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FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING IN SOUTH AMERICA

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Mutual Evaluation Report

Anti-Money Laundering and Combating the Financing of Terrorism

Federative Republic of Brazil

25 June 2010

Brazil is a member of the Financial Action Task Force (FATF) and the Financial Task Force on Money Laundering in South America (GAFISUD). This joint GAFISUD-FATF evaluation was adopted by the FATF Plenary on 25 June 2010.

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PREFACE

INFORMATION AND METHODOLOGY USED FOR THE EVALUATION OF BRAZIL

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of the Federative Republic of Brazil (hereinafter Brazil) was based on the *Forty Recommendations 2003* and the *Nine Special Recommendations on Terrorist Financing 2001* of the Financial Action Task Force (FATF), and was prepared using the *Methodology for Assessing Compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations*, 27 February 2004 (updated as at February 2009). As Brazil is a member of both the FATF and the *Grupo de Acción Financiera de Sudamérica* (GAFISUD), this evaluation was conducted jointly by both bodies. The evaluation was based on the laws, regulations and other materials supplied by Brazil, and information obtained by the evaluation team during its on-site visit to Brazil from 26 October to 7 November 2009, and subsequently. During the on-site the evaluation team met with officials and representatives of all relevant government agencies and the private sector. A list of the bodies met is set out in Annex 2 to the mutual evaluation report.

2. The evaluation was conducted by an assessment team, which consisted of members of the FATF and GAFISUD Secretariats and FATF and GAFISUD experts in criminal law, law enforcement and regulatory issues: Ms. Valerie Schilling and Ms. Rachelle Boyle from the FATF Secretariat; Mr. Esteban Fullin from the GAFISUD Secretariat; Mr. André Corterier, Federal Financial Supervisory Authority, Germany (financial expert); Mr. Eduardo Apaez Davila, Ministry of Finance and Public Credit, Mexico (legal expert); Mr. Federico Di Pasquale, Public Prosecutors Office, Argentina (law enforcement expert); Mrs. Maria Célia Ramos, Banco de Portugal, Portugal (legal expert); and Ms. Emily Reinhart, Department of the Treasury, United States (financial expert). The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all these systems.

3. This report provides a summary of the AML/CFT measures in place in Brazil as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, sets out Brazil's levels of compliance with the FATF 40+9 Recommendations (see Table 1), and provides recommendations on how certain aspects of the system could be strengthened (see Table 2).

MUTUAL EVALUATION REPORT

1. GENERAL

1.1 General information on Brazil

1. The Federative Republic of Brazil (*República Federativa do Brasil*) is the largest and most populous country in South America. Brazil is the fifth largest country in the world with a total area of 8 511 965 km^2, including the islands of Arquipelago de Fernando de Noronha, Atol das Rocas, Ilha da Trindade, Ilhas Martin Vaz, and Penedos de Sao Pedro e Sao Paulo. Brazil shares extensive land borders with 10 countries: Argentina, Bolivia, Colombia, French Guiana, Guyana, Paraguay, Peru, Suriname, Uruguay and Venezuela. Brazil is the sixth most populous country in the world with a population of 198 739 269 (as at August 2009) of which 86% live in urban areas. Brazilian society is multicultural. The language spoken is Portuguese (the official language). English and Spanish, as a second language, are becoming widespread. There are some ethnic communities which also speak their native languages, such as German, Italian, Japanese, and a large number of minor Amerindian languages. The literacy rate of the Brazilian population is 88.6%. The currency in Brazil is the Brazilian Real *(Reais)* (BRL).[1]

Economy

2. Brazil is a regional economic power and has the world's tenth largest economy by nominal GDP and the ninth largest by purchasing power parity. The gross domestic product (GDP) of Brazil was 1.48 trillion United States dollars (USD) as at October 2009, with a GDP per capita of USD 7 737 (EUR 5 200)[2]. In the last four years, the real growth rate of the GDP has been: 4% (2006), 5.7% (2007), 5.2% (2008) and 1% (2009 estimated). The economy is characterised by large and well-developed agricultural, mining, manufacturing, and service sectors. Brazil continues to pursue industrial and agricultural growth, and the development of its interior. The main natural resources are bauxite, gold, iron ore, manganese, nickel, phosphates, platinum, tin, uranium, petroleum, hydropower and timber.

3. From 2003 to 2007, Brazil had a record trade surplus and recorded its first current account surplus since 1992. Brazil's debt achieved investment grade status early in 2008, but the government's attempt to achieve strong growth while reducing the debt burden created inflationary pressures. For most of 2008, the Central Bank of Brazil (BACEN) embarked on a restrictive monetary policy to stem these pressures. Since the onset of the global financial crisis in September 2008, Brazil's currency and its stock market, BOVESPA, have significantly lost value (-41% for BOVESPA for the year ending 30 December 2008). Brazil incurred another current account deficit in 2008, as world demand and prices for commodities dropped in the second half of the year.

4. Brazil's labour force is 101 million people, 66% of whom are employed in the services sector. The unemployment rate is 8%. The inflation rate at consumer prices was 5.8% in 2008 and BACEN's estimates place it at 4.3% as at August 2009.

[1] At the time of the on-site visit, the exchange rate was BRL 1 = EUR 0.3901 / EUR 1 = BRL 2.5554 or BRL 1 = USD 0.5795/USD 1 = BRL 1.7230.

[2] International Monetary Fund, World Economic Outlook Database, October 2009.

5. There are four free trade zones in Brazil – Manaus in the State of Amazonas; Tabatinga bordering Colombia in the State of Amazonas; Macapá/Santana in the State of Amapá; and Guajaramirim bordering Bolivia in the State of Rondônia. Four other free trade zones are authorised but not yet functioning – Bonfim and Paracaima in the State of Roraima, Brasiléia in the State of Acre and Epitaciolândia in the State of Rondônia. The Manaus Free Trade Zone is the most extensively developed. Decree 288/1967 established special incentives for a period of 30 years with the aim of creating an industrial, commercial and agricultural centre in the heart of the Brazilian Amazon. The Manaus Free Trade Zone is a 10 000 km^2 area. The Brazilian *Constitution* of 1988 provides that the fiscal benefits of the Manaus Free Trade Zone will continue until 2013.

System of government and hierarchy of laws

6. Brazil is administratively divided into 26 states[3] and one federal district (its capital, Brasilia). The country underwent more than half a century of populist and military government until 1985, when the military regime peacefully ceded power to a civilian government. The Brazilian legal system is based on the civil legal tradition and is grounded in the current Federal *Constitution* which has been in force since 5 October 1988. Independence of the Executive, Legislature and the Judiciary is guaranteed under the *Constitution*.

7. The head of the Executive branch is the President of the Republic, who is both the head of state and the head of government. The President and Vice-president are elected by popular vote for a single four-year term, with the possibility of serving a second term.

8. The Legislative branch is bicameral and consists of the Federal Senate (*Senado Federal*), which has a total of 81 seats comprising three members from each state and federal district who serve eight year terms, and the Chamber of Deputies (*Câmara dos Deputados*), which has 513 seats comprising members elected by proportional representation to serve four-year terms.

9. The Judicial branch consists of a Federal Supreme Court (11 ministers appointed for life by the President and confirmed by the Senate), the Superior Court of Justice, five Federal Regional Courts, 26 State Courts and one Federal District Court. The five Regional Federal Courts are responsible for cases of national and international interest (including crimes of terrorism and major crimes against the financial system), crimes included in international agreements, and most disputes in which one of the parties is Brazil. The State Courts hear cases of more interest to the particular state, such as cases involving state or local corruption. In addition, since 2003, Brazil has had specialised courts of first instance which adjudicate cases involving ML and crimes against the national financial system. The need for new initiatives such as this and the need more broadly for judicial reform in Brazil is widely recognised because the current system is inefficient, with backlogs of cases and shortages of judges. Cases are frequently dismissed because they are too old.

10. Article 59 of the *Constitution* provides for eight different types of legislative instruments.

Instrument	Description
The *Constitution* and Constitutional amendments	The highest law, above all others. The current *Constitution* was enacted in 1988 and has been amended more than 60 times since its enactment.

[3] Acre, Alagoas, Amapa, Amazonas, Bahia, Ceara, Distrito Federal, Espirito Santo, Goias, Maranhao, Mato Grosso, Mato Grosso do Sul, Minas Gerais, Para, Paraiba, Parana, Pernambuco, Piaui, Rio de Janeiro, Rio Grande do Norte, Rio Grande do Sul, Rondonia, Roraima, Santa Catarina, Sao Paulo, Sergipe and Tocantins.

Instrument	Description
Complementary laws	These laws supplement the *Constitution* by detailing subjects that are only dealt with generically in the *Constitution* itself. Complementary laws are permissible only in relation to those subjects expressly authorised by the *Constitution*. They neither interfere with the constitutional text itself, nor become an integral part of the *Constitution*. Complementary laws are enacted by an absolute majority of the members of each House and are thus more difficult to enact than ordinary laws. Unlike ordinary laws, they may only be changed, revised or amended by another complementary law.
Laws (federal, state, federal district, local)	The laws are the primary legislative instruments. At the federal level, an ordinary law is enacted through one reading in each House of the National Congress, with approval by a simple majority vote and sanction by the President.
Decree-Laws	These instruments were Presidential Decrees enacted during the dictatorship period (1964-1984). They had the status of law from their date of issuance and are sent for discussion in Congress. Although the Congress may not amend a decree-law, it may approve or reject it within 60 days. Some Decree-Laws are still in force and have an equivalent status to laws.
Delegated laws (federal)	Delegated laws are issued by a legislative branch that would not normally have competence over a particular subject, by means of delegation from another legislative branch that does have competence over the subject.
Provisional measures	These are *sui generis* legislative instruments issued by the President and submitted to Congress for approval. Provisional measures are only valid for 60 days, although this period may be extended for an additional 60 days. During that period, a provisional measure undergoes the same approval process as an ordinary law and, if enacted, it becomes an ordinary law. After that period, a provisional measure takes precedence over any legislative proposals and must be submitted to Congress for a vote. If rejected, a provisional measure ceases to have force.
Decrees	Decrees are issued by the Chief of the Executive Branch (*i.e.* the President). The purpose of a decree is to discipline/regulate/detail an approved law. For example, Law 9613/1998 (the *AML Law*) is supported by Decree 2799/1998. Presidential Decrees are also used to ratify international Conventions that have already been approved by the Congress.
Resolutions	Resolutions are directed to specific purposes, connected to the exclusive activities of the National Congress. They are independent from sanction by the President and may be approved by a simple majority vote[4].

Transparency, good governance, ethics and measures against corruption

11. Corruption has been a longstanding issue in Brazil. In its 2009 corruption perceptions index, Transparency International ranked Brazil 75th of the 180 jurisdictions covered by the index and concluded that Brazil continues to have a serious corruption problem with scandals involving impunity, kickbacks, political corruption and state capture[5].

12. Even before the 1988 *Constitution* was adopted, the Brazilian legal system incorporated measures designed to prevent and suppress illegal, unjust, unethical or dishonest conduct by persons occupying political positions. Law 1079/1950 defines political liability crimes (*crimes de responsabilidade*) in regard to the President, Federal Government Ministries, Justices of the Federal Supreme Court, the Federal Prosecutor General, the State Governors and the State Secretaries. Decree-Law 201/1967 defines political liability crimes in regard to the mayors of the municipalities. Both of these laws remain in force and the essential concept of the political liability crime was maintained in the 1988 *Constitution*.

4 Resolutions of the National Congress hold a different status to Resolutions issued by various competent authorities, most of which can be considered to be other enforceable means (see section 3 of this report).

5 www.transparency.org Corruption Perceptions Index 2009 Regional Highlights: Americas.

13. Since enactment of the 1988 *Constitution*, the government has had a concerted focus on anti-corruption measures. Law 8429/1992 prescribes conduct forbidden for public agents (*e.g.* receiving bribes) and persons committing such crimes are subject to civil, administrative and political penalties, (Law 8429/1992, art.12(I-II)). The federal government has also issued a number of decrees setting out mandatory ethical standards of conduct for public positions[6]. Likewise, the Public Ethics Commission, created by Decree 6029/2007, has issued several resolutions setting out standards of ethical conduct applicable to the high level staff of the Executive Branch[7].

