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The impacts of the reform of the Administrative Improbity Law

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Authors

Plínio Simões Barbosa

José Guilherme Berman

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The Administrative Improbity Law ("LIA" – Lei de Improbidade Administrativa, Law 8429/1992) is part of the anticorruption "microsystem" in Brazilian law, which includes other legislation, such as the Public Procurement Law (Law 14.133/2021), the Competition Defence Law (Law 12.259/2011), the Organic Law of the Public Accounts Tribunal (Law 8443/1992), the State-Owned Companies Law (Law 13.303/2016), and the Anticorruption Law (Law 12.846/2013).

Reconciling these various pieces of legislation is not simple, because they often contain conflicting principles. Businesses accused of illegal conduct can various administrative and judicial proceedings involving the same set of facts, before authorities that consider themselves to be completely independent of each other, which can generate legal uncertainty. The reform of the LIA may help to remedy this situation.

The reform reinforces the personal nature of penalties. Shareholders, partners, officers and other collaborators of companies in the private sector can now only be punished if they are proved to have participated directly in the offence, and benefited from it: they can no longer be held liable merely because of their position in the corporate hierarchy. In addition, lifting the corporate veil now requires a specific incidental proceeding, and penalties are not automatically extended beyond the legal entity directly involved in the events, on the grounds that the entity is part of an economic group.

The legislator also offers greater legal certainty to good-faith third parties that carry out corporate transactions with companies involved in administrative misconduct. Following the line taken in the Anticorruption Law, in cases of merger, the LIA now limits the successor company's liability to full reparation of the damage caused, capped by the value of the assets transferred in the merger.

The risk of double jeopardy under the Administrative Improbity and Anticorruption Laws has also been eliminated. Since various types of conduct are prohibited by both Laws, double penalties for the same conduct were common. Now, the LIA makes it clear that penalties under that legislation will not be applied to private sector entities if the same conduct constitutes an offence under the Anticorruption Law, so that only the more specific legislation will apply.

The change is not an incentive to impunity, not least because the Anticorruption Law continues to apply, and imposes strict liability (i.e. regardless of negligence or malicious intent) on legal entities, at the administrative level. Indeed, the Anticorruption Law is much more rigorous than the LIA, which imposes liability only for intentionally wrongful conduct. Furthermore, sanctions for offences under the LIA can only be imposed through judicial proceedings, which are often lengthy.

These changes to the LIA reflect a concern to preserve the social function of companies. This is an important point, because fighting administrative improbity should not lead to the systematic breakup of businesses. The reform is expected to contribute to the development of a compliant business environment: after all, greater legal certainty reduces incentives to engage in questionable or illegal conduct.

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Plínio Simões Barbosa

José Guilherme Berman