



UNITED NATIONS
Office on Drugs and Crime



Self-assessment checklist on the implementation of the United Nations Convention against Corruption

Assessment Name: CONTROLADORIA-GERAL DA UNIÃO - CGU

Country: Brazil

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Comments:

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II. Preventive measures (chapter II)

A. Article 5 Preventive anti-corruption policies and practices

1. Paragraph 1 of article 5 (Policies preventive of corruption)

Has your country adopted the measures described above? (Check one answer)

(P) Yes, in part

Please cite the applicable law(s) or other measure(s):

The Transparency Portal (Decree N. 5,482/05) and the Public Transparency Pages (Interministerial Administrative Ruling N. 140/06) are the Federal Government's main instruments to provide the public with information on federal expenditures. Federal Government Service Portal (www.brasil.gov.br) – The Brazil Portal is considered the Brazilian Government official gateway for citizens, governments and companies. It seeks to gather in one single channel institutional information and service provision. Federal Government Procurement Portal - COMPRASNET (www.comprasnet.gov.br) - COMPRASNET is the Federal Government Portal where all electronic contracts are performed, with an emphasis on Electronic Auction and electronic quotation. Comprasnet gives more transparency to public contracts, as society can track, by accessing the portal, all procedures relating to electronic tenders, bids offered and winning proposals, and tender notices, among others. Transparency Council (Decree N. 4,923/03) – The Council for Public Transparency and Against Corruption, a collegiate and advisory body linked to the Federal Comptroller-General's Office has been established for the purpose of suggesting and debating measures to improve methods and systems aimed at controlling and increasing transparency in public management as well as strategies to fight corruption and impunity. Fiscal Responsibility Law (Complementary Law N.101/00) – The Fiscal Responsibility Law provides for public finance documentary standards oriented towards fiscal management responsibility. Internal Control System of the Federal Executive Branch (Decree N. 3,591/00) – The Internal Control System of the Federal Executive Branch is responsible for evaluating the allocation of Union budgets, inspecting the implementation of government programs and carrying out audits on the management of public funds under the responsibility of public organs and agencies and entities under private law, among other duties. Organic Law of the Brazilian Court of Audit (Law N. 8.443/92). Decree N. 6,170/07 (Norms relating to transfers of Union funds through agreements and transfer contracts); Normative Instruction N. 01/97 of the National Treasury Secretariat. “Olho Vivo no Dinheiro Público” Program (Federal Development to Social Control Program). The “Olho Vivo no Dinheiro Público” Program develops actions aimed at encouraging and training citizens in exercising social control. National Fiscal Education Program (Ministry of Finance, Ministry of Education and Federal Comptroller-General's Office) – Program aimed at enabling conscious citizen participation in the operation and improvement of State social and fiscal controls. Public Dialogue Program of the Brazilian Court of Audit – The Public Dialogue Program is a set of actions developed by the Brazilian Court of Audit to encourage social control.

Which of the following forms of technical assistance, if available, would assist your country with adopting the measures described above? (Check all the answers that apply)

- (v) Site visit by an anti-corruption expert
- (vi) Development of an action plan for implementation

Are any of the forms of technical assistance previously mentioned already provided? (Check one answer)

(Y) Yes

By whom are they provided?

UNODC and United Kingdom (UK).

Would the extension and/or integration of such assistance help your country adopt the measures described above? (Check one answer)

(Y) Yes

Please provide a description of the steps or action (and related timeframe) that national authorities would need to take to ensure full compliance, including an assessment of your country's efforts to date:

B. Article 6 Preventive anti-corruption body or bodies

2. Paragraph 1 of article 6 (Anti-corruption body or bodies)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Establishment of the Corruption Prevention and Strategic Information Secretariat at the Federal Comptroller-General's Office (Decree n 5.863/06).

Please provide examples of the successful use or implementation of this article:

The Corruption Prevention and Strategic Information Secretariat is responsible for carrying out the following activities, among others:- To perform research and studies on the phenomenon of corruption by consolidating and disseminating the data and knowledge acquired;- To propose and implement projects and actions that contribute to increasing public management transparency;- To develop methodologies for constructing risk maps in public institutions and to propose measures that prevent damages to public assets; - To monitor the implementation of international agreements and commitments undertaken by Brazil, whose object is the prevention of and fight against corruption; - To propose and implement measures that prevent conflicts of interest in the performance of public functions; and - To encourage citizen participation in social control. In order to achieve its objectives, the secretariat implements several actions targeted at preventing corruption: development of the Transparency Portal and the Transparency Pages, promotion of ethics and integrity, strengthening of public management and encouragement to social control.

3. Paragraph 2 of article 6 (Independent status, resources and trained staff for anti-corruption body or bodies)

Has your country adopted the measures described above? (Check one answer)

(P) Yes, in part

Please cite the applicable law(s) or other measure(s):

The corruption prevention agency in Brazil has the necessary competence to perform its duties effectively and without any undue influence. The agency's budget for 2007 is R\$ 5,470,000.00 (five million four hundred and seventy thousand Reals). It currently has a staff of 50 people. The activity of corruption prevention is one of the duties of the Office of the Comptroller-General. For the year of 2007, it has a budget of R\$ 60.000.000,00 (sixty milion reais) and a staff of 2.300 people.

Which of the following forms of technical assistance, if available, would assist your country with adopting the measures described above? (Check all the answers that apply)

- (v) Site visit by an anti-corruption expert
- (vi) Development of an action plan for implementation

Are any of the forms of technical assistance previously mentioned already provided? (Check one answer)

(Y) Yes

By whom are they provided?