14. Brazil signed the *Convention on Combating the Bribery of Foreign Public Officials in International Business Transactions* on 17 December 1997, and deposited its instrument of ratification on 24 August 2000 (Decree 125/2000). Brazil subsequently enacted implementing legislation; Law 10467/2002, which amended the *Criminal Code*, and Law 9613/1998 (the *AML Law*). Brazil has been evaluated by the Organisation for Economic Co-operation and Development (OECD) for its compliance with this convention. Those reports are broadly publicised on the website of the Office of the Comptroller General (CGU). Brazil also amended a number of its laws to comply with the Convention, including: Law 8666/1993 (rules for competitive bidding and contracts of the Public Administration); Law 10520/2002 (procurement of goods or services through electronic means); Law 8112/1990 (the legal regime for civil servants working in the federal government, autonomous government organisations and federal public foundations); and Law 8429/1992 (sanctions applicable to public officials who have been illicitly enriched in the performance of their duties). Brazil is also working to comply with the *United Nations Convention against Corruption*.

15. Brazil has established an Office of the Comptroller General (*Controladoria-Geral da União* - CGU) that is responsible for: developing internal control mechanisms and auditing the federal administration; overseeing the verification of administrative irregularities to ensure that public property is not misused; and receiving and analysing reports concerning the procedures and actions of public agents and institutions with a view to seeking appropriate solutions (Law 9649/1998, amended by Decrees 4118/2002 and 4177/2002). In early 2004, the CGU started the Keep an Eye on Public Money Program, to sensitise and provide guidance to municipal council members and public agents, local leaders, teachers and students on the importance of transparency, accountability and compliance with legal provisions in the public administration. In 2006, the CGU started the Public Management Strengthening Program to strengthen public management at the municipal, state and federal levels, and provide guidance and technical information on the correct use of federal public funds. Also in 2006, the CGU created the Corruption Prevention and Strategic Information Secretariat (SPCI) as an advisory and co-ordinating department of anti-corruption initiatives taken by other agencies and branches. The Council on Public Transparency and Combating Corruption is a collegiate and advisory body linked to CGU and created by Decree 4923/2003 for the purpose of developing ways to improve control systems, enhance transparency in the public administration, and develop anti-corruption strategies.

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6 Decree 1171/1994 (Code of Professional Ethics for the Civil Public Servants at the Federal Executive Branch); Decree 4081/2002 (Code of Conduct for the Senior Government Officers at the Federal Executive Branch); Decree 4332/2002 (Rules for official meetings between persons from civil societies, public agents from the federal public branch and other federal public entities); Decree 6029/2007 (Establishes the system for managing ethics in the federal executive branch); and Decree 4187/2002 (Establishes rules to temporarily prevent public officials to conduct activities or provide services after being dismissed from their public positions).

7 Resolutions 01/2000, 05/2001 and 09/2005 (procedures and forms for disclosing information on their personal property and valuables); Resolution 02/2000 (rules for the participating in seminars and other events); Resolution 03/2000 (rules concerning gifts and presents); Resolutions 04/2001 and 10/2009 (on the Statute, structure and functioning of the Public Ethics Commission); Resolution 07/2002 (rules for participating in political or electoral activities); and Resolution 08/2003 (resolving potential conflicts between public/private interests).

16. Since November 2004, the CGU has maintained a Transparency Portal on the Internet, the goal of which is to increase transparency of the public administration and deter corruption in Brazil. Citizens can use the portal to monitor programs developed directly or indirectly by the federal government. The information available includes the ordinary expenses of the federal government, and also the amounts of money transferred to the States, municipalities, the Federal District and non-government organisations. Additionally, each agency and entity of the federal public administration is requirement to maintain, on the Internet, its own transparency page providing detailed information on their budget, financial execution, competitive bidding, contracts, agreements and expenses (Decree 5482/2005, regulated by Joint Ministerial Decree 140/2006). The federal government also maintains a Procurement Portal[8] with information freely accessible by the public.

17. In 2006, Brazil's national policy strategy was expanded from combating money laundering to include anti-corruption initiatives. The National Strategy Against Corruption and Money Laundering (ENCCLA) is discussed in more detail in sections 1.5 and 6.1 of this report. Additionally, the Federal Prosecutor´s Office has specialist Co-ordinating Counsel—two of whom have implemented initiatives that are raising awareness of bribery and corruption, and promoting collaboration between institutions that combat these crimes. Both Co-ordinating Counsels promote annual meetings with the prosecutors, to share information and discuss new measures they can adopt. Additionally, there are regional fora to discuss anti-corruption issues, organised by federal prosecutors working together with other institutions that have the same goal.

18. In 2007, the Organisation for Economic Co-operation and Development (OECD) assessed Brazil's implementation of the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* and the *1997 Recommendation on Combating Bribery in International Business Transactions.* The report concluded that the ongoing fight against corruption within Brazil is well publicised and reported. Nevertheless, more work needed to be done to raise awareness of the foreign bribery offence among both the public and private sector, and to establish liability for legal persons for the bribery of a foreign public official.

1.2 General situation of money laundering and financing of terrorism

19. The main sources of proceeds of crime in Brazil are corruption and crimes against the national financial system, including fraud and capital flight. Drug trafficking, weapons trafficking, organised crime, smuggling and embezzlement of governmental money are also important sources of illegal proceeds. Brazil is a major transit country for illicit drugs (particularly cocaine produced in Bolivia, Colombia and Peru) that are destined for Europe and, to a much lesser extent, the United States. Additionally, there is marijuana production in the northeast region of the country. Major drug gangs operating in Rio de Janeiro and São Paulo have been responsible for significant waves of crime and violence in these areas. In addition to weapons and narcotics, a wide variety of counterfeit goods—including CDs, DVDs, and computer software—is smuggled across the border from Paraguay into Brazil. Although tax offences are not predicate offences, these crimes are also highly profitable.

20. In general, the perception is that money laundering risks are higher in relation to the border areas and the informal economy. The banking sector is perceived to face greater ML risk in the business areas of foreign exchange and private banking. In the securities sector, ML risk has been detected through the use of a broker to deposit funds and conduct stock market transactions. In the insurance sector, the following business lines are perceived as being the most vulnerable to ML: accumulation, life and pension/retirement products. Some cases of illicit drugs being exchanged for precious stones have been detected; however, it was indicated during the on-site visit that this is not common, as the profit margins for precious stones

[8] www.comprasnet.gov.br

being sold on the open market are relatively low because most of the precious stone trade conducted in Brazil is carried out on the wholesale export market and the retail market is residual. No cases of ML have been detected in the closed pension funds sector.

21. The government of Brazil has been working to mitigate the risk of terrorism financing in its territory. Such work has been carried out in close co-operation with other interested governments and allows it to keep under strict surveillance all activities considered to be of higher risk. Initiatives such as regional intelligence structures, joint operations and exchange of information, among others, are used to identify, prevent and disrupt activities that could be related to terrorism and its financing.

1.3 Overview of the financial sector and DNFBP

Financial sector

22. Brazil has the largest and most complex financial system in Latin America, comprising both public and private institutions.

23. Brazil's banking system operates across the country and offers a wide variety of products including traditional banking services, insurance and investment products. Some banks are privately owned, while others are public (*i.e.* entirely controlled by the government). A major function of the public banks is to finance the agribusiness, civil and construction sectors. At the end of 2007, there were 131 banks in Brazil with over 18 000 branches across the country and accounts valued at an estimated BRL 149 billion (EUR 58.1 billion/USD 86.3 billion). Additionally, there were 1 952 credit co-operatives and non-bank financial institutions (NBFIs) with another 2 400 branches and accounts valued at an estimated BRL 3.8 billion (EUR 1.5 billion/USD 2.2 billion). There are a large number of credit co-operatives in the NBFI sector—1 394 as of December 2009, of which 1 090 are distributed in 38 central cooperatives. The three largest co-operative systems encompass 60% of the credit co-operatives (872 affiliates) and 36% of the credit centrals (28 centrals). The greatest concentration of credit co-operatives (75%) are located in the south and southeast regions of Brazil which are considered to be the most prosperous regions in the country. Although the number of credit co-operatives has grown in the last 10 years, they only account for 1.4% of the total assets, 3.3% of the liquid assets and 2% of the loan activity (BRL 25.5 billion[9]) of the National Financial System.

24. As at December 2008, there were 120 insurance societies, 28 complementary open-end pension funds, 17 capitalisation societies, 5 local reinsurers, 18 admitted reinsurers, 25 eventual reinsurers, 31 reinsurance brokers, and 67 988 active insurance brokers (43 716 natural persons and 24 272 legal persons). In 2008, the total revenues of these markets amounted to BRL 85.1 billion (EUR 33.2 billion/USD 49.3 billion), with estimated reserves amounting to BRL 184.7 billion (EUR 72 billion/USD 107 billion). The total amount of written premiums and capitalisation revenues represented more than 2.9% of the estimated GDP for 2008. In the last five years, the Brazilian insurance market has grown by an average of 14% per year.

25. In 2008, the total revenues of Brazil's capital markets was about BRL 9 billion (EUR 3.5 billion/USD 5.2 billion). The average daily volume of Brazil's securities, commodities and futures exchange (the BM&FBOVESPA) was BRL 5.9 billion (EUR 2.3 billion/USD 3.4 billion), as at June 2009. This volume comprises a daily average of 334 791 trades settled and 15.7 billion securities processed.

26. Brazil receives the second largest volume of remittances in Latin America (after Mexico). For example, in 2007, the amount of money being sent to families in Brazil by Brazilians living abroad was

[9] EUR 11 billion / USD 13.5 billion.

USD 2.8 billion (EUR 1.9 billion). Of this, over USD 1.3 billion (EUR 875 million) was sent from the United States, and about EUR 420 million (USD 624 million) from Portugal. Remittances are commonly effected to Brazil via bank transfer. Information from BACEN Economics Department indicates that remittances via ATM/pre-paid debit cards is statistically insignificant. About 60 to 70% of remittance activity is managed by banking institutions; the remainder goes through the post office. The following table shows the share of revenues from money orders versus remittances by workers (or maintenance of residents). Money orders are part of the communication services and, therefore, do not contribute to the amount of remittances by workers.

PERIOD	REMITTANCES	MONEY ORDERS	%
2005	2 479.90	5.7	0.23
2006	2 889.80	12	0.42
2007	2 808.80	11.9	0.42
2008	2 912.60	8.7	0.30
2009	2 223.80	23.2	1.04
TOTAL	**13 314.90**	**61.5**	**0.46**

(USD millions)

27. Brazil has a tight system of foreign exchange controls that is under the supervision of BACEN. Only authorised agents (usually commercial banks) are entitled to conduct foreign exchange transactions. The only other types of institutions that are authorised to perform specific types of foreign exchange transactions are credit societies, investment societies, financing societies, savings banks, stock brokerage societies, foreign exchange or securities societies, securities and stock dealers societies, and tourism agencies (but only for small amounts of foreign currency).

28. The table below shows the number of financial institutions authorised to operate in Brazil[10].

Type of financial institution	2005	2006	2007	2008
Banks				
Multiple	138	137	135	140
Nationals	81	80	77	78
With foreign participation	8	9	10	7
With foreign control	49	48	48	55
Commercials and branches of foreign banks	22	21	20	18
Nationals	14	13	12	11
With foreign participation	-	-	-	-
With foreign control	-	-	1	1
Branches of foreign banks	8	8	7	6
Development	4	4	4	4
Investment	20	18	17	17

10 Unicad e PCOS200 (doc. 4016).

Type of financial institution	2005	2006	2007	2008
Federal Saving Deposit Bank	1	1	1	1
Corporations				
Leasing	45	41	38	36
Credit financing and investment	50	51	52	55
Real estate credit, savings and loans associations and repassing[11]	18	18	18	16
Securities and exchange brokers	133	116	107	107
Foreign exchange brokers	45	48	46	45
Securities and exchange intermediaries	134	133	135	135
Fostering agencies	12	12	12	12
Mortgage companies	6	6	6	6
Subtotal	628	606	591	592
Co-operatives	1 439	1 452	1 465	1 453
Credit corporations to micro-entrepreneur	55	56	52	47
Subtotal	2 122	2 114	2 108	2 092
Consortia managers	342	333	329	317
TOTAL	**2 464**	**2 447**	**2 437**	**2 409**

29. The following chart shows which types of financial institutions in Brazil are authorised to perform the types of financial activities that fall within the scope of the *FATF Recommendations*.

