



**Financial Action Task Force
on Money Laundering**

Groupe d'action financière
sur le blanchiment de capitaux

CONFIDENTIAL

**Federative Republic of
BRAZIL**

**MUTUAL EVALUATION REPORT ON
ANTI-MONEY LAUNDERING AND
COMBATING THE FINANCING OF TERRORISM**

28 June 2004

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Federative Republic of Brazil

DRAFT **DETAILED MUTUAL EVALUATION REPORT¹** **ANTI-MONEY LAUNDERING AND COMBATING THE** **FINANCING OF TERRORISM**

A. General

I. Information and methodology used for the assessment

1. A detailed assessment of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Brazil was prepared by a team of examiners that included Financial Action Task Force (FATF) experts in legal, law enforcement, and financial regulatory issues, as well as the FATF Secretariat. This was a joint mutual evaluation with the *Grupo de Acción Financiera de Sudamérica* (GAFISUD) and included a GAFISUD expert in law enforcement issues and the GAFISUD Secretariat. The experts reviewed the relevant AML/CFT laws and regulations and the supervisory and regulatory systems in place to deter money laundering (ML) and financing of terrorism (FT) among financial institutions as well as the capacity and implementation of these and criminal law enforcement systems.

2. The team consisted of: Mr. José Luis Fernández Valoni (legal expert), Ministry of Foreign Affairs, International Trade and Worship, Argentina; Mr. Fernando Mera Espinosa (law enforcement expert), Responsible for the Money Laundering Office at the Superintendence of Banks and Insurance of Ecuador; Mrs. Maria Célia Ramos (financial expert), Senior Legal Counsel, Legal Department, Banco de Portugal; Mr. John C. Ellis (financial expert), Adviser, Money Laundering Policy, Financial Crime Policy Unit, Financial Services Authority (FSA), United Kingdom; Mr. Fernando Rosado, Executive Secretary, GAFISUD; Ms. Silvina Capello, GAFISUD Secretariat; Mr. Patrick Moulette, Executive Secretary, FATF; and Mr. Kevin Vandergrift, FATF Secretariat.

3. The evaluation team met with officials from the relevant Brazilian agencies and financial institutions from 3-7 November 2003. Meetings took place with the following government agencies and departments: *Conselho de Controle de Atividades Financeiras* (COAF), the Ministry of Justice, the Superior Court of Justice, the Central Bank of Brazil, the Federal Police Department, the Attorney General's Office, Secretariat of the Federal Revenue, the Brazilian Intelligence Agency, the Superintendence of Private Insurance, and the Securities and Exchange Commission. The evaluation team also met with several financial institutions and private-sector organisations: Caixa Econômica Federal, Banco do Brasil, Brazilian Federation of Banks, Nossa Caixa, Unibanco, and the National Federation of Insurance and Capitalisation Companies.

II. Introduction to Brazil and its economy and legal system

4. With an area of 8.5 million square kilometres and an estimated 177 million inhabitants, Brazil ranks fifth in the world in both area and population. Brazil's economy is highly diversified with wide

¹ Please note that this document is not yet in final form and is subject to other minor modifications before it is put into effect. For any questions on this document, contact the FATF Secretariat (Secretariat@fatf-gafi.org).

variations in levels of development and a GDP for 2003 of USD 528 billion. The poverty rate was 22% in 2002; inflation was 15% in 2003. Unemployment was approximately 12.8% in April 2004.²

5. Brazil's extensive mineral and other natural resources include iron, manganese, bauxite, nickel, uranium, gold, phosphates, petroleum, and timber. Industry is also diverse, with the main products being steel, automobiles, hydroelectricity, textiles, cement, and lumber. Brazil is the world's largest producer of coffee, sugarcane, and tropical fruits; other important agricultural products include soybeans, cocoa, rice, livestock, corn, cotton, wheat, and tobacco. Brazil has a diverse and sophisticated services industry as well.

6. In comparison to some industrialised countries, Brazilian financial institutions operating in the domestic market are in general diversified, dynamic and competitive. The financial system also exhibits some inadequacies, particularly in its role of supporter of economic growth. Both features are the result of high and persistent inflation that plagued the Brazilian economy from the mid-1960s to the *Real Plan* in 1994. Hyperinflation caused some currency flight but also resulted in investment in Brazilian financial products indexed to inflation and thus some diversification in the financial sector. Investment in public debt, most of it indexed either to short-term interest rates (SELIC rate) or to the US dollar, is still the investment of choice.

7. Legislation in 1988 and 1989 opened the financial system and began a process of reducing the state's role through privatisation. The *Real Plan* ("*Plano Real*")—the economic plan introduced in 1994—further increased competitiveness in the financial sector and ended hyperinflation by introducing the new currency—the *real* (BRL)—pegged to the US dollar. Despite a USD 41 billion IMF-led support program in November 1998, pressure on the currency caused the government to abandon pegging the real to the US dollar in January 1999. With the *real* devalued to 1/3 of its 1998 value by 2002³, IMF stepped in again with a USD 30 billion loan. In 2003, the Brazilian government was considering two major reforms that are considered crucial to Brazil's long-term financial stability: reform of the national pension system and reform of the tax code.

8. The Brazilian legal system is based on the Civil Law tradition and is grounded in the Federal Constitution, in force since 5 October 1988. The Constitution organizes the country as a Federative Republic, "*formed by the indissoluble union of the states and municipalities and of the Federal District*". The 26 states have powers to adopt their own Constitutions and laws, provided they are consistent with the principles of the Federal Constitution. Municipalities also enjoy similar autonomy; the Federal District blends functions of a federal state and of a municipality. The Executive, the Legislative and the Judiciary branches are independent. The head of the Executive is the President of the Republic, who is both the Chief of State and the Head of Government and is directly elected by the population.

9. The judicial branch is organized into federal and state areas. Municipalities do not have their own justice systems, and therefore, depending on the nature of the case, must resort to state or federal justice systems. The five Regional Federal Courts are responsible for cases of national interest and crimes included in international agreements; the Federal Judges' duties include hearing most disputes in which one of the parties is the Union. Thus, Brazilian officials have indicated that the Federal courts will generally prosecute those crimes of national and international interest, such as terrorism and major crimes against the financial system. States would prosecute those cases of more interest to the particular state, such as state or local corruption.

² Sources include the Brazilian Institute of Geography and Statistics, the Central Bank of Brazil, and the Institute for Applied Economic Research.

³ The exchange rate as of 3 November 2003 was 1 BRL = .349 USD. This conversion rate is used throughout this report.

III. Overview of the financial sector

10. The dominant financial institution in Brazil is the universal or “multiple” bank, which operates in many segments of the financial market such as deposit acceptance, credit intermediation and securities trading. Commercial banks, issuing very short term liabilities, such as demand and time deposits, were favored by the shortening of contract maturities brought about by inflation.

11. Brazil has approximately 168 multiple and commercial banks with total assets of approximately USD 349 billion and equity of approximately USD 49 billion. As of December 2002, foreign-controlled banks had approximately 27% of total assets; national private banks had 37% of assets, public banks had 6 % of assets. The Caixa Econômica Federal had approximately 12% of assets, and the Banco do Brasil had 17% of assets. In addition, there are 21 investment banks and 3 development banks; however, these institutions do not take deposits from the public. There were also 45 financing companies, 18 savings and loan companies, 9 mortgage companies, 40 savings and loan associations, 58 leasing companies, and 1,381 co-operatives. As of November 2003, Brazil had 149 security brokers and 145 security dealers.⁴

12. The Brazilian insurance market consists of insurance, capitalisation, and complementary open pension funds segments, with aggregated income of USD 14.7 billion (USD 10.5 billion for insurance alone) in 2002. In 2002 there were 140 insurance companies, 18 companies selling capitalisation securities, 77 companies in the area of complementary open pension funds and 78,500 insurance brokers.⁵

13. Foreign exchange operations in Brazil may be carried out only by banks and other authorised exchange brokers authorised by the Central Bank of Brazil (*Banco Central do Brasil*—BACEN) to perform this kind of business, including exchange brokerage companies, travel agencies, hotels and lodging facilities. In November 2003 there were 43 exchange brokerage companies⁶, 268 travel agencies and 8 hotels authorised by BACEN to carry out foreign exchange transactions. These entities are not authorised to perform cross-border transactions either on foreign currency or in national currency, which can only be performed by banks. All currency exchange transactions are entered into BACEN’s database—about 15,000 daily.

14. Foreign money remittance can only be performed through the banking system, either directly by authorised banks or through a customer of a bank on a contractual basis. Currently only one bank—Banco do Brasil—has such a contract (with Western Union). Banco do Brasil is a financial institution fully regulated and supervised by BACEN. All foreign remittances must also be recorded in BACEN’s database.

15. Although the AML law and regulations also contain requirements for other “money remittance companies,” there are no such independent entities in Brazil at this time. The law and regulations were written as a precautionary measure to comply with international standards, if such entities were to be established in the future.

16. Brazilian authorities have encouraged the wide use of non-cash payments such as checks and credit cards. However, the introduction in 1997 of a tax on checks may have caused a large increase in cash transactions. The significant number of large cash transaction reports seems to indicate high volumes of cash movements in the economy. COAF is aware of the risk associated with continued reliance on cash transactions in the Brazilian economy and is considering increasing the degree of vigilance over companies that transport cash values.

⁴ Statistics from the Central Bank of Brazil (BACEN) website: <http://www.bcb.gov.br/?QEVSFN200311>.

⁵ Statistics according to the 2002 Annual Report of FENASEG (National Federation of Insurance and Capitalization Companies).

⁶ Statistics from the Central Bank of Brazil (BACEN) website: <http://www.bcb.gov.br/?QEVSFN200311>.

IV. General situation of money laundering and financing of terrorism

17. Brazilian authorities report that the major sources of illegal proceeds are: crimes against the financial system such as fraud, embezzlement and corruption; drug trafficking, and tax evasion. There are, however, no statistics that can demonstrate evidence of that.

18. Money laundering in Brazil seems to be primarily associated with domestic crime, including the smuggling of contraband goods and corruption, both of which generate funds that may be laundered through the banking system, real estate investment or financial asset markets. The proceeds of narcotics trafficking and organized criminal activities are laundered in a similar fashion. A significant trend at the integration phase is the purchase of real estate by foreigners.

19. Illegal money frequently leaves the country to find protection in an offshore market and comes back disguised as an investment (acquisition of real estate, capital increase in companies) or as a loan. According to the Brazilian Federal Police, the most frequent technique in this regard consists of sending money abroad through the CC-5 special accounts for non-residents. Another common technique is the use of accounts opened in names of nominees (“*laranjas*”). Other techniques reported by the police are the use of bingos, lotteries and informal gambling.

20. The geographical situation of Brazil, with borders with ten countries and almost 8,000 kilometres of coastline, represents an additional challenge to fighting criminal activities, especially near the tri-border area between Brazil, Argentina and Paraguay (Foz de Iguaçu). In these specific areas, the Federal Police report extensive cash smuggling through vehicles.

21. With regard to typologies of terrorist financing, the Federal Police, in conjunction with authorities from other countries, have monitored the tri-border area. However, no evidence of terrorist financing has been observed.

V. Overview of measures to prevent money laundering and terrorism financing

a. General

22. The legislative framework to address the problem of money laundering in Brazil is contained in the Law N°9613 of 3 March 1998. This law establishes the necessary legal measures, such as the definition of the money laundering offence, the preventive measures, the suspicious reporting system and various procedures for international co-operation. Law N°9613 translates into Brazilian legislation a number of international initiatives of the 1990s (1988 United Nations Convention, 1996 FATF Recommendations, etc.). A key characteristic of the Brazilian anti-money laundering is its reliance on both a central authority (the financial intelligence unit) as well as sector specific authorities to cover all the entities of the banking and financial sectors.

23. The most significant anti-money laundering reform since 1998 is the enactment of Complementary Law 105 of 20 January 2001, which extended COAF’s access to information subject to banking secrecy. In addition, Law 10701/03 added the financing of terrorism as a predicate offence for money laundering, provided additional authority for the FIU to obtain information from reporting parties, and creates a national registry of bank accounts.

24. The financial intelligence unit (COAF) plays a central role in the Brazilian anti-money laundering and countering the financing of terrorism system not only at the operational level but also at the policy level through its plenary council, which is comprised of representatives from all the responsible bodies and ministries that meet as needed. However, it appears that the Brazilian authorities are aware of the need for improved co-ordination. Recently, COAF and the Ministry of

Justice have promoted the elaboration of a National Anti-Money Laundering Strategy (ENCLA), which involves all the relevant ministries and agencies (both at Federal and State level), as well as the Congress.

b. Overview of the governmental and non-governmental authorities and their respective duties

Ministries

25. **The Ministry of Finance** is responsible for the formulation and execution of the macroeconomic policies and treasury operations. The financial intelligence unit (COAF), and the supervisors for the banking (BACEN), insurance (SUSEP) and securities sectors (CVM) fall under the Ministry of Finance.

26. **The Ministry of Justice** has among its responsibilities those of establishing law enforcement policies, overseeing the Federal Police Department, processing extradition and mutual legal assistance requests and letters rogatory.

The Financial Intelligence Unit (FIU)⁷

27. **The financial intelligence unit** (*Conselho de Controle de Atividades Financeiras—COAF*) plays a central role in the Brazilian anti-money laundering and countering the financing of terrorism system at the operational as well as the policy level. COAF also regulates certain entities with AML obligations that were not previously subject to a supervisory regime.

Law enforcement and prosecution authorities⁸

28. **The Federal Police Department** (*Departamento de Polícia Federal—DPF*) is housed within the Ministry of Justice and investigates federal crimes. The Division for Combating Financial Crimes (*Divisão de Repressão de Crimes Financeiros—DFIN*), investigates money laundering cases.

29. **The Attorney General's Office** (*Procuradoria Geral*) is responsible for the defending the democratic regime and the legal order; its functions also include requesting investigations and police inquires (“*inquéritos*”). The Office’s “*promotores*” at the state level and “*procuradores*” at the federal level are in charge of the prosecution of criminal offences.

30. **The Federal Revenue Secretariat** (*Secretaria da Receita Federal—SRF*) is responsible for tax collection and auditing as well as customs control; SRF investigates money laundering cases relating to the offences under its jurisdiction.

31. **The Brazilian Intelligence Agency** (*Agência Brasileira de Inteligência—ABIN*) is linked to the office of the President and its Counter-Intelligence Department plays a role not only in combating money laundering, but also terrorism and terrorist financing.

32. **The Specialised Federal Courts** were recently established to specifically prosecute money laundering and other crimes against the national financial system.

⁷ For more details, see section B. III beginning at paragraph 96.

⁸ For more details, see section B. IV beginning at paragraph 136.

Regulatory bodies for financial institutions⁹

33. **The National Monetary Council** (*Conselho Monetário Nacional—CMN*), is the main decision-making authority for the national financial system. The CMN is composed of the Minister of Finance, the Minister of Planning and Budget, and the President of the Central Bank of Brazil (BACEN).

34. **The Central Bank of Brazil** (*Banco Central do Brasil—BACEN*) licenses and supervises banks and other institutions, such as credit cooperatives, exchange brokerage companies, and travel agencies hotels that perform retail foreign exchange operations. BACEN's anti-money laundering unit (DECIF) supervises compliance for anti-money laundering regulations.

35. **The Superintendence of Private Insurance** (*Superintência de Seguros Privados—SUSEP*) regulates and supervises the insurance market, capitalisation companies and re-insurance for prudential and AML purposes.

36. **The Securities and Exchange Commission** (*Comissão de Valores Mobiliários—CVM*) is responsible for supervising the securities market and related activities for prudential and AML purposes.

37. **The Caixa Econômica Federal** is a large public financial institution that also supervises the national lottery system.

The private sector

38. **The Brazilian Federation of Banks** (FEBRABAN) is an association of 116 banks and consists of approximately two thirds of all Brazilian banks that account for 96% of assets in the Brazilian banking system. Its main roles are the standardisation and automation of services, costs reduction, transparency, clients' rights, and the ongoing search for improvements in banking services. FEBRABAN also performs a useful AML awareness and training role.

39. **National Federation of Insurance and Capitalisation Companies** (FENASEG) is the association of private insurance and capitalisation entities and complementary open pension funds. Its main goal is the promoting and developing of order and efficiency in these markets. FENASEG collaborates with the government in the study and elaboration of laws and regulations that relate to this sector.

c. Progress since the first mutual evaluation of Brazil

40. In the first mutual evaluation report of Brazil, dated 21 June 2000, the FATF noted the following deficiencies or potential deficiencies and recommended certain actions, with actions since that time noted.

- (a) **The scope of the criminal offence.** The list of predicate offences is not exhaustive but includes other major criminal activities, activities conducted by organised crime groups and those against the “national financial system”. This appears to enable Brazilian authorities to interpret most serious offences as money laundering predicates; however, it is difficult to judge the effectiveness of the law until there has been some experience with it in court.

Action taken: Legislation in July 2003 added the predicate offence of terrorist financing to the anti-money laundering law. Otherwise, although Brazil has demonstrated an increasing number of money laundering investigations, there were no available statistics on prosecutions or convictions to demonstrate that the legal offence was adequately sufficient.

⁹ For more information, see section C. I beginning at paragraph 207.

- (b) **Customer identification and record keeping.** Customer identification measures appear to be complete and to reach the whole financial sector, although SUSEP must still address this particular issue in its regulation. Neither the law nor individual regulations provide guidance on what actions may or may not be taken when there is no identification of the customer or the beneficiary (for example, prohibiting the carrying out of the transaction or delaying it until identification may be effected). Brazilian authorities may want to consider adding such provisions in the various supervisory regulations.

Action taken: SUSEP issued its first anti-money launderer regulation—Circular 181—on 8 January 2002. This was updated and replaced by Circular 200 of 9 September 2002. The circulars detail the requirements for the insurance sector for customer identification, record keeping, and STR reporting in compliance with the anti-money laundering Law 9613/98.

- (c) **Allow COAF to receive all STR information.** Current secrecy provisions—requiring a court order or for disclosure of “banking information”—pose a potentially significant obstacle to an efficient anti-money laundering system and inhibit the analysis work on STRs by COAF. The supervisory authorities are not permitted to transmit to COAF the full extent of information they receive from reporting institutions.

Action taken: Brazil has addressed this by enacting Complementary Law 105 of 10 January 2001. COAF may now receive full customer identification information on all STRs.

- (d) **Streamline STR reporting.** To help prevent duplicative efforts of STRs analysis by COAF and by departments within other supervisors, Brazil should consider streamlining the information flow to COAF of STRs and other relevant information. Modifications to banking secrecy as currently drafted will likely be a first step. However, the government should thereafter consider centralising the initial reporting of suspicious transactions at COAF.

Action taken: With Circular Letter SUSEP/ DEFIS/ GAB/ n.01/ 03, of 13 June 2003, STRs from the insurance sector are now sent directly to COAF. STRs from the securities sector are still sent to the securities regulator (CVM) first and then forwarded to COAF; however, they are forwarded in their entirety and entered into COAF’s database (SISCOAF), allowing full analysis. As a result of Complementary Law 105 of 2001, COAF can now fully access STR records from banks directly and on-line, through the Central Bank database (SISBACEN) from the moment those transactions are registered in the database by the financial institution.

- (e) **Increasing resources for COAF.** With the current number of COAF permanent staff (2 analysts, a secretarial staff, 2 assistants to the President, and an executive secretary), it may be difficult in the long term to perform all of the responsibilities as foreseen in the COAF mandate.

Action taken: Brazil has addressed this issue, as its permanent staff now consists of 25 civil servants.

- (f) **Compliance Inspections.** As of the first evaluation, only BACEN and CVM had performed anti-money laundering compliance inspections for the institutions and entities under their supervision, and no sanctions had been applied for non-compliance. The other supervisory authorities will need to implement compliance inspection programmes. As the focus on AML system is new, the authorities will need to ensure effective compliance inspections.

Action taken: BACEN, CVM, and SUSEP (the insurance regulator) have all conducted anti-money laundering compliance inspections and issued sanctions for non-compliance.

- (g) **Bring bi-lateral agreements into force.** Brazil has entered into a number of bi-lateral mutual legal assistance treaties, but must still bring a number of these agreements into force.

Action taken: Brazil has brought four additional agreements that had been negotiated as of the first evaluation into force (Colombia, France, Peru, the United States).

- (h) **International co-operation.** Obtaining information covered by bank secrecy provisions (i.e., certain portions of suspicious transaction reports) would necessarily require a foreign jurisdiction to make a request through a formal rogatory letter. The requirement for an *exequatur* hearing to decide whether such a request will be granted delays the response time and is another serious obstacle to international co-operation. Brazilian authorities are aware of this problem, and the Ministry of Justice has proposed amending the Brazilian Constitution to abolish the *exequatur* requirement.

Action taken: Brazil has changed its bank secrecy law to allow the COAF to access all information from STRs; all the information COAF receives can be provided to a foreign counterpart for intelligence purposes.

41. Brazilian authorities have indicated that the following steps have been taken since the on-site visit (November 2003):

- (a) The Justice Ministry's Department of Assets Recovery and International Legal Co-operation (*Departamento de Ativos e Cooperação Jurídica Internacional—DRCI*) was formally established by Decree 4991 of 18 February 2004.
- (b) The ENCLA met in December 2003 and agreed on 5 strategic objectives and 32 specific goals, including developing a system to provide nationwide statistics on money laundering investigations, indictments, and convictions, under the coordination DRCI. Another agreed goal was to update Brazil's counter-terrorist financing legislation.
- (c) Brazil ratified the United Nations Convention against Transnational Organised Crime on 29 January 2004; it was promulgated by Decree 5015 of 12 March 2004.
- (d) SUSEP Circular 249/2004 was issued on 20 February 2004. The Circular purports to require insurance companies, capitalisation companies, and open pension funds entities to establish international controls (including an internal audit) by 31 December 2004. The examination team has not evaluated the Circular.
- (e) BACEN Circular Letter 3136 was issued on 17 May 2004. The Circular purports to require financial institutions to report assets or funds held by individuals or legal entities included in the lists established pursuant to S/RES/1267 and S/RES/1483. The examination team has not evaluated the Circular.

B. Detailed Assessment of Criminal Justice Measures and International Cooperation

42. The following detailed assessment was conducted using the October 11, 2002 version of *Methodology for assessing compliance with the AML/CFT international standard, i.e., criteria issued by the Financial Action Task Force (FATF) 40+8 Recommendations* (the Methodology).

I. Criminalization of money laundering (ML) and the financing of terrorism (FT) (compliance with criteria 1-6)

Description

United Nations instruments

43. Brazil ratified on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (Vienna Convention) on 17 July 1991. Brazil signed the United Nations International Convention for the Suppression of the Financing of Terrorism on 10 November 2001 and the United Nations Convention against Transnational Organised Crime on 12 December 2000. Although both of these conventions have been submitted to the National Congress, neither has yet been ratified.¹⁰

44. Brazil has issued a series of Executive Decrees to implement the relevant United Nations Security Council Resolutions by incorporating the text of the Resolutions into the domestic legal regime. In this manner, Decree 3976 of 18 October 2001 implements S/RES/1373(2001); Decree 3755 of 19 February 2001 implements S/RES/1333(2000); and Decree 3267, of 30 November 1999 implements S/RES/1267(1999).

The money laundering offence

45. Law 9613 of 3 March 1998 creates a legal framework for the money laundering offence. Article 1 makes it a crime “to conceal or disguise the true nature, origin, location, disposition, movement, or ownership of assets, rights and valuables that result directly or indirectly from the eight classes of offences: I - Illicit trafficking in narcotic substances or similar drugs; II. Terrorism and its financing; III. Smuggling or trafficking in weapons, munitions or materials used for their production; IV. Extortion through kidnapping; V. Acts against the public administration, including direct or indirect demands of benefits on behalf of oneself or others, as a condition or price for the performance or the omission of any administrative act; VI. Acts against the Brazilian financial system; VII. Acts committed by a criminal organization; VIII – practiced by individuals against foreign public administration.”

46. Law 7492 of 1986 criminalises certain acts against the Brazilian financial system; Brazilian authorities indicated these would thus be included in the category of the money laundering law as predicate offences.

47. Law 10701 of 2003 amended Law 9613 to include the financing of terrorism as a predicate offence for money laundering. Law 10467 of 2002 amended Law 9613 to include bribery of a foreign public official as a predicate offence.

¹⁰ Brazil ratified the Palermo Convention on 29 January 2004 and promulgated it by Decree 5015 of 12 March 2004.

48. Paragraphs 1 and 2 of Law 9613 extend the punishment for money laundering to anyone who knowingly deal in or converts proceeds into legitimate assets; acquire, receives, exchanges, trades in, gives or receives them as guarantee, keeps, stores, moves, or transfers such property; imports or exports goods at prices other than their actual values; makes use of illicit proceeds which are known to derive from predicate crimes, and knowingly takes part in a criminal organization established for the purpose of money laundering. Attempts to commit any of the above crimes are also punishable, although with a reduced penalty.

49. According to Article 2 of Law 9613, “the judicial proceedings and sentencing of the crimes referred to in this law... Are not dependent on the judicial proceedings and sentencing applicable to prior crimes referred to in the previous article (Article 1), even if these crimes were committed abroad.” There need only be sufficient indications of the existence of a prior crime. Thus, a person may be convicted of a money laundering offence notwithstanding the absence of a conviction for a predicate offence, an offence could apply to the person who commits both the predicate and the money laundering offences, and the money laundering offence applies to predicate offences that occurred in another country.

50. The offence of money laundering applies to those individuals that knowingly engage in money laundering. The intention must be inferred from objective and subjective circumstances. As the Brazilian legal system incorporates the intentionally element *dolus*, which can be direct (*dolus directus*)—linked to the intention of the agent or to parallel conduct that indicates previous knowledge of the main crime. *Dolus* may also be indirect (*dolus eventualis*), when the agent takes the risk of producing a determined result, even though he does not desire it, having just potential knowledge of the offence. Thus, the analysis of the *dolus* in a concrete case involves the evaluation of the factual circumstances in which the crime occurred, the instruments used, the eventual premeditation etc. Therefore, in accordance with the Criminal Code, Article 18 - I, knowledge may be inferred when “...one has wished for the result or has taken the risk of producing it...” It is up to the court to determine this on a case-by-case basis.

51. The offence of money laundering does not apply to legal entities. According to the Brazilian Constitution, criminal liability may apply to legal persons only in cases of crimes against the economic and financial order and environmental crimes. However, so far, the Brazilian legal system has recognised criminal liability of legal persons exclusively for environmental crimes.

Sanctions

52. The money laundering offence calls for strict imprisonment (“*reclusão*”) from three to 10 years and a fine. When the offence is committed by a criminal organization or is a continuing offence, the sentence shall be increased by one to two-thirds. In the event an accused or accomplice cooperates with the authorities and provides information that leads to the detection of a crime and identification of those responsible for it, or to the discover of illicit proceeds, the sentenced may be reduced by one to two-thirds or could be substituted with a less severe form of imprisonment (“*detenção*”). The judge shall decide on an individual basis whether to apply these provisions.

53. Attempts to commit any conduct described in AML are also punishable (Paragraph 3 of Article 1 of the AML Law) but the penalty is reduced by one to two-thirds (Article 14 of the Brazilian Criminal Code). A similar reduction in punishment is also allowed where an accused person or his accomplice agree to cooperate with the authorities in an investigation of money laundering.

The terrorist financing offence

54. The Brazilian authorities have indicated that several statutes relate to the criminalisation of terrorist financing. Law 7170, of 14 December 1983 establishes that any person commits an offence, if that person “devastates, plunders, extorts, steals, kidnaps, keeps in illegal prison, sets in fire, depredates, provokes explosion, practices personal attacks or acts of terrorism, for political reasons or for obtaining

funds destined to the maintaining of clandestine or subversive political organizations” (Article 20) or “constitutes, integrates or maintains a military-like illegal organization, of any kind, armed or not, with or without uniform, with a fighting objective” (Article 24).

55. In addition, the Criminal Code, Article 7, provides that crimes: a) that, by treaty or convention, Brazil is obliged to repress “are subject to the Brazilian jurisdiction, although committed abroad.” As Brazil is a party to most anti-terrorism international conventions, under Brazilian law, anyone who has committed terrorist acts abroad and is found in the national territory may be punished. National courts have custodial universal jurisdiction to prosecute crimes that were committed abroad and which Brazil is obliged to repress under a treaty or convention, such as terrorism. However, Brazil is not yet a party to the UN Convention on the Suppression of the Financing of Terrorism.

Analysis of Effectiveness

56. At the time of the on-site visit, Brazil had ratified and implemented only one of the three international conventions mentioned—the Vienna Convention. Brazil was not yet a party to the Palermo Convention, but its ML legislation appears to be compatible with the Convention’s provisions. On the other hand, not only has the 1999 Financing of Terrorism Convention not been ratified by Brazil, but also existing legislation is inadequate to fulfil the requirements of the Convention. For the same reason, Brazilian law falls short of what is required by S/RES/1373 (i.e. the definition of financing of terrorism as an autonomous offence.) The ratification of the FT Convention is proceeding through the Brazilian Congress.

57. Regarding other relevant UN Security Council resolutions, Executive Decrees which incorporate their content into the domestic legal system may be deemed to be a necessary but not a sufficient implementation measure for administrative seizure. Both public and private agencies expressed uncertainty on this issue. There was a greater belief that funds could be frozen pursuant to S/RES/1267 since the specific list was issued by the UN, and Brazil could enforce its international commitments pursuant to the Brazilian Criminal Code (Article 7, described above). There was less certainty about whether funds could be frozen pursuant to S/RES/1373, as a list of accused terrorists would not be issued by the UN. Government authorities and the private sector indicated that accounts had been searched but did not reveal any terrorist-related assets; therefore, effectiveness of these legal provisions could not be determined.

58. The scope of the money laundering offence appears sufficiently broad in terms of the definition of the offence, the predicate offences, the element of knowledge required, and the available sanctions. However, there are no available statistics regarding the money laundering prosecutions, and convictions. It is therefore difficult to assess the effectiveness of the legal provisions.

59. The outcome of a judicial challenge to Law 10701/03 as to the whether FT could be considered as an enforceable predicate offence would be uncertain, due to the lack/incomplete definition of terrorist financing in the legal system.

60. As indicated above, the FT offence is not defined in Brazil in accordance to the 1999 UN Convention on the Suppression of the Financing of Terrorism. The existing offence limits itself to criminalising acts aimed at obtaining funds destined to the maintaining of clandestine or subversive political organizations (Law 7170, Article 20), or to maintain a military-like illegal organization, of any kind, armed or not, with or without uniform, with a fighting objective (Article 24). These conducts are much narrower than what is intended by both the 1999 Convention and S/RES/1373(2001). In addition, the law was issued under the last military dictatorship; however, Brazilian authorities have indicated that all fully enacted laws remain in effect, and prosecutions under this law would be pursued for cases of terrorism or terrorist financing.

61. On the issue of jurisdiction, the Criminal Code provides that crimes that Brazil is bound to suppress by treaty or convention are subject to the Brazilian jurisdiction, even if committed abroad.

Inasmuch as Brazil is not a party to the 1999 Convention, therefore, Brazil would be unable to prosecute extraterritorial instances of FT, unless that provision is interpreted as to include S/RES/1373 as a basis for extraterritorial jurisdiction. Moreover, although it has ratified many UN Conventions dealing with terrorism, Brazil is yet to ratify the recent UN convention on bombing and the two IMO conventions.

