

LAW No. 12,846 OF AUGUST 1, 2013

This law provides for the civil and administrative liability of legal entities for acts against the Public Administration, either foreign or domestic, and establish other provisions.

THE PRESIDENT OF THE REPUBLIC

I hereby make known that the National Congress decrees and I ratify the following law:

**CHAPTER I
GENERAL PROVISIONS**

Article 1. This law provides for the strict civil and administrative liability of legal entities for acts committed against the domestic or foreign Public Administration.

Sole Paragraph. This law applies to the business organizations and sole proprietorships, incorporated or not, regardless of the type of organization or the corporate model adopted, as well as to any foundations, associations of entities or persons, or foreign companies having office, branch or representation in the Brazilian territory, organized in fact or by law, even if temporarily.

Article 2. The legal entities will be held strictly liable, in the administrative and civil spheres, for the wrongful acts set forth in this law performed in their interest or for their benefit, either exclusive or not.

Article 3. The legal entity's liability does not exclude the individual responsibility of its directors or officers or of any natural person who is the offender, co-offender or participant of the illegal act.

Paragraph One. The legal entity will be held liable irrespective of the individual liability of the natural persons referred to in the *caput*.

Paragraph Two. The directors or officers shall only be held liable for illegal acts to the extent of their culpability.

Article 4. The responsibility of the legal entity remains in the event of corporate changes, transformation, merger, acquisition or spin-off.

Paragraph One. In the case of mergers and acquisitions, the successor's liability will be restricted to the obligation to pay fines and full restitution for the damage caused, up to the limit of the assets transferred, not being applicable to it the other sanctions set forth in this law for acts and events that occurred before the date of the merger or acquisition, with the exception of cases of simulation or evident intention of fraud, duly proved.

Paragraph Two. Parent, controlled or affiliated companies, or, within the scope of the respective contract, consortium members will be jointly responsible for the acts provided for in this

law. This responsibility shall be restricted to the obligation to pay fines and full restitution for the damage caused.

CHAPTER II

WRONGFUL ACTS AGAINST THE DOMESTIC OR FOREIGN PUBLIC ADMINISTRATION

Article 5. For the purposes of this law, wrongful acts against the domestic or foreign Public Administration are those acts performed by the legal entities mentioned in the sole paragraph of Article 1 in detriment of the domestic or foreign public assets, the principles of the Public Administration or the international commitments made by Brazil, which are defined as follows:

I - To promise, offer or give, directly or indirectly, an undue advantage to a public official, or third person related to him;

II - To finance, defray, sponsor or in any way subsidize, in a proven way, the performance of the wrongful acts provided for in this law;

III - To make use of an individual or legal entity interposed to conceal or dissimulate its real interests or the identity of the beneficiaries of the acts performed, in a proven way;

IV - Regarding public tenders and contracts:

a) To thwart or defraud, through an adjustment, arrangement or any other means, the competitive character of the public tender procedure;

b) To prevent, disturb or defraud the performance of any act of public tender procedure;

c) To remove or try to remove a tenderer by fraud or by an offer of any type of advantage;

d) To defraud a public tender or a contract arising therefrom;

e) To create, in a fraudulent or irregular manner, a legal entity to participate in a public tender or enter into a contract with the Public Administration;

f) To gain an undue advantage or benefit, in a fraudulent way, of modifications in or extensions to contracts made with the Public Administration, without legal authorization, in the act inviting to the public tender or in the respective contractual instruments; or

g) To manipulate or defraud the economic and financial balance of the contracts made with the Public Administration.

V - To hinder the investigation or assessment activity of public agencies, entities or officials, or interfere with their work, including within the scope of regulatory agencies and supervisory bodies of the national financial system.

Paragraph One. Public agencies and entities, or diplomatic representations of a foreign country, of any government level or sphere, as well as legal entities controlled, directly or indirectly, by the government of a foreign country, are all considered part of foreign Public Administration.

Paragraph Two. For the purposes of this law, international public organizations are equivalent to the foreign Public Administration.

Paragraph Three. Those who, even transitorily or without compensation, hold a public

position, job or office in government agencies and entities, or in diplomatic representations of a foreign country, as well as in legal entities controlled, directly or indirectly, by the government of a foreign country or in international public organizations, are considered foreign public agents for the purposes of this law.

