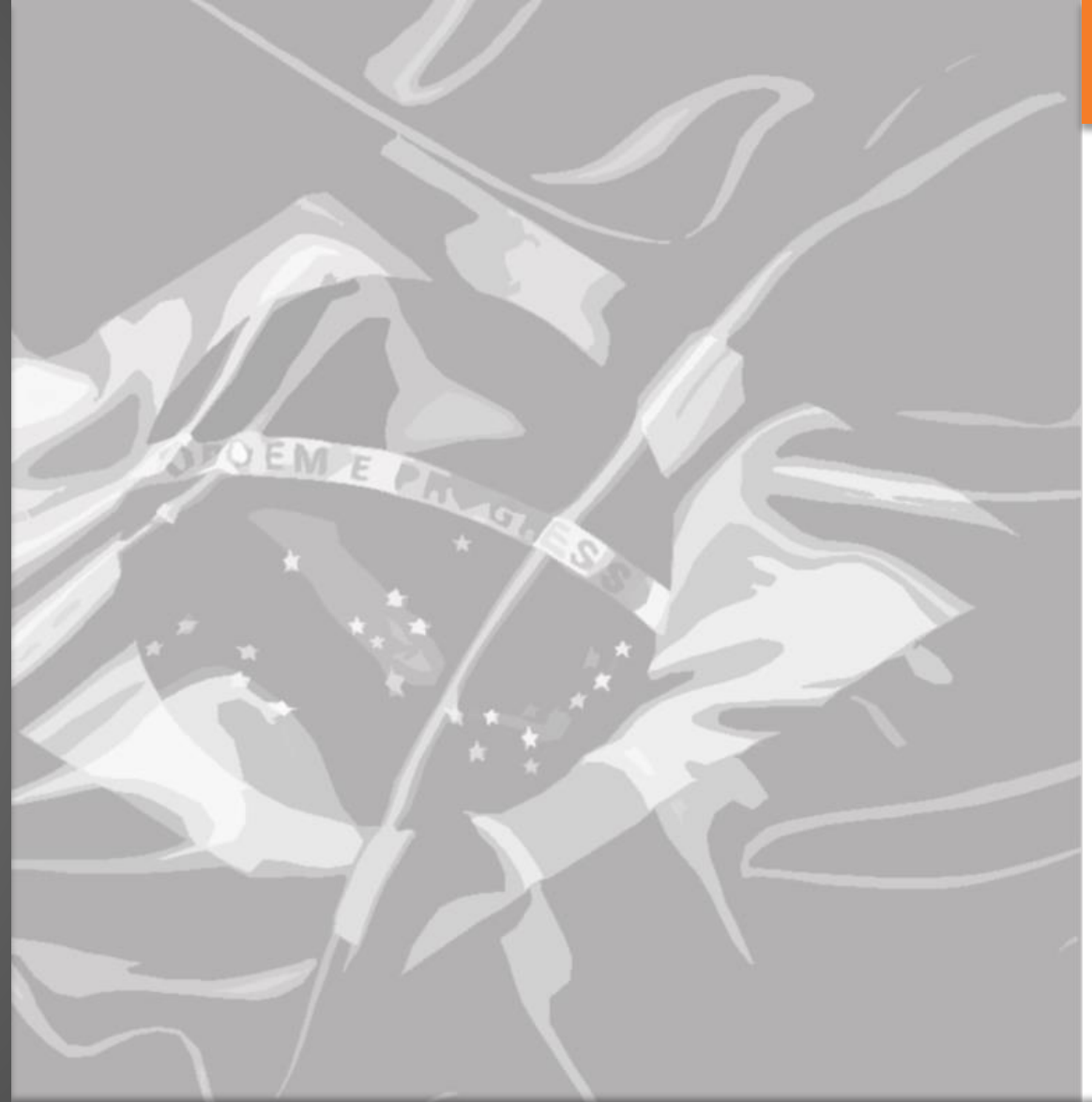


WHAT'S GOING ON IN BRAZIL?