Recommendations and Comments

62. As noted in Brazil's first FATF mutual evaluation report in 1999, paragraph 108: "However, almost two years after enactment of the money laundering law and a year since the first relevant regulatory guidelines were issued, the system will have to start showing some successful prosecutions and convictions if it is to demonstrate its effectiveness to and maintain the support of law enforcement, the financial sector and the general public." Despite this key observation, there are still no available statistics regarding the money laundering investigations, prosecutions, and convictions. It is therefore difficult to assess the effectiveness of the legal provisions.¹¹

63. To assist the effectiveness of investigating and prosecuting the money laundering offence Brazil recently established regional federal courts to specialise in prosecuting money laundering and other economic crimes offences under Federal Justice Council Resolution 314 of 12 May 2003. As of the on-site visit, five units were fully operating: one in Porto Alegre, one in Florianópolis, one in Curitiba, one in Rio de Janeiro, and one in Fortaleza, respectively the capital of the Brazilian Federative States of Rio Grande do Sul, Santa Catarina, Paraná, Rio de Janeiro, and Ceará.

64. With regard to the implementation of the UN instruments, perhaps more precise regulations from COAF, BACEN and other regulatory bodies would be necessary in this field.¹²

65. As indicated above, the offence of the financing of terrorism is not sufficiently included in the Brazilian legal system. No known draft legislation exists to address those shortcomings. While FT has been expressly included as a predicate offence for ML, Brazil may wish to consider comprehensively defining "terrorism" somewhere in its legal system so as to avoid potential loopholes when attempting to prosecute the financing of terrorism under the money laundering law in the future.

Implications for compliance with FATF Recommendations 1, 4, 5, SR I, SR II

| | |
|------------------|---|
| Recommendation 1 | Compliant |
| Recommendation 4 | Compliant |
| Recommendation 5 | Compliant |
| SR I | Materially non-compliant. Not yet a party to UN Convention on the Suppression of the Financing of Terrorism, although the ratification is proceeding through the Brazilian Congress; not yet implemented parts of S/RES/1373 (criminalisation of FT according to the FT Convention, also affects ability to extradite); Uncertainty about how funds could be administratively seized under implementing legislation for UN Resolutions. |
| SR II | Materially non-compliant. FT is a predicate offence for ML; but Brazil has not yet criminalised the financing of terrorism as an autonomous offence. |

¹¹ In December 2003, ENCLA established the goal of developing nationwide system of statistics on money laundering investigations, indictments, and convictions, under the coordination of the Justice Ministry's Department of Assets Recovery and International Legal Co-operation.

¹² BACEN Circular Letter 3136 was issued on 17 May 2004. The Circular purportedly requires financial institutions to report assets or funds held by individuals or legal entities included in the lists established pursuant to S/RES/1267 and S/RES/1483. The examination team has not evaluated the Circular. COAF is also working on a specific regulation with regard to the implementation of the UN instruments.

II. Confiscation of proceeds of crime or property used to finance terrorism (compliance with criteria 7-16)

Description

Criminal confiscation

66. Article 91, II of the Criminal Code provides generally for the confiscation of assets, rights and valuables resulting from any crime after a guilty verdict, which would thus include proceeds from and instrumentalities used in or intended for use in the commission of money laundering, predicate offences and financing of terrorism. Article 91 of the Penal Code stipulates: “The following are the effects of the sentence: II — forfeiture to the Union, reserving the right of the injured party or of a third party in good faith: (...); (b) the proceeds of the offence or any property or asset constituting proceeds obtained by the agent through the perpetration of a criminal act”.

67. Additional confiscation measures are contained in Law 9613. Item I of Article 7 provides, after a guilty sentence, for forfeiture “in favor of the Union, of any assets, rights and valuables resulting from any of the crimes referred to in this law, due provision being made for safeguarding the rights of a victim or a third party in good faith.” While Article 7 is silent on whether property of corresponding value may be confiscated, Brazilian authorities have stated that the broad language of that provision includes the forfeiture of “any” property of corresponding value whenever the property that is subject to confiscation is not available.

68. In addition to these legal provisions, Law 7560/86 created the National Anti-Drug Fund (FUNAD) and requires that property confiscated under the AML Law relating to drug trafficking offences shall be allocated to this Fund. Part of this Fund can be used to pay for the expenses of the COAF. FUNAD is administered by the CONAD Council, which also administers the National Anti-drugs Policy and to determine and exert normative control over activities of repression against drug abuse.

Civil forfeiture

69. A criminal conviction is required before any confiscation of assets. The legal system of Brazil does not provide for any form of civil forfeiture.

Provisional measures

70. Article 4 of Law 9613/98 provides that during investigations or judicial proceedings, upon request made by the prosecutor or the competent police authority, after consulting the prosecutor within twenty-four hours, and with sufficient evidence, the judge may order the seizure or detention of assets, rights and valuables that constitute the object of the crimes referred to in this Law, and which belong to the defendant or are registered under his/her name. According to Article 4, Paragraph 1 of Law 9613, this takes place on an *ex parte* basis, “*inaudita altera parte*” in the form prescribed in Articles 125 to 144 of Decree-Law 3689 of October 3, 1941 – Criminal Procedure Code. The provisional measures referred to in this section shall be suspended if the criminal lawsuit is not initiated within 120 days, beginning on the date the judicial proceedings are concluded. This period of time is longer than what is established in Criminal Procedure Code (60 days).

71. A restraining order can be lifted by a judge if the legality of assets can be proven. It is thus inferred that the burden of proof, to establish the legality of seized assets, is on the claimant who is also required to present his or herself. A restraining/freezing order also can be lifted by a judge if, on the advice of the prosecutor or police, it is deemed to be prejudicial to an investigation. (Law 9613, Article 4, Paragraphs 3 and 4).

72. With respect to property belonging to an organisation that is primarily criminal in nature, given that crimes committed by a criminal organisation are predicate offences for money laundering in Law 9613, the property resulting from those crimes, or property of corresponding value, would also be forfeitable after a conviction for one of these crimes under Law 9613.

Powers to identify and trace property

73. The Criminal Procedure Code contains measures for the search and seizure of property, based on grounded reasons. It covers seizure of goods and assets found or obtained by criminal means; instruments for falsification or counterfeit and falsified or counterfeited objects; weapons and munitions, instruments utilized or destined to criminal ends; objects necessary to the proof of offence or to the defence of the defendant; letters, opened or not, destined to the accused or in his possession, when there is suspicion that the knowledge of its contents may be useful to the elucidation of the fact; apprehension of any element of conviction. The judge can determine the anticipated lifting of evidences considered urgent according to Law 9271/96.

74. Law 10701 of July 2003 also amended Law 9613 to create a National Register of Bank Accounts. Brazilian authorities have indicated that, when put fully into effect, this database will improve the ability to identify and trace financial assets that are or may become, subject to confiscation.

75. In Brazil, all natural and legal persons must have a taxpayer identification number (CPF/CNPJ) in order to make any commercial or financial operations. This is mandatory for individuals or legal persons residing in Brazil or abroad who own goods and rights in Brazil subject to public registration including real state; vehicles; ships; aircrafts; stock shares; banking accounts; financial market investments and capital market investments. Moreover, every year the Secretariat Revenue imposes re-registration for anyone who has a number and does not present annual tax information for the purpose of preventing fraud and other crimes. Thus, it is possible for intelligence authorities to trace any kind of financial movement using the CPF/CNPJ database which provides the requested information by the number of the CPF/CNPJ of the person or legal entity under investigation. The research can be done using the name of person or legal entity or by using their respective CPF/CNPJ number. The access to this database is restricted.

Rights of third parties

76. The sections of the Criminal Code providing for forfeiture of property resulting from crime also provide that this forfeiture be made after “due provision being made for safeguarding the rights of a victim or a third party in good faith.” The same language qualifies the section of Law 9613, providing for forfeiture... due provision being made for safeguarding the rights of a victim or a third party in good faith...”

Voiding of contracts

77. Under the Civil Code, Brazilian authorities may void or render unenforceable contracts which have an illegal object or whose main intent is illegal (Civil Code, Article 166, II and III). The Civil Code allows authorities to void or render unenforceable contracts where parties to the contract knew or should have known that as a result of the contract authorities would be prejudiced in their ability to recover financial claims resulting from the operation of money laundering and financing of terrorism laws.

Statistics on confiscated proceeds

78. During the period from 2000 to 2002, the amount of BRL 290,078.62¹³ was confiscated in favor of the Anti-Drugs National Fund. This amount is the result of the confiscation of assets and values related to drugs trafficking. There are no statistics available on the amounts of property frozen, seized, and confiscated relating to ML, or any other predicate offence.

Training

79. Various Brazilian agencies have offered a series of training courses on money laundering issues generally, although it is not clear to what extent these courses include specific training on freezing, seizure, and confiscation of property. COAF, with input from other governmental agencies, has developed several courses for specialized anti-money laundering training.

80. The Training Course on Financial Intelligence was created by COAF in 2000 and has been organised annually by COAF since that time to train professionals of entities involved in the fight against money laundering. Thus, it is addressed to employees of financial institutions, supervisory agencies, and prosecutors on money laundering. The first course was dedicated to civil servants coming from the agencies that take part of the COAF's Plenary. This course was given in three different circumstances: to Federal Judges; to civil servants of several governmental agencies; and to Federal and State Prosecutors. The total number of servants trained was 165, taking into account that they serve as disseminators of the knowledge acquired in the several levels of their own institutions.

81. In addition to the training organised by COAF, other sectors and associations involved in combating money laundering, such as FEBRABAN and the National Police, also trains its staff on anti-money laundering matters.

Freezing and seizing, and confiscation related to terrorist financing

82. Brazil has issued a series of Executive Decrees to implement S/RES/1267 and its successor resolutions by transcribing the text of Resolutions into the domestic legal regime. In this manner, Decree 3267 of 30 November 1999 implements S/RES/1267(1999); Decree 3755 of 19 February 2001 implements S/RES/1333(2000); Decree 4150 of 6 March 2002 implements S/RES/1390(2002). As provided by the resolutions, these Decrees provide for enforcing sanctions related to the Taliban and Osama bin Laden, including a specific list of designated persons and entities. Decree 3976 of 18 October 2001 implements the provisions of S/RES/1373(2001).

83. With respect to the freezing and seizing of property related to suspected terrorists, those who finance terrorism and terrorist organisations, even where the names of such persons do not appear on the list maintained by the UN Security Council, Brazil indicates that Law 9613 provides this authority. As indicated above, since Law 9613 establishes terrorism and (as amended) its financing as a predicate offence for money laundering, Brazilian courts can freeze and seize, and confiscate the suspected "objects" of terrorism or terrorist financing offences. Article 4 indicates that "upon request made by the prosecutor or the competent police authority, after consulting the prosecutor within twenty-four hours, and with sufficient evidence, the judge may order the seizure or detention of assets, rights and valuables that constitute the object of the crimes referred to in this Law, and which belong to the defendant or are registered under his/her name."

84. COAF has received many lists containing names of persons and entities that are or are suspected to be involved in terrorist activities. COAF has included these names in its database and has disclosed, immediately, those lists to some governmental agencies such as the Federal Police, the Secretariat for Federal Revenue, the Brazilian Agency of Intelligence, and the Central Bank to adopt the appropriate measures. Also, COAF verifies all the names in the list CPF/CNPJ database in order to check if the

¹³ USD 101,237.

natural or legal person has legally operated in Brazil. In the same manner, Central Bank of Brazil discloses the lists provided to all financial institutions, in order to check if any person or legal entity which are in the list have operated in the financial system or in have accounts or any other kind of assets.

85. Brazil might also be able to freeze and confiscate assets under the crimes described in Law 7170, of 14 December 1983. The crimes referred to in this law relate to anyone who “devastates, plunders, extorts, steals, kidnaps, keeps in illegal prison, sets in fire, depredates, provokes explosion, practices personal attacks or acts of terrorism, for political reasons or for obtaining funds destined to the maintaining of clandestine or subversive political organizations” (Article 20) or “constitutes, integrates or maintains a_military-like illegal organization, of any kind, armed or not, with or without uniform, with a fighting objective” (Article 24).

Asset sharing

86. Law 9613 allows competent authorities to share confiscated property with other jurisdictions without imposing conditions on jurisdictions receiving the shared property. Article 8 provides that “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. 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. 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.”

Analysis of Effectiveness

87. The legal measures for freezing and confiscation for money laundering seem generally comprehensive. However, since Brazilian authorities could offer no comprehensive statistics regarding seizure or forfeiture, it is difficult to determine the actual effectiveness of the legal structure.

88. Brazilian authorities were not able to provide any comprehensive statistics on the amount of assets frozen, seized or confiscated. The amount confiscated in favor of the Anti-Drugs National Fund—BRL 290,078 (approximately USD 100,000)—seems quite low given the size of the drug trade as indicated by the Brazilian authorities.

89. Given the lack of a comprehensive terrorist financing offence generally and a lack of the definition of terrorism in the legal structure, it is unclear if and how these measures would actually be applied. With respect to terrorism and terrorist financing being a predicate offence for money laundering, Brazilian authorities have indicated that a judge could freeze assets under suspicion that they are involved in one of the predicate “crimes” listed in the money laundering law. But without the criminality of the underlying offence being clearly defined, it is unclear whether a judge could in practice apply Article 4 of Law 9613 in these cases. And since a conviction is also required before confiscation, it is unclear how frozen funds could ultimately be confiscated. It is also unclear whether this would cover property intended or allocated for use in the financing of terrorism.

90. With respect to freezing and seizing funds related to the UN Security Council Resolutions, the legal measures undertaken by the Brazilian authorities have been the issuance of Presidential Decrees which incorporate UNSC resolutions either by *renvoi* or by transcribing their content. However, there is uncertainty regarding the banks' ability to freeze those funds merely on the basis of the Decrees, without an order from a judge, which would not be satisfactory for the case of S/RES/1267.

91. On the other hand, Brazilian authorities reported that they have searched for funds and bank accounts and all relevant databases against various list of suspected terrorists and terrorist organisations, with no matches being found and no criminal proceedings being initiated. Since no alleged funds have been found and no cases initiated, it is not possible to assess the effectiveness of the system for freezing, seizing, and confiscating terrorist-relating assets.

92. With respect to freezing and seizing under Law 7170 of 1983, the crimes referred to in this law are not comprehensive. Article 20 refers only to various acts that raise funds to support a “subversive political organisation”; Article 24 refers to maintaining a “military-like illegal organisation.” As both of these sections refer to organisations, they could not be used to cover individual terrorists or terrorist acts.

93. Training resources are limited and ideally could be strengthened. The Government of Brazil has indicated that, given the fiscal constraints in place in Brazil, they are generally compatible with resources available for other agencies in Public Administration. Although the COAF and other Brazilian agencies, including the National Police, have clearly organised and participated in numerous training programs regarding Law 9613 and money laundering issues, it is also not clear to what extent these courses include specific training on freezing, seizure, and confiscation of property.¹⁴

Recommendations and Comments

94. Brazil should develop a national statistic system which contains the amount of assets and values frozen, seized, and confiscated relating to ML, the predicate offences and FT. Brazil indicated during the on-site visit that it was in the final stages of establishing a new Department of Assets Recovery and International Legal Co-operation in the Ministry of Justice. This unit could make the system more efficient and could help track the total number and amount of assets confiscated.

95. Uncertainty also remains with respect to freezing and seizing funds suspected under Law 9613 relating to terrorism or the financing of terrorism. Since Brazil has no comprehensive legal definition of terrorism or terrorist financing, it is uncertain whether these could be enforceable predicate offences under Law 9613. It is thus also uncertain whether the freezing and confiscation mechanism could also apply to these predicate offences. Brazil should enact legislation to address these definitions so as to not create any loopholes with the application of Law 9613.

Implications for compliance with FATF Recommendations

| | |
|--|--|
| Recommendation 7 | Compliant |
| Recommendation 38 (second sentence) | Compliant |
| SR III | Materially non-compliant. Existing laws relating to certain acts of terrorist organisations do not sufficiently cover terrorist financing. No other legal definition of terrorism or terrorist financing, complicating freezing and confiscation mechanisms. Uncertainty how and if administrative seizure under the existing regulations to enforce UN Security Council resolutions could be applied. |

III. The FIU and processes for receiving, analyzing, and disseminating financial information and other intelligence at the domestic and international levels (compliance with criteria 17-24)

¹⁴ The Justice Ministry’s Department of Assets Recovery and International Legal Co-operation, formally established in February 2004, has proposed a National Program of Qualification and Training for Combating Money Laundering, to include specific training modules on asset recovery.

DescriptionCOAF and its main functions

96. Law 9613/98 created the Council for Financial Activities Control (*Conselho de Controle de Atividades Financeiras—COAF*), subordinated to the Ministry of Finance, as the Brazilian financial intelligence unit. Decree 2799, of 19 December 1998, and Administrative Rule 330, of 18 December 1998, approved, respectively, the Statute and the Internal Regime of COAF. Article 14 of Law 9613 describes COAF's main functions as: applying administrative sanctions, receiving pertinent information, examining and identifying any suspicious occurrence of the illicit activities defined in the law; regulating and issuing instructions for the those entities that are not already subject to any specific monitoring or regulatory agency. In accordance with the Egmont Group Statement of Principles, COAF coordinates and develops the policy for co-operation and information exchange in the fight against money laundering. COAF has been a member of the Egmont Group since 1999.

Receiving STRs and currency transaction reports

97. Pursuant to Article 11 of Law 9613/98, financial institutions and other reporting parties are required to notify the relevant supervisory authorities, within twenty-four hours and without informing the client, of any transactions that exceed the threshold defined by the authority or of any transactions that, based on the instructions issued by the competent authorities, “may represent serious indications of or be related to the crimes referred to in this law.” Those entities or activities subject to the law but without a designated supervisor send these reports directly to COAF. With Circular Letter SUSEP/DEFIS/GAB/n.01/03, of 13 June 2003, STRs from the insurance sector are now sent directly to COAF via COAF's internet site. STRs from the securities are first sent to the securities regulator (CVM), but then forwarded in their entirety to COAF where they are entered into COAF's database. Banks register their STRs in the databases of BACEN, where COAF can fully access them directly and on-line from the moment they are registered in the database.

98. It should be noted that the law does not impose on financial supervisors the obligation to report, but if they become aware of the existence of a crime committed, they are subject to the mandatory requirement to notify the public prosecutor, as public officials are required to do under the general legislation.

99. BACEN Circular Letter 3098, of 11 June 2003, obliges financial institutions to register deposits and withdrawals in cash or provisioning for withdrawals equal to or higher than BRL 100,000¹⁵ in the Central Bank Information System (SISBACEN), with the register being done in the date of the deposit, withdraw or the request of provision for withdraw. As with the STRs from banks, COAF can directly access these cash transaction reports on-line through the SISBACEN from the moment they are registered in the database.

Regulations and guidelines for filing STRs

100. COAF issues appropriate regulations for the entities directly falling under its supervision in money laundering matters. These regulations contain reporting procedures, indicating that transactions should be reported directly to the COAF, and guidelines for identifying potentially suspicious transactions. Thus far, COAF has issued the following regulations for various sectors:

| Resolution | Date | Sector covered |
|-------------------|---------------|---|
| Resolution 1 | 13 April 1999 | real estate, including the promotion purchase and sale (of such properties) |
| Resolution 2 | 13 April 1999 | factoring |
| Resolution 3 | 2 June 1999 | lotteries |

¹⁵ USD 34,900.

| | | |
|---------------|-------------------|---|
| Resolution 4 | 2 June 1999 | jewellery, precious stones and metals dealers |
| Resolution 5 | 2 July 1999 | bingos |
| Resolution 6 | 2 July 1999 | credit and payment card managers |
| Resolution 7 | 15 September 1999 | commodities exchanges and their brokers |
| Resolution 8 | 15 September 1999 | objects of art and antiques dealers |
| Resolution 10 | 19 November 2001 | cash transfer services |

101. According to COAF Normative Instruction 1, of 26 July 1999, the legal entities regulated by COAF shall report STRs directly to COAF, preferably electronically. The impossibility to send the reports electronically shall be no justification for not sending them. The Instruction provides COAF's website address, where the COAF maintains an electronic reporting form. The Instruction also includes COAF's fax number and mailing and email addresses to assist entities to comply with their reporting obligations.

102. Existing supervisory authorities have issued the following regulations implementing provisions of Law 9613; these include reporting procedures and lists of transactions that should be deemed suspicious and reported:

| Supervisor | Regulation | Date | Explanation |
|--|------------------------------|------------------|---|
| Central Bank | Circular 2852 | 3 December 1998 | deals with the obligations under Law 9613/98, for the financial system |
| Central Bank | Circular 2826 | 4 December 1998 | specifies list of potential indicators of suspicious/reportable transactions |
| Superintendence of Private Insurance (SUSEP) | Circular 200 | 9 September 2002 | deals with the obligations under Law 9613/98, for private insurance |
| Securities and Exchange Commission (CVM) | CVM Instruction 301 | 16 April 1999 | deals with the obligations under Law 9613/98, for securities |
| Secretariat of Complementary Social Security (SPC) (Pension Funds) | SPC Normative Instruction 22 | 19 July 1999 | deals with the obligations under Law 9613/98, for pension funds |
| Secretariat of Complementary Social Security (SPC) (Pension Funds) | Ofício-Circular SPC 27 | 18 August 1999 | establishes complementary orientations concerning the Instrução Normativa SPC 22, from July 19th, of 1999 |

COAF's access to information

103. The COAF and other supervisors are authorised to obtain from reporting parties additional documentation needed to assist in its analysis of financial transactions. As provided for the Bylaws for COAF contained in Decree 2799 of 8 October 1998, COAF has general authority to obtain information and documents directly from reporting parties under its supervision and indirectly through an existing supervisor (Article 7, VIII). Section 11 of the Decree obliges various surveillance and supervisory entities to "provide the necessary information and collaboration for COAF and its Executive Secretariat to accomplish their mission."

104. Moreover, Law 10701/03, amended Article 5 of Law 9613/98 to more specifically empower COAF to request banking or financial information from other government agencies regarding persons involved in suspicious transactions.

105. Complementary Law 105 of 10 January 2001 also expanded COAF's access to financial information. Article 2, Paragraph 6 obliges the financial supervisors, including the Central Bank and Securities and Exchange Commission, to provide COAF with information on the "customer identification and the financial flows concerning" the operations described in Item I of Article 11 of

Law 9613/98 (i.e., suspicious transaction reports). This information had previously been protected by bank secrecy. While COAF has the authority to directly request further information from banks and other financial institutions, most of the requests for information with regard to regulated entities are made through the supervisory authorities, for the following reasons: (i) since the supervisors have daily contact with banks and other FIs, it is more practical to ask them to make the requests; (ii) this kind of request also helps the supervisors to improve the AML/CFT system, through analysing the quality of information provided by banks and other FIs to COAF.

106. In addition to the financial information above, COAF has access to the following government data bases: National Registry of Legal Entities, National Registry of Natural Persons, Real Estate Operation Returns, Central Bank's information system (SISBACEN), the Registry of Tourist Service Providers, the Registry of Government Tourism Projects, the Registry of Aircrafts, the National Vessels Registry, the National Registry of Motor Vehicles, the National Registry of Drivers' Licenses, the Information system of the National Rural Registry, Integrated System of Government Administration Employees, Foreign Trade information analysis system.

107. At present COAF is negotiating access to twenty other databases, including the National System of Passports and the National System of Criminal Information.

Sanctions

108. COAF and other authorities are empowered to apply substantial fines and even to withdraw the license to operate of any obligated subjects that do not comply with their obligation to report. Under Article 12 of the Law 9613, the range of penalties for failure comply with AML obligations include: (i) a warning; (ii) a variable monetary fine, ranging from one percent of to double the amount of the transaction; up to two hundred percent of the profits indeed or presumably obtained as a result of the transaction; or up to BRL 200,000¹⁶; (iii) a temporary prohibition for up to 10 (ten) years on holding any management position the legal entities referred to in the sole paragraph in Section 9; (iv) the cancellation of the authorization to operate. A fine shall first be applied when failing to comply with the reporting obligations; temporary suspension and revocation of license could apply in more egregious or repeated cases.

109. The procedures for administering administrative penalties are set forth in Decree 2799. These procedures include the ability for COAF and other supervisors to conduct preliminary investigations, and if necessary, begin official procedures through an official act, which shall take place within no more than 10 days after being informed of the infraction or being informed of the results of the preliminary investigation (Article 17).

Domestic dissemination of information

110. COAF notifies the competent authorities whenever it finds evidence of the crimes defined in Law 9613/98 or of any other unlawful activity, for said authorities to adopt the appropriate legal measures (Article 15). COAF can also forward foreign requests for information to other agencies in Brazil for necessary action. (Article 11, Paragraph 4 and Article 13 of the Decree 2799).

111. COAF indicates that it has made agreements with 118 judicial, fiscal, and policy authorities and with other government agencies in Brazil, for the purpose of exchanging information on money laundering cases.

112. In addition, the databases accessed by COAF as well as the information gathered in its own database (SISCOAF) can be shared domestically when they do not involve data under banking secrecy protection, which can be accessed through a judicial order. To this end, COAF developed the SISPED (System of Information Requests) within SISCOAF that permits any domestic authority to have access

¹⁶ USD 69,800.

to all information of SISCOAF by entering into a registering form, putting specific data which are analysed by COAF, and receiving a password provided by COAF to access the system.

International exchange of information

113. Chapter IV of Decree 2799/98 regulates the duties and powers of COAF with respect to information exchange and co-operation agreements. The information could be shared with the competent authorities of other countries and international organizations based on reciprocity agreements. Articles 12 and 13 of Decree 2799/98 establish the following:

Article 12. COAF may share information with the pertinent authorities of other countries and international organizations on the basis of reciprocity agreements.

Article 13. Whenever COAF receives information requests concerning the crimes defined in Section 1 of Law 9613/98 from foreign competent authorities or entities, COAF may answer or send out those requirements, as the case may be, to the agencies, taking the necessary measures for answering.

114. As a member of the Egmont Group, COAF can exchange information with other financial intelligence units. COAF has already signed memoranda of understanding (MOUs) with: Belgium, Bolivia, Colombia, France, Guatemala, Panama, Paraguay, Portugal, Russia, Spain, South Korea, and Thailand. COAF is negotiating similar memoranda with Argentina, Croatia, British Virgin Islands, Indonesia, Mexico, Poland, Venezuela, and Ukraine.

115. Any information request from other countries can be answered directly by COAF in specific form sheets (as recommended by the Egmont group; the specific form sheet is not a requirement), which implies a transfer of the responsibility to keep information confidential. The databases accessed by COAF as well as the information gathered in its own database (SISCOAF) can be shared internationally as intelligence information; a court order would be required for documentation needed for judicial proceedings.

Statistics

116. COAF provided the following statistics relating to the period from 1999 until September 2003:

| | |
|---|-------------------------|
| STRs received and evaluated by COAF | 24,557 |
| STRs disclosed to competent authorities | 128 |
| STRs resulting in investigation, prosecution, or conviction | no statistics available |
| Requests for assistance received by COAF from domestic authorities | 849 |
| Requests for assistance received by COAF from foreign authorities | 255 |
| Number of responses provided to the requests received from domestic authorities | 849 |
| Number of responses provided to the requests received from foreign authorities | 255 |
| Number of spontaneous referrals made by COAF to domestic authorities | 379 |
| Number of spontaneous referrals made by COAF to foreign authorities | 481 |
| Number of large cash transaction reports filed | 17,842 ¹⁷ |

Structure, funding, and staffing

117. COAF is housed within the Ministry of Finance, and its main offices are located in the Federal District. COAF consists of a Plenary Council and an Executive Secretariat.

118. COAF's Plenary Council ("the Council") is formed by a chairman (appointed by the President of the Republic upon suggestion of the Ministry of Finance) and by 10 commissioners or representatives of the government institutions that share the responsibilities of the fight against money laundering,

¹⁷ As of 29 October 2003.

including the Central Bank (BACEN), the Securities and Exchange Commission (CVM), Superintendence of Private Insurance (SUSEP), the Attorney General, the Secretariat of the Federal Revenue, the Brazilian Intelligence Agency, the Federal Police, and the Ministry of Foreign Affairs. The Council members are appointed for a three-year period and can be reappointed.

119. The Council is supported by an Executive Secretariat, headed by an Executive Secretary, who is appointed by the Finance Minister and whose powers and duties allow him, among other things, to: a) receive classified information and information on any money transfers deemed suspicious according to the Articles 10 and 11 of Law 9613/98; b) centralize the requirements addressed to COAF's branches; c) receive reports of suspicious transactions; d) qualify, catalogue, compare and file received and required information; e) request information contained in data bases of agencies and public and private entities.

120. COAF may have branches in different parts of the national territory, for which it shall use the facilities of the agencies to which COAF's commissioners belong. COAF's Chairman and commissioners, as well as the Executive Secretary can: a) act as comptrollers, representatives or employees in legal entities whose activities may be related to the economic sectors object of the anti-money laundering measures; b) give their opinion on the subject matter in which they are specialized in cases where it is not a part of their duties, or to act as consultants to any of the aforesaid legal entities; c) express through any communications media opinions with respect to the subject matters being reviewed by the Council.

121. The installation and operating expenses of both COAF Council and the Executive Secretariat are included within the Finance Ministry budget, as provided in Article 24 of Decree 2799/98.

122. The staff of the Executive Secretariat consists of 25 civil servants. This includes three analysts in the International Division, eight analysts in an Analysis Division, two technical co-ordinators, two legal advisors, and three administrative support staff.

123. As already mentioned, COAF organises an annual training course on financial intelligence. COAF has also developed many initiatives to train its own technical staff, with specific courses concerning the execution of internal activities of combating money laundering. Moreover, some of COAF's civil servants participated in the activities in international organizations, either as observers or instructors, in order to assist in the training of technical staff in other countries. Also, they have been trained to act as experts in international evaluations. Between 1998 and 2003, COAF participated in over 156 seminars and conferences, including its regular training programs, training programs of other agencies, and international organisations.

Publishing of reports

124. COAF publishes an annual report on its website, which includes information on the legislative and regulatory framework and statistics on STRs received from each sector per year.

125. COAF's members as well as other authorities, in order to identify the new methods used for laundering money, participate in seminars and conferences for the purpose of divulging the new typologies detected. In 2001, COAF published the Brazilian version of the Egmont Group's report on 100 sanitized cases and, in 2002, COAF published the Brazilian version of the FATF Guidelines to Financial Institutions for Identification of Activities related to Terrorist Financing.

Analysis of Effectiveness

126. Brazilian legislation is generally adapted to international standards. Complementary Law 105/01 has corrected a deficiency identified in Brazil's first mutual evaluation by allowing COAF to access full information included on STRs that was previously protected by banking secrecy.

127. COAF appears to have adequate authority to obtain additional information from reporting parties in order to assist in its analysis of financial transactions. Per the provisions of Decree 2799/98, Law 10701/03, and Complementary Law 105/01, reporting entities are obliged to act upon COAF's requirements at all times, also providing additional information about the transactions made by their clients, owners, representatives, directors, CEOs, etc. One potential hurdle is that the reporting entities subject to the control of a specific supervisor first deliver their information to their supervisor who, observing the current confidentiality restrictions, forwards to COAF such information as they are authorised by law to convey.

128. Another potential hurdle is that, despite Complementary Law 105's provisions, bank and other secrecy provisions could be further improved to allow COAF's to access information and provide information to the Federal Police or the Attorney General's Office without a Court order when the information is needed for money laundering investigative purposes. Paragraph 6 of Article 2 of Complementary Law 105 refers only to information on the customer identification and the financial flows relating to suspicious transaction reports, which seems insufficient for investigative purposes either to COAF or to the Police or Attorney General investigations, that may need pieces of other information related to the operations being investigated, such as documents, letters, or transfer orders. To obtain this kind of information a Court order is still needed even by COAF, the Police and the Attorney General, as indicated in Article 3, which may jeopardize any investigation taking in consideration the time needed to obtain the needed information or documents. This appears to be an obstacle to the effective investigations of money laundering cases.