CHAPTER III ADMINISTRATIVE LIABILITY

Article 6. In the administrative sphere, the following sanctions will be applied to the legal entities considered responsible for the wrongful acts provided for in this law:

I - A fine in the amount of 0,1% (zero point one percent) to 20% (twenty percent) of the gross earnings in the latest fiscal year of the legal entity prior to the initiation of the administrative proceedings, excluding taxes, which shall never be lower than the advantage obtained, when it is possible to estimate it;

II - Publication of the condemnatory decision;

Paragraph One. The sanctions will be applied in a grounded manner, on an isolated or cumulative basis, according to the peculiarities of the concrete case and to the seriousness and nature of the violations.

Paragraph Two. The application of the sanctions provided for in this article shall be preceded by a legal opinion prepared by the Public Advocacy Office or the body of legal assistance or its equivalent, of the public entity.

Paragraph Three. The application of the sanctions provided for in this article does not exclude, in any case, the obligation of full restitution for the damage caused.

Paragraph Four. In the event of item I of the *caput*, if it is not possible to use the criteria regarding the value of the legal entity's gross earnings, the fine will range from six thousand reais (R\$ 6,000.00) to sixty million reais (R\$ 60,000,000.00).

Paragraph Five. The publication of the condemnatory decision will be made as a summary of the decision, at the legal entity's expenses, through a means of communication widely circulated in the area where the violation was committed and the legal entity has business or, in its absence, in a nationally circulated publication, as well as by fixing a public notice, for the minimum term of 30 days, at the establishment or at the place where the activity is conducted, in a manner visible to the public, and at an electronic site in the World Wide Web.

~~Paragraph Six. The amount of the fine set forth in item I shall not exceed the total amount of the goods or services contracted or sought. (Vetoed)~~

Article 7. In applying the sanctions, the following will be taken into consideration:

I - The seriousness of the offense;

II - The advantage gained or intended by the offender;

III - Whether the offense was fully completed or not;

IV - The degree of damage, or risk of damage;

V - The negative effect produced by the offense;

VI - The offender's economic situation;

VII - The cooperation of the legal entity in the investigation of the wrongdoing;

VIII - The existence of internal mechanisms and procedures of integrity, audit and incentive for the reporting of irregularities, as well as the effective enforcement of codes of ethics and of conduct within the scope of the legal entity;

IX - The value of the contracts held by the legal person with public agency or entity damaged; and

~~X - The degree of contribution of a public agent's conduct to the wrongful act. (Vetoed)~~

Sole Paragraph. The criteria of evaluation of the mechanisms and procedures set forth in item VIII of the *caput* shall be established by regulation of the Federal Executive Power.

CHAPTER IV ADMINISTRATIVE PROCEEDING

Article 8. The commencement and decision of an administrative proceeding to determine the liability of a legal entity is an incumbency of the highest authority of each agency or entity of the Executive, Legislative and Judiciary, which will act *ex officio* or upon request, always observing the due process and full defense principles.

Paragraph One. The competence to initiate and decide on an administrative proceeding to determine the liability of the legal entity may be delegated, while subdelegation is prohibited.

Paragraph Two. Within the scope of the Federal Executive Power, the Office of the Federal Comptroller General - CGU will have concurrent competence to commence administrative proceedings to determine the liability of legal entities, or to arrogate the proceedings initiated based on this law, for the examination of their regularity or to correct their progress.

Article 9. The Office of the Federal Comptroller General is responsible for the investigation, process and decision of the wrongful acts provided for in this law and committed against the foreign Public Administration, in accordance with Article Four of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, enacted by Decree No. 3.678 as of 30 November 2000.

Article 10. The administrative proceeding to determine the liability of legal entity will be conducted by a committee appointed by the authority initiating the proceeding and will be formed by two or more employees with tenure.

Paragraph One. At the request of the committee, the public entity, through its judicial representative body, or equivalent, may request the necessary legal measures for the investigation and prosecution of the wrongdoings, including search and seizure procedures.

Paragraph Two. The committee, in a precautionary manner, may suggest the authority initiating the proceeding to suspend the effects of the act or process that is the subject of the investigation.

Paragraph Three. The committee must conclude the proceeding within 180 (one hundred

and eighty) days as of the date of the publication of the act that creates the committee, and, in the end, present reports on the facts investigated and the possible liability of the legal entity, suggesting in a motivated manner the sanctions to be applied.

Paragraph Four. The term provided for in Paragraph Three may be extended by means of a grounded decision by the authority that initiated the proceeding.

Article 11. In the administrative proceeding to determine its liability, the legal entity will have a term of 30 days for its defense, from the date of service.

Article 12. The administrative proceeding, together with the committee's report, will be remitted for judgment to the authority initiating the proceeding, pursuant to Article Ten.

Article 13. The initiation of a specific administrative proceeding for the full restitution for the damage does not affect the immediate application of the sanctions established in this law.