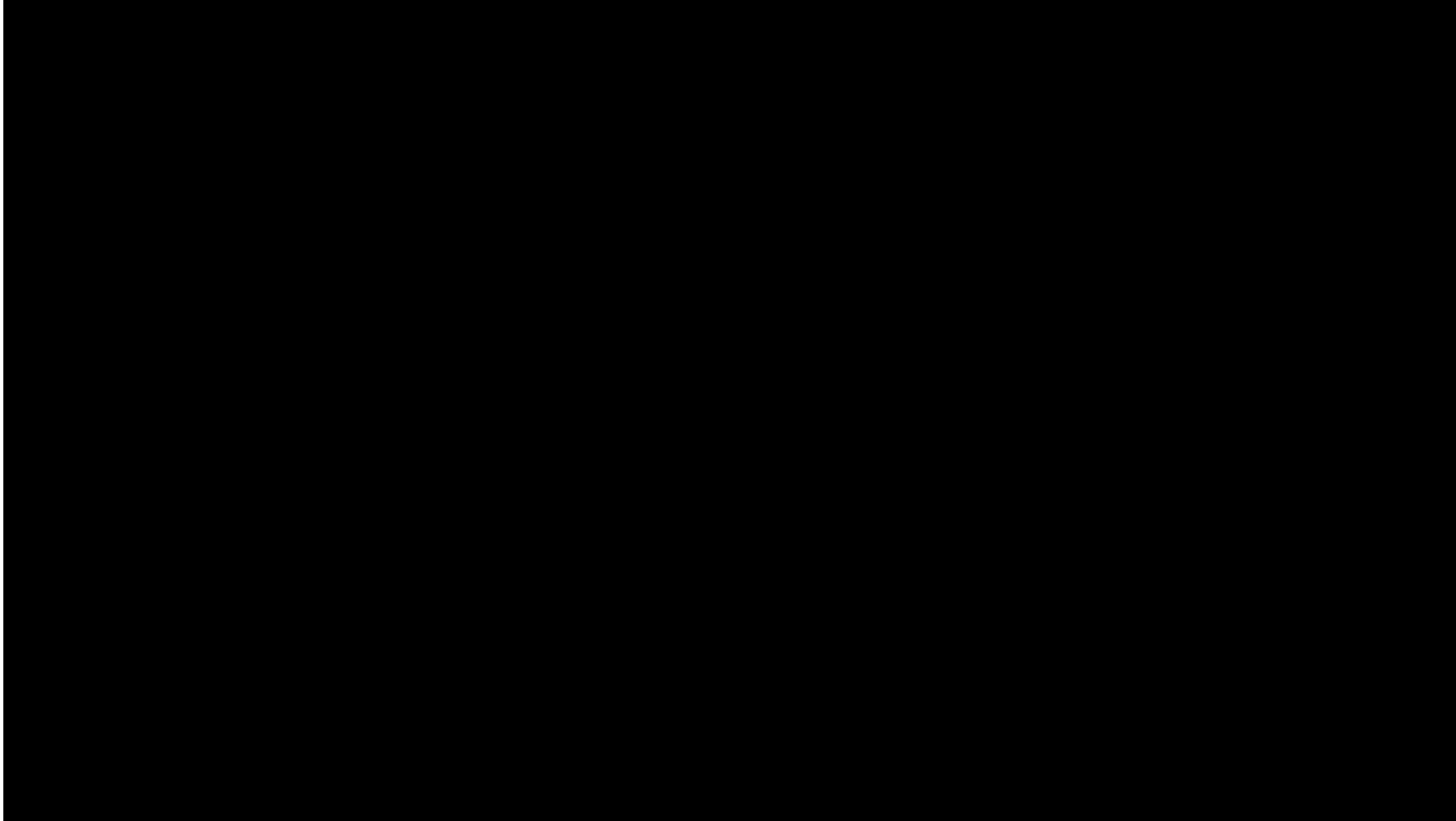
A Compliance & ABAC Perspective



Zancaner Costa e Spiewak
Advogados

Benny SPIEWAK

BRAZIL, HOUSE OF CARDS?



WHO IS WHO?

MICHEL TEMER
(Current President)

Former Vice-President for Dilma Rousseff. Under investigation on Corruption Charges



LULA
(Former President)

Appointed as an epicenter of corruption and condemned in a first instance court for 9 year in prison.



DILMA ROUSSEFF
(Impeached President)

Impeached due to Accountability Misconducts.



RENAN CALHEIROS
(Leader of Senate)

Involved in Car Wash. Defendant on Bribery, Corruption and Tax Evasion charges.