129. COAF has direct access to a wide range of financial and administrative information on a timely basis, enabling it to adequately undertake its responsibilities. This capability will be further strengthened through the implementation of the National Bank Accounts Registry, as provided for in Law 10701/03. The above notwithstanding, it is very important to continue to manage and implement co-operation agreements between COAF and the judicial and law enforcement authorities.

130. The legal framework provides COAF and the other competent authorities adequate legal powers to make inspections to verify anti-money laundering compliance and apply appropriate sanctions. Should COAF be short of staff for the purpose, the COAF may request the co-operation of other government agencies so that they carry out anti-money laundering and anti-terrorist financing reviews on COAF's behalf.

131. The legal framework for dissemination of financial information and intelligence to domestic authorities for investigation and for exchanging information with counterparts are generally adequate. However, as noted earlier, confidentiality provisions might still restrict access to certain kinds of information and subsequent referral to the Federal Police and Attorney General's office.

132. COAF maintains adequate statistics regarding STRs received, assessed, conveyed to other authorities, as well as information requests received and to which COAF has responded. However, despite the fact that most of the legal framework has been in place for five years, there are no reliable data relating to STRs resulting in money laundering investigations, prosecutions or convictions.

133. COAF has an organisational structure, sufficient independence, and is adequately staffed to enable it to adequately fulfil its functions. COAF's annual reports and other publications provide comprehensive information relating to COAF's activities; however, the preparation and publication of typology reports based on the COAF's findings would be a major contribution to refine the results of its work.

Recommendations and Comments

134. Secrecy provisions could be further improved in order to allow COAF to require all the information and copies of documents needed to investigate fully a suspicion of money laundering,

without the need of a court order, and have the capacity of transmitting this information for investigative purposes to the Police or the Attorney General’s Office.

135. Brazil should also consider giving the Attorney General’s Office the capacity to require all the financial information and documents needed for a case in the process of investigation, directly or through COAF, but without the need of a Court Order. This would contribute to the improvement of the effectiveness of the system of preventing and repressing money laundering.

Implications for compliance with FATF Recommendations 28, 32

| | |
|-------------------|-----------|
| Recommendation 28 | Compliant |
| Recommendation 32 | Compliant |

**IV. Law enforcement and prosecution authorities, powers and duties
(compliance with criteria 25-33)**

Description

136. Brazil has designated investigative, prosecutorial, intelligence, and judicial authorities to combat money laundering and terrorist financing.

The Federal Police

137. Housed within the Ministry of Justice, the Brazilian Federal Police (*Departamento de Polícia Federal—DPF*) investigates cases of money laundering through police inquiries. The Directorate for Combating Organised Crime (*Diretoria de Combate ao Crime Organizado—DCOR*) was created in 1998. One of DCOR’s four main divisions is the Division for Combating Financial Crimes (*Divisão de Repressão de Crimes Financeiros—DFIN*), which is in charge of money laundering investigations, especially those related to offences against the national financial system.

138. DFIN is working to establish six regional units to correspond to and work closely with the specialised regional courts (discussed below) to investigate and prosecute money laundering cases. Three units have already been established—in Brasília, São Paulo, and Rio de Janeiro. Three more units will be established in the southern Brazilian cities of Curitiba (Paraná), Florianópolis (Santa Catarina), and Porto Alegre (Rio Grande do Sul).

The Attorney General

139. The Attorney General’s Office (*Procuradoria Geral*) is an autonomous institution that is responsible for the defence of the legal order, of the democratic regime and social and individual fundamental interests (Constituição, Art. 127). The Office’s “*promotores*” at the state level and “*procuradores*” at the federal level are in charge of the prosecution of criminal offences. Other functions include: promoting civil inquiry and public civil action on collective issues, such as the environment, and the external control of police activities, requesting investigations and police inquiries (“*inquéritos*”).

140. The Attorney General is also responsible for the external control of police activities, requesting investigations and police inquiries (“*inquéritos*”). The Attorney General also warrants the effectiveness of powers and prevents abuses of constitutional rights.

General Controller’s Office

141. According to Law 9649 of 25 May 1998 (amended by Decree 4118 of 7 February 2002 and by Decree 4177 of 28 March 2002), the General Controller's Office (*Controladoria Geral da União*) is responsible for internal control and public auditing of the federal administration, investigating administrative irregularities that defraud or threaten public property, and reviewing and resolving reports concerning procedures and actions of public agents and institutions.

Federal Revenue Secretariat

142. The Federal Revenue Secretariat (*Secretaria da Receita Federal*—SRF) performs the functions of planning, control, supervision, evaluation and execution of tax collection activities and auditing. It is also responsible for the control of customs and enforcing border controls related to smuggling, embezzlement, drugs trafficking; SRF investigates money laundering relating to the offences under its jurisdiction. SRF is divided into 10 regional units and four additional units in the most important border areas.

143. The General Coordination for Research and Investigation (COPEI) is the intelligence branch of SRF and investigates crimes; it participates in task forces such as the Banestado investigation. The Special Division of Financial Institutions (DEINF), which supervises financial institutions with respect to tax issues, and the Special Division of Foreign Affairs (DEAIN) also implement actions to combat money laundering activities.

Brazilian Intelligence Agency

144. The Brazilian Intelligence Agency (*Agência Brasileira de Inteligência*—ABIN) is linked to the office of the President. The Division for Analysis of Criminal Organizations, within ABIN's Counter-Intelligence Department, plays a role not only in combating money laundering, but also terrorism and terrorist financing. ABIN uses traditional intelligence methods such as field operations and cooperates with other intelligence and law enforcement agencies on the federal and state level. Under its working structure, a unit responsible for assisting the joint work of governmental institutions was created. ABIN has a representative in COAF.

Specialised Federal Courts

145. Federal Justice Council Resolution No. 314 of 12 May 2003 provides the legislative basis for the establishment of regional specialised courts ("*varas federais criminais*"). These courts are specifically to address crimes against the national financial system and crimes of laundering of assets, rights and valuables.

146. A judge heads each of these courts, having his/her main function limited to decisions involving fundamental laws such as sentencing and the lifting of bank secrecy. The Attorney General coordinates the investigative work of the Federal Police, assisted by representatives of the Central Bank, of the Secretariat for Federal Revenue, of the Securities and Exchange Commission, of the Superintendence of Private Insurance, and of COAF.

147. As of November 2003, five specialised Courts were fully operating: one in Porto Alegre, one in Florianópolis, one in Curitiba, one in Rio de Janeiro, and one in Fortaleza, respectively the capitals of the Brazilian Federative States of Rio Grande do Sul, Santa Catarina, Paraná, Rio de Janeiro, and Ceará.

Task Forces

148. Brazil has created several arrangements and task forces to facilitate information sharing and co-operation among agencies to more effectively combat money laundering and terrorist financing.

149. *Brazilian System of Intelligence (SISBIN)*: SISBIN's main objective is to integrate actions of planning and execution of intelligence activities in Brazil through a variety of actions and co-operation

with other government agencies. In general, SISBIN's actions are carried out directly for the President of the Republic, with reference to issues of national interest. SISBIN's actions are mainly addressed to terrorism, although the Brazilian Intelligence Agency (ABIN) has indicated that it has not initiated any CFT actions because they have not found indications of terrorist financing cases so far.

150. *“Three Plus One” Group.* Since September 11, 2001, Brazil participates in this task force, which includes Argentina, Brazil, Paraguay and United States. It was created for joint action against terrorism, specifically potential terrorist and terrorist financing activities taking place in the tri-border region of Argentina, Brazil, and Paraguay.

151. *Commission under the Federal Justice Council.* This committee was created within the Federal Justice Council to work towards planning and revising measures intended to make the task of justice in the fight against money laundering more effective. This committee is formed by representatives of the Judiciary, the Attorney General's Office, COAF, the Central Bank of Brazil, the Federal Police, the Federal Revenue Secretariat and the Brazilian Federation of Banking Associations (FEBRABAN).

152. *Banestado.* This task force involves representatives of the Federal Police, the Attorney General, the Central Bank, and the Federal Revenue, in co-operation with US law enforcement authorities. The task force is investigating Banestado, the state Bank of Paraná in Foz de Iguaçu, as well as other banks, and their foreign currency (CC-5) accounts that were used to transmit billions of dollars abroad between 1996 and 1999. The money first went to the New York branch of Banestado, and from there to other countries, mainly tax havens. The source of the proceeds is alleged to involve narcotics, contraband, and corruption. Although the investigation is ongoing, over 250 people have been formally charged, including bank owners, and assets have been seized. Brazilian officials have indicated that these types of transactions have decreased as a result of more strict rules and supervision of these accounts opened since 1996.

153. *Other working groups.* Brazil has several other government groups, special groups, committees and councils. COAF is also involved with other government agencies in designing policies, integration actions and taking precautionary measure to combat money laundering and other related crimes. Thus COAF participates in the following activities: a) Inter-Ministry committee for designing anti-drug policies, b) Inter-Ministry committee in the fight against piracy, c) Special anti-impunity cell, d) Mandacaru Operation. The Mandacaru Operation task force was created to work in the so-called “Marijuana Polygon”, in the interior portion of the Brazilian Federative State of Pernambuco. This operation aimed to eradicate marijuana plantations, install a sustainable economic activity to replace those plantations, and disrupt the financial structure of the local criminal organisations.

Investigative Techniques

154. According to Law 9034/95, amended by Law 10217/01, the following are permitted during any stage of the criminal accusation/prosecution (“*persecução criminal*”) for crimes committed or originating in activities carried out by any type of criminal association or organization: delivery under surveillance; access to tax, election or financial records; receiving and intercepting optical, electromagnetic and acoustic signals, the recording and analysis thereof with express judicial authorization; undercover operations by policemen or intelligence agents expressly authorised by a judicial authority, which shall remain secret during the length of the operation.

155. Law 10409/02 allows for additional investigative techniques in drug trafficking cases. Section 33 allows, in any stage of the criminal accusation/prosecution (“*persecução criminal*”) for the drug trafficking offences, the techniques provided for in law 9034/85, properly authorised by a judicial authority, and the following investigation procedures: infiltration of criminal organizations by policemen for the purpose of obtaining information on illegal operations carried out therein, police non action with respect to individuals entering, leaving or in transit in the Brazilian territory who carry drugs or illegal substances for the purpose of identifying a larger number of members of drug traffickers or dealers.

156. Law 9613/98 also provides that, in the event of immediate implementation of preventive measures that may jeopardize an investigation, the Judge - after consulting the accuser - may suspend the warrant of arrest or confiscation of assets, rights or valuables.

Production of financial institution records

157. According to Article 34 of Law 10409/02, the Attorney General and police authorities may request the following of judicial authorities, provided that there is sufficient evidence of criminal activity: a) access to tax, bank, asset and financial information and documents; b) placing certain bank accounts under surveillance for a given period of time; c) access, for a given period of time, to the information contained in the computer systems of financial institutions; d) authorisation to intercept or record telephone communications, for a given period of time, pursuant to the provisions of the pertinent legislation and Chapter II of law 9434/95.

Statistics on money laundering investigations

158. The Federal Police indicated the following number of investigations (“*inquéritos instaurados*”) for money laundering offences, per year:

| Year | Number of investigations |
|-------------------------|---------------------------------|
| 1998 | 7 |
| 1999 | 40 |
| 2000 | 124 |
| 2001 | 183 |
| 2002 | 363 |
| 2003 (until 4 Nov 2003) | 353 |

159. Brazilian authorities provided the following additional information and statistics regarding the overall number of investigations, prosecutions, and convictions for money laundering:

| Year(s) | Type | Number |
|----------------|--|---------------|
| 1998-2003 | Police investigations into crimes against the national financial system (a predicate offence for money laundering) | 7,102 |
| | Number of persons involved in these cases | 3,478 |
| 1999-2002 | Number of preliminary investigations by COAF | 16 |

Statistics on money laundering prosecutions and convictions

160. The Brazilian authorities could not provide statistics on the overall number of prosecutions and convictions for money laundering. However, the Federal Revenue Secretariat (SRF) reported 9 cases of convictions in the first instance for money laundering offences relating to issues under its jurisdiction.

Typologies publications

161. COAF has published several books, including a summary compilation of money laundering legislation (in Portuguese and English), advice for explaining the central problem of money laundering, and a Portuguese version of the 100 money laundering cases of the Egmont Group. All these publications add up to 28,470 printed units, published with the co-operation of other Brazilian entities such as the Bank of Brazil and the United Nations Drug Control Program. COAF has disclosed and distributed those publications in seminars, conferences, workshops or whenever the publications have been requested by natural persons, public entities or any other player involved in the fight against money laundering.

162. Since the enactment of Law 9613/98, certain associations have also published guidelines to be applied by their members. One example of this is the publication made by the Brazilian National Federation of Insurance Companies about the fight against money laundering by the insurance sector. However, it is unclear whether these guidelines only discuss the legislation and reporting obligations or also reflect money laundering typologies in the various sectors.

Training

163. Training courses on money laundering issues are offered by various Brazilian agencies.

164. For example, the Brazilian Agency of Intelligence (ABIN), through its Intelligence School, has trained its analysts as well as staff from other governmental institutions with respect to combating money laundering. In 2003, the Intelligence School carried out, with direct participation of COAF, the Second Course for ABIN staff who work in several Brazilian States. The Intelligence School of ABIN also supported the intelligence activity module of COAF's Training Course on Financial Intelligence.

165. In addition, COAF, with input from other governmental agencies, has developed several specialised training courses, such as the Training Course on Financial Intelligence. In addition to the training organised by COAF, Brazilian authorities have indicated that other sectors and associations involved in combating money laundering also train their staff on anti-money laundering matters. However, no specific information was provided regarding anti-money laundering training programs of the other investigative agencies such as the National Police or the Federal Revenue Secretariat.

Analysis of Effectiveness

166. The designation and responsibilities of the Federal Police, the Attorney General, and the other agencies for investigating money laundering and terrorist financing are consistent with international standards. The domestic preventive measures such as the legal ability to access financial information and employ special investigative techniques also appear adequate and are consistent with international standards. The possibility of following up and monitoring bank accounts will also be enhanced with the implementation the "National Bank Account Registry" that will be operated by the Central Bank.

167. The fact that the Federal Police have registered an increased number of money laundering investigations each year suggests increased anti-money laundering awareness and activities. However, without accurate information regarding the number and types of money laundering prosecutions or convictions, it is not possible to determine the effectiveness of the systems for investigation, nearly five years after the passage of the anti-money laundering law.

168. Brazilian authorities, (including ABIN which has a leading role in combating terrorism and terrorist financing) have indicated that they have not found any indications of terrorist financing in Brazil and therefore have not initiated any formal terrorist financing investigations. However, operations were ongoing that sought to monitor for the potential of these activities.

169. There was not enough information provided regarding the staffing, funding, and technical resources of the various law enforcement and prosecution agencies to adequately determine their effectiveness.

170. Since this Commission under the scope of the Federal Justice Council was created, significant results have been achieved. These include the improvement of the Central Bank information system (SISBACEN), assisting judges in the issuance of warrants for asset freezing, seizure and confiscation, and establishing courts specialized in money laundering cases.

Recommendations and Comments

171. It is a matter of concern that there are no comprehensive statistics on money laundering prosecutions and convictions, especially since the primary anti-money laundering legislation has been in effect for five years, and the key recommendations from Brazil's first mutual evaluation noted the need for the system to begin showing results. It is therefore important to develop a nationwide data base that takes into account the number of money laundering indictments and convictions. It would be advisable that judicial authorities carry statistics of pending and solved cases. The creation of the new specialised anti-money laundering courts should help, in part, by the tracking of prosecutions and convictions of those cases within their jurisdiction.¹⁸

172. It would also be important to prepare a report on typologies based on the information received by COAF, which would be an major contribution to demonstrate the results of their work.

173. Even though a large number of training seminars have been developed, it is very important to continue with the development of agreements between COAF and the legal and judicial authorities in order to promote more specific training programs for those authorities in subject matters such as typologies, new trends, international conventions and agreements, as the content of the seminars directed to judges, prosecutors, supervisors, etc., does not appear to be specific.¹⁹

Implications for compliance with the FATF Recommendation 37

| | |
|-------------------|--|
| Recommendation 37 | Compliant with respect to the aspect of Recommendation 37 that deals with <i>domestic</i> access to records by financial institutions and other persons, search of persons and premises, seizure and obtaining evidence for use in money laundering investigations and prosecutions. |
|-------------------|--|

V. International Co-operation

(compliance with criteria 34-42)

Description

174. Chapter II of Law 9613 (Articles 2 to 6) contains measures for Brazilian authorities to freeze and seize assets and valuables pertaining to the crimes described in the law, regardless of whether the underlying crime was committed in Brazil or abroad. Chapter IV (Article 8) allows Brazilian authorities to issue freezing orders upon request of a foreign authority, either under an international treaty or convention, or in the absence of a treaty, under the concept or reciprocity.

175. The law appears to cover part (iii) of Criterion 34: identification, freezing, seizure, and confiscation of assets laundered or intended to be laundered. However, Law 9613 does not contain any provisions regarding the other requirements in Criterion 34: i) the production or seizure of information, documents, or evidence (including financial records) from financial institutions, other entities, or natural persons; searches of financial institutions, other entities, and domiciles; (ii) the taking of witnesses' statements.

176. According to Brazilian law, mutual legal assistance (MLA) is governed by applicable treaties and by the Criminal Procedure Code (Articles 780 to 790). The Code states that letters rogatory are not to be complied with if found contrary to *ordre public* (art. 781). Moreover, letters rogatory may only be complied with provided that the crime to which they refer admit extradition according to Brazilian law

¹⁸ In December 2003, ENCLA established the goal of developing a system to provide nationwide statistics on money laundering investigations, indictments, and convictions, under the coordination of the Justice Department's Department of Assets Recovery and International Legal Co-operation (DRCI).

¹⁹ DRCI has presented the National Program of Qualification and Training for Combating Money Laundering, aimed at capacity building and training for public servants working in the AML/CFT field.

(Article 784). They also require an *exequatur* by the Federal Supreme Tribunal. Hence, requests under a letter rogatory system are subject to the numerous conditions set forth in the extradition regime (Law 6815), to wit: reciprocity in absence of a treaty; nationality of the requested person; dual criminality; lack of jurisdiction of Brazilian tribunals; minimum punishment of one year; lack of statute of limitations; non-political character of the offence; lack of previous sentence or pending proceedings in Brazil; jurisdiction of the requesting State (Articles 76 to 78). Finally, the Federal Supreme Tribunal has stated that a letter-rogatory cannot be enforced to provide coercive measures, such as the lifting of bank secrecy.

177. Brazilian authorities indicate that international legal assistance, including for terrorist financing investigations, can also be provided based on a request for so-called “direct assistance.” Unlike a letter rogatory, which will be reviewed by the Supreme Court only in its formal aspects, a request for direct assistance will have its merits fully examined by the first instance court.

178. Brazilian authorities cite Complimentary Law 105 as the legal basis for this type of co-operation. The law authorises the lifting of the secrecy if it is needed for the investigation or prosecution of any illicit activity (“*qualquer ilícito*”), especially (but not limited to) the list of crimes provided in Article 1, Paragraph 4. The law makes no distinction with regard to the venue of the interested investigation or prosecution, nor does it limit the production of bank records to Brazilian investigations or prosecutions. Therefore, the lifting of bank secrecy may also be authorised by request of competent foreign authorities under the same conditions imposed for Brazilian competent authorities.

179. Under “direct assistance,” the Brazilian government’s attorneys will present the foreign requests for bank records (or any other assistance that requires a court order to be produced) to a Brazilian first instance judge or court of law. The court will review the merits of the request and authorise the lifting of the secrecy if it concludes that the request is in accordance with Brazilian law.

180. Currently, Brazil is a party to several agreements of mutual legal assistance. These are: the Inter-American Convention on Mutual Legal Assistance and the Mercosul Protocol of Mutual Legal Assistance. The latter, approved by the decision of the Common Market Council in 1996, covers information exchange with Argentina, Uruguay, and Paraguay. The Agreement on Extradition among party States of MERCOSUL, approved by Decision of the Common Market Council in 1998, establishes that the delivery of a prisoner will be accompanied by assets which are the proceeds of crime, according to Articles 22.6 and 24.

181. Brazil also has bi-lateral agreements in force with Colombia, France, Italy, Peru, Portugal, and the United States.

182. Brazil has negotiated written agreements with Switzerland, United Kingdom, Ukraine and Poland; however these agreements are not yet in force. When in force, these agreements could be used to provide evidence for foreign criminal proceedings. Since Bolivia and Chile are observer members of MERCOSUL, the extension of the co-operation dealt with in the Protocol and in the Agreement of MERCOSUL mentioned above is under consideration by the Brazilian authorities. The Inter-American Convention on Mutual Legal Assistance is also under consideration by the Brazilian Parliament.

183. Mutual legal assistance requests, letters rogatory, and requests for “direct assistance” are processed by the Ministry of Justice.

184. Different standards in the requesting and in the requested jurisdiction concerning the intentional elements of the offence under domestic law do not affect the ability to provide mutual legal assistance.

Law enforcement co-operation

185. The Brazilian Federal Police Department is a member of Interpol, and COAF is a member of the Egmont group. The COAF has signed a number of MOUs with other FIUs. As a member of Interpol,

the Brazilian Federal Police exchanges information regarding investigations with its international counterparts. Likewise, other Brazilian law enforcement authorities have been exchanging information based on reciprocity. Brazilian authorities did not provide information regarding any bilateral written arrangements in place for exchanging law enforcement information. Brazil has indicated that the Federal Police keep records of cooperative investigations; however there are no available statistics about exchanges of information; therefore, it is not clear whether this includes the recording the number, source, purpose of the request for such information exchange, as well as its resolution.

186. The Brazilian Federal Police Department has been conducting co-operative investigations with its counterparts in other countries, especially the United States, the countries from MERCOSUL, and Switzerland. In the case of MERCOSUL and Switzerland, however, these investigations are limited to the search of persons and premises and of other evidences which do not require judicial authorization. In the case of the United States, the co-operation is not bound by those limits due to authority granted by the specific MLAT.

Co-ordinating seizure and forfeiture actions, asset sharing

187. Article 8 of Law 9613 states that in the context of an international treaty or convention, or on the condition of reciprocity, and upon a request by a competent foreign authority, a judge can order the seizure or detention of assets, rights and valuables resulting from crimes committed abroad. In the absence of an international treaty or convention, the assets, rights or valuables seized or detained upon request from a competent foreign authority, as well as 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. As indicated above, the Agreement on Extradition among party States of MERCOSUL, approved by Decision of the Common Market Council in 1998, establishes that the delivery of a prisoner will be accompanied by assets which are the proceeds of crime, according to Articles 22.6 and 24.

Extradition

188. The 1988 Federal Constitution provides that no Brazilian may be extradited, except for naturalised Brazilians in the case of an ordinary offence committed prior to naturalisation or proven involvement in unlawful trafficking in narcotics and similar drugs. Brazil's extradition law, Law 6815 of 1980, establishes the procedures for extradition, including the requirement of dual criminality. With respect to Brazilian nationals, Brazil has indicated that at the request of a jurisdiction seeking extradition, and in accordance with the general principles of mutual assistance, the case shall be presented without undue delay to the competent authorities for the purpose of prosecution of the offences set forth in the request. However, Brazilian authorities have not provided the legal basis for this.

189. As of 27 December 2001, Brazil had extradition agreements in force with Argentina, Australia, Belgium, Bolivia, Chile, Colombia, Ecuador, Italy, Lithuania, Mexico, Paraguay, Peru, Portugal, Spain, Switzerland, United Kingdom, the United States, Uruguay and Venezuela. Brazil had negotiated but not yet ratified extradition agreements with Canada, France, Germany, and the Republic of Korea. Some of these agreements include specific arrangements for prosecution of Brazilian nationals under the Brazilian judicial system for the criminal conduct that gave rise to the request for extradition.²⁰

190. In the absence of a bi-lateral treaty, Brazil may consider requests for extradition on the basis of a promise of reciprocal treatment in similar cases. All extradition requests are processed by the Ministry of Justice.

²⁰ Source: first report by Brazil to the United Nations Committee monitoring actions taken to comply with S/RES/1373. Brazil indicated that as of 21 May 2004, although no new agreements had entered into force, additional extradition agreements had also been negotiated but not yet ratified with Lebanon, Russia, and Ukraine.

Extradition for terrorism and terrorist financing

191. The Brazilian Constitution and extradition Law 6815/80 require dual criminality for extradition. The Constitution also does not allow extradition for crimes for political offences; however, Law 6815, Article 77, Paragraph 3, indicates that terrorism shall not be deemed a political crime and therefore extraditable.

192. Currently the only domestic offences relating to terrorism are contained in Law 7170 of 1983, referring to acts that raise funds to support a “subversive political organisation”; and to maintaining a “military-like illegal organisation.” Hence, Brazil would in theory be able to extradite for these crimes. There are no other specific provisions for extraditing related to terrorist financing offences.

Analysis of Effectiveness

193. Article 8 of Law 9613 provides for certain measures—seizure or detention of assets—upon request of a competent foreign authority, with or without a treaty obligation. Given the little practical effect of letters rogatory in Brazilian law, the system for providing legal assistance was augmented by means of so called “direct assistance” as explained in paragraph 177 above. For instance, a “direct assistance” request can be used to produce evidence for use in foreign proceedings, including banking information.

194. Brazil has bilateral or multilateral mutual legal assistance treaties or agreements in force covering nine countries (Argentina, Uruguay, Paraguay, Colombia, France, Italy, Peru, Portugal, and the United States) The legal basis of the “direct assistance” system appears to be, according to Brazilian authorities, the principles of international law and reciprocity, as well as the bank secrecy law—Complementary Law 105—which does not prohibit providing banking information to foreign authorities. However, the Criminal Procedure Code has not been reformed, and no particular provision of the Brazilian legal system was presented to show how the system is regulated. In addition, as stated in paragraph 197 below, in one case the judge interpreted his competence to provide assistance under this proceeding as unconstitutional and denied assistance. The general legal framework regarding MLA is therefore not entirely clear.

195. i. Brazil can also provide mutual legal assistance related to terrorist financing investigations without a treaty and without the need for dual criminality, through the “direct assistance” procedures described in paragraphs 177 to 179. However, as indicated earlier, the legal basis for “direct assistance” is unclear. In addition, there is uncertainty regarding Brazil’s ability to extradite for all FT offences. Brazil has not received any requests for “direct assistance” for terrorist financing investigations.

196. Brazil has indicated that between January 1999 and May 2003, Brazil made 149 requests for mutual legal assistance and received 40 MLA requests. In the same period, Brazil issued requests under 2,752 letters rogatory, while receiving 741. Authorities have not provided any additional information regarding the number of either of these that were responded to, or the content or time frame for these responses. The Brazilian authorities could also provide no statistics regarding requests relating to money laundering offences. Given these numbers and the lack of detail, it is difficult to assess the effectiveness of the system.

197. The Ministry of Justice has indicated that in the past two years it has received 12-15 requests for direct assistance. Only in one case the judge interpreted his competence to provide assistance under this proceeding as unconstitutional and denied assistance. The Government has filed an appeal in that case, which has not yet been decided. In several other cases, judges accepted the authority and provided assistance, including the production of bank records.²¹

²¹ Brazilian authorities reported that 50 requests for “direct assistance” had been processed as of 12 June 2004, with no additional requests being rejected.

198. Dual criminality is required for extradition. Therefore, Brazil could extradite for the crimes described in Law 7170. However, the indicated provisions Law 7170 refer only to certain acts relating to organisations; they could not be used to cover individual terrorists or terrorist acts. Since the law does not comprehensively cover terrorist financing, Brazil is limited in its ability to fully extradite for terrorist financing.

199. In their response to the UN Committee monitoring actions taken to comply with S/RES/1373, Brazil cites the fact that under the Criminal Code, Article 7, II “a,” the Brazilian jurisdiction is extended over perpetrators of offences described in international conventions to which Brazil is a party of as soon as they are found in the national territory. As Brazil is a party to most anti-terrorism international conventions, under Brazilian law, anyone who has committed terrorist acts abroad and is found in the national territory may be punished. It is worth noting, however, that Brazil is not yet a party to the UN Convention on the Suppression of the Financing of Terrorism and therefore does not have the full legal means to deny safe haven for the perpetrators of all the offences described in the Convention.

Recommendations and Comments

200. The combination of Brazil’s bi-lateral and multi-lateral agreements, Law 9613/98, and the ability to provide evidence through “direct assistance” appears to be a generally comprehensive system for providing international legal co-operation related to money laundering. However, absent additional treaties, Brazilian authorities will need to ensure that the system of “direct assistance” keeps functioning effectively, especially since one judge has doubted the system’s constitutionality, and the case’s appeal is not yet decided. Brazil should consider establishing a stronger legal basis for “direct assistance,” perhaps through changes to the Criminal Procedure Code or other legislation, to avoid possible confusion from requesting states that might otherwise request information through letters rogatory.

201. Brazil has stated the goal of having mutual legal assistance agreements with 50 countries by the end of 2006.²² This will improve the effectiveness of the system to provide legal assistance and will help prevent any potential obstacles to providing assistance in the future, should further constitutional issues arise regarding direct assistance.

202. The lack of a definition of terrorism and terrorist financing, and the lack of a comprehensive criminal offence for terrorist financing impede the provision of mutual legal assistance and extradition. Brazil should address these issues in their legal framework so as to more comprehensively provide international co-operation relating to terrorist financing.²³

203. At the time of the on-site visit, the Ministry of Justice was finalising the creation of a Department of Assets Recovery and International Legal Co-operation. When fully staffed and operational, this unit should help Brazil respond more efficiently to mutual legal assistance requests and help Brazil to maintain more comprehensive statistics that would allow a more accurate assessment of the effectiveness of Brazil’s systems.²⁴

²² As of 1 June 2004, Brazil had negotiated agreements with China, Switzerland, Cuba, United Kingdom, South Korea, The Bahamas, Canada, Lebanon, Ukraine, Poland and the Community of Portuguese Speaking Countries – CPLP (Angola, Cape Verde, Guinea-Bissau, Mozambique, Portugal, Saint Thomas and Prince, and East-Timor); however, these agreements are not yet in force.

²³ In December 2003, ENCLA agreed as one of the main agreed goals to update Brazil’s counter-terrorist financing legislation.

²⁴ The Justice Ministry’s Department of Assets Recovery and International Legal Co-operation was formally established by Decree 4991 of 18 February 2004.

Implications for compliance with FATF Recommendations

| | |
|-------------------|--|
| Recommendation 3 | Compliant |
| Recommendation 32 | Compliant |
| Recommendation 33 | Compliant |
| Recommendation 34 | Compliant |
| Recommendation 37 | Largely compliant. Compulsory measures to obtain evidence exist through bi-lateral and multi-lateral treaties covering nine countries. Brazil can also provide information through “direct assistance” requests; however, the legal framework for this system is unclear and a legal challenge remains. It also appears that in practice “direct assistance” can only be provided pursuant to provisions of a treaty, which would limit Brazil’s ability to provide legal assistance to the fullest extent possible. |
| Recommendation 38 | Compliant. |
| Recommendation 40 | Compliant |
| SR I | Materially non-compliant. Has not ratified UN Convention on the Suppression of the Financing of Terrorism |
| SR V | Largely compliant. Generally comprehensive provisions for providing legal assistance through treaties, agreements, or direct assistance; however, the legal basis for direct assistance is unclear. In addition, there is uncertainty regarding Brazil’s ability to extradite for all FT offences. |

C. Detailed Assessment of the Legal and Institutional Framework for Financial Institutions and its Effective Implementation

I. General Framework

(compliance with criteria 43 and 44)

Description

Bank secrecy

204. Complementary Law 105 of 10 January 2001 addresses the confidentiality of transactions performed by financial institutions and removes impediments to the reporting of suspicious transactions to COAF under Article 11 of the Law 9613/98.

