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Brazil — Recent Changes to Leniency Agreement Practices

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On December 23, 2025, Brazil's Office of the Comptroller General ("**CGU**"), together with the Attorney General's Office ("**AGU**"), published Interministerial Normative Ordinance CGU/AGU No. 1, reforming the framework governing the negotiation, execution and monitoring of leniency agreements under Law No. 12,846/2013 ("**Brazilian Anti-Corruption Law**"). The ordinance is particularly relevant for M&A transactions, as it clarifies the treatment of historic misconduct that may be discovered at acquired companies. With these reforms, the CGU expressly acknowledged that acquiring companies that identify and voluntarily disclose irregularities committed by recently acquired or merged subsidiaries may benefit from more favorable conditions when negotiating leniency agreements. In doing so, Brazil is following other countries, including the United States, in incentivizing companies to conduct robust pre-acquisition due diligence and post-acquisition compliance integration.

While Brazilian law had already provided, in general terms, for the possibility of reducing administrative sanctions in the context of leniency agreements, the novelty of the new framework lies in the structured application of these incentives to M&A transactions, considering the position and post-closing conduct of the acquiring company. According to the CGU, the voluntary disclosure of misconduct identified in connection with a corporate transaction, when made within 12 months following completion of the transaction, could reduce by up to two-thirds the applicable penalty under a leniency agreement entered into with the authority.

Access to this benefit is subject to compliance with objective eligibility criteria, including full remediation of damages caused to the public sector, disgorgement of any illicit gains, the adoption of effective remediation measures, including the enhancement of the company's compliance program, and internal accountability measures with respect to individuals involved in the misconduct, including termination of employment. The CGU further conditions the reduction of penalties on the absence of sanctions imposed on the acquiring company in the preceding five years, as well as on evidence that the corporate transaction served a legitimate commercial purpose and was not structured to avoid or limit legal liability.

From a practical standpoint, the CGU's position seeks to reduce the uncertainty surrounding the response of Brazilian authorities to misconduct uncovered post-closing, a factor that has historically affected investment decisions and deal execution. By articulating clearer criteria, timelines and benefits, the new approach aims to reduce perceived successor liability risks and reinforce the importance of post-acquisition due diligence and integration as key risk management tools in Brazilian M&A transactions.

This revised framework is also expected to influence the contractual allocation of risks, costs and responsibilities between buyers and sellers with respect to irregularities identified after closing. According to the CGU, the overarching objectives of the new framework are to increase predictability and legal certainty, encourage qualified voluntary disclosures, and expand the flow of information regarding corporate misconduct, without discouraging productive investment in Brazil.

The CGU has indicated that this new approach was inspired by developments in other jurisdictions, while emphasizing that the Brazilian model was designed to remain within the framework of the Brazilian Anti-Corruption Law and to reflect the realities of Brazil's fragmented enforcement framework, in which multiple authorities exercise concurrent jurisdiction. This institutional context was cited as justification for the adoption of a longer timeframe, in comparison with other jurisdictions, for the identification and disclosure of misconduct discovered after closing, particularly in complex cross-border transactions.

In light of these developments, the approach adopted by the CGU can be viewed as further evidence of jurisdictions attempting to incentivize companies to adopt robust pre-acquisition risk-based compliance due diligence and prompt post-acquisition compliance integration. The CGU's approach follows the U.S. Department of Justice 2024 M&A Safe Harbor policy, which was first applied in a December 2024 declination afforded to private equity firm White Deer, after its discovery of sanctions-related violations at a firm it had acquired in 2020. To illustrate the incentives for identifying, promptly self-disclosing, and remediating such misconduct, White Deer avoided prosecution while the entity that it had acquired entered into a Non-Prosecution Agreement and paid fines and penalties of over $4 million; its former President also pleaded guilty to sanctions-related violations.

The practical takeaways for acquisitive companies or funds operating across jurisdictions – particularly in jurisdictions that present heightened corruption or sanctions-related risk – are the following:

- Seek to conduct risk-based pre-acquisition due diligence in as robust a manner as circumstances permit; such diligence can help to identify latent compliance problems that could provide a basis for negotiating the purchase price or allow for further risk mitigation measures.
- Seek to define a timeline for additional post-acquisition diligence steps (depending on those conducted pre-acquisition) as well as a roadmap for post-acquisition compliance integration. To the extent that pre-acquisition diligence was not fully possible, having a structured and robust post-acquisition plan can help to identify problematic behaviors in a timely manner.
- To the extent that instances of misconduct are identified, putting in place prompt remedial measures will be key to benefiting from any of the safe harbor / leniency programs offered by authorities.

Comparative Table of United States and Brazil Safe Harbor Approaches:

Criteria	United States M&A Safe Harbor Policy	Brazil (Leniency Settlement) – CGU
Legal basis	DOJ M&A Safe Harbor Policy (announced October 2023; updated Justice Manual March 2024)	Brazilian Anti-Corruption Law (Law No. 12,846/2013) and Interministerial Normative Ordinance CGU/AGU No. 1 (2025)
Type of resolution	Presumption in favor of a declination for acquiring company	Leniency agreement with the CGU

Criteria	United States M&A Safe Harbor Policy	Brazil (Leniency Settlement) – CGU
Types of misconduct covered	Corporate criminal misconduct (including corruption, sanctions and export-control violations)	Acts harmful to the public administration (including corruption) committed by the acquired entity
Role of the acquiring company	Rapid post-acquisition detection and prompt voluntary disclosure	Voluntary disclosure of historic misconduct identified at recently acquired or merged subsidiaries
Disclosure timing	Within 6 months of closing (with remediation completed within 12 months)	Within 12 months following completion of the corporate transaction
Type of benefit	Presumption in favor of a declination	Reduction of up to two-thirds of the applicable corporate penalty
Eligibility requirements	Voluntary disclosure, cooperation, remediation, absence of aggravating factors	Disgorgement of illicit gains; remediation measures; termination of employees involved; no CGU sanctions in the preceding five years; legitimate commercial purpose of the transaction
Individual liability	Criminal prosecution of culpable individuals and target entity preserved	Administrative and civil liability preserved; internal accountability measures required
Post-resolution supervision	No specific official oversight in the event of a declination	CGU oversight under the terms of the leniency agreement
Policy objective	Incentivize post-acquisition disclosure and remediation (including integration into acquiror's compliance program)	Increase legal certainty, encourage voluntary disclosure and reduce deterrence to investment

(Read the Portuguese version)

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