EDUARDO CUNHA
(Former Leader of Congress)

Orchestrator of Rousseff's Impeachment. Currently in Prison on Bribery, Corruption and Tax Evasion charges.



JOSÉ DIRCEU
(Former Chief of Staff)

Currently in prison on Corruption charges.



AÉCIO NEVES
(Opposition Leader)

Defendant on Bribery and Corruption charges.



SÉRGIO MORO
(District Judge "in charge" of operation Car Wash)



TAKEAWAYS *(or part of them)*

- **CORRUPTION, BRIBERY, CONFLICT OF INTEREST** and **UNDUE INFLUENCE**? Not just words.
- The Country is hurting and corruption is the driving force.
- Brazilian legislators enacted locally-applicable **ABAC RULES**.
- Brazilian players now must observe both **INTERNATIONAL** and **LOCAL** standards.
- “**ONE SIZE FITS ALL**” proved ineffective, mostly for pharmarkets.
- Once the political environment is done with, the **HEALTH SECTOR** will be dealt with.
- Why did we get to this point? How “**CULTURAL**” has corruption become?
- **WHAT IS GOING ON IN BRAZIL?** Conscience is calling, and the “**JEITINHO**” must go.

CORRUPTION IS THE THEME OF THE YEAR

IT MAKES HEADLINES IN THE MAIN NEWSPAPERS AND WEBSITES



**WE HAD A PRESIDENT IMPEACHED
DUE TO ACCOUNTABILITY MISCONDUCTS...**



Drusse

THE SPEAKER OF THE HOUSE OF REPRESENTATIVES HAS BEEN ARRESTED...



Ueslei Marcelino/Reuters

HOW DOES THAT AFFECT THE COUNTRY?

THE WAY WE DO BUSINESS?

FRIENDSHIPS?

OPERATION CAR WASH



OPERATION CAR WASH

- Launched in the spring of 2014, the operation had initially focused on agents known as **DOLEIROS** (*black market money dealers*), who used small businesses, such as petrol stations and **CAR WASHES**, to launder the profits of crime.
- But police soon realised they were on to something bigger when they discovered that the **DOLEIROS** were working on behalf of an executive at **PETROBRAS**. This link led prosecutors to uncover a vast and extraordinarily intricate web of corruption.



OPERATION CAR WASH



- The web is so wide that up to now, prosecutors have formulated almost **200 ARREST WARRANTS** in connection with **OPERATION CAR WASH**, including several prominent business and political figures.
- Around **R\$ 10 BILLION** were recovered.
- More than **120 PLEA BARGAINS** were made.
- Almost **90 PEOPLE CONVICTED** by Judge Sérgio Moro

OPERATION CAR WASH



- Over 60 Odebrecht **EXECUTIVES** are signing plea bargain agreements with investigators and lawyers both in Brazil and the **U.S.**

“Untouchables”?
NOT ANYMORE

- Odebrecht had a **DEPARTMENT DEDICATED TO BRIBES**, known as the Division of Structured Operations, which laid out close to **R\$ 800 MILLION** in illicit pay-offs for more than **100 CONTRACTS** in a dozen countries over **15 YEARS**.
- In June 2015, prosecutors arrested high-profile Brazilian businessmen Marcelo Odebrecht, CEO of Latin America’s largest engineering and construction company.
- is serving a **19-YEAR PRISON SENTENCE** for corruption. He was found guilty of paying **MORE THAN \$30 MILLION** in bribes to Petrobras officials in exchange for contracts and influence.

After shifting focus from Petrobras to Odebrecht, prosecutors opened new probes into dozens more politicians from all sides of the political spectrum, including **EIGHT MEMBERS OF TEMER'S CABINET**.

They then widened their net to include **JBS**, one of the world's biggest meat-packing firms.

A plea bargain made in May by the two brothers who own the company – **WESLEY** and **JOESLEY BATISTA** – which includes secret recordings allegedly made in March, in which **TEMER** allegedly discusses *hush-money payments* to **EDUARDO CUNHA**, and details of **BRIBERY**.

The attorney general has formally accused **TEMER** of conspiring to obstruct **CAR WASH**, setting the stage for a constitutional battle between the judiciary and the government and prompting calls in Congress for the **IMPEACHMENT OF A SECOND PRESIDENT IN A YEAR**.