205. Article 1 of the Law specifically removes from banking secrecy the reporting by financial institutions of information to their supervisors on funds deriving from criminal activities and from transactions (or proposed transactions) suspected of being related to money laundering and terrorist financing. Article 2 requires the Central Bank of Brazil, the Securities and Exchange Commission and other regulatory authorities to provide the COAF with information on the customer identification and the financial flow from financial institutions in connection with the suspicious transaction reports they submitted pursuant to Section 11 of the AML Law.

206. The law also allows banking and securities supervisors to sign co-operative agreements with their overseas counterparts to facilitate information exchange and cross-border monitoring of institutions (Article 2, Paragraph 4).

Designation of competent authorities

207. A key characteristic of Brazilian AML system is its reliance on both a central competent authority (the COAF), as well as sector-specific authorities to ensure effective implementation of the FATF 40+8 Recommendations by all financial institutions. As provided for in Law 9613, financial institutions shall comply with more specific obligations set out by their competent authorities for issues such as customer identification, record keeping, and suspicious transaction report (Articles 10 and 11). Each financial supervisory authority issues AML regulations applicable to institutions, entities, or activities under its jurisdiction and is responsible for ensuring compliance with the measures.

208. COAF regulates and supervises entities covered by the law that did not already belong to a supervised sector. As described in greater detail in section III (the FIU), COAF has issued regulations for previously non-regulated sectors: real estate, factoring, lotteries, jewellery, precious stones and metals dealers, bingo, credit and payment card managers, commodities exchanges and their brokers, objects of art and antiques dealers, and cash transfer services.

The National Monetary Council and the Technical Commission on Currency and Credit

209. The National Monetary Council (CMN), established by the Law 4595 of 31 December 1964, is the main decision-making authority for the national financial system. The CMN has the responsibility for: setting general guidelines for monetary, foreign exchange and credit policies; regulating creation, functioning and supervision of financial institutions; and monitoring the instruments of monetary and foreign exchange policies. The CMN is composed of the Minister of Finance, who serves the President, the Minister of Planning and Budget and the President of the Central Bank of Brazil (BACEN). BACEN acts as secretary for the CMN.

210. The Technical Commission on Currency and Credit (COMOC) acts with the CMN and is chaired and coordinated by the President of BACEN. COMOC's members are: the President of the Securities and Exchange Commission (CVM), the Executive Secretary of Minister of Planning and Budget, the Executive Secretary of Minister of Finance, the Economic Policy Secretary of the Minister of Finance, the Secretary of the National Treasury of the Minister of Finance and directors of the BACEN, who are appointed by its President.

211. COMOC and CMN control the following Consultative Committees: (i) Rules and Organization of the Financial System; (ii) Securities and Exchange & Forward Markets; Rural Credit; (iii) Industrial Credit; (iv) Housing and Sanitation and Urban Infrastructure Credit, (v) Public Indebtedness and (vi) Monetary and Foreign Exchange Policies.

212. Regulation and supervision entities of the National Financial System are: (i) Securities and Exchange Commission of Brazil (*Comissão de Valores Mobiliários—CVM*) (ii) Superintendence of Private Insurance (*Superintendência de Seguros Privados—SUSEP*); (iii) Secretariat of Complementary Social Security (*Secretaria de Previdência Complementar—SPC*); and (iv) Central Bank of Brazil (*Banco Central do Brasil—BACEN*).

Central Bank of Brazil

213. The Central Bank of Brazil (*Banco Central do Brasil—BACEN*) supervises and regulates banks and other institutions, such as credit cooperatives, buyer group management companies, leasing companies, stock and security distribution and brokerage companies (dealing public bonds), exchange brokerage companies, companies or entities that issue internationally valid credit cards and their branches, Brazilian subsidiaries or offices and representatives of foreign financial institutions, and travel agencies and lodging facilities authorised to perform retail foreign exchange operations.

214. There are 268 travel agencies and 8 hotels authorised by BACEN to carry out exchange transactions. In the last three years 101 licenses of travel agencies and hotels have been revoked by BACEN, which is now in the process of elaborating new licensing procedures in this sector. New authorisations are on hold pending the elaboration of these regulations.

215. In November 1999, BACEN established a specialized anti-money laundering unit (*Departamento de Combate a Ilícitos Cambiais e Financeiros—DECIF*) in its banking supervision Directorate with responsibility for, *inter alia*, ensuring the adequacy of banks' anti-money laundering internal control systems and reviewing compliance with anti-money laundering (AML) legislation. DECIF conducts periodic on-site AML inspections of banks focusing on legal compliance, implementation of AML policies and procedures, the role and organizational position of the money laundering compliance officer, and review of monitoring and reporting systems.

216. DECIF currently consists of nine regional offices, with a head office in Brasilia, and a total staff of 229 employees.

Superintendence of Private Insurance

217. The Superintendence of Private Insurance (*Superintência de Seguros Privados—SUSEP*), created by Decree-Law 73, of 21 November 1966, regulates and supervises the insurance market, open private social security, capitalisation companies and re-insurance.

218. SUSEP has the following responsibilities:

- supervising the constitution, organization, functioning and operation of the Insuring Societies, Capitalization Societies, Open Private Social Security entities;
- protecting the collection of popular savings;
- guaranteeing the quality of institutions and of operational instruments related to insurance market;

- promoting the stability of the markets;
- disciplining and accompanying investments.

219. SUSEP also regulates and supervises the institutions under its responsibility for AML purposes. In this regard, SUSEP issued Circular 200 on 9 September 2002, which deals with customer identification, record keeping, and STR obligations under Law 9613/98 for insurance companies, insurance brokers, and institutions involved with private social security. The Circular establishes the set of operations which mean or are related to indications of the crimes prescribed in the same Law and addresses the communication of financial operations and the administrative responsibility dealt with in the Law.

Securities and Exchange Commission

220. The Securities and Exchange Commission (*Comissão de Valores Mobiliários—CVM*) was created by the Law 6385 of 7 December 1976 and supervises the securities and exchange market and the activities related to the custody, emission, distribution, liquidation, negotiation, and administration of securities.. Law 10303/03 amended Law 6385 to make CVM the sole agency responsible for regulating the derivatives markets. CVM also regulates, jointly with BACEN, commodities and futures exchanges, and supervises these activities for AML purposes. In 1999, CVM issued Instruction (*“Instrução”*) 301, which deals with the AML obligations under Law 9613/98, for negotiation of securities, stock exchanges, over the counter organised entities, commodities, and futures exchanges and other legal entities referred to in Article 9 of Law 9613.

Secretariat of Complementary Social Security

221. Linked to the Ministry of Social Security and Assistance, the Secretariat of Complementary Social Security (*Secretaria de Previdência Complementar—SPC*), among others, the functions of:

- proposing basic guidelines for the Complementary Social Security System;
- harmonizing the activities of the close entities of private social security with the Government of economic, financial and social development policies;
- supervising, coordinating, guiding, and controlling activities related to close complementary social security;
- supervising activities of the close entities of private social security, in respect of legislation accomplishment and applying the appropriate penalties;

222. The Secretariat of Complementary Social Security is responsible for the regulation of Law 9613/98 for the sector in which the close entities of private social security operate. For this purpose SPC issued Instrução Normativa SPC 22 on 19 July 1999 dealing with the obligations under Law 9613/98, for pension funds; and *Ofício-Circular* SPC 27 on 18 August 1999, establishing complementary provisions concerning the SPC Normative Instruction 22 of 19 July 1999.

Analysis of Effectiveness

223. Since the enactment of Complementary Law 105, Brazilian regulators and financial institutions have been exchanging information in a more effective way. The Central Bank, the Securities and Exchange Commission and other supervision authorities have also been sending more complete information to COAF on customer identification and the financial flows relating to suspicious transactions, according to Article 2, paragraph 6 of Complementary Law 105.

224. According to data provided by COAF, since the establishment of COAF in 1999 to 30 September 2003, 17,683 STRs were received from the financial institutions regulated by Central Bank, 767 from SUSEP, 30 from CVM and 11 from SPC. We should note that the great majority of suspicious transactions are transmitted by banks and those received from SUSEP, the insurance regulator, does not refer to money laundering but to fraud in insurance.

Recommendations and Comments

225. The system could be more effective if COAF, the Attorney General, and judiciary authorities have the capacity to ask financial institutions, directly or through COAF, for all the information and documents related to a suspicious transaction which is under investigation without the need of a court order as required by the Paragraph 4 of Article 1 of Law 105.

Implications for compliance with FATF Recommendation 2

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| Recommendation 2 | Largely compliant: As described in other sections of the report, secrecy provisions limit CVM's ability to supervise the securities sector.) |
|------------------|--|

II. Customer identification

(compliance with criteria 45-48 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criteria 68-83 for the banking sector, criteria 101-104 for the insurance sector and criterion 111 for the securities sector)

Description**General**

226. The Brazilian anti-money laundering law creates the basic framework for customer identification for a wide range of financial and non-financial institutions, specific requirements are to be laid out by the competent supervisory authority. According to Article 10, Item I of Law 9613/98, financial institutions, financial intermediaries, and other non-financial institutions subject to the mentioned law must "identify their customers and maintain updated records in compliance with the provisions set forth by the competent authorities."

227. Article 9 of Law 9613/98 indicates that the requirements of Articles 10 and 11 (transaction reporting) apply to those that engage on a permanent or temporary basis, as principal or secondary activity, in:

- I. The reception, brokerage, and investment of third parties' funds in Brazilian or foreign currency;
- II. The purchase and sale of foreign currency or gold as a financial asset;
- III. The custody, issuance, distribution, clearing, negotiation, brokerage or management of securities;

Sole paragraph. The same obligations shall apply to the following:

- I. Stock, commodities, and futures exchanges;
- II. Insurance companies, insurance brokers, and institutions involved with private pension plans or social security;
- III. Payment or credit card administrators and *consórcios* (consumer funds commonly held and managed for the acquisition of consumer goods);
- IV. Administrators or companies that use cards or any other electronic, magnetic or similar means, that allow fund transfers;
- V. Companies that engage in leasing and factoring activities;
- VI. Companies that distribute any kind of property (including cash, real estate, and goods) or services, or give discounts for the acquisition of such property or services by means of lotteries or similar methods;
- VII. Branches or representatives of foreign entities that engage in any of the activities referred to in this article, which take place in Brazil, even if occasionally;
- VIII. All other legal entities engaged in the performance of activities that are dependent upon an authorization from the agencies that regulate the stock, exchange, financial, and insurance markets;

- IX. Any and all Brazilian or foreign individuals or entities, which operate in Brazil in the capacity of agents, managers, representatives or proxies, commission agents, or represent in any other way the interests of foreign legal entities that engage in any of the activities referred to in this article;
- X. Legal entities that engage in activities pertaining to real estate, including the promotion, purchase and sale of properties;
- XI. Individuals or legal entities that engage in the commerce of jewelry, precious stones and metals, works of art, and antiques.

Legal entities

228. Article 10, Paragraph 1 of Law 9613/98 specifies that “if the customer is a legal entity, the identification mentioned in item I of this article shall include individuals who are legally authorised to represent it, as well as its owners.” Bearer shares are not allowed for Brazilian business entities.

229. A similar obligation is expressed in BACEN Circular 2852. Article 1, item one indicates that all financial institutions authorised by BACEN must “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, and amendments. Article 1, paragraph 2 indicates that if the customer is a legal entity the identification must include the individuals who are legally authorised to represent it, as well as their controllers.

Opening and maintaining accounts

230. The Central Bank and National Monetary Council (BACEN/CMN) Resolution 2025 of 24 November 1993, amended by BACEN/CMN Resolution 2747 of June 28, 2000, sets minimum identification requirements for opening deposit accounts. The documentation must presented to the bank official at the moment of opening the account, be maintained up-to-date by the financial institutions, and according to Article 3 must be maintained alongside the file to open the account. For all accounts, this must include name, businesses and residential address, telephone number, references, account opening date, and signature of the depositor.

231. For accounts of physical persons, the information must also include: customer’s name; sex; date and place of birth; marital status; occupation; nationality; type, number, and date of identity document; natural persons register number (*Cadastro de Pessoa Física*—CPF).

232. For accounts of legal persons, this information must also include: legal name, main activity, address and legal entities national register number (*Cadastro Nacional de Pessoa Jurídica*—CNPJ), statutes of association and date of incorporation; documents that qualify and authorise the representative to act on the account’s behalf.

Occasional transactions

233. Although the identification requirements in BACEN Circular 2852 above are mentioned within the context Resolution 2025, which deals specifically account opening procedures, BACEN officials have indicated that its requirements are also applicable to individual transactions by occasional customers.

234. In addition, BACEN Circular Letter 3098, of 11 June 2003, also requires certain individual transactions to be recorded and registered into the BACEN information system (SISBACEN): (Article 1):

- I deposits and withdrawals in cash or of provisioning for withdrawals equal or higher than BRL 100,000²⁵;

²⁵ USD 34,900.

- II. deposits and withdrawals in cash or request of provisioning for withdrawals of values lower than BRL 100,000, that may represent serious indications of concealment or dissimulation of nature, origin, localization, disposition, movement, or property of assets, rights and valuables, in accordance with what established in Article 2 of Circular 2852/98.

235. The transaction record must include certain customer identification information, including: the name and CPF or CNPJ, as applicable, of the owner or beneficiary of the money and of the person conducting the transaction (Article 2), name and CPF/CNPJ as applicable, of the account owners.

Measures to establish true identity of client on whose behalf an account is opened or renew identification if doubts appear as to whether the customer is acting on own behalf

236. There is a general obligation contained in Article 1 of BACEN/CMN Resolution 2747, which requires that the customer identification required for accounts must maintain up-to-date by the financial institution. This is reiterated by Article 1 (Items I and II) of BACEN Circular 2852, which requires financial institutions to maintain updated records on their respective customers and controls to enable to confirm his economic and financial capability.

237. Professional intermediaries are not permitted to open accounts acting in the name of third parties. In addition, opening accounts or carrying out transactions on behalf of third parties, without the respective power of attorney, is considered crime punishable by 1 to 5 years in prison and a fine (Section 299 of Brazilian Penal Code).

238. For legal entities, BACEN Circular 2852, Article 1, Paragraph 2 also requires identification of those individuals legally authorised to represent it, as well as their controllers. There is no other direct obligation for identification of the beneficial owner of such accounts, nor any corresponding obligation to identify the true controller for accounts of physical persons.

239. Although there is no direct obligation to renew the customer's identification if doubts appear as to whether the customer is acting on his/her own behalf, Article 13 of BACEN/CMN Resolution 2025 does require financial institutions to close deposit accounts if serious concerns arise regarding the ability to verify customer identification and to report this promptly to BACEN. Although this appears to apply only to identification of the direct customer. In addition, BACEN Circular 2826/98 indicates that if an institution suspects that a checking account is being used by a third party and the identity of the beneficiary cannot be confirmed, the transaction should be reported as an STR to BACEN.

Identification on wire transfers

240. BACEN Circular 3104 of 28 March 2002 regulates electronic exchange of messages in the National Financial System Network (*Rede do Sistema Financeiro Nacional*—RSFN). This network was created to carry the message flow throughout the Brazilian Payment System (*Sistema de Pagamentos Brasileiro*—SPB). Among others, messages related to funds transfers, collateral pledges and securities operations are issued through RSFN.

241. According the SPB Messages Catalogue, funds transfers shall include originator and beneficiary identification. For transfers from a customer account, the system requires name, account number, and CPF/CNPJ. For transfers from non-customer accounts, the system requires name, financial institution identifying information, and a unique identification code (“*número de controle*”) to allow tracing transactions through the payment chain. Although the system itself does not require the CPF or CNPJ to be supplied, the catalogue instructions indicate that this should be included.

242. According to COAF Resolution 10, money remittance businesses (if they were to be established), would be required to maintain records of all the transactions they perform, which must include the following information: I. the cash transfer amount; II. the form of payment (cash, check, credit card, etc.); III. the date of the transaction; IV. the purpose of the transfer; V. the name, the Natural Persons

Registry number (CPF) or the National Registry of Legal Entities number (CNPJ), and the identification document of the sender and the recipient of the cash transfer; VI. the location of the origin and the destination of the cash transfer. This Resolution does not specifically require that this information be sent with the transfer itself; however, with the CPF or CNPJ, the competent authorities can access the address of the persons involved in the operation.

Higher-risk customers

243. Brazil does not have any specific regulations in place dealing with graduated customer acceptance policies for higher-risk customers, decisions to enter into higher risk customers being taken at the management level, private banking, or politically exposed persons (PEPs).

244. Circular 2677 of 10 April 1996 establishes specific customer identification requirements for non-resident (“CC-5”) accounts. Domestic deposits and withdrawals over BRL 10,000²⁶ carried out in these kinds of accounts must be registered in the BACEN’s SISBACEN system. Non-resident clients have similar identification requirements as domestic clients and require copies of documents presented as identification to be certified by a public notary or a Brazilian Embassy official abroad.

245. With respect to non face-to-face transactions, Resolution 2817 of 22 February 2001 established special identification procedures for opening and conducting transactions with deposit accounts through electronic means including through the internet. These accounts may only be opened by customers domiciled in Brazil and which already have an established banking relationship in Brazil.

Introducers

246. Resolution of National Monetary Council 2953 of 25 April 2002 establishes that introducers (known in Brazilian financial system as bank correspondents) shall comply with the same customer identification procedures established for banks and other financial institutions under BACEN regulation. Banks shall adjust their know your customer procedures and internal control systems to monitor the customer identification procedures carried out by its introducers and prevent illicit or fraudulent activities.

247. Resolution 3110 of 31 July 2003 consolidated the rules about services provided by introducers. Introducers shall submit every deposit or saving account opening form filled by the customer to the bank, which is responsible for keep the customer identification documents and records. BACEN must authorise the agreement between the bank and the introducer; the ultimate responsibility for the customer identification procedures lies with the bank.

Correspondent accounts

248. BACEN Circular 2677 of 10 April 1996 establishes procedures regarding non-resident (“CC-5”) accounts, which could include correspondent accounts opened in Brazilian financial institutions. Non-resident clients have similar identification requirements as domestic clients and require copies of documents presented as identification to be certified by a public notary or a Brazilian Embassy official abroad, including of the individuals who are legally authorised to represent them.

Currency exchange

249. The exchange business is performed by banks, exchange brokers, hotels and travel agencies authorised by BACEN to perform and settle these particular operations. The authorisation could also include buying and selling checks and travellers checks.

²⁶ USD 3,490.

250. Circular BACEN 2852, which lays out the basic AML requirements for banks and other financial institutions, also specifies that these obligations apply to travel agencies, hotels and lodging facilities conducting foreign exchange operations (Article 1; paragraph 1; point II). This would thus include the requirements in Circular 2852 and Resolution 2025, described above, to maintain updated records on their respective customers.

251. Additional requirements are contained in various BACEN Circulars specifically pertaining to foreign exchange operations.²⁷ The authorised operators on foreign exchange business, independently of their financial nature, are obliged to demand documentation to verify, and record certain information from customers: name, nationality, affiliation, number and date of ID card, CPF, passport, maintain those files and records for a period of five years after the conclusion of the transaction, according to Circular nº 2.621 of 27 September 1995 (CNC/ Chapter 1/ Title 8 (updated by CNC updating document 211) and Circular 3.113, of 17 April 2002 (CNC/ Chapter 2/ Title 1 (updated by CNC updating document 306). The transactions must be registered in SISBACEN, which allows BACEN to carry out its foreign exchange market monitoring activities.

252. Purchases of foreign currency, travellers checks, and other international financial instruments issued to individuals or legal entities such as tourist operators are permitted for any amount; buyers must be identified for transactions exceeding USD 10,000 (Circular 2685 of 16 May 1996/ CNC/ Chapter 2/ Title 4 (updated by CNC updating document 224.)

Securities

253. It is a legal requirement under Law 9613/98 that legal entities that are subject to the regulation and surveillance of the CVM should maintain updated records on the identity of their customers. This includes any entity involved, in any way, in the "custody, emission, distribution, liquidation, negotiation, intermediation or administration of securities". The CVM's responsibilities also extend to futures and commodities exchanges and to collective investment schemes.

254. CVM Instruction 301/99 deals specifically with customer identification and record keeping. Article 3 specifies the minimum information to be collected and kept. For individuals, this includes name, address, CPF, professional activity and information about income and net worth. For companies, the information must include corporate name, address, CNPJ, principal activity, financial standing and net worth; and name of legal entities that control, are controlled by, or are connected with it.

255. There is a broader obligation to identify beneficiaries in various other resolutions and circulars. For example, Article 61 of CMN Resolution 2690 obliges stock exchanges to maintain adequate registers so as to be able to identify the final beneficiary of any transaction. CMN Resolution 1655 (Article 12, Paragraph V) prohibits securities brokers from carrying out transactions involving a final beneficiary that is not identified in the stock exchange; CMN Resolution 1120 (Article 12, Paragraph 5, as modified by CMN Resolution 1653) similarly prohibits security dealer companies from allowing brokers to carry out transactions where the final beneficiary is not identified in the stock exchange. Finally, Law 9311 of 1996 (Article 2, Item III) requires that securities transaction be cleared and settled only under the name of the beneficiary.

Insurance

256. SUSEP Circular 200/02 requires insurance companies, insurance brokers, local reinsurers, representative offices of authorised reinsurers and reinsurance brokers ("insurance entities" for short) to keep identification information on their customers, and those customers' representatives and beneficiaries, and to keep copies of that identification information. At a minimum, this information must include for natural persons: name, CPF, type and number of identity document, complete address,

²⁷ The various circulars related to foreign exchange are consolidated into the Consolidated Rules for Foreign Exchange (*Consolidação das Normas Cambiais*—CNC), located at <http://www.bcb.gov.br/?CNC>.

and telephone number. For legal entities, this must include name, principal activity, CNPJ, and complete address, and telephone number.

257. The information may be passed to, and held by, other financial institutions or database management companies that maintain registries of information and/or documents, on condition that the information is made available to SUSEP on request. There are no additional legal or regulatory obligations on insurance entities to collect 'Know Your Business' information about customers or anyone else.

258. Article 3, Paragraph 5 (Item IV) of SUSEP Circular 200/02 stipulates that, for insurance products, identification information must be obtained (a) at the time of underwriting; and (b) whenever payment is made of a sum exceeding BRL 10,000²⁸, whether that payment relates to a claim, redemption or cancellation. There is not a threshold associated with guarantee insurance (Item III); identification is required at the time of underwriting.

259. With regard to record-keeping by intermediaries, virtually 100% of insurance business is carried out through brokers, who undertake the client identification and pass the identification evidence to the insurance company. However, Circular SUSEP 74/99 specifies that insurance companies are always responsible for record keeping. It is not possible to transfer this responsibility. Article 3, Paragraph 2, of Circular 200/02 also specifies that the insurance entities are always responsible for keeping exact and updated information on their clients, including those clients' beneficiaries and representatives.

Money remittance

260. In practice, money remittance in Brazil can only be conducted through a bank with a contract to conduct this activity; therefore, this activity is already subject to the rules issued by BACEN. There are currently no non-bank money remittance companies operating Brazil. However, COAF Resolution 10 of 19 November 2001 list obligations for such entities; presumably they would be applicable should such entities be established.

261. COAF Resolution 10 requires money remittance companies to identify their customers and maintain records of for a period of at least five years, which must include, as a minimum: the amount; the form of payment (cash, check, credit card, etc.); date; purpose of the transfer; name, Natural Persons Registry number (CPF) or the National Registry of Legal Entities number (CNPJ), the identification document of the sender and the recipient of the cash transfer, and the location of the origin and the destination of the cash transfer.

Analysis of Effectiveness

General and banking

262. Brazil's banking system does not permit accounts to be opened anonymously or in obviously fictitious names. Brazil has comprehensive regulatory requirements for identification of the direct customer for accounts of physical and legal persons. Identification takes place at the time a business relationship is established and requires the presentation of appropriate original documentation and written confirmation by authorised bank staff. And according to Law 8383 of 30 December 1991 and Article 3 of BACEN Resolution 2025, account managers and other FIs employees can be held criminally liable for allowing accounts opening or funds transfers carried out by non-existent natural persons or legal entities, or customers with false (fictitious) names.

263. Although there is no direct obligation to take reasonable measures to obtain information about the true identity of the person on whose behalf an account is opened, BACEN officials indicate that identification procedures are checked during on-site examinations. This would include whether the

²⁸ USD 3,490.

bank has verified that the documentation required for account opening establishes that the account activity is consistent with the client's identity (verified through the CPF), background and financial status and is therefore acting on his or her own behalf.

264. The obligation is clearer for legal entities, as BACEN Circular 2852, requires identification of those individuals legally authorised to represent legal entities as well as their controllers. Although there is no direct obligation for identification of the beneficial owner of such accounts, BACEN and banking officials indicated that this applies to beneficial owners. These procedures are also checked during on-site examinations to verify if the bank has verified the presented documentation required for account opening, including the background of the company and its CNPJ, before opening the account.

265. Although there is a general obligation in BACEN/CMN Resolution 2747 and BACEN Circular 2852 to maintain updated customer identification information, there is no direct obligation to renew identification if doubts appear as to their identity during the course of a business relationship. Brazilian authorities have cited BACEN Circular 2826/98, which indicates that in the event that the financial institution suspects the account is being used by a third party and cannot confirm the identity of the beneficiary, the bank should report this as an STR. Although this is not a direct obligation, this implies the re-identification of the customer, as his/her information would be part of the STR itself.

266. BACEN assesses financial institutions' internal controls and compliance with identification and due diligence requirements during the course of its onsite examinations program.

267. However, with regard to the actual effectiveness of these measures, it is of concern that Brazilian authorities, including the Federal Police, cited the use of nominee accounts (called "*laranjas*" or oranges) as one of the most common money laundering mechanism. Similar to a "smurfing" scheme, criminals hire individuals—and the use of their CPF or CNPJ number—to facilitate money laundering operations.

Higher-risk customers

268. Despite the absence of specific regulations, the procedures for identification and due diligence for high-risk customers adopted by financial institutions under BACEN regulation are evaluated in the onsite examinations program. Since the beginning of the evaluations program, BACEN has noticed an increase of due diligence related to high-risk customers, with reports of closing accounts and refusal of proposals for financial transactions. Individual banks have also been establishing specific policies dealing with private banking, and PEPs.

269. BACEN indicated that it monitored non-resident ("CC-5") accounts continuously using data registered in SISBACEN system and the documents retained by the financial institution. However, the Brazilian Federal Police as well as media reports consistently identified the use of the CC-5 accounts as a common mechanism to facilitate money laundering and involved in the large-scale money laundering investigations that did take place, including the Banestado case. However, Brazilian authorities did point out that in most cases the accounts were probably opened before the tighter identification requirements came into effect in 1996.

Correspondent accounts

270. Brazil does not have adequate specific regulations in place dealing with correspondent accounts. Circular 2677 does not require the bank, for example:

- To fully understand and document the nature of the respondent bank's management and business;
- To ascertain that the respondent bank has effective customer acceptance and KYC policies and is effectively supervised;
- To identify and monitor the use of correspondent accounts that may be used as payable-through accounts; and

- Not to enter into or continue a correspondent relationship with a bank incorporated in a jurisdiction in which it has no physical presence (i.e. meaningful mind and management) (the meaning of physical presence is not defined in the CDD paper. In its Shell banks and booking offices (July 2002) paper, the Basel Committee defines “physical presence” to be meaningful mind and management.) which is unaffiliated with a regulated financial group (i.e. shell banks) (CDD 50, 52).

Wire transfers

271. The legal requirement for wire transfers generated by the Brazilian messaging system (SPB) are adequate where an account exists. In the absence of an account, the requirement is not as satisfactory; the system itself does not require the CPF/CNPJ, although the Catalogue instructions do indicate that the this number should be included. It appears that the message could be sent without this information, and it is also not clear what, if any, sanctions are available for not complying with the instructions to include the CPF/CNPJ. Brazilian authorities have indicated that in practice this loophole only applies in cases where the customer is a foreigner who does not have a CPF. In addition, the Brazilian foreign exchange regime requires complete originator information to be recorded by the financial institution and entered into BACEN’s database. This information would therefore be readily available to assist in investigations.

272. The SPB system operates within Brazil in real time and can identify transfers containing inadequate information and reject them when appropriate to do so. Therefore, the system can be effective for transfers generated within Brazil and transfers received from abroad that are routed to a Brazilian beneficiary through the SPB system.

273. Where a Brazilian financial institution is the beneficiary or intermediary in a chain of cross-border transactions, the identifying information received is maintained, since these transactions must be linked through foreign exchange operations carried out through an authorised bank and, according to Paragraph 1 of CNC/Chapter 1/Title 2, financial institutions must keep records and documents related to these transactions for five years.

274. Brazilian financial institutions would not be able to receive transfers from within Brazil that did not contain the required fields from the SPB system, since the system itself would not allow the transfer to be sent in the first place. Transfers from abroad without adequate information would be rejected by BACEN’s system for registering foreign exchange transactions.(See paragraph 251.) If there are reasons to believe the transaction is suspicious, the transaction must be reported to COAF.

Securities

275. The requirements for evidence of customer identification in AML regulation for securities, CVM Instruction 301, do not explicitly cover principal owners and beneficiaries, though the Instruction does refer to the need for complete identification of “customers and their representatives and/or managers.” However, the requirement to identify beneficiaries is broadly covered in other resolutions and circulars.

276. The CVM has conducted 90 compliance inspections with an AML element since 2000, several of which revealed identification or record keeping deficiencies.

Insurance

277. The requirement in Article 3 of SUSEP Circular 200/02 is simply to “keep identification information on their customers, and their customers' beneficiaries and representatives.” There is no specific obligation to carry out verification in respect of parties entering into the insurance contract or to make enquiries about relationships between underlying principals and policyholders.

278. For payment of sums over BRL 10,000²⁹ under an insurance policy, Circular 200/02 satisfies the requirement that if moneys are to be paid to people other than the policyholder, then the proposed recipients of the moneys should be subjects of verification, since the identity verification is necessary for *anyone* who receives a payment over BRL 10,000. Therefore, in addition to the identification requirement for guarantee insurance (where there is no threshold), the requirement should extend to other third party payment of whatever sum. FENASEG (the Brazilian Insurance Association) indicated that it is a legal obligation to pay claims directly to the insured, *not* to a third party. However, this obligation is not contained in SUSEP Circular 200/02.

Recommendations and Comments

279. Brazil should update its legislation to specifically require identification of the ultimate natural persons controlling accounts of both individuals and legal entities.

280. BACEN is reviewing BACEN/CMN Resolution 2025 and BACEN Circular 2852 with the aim of observing the revised FATF Forty Recommendations, including the criteria related to correspondent accounts. Brazil should also make more specific regulations to deal with other high risk situations, such as private banking and PEPs. BACEN has indicated that it plans to include requirements for financial institutions to identify the ultimate natural persons who control legal entities in this review. Particular consideration should be given to understand the structure of control of the corporation and keeping this information updated and available. BACEN, in particular, should continue to carefully monitor the sector to prevent further money laundering using CC-5 and nominee (“*laranja*”) accounts.