UNODC and United Kingdom.

Would the extension and/or integration of such assistance help your country adopt the measures described above? (Check one answer)

(Y) Yes

Please provide a description of the steps or action (and related timeframe) that national authorities would need to take to ensure full compliance, including an assessment of your country's efforts to date:

C. Article 9 Public procurement and management of public finances

4. Subparagraph 1 (a) of article 9 (Systems of procurement designed to prevent corruption)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Law of Public Biddings and Contracts in Public Administration (Law N. 8,666/93); Electronic Auction (Law N. 10,520/02); Agreements Portal (Decree N. 6,170/07); COMPRASNET (Federal Government Procurement Portal); Public Transparency Pages (Interministerial Administrative Ruling N. 140/06).

Please provide examples of the successful use or implementation of this article:

The Law of Public Biddings and Contracts in Public Administration regulates all processes involving the procurement of goods or services, including procedures in which tender is not mandatory or is waived. Law 10,520/02 regulates the electronic procurement of goods or services. The Agreements Portal is the website where information on the signing, disbursement of funds, follow-up of execution and rendering of accounts relating to agreements signed by the Federal Government are posted. The COMPRASNET Portal contains information on all federal government tender-related procedures, giving them full publicity and enabling inquiries by stakeholders. The Transparency Pages are websites gathering information of different types on public agencies, including data on procurements made to date.

5. Subparagraph 1 (b) of article 9 (Establishment of conditions for participation in public procurement)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Law N 8,666/93.

Please provide examples of the successful use or implementation of this article:

The Law of Public Biddings and Contracts in Public Administration (Law N. 8,666/93) provides for the requirements to be met by companies or natural persons for contracting with the Public Administration.

6. Subparagraph 1 (c) of article 9 (Criteria for public procurement decisions)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Law of Public Biddings and Contracts in Public Administration (Law N. 8,666/93).

Please provide examples of the successful use or implementation of this article:

The Law of Public Biddings and Contracts in Public Administration provides for all the criteria to be met when selecting contractors. These criterias are impersonals and objectives.

7. Subparagraph 1 (d) of article 9 (System of domestic review of public procurement decisions)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Administrative Process Law (Law N. 9,784/99); Law of Public Biddings and Contracts in Public Administration (Law N. 8,666/93).

Please provide examples of the successful use or implementation of this article:

The Administrative Process Law provides for general rules applicable to administrative processes within the Federal Public Administration, among which are those regulating administrative appeals. The Law of Public Biddings and Contracts in Public Administration, in turn, provides for the filing of appeals in government procurement processes.

8. Subparagraph 1 (e) of article 9 (Measures regarding public procurement personnel)

Has your country adopted the measures described above? (Check one answer)

(P) Yes, in part

Please cite the applicable law(s) or other measure(s):

The Law of Public Biddings and Contracts in Public Administration (Law N. 8,666/93) establishes the rules applicable to committees set up by the Administration for the purpose of receiving, reviewing and judging all documents and procedures relating to bids and registration of bidders. The civil servants that make up these committees are appointed by the Administration and are not obliged to submit a statement of interest concerning public contracting; however, they are prohibited from participating, either directly or indirectly, in the bidding or in the execution of the works or services as well as in the provision of goods relating to procedures they participate in. The bidding committees will comprise a minimum of three members, at least two of whom should be qualified civil servants belonging to the permanent staff of the Administration's agencies responsible for the bidding process. Law N. 10,520/02, which provides for electronic auction, also establishes rules applicable to bidding committees. The Law determines, for example, that the competent authority will designate the auctioneer and the respective supporting team responsible for conducting the contracting process and this team should comprise, in its majority, civil servants holding permanent offices or employments in the administration and preferably belonging to the permanent staff of the contracting agency or entity. The law also establishes that only civil servants who have been specifically trained for the function can act as auctioneers.

Which of the following forms of technical assistance, if available, would assist your country with adopting the measures described above? (Check all the answers that apply)

- (v) Site visit by an anti-corruption expert
- (vi) Development of an action plan for implementation

Are any of the forms of technical assistance previously mentioned already provided? (Check one answer)

(N) No

9. Subparagraph 2 (a) of article 9 (Transparency and accountability in public finances)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Federal Constitution (art. 165); Law N. 4,320/64 (Provides for General Norms of the Financial Law for preparing and controlling budgets and balances of the Union, States, Municipalities and the Federal District); Pluriannual Plan 2004-2007 (Law N. 10,933/04); Budget Guidelines Law for 2007 (Law N. 11,439/06); Annual Budget Law for 2007 (Law N. 11,451/07); Fiscal Responsibility Law (Complementary Law N. 101/00).

Please provide examples of the successful use or implementation of this article:

The Federal Constitution provides for the obligation to issue laws establishing the pluriannual plan, budget guidelines and annual budgets. The law that institutes the four-year Pluriannual Plan shall establish, on a regional basis, the directives, objectives and targets of the Public Administration for capital expenditures and other expenses resulting therefrom and for those regarding continuous programs. No investment whose execution exceeds one fiscal year may be implemented without prior inclusion in the pluriannual plan, or without a law to authorize such inclusion, subject to crime of malversation. The main purpose of the Budget Guidelines Law (LDO) is to guide the drawing up of the fiscal and social security budgets as well as of investments by public companies. It seeks to synchronize the Annual Budget Law (LOA) with the directives, objectives and targets proposed in the Pluriannual Plan, according to the guidelines established by the Budget Guidelines Law. The proposal of the Annual Budget law comprises the three different types of Union budgets: Fiscal Budget, Social Security Budget, and Public Companies' Investment Budget.