Dozens of foreign corporate suppliers (*of engineering equipment, power lines, drilling rigs and so forth*) also face regulatory and shareholder inquiries about the bribes they paid to secure contracts with Petrobras. The **WORLD CUP** and **OLYMPICS** have also been sucked into the mire with fraud investigations now focused on six out of the 12 stadiums used in 2014 and 2016.



REACTIONS?



■ **DEMONSTRATIONS** around the country for the impeachment of President **DILMA ROUSSEF**, for and against former president **LULA** and current president **TEMER**, in support to operation **CAR WASH** and Judge **MORO**.

■ *“Golden race”* to arrest Lula:

- ✓ Three years after the investigation began, Lula was found guilty of the first of **FIVE CHARGES** against him: that he had been given a beachfront apartment by engineering firm OAS in return for his help in winning contracts with Petrobras. He has been sentenced to **9 ½ YEARS** in prison, although he will not be jailed until the outcome of an **APPEAL**.
- ✓ But Lula, who **DENIES ALL CHARGES**, says the investigation and trial were politically motivated to prevent him from running for president again in the next election.

■ **HOW DEEP CORRUPTION CUT? FOR HOW LONG? IS THAT A CULTURAL TRACE?**

BRAZILIAN ANTICORRUPTION LAW

LAW 12846.13

DECREE 8420.15

- Came into force on **JANUARY 28, 2014**
- **STRICT** (no-fault) liability to “acts contrary to the Public Administration”
- Prohibits offering **UNDUE ADVANTAGES** to government official
- No explicit requirement of *quid pro quo*
- **COMPANIES ARE LIABLE** for acts of their representatives, agents and contractors
- Prizes **COMPLIANCE PROGRAMS**, self reporting and cooperation with authorities
- **LACK OF PRECEDENTS.** How the Act will be interpreted by the courts?
- Car Wash is testing the new law, mainly when it comes to self-reporting, and leniency.



BRAZILIAN ANTICORRUPTION LAW

ADMINISTRATIVE PENALTIES:

LAW 12846.13

DECREE 8420.15

- Imposed by the Government Agency harmed by the irregular act;
- Fines ranging from 0,1% to 20% of the previous year's **GROSS REVENUE** less taxes;
- If impossible to ascertain previous year's revenue: **UP TO R\$60,000,000.00**;
- **PUBLICATION** of the decision imposing the penalty on the media;
- Prohibition from **CONTRACTING** with Public authorities.

JUDICIAL PENALTIES:

- Imposed by court action filed by the Government Entity or Public Prosecutors Office;
- **CONFISCATION OF ASSETS**/disgorgement of illegal gains;
- Suspension or partial **SHUTDOWN OF ACTIVITIES**;
- Compulsory **DISSOLUTION**;
- Prohibition against receiving incentives, subsidies, grants, donations or loans from public entities and from government controlled financial institutions for **UP TO 5 YEARS**.



HOW DOES OPERATION CAR WASH AFFECT THE PHARMACEUTICAL INDUSTRY?



LABOGEN CASE



- Representatives from Labogen were questioned by members of the Congress?
- How come a Pharmaceutical company got involved with an **OIL** and **GAS** issue?
- **MONEY LAUNDERING, INFLUENCE PEDDLING**, false representations and lack of technical skills
- In May 2014, a Labogen representative was **ARRESTED** by the Federal Police and charged with allegedly leading an illegal and multi-million dollar scheme with strong ties to high-level Brazilian politicians, including the now former President of the Brazilian House of Representatives;
- The representative of Labogen confirmed that the Congressman was vital to ensure the execution of a strategic **PRODUCT DEVELOPMENT AGREEMENT** (“*PDP*”) between the company and the Brazilian Ministry of Health for the production of *sildenafil*;

LABOGEN CASE



CONSEQUENCES?

- Cancellation of the *Sildenafil* deal
- An **INTERNAL AUDIT** by the Ministry of Health was performed and new PDP rules were set
- Qualification processes to identify and select partners
- The Federal Accountability Office became interested in understanding the mechanisms connecting **PHARMACEUTICAL COMPANIES** and the **GOVERNMENT**
- How Brazilian companies influenced health policies, **INCLUDING INCORPORATION OF NEW TECH?**
- Connected the (BR-based) pharma world to a dark environment. **PROTECTIONISM?**

WHAT'S NEW? WHAT'S NOT?