Type of financial institution (see the glossary of the *FATF Recommendations*)	**Type of financial institution that performs this activity**	**AML/CFT obligations?**
Acceptance of deposits and other repayable funds from the public	Universal banks, commercial banks, savings banks and credit unions (only of associates)	Yes
Lending	Universal banks, commercial banks, savings banks and credit unions (only of associates)	Yes
Financial leasing	Leasing companies, universal banks with a leasing portfolio, investment banks, development banks, savings banks and real estate credit companies	Yes
Transfer of money or value	Universal banks, commercial banks, savings banks, investment banks, development banks and foreign exchange banks who are authorised to conduct exchange operations, and the post office	Yes
Issuing and managing means of payment (*i.e.* credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)	Universal banks, commercial banks, savings banks and credit unions (only for associates)	Yes

[11] The SCI-Repassing associations do not collect funds in the market. In a repass loan, a Brazilian bank would borrow money from a foreign lender, and then lend it out in smaller parcels to borrowers.

Type of financial institution (see the glossary of the *FATF Recommendations*)	**Type of financial institution that performs this activity**	**AML/CFT obligations?**
Financial guarantees and commitments	Universal banks, commercial banks, savings banks, investment banks, development banks, consumer finance companies, real estate credit companies, mortgage companies and credit unions	Yes
Trading in Money market instruments (cheques, bills, CDs, derivatives etc.)	Universal banks, commercial banks, savings banks, investment banks, development banks, consumer finance companies and derivatives markets intermediaries (brokers, distributors, banks)	Yes
Trading in Foreign exchange	Universal banks, commercial banks, savings banks, investment banks, development banks, foreign exchange banks, consumer finance companies, securities brokerage companies, securities distribution companies and foreign exchange brokerage companies	Yes
Trading in Exchange, interest rate and index instruments	Universal banks, commercial banks, savings banks, investment banks, development banks, foreign exchange banks, consumer finance companies, securities brokerage companies, securities distribution companies, foreign exchange brokerage companies and derivatives markets intermediaries (brokers, distributors, banks)	Yes
Trading in Transferable securities	Universal banks, commercial banks, savings banks, investment banks, development banks, consumer finance companies, securities brokerage companies, securities distribution companies and derivatives markets intermediaries (brokers, distributors, banks)	Yes
Trading in Commodities	Universal banks, commercial banks, savings banks, investment banks, development banks, consumer finance companies, securities brokerage companies and securities distribution companies	Yes
Participation in securities issues and the provision of financial services related to such issues	Universal banks, commercial banks, investment banks, securities brokerage companies, securities distribution companies and derivatives markets intermediaries (brokers, distributors, banks)	Yes
Individual and collective portfolio management	Financial investment funds and asset managers (brokers, distributors, banks) after they register with the CVM	Yes
Safekeeping and administration of cash or liquid securities on behalf of other persons	Universal banks, commercial banks, savings banks and derivatives markets intermediaries (brokers, distributors, banks)	Yes
Otherwise investing, administering or managing funds or money on behalf of other persons	Financial investment funds and asset managers (brokers, distributors, banks) after they register with the CVM	Yes
Underwriting and placement of life insurance and other investment related insurance	Insurance companies, reinsurance companies and open private pension entities	Yes
Money and currency changing	Multiple banks; commercial banks; savings banks; investment banks; development banks; foreign exchange banks; credit, financing and investment societies; securities and stock brokerage societies; securities and stock dealers societies; and foreign exchange brokerage societies[12].	Yes

[12] According to CMN Resolution 3568/2009: *(i)* only these institutions can be directly authorised by BACEN to conduct foreign exchange operations; and *(ii)* these institutions are also allowed to contract companies to conduct operations up to USD 3 000. The financial institutions (contractors) take full responsibility for the

DNFBP sector

30. Casinos have been prohibited in Brazil since 1946 (Decree-Law 9215/1946). This prohibition applies to casinos of all types, including land, Internet and ship-based casinos. Ship-based casinos that are not situated on a Brazilian vessel are also subject to this prohibition when in Brazilian territory. However, Brazilian citizens are not prohibited from using foreign casinos that are operating on the Internet.

31. There are 1 842 entities operating in the precious stones industry, and 20 781 traders in precious metals and stones operating in Brazil. This is a significant industry, with Brazil being responsible for 65% of global production of coloured gemstones. It is the world's second largest supplier of emeralds, and also a major producer of aquamarine, tourmaline, topaz, amethyst and agate. Brazil's domestic market of precious stones is about USD 1 billion (EUR 673 million). Dealers in precious metals and stones have been subject to AML/CFT obligations since enactment of the *AML Law* in 1998.

32. With an estimated 440 000 lawyers, Brazil has the third largest legal profession in the world. Notaries are authorised to intervene in and authenticate business acts, authenticate facts, formalise powers of attorney, register property, recognise signatures, authenticate copies, formalise wills, and receive payment of debts and their related documents. Lawyers in Brazil are not subject to AML/CFT obligations.

33. As at July 2009, there were 410 596 accountants (*contador* and *técnico de contabilidade*) registered with Brazil's professional accountancy body, the *Conselho Federal de Contabilidade*, and about 2 000 independent auditors associated with the *Instituto dos Auditores Independentes do Brasil*. Accountants in Brazil are not subject to AML/CFT obligations.

34. The great majority of real estate transactions are concluded with the intermediation of real estate companies and/or estate agents. The contracts for sale are oversighted by a notary public and registered in the relevant public registry[13]. Real estate businesses and brokers were made subject to AML/CFT obligations in 1998 when the *AML Law* was enacted. There are over 200 000 registered real estate agents doing business in Brazil, as indicated in the charge below .

TOTAL NUMBER OF REAL ESTATE AGENTS REGISTERED WITH THE COFECI/CRECI SYSTEM AS OF DECEMBER 2007			
Region	**Natural Person**	**Legal Person**	**Total Region**
1ª/RJ	35 993	4 029	40 022
2ª/SP	58 492	11 276	69 768
3ª/RS	11 401	1 357	12 758
4ª/MG	11 617	2 533	14 150
5ª/GO	5 597	470	6 067
6ª/PR	8 019	1 238	9 257

services rendered by the contracted companies that can be: (a) juristic persons in general, to negotiate the performance of current transfers to and from abroad; (b) juristic persons registered, according to the terms of current regulation, with the Ministry of Tourism as suppliers of tourism services, to purchase and sell foreign currency in cash, checks and travellers cheques; and (c) financial institutions and other institutions authorised to function by BACEN not authorised to operate in the foreign exchange market, to perform current transfers, and to purchase and sell foreign currency in cash, checks and travellers checks.

13 Property registration occurs through a particular designated notary in each region. Every property is linked to a specific property registration notary.

TOTAL NUMBER OF REAL ESTATE AGENTS REGISTERED WITH THE COFECI/CRECI SYSTEM AS OF DECEMBER 2007			
Region	**Natural Person**	**Legal Person**	**Total Region**
7ª/PE	2 624	144	2 768
8ª/DF	8 795	534	9 329
9ª/BA	5 637	312	5 949
11ª/SC	12 058	1 197	13 255
12ª/PA	3 782	79	3 861
13ª/ES	2 294	180	2 474
14ª/MS	1 708	230	1 938
15ª/CE	4 474	616	5 090
16ª/SE	942	55	997
17ª/RN	1 055	131	1 186
18ª/AM	715	60	775
19ª/MT	1 914	313	2 227
20ª/MA	881	122	1 003
21ª/PB	2 061	90	2 151
22ª/AL	960	112	1 072
23ª/PI	468	80	548
24ª/RO	412	71	483
25ª/TO	409	49	458
Total	**182 308**	**25 278**	**207 586**

35. Company services providers are not regulated as a separate industry. Company formation and related services may be provided by lawyers, accountants or private company service providers. It is not known how many persons/entities are providing such services.

36. There are no persons or entities in Brazil that are authorised to establish or administer trusts. Brazil does, however, recognise foreign trusts and allows them to operate in the various financial markets. They must comply with the requirements of article 3-A of CVM Instruction 301/1999 which applies to all financial intermediaries. Trusts that intend to operate or do business in Brazil or with Brazilian companies are subject to the same controls as those applicable to Brazilian companies. Such controls include identification of the Brazilian legal representative/attorney, the trustee, and the ultimate beneficiary. It is not known how many trusts are doing business in Brazil.

1.4 Overview of commercial laws and mechanisms governing legal persons and arrangements

37. Article 44 of the *Civil Code* provides for the following types of entities[14]:

- partnerships;

[14] Further information on associations and foundations is set out in section 5.3 of this report.

- associations which are established through the union of people organised not for profit purposes (see further *Civil Code* art.53);

- foundations which are established for religious, moral, cultural or charitable purposes (see further *Civil Code* art.62);

- religious organisations; and

- political parties.

38. Partnerships are formed between persons who reciprocally oblige themselves to contribute, with assets or services, to the exercise of an economic activity and to share its results. The broad term partnership (*sociedade*) includes limited liability companies and share corporations, and can refer to a separate legal entity (*sociedade personificada*) (*i.e.* a company) or a partnership that is not a legal entity (*sociedade não personificada*).

Partnerships that are legal entities (companies)

39. Partnerships established for the purpose of generating profit (*i.e.* companies) must register at the appropriate public registry office in order to gain legal personality. Generally, it is the act of registration that gives a *sociedade* its corporate status (*i.e.* rights, obligations and liabilities distinct from that of its partners). The most common types of company in Brazil (nearly 5.8 million as at August 2009) are:

- **Anonymous partnerships (joint stock company) (*sociedade anônima*) (S/A):** The ownership of this type of company is divided into shares, and is established by means of a shareholders agreement. Each shareholder is liable only up to the limit of the price of his/her shares. Such companies may be publicly traded or closed capital companies that obtain capital from their own shareholders/subscribers. Such companies are managed by a board of directors and administrative council, or exclusively by a board of directors (*Civil Code* art.1088; Law 6404/1976).

- **Partnership by shares (limited liability company) (*sociedade limitada*) (LTDA):** This is the most common type of company in Brazil (*Civil Code* art.1052-1087), with over 5.6 million such partnerships in existence in Brazil as at August 2009. Each partner is liable only up to the extent of his/her participation in social capital. It may take one of two forms, depending on their corporate objectives and type of business: a simple partnership or an entrepreneurial activity partnership.

- **Simple partnerships (*sociedade simples*):** Such companies are established by a written contract regulating the object of the partnership, type of business, rights and obligations of the partners, and identification (name, nationality, civil status, profession and home address) of the partners. The partnership contract must outline how the partners are responsible for capitalising the business and the extension of their liability in relation to third parties (*Civil Code* art.997). Such companies must register with the Civil Registry Office for Legal Entities *(Registro civil das Pessoas Juridicas).*

- **Entrepreneurial activity partnerships (*sociedade empresária*):** Such companies are organised through articles of association for the purpose of production or distribution for profit (other than in relation to intellectual, scientific, literary or artistic activity) (*Civil Code* art.996). Such companies must register with the Registry of Commerce *(Junta Comercial).*

- **Interconnected partnerships** are those which are affiliated with or participate in the ownership of another partnership (*Civil Code* art.1097).

40. The following types of companies are less common—there were 48 409 such companies in Brazil as at August 2009—as some partners attract partial or unlimited liability:

- **Limited co-partnership (*sociedade em comandita simples*):** Such partnerships have two types of partners. The full partners *(comanditados)* are natural persons equally and unlimitedly liable for social obligations. The silent partners *(comanditarios)*, in turn, are liable only up to the extent of their participation in social capital (*i.e.* the value of their shares). The partnership contract must specify the nature of each partner: *comanditados* or *comanditarios* (*Civil Code* art.1045).