10. Subparagraph 2 (b) of article 9 (Timely reporting on revenue and expenditures)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Federal Constitution (art. 165, § 3º); Public Transparency Pages (Interministerial Administrative Ruling N. 140/06); Transparency Portal (Decree N. 5,482/05); Fiscal Responsibility Law (Complementary Law N. 101/00); General Balance of the Union (BGU).

Please provide examples of the successful use or implementation of this article:

The Federal Constitution provides for the obligation to publish, within thirty days after the closing of each two-month period, a summarized report on budget implementation. The Fiscal Responsibility Law determines that full publicity be given, including through electronic means of public access to: plans, budgets and budget guidelines laws; rendering of accounts and the respective previous legal opinion; the Summary Report on Budget Implementation and the Fiscal Management Report. The annual publication of the General Balance of the Union is also mandatory.

11. Subparagraph 2 (c) of article 9 (Accounting and auditing standards)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Law N. 4,320/64; Fiscal Responsibility Law (Complementary Law N. 101/00); Law 10,180/01 (Organizes and disciplines the Federal Planning and Budget, the Federal Financial Administration, the Federal Accounting, and the Federal Executive Branch Internal Control Systems); Law N. 8,443/92 (Organic Law of the Brazilian Court of Audit); Internal Control System (Decree N. 3,591/00); Federal Accounting System (Decree N. 3,589/00).

Please provide examples of the successful use or implementation of this article:

The Decree instituting the Federal Accounting Systems establishes rules aimed at providing instruments to record acts and facts related to the management of budgets, finances and assets of the Union.

12. Subparagraph 2 (d) of article 9 (Systems of risk management and internal control)

Has your country adopted the measures described above? (Check one answer)

(P) Yes, in part

Please cite the applicable law(s) or other measure(s):

Law 10,180/01 (Organizes and disciplines the Federal Planning and Budget, the Federal Financial Administration, the Federal Accounting, and the Federal Executive Branch Internal Control Systems); Internal Control System (Decree N. 3,591/00).

Which of the following forms of technical assistance, if available, would assist your country with adopting the measures described above? (Check all the answers that apply)

- (iv) Legal advice
- (v) Site visit by an anti-corruption expert
- (vi) Development of an action plan for implementation

Are any of the forms of technical assistance previously mentioned already provided? (Check one answer)

(Y) Yes

By whom are they provided?

UNODC and United kingdom.

Would the extension and/or integration of such assistance help your country adopt the measures described above? (Check one answer)

(Y) Yes

13. Subparagraph 2 (e) of article 9 (Corrective action upon failure to comply)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Fiscal Responsibility Law (Complementary Law N. 101/00); Law 10,180/01 (Internal Control System of the Federal Executive Branch); Law N. 8,443/92 (Organic Law of the Brazilian Court of Audit); Law N. 8,112/90 (Federal Public Servants Statute); Law N. 8,429/92 (Administrative Improbability Law).

Please provide examples of the successful use or implementation of this article:

According to the Organic Law of the Brazilian Court of Audit, if during its inspection activities the Court identifies the occurrence of embezzlement, diversion of assets, or any other violation that may result in losses to the public treasury, it shall require that a special rendering of accounts be provided, for the purpose of imposing, if appropriate, corrective measures against the manager responsible for the violation.

14. Paragraph 3 of article 9 (Prevention of falsification of public expenditure records)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Law N. 4,320/64; Fiscal Responsibility Law (Complementary Law N. 101/00); Law N. 10,180/01 (Organizes and disciplines the Federal Planning and Budget, the Federal Financial Administration, the Federal Accounting, and the Federal Executive Branch Internal Control Systems); Federal Accounting System (Decree N. 3,589/00); Internal Control System (Decree N. 3,591/00).

Please provide examples of the successful use or implementation of this article:

III. Criminalization and law enforcement (chapter III)

A. Article 15 Bribery of national public officials

15. Subparagraph (a) of article 15 (Active bribery of a national public official)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Decree-Law N. 2,848/40 – Brazilian Penal Code: art. 333.

Please provide examples of the successful use or implementation of this article:

Article 333 of the Brazilian Penal Code provides for the crime of Active Corruption: "Art. 333. Offering improper advantages to a public official for the purpose of persuading him to perform, omit, or delay an official act".

16. Subparagraph (b) of article 15 (Passive bribery of a national public official)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Decree-Law N. 2,848/40 – Brazilian Penal Code: art. 317.

Please provide examples of the successful use or implementation of this article:

The Brazilian Penal Code, in its article 317, provides for the crime of Passive Corruption: "Art. 317. Soliciting or receiving for himself or other persons, either directly or indirectly, out of the remit of his office or before taking office, an improper advantage, or accepting the promise of this".

B. Article 16 Bribery of foreign public officials and officials of public international organizations

17. Paragraph 1 of article 16 (Active bribery of a foreign public official or an official of a public international organization)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Decree-Law N. 2,848/40 – Brazilian Penal Code: art. 337-B.

Please provide examples of the successful use or implementation of this article:

The Brazilian Penal Code, in its article 337-B, provides for the crime of Active Corruption in

International Commercial Transactions: "Art. 337-B. Promising, offering, or giving, either directly or indirectly, advantages to a public official of another State or to a third person, for the purpose of persuading him to perform, omit, or delay an official act related to the international commercial transaction".