- No pharma company has been convicted in the wake of the **CCA**. **YET...**
- On April 13, **ANVISA** issued Ruling (Portaria) 894
- On 2016, **INTERFARMA** launched its reviewed Code of Conduct.

NEW TOPICS

- ✓ Internal Affairs and conciliation level
- ✓ Judicialization
- ✓ Defense of Competition, Antitrust
- ✓ Transparency and prohibition of payments for visitation access/*mini meetings*?

UPDATED

- ✓ Relationship with media outlets (releases, social media)
- ✓ Review the chapter about the relationship with patients' associations

**ENFORCEMENT OF FOREIGN ABAC LAWS
CONTINUE TO HIGHLIGHT THE SEVERE
CHALLENGES OF PHARMARKETS**

new

FCPA CASES INVOLVING BRAZIL



- SEC charged Eli Lilly with violations of the FCPA for **IMPROPER PAYMENTS** made by its subsidiaries to **FOREIGN GOVERNMENT OFFICIALS** to win businesses in Brazil
- Lilly's subsidiary in Brazil purportedly allowed one of its **PHARMACEUTICAL DISTRIBUTORS** to **PAY BRIBES TO GOVERNMENT HEALTH OFFICIALS TO FACILITATE** US\$1.2 million in sales of a Lilly drug product to **STATE GOVERNMENT INSTITUTIONS**
- Lilly agreed to pay disgorgement of US\$13mi, prejudgment interest of US\$6,7mi and a penalty of US\$8.7mi, summing almost US\$30mi

FCPA CASES INVOLVING BRAZIL



- Violating FCPA when its subsidiaries and agents bribed public doctors in Brazil for **OVER A DECADE**
- Employees and managers at all levels of the parent company and the subsidiaries were involved along with the distributors who sold Biomet's products
- Biomet's compliance and internal audit functions reportedly failed to stop the payments to doctors even after learning about the illegal practices
- US\$ 4,4mi in disgorgement, US\$ 1,1mi prejudgment interest, US\$ 17,28 mi settlement
- Self reporting? The role of **FOREIGN COMPLIANCE OFFICERS?**
- **FORMAL TRAINING. MISTRUST**

FCPA CASES INVOLVING BRAZIL



- The company's Latin America unit agreed to pay **US\$ 22.8 MILLION** to resolve criminal allegations of violation of the FCPA.
- Three-year deferred prosecution agreement with enhanced compliance obligations
- Provided "*cash, money transfers, personal or non-Olympus medical education travel, free or heavily discounted equipment, and other things of value*" to doctors working at government hospitals and clinics, according to the deferred prosecution agreement
- The offences occurred in Brazil, Bolivia, Colombia, Argentina, Mexico and Costa Rica
- The payments resulted in profits for Olympus Latin America of **MORE THAN \$7.5 MILLION**
- **EXECUTIVES KEPT A SPREAD SHEET** with illegal payments and linked them to sales and revenues, instructing employees to keep the payments secret

BUT STILL...



- **“HARD”** BRIBERY AND CORRUPTION CONTINUES TO EXIST.

- **CULTURAL EXCUSES** AND CUSTOM-ORIENTATIONS ARE GENERALLY PART OF THE DEFENSE.

- SEVERE PRESSURES FOR RESULTS VS. TIME-CONSUMING, **RED-TAPED** DECISION MAKING.

- COMPLIANCE AS A **TOOL** FOR BUSINESS, RATHER THAN AN OBSTACLE.