281. For the insurance sector, Brazil should consider extending the identification requirement to specifically extend to any third party payment of whatever sum, regardless of the amount.

282. For wire transfers, for cases where no account exists, Brazil should consider making it a more strict legal or regulatory requirement to include either the CPF/CPNJ, or the customer’s address, date of birth, or unique identifier in lieu of this national identification number. Brazil should also ensure that intermediary Brazilian financial institutions are required to pass on all the information they receive to the beneficiary or to keep the information they do receive for five years in the event that it is impossible to pass on all the originator information received. Brazil has indicated that it is working to close these loopholes, with implementation scheduled for August 2004.

Higher risk customers

283. BACEN is reviewing Resolution of National Monetary Council 2025 and Circular BACEN 2852 with the aim of observing the revised FATF/GAFI Forty Recommendations, including the criteria related to high risk customers, PEPs, introducers and correspondent accounts. BACEN is going to maintain the evaluation of high-risk account opening procedures, including PEPs, private banking in its supervision onsite examinations program manual until December 2003.

284. Although trust businesses are not known to form part of Brazilian financial system, particular consideration should be given to foreign transactions where foreign vehicles of this type may be involved.

Implications for compliance with FATF Recommendations 10, 11, SR VII

| | |
|-------------------|---|
| Recommendation 10 | Compliant |
| Recommendation 11 | Largely compliant. Obligation should be more clearly defined to require verification of ultimate beneficiary of legal entities for banks. For insurance, obligation to verify identity only for payouts exceeding BRL 10,000. |
| SR VII | Largely compliant. There should be a more specific requirement to include the |

²⁹ USD 3,490.

| | |
|--|--|
| | CPF/CNPJ (or the customer's address, date of birth, or unique identifying number) in the wire message. |
|--|--|

III. Ongoing monitoring of accounts and transactions

(compliance with Criteria 49-51 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criteria 84-87 for the banking sector, and criterion 104 for the insurance sector)

Description

285. Article 10 of Law 9613/98 requires *all* financial institutions subject to the law (and listed in the previous chapter) to “pay special attention to any transaction that, in view of the provisions set forth by the competent authorities, may represent serious indications of or be related to the crimes referred to in this law. These transactions must be recorded in writing and reported to the competent authority.

286. In addition, BACEN Circular 2852/98, Article 2 obliges all entities licenced by BACEN to “give special attention to the transactions or proposed transaction that, due to the features concerning the parties, amounts, forms of execution and instruments used, or the absence of economic or legal grounds, may indicate or be related to the crimes defined in Law No. 9613.”

287. BACEN Circular 2826 of 4 December 1998 provides a comprehensive list of transactions or situations related to cash or traveller's checks transactions, maintenance of current accounts, international businesses and institution's employees and their representatives, that could raise suspicious of constituting money laundering, or other crimes and should therefore be reported.

288. Banks are required to record the reasons for their suspicions and, where they have reviewed transactions and made a determination that a suspicious report is not warranted, the reasons for that decision.

289. BACEN Circular 2852 (Article 5) also requires financial institutions under its regulation to develop and implement internal control and procedures to detect transactions that suggest the occurrence of the crimes defined in Law 9613. The internal controls and records must enable verification of customer identification as well as the compatibility among the respective customer's fund transfers, economic activity, and financial standing.

Increased diligence for transactions involving certain jurisdictions

290. COAF periodically issues Circular letters to advise financial institutions of the list of non-cooperative countries or territories (NCCTs) designed by the FATF. The circulars warn financial institutions of the deficiencies in the AML systems of the NCCTs, and advises obliged institutions to pay special attention when dealing with transactions involving these countries as they pose an increased risk for money laundering. COAF Circular Letters 1 (of 20 February 2001) through 8 (of 25 July 2003) related to the NCCTs in this manner and updated the NCCTs list accordingly. Circular Letter 4 of 7 February 2002 and Circular Letter 9 of 19 November 2003 advise of additional counter-measures applicable to Nauru and Myanmar, respectively.

291. BACEN has expressed similar warnings in its Circular Letter 2997 of 28 February 2002, which advising financial institutions to consider the increased money laundering risk associated with transactions involving Nauru and the need to adequately identify the parties involved. BACEN Circular Letter 3100 of 7 July 2003 expresses the more general advisory of the AML deficiencies of all the current NCCTs, and warns financial institutions to give special attention to these transactions.

Wire transfers

292. According to the SPB Messages Catalogue, outgoing funds transfers shall include certain pieces of originator information such as name, account number (where one exists), natural persons register number (CPF) or legal entities national register number (CNPJ).

Securities

293. CVM Instruction 301/99, Article 6, specifies that legal entities subject to CVM regulation must pay special attention to a number of transactions involving securities. These include transactions:

- Inconsistent with the professional activity, income or financial standing of the parties concerned;
- Repeatedly carried out between the same parties;
- Indicating significant fluctuations in volume or frequency of business conducted;
- Indicative of an attempt to avoid identification of parties involved or other beneficiaries;
- Carried out frequently for 3rd parties; or
- Showing sudden unwarranted changes in methods [sic] previously used.

294. Transactions showing any of the Article 6 listed characteristics must be reported to the CVM within 24 hours.

Insurance

295. Article 6 of Circular SUSEP 200/02 sets out a variety of scenarios which could be prima facie indicators of money laundering. These include early surrenders but do not specifically mention trading of second hand endowment policies. However, insurance companies must be alert to situations where the policyholder changes before the claim is paid, which would be relevant to traded endowment policies. More generally, SUSEP tells insurance companies to report suspicious activity for whatever reason, whether indicative of money laundering or terrorist financing. Many companies operate automated monitoring systems that raise 'red flags' on suspicious activities that should be reported to COAF and thus avoid SUSEP sanctions.

Analysis of Effectiveness

296. The Brazilian legislation and regulations adequately cover the obligation for financial institutions to give special attention to large or unusual transactions that could indicate money laundering. The various circular letters have also adequately advised Brazilian financial institutions of specific countries with AML deficiencies and the need to give enhanced scrutiny when dealing with transactions involving those countries.

297. BACEN has been evaluating the monitoring systems used by financial institutions to detect unusual transactions in its onsite examination program. Usually, these systems are computer-based, providing management with timely information on exceptions identified. Most of the parameters used by these systems are related to transactions and situations listed in BACEN Circular 2826, especially transactions that exceed BRL 10,000³⁰, transactions not compatible with the customer's net worth, economic activity or financial standing, or sudden changes in the account regular pattern.

298. Brazilian financial institutions would not be able to receive transfers from within Brazil that did not contain the required fields from the SPB system, since the system itself would not allow the transfer to be sent in the first place. In addition, originator information is required for registering the foreign exchange transaction in SISBACEN. Brazilian authorities have indicated that transfers received from abroad without adequate originator information would be rejected by BACEN system and its strict requirements for completing a foreign exchange transaction; banks that completed remitting the funds in

³⁰ USD 3,490.

these cases would therefore do so in violation of the exchange control requirements. The procedures adopted by financial institutions for monitoring accounts and transactions are a key issue in the BACEN onsite examinations program. In order to verify the compliance with this issue BACEN applies consistency tests that aim to match clients subject to AML reports in DECIF's database with the bank's clients database. Whenever unreported matches are detected, DECIF discusses such cases with management to ascertain if there are weaknesses in control systems, and where appropriate requests corrective action.

Implications for compliance with FATF Recommendations 14, 21, 28

| | |
|-------------------|-----------|
| Recommendation 14 | Compliant |
| Recommendation 21 | Compliant |
| Recommendation 28 | Compliant |

IV. Record keeping

(compliance with Criteria 52-54 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criterion 88 for the banking sector, criteria 106 and 107 for the insurance sector, and criterion 112 for the securities sector)

Description

General

299. Article 10 of Law 9613/98 creates an overall framework for record-keeping for financial institutions. Financial institutions covered under Article 9 of the Law shall “identify their customers and maintain updated records in compliance with the provisions set forth by the competent authorities” (Item I) and “keep up-to-date records of all transactions in Brazilian and foreign currency, involving securities bonds, credit instruments, metals, or any asset that may be converted into cash that exceed the amount set forth by the competent authorities, and which shall be in accordance with the instructions issued by these authorities” (Item II). The period of five years begins on the date of account is closed or the date of transaction is concluded (Paragraph 2).

300. Article 10, Paragraph 3 of Law 9613 also established that records shall also be kept whenever an individual or legal entity, or their associates engage, during the same calendar month, in transactions with the same individual, legal entity, conglomerate or group that exceed, in the aggregate, the limits set forth by the competent authorities.

301. According to BACEN Circular 2826 of 4 December 1998, the transaction records must include, at a minimum, the type of transaction, the amount, the date, and CPF or CNPJ.

BACEN

302. BACEN Circular 2852 indicates that financial institutions authorised by BACEN “shall maintain updated records on their respective customers, complying as the case may be, with the requirements and responsibilities of Resolution 2025 and amendments” (Article 1, Item I). Financial institutions shall also “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.” (Article 1, Item III).

303. Circular 2852 further specifies that, notwithstanding the provisions of Article 1, Item III, all transactions over BRL 10,000³¹ performed by the same person, conglomerate or group in the same calendar month (Article 1, Paragraph 3) shall also be recorded.

304. Circular 2852 (Article 3) and CMN/BACEN Resolution 2025 (Article 4) set an equal time period of that records of customer identity and transactions must be kept—five years following the closing of the account or the conclusion of the transaction.

Securities

305. CVM Instruction 301/99, Article 4, specifies that legal entities subject to CVM regulation must maintain records of all transactions involving securities with a value of BRL 10,000 or more. Article 5 specifies that those records must be available to the CVM for a minimum period of 5 years from the date the transaction is concluded or the account closed.

306. CVM Instruction 387/03 establishes that broker-dealers must file a document dated and signed by the customer stating (1) that personal data provided are true, (2) that he/she is committed to inform any changes within 10 days, (3) that he/she operate for if not, he/she must specify for whom (for instance, parents operating for their children or operations carried out through power of attorney), and (4) that he/she is not prohibited to operate in the securities market. This document must be available for CVM inspection.

307. There is also a more general obligation to maintain records contained in Article 60 of CMN Resolution 2690, which requires stock exchanges themselves to register all transactions. There is also a broader requirement to keep records in Article 12 of CVM Instruction 387/03, which indicates that “Brokerage houses shall keep all documents related to the operations with securities... in its headquarters or in the headquarters of the financial conglomerate they belong to and at the disposal of CVM, exchanges and clients, for the term of 5 (five) years, to be counted from the date operations are made.”

308. Article 2 of CVM Instruction 42 requires security dealers to maintain records for all secondary over-the-counter transactions, to be made available to the CVM; these transaction records must include the identity of the client, type of operation (purchase or sale), kind of security, price, quantity negotiated, and transaction date.

Insurance

309. Article 5 of Circular SUSEP 200/02 specifies that “records, registries and documents” must be kept for a minimum period of 5 years, beginning on the date the transaction is concluded or when the transaction is closed down.” These records include the customer identification information (Article 3—discussed in the previous chapter) as well as records and files of documents that attest to all of the payouts (single or aggregated in one month) of at least BRL 10,000.

310. SUSEP Circular 74/99 contains additional requirements to maintain specified documents related to insurance contracts (eg, application form, policy document, and correspondence between parties to the contract) for at least five years. Finally, Annex 1 to CNSP Resolution 86 of 19 August 2002, contain the accounting rules and procedures for insurance, re-insurance, and capitalisation companies, and private pension funds. Item 3.1 indicates that “The bookkeeping of operations shall comply with the rules established by the Federal Council of Accounting, CFC.” The CFC accounting rules, published on 30 December 1983, indicate that “the ‘Journal’ and the ‘Ledger’ constitute the permanent registry of the companies. (Item 2.1.5). The subsidiary registries, when adopted, shall comply with the general provisions of bookkeeping... All operations carried out shall be entried in the Journal,

³¹ USD 3,490.

chronologically, and individualised, clearly and with reference to the supporting document, including those of a random nature.”

Other entities under COAF regulation

311. For all economic activities for which COAF has issued regulations, the period of five years begins on the date of transaction and/or contract is concluded. COAF has not established threshold for these customer record requirements.

312. Non-financial legal entities that provide cash transfer services in Brazil or abroad; commodity exchanges, their brokers; and payment cards and credit cards administrators shall maintain records of all the transactions performed. The factoring companies shall maintain records of all transactions that exceed the amount of BRL 10,000.

Availability of documents for investigations and prosecutions

313. According to articles 10 and 18 of Law 4595, of 31 December 1964, BACEN has the capacity to supervise banks and financial institutions and obtaining information to perform their functions.

314. In addition, Article 2 of Complementary Law 105 gave BACEN the power to collect information from banks and financial institutions when fulfilling its surveillance duties and when they are investigating a financial institution under a special regime.

315. Complementary Law 105 lifted banking secrecy restrictions on the disclosure of information by banks and other financial institutions to COAF, of information on customer identification and on financial flows relating to suspicious transactions, regardless of thresholds, and established the framework for information exchange among regulators in Brazil and abroad. BACEN and CVM can provide additional information to judiciary authorities on the basis of a court order, according to Article 3 of Complementary Law 105.

316. Article 1, Paragraph 4 of Law 105 also specifically allows for ordering the breach of confidentiality, when it is necessary to verify the occurrence of any illicit activity, during any stage of investigations or legal proceedings, and especially in the case of the predicate crimes for Law 9613, other money laundering, or crimes against the fiscal or social order.

317. Article 6 allows for further availability of documents: “The authorities and the tax agents of Federal, State, Municipal and Federal District administrations shall only examine documents, books and records of the financial institutions, including those relating to deposit accounts and financial investments, when administrative proceedings or tax proceedings have been initiated and said examination is considered indispensable by the competent administrative authority.”

Analysis of Effectiveness

318. Despite the specific requirement contained in Article 1, Paragraph 3 of BACEN Circular 2852 for records of transactions over the BRL 10,000 to be kept, Brazilian officials indicate that the general obligation contained in Article 1, Item 3 indicates that records of all transactions must also be kept. The information specified in BACEN Circular 2826 that must be contained on these transaction records is generally adequate, although it does not specifically require name or account number. However, this information is already required by the BACEN database, and the Circular does require the CPF or CNPJ, which is uniquely identified with an individual or business, and this number must also be included on any account register. Also, there is a minimum set of data required for registering foreign exchange transactions in SISBACEN and for funds transfers through though SPB messages catalogue.

319. As part of its task of monitoring financial transactions, BACEN frequently requests, customer identity records and transaction documents. BACEN also verifies banks’ compliance with

documentation and due diligence requirements in its onsite examinations program. Financial transaction records already include the information established in this criterion. This kind of information is usually required by BACEN in its tracing activities on demand of law enforcement authorities.

320. Although CVM Instruction 301 sets a threshold of BRL 10,000 for the record-keeping requirement, there are broader requirements to register and maintain all securities transaction records contained in other resolutions and instructions applicable to stock exchanges, brokers and dealers. Although CVM Instruction 301 specifies the information to be recorded for the customer identification register, the instruction does not indicate which pieces of information should be included on the transaction records. In terms of compliance, the CVM has conducted 90 compliance inspections with an AML element since 2000, several of which revealed identification or record keeping deficiencies.

321. Customer identification and transaction records are adequately available to COAF, BACEN, and CVM for their surveillance duties that include AML/CFT investigations and onsite financial institutions' examination program, and also via a court order for investigations and prosecutions, according to the provisions of Complementary Law 105.

Recommendations and Comments

322. Brazil should consider a more specific requirement for banks to record all transactions. SUSEP and the CVM should also specify the information that should be included on all transaction records, as a minimum: the customer's (and beneficiary's) name, address (or other identifying information normally recorded by the intermediary), the nature and date of the transaction, the type and amount of currency involved, and the type and identifying number of any account involved in the transaction.

Implications for compliance with FATF Recommendation 12

| | |
|-------------------|------------|
| Recommendation 12 | Compliant. |
|-------------------|------------|

V. Suspicious transactions reporting

(compliance with Criteria 55-57 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criteria 101-104 for the insurance sector)

Description

Reporting of STRs related to ML and FT

323. Article 11 of Law 9613/98 establishes that financial institutions and other legal entities shall pay special attention to any transaction that, in view of the provisions set forth by competent authorities, may represent serious indications of or be related to the crimes referred in the Law. Law 9613 included terrorism as a predicate offence; Law 10701 of 2003 amended Law 9613 to include the financing of terrorism as a predicate offence for money laundering.

324. The proposal or execution of such transactions shall be reported within 24 hours to the competent authorities, without informing their clients of this reporting (Item II). Information provided in good faith shall not generate any civil or criminal liability (Paragraph 1).

BACEN

325. BACEN Circular 2852 further specifies that financial institutions shall report (Article 4) "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, may indicate or be related to the crimes defined in Law No. 9613.” Banks are required to record the reasons for their suspicions and, where they have reviewed transactions and made a determination that a suspicious report is not warranted, the reasons for that decision. The reports “shall be made without informing the parties involved of such reports.” Reports in good faith shall not generate any civil or administrative liability of the institutions, their controllers, officers, and employees. (Article 4, Paragraphs 1 and 2).

326. BACEN Circular 2826 provides guidelines and instructions for the identification and reporting of suspicious transactions. The Circular contains a comprehensive list of transactions or situations related to cash or traveller’s checks transactions, maintenance of current accounts, international businesses and institution’s employees and their representatives, that could constitute money laundering, terrorism financing or other crimes referred in the AML Law.

Securities

327. CVM Instruction 301/99 requires legal entities subject to CVM regulation to report certain transactions to CVM within 24 hours. Article 7 requires the reporting of any transaction over BRL 10,000³² that, due to the characteristics of the parties involved, form of execution, types of instruments used, or the lack of economic or legal grounds, may constitute serious indications of or be related to the crimes of laundering or concealment of assets, rights and valuables.

328. Furthermore, Article 6 of the instruction specifies a list of specific securities transactions that should be monitored and reported, including transactions:

- Inconsistent with the professional activity, income or financial standing of the parties concerned;
- Repeatedly carried out between the same parties;
- Indicating significant fluctuations in volume or frequency of business conducted;
- Indicative of an attempt to avoid identification of parties involved or other beneficiaries;
- Carried out frequently for 3rd parties; or
- Showing sudden unwarranted changes in methods previously used.

329. The reports should be made while “abstaining from informing their customer of such reports” (Article 7, Paragraph 1).

Insurance

330. Article 7 of SUSEP Circular 200 of 9 September 2002 indicates the instances when insurance brokers and companies must file a report to SUSEP:

- Operations over BRL 10,000 involving payments of indemnity, draw or redemption of capitalization securities, social security benefits, reimbursement of prizes through cancellation, and operation carried out, that, because of the parties, amounts involved, lack of economic or legal grounds, may represent serious indications of the crimes in Law 9613/98.
- Transactions or proposed transactions from an extensive list of examples of transactions performed by insurance companies and brokers, situations related to insurance and reinsurance companies, activities related to capitalisation companies, activities related to private pension funds, and acts of shareholders or managers.

331. Circular Letter SUSEP/DEFIS/GAB/n.01/03, of 13 June 2003, directed that all communications of activities required in Circular 200 should be made directly to COAF and its system SISCOAF, through its Internet interface.

³² USD 3,490.

Other sectors

332. COAF has also issued guidelines to assist the various sectors falling under its regulatory scope to recognise and report suspicious transactions. Each COAF Resolution (see paragraph 79) lists specific operations that could characterize serious indications of or be related to money laundering.

*Analysis of Effectiveness*General

333. The Brazilian legislation broadly cover requirements to report suspicious transactions suspected of being related to money laundering and the predicate offences. The legislation and subsequent guidelines also prohibit tipping off clients and provide a safe harbour from criminal or civil liability for reporting in good faith. However, the guidelines issued to competent authorities did not include references to recognising and reporting transactions involving funds that are suspected to be linked to terrorist financing.

334. Since terrorist financing was added as a predicate offence for money laundering to Law 9613 by Law 10701 of 2003, financial institutions are now generally obliged to report transactions suspected of being related to terrorism or terrorist financing, since the obligation refers to transactions that “represent serious indications of or be related to the crimes referred in the Law.”

335. The only potential problem is that the financing of terrorism is not sufficiently defined as a crime elsewhere in the Brazilian legal system, and financial institutions might not be willing or able to report such transactions. In addition, the text of SR IV also refers to transactions suspected to involve funds that “are to be used for terrorism, terrorist acts, or terrorist organisations. While the Brazilian legislation does not specify this criterion, it is broadly included in the amended Law 9613, since such transactions would be still be “related to” terrorism, terrorist acts, and terrorist organisations.

336. For the securities and insurance sectors, the Brazilian legislation does not require the reporting of all suspicious transactions, or all transactions suspected be linked to money laundering or the predicate offences. Rather, the requirement is for the reporting of such transactions over the BRL 10,000 threshold, or an example of a transaction under the threshold but meeting a specific condition.

337. There is no register of any violation of the provision for unauthorised disclosure (“tipping off”); nor is there any register of any civil or administrative liability generated for disclosures of transactions made in good faith.

338. The following chart shows the numbers of reports received by year, by sector and supervisor, through 31 December 2003:

| | 1999 | 2000 | 2001 | 2002 | 2003 | TOTAL |
|---------------------------------------|------------|--------------|--------------|--------------|----------------------|---------------|
| BACEN (STRs) | 544 | 4,308 | 4,521 | 4,697 | 5,212 | 19,282 |
| BACEN (large currency reports) | | | | | 32,608 ³³ | 32,608 |
| SUSEP | 0 | 0 | 7 | 361 | 876 | 1244 |
| CVM | 0 | 0 | 10 | 9 | 13 | 32 |
| SPC (Pension Funds) | 0 | 1 | 9 | 0 | 2 | 12 |
| SUBTOTAL | 544 | 4,309 | 4,547 | 5,067 | 38,711 | 53,178 |
| | | | | | | |

³³ BACEN indicated that 17,842 reports were received as of 31/10/2003.

| | | | | | | |
|---|------------|--------------|--------------|------------|------------|--------------|
| Bingos | 35 | 1412 | 960 | 55 | 19 | 2,481 |
| Commodity Exchanges and Brokers | 1 | 1 | 0 | 0 | 0 | 2 |
| Credit Cards | 0 | 3 | 42 | 58 | 96 | 199 |
| Real Estate | 206 | 769 | 610 | 741 | 635 | 2,961 |
| Factoring | 32 | 20 | 37 | 1 | 1 | 91 |
| Jewels, Precious metals and stones | 6 | 7 | 1 | 1 | 0 | 15 |
| Lotteries | 0 | 133 | 167 | 97 | 152 | 549 |
| Arts & Antiquities | 0 | 0 | 0 | 0 | 1 | 1 |
| Money Transfer | 0 | 0 | 0 | 0 | 1 | 1 |
| SUBTOTAL COAF | 280 | 2,345 | 1,817 | 953 | 905 | 6,300 |

Banks

339. Suspicious transaction reports are submitted by banks to the Central Bank Information System's (SISBACEN) PCAF computer system, which has been operational since September 2001. COAF has full, direct access to this database from the moment these transactions are entered into the database. According to SISBACEN, from 1999 to 2004, there were 18,739 reports from banks, 240 from credit cooperatives, 78 from stock and securities distribution companies, 20 from exchange and securities brokerage companies, 3 from buyer group management companies, 2 from consumer finance companies and 1 from a leasing company.

340. These reports include information such as code of reporting institutions, branch or office; number of deposit account; date account opening; name of persons involved in the transaction; natural persons and legal entities national register number (income tax registration); date transactions occurred and amounts involved; and details of measures that may have been taken.

341. The report also includes the type of suspicion according to the BACEN list of potentially suspicious activity by category according to BACEN Circular 2826. BACEN's statistics on the reports it has received in 2002 indicate that most reports (approximately 50%) have related to fund transfers incompatible with the customer's net worth, economic activity or financial standing (Item II-a in Circular 2826); 30% were "other"; 10% were cash or traveller's check transactions over BRL 10,000 or under this limit with the appearance of attempting to avoid this limit (I-a); 10 % involved a current account used to receive or pay significant amounts with no clear indication of the purpose or relation to the account holder (II-e); 5% were cash or traveller's check transactions where deposits were made in several smaller parts totalling a significant amount (I-e).

342. BACEN onsite examination program reviews banks' record-keeping systems and suspicious transaction reports procedures including computer tools used for detect suspicious activities, customer and transactions record keeping and quality of registers inputted in PCAF system. Where deficiencies are identified, banks are required to take corrective action.

343. On-site inspections began in May 2000, and 96 on-site assessments had taken place reaching 110 financial institutions (of the 190 that BACEN supervises) as of September 2003.

Securities

344. The CVM Instruction 301 provides practical guidance for securities companies and brokers to report suspicious transactions. However, the Instruction does not require the reporting of all suspicious transactions or transactions suspected to be related to money laundering or terrorist financing; rather it requires the reporting of all transactions from a specified list (regardless of threshold), as well as any other suspicious transaction exceeding BRL 10,000.

345. Since 2000, the CVM has received 30 STRs involving some 99 individuals and legal entities. The CVM has conducted 49 enforcement proceedings related to AML compliance, of which 39 have been concluded. The completed proceedings resulted in 25 warnings (involving 65 persons), 2 fines and 4 “not guilty” verdicts involving 13 persons. The situation of persons punished with warning is due to registering failures and the situation of those punished with fine is due to not reporting suspicious transactions.

Insurance

346. SUSEP Circular 200 provides a detailed and comprehensive set of guidance to assist companies and brokers in identifying and reporting suspicious transactions; although the requirement to report is somewhat limited in that it applies to transactions from a specific list (regardless of threshold), in addition to any other suspicious transaction over BRL 10,000. There has been an increasing number of STRs from insurance companies in the period 2001–2003. This would suggest that insurance companies are paying close attention to SUSEP’s suspicion indicators (as set out in Article 6 of Circular 200/02). But this is not necessarily related to knowing enough about a client's business to recognise a STR without explicit help from SUSEP.

Currency exchange

347. Although licensed to carry out exchange operations by BACEN and subject to STR requirements, travel agencies and hotels have not filed any STRs to date. Brazil has indicated two main reasons that might explain this. The first one is related to their small share in the financial market (less than 2% of floating rate foreign exchange market, which represents 2.5% of all Brazilian foreign exchange market).

348. Secondly, BACEN’s supervision prioritises banks, foreign exchange brokers and cooperatives inspections, given their size and share in the financial market. Thus, BACEN inspects travel agencies and hotels based on off-site monitoring of transactions performed by these entities and non-regular on-site inspections. However, Central Bank intends to apply to travel agencies and hotels authorised to perform retail foreign exchange transactions, internal controls and compliance evaluation procedures similar to the ones applied to banks and brokers, tailored to its size and transactions profile.

Recommendations and Comments

349. Brazil should consider broadening the reporting requirement for securities and insurance to all suspicious transactions, or all transactions suspected be linked to money laundering or the predicate offences, regardless of any threshold.

Implications for compliance with FATF Recommendations 15, 16, 17, 28, SR IV

| | |
|-------------------|--|
| Recommendation 15 | Largely compliant: regulations for securities and insurance create a threshold for STRs. |
| Recommendation 16 | Compliant |
| Recommendation 17 | Compliant |
| Recommendation 18 | Compliant |
| Recommendation 28 | Compliant |
| SR IV | Compliant |

VI. Internal controls, Compliance and Audit

(compliance with Criteria 58-61 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criteria 89-92 for the

banking sector, criteria 109 and 110 for the insurance sector, and criterion 113 for the securities sector)

Description

Internal AML Programs

350. Resolution of National Monetary Council 2554, of 24 September 1998 requires financial institutions authorised by BACEN to implement internal control systems in order to monitor their activities and their informational and operational systems, and to verify compliance with their respective laws and regulations. The controls shall include: measures to evaluate internal and external factors that might adversely affect the objectives of the institution, appropriate channels of communication for employees, continual evaluation of risks, periodic tests to assure the reliability of the information system. An internal audit should also form part of the system; the audit could be performed by an internal unit or from an affiliated institution (Article 2).

351. Article 5 of BACEN Circular 2852 also requires banks, and all other financial institutions and entities authorised to operate by the Central Bank to “develop and implement specific internal control procedures to detect transactions that suggest the occurrence of the crimes defined in Law 9613/98 and they shall also provide adequate training for their employees” in such procedures.

352. For insurance, Article 8 of SUSEP Circular 200 similarly requires the covered insurance entities to “develop and implement internal control procedures for the detection of transactions that indicate the occurrence of the crimes defined in Law 9613/98, by promoting the adequate training of their employees.”

Compliance officer

353. Article 7 of BACEN Circular 2852 requires banks and other financial institutions under BACEN regulation to designate a director or manager as the money laundering compliance officer, who will be responsible for the implementation of and compliance with the AML provisions. According to BACEN, this person must also be a Board member.

354. For insurance, SUSEP Circular 200 (Article 8) similarly requires that a Director or senior manager of the insurance company to be responsible for compliance with the obligations in the Circular.

Screening procedures

355. Resolution 3041, of 29 November 2002 and Circular BACEN 3172, of 31 December 2002, established specific conditions for financial institutions when hiring directors and senior managers. According to these basic conditions the applicant for the position must have good reputation, be not convicted for any crime listed in the Resolution, be not involved as a controller or manager of any company under bankruptcy process and have technical skills consistent with the position.

Foreign/local branch standards

356. There is no regulatory obligation for Brazilian financial institutions to extend home country AML/CFT procedures to their foreign branches and subsidiaries to the extent that local laws permit. Nor is there any notification requirement when a foreign branch or subsidiary is unable to apply appropriate AML/CFT measures. However, Complementary Law 105 allows BACEN and CVM, within their respective jurisdiction, to sign co-operative agreements with central banks or regulatory entities from other countries, in order to:

- a) Monitor agencies and branches of foreign financial institutions operating in Brazil and agencies and branches of Brazilian financial institutions which are located abroad;
- b) Mutually cooperate and exchange information for the investigation of activities or transactions that involve investment, negotiation, concealment, or transfer of financial assets and securities related to the practice of illicit activities.

Securities—requirements for internal organisation and market conduct

357. Market intermediaries are required to comply with CMN Resolution 1655, which sets forth guidelines for their constitution, organization, and market activities. CVM Instruction 301/99 requires controls to prevent and identify any transactions that might raise concerns about money laundering or other illegal activities, including terrorist financing. CVM Instruction 306 sets the necessary standards to protect the interests of investors. In addition, Instruction 387/03 sets minimum identification standards for individuals operating in the exchanges. Bearer operations are prohibited by Law 8021/90.

358. The rules issued by CVM to ensure the effectiveness of the market system establish: (i) written policies and procedures; (ii) minimum accounting and other applicable records and controls to safeguard firm data; (iii) segregation of duties and functions (designation of a person responsible for compliance); and (iv) controls to safeguard client and firm assets.

359. Assets are required to be identified as belonging to clients and are to be segregated from firm assets.

Analysis of Effectiveness

360. BACEN's onsite examination program evaluates several aspects related to AML/CFT procedures such as "know your customer" and "know your employee" policies; training programs an internal and external audits role.

361. Moreover, COAF has been issuing publications with information on money laundering and terrorist financing typologies. The Brazilian Banks Association (Febraban) performs a useful AML awareness and training role. In conjunction with its member banks' compliance officers, Febraban has produced a CDROM on ML prevention that has proved extremely useful, particularly for smaller banks. Both members and non-members of Febraban have access to training programmes and so do non-banks. In addition, Febraban organises one or two AML conferences every year.