18. Paragraph 2 of article 16 (Passive bribery of a foreign public official or an official of a public international organization)

Has your country adopted the measures described above? (Check one answer)

(N) No

Which of the following forms of technical assistance, if available, would assist your country with adopting the measures described above? (Check all the answers that apply)

(i) No assistance would be required

Are any of the forms of technical assistance previously mentioned already provided? (Check one answer)

(N) No

C. Article 17 Embezzlement, misappropriation or other diversion of property by a public official

19. Embezzlement, misappropriation or other diversion of property by a public official (article 17)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Brazilian Penal Code (Decree-Law N. 2,848/40) arts. 312 and 315.

Please provide examples of the successful use or implementation of this article:

The Brazilian Penal Code, in its art. 312, provides for the crime of Embezzlement: "Art. 312. Appropriation, by a public official, of money, valuables or any other chattel, either public or private, entrusted to him in the remit of his office, or diversion of such assets for himself or other persons. The Law of Administrative Improbity, in its articles 9 and 10, provides for several conducts that constitute misuse of public funds. In art. 315, the Penal Code provides for the crime of misuse of public budgets or incomes: "Art. 315 – Using public budgets or incomes for purposes other than those provided for in the law".

D. Article 23 Laundering of proceeds of crime

20. Subparagraph 1 (a) (Criminalization of conversion or transfer of property proceeds of crime)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Money Laundering Law (Law N. 9,613/98).

Please provide examples of the successful use or implementation of this article:

Statistics attached.

21. Subparagraph 1 (b) of article 23 (Criminalization of acquisition, possession or use of property proceeds of crime)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Law N. 9,613/98; Decree-Law N. 2,848/40 – Brazilian Penal Code.

Please provide examples of the successful use or implementation of this article:

According to Law N. 9,613/98, § 1: " The same punishment shall apply to anyone who, in order to conceal or disguise the use of the assets, rights and valuables resulting from the crimes set forth in this article: I – converts them into licit assets;II – Acquires, receives, exchanges, trades in, gives or receives as guarantee, keeps, stores, moves, or transfers any such assets, rights and valuables; III - Imports or exports goods at prices that do not correspond to their true value. The Brazilian Penal Code, in its art. 180, provides for the crime of receiving of stolen goods "Art. 180. Acquiring, receiving, transporting, conducting, or concealing, for himself or for others, assets, rights and valuables which are known to be the result of a crime, or influencing a third party to acquire, receive or conceal any such assets, rights and valuables in good faith". The Brazilian Penal Code, in its art. 349, provides for the crime of facilitation: "Art. 349. Provide an offender, except in the case of co-authorship or receiving of stolen goods, assistance with a view to securing the proceeds of the crime".

22. Subparagraphs 2 (a), (b), (c) and (e) of article 23 (Predicate offence in the laundering of proceeds of crime)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Law N. 9,613/98.

Please provide examples of the successful use or implementation of this article:

Article 1 of Law N. 9,613/98 includes a long list of previous (or originating) offences to the crime of Money Laundering, although the judicial proceedings and sentencing of such crime are not dependent on the judicial proceedings and sentencing of the previous (or originating) offences. Among these previous (or originating) offences are those against the Public Administration, including Corruption. It is worth emphasizing that the Brazilian Federal Senate is currently analyzing a Bill (PLS 209/03) that excludes

the list of previous (or originating) offences.

23. Subparagraph 2 (d) of article 23 (Predicate offence in the laundering of proceeds of crime)

Has your country furnished copies of its laws that give effect to article 23 and of any subsequent changes to such laws or a description thereof to the Secretary-General, as described above? (Check one answer)

(Y) Yes

Please submit such copies with the present checklist to the United Nations Office on Drugs and Crime or provide a description of such laws below.

Law N. 9,613/98 (Law of Money Laundering or Concealment of Goods).

E. Article 25 Obstruction of justice

24. Subparagraph (a) of article 25 (Criminalization of use of inducement, threats or force to interfere with witnesses or officials)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Brazilian Penal Code - Decree-Law N. 2,848/40.

Please provide examples of the successful use or implementation of this article:

There are two related offences:- the first is the crime of Perjury or false auditing, which is provided for in art. 343 of the Brazilian Penal Code: "Art. 343. Giving, offering, or promising money or any other advantage to a witness, translator or interpreter in order to persuade him to make a false statement, deny or omit the truth in testimonials, audits, calculations, translations or interpretations." - the second one is the crime of Coercion in the course of the proceedings, which is provided for in art. 344 of the Brazilian Penal Code: "Art. 344. Using violence or serious threat for the purpose of favoring one's own interest or that of others against an authority, a party or any person working or called in to intervene in judicial, police or administrative proceedings or in arbitration."

25. Subparagraph (b) of article 25 (Criminalization of interference with actions of judicial or law enforcement officials)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Brazilian Penal Code - Decree-Law N. 2,848/40.

Please provide examples of the successful use or implementation of this article:

Article 344 of the Brazilian Penal Code provides for the crime of coercion in the course of the proceedings: "Art. 344. Using violence or serious threat for the purpose of favoring one's own interest or that of others against an authority, a party or any person working or called in to intervene in judicial, police or administrative proceedings or in arbitration."