- **TROPICALIZATION** VS. GENUINE MECHANISM

- INTERNAL CONTROLS, ACCOUNTABILITY AND **EVIDENCE**

- **“OLD NEWS”** ATTITUDE VS. THE ROLE OF COMPLIANCE OFFICER: **SALES CONVENTION?**

BRAZIL CULTURE



CUTTING LINE



BUYING COUNTERFEIT PRODUCTS



**ILLEGAL PARKING
TRAFFIC VIOLATIONS**



STEALING CABLE



**BRINGING UNDECLARED
GOODS FROM ABROAD**



CHEATING ON TAXES

BRAZIL'S FEDERAL PROSECUTION OFFICE

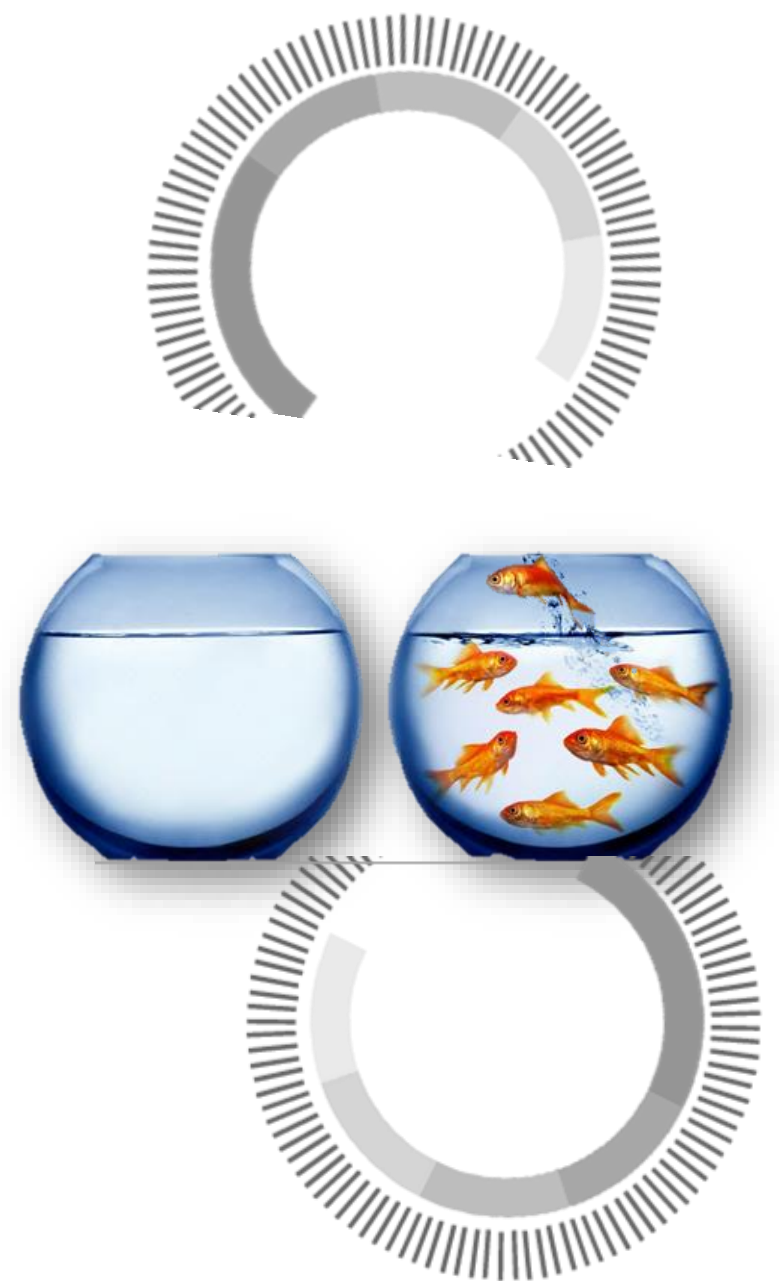


Released program of 10 measures against corruption, through legislation bills:

1. Criminalization of **UNJUST ENRICHMENT** of public officials;
2. Prevention of corruption through **TRANSPARENCY** and protection of information sources;
3. Accountability of political parties and criminalization of **PARALLEL ACCOUNTS**;
4. Increase of the sanctions and declaration of corruption as a **HEINOUS CRIME**;
5. Reform of the **CRIMINAL STATUTE OF LIMITATION**;
6. **CELERITY** for trials of administrative corruption;
7. **EFFICIENCY** of criminal proceedings appeals;
8. Adjustments regarding **CRIMINAL NULLITIES**;
9. Preventive arrest to ensure the return of the **DIVERTED AMOUNTS**;
10. **RECOVERY OF PROFITS** derived from crimes.

CHALLENGES

- Knowledge of the **INDUSTRY**
- Knowledge of the **LOCAL MARKET**
- Knowledge of the **COMPANY'S BUSINESS MODEL** and procedures
- Understanding of the **CULTURE**
- **CREATION** and implementation of compliance controls
- Evaluation and **IMPROVEMENT** of the compliance controls





QUESTIONS?

THANK YOU!

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Advogados