- **Limited by shares partnership (*sociedade em comandita por ações*):** Such partnerships have their ownership divided into shares held by both full partners *(comanditados)* with unlimited liability who are responsible for the company's management, and silent partners *(comanditários)* with liability limited to the value of their shares. Only a shareholder can administer the partnership and, as the director, he/she is subsidiarily and unlimitedly liable for social obligations (*Civil Code* art.1090-1092; Law 6404/1976).

- **Co-operative partnership (*sociedade co-operativa*):** Characteristics of this type of partnership include: the possibility of being constituted without any social capital; the partners' unlimited liability for the company's debts; the impossibility of transferring the partner ownership to third parties (including through inheritance); and requiring a quorum to allow decisions of the general assembly based on the number of partners (not on the value of each partner's ownership) based on the principle "one man, one vote" (*Civil Code* art.1094).

- **Collective partnership (*sociedade em nome coletivo*):** Only natural persons can take part in a collective partnership. All partners are equally and unlimitedly liable for the company's debt. The partnership can only be administered by partners (*Civil Code* art.1039).

Partnerships that are not legal entities

41. The following two forms of partnership are not legal entities:

- **Unregistered partnerships (*sociedade em comum*):** This category includes partnerships that are in the process of being established (but have not yet been registered) or have been deemed by a court to be partnerships.

- **Joint venture partnerships (*sociedade em conta de participação*) (SCP):** Such partnerships, even if registered, have no corporate status. They are established solely to conduct a specific undertaking for a specific period of time. The only requirement when establishing an SCP is to register its articles of association.

1.5 Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT Strategies and Priorities

42. The Brazilian authorities indicate that their first step to face this problematic issue was to work to establish an effective AML legal and institutional framework which could typify money laundering as a crime and establish preventative measures in the administrative and criminal fields, in line with international recommendations, as well as the creation of COAF, the Brazilian financial intelligence unit

(FIU). Other important work of the government involved disseminating the Law 9613/1998 (the *AML Law*), with the aim of guiding governmental authorities and raising awareness in society of this issue, as well as consolidating the work performed by COAF. The Brazilian authorities state that the legal entities subject to the *AML Law* have been collaborating in a satisfactory way to combat money laundering, in particular with regards to the requirements to identify customers, register all transactions above the prescribed threshold and report suspicious transactions. Additionally, regarding criminal justice measures, the authorities are no longer just focusing on pursuing predicate offences; several money laundering investigations are currently in progress, and others have proceeded through to prosecution and conviction.

43. In 2003, the Ministry of Justice identified the fight against money laundering as one of its priority policies. The authorities involved in combating organised crime realised that the effectiveness of the AML national systems depended upon increasing the co-operation and interaction among the several levels of government. As a result, the National Strategy Against Corruption and Money Laundering (ENCCLA) was established and its first meeting was held in December 2003. Also, in 2004, the Integrated Management Cabinet for Prevention and Combat Against Money Laundering (GGI-LD) was created. It is responsible, at the strategic level, for defining public policy and macro-objectives in this area, tracking progress and trying to ensure regular co-ordination among the relevant authorities (see sections 1.5 and 6.1 of this report for further details).

44. ENCCLA's work has resulted in the creation of: the national training program on anti-corruption and AML techniques (PNLD) (a training program for public officials and private sector); the national database on clients of financial institutions; the national system of seized assets (a database containing information about seized assets from criminal procedures in the Federal and State Courts); and the laboratory against ML, which uses information technology and a scientific methodology to optimise judicial proceedings in ML cases.

45. A key ENCCLA priority has been gaining reforms to Brazil's legislative framework. A proposal to reform the *AML Law* (Project Law 3443/2008) has been tabled before the Congress. The objective of this law is to, amongst other things, enlarge the range of predicate offences to encompass any offence under Brazilian law[15]. Project Law 3443/2008 has been approved by the Federal Senate and is now under consideration of the House of Representatives (*Câmara dos Deputados*). This project has recently been given priority status. Authorities advise that this bill includes provisions on criminalising FT.

b. The institutional framework for combating money laundering and terrorist financing

(i) Ministries, policy and government co-ordination bodies

46. The ***Ministry of Finance*** is responsible for the formulation and execution of macroeconomic policies, tax collection and treasury operations. Brazil's financial intelligence unit (FIU) and three primary supervisory authorities (BACEN, CVM and SUSEP) are closely linked to the Ministry of Finance.

47. The ***Ministry of Foreign Affairs*** receives from the Department of Assets Recovery and International Legal Co-operation (described below) requests for assistance grounded on reciprocity, which are to be processed via diplomatic channels.

48. The ***Ministry of Justice*** is responsible for extradition and mutual legal assistance, and also for legislative developments concerning AML measures. The Ministry co-ordinates the GGI-LD, which is responsible for defining public policy and macro-objectives in the area of AML, tracking progress and co-ordinating the relevant authorities.

[15] The evaluation team has not seen this draft legislation.

49. The ***Attorney General of the Union (AGU)*** is responsible for representing the federal government in court and for providing legal advice to the executive branch. Unlike other jurisdictions, the Attorney General in Brazil is not responsible for criminal prosecution.

50. The ***Department of Assets Recovery and International Legal Co-operation (DRCI)*** was created by Decree 6061/2007 as the Central Authority for international legal co-operation in Brazil, including for the 1988 *United Nations (UN) Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (the *Vienna Convention*) and the 2000 *UN Convention against Transnational Organised Crime* (the *Palermo Convention*). This department receives and examines requests for mutual legal assistance, including seizure and forfeiture requests. It also receives and analyses requests for assistance grounded on reciprocity, which are transmitted to the Ministry of Foreign Affairs, to be proceeded via diplomatic channels. DRCI is also in charge of co-ordinating the national strategy against corruption and money laundering.

51. The ***Department of Foreigners (DEEST)*** is the central authority for extradition, expulsion and transfer of sentenced persons.

52. The ***National Secretariat of Justice (SNJ)*** is responsible for the co-ordination of the national policy on justice. This includes deciding issues related to citizenship and foreigners; receiving requests for assistance pursuant to treaties or domestic legislation; qualifying non-profit organisations; and co-ordinating national action on AML and asset recovery. The DEEST and the DRCI are within the SNJ structure.

53. The ***Technical Commission on Currency and Credit (COMOC)*** works closely with the CMN on a number of consultative committees. It is comprised of the President of the BACEN acting as co-ordinator, the President of the 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 BACEN, who are appointed by its President.

54. The ***National Department of Commerce Registration (DNRC)*** is responsible for: supervising and co-ordinating the bodies responsible for carrying out business registrations; providing technical and financial support to the Commercial Registry Offices; and organising and updating the National Database of Enterprises (CNE) through mutual collaboration with the Registry Offices. It is under the scope of the Ministry of Development, Industry and Foreign Trade.

(ii) Criminal justice and operational agencies

55. The ***Council for Financial Activities Control (COAF)*** is Brazil's financial intelligence unit. It is also a council that provides a multi-agency forum involving heads of several government agencies responsible for aspects of Brazil's AML/CFT system, including the Ministry of Justice, the Federal Police and the Brazilian Agency of Intelligence. COAF is also responsible for regulating entities in the financial and DNFBP sectors that are not subject to regulation by other governmental institutions.

56. The ***Department of Federal Police (DPF)*** is responsible for preventing and investigating offences that violate federal law. Within the Federal Police are the following units.

- The ***Department of Federal Police Organised Crimes Repression and Special Inquiries Division*** is in charge of ML investigations, particularly those related to offences against the national financial system.

- The ***Board of Police Intelligence*** is responsible for planning, co-ordinating, managing, and guiding intelligence activities whenever they are related to issues under the interest and competence of the Federal Police. This Division is responsible for planning and implementing counter-intelligence and anti-terrorism actions.

- The ***Board of Combat of Organised Crime*** is responsible for planning, co-ordinating, managing, controlling, and assessing activities to combat illicit traffic of weapons, crimes against property, financial crimes, illicit traffic of drugs and organised crimes.

57. The ***Civil Police*** is the state-level police with law enforcement duties that include investigating crimes committed in violation of Brazilian criminal law.

58. The ***Brazilian Agency of Intelligence (ABIN)*** is linked to the office of the Presidency. Under its working structure, the Division (General Coordination) for Analysis of Criminal Organisations was created as part of the Counter-Intelligence Department (Strategic Intelligence Department). This division is responsible for assisting the joint work of government institutions, and is responsible for matters concerning ML.

59. The ***Federal Prosecution Service (MPF)*** is responsible for conducting criminal prosecutions and overseeing the activities of the police. It is led by the General Prosecutor *(Procurador-Geral da República – PGR)* (*Constitution* art.128, para.1).

60. The ***Public Prosecution Offices*** in each of Brazil's States are responsible for conducting criminal prosecutions at the state level. These offices are led by the State Attorney-Generals.

- The ***Special Action Group Against Organised Crime (GAECO)*** are special groups created by each state Public Prosecutor's Office to deal with complex cases involving organised crime, ML and financial crimes.

- The members of the GAECO groups gather twice a year in a meeting of the ***National Group Against Organised Crime (GNCOC)***. The GNCOC has a working group to deal specifically with ML cases and typologies.

61. The ***Secretariat of Federal Taxes and Revenue (RFB)*** is responsible for the control of customs and border control, including related efforts to combat ML, smuggling, embezzlement and drug trafficking. It is also responsible for collecting taxes. Three RFB branches have particular roles with respect to AML: the General Co-ordination for Research and Investigation (COPEI) (the intelligence branch); the Special Division of Financial Institutions; and the Special Division of Foreign Affairs.

62. The ***National Secretariat of Public Security (SENASP)*** was created by Decree 2315/1997. Through its General Co-ordination of Information Management, it is responsible for the National System of the Integration of Justice and Public Security Information (INFOSEG). INFOSEG is an information system for the restricted use of Brazilian justice and public security agencies. Its purpose is to integrate Brazil's existing criminal databases.

(iv) Financial sector bodies - government

63. The ***National Monetary Council (CMN)*** is the highest regulatory entity in the national financial system. It is comprised of the Minister of Finance (who serves as the President), the Minister of Planning and Budget, and the President/Governor of BACEN (who serves as secretary). It is responsible for: setting general guidelines for monetary, foreign exchange and credit policies; regulating creation, functioning and

supervision of FIs; monitoring the instruments of monetary and foreign exchange policies; and issuing resolutions and approving regulations applicable to the banking and securities sectors.

64. The ***Central Bank of Brazil (BACEN)*** is responsible for: supervising FIs; monitoring the financial system; and administering the regular operation of the foreign exchange market (Law 4595/1964). BACEN monitors all segments of the financial market with the aim of preventing its abuse and ensuring compliance with relevant legislation, including the *AML Law*. BACEN's Department of Struggle to Exchange and Financial Illicit (DECIF) was created in 1999 for the purpose of implementing AML policies in the National Financial System. In July 2007, the new structure of the Directorate of Supervision (DIFIS) distributed, among other areas, the activities related to the AML/CFT supervision of financial institutions which was, at that time, under the scope of DECIF. Since then, the banking and non-banking sectors were respectively submitted to the supervision of different units, DESUP and DESUC, which allowed specialisation and better conditions to supervise the non-banking sector specifically, improving the quantity and quality of the work. The activities related to the prevention of ML/FT involve the work of other departments of DIFIS, such as DESIG (which is responsible for monitoring the market regulated by BACEN) and DECAP (which is responsible for conducting administrative proceedings of sanctions). The articulation among all units of DIFIS involved in AML/CFT activities, as well as among other units of BACEN is under the responsibility of DECIC (Department of Combat to Financial Illicit and Information Demands on the Financial System). The head of this department is also the BACEN representative at COAF. Another key role of BACEN is to comply and enforce compliance with the relevant laws and the norms promulgated by the CMN.

65. The ***Securities and Exchange Commission (CVM)*** was created by Law 6385/1976. It is responsible for supervising the securities and exchange market. It is also responsible for regulating and supervising activities related to the custody, emission, distribution, liquidation, negotiation, and administration of securities and exchange markets, and ensuring compliance with AML measures. In particular, Law 6385 establishes that the CVM should observe the following objectives: to assure the proper functioning of the exchange and over-the-counter markets; to protect all securities holders against fraudulent issues and illegal actions performed by company managers, controlling shareholders, or mutual fund managers; to avoid or inhibit any kind of fraud or manipulation which may give rise to artificial price formation in the securities market; to assure public access to all relevant information about the securities traded and the companies which have issued them; to ensure that all market participants adopt fair trading practices; to stimulate the formation of savings and their investment in securities; and to promote the expansion and efficiency of the securities market and the capitalization of Brazilian publicly held companies.