IV. International cooperation (chapter IV)

A. Article 44 Extradition

26. Subparagraph 6 (a) (Taking the Convention against Corruption as the legal basis for cooperation on extradition)

Has your country notified the Secretary General, as described above? (Check one answer)

(Y) Yes

B. Article 46 Mutual legal assistance

27. Paragraph 13 of article 46 (Designation of a central authority to receive requests for mutual legal assistance)

Has your country notified the Secretary General, as described above? (Check one answer)

(Y) Yes

V. Asset recovery (chapter V)

A. Article 52 Prevention and detection of transfers of proceeds of crime

28. Paragraph 1 of article 52 (Verification of identity and enhanced scrutiny of customers of financial institutions)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Law N. 9,613/98 (Provides for the crimes of “laundering” or concealment of goods, rights and valuables; lays down the rules for avoiding misuse of the financial system for illicit actions set forth in the law; creates the Council for the Control of Financial Activities – COAF); Circular Letters of the Central Bank of Brazil (BACEN) N. 2,852 and N. 3,339.

Please provide examples of the successful use or implementation of this article:

Law N. 9,613/98 establishes that financial institutions shall identify their customers and maintain records of financial transactions as well as notify the Financial Intelligence Unit of suspicious or atypical transactions. Circular Letters N. 2,852 and N. 3,339 of BACEN establish that the financial institutions shall: - Maintain updated records on their respective customers, complying, as the case may be, with the requirements and responsibilities set forth in Resolution No. 2025, of November 24, 1993, as amended;- Maintain consolidated internal controls and records that make it possible to verify not only the precise customer identification, but also the compatibility among the respective customer’s fund transfers, economic activity, and financial standing;- Maintain records, as established by the Central Bank of Brazil, of transactions involving Brazilian and foreign currency, securities, metals, and any other assets that may be converted into money. Finally, the concept of Politically Exposed Persons contemplates all persons that hold or have held prominent public offices as well as their families and close collaborators. Circular Letter N. 3,339 of BACEN determines the adoption of special procedures in relation to the businesses and financial transactions of customers considered to be politically exposed persons.

29. Subparagraph 2 (a) of article 52 (Issuance of advisories to financial institutions)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Circular Letters of the Central Bank of Brazil (BACEN) N. 2,852 and N. 3,339.

Please provide examples of the successful use or implementation of this article:

Circular N. 2,852 determines that the Central Bank of Brazil shall be informed of:- Transactions mentioned in item III of Article 1 for amounts equal to or higher than R\$10,000 (ten thousand Reals);- Transactions that are performed with the same person, conglomerate or group, in the same calendar month, and exceed, for each institution or entity, in the aggregate, the limit of R\$10,000 (ten thousand Reals). In addition, the financial institutions and other institutions authorized to operate by the Central Bank of Brazil shall: - Maintain updated records on their respective customers;- Maintain consolidated internal controls and records that make it possible to verify not only the precise customer identification, but also the compatibility among the respective customer’s fund transfers, economic activity, and financial standing;- Maintain records, as established by the Central Bank of Brazil, of transactions involving Brazilian and foreign currency, securities, metals, and any other assets that may be converted into money. The financial institutions shall also pay special attention to the transactions or proposed transactions that, due to the features concerning the parties, amounts, forms of execution and instruments used, or the absence of economic or legal grounds thereto, may indicate or be related to the crime of money laundering. Circular N. 3,339 provides for procedures to be adopted by financial institutions to follow up the transactions of politically exposed persons.

30. Subparagraph 2 (b) of article 52 (Notifying financial institutions of identity of account holder for enhanced scrutiny)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Resolution N. 15 of March 28, 2007, of the Council for the Control of Financial Activities; Circular Letter N. 3,246 of October 24, 2006, of the Central Bank of Brazil.

Please provide examples of the successful use or implementation of this article:

Both acts, COAF's and BACEN's, provide for the notification of financial transactions linked with terrorism and the financing thereof.

31. Paragraph 3 of article 52 (Implementation of measures to require financial institutions to maintain adequate records)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Law N 9.613/98; Circular of the Central Bank of Brazil (BACEN) N. 2,852.

Please provide examples of the successful use or implementation of this article:

Law N. 9,613/98 and BACEN's Circular N. 2,852 establish that financial institutions shall maintain and keep files and records for a minimum period of five (5) years beginning on the first business day of the year subsequent to the closing of the current accounts or the conclusion of transactions. Failure to comply with this obligation shall be subject to the sanctions set forth in the above-mentioned acts.

32. Paragraph 4 of article 52 (Prevention of establishment of banks having no physical presence or affiliation to a registered financial group)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Law N. 4,595/64; Resolution 3,040 of the National Monetary Council; Circulars N. 3,179 and N. 3,218 of the Central Bank of Brazil (BACEN).

Please provide examples of the successful use or implementation of this article:

Item VIII, art. 10 of Law N 4,595/64 establishes the competence of the Central Bank of Brazil to inspect financial institutions and apply the appropriate penalties. Therefore, in Brazil all banks and financial institutions are inspected by BACEN. Furthermore, Resolution 3,040 of the National Monetary Council and Circulars N. 3,179 and N. 3,218 of BACEN provide for, among other things, the requirements and procedures for the establishment and operation of financial institutions.

33. Paragraph 5 of article 52 (Establishment of financial disclosure systems for public officials)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Law N. 9,613/98; Circular of the Central Bank of Brazil (BACEN) N. 2,852; Complementary Law N. 105/01.