Sole Paragraph. Once the proceeding is concluded, if the payment is made, the appraised credit shall be registered as a collectible debt by the Public Treasure .

Article 14. The corporate personality may be disregarded [*lifting the corporate veil*] whenever it is used with abuse of right in order to ease, conceal or dissimulate the performance of the wrongful acts provided for in this law or to cause property confusion, and all the effects of the sanctions applied to the legal entity shall be extended to its officers and shareholders with management powers, always observing due process and full defense principles.

Article 15. After the administrative proceeding is completed, the committee designated to determine the liability of the legal entity shall give notice of its existence to the Public Prosecutor Office, in order for it to proceed with the investigation of possible offenses.

CHAPTER V LENIENCY AGREEMENT

Article 16. The highest authority of each public body or entity may enter into a leniency agreement with the legal entities liable for the acts established in this law, which effectively collaborate with the investigations and with the administrative proceeding, provided that this collaboration results in:

- I – the identification of the ones involved in the violation, when applicable; and
- II – rapidly obtaining information and documents that prove the wrongful acts under investigation.

Paragraph One. The agreement set forth in the *caput* may only be executed when the following requirements are fulfilled cumulatively:

- I – The legal entity is the first one to come forward and demonstrate its interest in cooperating with the investigation of the illegal act;
- II – The legal entity completely ceases its involvement in the investigated wrongdoing as of the date of the proposal of the agreement;
- III – The legal entity admits its participation in the wrongdoing, and fully and permanently cooperates with the investigation and the administrative proceeding, always attending, at its expense

and whenever requested, all procedural acts, until its end.

Paragraph Two. The execution of the leniency agreement will exempt the legal entity of the sanctions set forth in item II of Article 6 and in item IV of Article 19 and will reduce the amount of the applicable fine by up to 2/3 (two thirds).

Paragraph Three. The leniency agreement does not exempt the legal entity from its obligation to make restitution for the damage caused.

Paragraph Four. The leniency agreement will establish the necessary conditions to secure the effectiveness of the collaboration and the useful result of the proceeding.

Paragraph Five. The effects of the leniency agreement will be extended to the legal entities that are part of the same economic group, in fact or by law, provided that the agreement is jointly executed by them and respected the conditions therein established.

Paragraph Six. The proposal of the leniency agreement will only become public after the execution of the respective agreement, except if in the best interest of the investigations and of the administrative proceeding.

Paragraph Seven. The rejection of a proposed leniency agreement will not result in the confession of the illegal act being investigated.

Paragraph Eight. In the event of breach of the leniency agreement, the legal entity will be prohibited from entering into a new agreement for 3 (three) years, starting on the date that the Public Administration becomes aware of the breach.

Paragraph Nine. The execution of the leniency agreement interrupts the statute of limitation of the illegal acts set forth in this law.

Paragraph Ten. The Office of the Federal Comptroller General - CGU is the competent authority to enter into leniency agreements in the Federal Executive sphere, as well as on cases of illegal acts committed against the Foreign Public Administration.

Article 17. The Public Administration may also enter into leniency agreements with legal entities liable for illegal acts under Law 8.666 of 21 June 1993, in order to exclude or mitigate the administrative sanctions set forth in Articles 86 to 88 of such law.

CHAPTER VI JUDICIAL LIABILITY

Article 18. The liability of the legal entity in the administrative sphere does not exclude the possibility of its liability in the judicial sphere.

Article 19. The Federal Government, the States, the Federal District, and the Municipalities, through their respective Public Advocacy Offices or legal representative bodies, or their equivalent, and the Public Prosecutor Office may file a judicial action in relation to the illegal acts set forth in Article 5 of this law, with a view to the application of the following sanctions to the responsible legal entities:

I - The loss of the assets, rights or valuables representing the advantage or profit, directly or indirectly, obtained from the wrongdoing, except for the right of the damaged party or of third parties in good faith;

II - Partial suspension or interdiction of its activities;

III - Compulsory dissolution of the legal entity

IV - Prohibition from receiving incentives, subsidies, grants, donations or loans from public agencies or entities and from public financial institutions or institutions controlled by the government, from one to five years

Paragraph One. The compulsory dissolution of the legal entity will be established when the following is evidenced that:

I - the corporate personality was used on a regular basis to ease or promote the performance of wrongful acts; or

II - the legal entity was organized to conceal or dissimulate illicit interests or the identity of the beneficiaries of the acts performed.

~~Paragraph Two. The application of the sanctions set forth in items II to IV of the *caput* will depend on proof of negligence or intent. (Vetoed)~~

Paragraph Three. The sanctions may be applied in an isolated or cumulative manner.