66. The ***National Council on Private Insurance (CNSP)*** is the highest regulatory entity in the National Private Insurance System (SNSP) and in the National Capitalisation System (SNC), which also includes the SUSEP. It is responsible for setting general guidelines, policies and directives in the National System, and issuing resolutions *(resolução)* and approving regulations *(regulamento)* applicable to the insurance sector.

67. The ***Superintendence of Private Insurance (SUSEP)*** is responsible for controlling and supervising the insurance, reinsurance, open private pension plans and capitalisation markets (Decree-law 73/1966, Decree-law 261/1967, Complementary Law 109/2001, Complementary Law 126/2007). SUSEP is a special administrative agency, under the Ministry of Finance, and is oriented to preserving the solvency of the markets under its jurisdiction, and defending the integrity of contracts and products offered to consumers. SUSEP is also responsible for applying AML measures to the insurance and capitalisation sector.

68. The ***National Regulatory Board for Complementary Pension Plans (CNPC)*** is the highest regulatory entity in the private and public sector pension plan system, which also includes the SPC (now PREVIC). It is responsible for setting general guidelines, policies and directives, and regulations applicable to private and public sector pension plans.

69. The ***Secretariat of Complementary Social Security (SPC)*** was created in 1978 and is responsible for: supervising the activities of private social security entities; proposing basic guidelines for the Complementary Social Security System; and regulating the *AML Law* for entities of private social security. It is linked to the Ministry of Social Security and Assistance (MPS).[16] In December 2009, the SPC was replaced by the National Superintendence for Pension Funds (PREVIC) which has fully taken on its role and competencies, including the power to issue regulatory instruments for the closed pension funds sector. All regulatory instruments issued by SPC continue to be in force under PREVIC.

70. The ***National Superintendence for Pension Funds (PREVIC)*** is a new supervisory and regulatory body which was created on 23 December 2009. It is considered to be more adequate to the size and complexity of the Brazilian private pension system and is independent of political interference. Among the features of PREVIC are chambers to solve any disputes—the Appeal Chamber for Complementary Pension Plans (CRPC) and the CNPC. PREVIC is responsible for supervising the pension funds system and the Secretariat for Pension Funds Policies (SPPC) is responsible for formulating pension funds policies.

(v) Financial sector bodies – private sector

71. The ***Brazilian Federation of Banks Associations (FEBRABAN)*** is a civil entity that was founded in 1967 for the purpose of contributing to the improvement of banking activities. FEBRABAN deals with subjects such as new technologies introduction, standardisation and automation of services, costs reduction, transparency, clients' rights, and the ongoing search for solutions in banking services.

72. The ***BM&FBOVESPA*** is Brazil's securities, commodities and futures exchange. It was created in 2008 through integration of the Brazilian Mercantile & Futures Exchange (BM&F) and the São Paulo Stock Exchange (BOVESPA). BM&FBOVESPA markets include equity, securities, derivative, fixed income, and over-the-counter (OTC) registration. The Brazilian Commodities Exchange is used by the BM&FBOVESPA to enable the commercialisation of agricultural products. It offers services to the public sector through its electronic auction system and to the private sector through its private system for the acquisition of goods and services. The BM&F Settlement Bank provides settlement services in relation to the transactions executed and/or registered in the BM&FBOVESPA trading environments. In 2008, the settlement services provided by the BM&F Settlement Bank amounted to BRL 3.4 million (EUR 1.3 million/USD 2 million). The Brazilian Clearing and Depository Corporation (CBLC) renders clearing, settlement, risk management, central depository and securities lending services. It acts as a central counterparty for the transactions carried out on the equities and corporate fixed-income securities markets, making and receiving payments, and providing safekeeping for all the securities and assets traded at the Exchange.

[16] The National Secretariat for Pension Funds (SPC) was created in 1978, pursuant to Law 6435/1997 and Presidential Decree 81240/1978 to be the supervisor of closed pension funds. In the watershed year of 2001, article 74 of Complementary Law 109 continued the supervisory and regulatory roles of the SPC and the National Regulatory Board for Complementary Pension Plans (CNPC) under the auspices of the Ministry of Social Security.

73. The ***BOVESPA Market Supervision (BSM)*** is a self-regulatory organisation which is responsible for monitoring the transactions and activities performed by market participants and clearing and/or custody agents at the CBLC. It is also responsible for managing the Investor Compensation Mechanism (MRP).

74. The ***Organised OTC Market (CETIP)*** is a central securities depository and derivatives registrar for operations carried out in "Over The Counter" markets that are regulated by BACEN and CVM. Its responsibilities include managing an electronic platform, trade registration, custody, financial settlement, securities distribution and collateral management. It was created by CMN Decision 188/1984 and started its operations in March 1986. The CETIP has 8 405 participants including: commercial banks, development banks, savings banks, special account banks, investment banks, multiple banks, co-operative enterprises and credits banks, investment funds, non-resident investors, leasing, savings and loan, non-financial entities, broker dealers, savings and loan associations, financing, investment and credit associations and exchange brokerages.

75. The ***Brazilian Federation of Factoring (FEBRAFAC)*** works together with the National Association of Factoring (AnFAC) is a civil, non-profit entity that works together with FEBRAFAC to defend the interests of branched factoring businesses.

76. The ***Brazilian Association of Credit Card Companies and Services (ABECS)*** represents credit card products and the business of its member companies before public and private entities (*i.e.* the executive, legislative and judicial branches of governments; media; and other associations).

(vi) DNFBP sector bodies

77. The ***Federal Council of Real Estate Brokers (COFECI)*** and its respective Regional Councils are governmental bodies, under the scope of Ministry of Labour, that operate with administrative, operational and financial autonomy (Law 6530/1978 art.5). They are responsible for supervising and disciplining the profession of real estate brokers. COFECI is authorised to issue orders regulating real estate companies and/or estate agents, both by individuals and corporate bodies (Law 6530/1978 art.4). The Federal Council: approves requests for registration; maintains the register; supervises the professional practice; and imposes disciplinary sanctions (art.5, 17 and 21).

78. The ***Brazilian Institute of Gems and Precious Metals (IBGM)*** is a national confederation which represents the interests of wholesale and retail businesses operating in the precious gems and precious metals industry, from mining to sales of final product. Members of the various State associations for this sector are also members of the institute.

(vii) Legal persons and arrangements, and non-profit organisations

79. The ***Brazilian Association of Non-Governmental Organisations (ABONG)*** is a national association created in 1991 to represent non-government organisations (NGOs) for the defence of human rights, democracy, and a united, fair and sustainable world. ABONG comprises 300 member organisations throughout Brazil. It is led by a directing council and has eight regional directories across the country, with a national office in São Paulo and a legal advisory office in Brasilia.

c. Approach concerning risk

80. BACEN and SUSEP have incorporated some elements of the risk-based approach within their supervisory frameworks. BACEN evaluates the FIs under its supervision on the basis of the risks assumed by the business and the managerial capacity within both regulatory and prudential limits. ML/FT risk is one of 11 specific risks (the others are prudential risks) that are taken into account. BACEN takes risk into account when setting its inspection cycle for banking institutions. SUSEP takes a similar approach in

relation to SUSEP/FIs. However BACEN has not yet extended this approach to non-bank BACEN/FIs (although it intends to do so). The evaluation of non-bank financial institutions based on the risks assumed by their management capacity within the regulatory and prudential limits is, in fact, differently considered by their nature, size and low complexity of the business conducted by these institutions. Specific assessments focused on the verification of ML/FT risks in non-bank institutions have always been considered as one of the items to be verified through monitoring work planned according to guidelines set forth by DIFIS and alerts indicated by DESIG. BACEN is currently evaluating the feasibility of applying the methodology of risk assessment and controls for the non-banking sector, in consideration of its specific characteristics. See section 3.10 of this report for further details on how the authorities have incorporated the risk-based approach into the regulatory framework.

81. PREVIC is developing a program to modernise its supervisory framework. The program includes a gradual shifting in the supervisory approach from a rules-based and remedial approach to one that emphasises prevention and efficient risk management. PREVIC has greatly progressed in shifting towards risk based supervision. For instance, a resolution adopted in 2004 established principles, rules and practices for governance, management and internal controls for EFPCs. The resolution also requires EFPCs to implement measures to mitigate the risks faced by the pension funds. According to the resolution, these risks need to be monitored, evaluated and controlled. A resolution adopted in 2007 strengthened these principles and requires segregation of the custody function from the asset management function. A resolution implemented in 2006 strengthened the rules for solvency by requiring a revised mortality table as a base for actuarial calculations. A resolution in 2008 proposes mechanisms to deal with eventual actuarial surpluses and deficits in pension funds. In January 2009, SPC adopted a resolution to align accounting rules of pension funds with IAS 26/1994 standards. Since 2007, SPC has developed new programs for on-site and off-site supervision. This is an ongoing plan that includes the elaboration of a risk matrix for the closed pension funds, and evaluation of closed pension funds according to an annual program. Recommendation 2, issued 27 April 2009, provides the adoption of Risk Based Supervision (RBS) by the National Superintendence for pension funds for the supervision of closed private pension entities and benefit plans administered by them.

82. The other regulators (CVM and COAF) do not apply a risk-based approach within their supervisory frameworks.

d. Progress since the last mutual evaluation

83. Since Brazil's last evaluation in 2004, the authorities have been working to address the deficiencies identified in the mutual evaluation report as being insufficiently or not in compliance with the *FATF Recommendations*. This section summarises some of the key action which has been taken.

84. Brazil has been working to enhance its legal and institutional AML/CFT framework. An important part of this work has involved awareness raising both among relevant governmental authorities and the public. Importantly, a revised AML Law (Project Law 3443/2008) has been created to strengthen the ML offence[17]. This bill has already been approved by the Federal Senate and is now under consideration in the House of Representatives (*Câmara dos Deputados*).

85. The Brazilian press has also contributed to raising the public's awareness about the importance of combating ML. The authorities report that these efforts have begun to generate results in terms of ML investigations, prosecutions and convictions.

[17] The assessment team has not seen this draft legislation.

86. Another important factor contributing to Brazil's progress has been the ENCCLA mechanism through which Brazil has developed a coherent AML/CFT strategy, set annual goals and systematically reviewed its progress to enhance implementation of AML/CFT measures (see section 6.1 of this report for further details). Some noteworthy outcomes of this approach have been:

(a) the development of centralised electronic information systems, including:

  (i) the National Financial System Client Reference Registry (CCS) which permits the authorities to confirm in which financial institutions customers maintain accounts (ENCCLA 2005 Goal 2);

  (ii) the National Registration of Social Entities for non-profit organisations (NPOs) (ENCCLA 2007 Goal 27);

  (iii) the National Registry of Civil Conviction for Acts of Administrative Improbity (ENCCLA 2008 Goal 21); and

  (iv) the Databank of Criminal Types (ENCCLA 2009 Action 2).

(b) the development of a system for collecting information and statistics on the amount, description, estimated value and location of seized assets (ENCCLA 2006 Goal 10);

(c) the introduction of requirements to identify politically exposed persons (PEPs) (ENCCLA 2006 Goal 1);

(d) the elaboration of more specific requirements to report suspicious transactions related to terrorist financing (ENCCLA 2007 Goal 3);

(e) the implementation of a comprehensive AML/CFT training program for law enforcement and prosecutorial authorities, and the judiciary—the National Program of Qualification and Training for Combating Money Laundering (PNLD) (ENCCLA 2004 Goal 25);

(f) the development of computerised systems to facilitate the analysis of large volumes of financial information—the Laboratory of Technology against Money Laundering (LAB-LD) (ENCCLA 2006 Goal 16); and

(g) the development of a standardised format for requesting and obtaining information resulting from the lifting of bank secrecy (ENCCLA 2008 Goal 4).

