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The new regulation of the Anti-Corruption Law

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The Anti-Corruption Law (Law Number 12,846) was enacted in 2013, while its regulation was only promoted in 2015, through Decree Number 8,420. A little over 7 years after its enactment, the Executive Branch chose to replace it with Decree Number 11,129, published on July 12, 2022. The new decree formalizes several practices consolidated over the first years of the Anti-Corruption Law, in addition to bringing important news. Some are analyzed below, notably those relating to the dosimetry of the fine for acts harmful to the Public Administration, the parameters applicable to integrity programs and leniency agreements.

With regard to the dosimetry of the fine provided for in art. 6, I, of the Anti-Corruption Law, Decree Number 11,129 imposed significant changes in relation to the rule that preceded it. A first point to be made refers to the inclusion of a new factor for the calculation of the fine, consisting of the existence of concurrence of harmful acts. The previous regulation was not clear on this hypothesis, which provided some legal uncertainty. From now on, when there is the practice of more than one harmful act being the object of an administrative process of accountability, there will be the imposition of a fine of up to 4% on the company's gross revenue.

Another important point deals with the valorization of integrity programs, considered a mitigating element of any sanction imposed in the event of a harmful act. The maximum discount on the amount of the fine, which was up to 4% of gross revenue, is now up to 5%, which reinforces the importance of companies having robust programs that meet the parameters set by the Decree itself.

On this point, it is observed that the parameters for the evaluation of integrity programs have undergone few changes, the most relevant being that related to the requirement that the company carry out appropriate, risk-based measures, to hire third parties or politically exposed persons and for sponsorships and donations.

Finally, the discipline of leniency agreements was also subject to significant changes. Instead of requiring the recognition of the signatory company's participation in the infraction, as provided for in Decree Number 8,420, Decree Number 11,129 allows the mere admission of the legal entity's objective liability for the harmful act to the Public Administration. A provision was also included that, for the execution of the leniency agreement, there must be full compensation for the undisputed portion of the damage caused and the loss of amounts corresponding to the undue increase in equity or illicit enrichment. Another novelty is the provision that the signing of a memorandum of understanding will interrupt the statute of limitations of 5 years provided for in Law Number 12,846. Such prediction, however, may be the subject of future questioning, as there is no provision in the law of this hypothesis as an interrupting cause of prescription.

With the edition of the new Decree, it is expected that other normative acts of the CGU (General Controller of the Union) will be updated soon, in order to adapt to the new directives . This is the case of the rules that govern the PAR (administrative process of accountability), the way in which the fine is calculated and the evaluation of integrity programs. Professionals in the field should be aware of the editing of these standards.

It is expected, with the maturation of the instances of application of anti-corruption legislation, that there will be not only the promotion of a more ethical business environment, but also greater legal certainty in the application of the relevant rules.

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