frustration with corruption in the country.

The types of corruption that drive citizens to the streets seem particularly pronounced in Brazil’s financial capital, São

Paulo. Not only is São Paulo the largest city in South America, it is the largest by far. This concrete metropolis boasts a massive population of about 20 million. If you increase the population of Buenos Aires, South America’s second largest city, by a third, you still have not matched the population of São Paulo.

Brazil’s political capital is Brasilia and its top tourist destination is Rio de Janeiro, but the country’s economic power resides squarely in São Paulo. In 2011, the city’s GDP was more than US\$240 billion, on par with that of entire nations, like Israel, Egypt, Ireland, and the Philippines. This makes it the 10th richest city in the world. A PwC study predicts that it will be the sixth richest by 2025. Its GDP is double that of Rio de Janeiro, the second richest city in Brazil.

Such economic heft means great opportunity for the business community. It also means pronounced forms of corruption risk. Here is a list of some of the most common forms that international businesspeople encounter when operating in São Paulo.

Public Procurement: In 2011, the City of São Paulo had a remarkable revenue of US\$22 billion, according to World Bank statistics. Public revenue on this scale means public procurement activity of immense scopes. The City’s purchases dwarf those of normal cities, even exceeding those of many states within the country. This means that competition for valuable public contracts can be fierce, creating an ideal breeding ground for corruption.

Bribery, fraud, and collusion often manifest themselves in public procurements in cre-

ative ways. The bidder might hire a “consultant” who used to work for the entity conducting the procurement office or who has friends there. Perhaps city official design commercial specifications to favor a specific bidder willing to kick back favors. Project designers might include confusing technical requirements that leave discretion to procurement officials to direct contracts one way or another.

The City has taken actions to mitigate these types of risks. It recently created an agency of the City Controller (Controladoria Geral do Municipio). In addition, several years ago it set up an audit court (Tribunal de Contas Municipio – TCM) specifically focused on procurement-related issues. These structures help ensure that the procurement decisions of public officials and the contracts that are awarded are scrutinized by third parties. São Paulo is one of the few cities in Brazil with such mechanisms in place. It is reported that the City has even begun asking employees to justify their own increases in assets when those assets are not compatible with the employee's income.

Regulatory Requirements. Doing business in São Paulo often requires crossing significant regulatory hurdles. These obstacles include construction permits and operational licenses. The World Bank Doing Business Report regularly ranks Brazil at the lower end of indexes for the quality of various regulatory frameworks. The effects of low regulatory quality are often most acute for those working in Brazil's largest city.

Poor regulatory quality can create opportunities for public officials to demand bribes. The less clear the rules, the more discretion that officials have to issue permits. This ambiguity creates opportunities to manipulate rules for corrupt purposes. Moreover, the more government actors that are involved in the process, the greater the chances a company will face requests for bribes. Complex regulatory regimes also mean that companies often rely on despachantes and third party agents to get things done. Without proper vetting and controls, these third parties can make improper payments on companies' behalf. These are all factors that contribute to corruption risk in a dense city environment like São Paulo's.

These risks are shown in the Brazilian Government's current investigation of the Brazilian subsidiary of Canada-based Brookfield Asset Management. Brookfield is one of the world's largest property investors. The civil charges allege that the subsidiary paid US\$640,000 in bribes to obtain construction permits around São Paulo. As part of the scheme, the firm is alleged to have hired an armored truck to deliver cash to city officials. In return, the firm, according to press accounts, avoided having to make improvements to a nearby overpass and received a reduced permitting fee in connection to renovating malls in São Paulo.

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Commercial Bribery. The São Paulo city government reports that 38% of Brazil's 100 largest privately-owned companies and 63% of the Brazilian operations of international companies are headquartered in the city. Not only does this create opportunities for public bribery, it also raises the potential for commercial bribery. More often than not, a company's purchasing, supply, and sales functions in Brazil will be run out of São Paulo. In this context, a company's own employees may consider steering opportunities to one commercial partner over another in return for kickbacks or other wrongful advantages.

Brazil does not currently criminalize commercial bribery, although the offense could fall under Criminal Code provisions prohibiting offenses like embezzlement or fraud. But the Brazilian Congress is currently considering criminalization of commercial bribery as a stand-alone offense. Moreover, under foreign laws like the U.K. Bribery Act of 2010, a company could be subject to commercial bribery violations in other jurisdictions for payments in São Paulo depending on the company's location and activities.

Paying Taxes: In the World Bank's 2012 Doing Business Report, Brazil ranks a staggering 154 out of 185 economies, 185 be-

ing the worst, for the ease of paying taxes. This issue can be particularly problematic in São Paulo, especially because the city applies a tax of 5% for services which is high compared to surrounding cities where the rate can be as low as 0.5%. São Paulo has city inspectors who regularly visit companies' operations to ensure proper reporting. This and other interactions with tax officials create opportunities for officials to seek improper payments.

Expect Biography

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