87. Additionally, Brazil has enhanced its ability to prosecute money laundering cases by continuing its implementation of the Specialised Federal Courts which bring together federal prosecutors and judges who are specialised, and have both expertise and experience in handling cases involving ML and other financial crimes. The Specialised Federal Courts appear to have adequate resources to carry out their functions. Nevertheless, overall, the number of final money laundering convictions remains very low.

88. Brazil has signed and ratified the *United Nations Convention for the Suppressing of the Financing of Terrorism* (the *Terrorist Financing Convention*) through Decree 5640/2005. However, it has not yet criminalised terrorist financing in a manner that is consistent with Special Recommendation II. This severely impacts the ability of Brazil to investigate and prosecute terrorist financing. It also undermines its ability to take provisional measures, confiscate assets, and provide international co-operation (extradition) in such cases.

89. The role of the FIU has been enhanced, including through budget increases and additional staff training. Amendments to Complementary Law 105/2001 facilitate COAF's ability to obtain from financial institutions in the securities sector additional information and documentation relating to suspicious transaction reports (STR).

90. Brazil has enhanced its implementation of a declaration system to detect cross-border transportations of currency and bearer negotiable instruments by requiring travellers to file the currency declaration form (e-DPV) through the web.

91. Brazil has also improved implementation of preventative measures in the financial sector. CDD measures have been generally enhanced, particularly in relation to financial institutions supervised by BACEN (banks and non-bank financial institutions) and SUSEP (insurance companies). Specific requirements to identify beneficial owners have been introduced. PEPs requirements have been introduced for all financial institutions and covered DNFBPs. Additionally, more comprehensive requirements in relation to Special Recommendation VII have been implemented, including a requirement to include the customer's tax registration number (CPF/CNPJ number) or identification number in the payment message where there is no account number. Brazil has also introduced preventative measures in the closed pension funds sector. Brazil has amended requirements in the banking, securities and insurance sectors to require the reporting of all suspicious transactions, regardless of a threshold.

92. Brazil has introduced an explicit audit requirement for financial institutions in the insurance sector, but has not yet done so in relation to the securities sector. Brazil has not yet introduced specific requirements in relation to foreign branches and subsidiaries (Recommendation 22) for most sectors. More specific measures to prevent criminals from holding a significant investment in financial institutions have been introduced in relation to non-bank financial institutions supervised by BACEN and insurance institutions. However, there are not measures in place to prevent criminals or their associates from owning or controlling financial institutions supervised by COAF (COAF/FIs), and the relevant measures in the closed pension funds sector are insufficient. Additionally, Brazil has amended Complementary Law 105/2001 to give the CVM direct access to the financial records of the entities that it supervises. However, COAF's supervisory function is impeded since it must obtain a court order to obtain supervisory information from COAF/FIs, unless the information is related to an STR and COAF's FIU function.

93. International co-operation has incrementally increased, and more agreements to facilitate international co-operation have been established since 2004. Also, the CVM has signed the IOSCO Multilateral MOU on 21 October 2009.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 Criminalisation of Money Laundering (R.1 & 2)

2.1.1 Description and Analysis

Recommendation 1

Elements of the money laundering offence

94. Brazil criminalised ML as an autonomous offence in 1998 on the basis of the *1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (the *Vienna Convention*) and the 2000 *UN Convention against Transnational Organised Crime* (the *Palermo Convention*)—both of which it has ratified. The ML offence is contained in article 1 of Federal Law 9613/1998 (the *AML Law*).

Concealment or disguise (AML Law art.1)

95. Brazil has criminalised the act of concealing or disguising proceeds in a manner that is consistent with Recommendation 1. Article 1 makes it an offence to conceal or disguise the proceeds generated from certain listed criminal offences. The elements of the offence are:

- ***Mens rea:*** The defendant knew that the property was proceeds.
- ***Physical act:*** The defendant concealed or disguised the true nature, origin, location, disposition, movement, or ownership of the assets, rights or valuables resulting directly or indirectly from certain listed criminal offences.

Conversion or transfer of proceeds (AML Law art.1, para.1)

96. Brazil has also criminalised the conversion and transfer of criminal proceeds. The elements of the offence are:

- ***Mens rea:*** The defendant intended to act and wanted the results of his/her action.
- ***Physical act:*** The defendant converted, exchanged, traded, gave, moved or transferred the proceeds, or imported/exported goods at prices that do not correspond to their true value.
- ***Purpose/intention:*** The defendant acted for the purpose of concealing or disguising the use of the proceeds.

97. This formulation is substantially consistent with Recommendation 1. However, there is a technical deficiency because the offence does not extend to circumstances where the conversion/transfer is performed for the purpose of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his/her action, but there is no intention to conceal/disguise. The offence only covers the conversion/transfer of proceeds for the purpose of concealing or disguising their use. In those very exceptional circumstances when the intention to conceal/disguise cannot be inferred from the circumstantial evidence, the Brazilian authorities are able to prosecute the defendant pursuant to the offence of "personal favouring" (*Criminal Code*, art.348). Article 348 is not a classic money laundering offence, and is only punishable by one to six months imprisonment and a fine. Moreover, it would only apply in the context of third party ML and is not punishable where the one who helps is the father, mother,

son, daughter, husband, wife, brother or sister of the defendant. Consequently, although article 348 goes some way to addressing the issue, a minor technical deficiency remains.

Acquisition and possession (AML Law art.1, para.1(II) and Criminal Code, article 180)

98. Brazil has also criminalised the acquisition of criminal proceeds. The elements of the offence are:

- ***Mens rea:*** The defendant intended to act and wanted the results of his/her action.
- ***Physical act:*** The defendant acquired, received, received as a guarantee, kept or stored proceeds.
- ***Purpose/intention:*** The defendant acted for the purpose of concealing or disguising the use of the proceeds.

99. Article 1 paragraph 1(II) substantially meets the requirements of Recommendation 1, except that it requires the defendant to have acted with the purpose of concealing or disguising the use of the assets, rights or valuables. Nevertheless, persons who act in circumstances where such an intent cannot be inferred from the circumstantial evidence may still be prosecuted pursuant to article 180 of the *Criminal Code*. Article 180 makes it an offence to acquire, transport, conduct or conceal, for oneself or for someone else's benefit, something known to be the proceeds of crime, or to influence a *bona fide* third party to do so. Jurisprudence confirms that the article 180 offence extends to illicit money.[18]

Use (AML Law art.1, para.2)

100. Brazil has criminalised the use of criminal proceeds. The elements of the offence are:

- ***Mens rea:*** The defendant knew that the property was proceeds of crime.
- ***Physical act:*** The defendant made use of the proceeds through economic or financial activity.

101. This aspect of the offence substantially covers the act of using proceeds through an economic or financial activity. Other types of use, not involving an economic/financial activity (*e.g.* living in a house, driving a vehicle) are covered by the broad concepts of keeping, storing or moving described above in relation to article 1, paragraph 1(II).

Self-laundering

102. The ML offence extends to a person who commits both the predicate crime and ML. Article 1 of the *AML Law* does not distinguish between the person who committed the predicate offence (a self-launderer) and a third party launderer. Moreover, there is no fundamental principle of Brazilian law that would prevent a self-launderer from being convicted and punished. Additionally, the Supreme Court has ruled that ML activities are independent of the predicate offence (Inq.2245, Reporter Ministry Joaquim Barbosa, full plenary, judgment: 28.08.2007. Justice Gazette 09.11.2007). While statistics are not available on this issue, in practice it appears that convictions for self-laundering are common and the Brazilian authorities have provided an example of a judgement in such a case.

[18] Criminal Appeal No.70009157538, Eight Criminal Chamber, State Court of RS, Date of Judgment 21/09/2005.

Laundering the proceeds of foreign predicate offences

103. The law specifically extends the ML offence to instances where the proceeds were generated from a predicate offence committed abroad (art.2(II)) and the Brazilian authorities have provided an example of a judgement in such a case.

Definition of proceeds

104. The ML offence extends to a broad range of property, broadly referred to as "assets, rights and valuables resulting from" the predicate crimes. No limits with regards to the value of such property are specified. The Brazilian authorities confirm that this provision is broad enough to cover property of any kind, regardless of its value, that directly or indirectly represents the proceeds of crime (art.1).

105. When proving that property is the proceeds of crime, it is not necessary that a person be convicted of a predicate offence, even if the predicate offence was committed abroad (*AML Law* art.2(II)). The prosecution only needs to prove sufficient indications of the existence of the predicate offence. The ML conduct is punishable even when the predicate offender is unknown or exempt from punishment (art.2, para.1).

Predicate offences

106. Brazil's *AML Law* provides a list of the types of offences that are considered to be predicate offences for ML (art.1)[19]:

- illicit trafficking of narcotic substances or similar drugs;
- terrorism, including its financing;
- smuggling or trafficking in weapons, munitions or materials used for their production;
- extortion, through kidnapping;
- 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 (*i.e.* corruption and bribery offences);
- acts against the Brazilian financial system;
- acts committed by a criminal organisation; and
- acts committed by an individual against foreign public administration.

[19] Project Law 3443/2008 is currently before the Brazilian Parliament. If enacted, it will extinguish the list of predicate offences and adopt an "all crimes" approach to defining the predicate offences for ML. This Project Law has already been approved by the Federal Senate and is now under consideration of the House of Representatives (*Câmara dos Deputados*).

FATF category of predicate offence (from the glossary to the *40 Recommendations*)	Offences in Brazilian legislation	Only if committed by a criminal organisation?
Participation in an organised criminal group and racketeering	Article 288 of the *Criminal Code*	No
Terrorism, including terrorist financing	Articles 20 and 24 of Law 7170/1983 – terrorism, including its financing	No
Trafficking in human beings and migrant smuggling	Chapter V, Articles 206, 207, 231 and 231-A of the *Criminal Code*	Yes
Sexual exploitation, including sexual exploitation of children	Articles 227, 228, 230, 231 and 231A of the *Criminal Code*	Yes
Illicit trafficking in narcotic drugs and psychotropic substances	Article 33 of Law 11343/1998	No
Illicit arms trafficking	Articles 17 and 18 of Law 10826/2003	No
Illicit trafficking in stolen and other goods	Article 180 of the *Criminal Code* Article 334 of the *Criminal Code*	Yes No
Corruption and bribery	Title XI, Articles 312-359-H of the *Criminal Code*	No
Fraud	Chapter VI of the *Criminal Code* Financial fraud (Article 7 of Law 7492)	Yes No
Counterfeiting currency	Article 289-290 of the *Criminal Code* Article 2 of Law 7492	No
Counterfeiting and piracy of products	Articles 184, 185 and 186 of the *Criminal Code* and Articles 183 - 194 of Law 9279/1996	Yes
Environmental crime	Chapter V, Articles 29 – 69-A of Law 9605/1998	Yes
Murder, grievous bodily injury	Articles 121 and 129 of the *Criminal Code*	Yes
Kidnapping, illegal restraint and hostage-taking[20]	Article 159 of the *Criminal Code*	No
Robbery or theft	Articles 155 and 157 of the *Criminal Code*	Yes
Smuggling	Article 334 of the *Criminal Code*	No
Extortion	Article 158 of the *Criminal Code*	Yes
Forgery	Chapter II, III and IV of the *Criminal Code*	Yes
Piracy	Article 261, paragraph 2 of the *Criminal Code*	Yes
Insider trading and market manipulation	Chapter VII-B, Articles 27B, 27C, 27D, 27E and 27F of Law 6385/1976 Articles 6 and 18 of Law 7492	No

107. Three of the types of predicate offences identified in the *AML Law* comprise a vast array of crimes. For example, "acts against the public administration" covers more than 40 crimes, including concussion, prevarication, trafficking of influence, corruption of foreign public official in international business transaction, fraud in legal proceedings, abuse of power, graft, betrayal of trust, facilitation of

[20] Extortion through kidnapping is predicate offence to ML under the *AML Law*.

smuggling[21] and the evasion of social security contributions. More than 20 crimes are established in Law 7492/1986 as "acts against the national financial system", including fraud, capital flight, violation of the secrecy of an operation carried out or a service provided by a financial institution or a member of the securities distribution system known to the person by reason of his/her office. Finally, "acts committed by a criminal organisation" include all offences committed by an association of more than three people, in a group or gang, which exists in order to perpetrate crimes (*Criminal Code* art.288).