Paragraph Four. The Public Prosecutor Office or the Public Advocacy Office, or the judicial representative body of the public entity, or their equivalent, may request the freezing of assets, rights or values necessary to guarantee the payment of the fine or to ensure the full restitution for the damage caused, as provided for in Article 7, except for the right of third parties in good faith.

Article 20. The sanctions set forth in Article 6 might be imposed in the lawsuits filed by the Public Prosecutor Office, with prejudice to the ones set forth in this Chapter, provided that an omission by the competent authorities to provide the administrative responsibility is verified.

Article 21. The procedure set forth in Law No. 7,347 of 24 July 1985 will be adopted as the procedure for the judicial sanctions.

Sole Paragraph. The condemning judgment shall render certain the obligation to fully repair the damage caused by the illicit act, in a value to be determined in a subsequent liquidation process, in case it is not expressly indicated in the decision

CHAPTER VII FINAL PROVISIONS

Article 22. It s hereby created, in the sphere of the Federal Executive Branch, the National Registry of Punished Companies - CNEP, which will consolidate the sanctions applied based on this Law by the agencies or entities of the Executive, Legislative and Judiciary Branches of all the spheres of government.

Paragraph One. The agencies and entities referred to in the *caput* shall inform, and keep updated, in the CNEP, the data related of the sanctions applied by them.

Paragraph Two. The CNEP will contain, among others, the following information about the applied sanctions:

I – Corporate name and registration number of the legal person or entity in the Corporate Taxpayer Registry - CNPJ;

II – Type of sanction;

III – Date of application of the sanction and end date of the effects of the limiting or impeditive sanction, when appropriate.

Paragraph Three. The authorities competent to enter leniency agreements set forth in this law must also inform and keep updated in the CNEP the information about the leniency agreement signed, after such agreement is in effect, unless this can affect the interest of the investigation and the administrative process.

Paragraph Four. In the event that the legal person does not comply with the terms of the leniency agreement, in addition to the information set forth in Paragraph Three, reference to such default must be included in the CNEP.

Paragraph Five. Upon request by the agency or entity applying the sanctions, the records of the sanctions and leniency agreements will be excluded after the end of the term previously established in the sanctioning act or after full compliance with the leniency agreement and restitution for the damage caused.

Article 23. The agencies or entities of the Executive, Legislative and Judiciary departments of all spheres of the government must inform and keep updated in the National Registry of Inapt and Suspended Companies – CEIS, established in the sphere of the federal Executive Branch, information related to the sanctions applied by them, in accordance with Articles 87 and 88 of Law 8.666 from 1993.

Article 24. The fine and the loss of assets, rights or valuables applied based on this law will be allocated preferably to the public bodies or entities damaged.

Article 25. The wrongful acts set forth in this law are time-barred in 5 (five) years, as of the date of the awareness of the wrongdoing or, in case of permanent or continued violation, as of the day in which it is ceased.

Sole Paragraph. In the administrative or judicial spheres, the statute of limitation will be interrupted by the commencement of the proceedings, with the purpose of assessing the wrongdoing.

Article 26. The legal entity will be represented in the administrative proceeding in accordance with its bylaws or articles of association.

Paragraph One. A company with no legal character will be represented by the person entitled to the management of its assets.

Paragraph Two. A foreign legal entity will be represented by the manager, representative or officer of its branch, agency or office operating or established in Brazil.

Article 27. The competent authority that is aware of a wrongdoing provided for in this Law and does not adopt measures for the investigation of the facts will be subject to criminal, civil and administrative liability in accordance with applicable laws.

Article 28. This law applies to illegal acts committed by Brazilian legal entities against foreign Public Administration, even if committed overseas.

Article 29. This law does not exclude the competence of the Administrative Counsel of Economic Defense, of the Ministry of Justice, and of the Ministry of Finance to prosecute and judge acts that constitute violations of the economic order.

Article 30. The application of the sanctions set forth in this law does not affect the process for accountability and application of sanctions arising out of:

I – an improbity act pursuant to Law No. 8,429, of 1992; and

II – illegal acts covered by Law 8.666, of June 21, 1993, or other rules regarding public tenders and contracts with the Public Administration, including in relation to Differentiated Regime of Public Contracts enacted by Law No. 12,462, of August 4, 2011.

Article 31. This law comes into force 180 (one hundred and eighty) days after the date it is published.

Brasília, August 1, 2013; 192nd year of Independence and 125th of the Republic.

DILMA ROUSSEFF