362. The requirement to designate a compliance officer is one of the aspects checked by BACEN in its onsite examination program.

363. Although there is no routine provision of feedback from COAF on cases reported, COAF has issued publications with information on money laundering and terrorist financing typologies. BACEN does provide general feedback to financial institutions in its on-site examination program. This feedback procedure has focused on the quality and pertinence of STR information supplied by financial institutions. In addition, Banco de Brasil indicated that it had no problems in finding out where things stood in relation to specific reports made – i.e., with the police, or the courts, etc.

364. There is no formal legal or regulatory obligation for banks to have in place internal audit requirements to test their own AML systems and training. However, at least one bank (Banco de Brasil) has a permanent and rigorous AML auditing programme, with results reported to senior management and follow-up to ensure recommendations for change are implemented.

Screening procedures

365. Screening procedures shall be conducted by the financial institution and must be confirmed to BACEN by a statement signed by the applicants. Furthermore, although it is not a formal regulatory

obligation, the Central Bank expects the financial institutions it regulates to adopt a 'Know Your Employee' policy, aimed at both fraud and money laundering prevention. Despite no specific regulation requiring financial institutions to adopt a "know your employee policy", these aspects are evaluated in BACEN's onsite examination program. These procedures are intended to pick up any change in an employee's lifestyle, or other abnormal behaviour, which might indicate involvement in fraud or money laundering.

Foreign/ local branch standards

366. BACEN has MOUs in place with supervisory authorities in the United States, Spain and Argentina that allow BACEN to undertake AML/CFT assessments abroad. BACEN has begun to evaluate AML/CFT procedures in overseas branches of financial institutions under its regulation and intends to extend this evaluation to subsidiaries. BACEN is free to decide its own programme of inspections but liaises closely with foreign counterparts in doing so.

Insurance

367. There are currently no internal audit requirements, and the requirements for internal controls are only in the context of reporting obligations. SUSEP is developing a regulation to require insurance companies to undertake internal audits of their AML compliance procedures.

368. Currently, companies give the necessary AML training to their staff on the take-on of business and the payment of claims, the two key elements of the business process. Companies have generally developed their own internal processes and training on those processes, i.e., without the help of FENASEG (National Federation of Insurance and Capitalization Companies). The sector has received no general or specific feedback from COAF on STRs. When SUSEP gave the examiners STR data, that was the first time FENASEG had ever seen such data.

369. Brazil has indicated that, in practice, all insurance companies have internal controls to deal with money laundering. In 2003, SUSEP applied 7 sanctions (penalties) to companies for breaches of regulations. These related to inadequate record keeping (broker not passing sufficient information to the insurer) and failure to make STRs that should have been made.

Securities

370. The CVM has conducted 49 enforcement proceedings related to AML compliance, of which 39 have been concluded. The completed proceedings resulted in 25 warnings (involving 65 persons), 2 fines and 4 "not guilty" verdicts involving 13 persons. The situation of persons punished with warning is due to registering failures and the situation of those punished with fine is due to not reporting suspicious transactions.

Recommendations and Comments

371. In order to ensure consistency across the banking sector, a formal auditing obligation should be introduced for AML compliance. SUSEP is currently developing a regulation that will require internal audits for AML compliance procedures;³⁴ an internal audit function will be necessary to ensure that the Manager required to be appointed as a compliance officer (under SUSEP 200/02) is doing his/her job properly.

³⁴ SUSEP Circular 249/2004 was issued on 20 February 2004. The Circular purportedly obliges insurance companies, capitalisation companies, and open pension funds entities to establish, by 31 December 2004, internal controls (including an internal audit). The controls must be effective and consistent with the nature, complexity, and risk of the business operations. The examination team has not evaluated the Circular.

372. More specific employee training requirements should be considered: for example, what the training should cover, employees to be trained and how frequently. BACEN should also issue a regulation requiring financial institutions to establish screening procedures to ensure high standards when hiring employees.

373. BACEN should issue a specific regulation requiring that financial institutions' foreign branches and subsidiaries adopt AML/CFT measures consistent with the Brazilian requirements.

Implications for compliance with the FATF Recommendations 19, 20

| | |
|-------------------|--|
| Recommendation 19 | Largely compliant. No formal audit requirement for AML compliance; rules for adequate screening procedures could also be strengthened. |
| Recommendation 20 | Largely compliant. No specific regulation for foreign branches and subsidiaries to apply the Brazilian standards. |

VII. Integrity standards

(compliance with Criteria 62 and 63 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criterion 14 for the securities sector)

Description

374. Resolution 3041, of 29 November 2002 and BACEN Circular 3172, of 31 December 2002 established specific conditions for financial institutions when hiring directors and senior managers. According to these basic conditions, the applicant for the position must have good reputation and not be convicted of any crime listed in the Resolution: bankruptcy, tax evasion, corruption, embezzlement, a crime against the national financial system, or any other crime which bans temporary or permanent future public employment (Resolution 3041, Article 2, III). They must not have been involved as a controller or manager of any company under bankruptcy process and have technical skills consistent with the position.

375. With respect to measures to prevent the unlawful use of entities such as shell corporations or non-profit organisations as channels for money laundering, BACEN Comunicado 9068, of 4 December 2001, reminded financial institutions of the existence of private entities receiving foreign donations in unusual volumes. This communiqué reminds financial institutions of their obligation under Law 9613/98 to pay special attention to report suspicious operations and recommends that such operations be examined with adequate diligence by evaluating the legality of the operation and the origin of funds and the foreign source and beneficiary, which should have a real and active presence in Brazil.

Analysis of Effectiveness

376. The legislation largely prohibits criminals from holding a management function in a financial institution. However, there is no specific regulation preventing criminals from holding a significant investment in a financial institution.

377. Screening procedures shall be conducted by the financial institution and must be confirmed to BACEN by a statement signed by the applicants. Despite no specific regulation requiring financial institutions to adopt a "know your employee policy", this aspect is evaluated in BACEN's onsite examination program.

378. As BACEN monitors all foreign exchange operations, BACEN also monitors foreign exchange transactions with vulnerable entities such as charitable or non-profit organizations, churches and companies whose financial standing or economic activity is not compatible with the fund transfers.

379. There are 268 travel agencies and 8 hotels authorised by BACEN to carry out exchange transactions. In the last 3 years, Central Bank has authorised 54 travel agencies and hotels to perform retail foreign exchange transactions, and 101 licenses have been revoked. BACEN is now in the process of elaborating new licensing procedures in this sector; new currency exchange licences for travel agencies and hotels are on hold until BACEN issues these new licensing procedures.

Recommendations and Comments

380. Specific regulations preventing criminals holding a significant investment in financial institutions are still required. BACEN could also issue more specific rules related to entities vulnerable to money laundering, especially with regard to shell companies.

381. Brazil should also complete its new regulations for licensing of dealers in foreign exchange, having regard to the required integrity standards.

Implications for compliance with FATF Recommendation 29

| | |
|-------------------|--|
| Recommendation 29 | Largely compliant. Specific regulations preventing criminals from holding a significant investment in financial institutions are still required. |
|-------------------|--|

VIII. Enforcement powers and sanctions

(compliance with Criteria 64 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criteria 93-96 for the banking sector and criteria 115-117 for the securities sector)

Description

382. With respect to the powers of competent authorities to monitor and ensure compliance with AML/CFT obligations, Law 9613/98 establishes that legal entities referred in the Law as well as their managers that fail to comply with the provisions set forth in the Law shall be subject to the following sanctions: warning, monetary fine, temporary prohibition for up to ten years on holding any management position in the legal entities referred in the Law and cancellation of the licensing authorization. These sanctions could be applied together or separately.

383. With regard to the authority to supervise and apply the above, Articles 10 and 18 of Law 4595, of 31 December 1964, gives BACEN the capacity to supervise banks and financial institutions and obtain information to perform its functions. Financial institutions under BACEN regulation shall provide any information or documentation required by BACEN to perform its surveillance activity.

384. In addition, Article 2 of Complementary Law 105 gives BACEN the power to collect information “in regard of deposit accounts and investments... when fulfilling its surveillance duties, including the verification at any time of illicit activities practiced by comptrollers, managers, members of the boards, agents, and proxies of financial institutions” and when they are investigating a financial institution under a special regime.

385. In November 1999, BACEN established a specialized anti-money laundering unit (*Departamento de Combate a Ilícitos Cambiais e Financeiros*—DECIF) in its banking supervision Directorate with responsibility for, inter alia, ensuring the adequacy of banks’ anti-money laundering internal control systems and reviewing compliance with anti-money laundering (AML) legislation, including customer due diligence requirements.

386. BACEN is responsible for evaluating compliance with AML legislation and internal controls implemented by financial institutions under its regulation. These systems are based on the following

aspects related to money laundering prevention: institutional policy; organizational structure; control tools and procedures for detecting, selecting, analyzing and reporting suspicious operations or situations; “know your customer” policy; “know your employee” policy; training policy and; internal and external audits.

387. BACEN also applies consistency tests that aim to match clients subject to AML reports in DECIF’s database, with the banks’ client database. Whenever unreported matches are detected, DECIF discusses such cases with management to ascertain if there are weaknesses in control systems, and where appropriate, requests corrective action. Inspections are conducted in conjunction with the BACEN prudential examination teams or on a stand-alone basis.

388. DECIF also targets for examination the branches of banks perceived to be of higher risk either because of the nature of their operations or their geographical location.

389. At the end of financial institution’s on-site examination, BACEN provides a written report to the FI’s Board of Directors, which includes comments and recommendations for improving its AML/CFT procedures.

390. If the FI fails to comply with the provisions set forth in the Law 9613/98, it is subject to the following sanctions: warning, monetary fine, temporary prohibition for up to ten years on holding any management position in the legal entities referred in the Law and cancellation of the licensing authorization.

391. With respect to powers regarding establishments in a foreign jurisdiction, under Resolution 2723, of 31 May 2000, a Brazilian bank that wishes to open a branch or subsidiary in a foreign jurisdiction must first seek authorization from BACEN. It is a condition of authorization that the bank must provide all necessary information, data and documents required by BACEN on the foreign entity’s activities. If the law of that country prevents information from being supplied, BACEN’s authorization would not be granted. Equally, if the country concerned later introduced impediments to the provision of information, BACEN could withdraw authorisation and thereby require the foreign entity to be closed down or sold.

Securities

392. Law 10303/03 establishes CVM as the sole regulator in the securities markets. The legislation grants CVM the responsibility for inspection, investigation and surveillance. CVM monitors all activities and services of the securities markets on a permanent basis, obtaining from market participants all information and documents which it may deem necessary. It may also obtain witnesses whenever necessary, and carry out inspections and investigations off-site and on-site (Law 6385/76, Articles 8-II, and 9).

393. Brazilian law empowers the CVM to obtain any information relating to securities dealings. Law 6385/76 (Article 9) authorises CVM to examine accounting books or records, take statements or depositions, open formal investigations, and impose sanctions.

394. Law 6385/76 (Article 9) granted CVM the authority over all market participants, which are subject to permanent enforcement activities of the Commission, starting with the requirement of specific authorizations to operate in the various segments of the securities market. The CVM’s responsibilities include access to pertinent publicly available information, enforcement of market activities and transactions, as well as investigation and punishment of unfair practices. Regulated entities are required to keep documents available for inspection when requested.

395. The inspection powers conferred to the CVM include the issuance of orders to compel the production of documents and orders for testimony. Failure will result in a daily fine, charged for as long as the documents are handed in or testimony is given.

396. Law 6385/76 grants the CVM enforcement powers, including the following:

- investigative power to obtain data, information, documents, statements and records from persons involved in the relevant activity or who may have information relevant to the inquiry (Article 9);
- the power to seek orders and to take other actions to ensure compliance with its regulatory, administrative and investigative powers (Article 9, § 1);
- the power to impose sanctions: warnings, fines, suspension from duties of director of market intermediaries and public companies, temporary disqualification from occupying managerial posts in market intermediaries and public companies, suspension or cancellation of licenses of market intermediaries that are licensed by the CVM itself (e.g., fund managers, custodians – Article 11).

397. BACEN is empowered to authorise and cancel the functioning of intermediaries based exclusively on capital requirements, risk and extrajudicial liquidation. CVM authorises and cancels the registry of brokers and dealers to operate, i.e., to carry its securities transactions. BACEN deals with the existence of a broker or dealer while the CVM authorizes their transactions in the capital market; therefore, in theory a broker or dealer could exist and not be able to carry out transactions with securities for not being fully registered with the CVM.

398. Article 28 of Law 6385/76 and Article 6 (2) of Complementary Law 105/2001 establish rules for exchange of public and non-public information between the Central Bank, CVM, the Secretariat of Federal Taxes and Revenue (SRF), the National Monetary Council (CMN) and COAF, related to the monitoring of the securities market, according to the area of specialization of each body.

399. Article 10 of Law 6385/76 permits CVM to exchange public and non-public information with foreign counterparts. However, this exchange depends on the prior existence of an MOU in which a formal agreement is undertaken by the requesting authority in order to safeguard the confidentiality of the documents and the information it receives.

Insurance

400. SUSEP's supervision procedure includes cross-referencing registering data with the copies of documents which give support to the transaction, such as identification documents and registries of transactions.

Currency exchange

401. In addition to financial institutions, BACEN also supervises currency brokers, hotels and tourist offices licensed to conduct foreign exchange. BACEN's inspection program prioritises banks, foreign exchange brokers and cooperatives inspections, given their size and share in the financial market. In the case of travel agencies and hotels, BACEN's inspection program is based on off-site monitoring of transactions performed by these entities and non-regular on-site inspections.

Analysis of Effectiveness

402. The provisions under Law 4954/64, Complementary Law 105, and Law 9613/98 give BACEN adequate legal authority to access documents and monitor its institutions for AML/CFT compliance and apply appropriate sanctions. Compliance with customer due diligence requirements in financial institutions is subject to monitoring by the supervisor that includes the review of policies and procedures, customer files, and the sampling of accounts.

403. In the period 1999-2003, BACEN undertook 96 on-site financial institutions examinations (33 among the fifty largest banks) with a projection of 106 evaluations by the end of 2003. So far, BACEN has issued 7 administrative proceedings—sanctions—related to non-compliance with AML/CFT dispositions, specifically for failures to report suspicious transactions. BACEN has also issued 5 letters

of commitment; i.e., a warning that procedures are inadequate and that the Board must take action. The Board of the institution must present a remedial plan of action and a timescale for implementing it. Three warning letters were related to recommendations for stopping a set of transactions detected by Banco Central supervision in Foz do Iguaçu area with smurfing characteristics. Two other letters were issued by BACEN as a result of on site examination program, requesting general improvements on internal controls, "know your customer", "know your employee" and training policies. Finally, the other warning letter was issued for failures to report suspicious transactions.

404. Brazilian banks with foreign operations have not experienced impediments to the provision of information.

Insurance

405. All of SUSEP's compliance inspections include an AML module and some 140 inspections a year are undertaken. Companies generally receive a visit every 3 years but may be subject to a spot check at any time. Unlike BACEN, SUSEP does not look at what firms' internal controls do to pick up suspicious transactions.³⁵

406. In 2003, SUSEP applied 7 sanctions (penalties) to companies for breaches of regulations. These related to inadequate record keeping (broker not passing sufficient information to the insurer) and failure to make STRs that should have been made.

Securities

407. The banking secrecy restrictions appear to be an obstacle to the CVM exercising its full supervisory powers. At present, the situation exists in which BACEN can exchange information protected by bank secrecy with its foreign counterparts but not with another Brazilian regulatory body, the CVM. Although CVM has access to all records in the registries kept by the intermediaries, including those related to the clients, CVM does not have access to information protected by the bank secrecy law—i.e., customer identification and bank account information relating to the securities transaction. The new Complementary Law 105 granted the Secretariat of Federal Taxes and Revenue (SRF) and BACEN access to data protected by bank secrecy for enforcement purposes. This power was not directly given to CVM. Access is only granted through the judiciary on a case-by-case basis. This situation often gives rise to difficulties when investigations are carried out.

408. Nevertheless, as a result of the exchange of information between CVM and BACEN, the CVM indirectly benefits, albeit in a limited way, from the powers given to BACEN. The latter may furnish the CVM with bank secrecy information when it forms part of surveys and investigations instigated and carried out by the BACEN, and when the information is such that the BACEN feels obliged to disclose it to the CVM. Thus, there remains some legal controversy on the extent to which the law allows CVM to access data protected by bank secrecy through BACEN.

409. To assist with enforcement of cross-border misconduct, CVM has also developed an electronic link with its Argentine counterpart, named SUNI (Sistema Unificado) that enables each securities commission to see what companies in each country has disclosed to the respective securities commission.

410. Since 2000, the CVM has carried out 90 inspections that included an AML element. These gave rise to 49 enforcement proceedings related to AML compliance, of which 39 have been concluded. The completed proceedings resulted in 25 warnings (involving 65 persons), 2 fines and 4 "not guilty" verdicts involving 13 persons. The situation of persons punished with warning is due to registering failures and the situation of those punished with fine is due to not reporting suspicious transactions

³⁵ See previous footnote.

Currency Exchange

411. Problems have arisen with the consistency and supervision of the non-banking currency exchange facilities. Currently, it seems extremely difficult to supervise the hotels and travel agencies performing these operations, which are outside the financial sector and do not have the will or the means to comply with money laundering legal framework and obligations, posing an increased risk of money laundering. Brazilian authorities have indicated that none of these facilities has filed an STR, and that this could be due to a more limited inspection regime. Brazil has also indicated that in the last three years, 101 licenses of travel agencies and hotels have been revoked by BACEN.

Recommendations and Comments

412. The CVM is seeking to gain access to information protected by bank secrecy and is hopeful of persuading the Ministry of Finance to amend Complementary Law 105/01 to this effect. Such access would be necessary for CVM to effectively fulfil all its supervisory functions and AML responsibilities.

413. It would also commendable to review the legal framework on money exchange to build system that could be more easily and better supervised. BACEN is now in the process of elaborating new licensing procedures in the non-bank currency exchange sector. BACEN intends to apply to travel agencies and hotels authorised to perform retail foreign exchange transactions, internal controls and compliance evaluation procedures similar to the ones applied to banks and brokers, tailored to its size and transactions profile. New authorisations are on hold pending the elaboration of these regulations.

Implications for compliance with FATF Recommendation 26

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|------------------------------------|--|
| Recommendation 26 (first sentence) | Largely compliant. CVM cannot access all information relating to securities transactions, as some information is still protected by bank secrecy, limiting CVM's ability to fully supervise the securities sector. The regime for supervising non-bank currency exchangers appears insufficient. |
|------------------------------------|--|

IX. Cooperation between supervisors and other competent authorities

(compliance with Criteria 65-67 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criteria 97-100 for the banking sector and criteria 118-120 for the securities sector)

DescriptionStructure, staffing and technical resources of supervisors

414. DECIF conducts periodic on-site AML inspections of banks focusing on legal compliance, implementation of AML policies and procedures, the role and organizational position of the money laundering compliance officer, and review of monitoring and reporting systems. DECIF currently consists of nine regional offices, with a head office in Brasília, and a total staff of 229 employees.

415. The Supervision Department of SUSEP (*Departamento de Fiscalização—DEFIS*) consists of 40 inspectors in charge of on-site supervision for money laundering compliance. However, all of SUSEP's departments that in some way deal with market supervision, such as the Economic Control Department (*Departamento de Controle Econômico—DECON*) and the Administration and Finance Department (*Departamento de Administração e Finanças—DEAFI*), are also kept aware of money laundering issues and as a result have filed STRs while carrying out their respective competences.

Co-operation between domestic authorities

416. According the Complementary Law 105, BACEN and the CVM, within their respective jurisdiction, shall provide to the COAF identification information and transactions reports referred in the AML Law. BACEN and CVM shall also provide information requested by Court Order and Parliamentary Inquiry Commissions. Complementary Law 105 also provides for additional co-operation between supervisors.

417. BACEN has also lent expertise to Public Attorney Office and other law enforcement units upon request.

Co-operation with international counterparts

418. According Article 2, Paragraph 4 of Complementary Law 105, BACEN and CVM, within their respective jurisdiction, may sign cooperative agreements with central banks or regulatory entities from other countries, in order to:

- a. Monitor agencies and branches of foreign financial institutions operating in Brazil and agencies and branches of Brazilian financial institutions which are located abroad;
- b. Mutually cooperate and exchange information for the investigation of activities or transactions that involve investment, negotiation, concealment, or transfer of financial assets and securities related to the practice of illicit activities.

419. Law 6385/76 (as amended by Law 10303/01), Article 6, also allows the CVM to “sign agreements with similar entities in other countries, or with international entities, for assistance and co-operation in the investigations related to the breach of regulations pertaining to the securities market occurring in Brazil and abroad.”

420. CVM's Administrative Rules (Portaria MF 327/77), Article 10 indicates that, the “CVM shall, within its authority:... establish relationship with any public or private legal entity, in Brazil or abroad, in order to exchange experience and information, as well as signing agreements.”

421. Information gathered by the CVM and shared internationally may be public or non-public. However, any information or documents obtained by the CVM in the course of its activities of inspection or examination are deemed non-public and confidential, unless they are public by nature. Therefore, the usual way for exchanging information is through an MOUs with foreign counterparts that states that confidentiality of the information provided must be maintained.

422. Through an MOU several types of information may be shared, as follows:

i) Information gathered from regulated persons and entities:

423. CVM has full powers to obtain from regulated entities whatever documents or statements are needed, except those protected by secrecy law. Information to be obtained could include an analysis of most aspects related to the issue under investigation, as well as copies of the documents that support records of financial transactions or settlement of trades by the brokerage firms.

424. MOUs provide the CVM with the necessary authority to exercise its inspection powers over regulated entities. Also, the CVM may assess pursuant to a formal request whether it has instituted any administrative proceedings against a particular individual or entity, without regard to dual criminality.

ii) Information gathered from banks and other non-regulated financial institutions

425. Information obtained through the BACEN on banks and financial institutions not regulated by the CVM may be shared, except those protected by bank secrecy.

426. The CVM currently does not have the authority to inspect or compel the production of information by financial institutions on bank accounts or banking transactions. As the CVM gains additional authority in this area in the future, it will undertake, to the fullest extent possible, to obtain and provide banking information to other securities authorities, provided they have signed a MOU with the CVM.

iii) Information gathered from other persons or entities:

427. The CVM may request that persons located in Brazil testify, produce, or prepare documents on a voluntary basis. Non-voluntary statements may not be taken unless under the conditions established in Article 9-I-g of Law 6385/76.

428. Administrative inquiries (formal investigations) are opened when an actual or potential violation of the Brazilian legislation is detected, most of the time after an inspection or analysis. In these cases, CVM staff submit a confidential recommendation, describing the main evidence of irregularities, to the Superintendent General. If approved, the Commission appoints at least four officials to conduct the investigation, and notifies the persons and entities under investigation.

429. In the event of a suspicion of fraud, manipulation, or failure to register securities, the CVM, after opening an administrative inquiry, is empowered to issue orders to compel the production of testimony to any person(s) participating in the transaction under investigation.

430. A person testifying has the right to withhold potentially self-incriminating testimony and to have a counsel present, but not to confer with the counsel during the testimony. The CVM staff may show documents to the person and question the person with respect to those documents. The person has the right to inspect the official verbatim transcript of the person's own testimony and to obtain a copy of that transcript. A person who is under formal investigation can obtain copies of other documents and transcripts of testimonies as part of the due process of law. Although a formal oath to tell the truth is not generally administered in testimony before the CVM, witnesses are deemed to have a commitment to tell the truth and may be criminally prosecuted for failure to do so.

Analysis of Effectiveness

431. BACEN and SUSEP appear to have adequate structure, staff and technical resources to carry out their AML/CFT functions.

432. Regarding domestic information exchange, there is regular dialogue between BACEN and COAF. In addition, BACEN has sent 59 reports to the Attorney General's Office and 165 reports to COAF.

433. Complementary Law 105 established the basis for information exchange and co-operation by banking and securities supervisors with their overseas counterparts. However, CVM does not have an MOU with BACEN providing for the exchange of bank data (information on financial statements relating to the securities transactions). Although CVM can fully access records through market intermediaries, CVM would need a court order to access bank data under the responsibility of BACEN and thus provide full information to its foreign counterparts.

434. BACEN is a signatory to the Cooperation Agreement among central banks of the MERCOSUR region, which also provides a mechanism to facilitate investigations and information exchange. BACEN has also signed co-operation agreements with United States (FED, OCC), Panama, Cayman Islands, Argentina, and Spain.

435. CVM is a party to international co-operation agreements, both bilateral MOUs with foreign counterparts and multilateral co-operation agreements. The CVM has signed MOUs with twenty-six countries and is negotiating with three others. Brazilian authorities indicated that MOUs have often

been used successfully, for example with Bahamas, Barbados, Canada, Cayman Islands, France, Ireland, Jersey, Portugal, Spain, the United Kingdom, and the United States.

436. The CVM has endorsed the Declaration of Boca Raton (Declaration on cooperation and supervision of international futures markets and clearing organizations). This is a declaration to be considered in parallel with a Memorandum of Understanding signed by more than 50 futures exchanges worldwide, in which the regulators endorse the memorandum, whose purpose is to facilitate and reinforce the exchange of information between the signatories. The CVM has signed the Windsor Declaration (1995), endorsed by the regulators of 16 countries and responsible for the supervision of the main derivatives markets of the world.

437. However, due to national law, CVM may not be able to access and forward bank account information to foreign authorities, limiting CVM's ability to fully co-operate with foreign regulators. Thus, CVM could not sign the IOSCO Multilateral MOU.

Recommendations and Comments

438. The CVM has been making efforts to increase the number of information exchange agreements, as the growth of cross-border securities transactions provokes a growing need to develop ties with authorities elsewhere in order to ensure an adequate level of protection for investors and preserve the integrity of markets.

439. The CVM is seeking specific powers to enhance the information sharing process with foreign agencies in the fullest extent possible, including information that is currently protected by bank secrecy. Brazil should consider giving CVM more complete access to financial information so that it may sign the IOSCO MOU and more effectively exchange information internationally.

Implications for compliance with FATF Recommendation 26

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|--|---|
| Recommendation 26 (second sentence) | Largely compliant. CVM cannot access and exchange information that is currently protected by banking secrecy. |
|--|---|

D. Description of the controls and monitoring of cash and cross border transactions

I. Monitoring cross-border transactions: FATF Recommendation 22 and its Interpretative Note

Description

440. Article 65 of Law 9069/95 requires that all inflows and outflows of domestic and foreign currency be effected through the banking system with proper identification of the sender and the beneficiary. Cash movements of at least BRL 10,000³⁶ shall be recorded using a manner to be prescribed by regulation. BACEN Resolution 2524/98 (issued under Article 65 of Law 9069/95) further specifies that persons transporting domestic or foreign currency in cash, checks or travellers checks of BRL 10,000 or its equivalent in foreign currencies to submit a declaration to the local unit of the Federal Revenue Secretariat (SRF). The SRF oversees customs as well as tax collection and enforcement. Those departing Brazil making a declaration could be for additional documentation to justify the source of funds, such as a similar declaration having been made upon arrival in Brazil. Failure to report is a crime.

441. The form itself, the Declaration of the Transport of Currency (*Declaração de Porte de Valores—DPV*), is prescribed by SRF Normative Instructions 117 and 120 of 1998. The form asks for full name of the traveller, date and place of birth, nationality, identification card or passport number, CPF (for Brazilians), address, method of transport, origin, destination, and type and amount of currency. Forms shall be available in Portuguese, English, and Spanish, and copies of the DPV shall be given to the traveller, the local customs unit, and BACEN.

442. The SRF performs analysis on this information and may investigate potential violations of the law – usually in conjunction with other law enforcement agencies. Although the authority to arrest persons and conduct regular law enforcement investigations is retained by the Federal Police, SRF may seize property or assets that are carried across the border in violation of the law (i.e., contraband or items that are not duly declared in the DPV). SRF may share non-tax related information from the DPVs with COAF by virtue of its membership in the COAF plenary.

Analysis and comments

443. During the first mutual evaluation of Brazil in 1999, statistics were provided for DPVs for 1999 at three major border control points: the airports at Rio de Janeiro and São Paulo and the heavily travelled land crossing at Foz de Iguaçu.

(Statistics in 1999)

| <i>Location</i> | <i>Nº of Reports in 1999</i> | <i>Amount</i> |
|-----------------------------|------------------------------|-------------------|
| Rio de Janeiro | 243 | BRL 10,855,496 |
| São Paulo | 938 | not available |
| Foz de Iguaçu (for cheques) | 1,389 | BRL 699,656,601 |
| Foz de Iguaçu (for cash) | 3,396 | BRL 3,220,157,957 |
| Total Foz de Iguaçu | 4,785 | BRL 3,919,814,558 |

³⁶ USD 3,490.

444. Nevertheless, no additional statistics were available during the on-site visit in 2003. SRF officials indicated that the DPVs were not electronically consolidated and therefore could not be analysed electronically. It was unknown whether BACEN digitises or analyses the copies of the DPVs it receives.

445. The revision of procedures related to national and international transport of currency has been discussed by a specific working group consisting of COAF, BACEN and SRF. As a result of preliminary meetings, the working group members have proposed the implementation of a DPV electronic system, which would allow the definition of passenger risk profiles by checking data with flight passenger lists, their fiscal data and other relevant information.

II. Monitoring large cash transactions: FATF Recommendation 23

Description

446. Pursuant to Article 11 of Law 9613/1998, financial institutions and other reporting parties are required to notify the relevant supervisory authorities, within the term of twenty four hours and without informing the client, of any transactions that exceed the threshold defined by the authority or of any transactions that, based on the instructions issued by the competent authorities, “may represent serious indications of or be related to the crimes referred to in this law.”

447. BACEN Circular Letter 3098 of 11 June 2003 further specifies that financial institutions must register deposits and withdrawals in cash or provisioning for withdrawals equal to or higher than BRL 100,000³⁷ in the Central Bank Information System, with the register being done on the date of the deposit, withdraw or the request of provision for withdraw. Article 2 specifies that the report must contain: name and CPF/CNPJ of the owner or beneficiary of the funds and of the person making the transaction, the name of the financial institution, branch, and account number from which the money is debited or to which the money is deposited, as well as the name and CPF/CNPJ of the relevant account.

448. COAF does not receive these reports directly; however, COAF has direct on-line access to BACEN’s database.

Analysis and comments

449. BACEN and COAF statistics indicated that from the time of the regulation going into effect until 29 October 2003, 17,842 reports had already been filed.³⁸ This appears to be a large number of reports, especially given that the threshold is BRL 100,000, and the fact that Brazilian authorities have indicated that cash does not play a major role in the economy. As the reporting requirement and reports were relatively new, BACEN and COAF had not yet conducted detailed analyses on these reports. Like with BACEN’s database of STRs in SISBACEN, COAF can consult the currency report database within SISBACEN directly and from the moment the transaction is entered into the database.

450. Brazilian authorities should look closely at the database of reports for possible patterns or information that could be useful in combating money laundering and terrorist financing.

³⁷ USD 34,900.

³⁸ According to COAF’s annual report for 2003, BACEN had received 32,608 reports of cash transactions over 100,000 reais as of 31 December 2003.