108. All 20 FATF designated categories of predicate offences are predicate offences for ML in Brazil. However, for the following reasons, the range of predicate offences is not considered to be sufficient in 10 of the designated categories.

- There is an insufficient range of offences in the category of *terrorism, including terrorist financing* because FT is not criminalised as a stand alone offence in Brazil, consistent with Special Recommendation II (other than in extremely limited circumstances) (see section 2.2 of this report for further details).

- Offences in nine of the FATF designated categories of offences are predicates for ML only if they are committed by a criminal organisation (meaning a criminal association, group or gang of more than three people): trafficking in human beings and migrant smuggling; sexual exploitation, including sexual exploitation of children; counterfeiting and piracy of products; environmental crime; murder, grievous bodily injury; robbery or theft; extortion; forgery; and piracy. They are not predicate offences if committed in other circumstances (*e.g.* by one or two persons).[22]

Ancillary offences

109. There is a broad range of ancillary offences to ML. Conspiracy is covered by the offence of knowingly taking part in "any group, association, or office" set up for the principal or secondary purpose of committing ML (*AML Law* art.1, para.2). The terms *group* and *association* are undefined in the AML Law, but this formulation would appear broad enough to cover any group, association or office, regardless of its size. Additionally, ancillary offences in the *Criminal Code* apply to offences established in federal laws (such as the ML offence) (*Criminal Code,* art.12). In particular, article 29 of the *Criminal Code* provides that "Whoever, in any way, concurs for the crime will be punished by the same penalties, in accordance with his culpability". The term "concurs" is broad enough to cover the conduct of assisting (*i.e.* facilitating), aiding and abetting. Further, Brazil has criminalised the conduct of "real favouring" which also considers an offence "to provide a criminal, except in cases of co-perpetration or receiving, with assistance to turn the proceeds of crime safe" *(Criminal Code,* art.349). Additionally, it is an offence to openly incite (*i.e.* counsel) someone to commit a crime (*Criminal Code,* art.286) or attempt to commit ML (*AML Law* art.1, para.3).

Additional elements

110. Where the proceeds of crime are derived from conduct that occurred in another country, which is not an offence in that other country but which would have constituted a predicate offence had it occurred domestically, there will not be the offence of ML

21 Smuggling is considered to be a crime against the public administration because it generally involves the avoidance of tax (*e.g.* import/export duties).

22 If enacted in its current form, Draft Law 3443, which is currently before the Chamber of Deputies, would increase the list of predicate offences, making each and every criminal act a predicate offence.

Recommendation 2

Scope of liability

111. Like all offences in Brazil, the offence of ML applies to natural persons. Money laundering is a wilful offence in Brazil, where there are three possible forms of intent (*dolus*): direct, necessary or eventual. Direct intent (*dolus directus*) means that the consequences of the action were both foreseen and desired (or alternatively, assumed as necessary) by the perpetrator (*Criminal Code* art.18(I)). Eventual wilfulness means that the perpetrator had the intention of acting and assumed that the result was possible as a consequence of his conduct (*Criminal Code* art.18(I), last part). Eventual intention (*dolus eventualis*) means that the prosecution must prove, by the circumstances related to the conduct, that the perpetrator assumed the risk that the assets, rights or valuables might be proceeds of an illicit activity. There is no need to prove any specific intention with the conduct, as it would be necessary for the second form of wilfulness.

112. The intentional element of the offence of ML (the *dolus*) may be inferred from objective factual circumstances. The judge may freely appreciate all of the evidence to reach a conclusion and rule the case (*Criminal Procedure Code* (CPC) art.155). A notorious and proven circumstance that, referring to the fact, may lead inductively to come to the conclusion that there is or are other circumstances is considered evidence in a case (CPC art.239).

113. Legal persons are not subject to criminal, civil or administrative liability for money laundering. Criminal liability for ML does not extend to legal persons, and is not possible due to fundamental principles of domestic law. While the majority of legal scholars in Brazil consider that the criminal liability of legal persons is incompatible with the principle that only individuals can be criminal agents, criminal liability for legal persons does exist in Brazil's *Constitution* with respect to two defined types of criminal activity: crimes against the environment (art.225, para.3) and crimes against the economic and financial order (art.173, para.5)[23]. Both of these are relatively recently established, enacted for the first time in the 1988 *Constitution*. While the first of these is further elucidated in supporting legislation (*e.g.* Law 9605/1998), the second is merely repeated in article 173 of the *Criminal Code*. Corporate criminal liability was extended in these very limited circumstances as environmental crimes and crimes against the economic and financial order both have a particularly broad impact on the nation and are considered to be crimes against the public economy. The *Constitution* does not allow for any further extension of corporate criminal liability to other types of offences. This means that, due to fundamental principles of domestic law, as articulated in the *Constitution*, corporate criminal liability is only possible for environmental crimes and crimes against the economic and financial order. It is not possible for money laundering offences or any other type of predicate offence.

114. Neither civil nor administrative liability for ML apply to legal persons. In the absence of corporate criminal liability for ML, the *FATF Recommendations* require civil or administrative liability to apply directly to legal persons that engage in ML activities, in similar terms as occurs with criminal sanctions, for the sake of maintaining a level playing field. However, in Brazil, corporate civil or administrative liability designed to directly sanction ML activities is not available. Although, in some cases, legal persons might be punished for other general offences of impropriety—*e.g.* performing acts against the economic and financial order, and against the citizens' monies (*Constitution* art.173, para.5) or being involved in offences against the public administration (Law 8429/1992, art.9)—these are not money laundering offences and could only be used if the circumstances of the ML offence correspond with the

[23] Article 173 paragraph 5 of the *Constitution*: "The law shall, without prejudice to the individual liability of the managing officers of a legal entity, establish the liability of the latter, subjecting it to punishments compatible with its nature, for acts performed against the economic and financial order and against the citizens' monies."

elements of one of these other general offences. There are no offences which are directly, exclusively and mandatorily applicable to a legal person for engaging in ML activities on its behalf. Legal persons are only subject to administrative and civil liability for non-compliance with the preventative measures and duties provided for in the *AML Law.*

115. The absence of corporate criminal liability with respect to ML does not preclude civil or administrative liability in relation to natural persons who were responsible for the actions of a legal person. If ML is committed by (or on behalf of) a legal person, all natural persons who had control over the decision to commit such conduct are criminally liable (*e.g.* presidents, directors, financial directors, accountants, etcetera). Additionally, the administrators or partners of the legal entity will be personally and civilly liable for the illicit acts of the legal person (*Civil Code* art.50).

Sanctions

116. Natural persons who commit a ML offence are punishable by three to 10 years imprisonment, plus a fine[24]. Additionally, upon conviction all laundered proceeds are forfeit. If the offence follows a constant pattern or is committed by a criminal organisation, the sentence shall be increased by one to two-thirds. An attempt to commit ML is punishable by a penalty corresponding to the penalty for ML, diminished by one to two-thirds. Additionally, there is the penalty of being prohibited to occupy or maintain a public function or position as a director, board of administration member, or manager of legal persons that operate in the financial sector, for a period of time double to the term of imprisonment imposed. The loss of position, public function or term of office may apply to convicted natural persons. This additional sanction is not automatic, but must be specifically pronounced by the court, and can only be ordered where an imprisonment sentence of one year or more is ordered (*Criminal Code* art.92(I)). In general, the sanctions that apply to natural persons are proportionate and dissuasive; however, in practice, they are not being effectively applied, as is described below in more detail.

117. The ML offence does not set out any criminal, administrative or civil sanctions specifically applicable to legal persons. However, legal persons that have demonstrated they are unfit to enter into a contract with the public administration as a result of illicit acts committed, are excluded from the public procurement process (Law 8666/1993 art.88). Although the authorities provided examples of instances in which the corporate veil was lifted to seize assets of an individual defendant/third party being held by the legal entity, it is not possible to apply administrative or civil sanctions to a legal person directly for wilfully laundering proceeds.

Additional elements

118. There are no statistics on the criminal sanctions applied to persons convicted of the ML offence.

Statistics and effectiveness

119. Brazil does not maintain comprehensive statistics on ML prosecutions and convictions. Each institution is responsible for keeping its own statistics (MPF, DPF, judiciary). There are important deficiencies in the collection of statistics on ML prosecutions and convictions by all of the bodies concerned, including the public prosecutors and courts. There is a lack of complete information related to enquiries, judicial investigations, prosecutions, convictions in first instance and final convictions. Statistics are not available on the number of ML convictions in courts of first instance which related to cases of self-

[24] The reform of *AML Law* approved by the Brazilian Federal Senate (Project Law 3443) purports to increase the maximum penalty to 18 years. This project law is now under consideration of the House of Representatives (*Câmara dos Deputados*).

laundering, nor on the number of ML convictions obtained without conviction for a predicate offence. Information is not available on the sentences handed down for ML convictions in the courts of first or second instance. Nevertheless, for the purposes of the mutual evaluation, the authorities were able to provide the following information.

State-level proceedings

120. The following chart provides some information about ML prosecutions and convictions at the state level. However, these statistics are incomplete as not all Brazilian states provided information in this regard. Moreover, the statistics provided do not indicate how many cases resulted in conviction/acquittal, or how many individual persons were convicted at the state-level.

STATE-LEVEL ML INQUIRIES, PROSECUTIONS AND APPEALS											
Year	1ST DEGREE PROCEEDINGS							2ND DEGREE PROCEEDINGS			
	INQUIRIES			CRIMINAL ACTIONS				APPEALS			
	Distributed	Filed	In course	Distributed	Filed	In course	Forfeiture decisions	Distributed	Judged	In course	Forfeiture decisions
2007	37	6	41	47	21	145	10	1	0	4	0
2008	111	12	74	45	24	155	9	38	32	25	0
2009	125	12	97	68	23	226	4	99	59	83	0
TOTAL	**273**	**30**	**212**	**160**	**67**	**526**	**23**	**138**	**91**	**112**	**0**

Federal-level proceedings

121. The Brazilian system for investigating and prosecuting criminal matters works as follows. Upon receiving information that a crime may have occurred (*notitia criminis),* the prosecutor must always act after analysing the case, either by: dismissing it with a formal act (administrative or judicial) if there is no evidence to support starting an investigation; opening a preliminary investigation (administrative) within the Federal Prosecution Service (MPF); or sending it to the Department of Federal Police (DPF) for a criminal investigation (*inquérito policial*) and eventually prosecution. Alternatively, the prosecutor may proceed directly to prosecution (*ação penal*).

122. The chart below reflects the following. For the period from 2004 to 2008, the MPF conducted a total of 1 214 preliminary inquiries (see "Number of preliminary inquiries by MPF"). The MPF sent a total of 6 071 matters to the DPF for further investigation. This number is comprised of those preliminary inquiries which resulted in an opinion that further investigation was needed and, additionally, those plain *notitia criminis* (information received by the MPF indicating that a crime may have occurred) (see "Number of criminal investigations launched by the DPF"). Once the DPF conducted its investigation, it sent 3 289 cases back to the MPF where there was sufficient evidence for prosecution (see "No. of criminal investigations reported by the DPF"). Then, the MPF started the prosecution which appears as a "criminal actions" in the charts below relating to the Specialised Federal Courts.

Year	Number of preliminary inquiries by the MPF	Number of criminal investigations launched by the DPF	Number of criminal investigations reported by the DPF
2004	235	1 035 (only main units)	477 (only main units)
2005	195	697 (only main units)	249 (only main units)

2006	204	1 613	458
2007	286	1 437	612
2008	294	1 289	1 493
TOTAL	**1 214**	**6 071**	**3 289**

123. The Specialised Federal Courts were created in 2003 by means of Resolution 314/2003 of the Federal Council of Justice. It is important to note that Brazil's implementation of a system of specialised federal courts has greatly enhanced its ability to prosecute ML by bringing together federal prosecutors and judges who are specialised and have expertise and experience in handling cases involving ML and other financial crimes. The authorities confirmed that before this step was taken, there were very few proceedings for ML, despite the fact that the *AML Law* was enacted in 1998. Following the creation of the Specialised Federal Courts, the number of proceedings started to rise. Unfortunately, comprehensive statistics have not been maintained since the beginning of the process which means that a clear picture of the progress being made by the Specialised Federal Courts is not available. The specialised federal courts are described in more detail in section 2.6 of this report.