Please provide examples of the successful use or implementation of this article:

The Money Laundering Law (Law N. 9,613/98) establishes that COAF shall notify the competent authorities whenever it finds evidence of the existence of crimes defined in this Law, or of clear indications of the occurrence of such crimes or of any other illicit activity. COAF shall also be responsible for coordinating and advancing suggestions for the adoption of systems of cooperation and exchange of information designed to enable rapid and efficient responses in the struggle against the practice of concealment or disguise of assets, rights and valuables. Article 1, § 3º, item IV of Complementary Law N. 105/01 establishes that it does not constitute violation of the duty to secrecy, notifying the competent authorities of the commitment of criminal or administrative offences, including furnishing information on transactions involving the proceeds of any criminal offence. Article 9 provides for the obligation of the Central Bank of Brazil and the Securities Commission to, in the exercise of their duties, verify the occurrence of a crime defined by law as criminal action, or indications of commitment of such crimes, and notify the Public Prosecutor, attaching to the notification the documents necessary to investigate or prove the facts.

34. Paragraph 6 of article 52 (Requiring public officials to report foreign financial accounts)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Legislation on Individual Income Tax: Decree n. 3.000, of March 26, 1999.

Please provide examples of the successful use or implementation of this article:

All persons, including public officials, shall inform in their annual income tax return the number of accounts held overseas as well as their respective balances.

B. Article 53 Measures for direct recovery of property

35. Subparagraph (a) of article 53 (Institution by a State party of measures to permit another State party to initiate civil action in its courts)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

First, it is useful to point out that in Brazil once an international treaty is ratified, and the corresponding presidential decree is promulgated, the referred to instrument enters into force as an ordinary law in the Brazilian legal system, and is applicable in all its procedural provisions. The civil proceeding which may allow for reparation or compensation to the victims will take place pursuant to the article 63 and the following ones of the Brazilian Code of Criminal Procedure, which provide for the namely Ex Delicto Civil Action. According to these provisions, once it is reached a final decision for the criminal conviction, the plaintiff, his/her legal representative or his/her heirs may have it executed in the civil court for the purpose of compensation for damage. The Brazilian code of criminal procedure also provides that the damage compensation proceeding may be initiated in the civil court against the perpetrator of the crime and, if it is the case, against the civil responsible even if there is not a corresponding criminal action. In this case, however, if a criminal action is brought forth, the judge of the civil action may suspend the civil action until the final judgment about the criminal action. Furthermore, the referred to articles provide that civil res judicata results from a criminal sentence which acknowledges that the act had been perpetrated in flagrant necessity, self defense, strict fulfillment of one's legal duty or in the regular exercise of one's right. On the other hand, despite the acquittal in a criminal proceeding, the civil action may be initiated when the material inexistence of the fact has not been categorically acknowledged. The following shall not impede the civil action to be brought forth: I – the order to close and file the inquiry or the pieces of information; II – the decision to consider the punishment extinct; III – the acquittal which decides that the accusation does not constitute a crime. It is important as well to mention the Law No. 8.429/1992, which regulates the Administrative Improbity Action, and sets forth the sanctions applicable to the public officials in cases of illicit enrichment in the exercise of a public office. The Law also includes as liable to sanctions the legal entities which contributed for the perpetration of such act. To this extent, the article 12 of the referred to Law provides that, independently of the criminal, civil and administrative sanctions, set forth in the specific legislation, the individual who is responsible for the act of improbity is subject to sanctions such as the forfeiture of assets or funds illicitly incorporated to his personal estate, full compensation for the damage if that is the case, the loss of his public office, suspension of political rights, payment of civil fine, etc.

Please provide examples of the successful use or implementation of this article:

36. Subparagraph (b) of article 53 (Institution by a State party of measures to permit its courts to order payment of compensation or damages)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

The crimes against the Public Administration are listed in the Title XI of the Brazilian Criminal Code, and include, among other crimes, the acts of embezzlement of public funds, graft, active and passive corruption, violation of duty, trafficking in influence and illicit acts against the administration of justice. Money laundering, however, is found described in the Law No. 9.613, of March 3rd, 1998. Likewise, the article 91 of the Criminal Code provides that the following are effects of the conviction: I) Make certain the obligation to compensate for the damage caused by the crime; II) The loss, on behalf of the Union, excepting for the rights of the individual damaged or a third-party bona-fide: a. of the instrumentalities of the crime as long as they are objects whose manufacturing, alienation, use, transportation or detention consist of an illicit fact; b. of the proceeds of crime or any asset or figure which constitutes advantage obtained by the agent with the perpetration of the criminal fact. Moreover, as mentioned above, the Brazilian Code of Criminal Procedure sets forth that once it is reached a final decision for the criminal conviction, the plaintiff, his/her legal representative or his/her heirs may have it executed in the civil court for the purpose of compensation for damage.

Please provide examples of the successful use or implementation of this article:

37. Subparagraph (c) of article 53 (Institution by a State party of measures to permit its courts or competent authorities to recognize another State party's claim of legitimate ownership of property proceeds of crime)

Has your country adopted the measures described above? (Check one answer)

(P) Yes, in part

Please cite the applicable law(s) or other measure(s):

As already mentioned, the article 91 of the Criminal Code makes an exception for the rights of the individual damaged or a third-party bona-fide when it sets forth the provisions concerning the effects of the conviction.

Which of the following forms of technical assistance, if available, would assist your country with adopting the measures described above? (Check all the answers that apply)

(i) No assistance would be required

Are any of the forms of technical assistance previously mentioned already provided? (Check one answer)

(N) No

C. Article 54 Mechanisms for recovery of property through international cooperation in confiscation

38. Subparagraph 1 (a) of article 54 (Institution by a State party of measures to permit its competent authorities to give effect to orders of confiscation issued by courts of another State party)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

The confiscation orders must be issued at the court where it is reached the final judgment and will be executed in Brazil by means of the legal institute of the Action of Homologation of Sentence, which will proceed at the Superior Court of Justice, pursuant to the articles 483 and 484 of the Code of Civil Procedure, as well as the Resolution No. 09 of the Superior Court of Justice.

