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**Compliance and legal risk
management for Japanese companies
doing business in Brazil**

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Brazilian Anticorruption Act

- **Prevention of Misconduct**
 - Merger and acquisition
 - In the course of the regular business of the company

- **Reacting to Misconduct**
 - Initial response in relation to public and shareholders
 - Conducting an internal investigation
 - Deciding on whether or not disclose and voluntarily cooperate with the authorities
 - Treatment of managers and employees involved

Prevention – Mergers & Acquisitions

- **Successor Liability**

- Under the *U.S. Foreign Corrupt Practices Act* – FCPA purchaser is liable for past conduct, unless:
 - Pre-acquisition due diligence
 - Disclosure prior to closing
- Under the Brazilian Anticorruption Act
 - Limited to the value of the conveyed assets
 - No exclusion under law

Prevention – Mergers & Acquisitions

- **Successor Liability – How to prevent**

- Pre-acquisition due diligence – Risk based approach:
 - Assessment of internal controls
 - Internal audit practices
 - Compliance structure
 - Clients, agents and service providers
- Remedies
 - Representations and Warranties
 - Disclosure to local authorities?

Prevention – Course of Business

- **Brazilian Anticorruption Act provides for strict liability for corporations**

- No defense for acts performed by
 - Managers and employees
 - Agents and representatives
 - Service providers
- Penalty may be reduced based on mitigating factors
 - Cooperation
 - Compliance programs

Prevention – Compliance Program

- The implementation of a compliance program is the only preventive measure which a company can adopt in order to prevent liability under the Anticorruption Law.
- Definition and criteria for evaluation of compliance programs are still pending definition by Federal regulation.

Prevention – Compliance Program

- **Legal Reasons**

- Reduce the risks of exposure to penalties
- Reduces applicable penalties in case of enforcement
- Reduce the risks of internal frauds

- **Business Reasons**

- Incentives for a common culture between the different business and subsidiaries of the company
- Identify risks (legal / business)
- Mitigation / management of the risks
- Creation of value to the company: reputation
- Improves relationship with *stakeholders*

Prevention – Compliance Program

- **International standards for a effective program**
 - Participation of the top management – “*Top-down approach*”
 - Clear and defined policies and procedures
 - Training and education
 - Communication channels
 - Constant monitoring
 - Guidelines for investigation and disciplinary action
 - Response to problems and corrective measures
 - Periodic evaluation of the results

Prevention – Compliance Program

- **Compliance program and third parties**

- Risk assessment of how the third parties conducts business and expected interaction with government officials
- Contractual clauses, certifications and audit rights
- Audit payment to third parties (including payments made by the third parties relevant to services rendered)
- Due diligence should be documented and kept in an easily accessible database

Reacting to Misconduct

- **What to do once a misconduct takes place**
 - Response to the public and shareholders
 - Internal investigation
 - Managers and employees involved
 - Disclosure to public authorities

Reacting to Misconduct

- **Response to the public and shareholders**

- Public response

- Control the message
- Reputational damage

- Internal Response for limited liability companies (Ltda)

- Disclosure to managers and quotaholders

- Internal response for stock corporations (S/A)

- Disclosure to relevant managers, board of directors and board of auditors
- Disclosure of "relevant facts" to the market

Reacting to Misconduct

- **Conducting an internal investigation**
 - Clear policies on how to conduct an investigation
 - Collection of evidence
 - Preservation of privilege
 - Establish an investigation team
 - Establish clear roles
 - In-house or external investigators
 - Secure evidence
 - Stop ongoing misconduct

Reacting to Misconduct

- **Conducting an internal investigation (cont.)**
 - Analyze the evidence
 - Review of e-mails and electronic data
 - Personal communications and documents
 - Interviews
 - Selection of witnesses
 - Preparation
 - How to conduct the interviews
 - Report
 - Findings
 - Recommendations

Reacting to Misconduct

- **Disclosure to public authorities**

- Culture clash – lack of disclosure culture
 - Prior lack of incentives for disclosure
- Disclosure of confidential information
- Incentives to disclosure under the Anticorruption Law
 - Leniency agreement
 - Cooperation with authorities during investigations

Reacting to Misconduct

- **Treatment of managers and employees**

- Suspects of wrongdoing
 - Suspension
 - Termination (with or without cause)
 - Referral to criminal authorities
 - Civil and labor litigation
- General and Special Prevention

Pinheiro Neto Advogados

Firm Profile

Founded in 1942, Pinheiro Neto Advogados is one of the largest law firms in Latin America and one of the most well-established in Brazil. With our roots in tradition and constant concern for the highest ethical standards, Pinheiro Neto Advogados is a full-service law firm in Brazil with offices in São Paulo, Rio de Janeiro and Brasília.

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