

**Brazil's Administrative Improbity Law:  
Changes introduced by Law 14,230/2021**

Topic	Amendments
<b>Acts of misconduct</b>	<ul style="list-style-type: none"> <li>• Establishes that it is necessary to prove that a defendant was duly aware of the illegality of their conduct when it was carried out.</li> <li>• Makes it clear that administrative sanctioning law principles are applicable to the framework for administrative improbity.</li> <li>• Clarifies that an act based on a divergent interpretation of the law where no case law has been established does not make a defendant liable for administrative improbity, even if the Judiciary refutes the interpretation at a later stage.</li> <li>• If misconduct results in loss to the treasury, the administration's mere loss of assets does not constitute improbity unless it is proven that the administration committed an intentional act for this purpose.</li> <li>• Establishes a list of acts of misconduct that offend the principles of public administration and, therefore, are considered administrative improbity.</li> </ul>
<b>Legal entities' liability</b>	<ul style="list-style-type: none"> <li>• When holding a legal entity liable, the sanction's economic and social effects should be considered, so as not to make the entity's activities inviable.</li> <li>• Partners, shareholders, officers, and collaborators will only be held liable for a private entity's improbity if they are found to have directly participated in</li> </ul>

	<p>the act. In such a case, they must respond per the extent of their participation.</p> <ul style="list-style-type: none"><li>• Regardless of contractual alterations, transformations, incorporations, mergers, and splits, legal entities remain liable for improbity involving illicit enrichment and loss to the treasury, up to the limit of the transferred assets.</li></ul>
<b>Sanctions for administrative improbity</b>	<ul style="list-style-type: none"><li>• In exceptional and duly justified cases, a sanction prohibiting services to be contracted by public authorities may extend beyond the public entity injured by the improbity.</li><li>• Reductions in the maximum value of applicable fines, which must now be equivalent to the value of the damage or increase in asset values. In a considerable reduction to the amount previously provided for, cases where the provisions of Article 11 are violated will result in a fine of up to 24 times the value of the remuneration the public agent received.</li><li>• The suspension period of the public official's political rights has been increased from 8 to 10 years to up to 14 years.</li></ul>
<b>Freezing assets</b>	<ul style="list-style-type: none"><li>• Requests to freeze assets will only be granted if the danger of irreparable loss or the risk to the case's outcome can be demonstrated, and only after hearing the defendant.</li><li>• The defendant's testimony must occur unless the prosecutor can demonstrate due justification for thwarting it, or other circumstances that may recommend an injunction. Urgency cannot be assumed in such cases.</li><li>• Only assets that exclusively ensure the full reimbursement of the loss to the public treasury will be frozen, with no effect on the value of fines or asset increases resulting from illicit activity.</li></ul>

## **Procedural aspects**

- The Public Prosecutor's Office has the exclusive jurisdiction to file administrative improbity lawsuits; that is, bodies that represent the Executive Branch can no longer file administrative improbity lawsuits.
- The law creates a one-year transition period during which the Public Prosecutor's Office must express its opinion about whether it is interested in continuing improbity lawsuits that are already in progress. If the Public Prosecutor's Office fails to express its opinion in regard to a given case, it will be dismissed.
- Civil non-prosecution agreements (ANPC): the agreement must provide for the full recovery of the loss or the correction of any undue advantage via payment to the injured party. An ANPC may only be executed upon hearing the injured party's testimony and approval by the Public Prosecutor's Office and Judiciary.
- The statute of limitations for filing improbity lawsuits has been unified at eight years from the occurrence of the alleged act, or, in the case of permanent violations, from the date the act ceased.
- Improbity civil investigations must be concluded within one year, which may only be extended for a maximum of one more year.
- Civil and criminal judgments will have effects on improbity lawsuits when judges decide that no improbity took place, or that there is no one liable.
- If confirmed by a collective body, a criminal acquittal in another lawsuit that discusses the same acts will impede the progress of the improbity lawsuit.

- There is a need to compensate for possible sanctions applied in other spheres when enforcing sanctions linked to the Administrative Improbability Law.