E. Other relevant AML/CFT measures or issues

451. Under Law 9613/98, COAF is responsible for regulating the entities with anti-money laundering obligations that do not already have a specific monitoring or regulatory agency. COAF has thus issued a series of regulations for the sectors under its supervision. These regulations contain customer identification, record-keeping, reporting procedures indicating that transactions should be reported directly to the COAF, and guidelines for identifying potentially suspicious transactions. Thus far, COAF has issued the following regulations for various sectors:

| | | |
|---------------|-------------------|---|
| Resolution 1 | 13 April 1999 | real estate, including the promotion purchase and sale of such properties |
| Resolution 2 | 13 April 1999 | factoring |
| Resolution 3 | 2 June 1999 | lotteries |
| Resolution 4 | 2 June 1999 | jewelry, precious stones and metals dealers |
| Resolution 5 | 2 July 1999 | bingos |
| Resolution 6 | 2 July 1999 | credit and payment card managers |
| Resolution 7 | 15 September 1999 | commodities exchanges and their brokers |
| Resolution 8 | 15 September 1999 | objects of art and antiques dealers |
| Resolution 10 | 19 November 2001 | cash transfer services |

I. Real estate

452. Under COAF Resolution 1 applies to entities that engage on a permanent or temporary basis in the promotion, purchase, or sale of real estate. Such legal entities that engage transactions that exceed the amount of BRL 50,000.00³⁹ shall record those transactions (Article 4) and maintain the records for at least five years.

453. The customer identifying information on the transaction records must contain, for legal entities: name, name of managers, owners, and controllers; legal form, business registry identification number and CNPJ, complete address. For natural persons, the records must contain: name, date and place of birth, address, number and type of identifying document, and CPF (Article 3). The transaction records shall also contain the information including, the date and value of the transaction, settlement conditions, description and address of the property (Article 5).

454. Article 7 indicates that transactions that might indicate the crimes of money laundering, as set for in the Annex, must be reported to COAF within 24 hours. Such reporting is exempt from any civil or criminal liability. In addition to a general provision to report transaction that might indicate money laundering, the Annex also lists nine specific examples of transactions that should be reported. One of the indicators that must be reported is a cash transaction exceeding BRL 10,000⁴⁰.

II. Factoring companies

455. COAF Resolution 2 of 13 April 1999 deals with the obligations under Law 9613/98, for companies that engage in factoring activities. The factoring companies must identify the contracting companies and maintain records of transactions exceeding BRL 10,000 for at least five years. The records must contain, at a minimum, the following information:

³⁹ USD 17,450.

⁴⁰ USD 3,490.

- qualification of the contracting company: Corporate name; legal form and date of incorporation; Business Registry Identification Number (NIRE) and CNPJ; complete address; and principal activity.
- qualification of the contractor's owner(s), controller(s), manager(s), representative(s), deputy(ies), chief executive officer(s), and chairperson(s): name, sex, date and of birth, nationality, marital status, CPF, identification document number and date of issue, complete address, telephone number; and Principal activity.

456. The records must also contain the name of the factoring company's employee responsible for contracting services and for verifying and conferring the documents presented by the contractor.

457. Article 7 indicates that transactions that might indicate the crimes of money laundering, as set for in the Annex, must be reported to COAF within 24 hours. Such reporting is exempt from any civil or criminal liability. In addition to a general provision to report transaction that might indicate money laundering, the Annex also lists four other specific examples of transactions that should be reported.

III. Lotteries

458. COAF Resolution 3 (modified by Resolution 9) applies to entities that directly or indirectly carry out the distribution of any kind of property (including cash, real estate, and goods), by means of lotteries or similar methods. Such entities shall identify all prize winners and maintain updated records of any delivery and/or payment of prizes with values equal to or higher than BRL 10,000. The records shall contain the description of the prize, its value, and date of delivery or payment. Customer information on the records shall include name, identifying document or passport number, and CPF, and complete residential address.

459. Article 5 indicates that transactions that might indicate the crimes of money laundering, as set for in the Annex, must be reported to COAF within 24 hours. Such reporting is exempt from any civil or criminal liability. In addition to a general provision to report transaction that might indicate money laundering, the Annex also lists four other specific examples of transactions that should be reported. One of the indicators that must be reported is the payment of three or more prizes totalling BRL 10,000 to the same CPF holder within 12 months.

460. The Caixa Econômica Federal, a formerly government-owned financial institution that has now been privatised, has the sole responsibility for paying out winnings at its branches.

IV. Jewelry, precious stones, and metals

461. Pursuant to COAF Resolution 4, individuals or legal entities that engage in the commerce of jewelry, precious stones, and metals shall identify customers and maintain records for at least five years for all transactions that exceed the amount of BRL 5,000 in retail sales and BRL 50,000 in industrial sector sales.

462. The customer identifying information on the transaction records must contain, for natural persons: the records must contain: name, address, number and type of identifying document, and CPF. For legal entities the records must contain: name, CNPJ, address, principal activity, and name of parent, subsidiary or associate entities. The records shall also contain a description of the merchandise, value, form of payment, and transaction date.

463. Article 7 indicates that transactions that might indicate the crimes of money laundering, as set for in the Annex, must be reported to COAF within 24 hours. Such reporting is exempt from any civil or criminal liability. In addition to a general provision to report transactions that might indicate money laundering, the Annex also lists eight other specific examples of transactions that should be reported.

V. Bingos

464. Pursuant to COAF Resolution 5 (modified by Resolution 9), the legal entities that engage in the operation of bingo and/or similar games shall identify all prize winners and maintain updated records of any delivery and/or payment of prizes with values equal to or higher than BRL 2,000.

465. The records must contain information on the type, date, and value of the prize, and the following information on the prize winner: name, identifying number or passport number, CPF, complete residential and commercial addresses, and a representation that the winner is not related to the sporting entity, to the administrator, or to the operator of the bingo. Article 4 has similar identification requirements for the owners, controllers, managers, representatives and operators of bingo companies. The transaction records must also contain information on the prize type, and value and date of delivery.

466. Article 6 indicates that transactions that might indicate the crimes of money laundering, as set for in the Annex, must be reported to COAF within 24 hours. Such reporting is exempt from any civil or criminal liability. In addition to a general provision to report transactions that might indicate money laundering, the Annex also lists 6 other specific examples of transactions that should be reported. Among the indicators that must be reported: cumulative prize winnings by one person exceeding BRL 10,000 in a month, BRL 30,000 in three months, or BRL 60,000 annually.

VI. Credit and payment cards

467. Under COAF Resolution 6, payment and credit card managers must identify their customers, and maintain records of all their transactions for five years. The records must contain information on those involved in the activity for the adequate verification of their identity, the compatibility among the corresponding funds transfers, their economic activity, and their financial standing.

468. A monthly invoice record must contain: the value and date of the transaction, identification of the parties involved in the transaction and their CPF or CPNJ, and an indication of the branch of activity.

469. Article 7 indicates that transactions that might indicate the crimes of money laundering, as set for in the Annex, must be reported to COAF within 24 hours. Such reporting is exempt from any civil or criminal liability. In addition to a general provision to report transactions that might indicate money laundering, the Annex also lists 9 other specific examples of transactions that should be reported.

VII. Commodities and Futures Brokers

470. Pursuant to COAF Resolution 7, commodities exchanges and brokers must identify customers, record all transaction records, and maintain them for at least five years.

471. Records must contain, for natural persons: name, address, telephone number, identifying document or passport number, CPF, and principle activity. For legal persons, the records must contain: name, CNPJ, address, telephone number, principle activity, and name and qualification of legal representatives. The transaction records must also contain: a detailed description of the commodities, the value, date and form of payment.

472. Article 7 indicates that transactions that might indicate the crimes of money laundering, as set for in the Annex, must be reported to COAF within 24 hours. Such reporting is exempt from any civil or criminal liability. In addition to a general provision to report transactions that might indicate money laundering, the Annex also lists 5 other specific examples of transactions that should be reported.

VIII. Arts and antiquities

473. COAF Resolution 8 pertains to dealers in art objects and antiques. These entities must identify customers and record transactions exceeding BRL 5,000.

474. Records must contain, for natural persons: name, address, telephone number, identifying document or passport number, and CPF. For legal persons, the records must contain: name, CNPJ, address, telephone number, principle activity, and name of parent, subsidiary, or associate entities. The transaction records must also contain: a detailed description of the each object, the value, and date and form of payment.

475. Article 7 indicates that transactions that might indicate the crimes of money laundering, as set for in the Annex, must be reported to COAF within 24 hours. Such reporting is exempt from any civil or criminal liability. In addition to a general provision to report transactions that might indicate money laundering, the Annex also lists seven other specific examples of transactions that should be reported. One of the indicators that must be reported is a cash transaction exceeding BRL 10,000.

IX. Private Pension Funds

476. In addition to the sectors regulated by COAF, SPC Normative Instruction 22 of 19 July 1999, was issued by the Secretariat of Complementary Social Security (*Secretaria de Previdência Complementar—SPC*) for the private pension funds, which it supervises. The identification requirement applies to customers of closed pension funds (except where the funds are managed by institutions supervised by BACEN and payments are thus made through those institutions). The entities must record transactions exceeding BRL 10,000 for natural persons and BRL 100,000 for legal entities.

477. Customer identification records shall include, for legal entities: name, names of parent companies, managers and representatives, business registry number and CNPJ, address, telephone number, principal activity, information on net worth and financial standing. For natural persons, the records shall include: name, date and place of birth, identifying document and number, CPF, address, telephone number, principal activity and information concerning net worth.

478. Pursuant to the amendments made to the normative instructions made by SPC Circular 27 of 18 August 1999, the following transactions should be reported to the SPC as suspicious:

- Voluntary contributions to benefits plans, made by participants of amounts that are objectively incompatible with their professional occupation and income, also taking into consideration the total amount of such contributions; and
- Substantial increases in the monthly value of pension fund contributions, with no apparent cause, especially if such contributions are later recovered by the participant within a short period of time.

X. Luxury and high value goods

479. Law 10701/03 further modified Law 9613/98 by include natural persons and legal entities which deal with luxury or high value assets as entities having all the various anti-money laundering obligations under the law.

480. COAF is currently preparing its resolution specifying the requirements for the sector.

F. Ratings of Compliance with FATF Recommendations, Summary of Effectiveness of AML/CFT efforts, and Recommended Action Plan

I. Ratings of Compliance with FATF Recommendations Requiring Specific Action

| FATF Recommendation | Based on Criteria Assessment | Rating |
|---|------------------------------|---|
| 1 – Ratification and implementation of the Vienna Convention | 1 | Compliant |
| 2 – Secrecy laws consistent with the 40 Recommendations | 43 | Largely compliant. Secrecy provisions still limit CVM's ability to supervise the securities sector. |
| 3 – Multilateral cooperation and mutual legal assistance in combating ML | 34, 35, 36 | Compliant. |
| 4 – ML a criminal offence (Vienna Convention) based on drug ML and other serious offences. | 2 | Compliant |
| 5 – Knowing ML activity a criminal offence (Vienna Convention) | 4 | Compliant |
| 7 – Legal and administrative conditions for provisional measures, such as freezing, seizing, and confiscation (Vienna Convention) | 7, 7.1, 7.3, 8, 9, 10, | Compliant |
| 8 – FATF Recommendations 10 to 29 applied to non-bank financial institutions; (e.g., those defined in the Methodology) | | See rating for Recommendations 10, 11, 12 and 15 |
| 10 – Prohibition of anonymous accounts and implementation of customer identification policies | 45, 46, 46.1, 46.2 | Compliant |
| 11 – Obligation to take reasonable measures to obtain information about the beneficial owner | 46.1, 47 | Largely compliant. Obligation should be more clearly defined to require verification of ultimate beneficiary of legal entities for banks. For insurance, obligation to verify identity only for guarantee insurance contracts (regardless of amount), or other payouts exceeding BRL 10,000 ⁴¹ . |
| 12 – Comprehensive record keeping for five years of transactions, accounts, correspondence, and customer identification documents | 52, 53, 54 | Compliant. |
| 14 – Pay special attention to complex, unusual large transactions | 49 | Compliant |
| 15 – If financial institutions suspect that funds stem from a criminal activity, they should be required to report promptly their suspicions to the FIU | 55 | Largely compliant. Securities and insurance STRs are required if from a specific list (without a threshold) or otherwise suspicious (with a threshold of BRL 10,000). |
| 16 – Legal protection for financial institutions, their directors and staff if they report their suspicions in good faith to the FIU | 56 | Compliant |
| 17 – Directors, officers and employees, should not warn customers when information relating to them is reported to the FIU | 57 | Compliant |
| 18 – Compliance with instructions for | 57 | Compliant |

⁴¹ USD 3,490.

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| suspicious transactions reporting | | |
| 19 – Internal policies, procedures, controls, audit, and training programs | 55.1, 58, 58.1, 59, 60 | Largely compliant. No formal audit requirement for AML compliance; rules for adequate screening procedures could also be strengthened. |
| 20 – AML rules and procedures applied to branches and subsidiaries located abroad | 61 | Largely compliant. No specific regulation for foreign branches and subsidiaries of Brazilian financial institutions to apply the Brazilian standards. |
| 21 – Special attention given to transactions with higher risk countries | 50, 50.1 | Compliant |
| 26 – Adequate AML programs in supervised banks, financial institutions or intermediaries; authority to cooperate with judicial and law enforcement | 44, 66 | Largely compliant. CVM cannot access all information relating to securities transactions, as some information is still protected by bank secrecy, limiting CVM’s ability to fully supervise the securities sector. The regime for supervising non-bank currency exchangers appears insufficient. |
| 28 – Guidelines for suspicious transactions’ detection | 17.2, 50.1, 55.2 | Compliant |
| 29 – Preventing control of, or significant participation in financial institutions by criminals | 62, 62.1 | Largely compliant. Specific regulations preventing criminals from holding a significant investment in financial institutions are still required. |
| 32 – International exchange of information relating to suspicious transactions, and to persons or corporations involved | 22, 22.1 | Compliant. |
| 33 – Bilateral or multilateral agreement on information exchange when legal standards are different should not affect willingness to provide mutual assistance | 34.2, 35.1 | Compliant |
| 34 – Bilateral and multilateral agreements and arrangements for widest possible range of mutual assistance | 34, 34.1, 36, 37 | Compliant |
| 37 – Existence of procedures for mutual assistance in criminal matters for production of records, search of persons and premises, seizure and obtaining of evidence for ML investigations and prosecution | 27, 34, 34.1, 35.2, 37 | Largely compliant. Compulsory measures to obtain evidence exist through bi-lateral and multi-lateral treaties covering 9 countries. Brazil can also provide information through “direct assistance” requests; however, the legal framework for this system is unclear and a legal challenge remains. It also appears that in practice “direct assistance” can only be provided pursuant to provisions of a treaty, which would limit Brazil’s ability to provide legal assistance to the fullest extent possible. |
| 38 – Authority to take expeditious actions in response to foreign countries’ requests to identify, freeze, seize and confiscate proceeds or other property | 34, 34.1, 35.2, 39 | Compliant. |
| 40 – ML an extraditable offence | 40 | Compliant |
| SR I – Take steps to ratify and implement relevant United Nations instruments | 1, 34 | Materially non-compliant. Not yet a party to UN Convention on the Suppression of the Financing of Terrorism, although ratification is proceeding through the Brazilian Congress; not yet implemented parts of S/RES/1373 (criminalisation of FT according to the FT Convention, also affects ability to extradite); Uncertainty about how funds could be seized administratively under implementing legislation for UN Resolutions. |
| SR II – Criminalize the FT and terrorist organizations | 2.3, 3, 3.1 | Materially non-compliant. FT is a predicate offence for ML; but Brazil has not yet criminalised the financing of terrorism as an autonomous offence |
| SR III – Freeze and confiscate terrorist assets | 7, 7.1, 7.3, 8, 13 | Materially non-compliant. Existing laws relating to certain acts of terrorist organisations do not fully cover terrorist financing, and no other legal definition of |

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| | | terrorism or terrorist financing, complicating freezing and confiscation mechanisms. Uncertainty how and if the existing regulations to enforce UN Security Council resolutions could be applied. |
| SR IV – Report suspicious transactions linked to terrorism | 55 | Compliant |
| SR V – Provide assistance to other countries' FT investigations | 34, 34.1, 36, 37, 40, 41 | Largely compliant. Generally comprehensive provisions for providing legal assistance through treaties, agreements, or through direct assistance; however the legal framework for direct assistance is unclear. In addition, there is uncertainty regarding Brazil's ability to extradite for all FT offences. |
| SR VI – Impose AML requirements on alternative remittance systems | 45, 46, 46.1, 47, 49, 50, 50.1, 52, 53, 54, 55, 56, 57, 58, 58.1, 59, 60, 61, 62 | Compliant |
| SR VII – Strengthen customer identification measures for wire transfers | 48, 51 | Largely compliant. There should be a more specific requirement to include the CPF/CNPJ (or the customer's address, date of birth, or unique identifying number) in the wire message. |

II. Summary of Effectiveness of AML/CFT efforts for each heading

| Heading | Assessment of Effectiveness |
|---|---|
| Criminal Justice Measures and International Cooperation | |
| I—Criminalization of ML and FT | Legal definition of the ML offence is sufficiently broad; however, there are no available statistics regarding money laundering prosecutions and convictions. It is therefore difficult to assess the effectiveness of the legal provisions. Brazil has not yet effectively criminalised the financing of terrorism or ratified the Terrorist Financing Convention, although the process of ratification is advancing through the Brazilian Congress. |
| II—Confiscation of proceeds of crime or property used to finance terrorism | The legal measures for freezing and confiscating related to ML appear sufficiently broad. However, as there were no available statistics regarding seizures—other than approximately USD 100,000 in drug proceeds—it is difficult to determine the actual effectiveness of the legal measures. The ability to administratively seize funds under the UN resolution without delay is unclear. The ability to seize funds related to FT under the money laundering law is unclear given that there is no comprehensive, autonomous offence for FT. However, Brazilian financial institutions have comprehensively searched all available databases in search of FT assets, although none have yet been found. |
| III—The FIU and processes for receiving, analyzing, and disseminating financial information and other intelligence at the domestic and international levels | COAF has the general legal basis to be an effective FIU. COAF generally functions effectively and serves a useful AML co-ordination role within Brazil. Legislation since the first mutual evaluation (Complementary Law 105 and law 10701/03) has improved COAF's access to information; however, bank and other secrecy provisions could be improved to allow greater access to additional information and documents. |
| IV—Law enforcement and prosecution authorities, powers and duties | Brazil has designated appropriate authorities to combat ML and FT effectively. Law enforcement authorities appear to have adequate access to information and investigative techniques for investigations and prosecutions. The Federal Police have increased the number of ML investigations, although there were not adequate statistics regarding prosecutions and convictions. The newly established specialised federal courts for prosecuting these cases should enhance |

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| | AML efforts. |
| V—International cooperation | <p>The overall system for providing legal assistance related to money laundering and terrorist financing appears to be generally comprehensive. MLA cannot be provided through a letter rogatory; however, MLA can be provided within a written treaty or agreement (currently covering nine countries), or through requests of “direct assistance.” Nevertheless, the legal framework for “direct assistance” is not entirely clear</p> <p>Regarding FT, it is also unclear how Brazil could effectively extradite for all FT offences since dual criminality is required, the current terrorist legislation does not comprehensively cover FT, and Brazil is not yet a party to the FT Convention.</p> |
| Legal and Institutional Framework for All Financial Institutions | |
| I—General framework | Brazil has designated the appropriate competent authorities to supervise financial institutions. Complementary Law has improved one main deficiency identified in the first mutual evaluation report by allowing COAF to receive additional information on STRs. However, bank secrecy also prevents CVM—the securities regulator—from fully accessing information and adequately supervise the sector. |
| II—Customer identification | Anonymous accounts or accounts in fictitious names are not permitted. Requirements for the verification of the identify of the direct customer are comprehensive. There is no direct obligation to take reasonable measures to obtain information regarding the true identity of the person on whose behalf an account is opened for FIs, although FIs are required to verify the identity of the “controller” of legal entities, and this is checked through on-site inspection. A more direct obligation to identify the ultimate beneficiary might be more effective, especially given that Brazilian authorities have indicated that a common money laundering mechanism is to use accounts opened under the names of nominees. For insurance, the identification requirement currently only extends to guarantee insurance (regardless of amount), and to other third-party payments exceeding BRL 10,000 ⁴² . |
| III—Ongoing monitoring of accounts and transactions | The legislation and regulations adequately cover the requirements for increased diligence for unusual or suspicious transactions and transactions involving jurisdictions with deficient AML regimes. Incoming wire transfers containing incomplete originator information would be rejected by the system. |
| IV—Record keeping | Record-keeping provisions are comprehensive. |
| V—Suspicious transactions reporting | STR provisions are generally comprehensive and appear effective. However, the regulations for securities and insurance only require reporting from a list of examples or other suspicious transactions exceeding BRL 10,000. Since enactment of the AML law and regulations, the Central Bank has received nearly 15,000 STRs. There has also been an increasing number of STRs filed by the insurance sector. |
| VI—Internal controls, compliance and audit | FIs are required to have AML programs, including training and compliance officers; however, there is no formal audit requirement for AML purposes or for screening employees. There is also no specific regulation for foreign branches and subsidiary to apply to local (Brazilian) standards, although the Central Bank is signing agreements to allow closer inspection of oversees branches and subsidiaries. |
| VII—Integrity standards | Regulations are generally comprehensive to prevent people involved in certain crimes (such as tax evasion, corruption, or embezzlement) from controlling or managing financial institutions. A regulation to specifically prevent criminals from holding a significant investment in a financial institution is still needed, however. |
| VIII—Enforcement powers and sanctions | Enforcement and sanction authority for supervisors is generally comprehensive and appears effective with the exception of the CVM, where secrecy provisions still prevent full access to information. |

⁴² USD 3,490.

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|---|--|
| IX—Co-operation between supervisors and other competent authorities | Domestic co-operation appears generally comprehensive. However, as it is limited from directly accessing certain information still protected by bank secrecy. CVM cannot adequately co-operate with foreign regulators. For example, Brazil could not sign the IOSCO multilateral MOU. |
|---|--|

III. Recommended Action Plan to Improve the Legal and Institutional Framework and to Strengthen the Implementation of AML/CFT Measures in Banking, Insurance and Securities Sectors.

| Criminal Justice Measures and International Cooperation | Recommended Action |
|---|--|
| I—Criminalization of ML and FT | Brazil should quickly ratify and become a party to the Terrorist Financing Convention. Brazil should also adopt legislation to clearly make the financing of terrorism a criminal offence. Brazil should continue implementation of specialised courts for prosecuting money laundering and other financial crimes. |
| II—Confiscation of proceeds of crime or property used to finance terrorism | Brazil should enhance legal measures to allow authorities to fully seize and confiscate terrorist and terrorist financing- related assets. |
| III—The FIU and processes for receiving, analyzing, and disseminating financial information and other intelligence at the domestic and international levels | Brazil should consider further amending its bank and information secrecy provisions to allow COAF to access all additional information and documentation relating to an STR. |
| IV—Law enforcement and prosecution authorities, powers and duties | Brazil needs to increase the number of money laundering investigations and prosecutions; Brazil should ensure that the new specialised courts and other enforcement agencies are fully resourced. |
| V—International cooperation | Brazil will need to ensure that the system for providing assistance through “direct assistance” requests continues to function effectively; Brazil should consider establishing a stronger legal basis for “direct assistance”. Significantly increasing the number of written agreements in force will also help ensure effective international co-operation. Brazil also needs to make terrorist financing a more comprehensive autonomous offence so as to be able to comply with the dual criminality provisions for granting extradition. Brazil needs to ratify the Terrorist Financing Convention. |
| Legal and Institutional Framework for Financial Institutions | |
| I—General framework | Brazil should further amend Complementary Law 105 to give the CVM direct access to information so as to more adequately supervise the sector. Brazil should also considering amending secrecy provisions to allow greater access to information by authorities without a court order. |
| II—Customer identification | Brazil should consider imposing a clearer obligation to identify the ultimate beneficiary of accounts, especially for legal entities, and for the insurance sector regardless of the amount. BACEN, should continue to carefully monitor the sector to prevent further money laundering using CC-5 and nominee (“ <i>laranja</i> ”) accounts. For wire transfers, there should be a more specific requirement to include the CPF/CNPJ (or the customer’s date of birth, address, or unique identifying number) in the message instruction. |
| III—Ongoing monitoring of accounts and transactions | Provisions are currently compliant. |
| IV—Record keeping | Provisions are currently compliant. |
| V—Suspicious transactions reporting | Brazil should amend its regulations for securities and insurance to require the reporting of all suspicious transactions regardless of a threshold. |
| VI—Internal controls, compliance and audit | Brazil should introduce a more explicit audit requirement for AML compliance. Also, Brazil needs more specific regulations for its foreign branches and subsidiaries of Brazilian financial institutions to apply the Brazilian standards. |

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|---|--|
| VII—Integrity standards | Specific regulations preventing criminals from holding a significant investment in financial institutions are still required. Rules for adequate screening procedures could also be strengthened. |
| VIII—Enforcement powers and sanctions | CVM should be granted more comprehensive direct access to information so as to be able to more comprehensively supervise the securities sector. The regime for supervising hotels and travel agencies conducting foreign exchange should also be strengthened. |
| IX—Co-operation between supervisors and other competent authorities | Brazilian supervisors should continue to pursue information exchange agreements. Brazil should also consider giving CVM more complete access to financial information so that it may sign the IOSCO MOU and more effectively exchange information internationally. |

G. Annex: Relevant Laws and Regulations

The following laws and regulations are compiled in English and available at the COAF website at: www.fazenda.gov.br/coaf/ingles/i_download.htm.

1. Law 9613 of 3 March 1998
2. Complementary Law 105 of 10 January 2001⁴³
3. Law 7560 of 19 December 1986
4. Decree 2799 of 8 October 1998
5. Administrative Rule No. 330 of 18 December 1998
6. COAF Resolution 1 of 13 April 1999
7. COAF Resolution 2 of 13 April 1999
8. COAF Resolution 3 of 2 June 1999
9. COAF Resolution 4 of 2 June 1999
10. COAF Resolution 5 of 2 July 1999
11. COAF Resolution 6 of 2 July 1999
12. COAF Resolution 7 of 15 September 1999
13. COAF Resolution 8 of 15 September 1999
14. COAF Resolution 9 of 15 December 2000
15. COAF Resolution 10 of 19 November 2001
16. COAF Circular Letter 1/2001
17. COAF Circular Letter 2/2001
18. COAF Normative Instruction 1 of 26 July 1999
19. BACEN Circular 2852 of 3 December 1998
20. BACEN Circular 2826 of 4 December 1998
21. CVM Instruction 301 of 16 April 1999
22. SPC Normative Instruction 22 of 19 July 1999
23. SPC Circular 27 of 18 August 18, 1999

Additional laws and regulations in Portuguese are available at the COAF website at www.fazenda.gov.br/coaf/portugues/i_legislacao.htm and/or on file at the FATF Secretariat.

⁴³ Update to the translation of Article 2, Paragraph 6 in Complementary Law 105: “Movimento de valores” was translated in this version as “cash transfer reports.” It should be read as “financial flows.”

SUPERINTENDENCE OF PRIVATE INSURANCE (SUSEP)

CIRCULAR N° 200, OF SEPTEMBER 9, 2002 (Unofficial translation)

This circular addresses the customer identification and record keeping procedures, the list of operations and transactions with meaningful indications of being or being connected to the crimes referred to in Law No. 9613, of March 3, 1998, the reports of financial transactions, and the administrative liability referred to in this Law.

THE SUPERINTENDENT OF THE SUPERINTENDENCE OF PRIVATE INSURANCE (SUSEP), pursuant to item XII of article 10 of SUSEP's Internal Regulations, which was approved by Resolution CNSP No. 6, of October 3, 1988, the provisions in articles 10, 11, 12, and 13 of Law No. 9613, of March 3, 1998, and the information of SUSEP Administrative Proceeding No. 10.006562/01-93,

HAS RESOLVED:

Article 1 To address the customer identification and record keeping procedures, the list of operations and transactions with meaningful indications of being or being connected to the crimes referred to in Law No. 9613, of March 3, 1998, the reports of financial transactions, and the administrative liability referred to in this Law.

Article 2 The provisions in this Circular shall apply to the Insurance Companies, Capitalization Companies, Private Pension Funds, Insurance Brokers, Capitalization Brokers, Private Pension Fund Brokers, Local Re-insurers, Representative Offices of Authorized Re-insurers, and Reinsurance Brokerage Houses.

CHAPTER I

CUSTOMER IDENTIFICATION AND RECORD KEEPING

Article 3 The individuals and the legal entities referred to in article 2 shall keep identification information on their customers, and their customers' beneficiaries and representatives, and they shall also keep a copy of the documents on which that information is based, with no prejudice to what is prescribed in specific regulation issued by the National Council of Private Insurance (CNSP) or by SUSEP.

Paragraph 1 The identification information shall contain, at minimum, the following information:

I – In the case of a natural person:

- a) Complete name;
- b) Inscription number in the Natural Persons Registry (CPF/MF-taxpayer identification number);
- c) b) Type and number of identification document, name of the issuing institution, and date of issuance; and
- d) Complete address (street, number, district, city, State, ZIP code), area code and telephone number; e) Professional occupation.

II – In the case of a legal entity:

- a) Corporate name;
- b) Principal activity;
- c) Inscription number in the National Registry of Legal Entities (CNPJ-taxpayer identification number);

- d) Complete address (street, number, district, State, ZIP code), area code and telephone number.

Paragraph 2 The individuals and the legal entities referred to in article 2 are responsible for keeping exact and updated registering information of their clients, including their beneficiaries and representatives.

Paragraph 3 The individuals and the legal entities referred to in article 2, with no prejudice of what is referred to in Paragraph 2, may sign agreement or contract with financial institutions, or database management companies, which have registries with information and/or documents which are in attendance to what is prescribed in this article.

Paragraph 4 The use of the registry prescribed in Paragraph 3 is conditioned on its presentation every time it is requested by SUSEP.

Paragraph 5 The information and the documents referred to in article 3 will be requested as follow:

I – in case of insurance commercialized through tickets, DPVAT insurance, collective insurance of closed policy related to employee/employer, collective insurance of opened policy commercialized through banks or credit card administrators, collective insurance of opened policy with monthly prize of at maximum R\$ 20 (twenty reais):

- a) at the instant of the payment of the loss or of the reimbursement of the prize through cancellation, when the amount is at maximum R\$ 10,000 (ten thousand reais): registering information;
- b) at the instant of the payment of the loss or of the reimbursement of the prize through cancellation, when the amount is higher than R\$ 10,000 (ten thousand reais): copies of registering information and documents.

II – in case of collective insurance of opened policy with monthly prize higher than R\$ 20 (twenty reais):

- a) at the instant of the underwriting: registering information of the insured;
- b) at the instant of the payment of the loss or of the reimbursement of the prize through cancellation, when the amount is at maximum R\$ 10,000 (ten thousand reais): registering information;
- c) at the instant of the payment of the loss or of the reimbursement of the prize through cancellation, when the amount is higher than R\$ 10,000 (ten thousand reais): copies of registering information and documents.

III – in case of guarantee insurance:

- a) at the instant of the underwriting: copies of registering information and documents of the involved parties.

IV – in other cases of products of insurance:

- a) at the instant of the underwriting: registering information;
- b) at the instant of the payment of the loss, of the redemption, or of the reimbursement of the prize through cancellation, when the amount is higher than R\$ 10,000 (ten thousand reais): copies of documents.

V – in case of products of complementary social security: at the instant of underwriting: registering information of the insured;

- a) at the instant of the payment of the redemption or of the benefit, when the amount is at maximum R\$ 10,000 (ten thousand reais): registering information;

- b) at the instant of the payment of the redemption or of the benefit, when the amount is higher than R\$ 10,000 (ten thousand reais): copies of registering information and documents.