Please provide examples of the successful use or implementation of this article:

39. Subparagraph 1 (b) of article 54 (Confiscation of property of foreign origin)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

The national Money Laundering Law clearly provides that, in case of the existence of an international

treaty or convention and upon request by a foreign competent authority, the judge shall order the restraint or the seizure of assets, rights and valuables originated from prior crimes, described in the article 1st, perpetrated abroad. It also provides that, independently of an international treaty or convention, the provision in this article applies when the government of the requesting authority offers reciprocity in treatment to Brazil.

Please provide examples of the successful use or implementation of this article:

40. Subparagraph 1 (c) of article 54 (Confiscation without a criminal conviction of property acquired through corruption)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Yes. In Brazil there is a supplementary material relationship between money laundering and the prior crime, because it would be impossible to determine the former without the perpetration of the latter. It is applied the theory of causality, since the prior crime is a *conditio sine qua non* for the laundering. However, the Article 2, § 1, of the Laundering Law provides that the charges will be prepared for trial with enough evidence of the existence of the prior crime, and the facts set forth in the law will be punished, even if the perpetrator of that crime is unknown or exempt from penalty. That is, the action which characterizes the prior crime must be typical and anti-juridical, independently of the culpability. The crime of money laundering does not subsist when it is applied to the prior crime any of the causes of the articles 23 to 25 of the Criminal Code (flagrant necessity, self defense, strict fulfillment of one's legal duty) or supra-legal causes for the exclusion of the anti-juridical aspect (consent on the part of the individual damaged, insignificance, socially adequate action). However, the occurrence of the causes which extinguish the prior crime punishment (for instance, death of the agent, statute of limitation and waiver of an action, etc.) does not prevent the occurrence of the crime of money laundering. The only exceptions are the pardon (meaning *novatio legis*, operating *ex tunc*) and the abolition *criminis*. Besides, the previously mentioned civil actions may be used in this case. At last, Brazil has already drafted a bill of law which regulates the illicit assets forfeiture action, independently of the criminal responsibility.

Please provide examples of the successful use or implementation of this article:

41. Subparagraph 2 (a) of article 54 (Freezing or seizure of property upon freezing or seizure order)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

The acknowledgement of foreign decisions and the execution of its effects in the Brazilian territory takes place, as rule of thumb, by means of the proceeding destined for the Letters Rogatory. However, the referred to measures may be requested by means of legal assistance, based on mutual legal assistance bilateral agreements, multilateral treaties, such as the referenced Convention, and even based on the principle of reciprocity, which in this case shall proceed by diplomatic channels.

Please provide examples of the successful use or implementation of this article:

42. Subparagraph 2 (b) of article 54 (Freezing or seizure of property upon request providing sufficient grounds)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

As mentioned above, the safeguarding measures may be requested by means of legal assistance based on mutual legal assistance bilateral agreements, multilateral treaties, such as the referenced Convention, and even based on the principle of reciprocity, which in this case shall proceed by diplomatic channels.

Please provide examples of the successful use or implementation of this article:

43. Subparagraph 2 (c) of article 54 (Preserving property for confiscation)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

By means of the request for assistance, the Requesting State may request the enforcement of safeguarding measures, but must provide the needed evidence, such as strong suspicion of materiality and the identity of the perpetrator of the crime, as well as the explanation of the reasons which made the requesting authorities believe that, in case the measures are not taken, there is serious risk that the victims cannot be compensated for or the evidence may be dissipated.

Please provide examples of the successful use or implementation of this article:

D. Article 55 International cooperation for purposes of confiscation

44. Paragraph 1 of article 55 (Submission of request for order of confiscation to competent authorities)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

As already mentioned, the confiscation measure in Brazil results from a final conviction. In relation to the possibility to obtain such measure by means of legal assistance, the request must be based on a sentence rendered in the Requesting state and follow the procedure of the Action of Homologation of Sentence to be executed in Brazil. The referred action shall proceed in the Superior Court of Justice. It is important to point out, however, that in case of money laundering the Law No. 9.613/98 clearly provides the possibility of persecution of this act by the Brazilian courts, even if the prior crime had been committed in a foreign jurisdiction. Thus in case there is a conviction, it will be ordered the forfeiture of the criminal assets and the repatriation of half of the amount in the State where the prior crime took place, except if otherwise agreed in provisions in a treaty or agreement: Article 8 If there is an international treaty or convention dealing with the matters referred to in this Law and upon request of a

competent foreign authority, the judge shall order the seizure or detention of assets, rights and valuables resulting from the crimes committed abroad referred to in article 1. Paragraph 1 These provisions shall also apply, regardless of the existence of an international treaty or convention, provided the government of the foreign country in question undertakes to grant reciprocity of treatment to Brazil. Paragraph 2 In the absence of an international treaty or convention, the assets, rights or valuables seized or detained upon request of a competent foreign authority or the proceeds resulting from their detention shall be evenly divided between the Country that makes the request and Brazil, safeguarding the rights of victims or third parties in good faith. In reference to the crimes set forth in the referenced Convention, however, the assets shall be repatriated integrally to the Requesting State. As mentioned, confiscation by means of mutual legal assistance shall be based on a sentence rendered in the Requesting state and follow the procedure of the Action of Homologation of Sentence. The Law 9.613/98, however, clearly provides the possibility of persecution of this act by the Brazilian courts, even if the prior crime had been committed in a foreign jurisdiction. Thus in this case in case there is a conviction it shall be ordered the forfeiture of the criminal assets and the repatriation.

