

# Steps taken to implement and enforce the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

## BRAZIL

*(Information as of 17 September 2009)*

### *Date of deposit of instruments of ratification/acceptance or date of accession*

Signing of the Convention: December 17, 1997.

Ratification of the Convention: June 15, 2000, by Legislative Decree no. 125/2000, published in the Official Federal Gazette ratifying the convention.

### *Implementing Legislation*

- a) **Identification of the law** - Law no 10.467, June 11, 2002, adding Chapter II-A to Section XI of Decree-Law No. 2,848, of December 7, 1940, Penal Code, and a provision to Law No. 9,613, of March 3, 1998, which governs the crimes of money-laundering or hiding of assets, rights and securities; the prevention of the use of the Financial System for the illegal acts provided for in this Law, creates the Council for **Financial Activities Control** (COAF), and makes other provisions.;
- b) Sanctioning of the implementing legislation: June 10, 2002; and,
- c) Implementing legislation comes into force: June 11, 2002.

### *Other relevant laws, regulations and decrees that have an impact on a country's implementation of the OECD Convention or the Recommendations*

#### *Relevant legislation:*

- Penal Code, especially Art. 317 (passive corruption); Penal Code, Art. 333 (active corruption);
- Law N° 9.034, May 3, 1995, which adopts provisions concerning the use of operational means for the prevention and repression of activities performed by criminal organizations;
- Law N° 9.613, March 3, 1998, which rules on the crimes of money laundering or hiding assets, rights and securities; the prevention of the use of the Financial System for the illegal acts provided for in this Law, creates the Financial Activities Control Board (COAF), and makes other provisions;
- Decree N° 3.000, March 26, 1999 . Income Tax Regulation;
- Law N° 8.884, June 11, 1994, which adopts provisions concerning prevention and repression of violations against the economic order, guided by the constitutional principles of freedom of initiative, free competition, social function of ownership, consumer protection, and repression of economic power abuse;

- Article 11 of Law N°. 7.492/86, which establishes a sentence of 1 (one) to 5 (five) years in prison and a fine for any person who "maintains or transfers resources or values in parallel to the legal accounting requirements";
- Article 1 of Law N° 4.729/1965 establishes as a crime punishable with 6 (six) months to 2 (two) years in prison the falsification of accounting documents.
- Decree 5.483, of June 30, 2005, which instituted the investigation of assets in the scope of the Federal Executive.
- Bill of Law n° 7710/2007, which proposes alteration of the Article 337 – B of Penal Code, increasing imprisonment from 1 to 8 years to 2 to 12 years.

### ***Other information***

#### *Relevant authorities*

Attention should be drawn to the articulated and integrated way through which corruption is being tackled in the country today, with the joining of all the state defense agencies in this endeavor.

The Office of the Comptroller General (CGU) acts in all the agencies and entities of the Federal Executive as the central body for internal control and audit, disciplinary action and ombudsman action, having within its structure the Secretariat for Prevention of Corruption and Strategic Information - SPCI.

The Federal Police Department (DPF) is responsible for prevention and repression of criminal offenses, as well as for conducting the pertinent investigations, relying on a modern and functional structure that allows centralized planning, coordination and control and decentralized execution.

The Department of Asset Recovery and International Legal Cooperation - DRCI, of the Ministry of Justice, has the function of identifying threats, defining effective and efficient policies, as well as developing an anti-money laundering culture, aiming at recovering assets sent abroad illegally and products of criminal activities. This Department is also responsible for international cooperation and technical assistance, both in penal and civil matters, being the central authority in the exchange of information and requests for international legal cooperation.

The Council of Control of Financial Activities – COAF, the Brazilian financial intelligence unit, was created in the scope of the Ministry of Finance, with the purpose of disciplining, enforcing administrative penalties, receiving, examining and identifying suspected illegal activity linked to money laundering.

The Brazilian Federal Revenue Secretariat, a specific and unique body linked to the Ministry of Finance, is responsible for the planning, execution, control and evaluation of the federal tax administration activities, as well as the execution of the country's customs policy, including the undertaking of studies on the economic impact of the tax and customs policies in Brazil.

The Prosecutor's Office is a permanent institution, which has functional, administrative and financial autonomy established in the Constitution, being responsible for persecution of offences.

The Legislative also has an important role in the fight against corruption, not only in its law-making function, but mainly through Parliamentary Inquiry Commissions - CPI. The CPIs, with the same investigation powers as the judicial authorities, are instituted by the House of Representatives or by the Federal Senate, with the purpose of investigating a certain fact within an established deadline and its

conclusions are forwarded to the Prosecutor's Office, if appropriate, for it to promote the civil or criminal liability of the offenders.

External control, which is the responsibility of the National Congress, is exercised with the help of the Federal Court of Accounts, whose attributions include, for example, judging the accounts of the managers and other people responsible for public moneys, property and values of the direct and indirect administration, including foundations and societies instituted and maintained by the Federal Public Power, and the accounts of those who have caused loss, misuse or any other irregularity results in loss to the treasury.

The articulation and coordination of the works developed by the above bodies and others were strengthened by the creation of the National Strategy to Combat Corruption and Money Laundering – ENCCLA, in 2003.

*Relevant Internet links to national implementing legislation:*

<http://www.cgu.gov.br>;

<http://www.camara.gov.br>;

<http://www.senado.gov.br>;

<http://www.mpf.gov.br>;

<http://www.mj.gov.br/drcj>;

<https://www.coaf.fazenda.gov.br>;

<http://www.receita.fazenda.gov.br>;

<http://www.tcu.gov.br>.

*Signature/Ratification of other relevant international instruments*

- Promulgation of the Inter-American Convention against Corruption (OAS) . Decree no 4.410, October 7, 2002;
- Signature of the United Nations Convention against Corruption (UN), on December 9, 2003, at Mérida, México;
- Promulgation of the United Nations Convention against Corruption (UN). Decree no 5.687, January 31, 2006.

***Working Group on Bribery Monitoring Reports***

Phase 1: Review of Implementation of the Convention and 1997 Recommendation

<http://www.oecd.org/dataoecd/52/46/33742137.pdf>

Phase 2: Review of Implementation of the Convention and 1997 Recommendation

<http://www.oecd.org/dataoecd/61/30/39801089.pdf>