VI – in case of capitalization securities PU and PM of at maximum R\$ 100 (one hundred reais): at the instant of the payment of the draw or of the redemption, involving one or more securities, when the amount is higher than R\$ 10,000 (ten thousand reais): copies of registering information and documents;

VII – in other cases of products of capitalization:

- a) at the instant of the underwriting: registering information: at the instant of the payment of the draw or of the redemption, when the amount is higher than R\$ 10,000 (ten thousand reais): copies of documents.

Paragraph 6 In case of benefits or indemnities payable through income, it is considered, with the purpose of verification of the amounts referred to in Paragraph 5, the amount corresponding to the current value of the considered income.

Paragraph 7 In case of co-insurance, only the leader insurance company is obliged to keep the information and documents referred to in this article.

Article 4 The individuals and legal entities referred to in article 2 shall keep records and files of the documents that attest all of the payments of indemnity, draw or redemption of capitalization securities, social security benefits, reimbursement of prizes through cancellation, and any other operation carried out, in national or foreign currency, as well as transactions with securities, credit securities, metals, or any asset convertible into cash, when the amount of operation is equal to or higher than R\$ 10,000 (ten thousand reais).

Sole Paragraph The provisions in this article shall apply to the transactions which are made in the same calendar month, with the same individual, conglomerate or group, and for an aggregate amount that surpasses the limit specified above.

Article 5 The records, registries and documents referred to in articles 3 and 4 shall be kept at SUSEP's disposal for a minimum period of five years, beginning on the date the transaction is concluded or when the transaction is closed down.

CHAPTER II

SUSPICIOUS ACTIVITIES

Article 6 The activities or the situations mentioned below may indicate the occurrence of the crimes defined in Law No. 9613, of March 3, 1998:

I – Situations related to the activities performed by the individuals or legal entities mentioned in article 2:

- a) Sudden increases in revenues without an apparent cause;
- b) Sudden and apparently unjustified changes in the form of fund transfers and/or in the type of transactions used;
- c) Financial or commercial transactions with persons residing or domiciled in the “non-cooperative countries” mentioned in the list published by SUSEP or in locations where the practice of the crimes defined in Law No. 9613/1998 is customary;
- d) Payments of redemptions, commissions, indemnities, premiums, or contributions which are not included in the plan of benefits, in insurance or reinsurance coverage contracted, or in the issuance of capitalization securities;

- e) The use of intermediaries when they are not necessary for the execution of the transactions;
- f) The intermediaries present proposals which are different from the ones previously agreed upon with the customers;
- g) Purchases, sales, and rental of properties or assets for a value significantly higher or lower than market prices;
- h) Transactions that involve customers who do not reside in Brazil;
- i) Records are not kept on the transactions performed; or
- j) Renovations of contracts made without customers' knowledge and/or consent;

II Situations related to the activities of the Insurance and Reinsurance Companies:

- a) To overvalue the indemnities to be paid for losses;
- b) To overvalue the amounts insured;
- c) Indemnity payments for losses for which there are no documented evidence of their occurrence;
- d) The issuance of a policy whose risk has already occurred;
- e) The issuance of a policy to the coverage of nonexistent assets or persons;
- f) The issuance of a policy to the coverage of a dead person;
- g) The registration of losses before their actual occurrence;
- h) Payments of indemnities which are not included in the insurance policy coverage;
- i) Payments of indemnities to third parties, not appointed as beneficiaries or acknowledged as legitimate heirs because of legislation in force;
- j) Payments of indemnities of amounts higher than the capital declared in the policy;
- k) Payments or receipts of remunerations which have no connection with the commercial premiums established by the Company;
- l) Abnormal loss events.

III – Specific situations related to the activities of the Capitalization Companies:

- a) Draws which are manipulated on behalf of specific holders;
- b) Holders who are awarded prizes two or more times in an amount higher than R4 10,000 (ten thousand reais);
- c) Transfers of ownership of assets drawn; or
- d) The trading of closed series.

IV – Specific situations related to the activities of the Private Pension Funds:

- a) Loans are granted to nonexistent or dead participants;
- b) Pension plans are made on behalf of nonexistent or dead persons; or
- c) Customary grants of loans which are not paid back.

V – Acts of shareholders or managers:

- a) Acquisitions of shares of stocks or capital increases made by persons that do not have the compatible net worth;
- b) Financial or commercial transactions carried out in the “non-cooperative countries” mentioned in the list published by SUSEP or locations where the practice of the crimes defined in Law No. 9613/1998 is customary; or
- c) Designation of managers who are resident in the “non-cooperative countries” mentioned in the list published by SUSEP or locations where the practice of the crimes defined in Law No. 9613/1998 is customary.

VI – Acts of customers:

- a) Early cancellations of policies with the reimbursement of the premiums to the insured parties without a clear purpose or in circumstances which are apparently unusual, especially when the payments are made in cash or the reimbursements are made on behalf of third parties;
- b) Individuals that make their identification difficult;
- c) Foreign customers contract services rendered by the individuals and legal entities referred to in article 2, when there is no justification for them not to contract these services in their countries of origin;
- d) Insurance proposals for the coverage of assets which are known to be directly or indirectly related to the crimes defined in article 1 of Law No. 9613/1998;
- e) Proposals which diverge from the profile of the issued parties;
- f) Proposals which diverge from the normal conditions of the market because of the profile of the insured parties or where brokers act;
- g) The same insured parties contract several policies of small values, followed by cancellation with reimbursements of the respective prizes;
- h) Indications of beneficiaries who apparently are not related with the insured parties;
- i) Business holders change immediately before a loss event;
- j) High premiums are paid in cash;
- k) Overpayments of premiums with the subsequent requests for the reimbursement of the difference; or
- l) Payments of premiums with checks or money orders of persons other than the insured parties.

CHAPTER III

TRANSACTIONS REPORT

Article 7 The individuals and legal entities referred to in article 2 shall report to the Superintendence of Private Insurance, within twenty-four hours beginning on their verification, the following events:

I – All the transactions included in article 4, which, due to their features concerning the parties involved, amounts, form of execution, types of instruments used, or the lack of economic or legal grounds, may represent serious indications of the crimes defined in Law No. 9613/1998;

II Transactions or proposed transactions included in article 6 of this Circular.

Paragraph 1 The individuals and legal entities shall make the reports referred to in this article through the form available at SUSEP's Web site (www.susep.gov.br), abstaining from informing their customers of this reporting.

Paragraph 2 Reports made in good faith, pursuant to paragraph 2 of article 11 of Law No. 9613/1998, shall not generate any civil or administrative liability to the individuals and legal entities referred to in article 2, as well as their controllers, managers, and employees.

Article 8 The individuals and legal entities referred to in article 2 shall develop and implement internal control procedures for the detection of transactions that indicate the occurrence of the crimes defined in Law No. 9613/1998, by promoting the adequate training of their employees.

Sole Paragraph A manager responsible for the compliance with the obligations established hereby shall be appointed.

CHAPTER IV

ADMINISTRATIVE RESPONSIBILITY

Article 9 The individuals and legal entities referred to in article 2, as well as their managers, that fail to comply with the provisions of this Circular shall be subject to the sanctions set forth in article 12 of

Law No. 9613/1998, which shall be applied together or separately by the Superintendence of Private Insurance (SUSEP), pursuant to the Annex to Decree No. 2799, of October 8, 1998.

CHAPTER V

GENERAL PROVISIONS

Article 10 The individuals and legal entities referred to in shall conclude, in a period of ninety days, beginning from the date of the publication of this Circular, the adjustment of their registries to what is established in article 3.

Article 11 This Circular shall come into force on the date of its publication.

Article 12 This Circular revokes SUSEP Circular No. 187, of May 3, 2002.

Rio de Janeiro, September 9, 2002.

HELIO OLIVEIRA PORTOCARRERO DE CASTRO
Superintendent

SUPERINTENDENCE OF PRIVATE INSURANCE (SUSEP)

CIRCULAR 74, OF JANUARY 25, 1999

Unofficial translation

This Circular establishes periods of time to keep documents and to store data by Insurance Companies, Capitalization Companies, Private Pension Funds, Insurance Brokers, Capitalization Brokers, and Private Pension Fund Brokers, concerning any subscribed contract.

THE SUPERINTENDENT OF THE SUPERINTENDENCE OF PRIVATE INSURANCE (SUSEP), pursuant to Article 36, item “b”, of Decree-Law No.73, of November 21, 1966, based on the Brazilian Civil Code (Law No. 3.701, of January 1, 1916) and on the Customer’s Defense Code (Law No. 8.078, of September 11, 1990), and the information of SUSEP Administrative Proceeding No. 15414.003214/97-21, of July 18, 1997,

HAS RESOLVED:

CHAPTER I – PURPOSE

Article 1 The Insurance Companies, Capitalization Companies, Private Pension Funds, Insurance Brokers, Capitalization Brokers, and Private Pension Fund Brokers shall keep register of all information concerning the contracts carried out by them, at minimum, for the period of prescription or for what is established in this Circular, the one which is longer.

CHAPTER II – DEFINITIONS

Article 2 For the purposes of the provisions of this Circular, it is considered documents related to subscribed contracts:

I – related to capitalization securities: application; general conditions; title; document of redemption request; document of holding transfer; approval dispatch of the plan issued by SUSEP,

II – related to insurance contracts: application; application-card; health declaration; policy; ticket; insurance certificate; general, special and private conditions; contractual additives and contractual endorsements; notice of loss and its respective evidential documents; correspondences between the parties in the contract and, in case of life insurance contract, also documents related to:

- a) criterion and components of the calculation basis of financial excesses, once contracted, contemplating, among others, the specification of guarantor assets considered by type, nature, issuer, expiration, as the case may be, amount, date and value of the acquisition, cost in basis date of the excess calculation, market value in the same basis date and way of verification and schedule of the calculation of the final consolidated profitability of guarantor assets, taken as the parameter to the comparison with the guaranteed remuneration rate;
- b) generating events of redemptions and transfers, totally or partially, of funds from mathematical reserves and of the calculation of the respective value;
- c) generating events of the benefits and of the calculation of the respective value; and
- d) criterion and components the calculation basis of technical excesses, once contracted.

III – related to social security contracts: application; regulation; adhesion contract; additive terms, certificate of participant, approval dispatch of the plan issued by SUSEP and evidential documents related to:

- a) criterion and components of the calculation basis of financial excesses, once contracted, contemplating, among others, the specification of guarantor assets considered by type, nature, issuer, expiration, as the case may be, amount, date and value of the acquisition, cost in basis date of the excess calculation, market value in the same basis date and way of verification and schedule of the calculation of the final consolidated profitability of guarantor assets, taken as the parameter to the comparison with the guaranteed remuneration rate;
- b) generating events of redemptions and transfers, totally or partially, of funds from mathematical reserves and of the calculation of the respective value;
- c) generating events of the benefits and of the calculation of the respective value; and
- d) criterion and components the calculation basis of technical excesses, once contracted.

Sole Paragraph It is included in the list of information to be kept by companies the technical actuarial report of the plan and the number of its respective administrative proceedings in SUSEP, as well as the generating data of the rates used to the setting of prices of the insurances and the social security plans.

CHAPTER III – THE FILING OF DOCUMENTS AND DATA

Section I – Capitalization Securities and Insurance Contracts

Article 3 The minimum period of time to keep the original documents related to capitalization securities is twenty years, beginning on the date of the end of their validity or when there is a redemption, the one which is longer.

Article 4 The minimum period of time to keep the original documents of insurance contracts of assets is five years, beginning on the date of the end of the contract validity or the period of prescription, the one which is longer.

Article 5 The minimum period of time to keep the original documents of insurance contracts of persons with direct liabilities or those contracts whose effective beneficiaries are not the own insured is, at minimum, twenty years, beginning on the date of the end of the contract validity.

Article 6 The information concerning all values related to insurance contracts and capitalization securities shall be kept, in the current currency of the considered period, during the period of the contract validity.

Sole Paragraph The registries referred to in the *caput* shall be kept for a minimum period of twenty years, beginning on the date of the end of the contract validity.

Section II – Social Security Contracts

Article 7 The minimum period of time to keep the original documents related to social security contracts is twenty years, beginning on the date of the end, by any cause, of the contract validity.

Sole Paragraph The registries referred to in sub-items 5.1.1, 5.1.2, 5.1.3, 5.1.4, and 5.2.1 of the Annex Rules of SUSEP's Circular No. 53, of June 20, 1998, shall be kept for the same period of time defined in the *caput*, not only by Private Pension Funds, but also by Insurance Companies authorized to operate in pension fund sector.

CHAPTER IV – FILING IN CASE OF ADMINISTRATIVE OR JUDICIAL PROCEEDINGS

Article 8 For the purposes of counting the periods of time established in this Circular, it shall not be considered the periods in which there is any proceduring of administrative or judicial proceedings.

CHAPTER V – MEANS OF DOCUMENTS FILING

Article 9 The Insurance Companies, Capitalization Companies, Private Pension Funds, Insurance Brokers, Capitalization Brokers, and Private Pension Fund Brokers shall keep in their respective files, for the period of time defined in this Circular, the original or microfilmed copies of the documents related to subscribed contracts originated from their operations.

Sole Paragraph With no prejudice of filing original documents or microfilmed copies established in caput, it is optional, with the purpose of supervision in the scope of SUSEP, the adoption of filing procedure of the documents mentioned in any means of electronic or magnetic record, in telecommunications system or equipment or other similar equipments, since such files may be promptly accessed by the Supervision Department which will check, when it is considered necessary, the deadline to present the original documents.

Article 10 This Circular shall come into force on the date of its publication.

HELIO OLIVEIRA PORTOCARRERO DE CASTRO
Superintendent

SECURITIES AND EXCHANGE COMMISSION (CVM)
INSTRUCTION Nº 387, DATED APRIL 28, 2003

Establishes standards and procedures to be followed in the securities and exchange transactions on the floor and in electronic trading and registration systems in the stock exchange and in the future and commodities exchange and other provisions.

THE CHAIRMAN OF THE SECURITIES COMMISSION - CVM, makes it public that the Board, in a meeting that took place on April 25th, 2003 based on paragraphs "a" and "c" subparagraph II from article 18 of Law# 6.385, dated December 7, 1976, have thereby RESOLVED to issue the following Instruction:

SCOPE AND PURPOSE

First Article – This Instruction establishes standards and procedures to be followed in securities and exchange transactions on the floor and in electronic trading and registration systems in the stock exchanges and in the future and commodities exchanges.

DEFINITIONS

Second Article - For the effects of this Instruction it is considered:

- I – Exchange(s): stock exchange(s) and future and commodities exchange(s), indistinctively;
- II – Securities Brokerage House: a company qualified to trade or register transactions with stocks on its own or on behalf of third parties on the Exchange and on organized counter companies;
- III – Commodities Brokerage House: a company qualified to negotiate or register transactions with securities traded in the futures and commodities exchange;
- IV – Brokerage House(s): indistinctively, includes securities brokerage and commodities brokerage houses;
- V – Special Operator: a natural person or company bearer of futures and commodities exchange securities, qualified to work on the floor and in the electronic trading and registration systems, trading on his own and on behalf of brokerage houses, authorized by the exchange;
- VI – Organized Counter Companies: legal person that manages securities electronic trading and registration systems
- VII – Committeeperson or Client: a natural or legal person, and an entity on behalf of which the securities transactions are carried out;
- VIII – Clearing House: a house or a service rendered for the register, clearing of operations with securities, integrating the Brazilian Payment System – SPB;
- IX – Clearing House Member or Clearing House Agent: a legal person, financial institution or similar, responsible before the ones that it render services and before the clearing house for the clearance of transactions with securities under its responsibility;
- X – Order: act before which the client orders a brokerage house to either buy or sell securities, or register operations, in its name or in the conditions that he specifies;
- XI - Offer: act before which the brokerage house or special operator divulges or registers the intention to buy or sell securities;
- XII – Participant with Direct Clearance: financial institution bearer of a title of Clearing House Member that carries out and clears operations either for its own portfolio or for funds that it manages.

RULES OF CONDUCT

Third Article – The Exchanges shall establish rules of conduct to be observed by the brokerage houses in the relation with its clients and other market participants, meeting the following principles:

- I – probity in carrying out activities;
- II – zeal for the market integrity, including the selection of clients and the requirements for guarantees deposits;
- III - diligence in the fulfillment of orders and in the specification of committeepersons;

IV – diligence in the control of clients’ positions in the custody, with the periodic reconciliation between:

a) Executed orders;

b) Constant positions in statements and abstracts supplied by the entity rendering the custody services; and

c) Positions supplied by clearing houses;

V – training for the fulfillment of activities;

VI – duty to obtain and present to its clients the information needed to the fulfillment of orders, including the risks involved in market transactions;

VII – adoption of measures in the sense of avoiding transactions in situations of conflicts of interests and assure an equal treatment to its clients; and

VIII – supply its clients, on time, with the documentation of transactions made.

§ 1st The rules of conduct treated herein shall be put to the disposal of the clients before the beginning of its operations and obligatorily delivered whenever asked for.

§ 2nd The rules of conduct referred to in this article shall be sent to CVM with a minimum advance of 30 (thirty) days of its implementation for approval.

§ 3rd The Exchanges are responsible for the auditing of the brokerage houses regarding the compliance with the principles referred to on paragraphs I to VIII of this article.

RESPONSIBLE DIRECTOR

Fourth Article – The Brokerage Houses shall indicate, to the Exchange to which they are associated and to the CVM, a statutory director, who will be responsible for the compliance with the dispositions herein.

Sole Paragraph. The director referred to in the *caput* shall, in his/hers auditing activities of the procedures established in this Instruction, be careful and diligent as all active and honest man/woman shall be in the management of his/her own business.

CURRENT ACCOUNTS

Fifth Article – The Brokerage Houses shall keep registers of all financial operations of its clients’ current accounts that cannot be accessed by checks.

RULES OF ACTION

Sixth Article – In compliance with the disposition of this Instruction, as well as the standards issued by the Exchanges, the Brokerage Houses and the other participants in the market that act directly on their locations or trading and registration systems and shall establish and submit to the previous approval of the Exchanges, the rules and related parameters of actions, at least:

I – to the type of orders, the time of its delivery, issuing form, term of validity, procedures of refusal, registration, fulfillment, distribution and canceling; and

II – to the form and the criteria to the compliance with the orders received and the distribution of the transactions done.

§ 1st the rules referred in the *caput* of this article shall be available to the clients before the beginning of its operations and delivered whenever requested.

§ 2nd The registering of the orders in the brokerage house shall contain the client’s identification that have issued them, and shall have a sequential unified numbering control organized in a chronological way.

§ 3rd The register system set forth on 2nd paragraph can be substituted by a recording system that records all the dialogs between the clients, the brokerage house and its floor operators, accompanied of a registration of all the executed orders in the ruling terms to be printed by the Exchanges and subject to the previous approval on the part of CVM.

Seventh Article – The participant with direct liquidation shall transmit its orders from its own portfolio apart from the orders issued by the funds administrated by it.

Sole paragraph. The participant with direct liquidation shall keep, before the futures and commodities exchange, identification codes to register, separately, the operations done through its own portfolio and the ones by the funds administrated by it.

Eighth Article - Brokerage houses can follow orders for their own portfolio or for portfolios of their clients, being optional, through a specific contract, for them to contract other brokerage houses for its accomplishment, by observing the provisions of articles 9th and 12th.

§1st Commodities brokerage houses can contract special operators, through a specific contract, in order to follow orders for their own portfolio or for their clients' portfolios.

§2nd If there is competition between orders, the priority for accomplishment should be determined through a chronological criteria, being that orders of clients who are not people entailed to the brokerage house should always have priority in relation to the ones issued by people who are so.

§3rd Only orders subject to accomplishment at the moment a business is effected, i.e., those which price specified by the client is compatible with the market price, will compete for their distribution.

REGISTER AND DOCUMENTATION OF CLIENTS IDENTIFICATION AND SPECIAL OPERATORS

Ninth Article - Brokerage houses shall register their clients, by keeping them updated.

§ 1st Brokerage houses shall, also, supply exchanges and clearinghouses, by following a standard defined by them, the basic register data of each client, in a way as to allow their perfect identification and qualification.

§ 2nd It is the responsibility of the participant with direct settlement to maintain the register of funds managed by him/her, in the way set forth in articles. 10th, 11th and 12th of this Instruction.

Tenth Article - The register mentioned by the *caput* of the previous article shall contain, at least, the information set forth in §1st of art. 3rd of CVM n^o 301 Instruction, dated April 16, 1999.

§ 1st In the case of a quota holder of one or more investment clubs whose consolidated balances of applications, in the same administrator, are inferior to R\$ 10.000,00 (ten thousand Reais), it is allowed the maintenance of a simplified register in the terms defined by the exchange where the club is registered, being the responsibility of the self-regulating body, the creation of control mechanisms to guaranty the fulfilment of the provisions of this paragraph.

§ 2nd The elaboration and maintenance of registers of institutional clients and financial institutions can, through the CVM's approval, be accomplished in a centralized way by exchanges, entities of the organized OTC market and clearing houses.

§ 3rd In the case of non-resident investors and institutional investors, resident or not, the register shall additionally contain the names of people authorized to issue orders and, depending on the case, the administrators of the institution or those responsible for the administration of the portfolio, as well as the legal representative or the person in charge of the custody of their securities.

§ 4th Brokerage houses can only alter the address consisting of the register through Express and written order of the client, followed by the correspondent proof of address.

§ 5th Brokerage houses are allowed to keep the register of their clients with a computerized system, as long as provisions contained in this Instruction are observed.

§ 6th In case the institution is part of a financial conglomerate, it will be admitted the maintenance of a single register of clients, being allowed the maintenance of complementary information of clients of the brokerage house in its own premises, as long as the provisions contained in this Instruction are observed, and the remote access to register data is assured by electronic media or instantaneous access system, also when requested by CVM.

§ 7th It is understood as single register of clients, the storage of all and any register information or documentation for the use in shared mode among the members of the financial conglomerate.

§ 8th Through CVM's previous approval, in the case of special operations in exchange, as considered those preceded by funding of low value pulverized orders by means of bank agencies or in their domestic premises, register data will be filed in the brokerage house or in the distributor, being not necessary, under this hypothesis, the register in exchange systems.

§ 9th It will be a condition for the exam by CVM of the petition relative to special operations mentioned in the previous paragraph, the prevision in relation to the responsibility and way of compensating clients in the hypothesis of damage resulting from operations.

§ 10th. Operations referred to by paragraphs 8th and 9th will be registered in the exchange where they are made in a special account under the name of the mediating institution.

Art. 11. The register, or document attached to it, mentioned by the *caput* of art. 9th, shall be considered a declaration, dated and signed by the client or, if it is the case, by a duly constituted solicitor, that:

I – information supplied for the filling out of register are true;

II – he/she is committed to inform, in the term of 10 (ten) days, any alteration that should occur in his/her register data;

III – operates on his/her own, and if authorizes or not the transmission of orders by duly identified representative or solicitor;

IV – operates through a third part, in the case of administrators of investment funds and of managed portfolios;

V – he/she is, or not, a person entailed to the brokerage house, in the terms of art. 15 of this Instruction;

VI – he/she is not hindered from operating in the securities market;

VII – through express option, if it is the case, his/her orders will be exclusively transmitted in written;

VIII – he/she acknowledges the provisions of this Instruction, and of the rules and parameters of performance of the brokerage house;

IX – he/she acknowledges the norms related to the guaranty fund, and the operational norms edited by the exchanges and by the clearing house, which shall be available in the pages of the respective institutions in the world computer network; and

X – he/she authorizes the brokerage houses, in case there are undecided debts in his/her name, to liquidate, in an exchange or in a clearing house, the contracts, rights and assets acquired on his/her own decision, as well as to execute goods and rights given in guaranty for his/her operations, or that are held by the brokerage company, then applying the result of the sale in the payment of undecided debts, regardless of judicial or extra judicial notification.

Art. 12. Brokerage houses should institute procedures of control that are adequate to proof the compliance with the provisions of arts. 9th and 10th.

§ 1st Brokerage houses shall keep all documents related to the operations with securities, as well as, when existing, the integrality of recordings mentioned in § 3rd of art. 6th of this Instruction, in its headquarters or in the headquarters of the financial conglomerate they belong to and at the disposal of CVM, exchanges and clients, for the term of 5 (five) years, to be counted from the date operations are made; it is admitted the presentation, in substitution of the original documents, of the respective images by means of digitalization system.

§ 2nd CVM can determine the increase of the term previewed in the previous paragraph for those documents and recordings it specifies.

PROHIBITIONS

Art. 13. It is prohibited:

I – to brokerage houses:

a) to use collective current accounts, except for the cases of joint accounts with up to 2 (two) holders;

b) to accept or follow orders of clients that are not previously registered; and

c) to use, in the special activities of the securities distribution system members, people not belonging to this system, or even to allow the execution of mediation activities or brokerage by people that are not authorized by CVM for this end;

II – to special operators, to follow orders directly issued from brokerage houses clients.

Sole paragraph. It is admitted, if dealing with institutional clients or financial institutions, the lack of signature in the register card for up to 20 (twenty) days, to be counted from the first operation ordered by these clients.

Art. 14. Brokerage houses and remaining securities distribution system members can only accept purchase and selling orders or make transfers of securities transmitted by proxy, if the solicitors are identified in the register documentation as constituted solicitors.

Sole paragraph. It will be the responsibility of clients to inform the possible revocation of the mandate.

OPERATIONS DONE BY ENTAILED PEOPLE AND BY SPECIAL OPERATORS

Art. 15. People entailed to a given brokerage company can only negotiate securities on their own, direct or indirectly, through the society they are entailed to.

§ 1st It will be considered as entailed people:

I - administrators, employees, operators, and representatives of the brokerage house;

II – autonomous agents;

III – remaining professionals who keep, with the brokerage company, a contract of services rendering directly related to the activity of intermediation;

IV – partners or stockholders of the brokerage house, natural persons;

V – partners, stockholders, and societies directly or indirectly controlled by the brokerage house, legal entities, except financial institutions and institutions similar to them;

VI – consort or companion and minor children of people mentioned in subparagraphs I to IV.

§ 2nd are equaled to the operations and orders accomplished by people entailed to the brokerage house, for the effects of this Instruction, those related to the brokerage house portfolio.

§ 3rd People that, in the terms set forth in subparagraphs II, III, IV and VI of § 1st, are entailed to more than one brokerage house, shall negotiate securities exclusively through one of the brokerage houses they are entailed to.

§ 4th It will be also considered as entailed people, investment clubs and funds whose majority of quotas belongs to entailed people who have power to influence the negotiation decisions of the administrator.

Art. 16. Special operators can negotiate directly in bidding and in electronic trading and registration system, and can only register their operations through the compensation member they are entailed to through contract.

TRANSFER OF OPERATIONS

Art. 17. It will be the responsibility of the exchanges, the establishment of rules and procedures for the transfer of operations accomplished in any of their systems.

§ 1st Rules mentioned in the *caput* of this article shall set forth, among others, the procedures of constitution of the transfer bond, and the way of identifying and registering operations originated by them.

§ 2nd Rules mentioned in the *caput* of this article shall be submitted to CVM for approval, with a minimum of 30 (thirty) days previous from their implementation.

§ 3rd In the case the CVM does not manifest in the term of 30 (thirty) days from the reception of the rules mentioned in the *caput* of this article, they will be considered as approved.

§ 4th In any case, the transfer will be allowed only when there is a specific contract between brokerage houses and, if it is the case, special operators involved.

TYPES OF ORDER

Art. 18. Exchanges should regulate the types of orders and offers accepted in their premises or negotiation systems, in a specific norm submitted to the CVM previous approval, by observing the provisions of arts. 6th and 8th.

Sole paragraph. In case CVM does not manifest in the term of 30 (thirty) days from the reception of rules mentioned in the *caput* of this article, they will be considered as approved.

PAYMENTS AND RECEIVING OF VALUES BY THE BROKERAGE COMPANY

Art. 19. Whenever brokerage houses make payments to their clients in relation to operations accomplished, they shall make that the following information consist of the according documents:

I – the number of the current account of the client in the brokerage company or with the intermediary; and

II – when in check, the numbers of the current account and the check, its value, name(s) of beneficiary(ies), drawer, and withdrawn bank, with indication of the agency and stripes saying: "exclusively for the credit of the account of the original favored", and annulling the "at your order" clause.

Sole paragraph. The provisions of the *caput* of this article are applied, in what applicable, to the cases of receiving, by the brokerage house, of any values from its clients.

SELF-REGULATING PROCEDURES

Art. 20. It is the responsibility of the exchanges, as auxiliary bodies of CVM, to inspect the activities of their members, and of establishing the complementary standards needed to the compliance with what is provided in this Instruction.

§1st Exchanges will keep at the disposal of CVM data and information obtained through the activities of inspection developed by them.

§2nd Whenever any of the entities mentioned in the *caput* of this article, in the exercise of self-regulation, identifies the practice, by any people or entity submitted to this jurisdiction, of illicit acts, as well as the existence of irregularities, the CVM should be immediately informed, also in relation to the arrangements being made.

§3rd Whenever any of the entities mentioned in the *caput* of this article suspects of the practice of illicit acts, or of the existence of irregularities involving a person or entity that is not submitted to its jurisdiction, it shall immediately communicate CVM of its suspicions.

APPLICATION TO OTHER ENTITIES

Art. 21. Provisions consisting of this Instruction are applied, in what applicable, to the entities of organized counter, to the associates of commodity and future exchanges, as well as to the remaining integrants of the system of distribution of securities, and to the institutions authorized to render services of registration, clearing, liquidation or custody of securities.

FINAL PROVISIONS

Art. 22. Exchanges, organized counter entities, member societies of exchanges, as well as the remaining integrants of the system of distribution of securities shall adapt to the precepts of this Instruction, in the following terms:

I – exchanges will have 60 (sixty) days, counted from the validation of this Instruction, to send CVM the rules previewed in arts. 3rd; § 3rd of art. 6th, and arts. 17 and 18, in order to be adapted to the provisions of art.20, § 1st, as well as to determine the complementary norms for this Instruction;

II – organized counter entities will have 120 (one hundred and twenty) days, counted from the validation of this Instruction, to send CVM the rules previewed in arts. 3rd, 17, 18, and to adapt to the provision of §1st of art. 20, as well as to determine the complementary norms for this Instruction; and

III – brokerage houses, special operators, remaining participants who directly act in the premises or systems of negotiation and register of operations and the remaining integrants of the system of distribution of securities will have 60 (sixty) days, counted from the date of approval by CVM of actuation rules, to elaborate the rules previewed in art. 6th, and to adapt to the provisions of arts. 7th, 8th, 9th and 10th of this Instruction.

Sole paragraph. While the rules mentioned by subparagraphs I, II and III are not approved by exchanges, by brokerage houses, and by CVM, the provisions contained in Instruction CVM n^o 220 of September 15, 1994, shall be observed.

Art. 23. It is considered as serious infraction, for the effect of the provisions in § 3rd of art. 11 of Law nº 6.385/76, the infraction to norms contained in arts. 3rd ; 4th ; 5th ; 6th, 7th ; 8th ; 13; 14; 15; 17; 19; 20 and 22.

Art. 24. Non-compliance of the provisions of arts. 9th , 10, 11 and 12 constitutes hypothesis of infraction of objective nature, subject to summary rite of administrative process.

Art. 25. Instruction CVM # 382, dated of January 28, 2003, Instruction CVM # 383, dated February 3, 2003, and Instruction CVM # 385, dated March 25, 2003 are revoked.

Art. 26. This Instruction will be valid from the date it is published in the Diário Oficial da União (Official Gazette).

Original signed by
LUIZ LEONARDO CANTIDIANO
President