Please provide examples of the successful use or implementation of this article:

45. Paragraph 2 of article 55 (Identification, tracing, freezing or seizure of proceeds of crime for eventual confiscation)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

As already mentioned, the referred to measures may be requested by means of legal assistance, based on mutual legal assistance bilateral agreements, multilateral treaties, such as the referenced Convention, and even based on the principle of reciprocity, which in this case shall proceed by diplomatic channels.

Please provide examples of the successful use or implementation of this article:

46. Paragraph 3 of article 55 (Contents of request for order of confiscation)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

As mentioned above, in case of money laundering, there is the possibility that the judge order, upon request by the foreign competent authority, the restraint or the seizure of assets, rights and valuables originated from crimes committed abroad. In the absence of a treaty or a convention, the assets, rights or funds restrained or seized upon request by a competent foreign authority or the funds resulting from the alienation shall be shared in the proportion of half between the Requesting state and Brazil safeguarding the rights of victims or third parties in good faith. Thus, it is important that it is provided in the referred to request a clear description of the facts, in a way that it becomes clear for the Brazilian authorities the illicit origin of the assets 'laundered' in Brazil and the importance of the measure for the Requesting state. As mentioned above, the confiscation in Brazil results from a final conviction, in a way that the execution of this measure in compliance with the request from the foreign state must follow the proceeding provided for the Action of Homologation of Sentence, which shall proceed in the Superior Court of Justice. Except the case of money laundering in Brazil, which have as prior crime an act perpetrated in a foreign State. Brazil still lacks an international legal cooperation law which determines the requirements to be included in a request for assistance, and these requests are analyzed based on the agreement or treaty in which it is grounded. It is known, however, that certain information is always necessary, independently of the treaty used as a legal ground, as for instance a clear description of facts, the connection between these facts and the measure requested and other requirements which may vary

according to the measure requested. Particularly in relation to the request for restraint, it is necessary to identify the asset, show that there is grounded reason to believe that its origin is criminal, and also the reason to believe that the non-execution of the measure requested would result in serious risk of making it impossible to compensate the victim, the dissipation or obstruction of evidence. It is important to note that it is under way in the National Congress a draft of law which will address the international legal cooperation, with provisions regarding the needed requirements for the execution of the requests.

Please provide examples of the successful use or implementation of this article:

E. Article 57 Return and disposal of assets

47. Paragraph 1 of article 57 (Disposal of confiscated property)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

As already previously mentioned, the provision in the Brazilian legislation which determines the forfeiture of criminal assets on behalf of the Union as one of the effects of the conviction sentence, safeguards the rights of victims or third parties in good faith. (art. 91 Criminal Code).

Please provide examples of the successful use or implementation of this article:

48. Paragraph 2 of article 57 (Return of confiscated property upon request by another State party)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

As already mentioned, Brazil still lacks a mutual legal assistance law in force. It is very important to point out, however, that there is a draft of law in the National Congress which addresses this matter, which provides about the procedure to follow in reference to the repatriation to the requesting state of the assets recovered.

Please provide examples of the successful use or implementation of this article:

49. Paragraph 3 of article 57 (Return of property confiscated in accordance with article 55 of the Convention against Corruption)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

The repatriation of the criminal assets “laundered” in Brazil will be carried out pursuant to the provisions set forth in the Laundering law, equally divided, except when otherwise agreed in a bilateral agreement or a multilateral treaty. Regarding some of the acts provided in the referenced Convention, such as prior crimes to money laundering, the Requesting State shall use a request for assistance (also “direct assistance”) to effect the repatriation of assets. In these cases, Brazil shall carry out the repatriation of the assets in their integrity. As mentioned in the previous item, the repatriation of assets of illicit origin “laundered” in Brazil shall happen pursuant to the provisions set forth in the already mentioned Laundering Law, equally divided, except when otherwise agreed in a bilateral agreement or a multilateral treaty. Regarding some of the acts provided in the referenced Convention, such as prior crimes to money laundering, the Requesting State shall use a request for assistance (also “direct assistance”) to effect the repatriation of assets. In these cases, Brazil shall carry out the repatriation of the assets in their integrity. The restitution of the asset recovered to the Requesting State, to the legitimate owners or the compensation for the victims of the felony shall take place grounded in the article 91 of the Criminal Code, in the Laundering Law and obviously in the referenced Convention.

Please provide examples of the successful use or implementation of this article:

50. Paragraph 4 of article 57 (Deduction of expenses incurred in return or disposal of confiscated property)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

The Brazilian legislation does not pose any impediment to the deduction of reasonable expenses which had been made in the course of the investigations or actions which may have allowed for the recovery of the assets.

Please provide examples of the successful use or implementation of this article:

51. Paragraph 5 of article 57 (Conclusion of agreements on final disposal of confiscated property)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Brazil has worked hard to sign more bilateral agreements on mutual legal assistance. Most of the agreements signed by the country thus far already provides for the repatriation of assets and Brazil has included this topic in the international instruments currently in negotiation. Besides, it is important to point out that this matter is also covered in the draft of law on mutual legal assistance (international legal cooperation) which currently proceeds in the National Congress.

Please provide examples of the successful use or implementation of this article:

VI. Other information

A. Other information

52. Other information

Please provide any other information you believe is important for the Conference of the States Parties to the United Nations Convention against Corruption to consider at this stage regarding aspects of, or difficulties in, implementing the Convention other than those mentioned above