124. Statistics at the federal level (like those at the state level) are incomplete. For instance, there are no available statistics on the number of persons who have been convicted, who actually entered prison and how long they were incarcerated. Until 2007, Brazil only collected statistics on the number of conviction decisions (*i.e.* the number of cases which resulted in conviction), not on the number of individual persons convicted in each case. Consequently, the authorities were unable to establish that the sanctions for ML are being applied effectively to natural persons. The following chart sets out the number of investigations and cases handled by Specialised Federal Courts from 2006 to 2008. However, these statistics are only partial as not all of the Specialised Federal Courts were able to provide such information.

DESCRIPTION	2006	2007	2008	TOTAL
Number of investigations initiated	2 228	1 311	1 221	**4 760**
Number of criminal actions started (indictments)	462	187	131	**780**
Number of cases resulting in acquittals	7	13	47	**67**
Number of cases declaring the extinction of punishment (based on statute of limitations)	1	10	40	**51**
Number of cases resulting in convictions in the first instance (some of these cases may involve multiple defendants)	14	30	47	**91**
Number of cases resulting in final convictions	2	1	3	**11**
Number of procedures of seizures or apprehension of assets started	350	73	48	**471**
Total amount of goods, rights and values obtained in seizures	BRL 1.2 billion (EUR 523 million /USD 675 million)	BRL 30.6 million (EUR 13 million /USD 17 million)	BRL 602 million (EUR 262 million /USD 339 million)	BRL 1.8 billion (EUR 784 million /USD 1 billion)

125. For 2006 and 2007, the statistics were further broken down by region, as indicated in the following chart. It should be noted that all of the convictions set out in the below chart are convictions in the first instance and are, therefore, subject to appeal (although some may already be definitive because they were later judged by a second and third degree court).

Region	Specialised Federal Court	2006					2007				
		investigations	indictments	convictions	acquittals	sentences of extinction[25]	investigations	indictments	convictions	acquittals	sentences of extinction
1st Region	2nd Criminal Court of Bahia	5	0	0	0	0	8	0	0	0	0
	10th Criminal Court of Distrito Federal	209	309	1	0	0	113	39	0	0	0
	11th Criminal Court of Goiás	-	-	-	-	-	11	1	0	0	0
	1st Criminal Court of Maranhão	0	1	0	0	0	8	8	2	0	1
	4th Criminal Court of Minas Gerais	171	26	-	-	-	116	29	1	0	0
	4th Criminal Court of Pará	7	2	0	0	0	-	-	-	-	-
Subtotal		**392**	**338**	**1**	**0**	**0**	**256**	**77**	**3**	**0**	**1**
2nd Region	5th Criminal Court of Rio de Janeiro	199	7	0	0	0	23	1	0	0	0
	3rd Criminal Court of Rio de Janeiro	205	2	0	0	0	15	0	0	0	0
	2nd Criminal Court of Rio de Janeiro	208	4	1	1	0	21	2	0	0	0
	7th Criminal Court of Rio de Janeiro	198	1	0	0	0	28	1	0	0	0
	1st Criminal Court of Espírito Santo	31	1	0	0	0	24	4	1	0	0
Subtotal		**841**	**15**	**1**	**1**	**0**	**111**	**8**	**1**	**0**	**0**
3rd Region	1st Criminal Court of Campinas-SP	11	0	0	0	0	16	0	0	0	0
	4th Criminal Court of Ribeirão Preto-SP	11	7	0	0	0	14	1	1	0	0
	6th Criminal Court of São Paulo	92	10	5	1	0	79	2	1	0	0
	3rd Criminal Court of Mato Grosso do Sul	26	4	2	0	0	20	1	2	0	1

25 In this chart, the term *Sentences of Extinction* means that the defendant has not been convicted or acquitted of the offence, but the criminal process has nevertheless been closed on the basis of: *(i)* death of the defendant; *(ii)* the granting of amnesty, grace or pardon; *(iii)* a new law extinguishing a particular offence; *(iv)* the expiration of a statute of limitation; *(v)* the waiver of the right to claim or the acceptance of forgiveness regarding the offences that depend on a private criminal action; or *(vi)* retraction of the agent, when admitted by law.

Region	Specialised Federal Court	2006					2007				
		investigations	indictments	convictions	acquittals	sentences of extinction[25]	investigations	indictments	convictions	acquittals	sentences of extinction
	2nd Criminal Court of São Paulo	166	27	0	1	1	494	57	-	-	-
Subtotal		**306**	**48**	**7**	**2**	**1**	**623**	**61**	**4**	**0**	**1**
4th Region	2nd Criminal Court of Curitiba-PR	44	33	1	1	0	57	6	5	4	3
	Criminal Court of Florianópolis-SC	87	19	-	-	-	78	23	7	4	3
	1st Criminal Court of Porto Alegre-RS	400	4	3	2	0	69	6	6	5	2
	3rd Criminal Court of Curitiba-PR	48	0	0	0	0	69	2	0	0	0
	2nd Criminal Court of Foz Iguaçu-PR**	-	-	-	-	-	-	-	-	-	-
Subtotal		**579**	**56**	**4**	**3**	**0**	**273**	**37**	**18**	**13**	**8**
5th Region	4th Criminal Court of Pernambuco	34	1	0	0	0	31	1	0	0	0
	11th Criminal Court of Ceará	76	4	1	1	0	17	3	4	0	0
Subtotal		**110**	**5**	**1**	**1**	**0**	**48**	**4**	**4**	**0**	**0**
TOTAL		**2 228**	**462**	**14**	**7**	**1**	**1 311**	**187**	**30**	**13**	**10**

126. Overall, the limited statistics that were provided indicate a very low number of final sentences and convictions for a country with such an important and sophisticated financial system. From 2006 to 2009, the statistics show only 11 cases (involving an unknown number of defendants) in which final convictions were obtained[26] (*i.e.* convictions no longer subject to appeal) and 91 convictions in the first instance (*i.e.* convictions which are still subject to appeal). As information is not available for all of the federal-level and state-level courts, the total number of convictions may, in fact, be higher. However, on the basis of the statistics available, there is serious concern about the overall effectiveness of implementation, given the size of the financial system and level of money laundering risk in the country.

127. For the most part, the reasons for the low number of convictions appear to be systemic issues that impede the ability to apply final sanctions, not only in ML cases, but in criminal cases generally. For example, a very complex and multi-level system of appeals means that it takes a very long time to obtain a final conviction, particularly in cases where the defendant has sufficient resources to pursue every available level of appeal. Even if the prosecution succeeds after every appeal has been exhausted, a final conviction is often no longer possible because the statute of limitations is often deemed to have expired.[27]

26 The predicate offences in these cases primarily involved drug trafficking, financial crime, organised crime and corruption offences.

27 At the time of the on-site visit, the authorities had submitted a draft law which would reform the statute of limitation rules, particularly in relation to the retroactive application of the statute of limitations which is

This is because, the applicable limitation period is calculated on the basis of the final sentence ultimately imposed by the court. Since it takes considerable time to process a case through the lengthy appeal process, the statute of limitations, therefore, often serves in practice to extinguish the case before a final conviction may be obtained. This means that even though some convictions are being obtained in the first instance, there are very few final convictions for ML. These systemic issues are described in more detail in section 7.3 of this report.

128. Complex cases involving ML and financial crime are particularly complex and challenging to prosecute, particularly for judges/prosecutors who may not have sufficient experience in dealing with such cases. To address this issue, the authorities implemented an extensive training programme—the Qualification and Training National Program for the Combat against Corruption and Money Laundering (PNLD)—for police, prosecutors and judges. The authorities also cited an example where the Federal Supreme Court (which is not a specialised court) called upon the help of first instance judges, including those from the Specialised Criminal Courts, to assist in dealing with a complex case involving corruption and ML. It is expected that this practice will be used in similar cases in the future. This type of arrangement allows the Superior Courts, which may not have regular experience in handling complex cases involving ML/financial crime, to leverage off the particular expertise of the Specialised Federal Courts, thereby enhancing the ability to prosecute and to obtain final convictions in such cases.

2.1.2 Recommendations and Comments

Recommendations 1 and 2, and Recommendation 30

129. Brazil's 1998 ML offence does cover all 20 of the FATF designated categories of offences. However, there is an insufficient range of offences in 10 of those categories—the most serious of these being in the category of "terrorism, including terrorist financing". The law does not provide for direct civil or administrative liability for legal persons which commit ML, and is not effectively implemented largely because of serious systemic problems in the court system. It is recommended that the Brazilian authorities criminalise terrorist financing in a manner that is consistent with Special Recommendation II, and work closely with the legislature to ensure quick passage of Project Law 3443/2008, which is designed to at least resolve the problem with respect to the coverage of predicate offences.

130. The creation of Specialised Federal Courts to combat ML and financial crime was a step in the right direction that has positively impacted Brazil's ability to prosecute ML. It is recommended that the authorities continue to support this initiative, with a view to enhancing the effectiveness of its system. The proposed reformation of the statute of limitations laws, which is currently awaiting Presidential approval, would be welcomed by the authorities and would also have a positive impact on effectiveness.[28] It is also recommended that the authorities continue their PNLD training programme and extend it as widely as possible to ensure that police, prosecutors and judges at both the state and federal levels have sufficient training in the investigation and prosecution of ML cases.

131. Corporate criminal liability is not possible due to fundamental principles of domestic law, as set out in the *Constitution.* However, Brazil should take legislative action to establish direct civil or administrative corporate liability for ML and ensure that effective, proportionate and dissuasive sanctions may by applied to legal persons.

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described in more detail in section 7.3 of this report. This draft law, which reforms the statute of limitation framework, came into effect on 5 May 2010.

28 The reform of the statute of limitation framework came into effect on 5 May 2010.

132. Brazil should also amend its legislation to criminalise the conversion/transfer of proceeds by a self-launderer in those limited circumstances where the conversion/transfer is performed for the purpose of evading the legal consequences of his/her crime and the intention to conceal/disguise cannot be inferred on the basis of the circumstantial evidence.

Recommendation 32

133. Brazil should implement mechanisms that will enable it to maintain accurate and comprehensive statistics on the number of ML prosecutions and convictions, at both the state and federal levels.

2.1.3 Compliance with Recommendations 1 & 2

	Rating	Summary of factors underlying rating
R.1	**PC**	• Effectiveness: Very few final convictions for ML and number of convictions in the first instance is also low given the level of ML risk and size of the financial sector. Very low penalties for conversion/transfer in the exceptional circumstances when the intention to conceal/disguise cannot be inferred from the circumstantial evidence (art.348-personal favouring offence) (1-6 months imprisonment and fine). • Insufficient range of predicate offences in 10 FATF designated categories of predicate offences (serious deficiencies in the criminalisation of FT; and offences in nine other designated categories are only considered predicates if they are committed by a criminal organisation). • Minor technical deficiencies in the criminalisation of the conversion/transfer of proceeds (self-laundering cases involving conversion/transfer performed for the purpose of helping a person to evade legal consequences not covered in those limited instances where the intention to conceal/disguise cannot be inferred from the circumstantial evidence).
R.2	**PC**	• Legal persons are not subject to direct civil or administrative liability for committing ML offences (corporate criminal liability not possible due to fundamental principles of domestic law). • Natural and legal persons are not subject to effective sanctions for ML because systemic problems in the court system seriously hamper the ability to obtain final convictions and sentences, and legal persons are not subject to direct civil/administrative sanctions for committing a ML offence. Very low penalties for conversion/transfer in the exceptional circumstances when the intention to conceal/disguise cannot be inferred from the circumstantial evidence (art.348-personal favouring offence) (1-6 months imprisonment and fine). • Effectiveness: Very few final convictions for ML and convictions in the first instance is low given the level of ML risk and size of the financial sector.

2.2 Criminalisation of Terrorist Financing (SR.II)

2.2.1 Description and Analysis

Elements of the terrorist financing offence

134. Although Brazil has signed and ratified the *United Nations International Convention for the Suppression of the Financing of Terrorism* (*Terrorist Financing Convention*), it has not criminalised terrorist financing in a manner that is consistent with Special Recommendation II.

135. Brazil relies primarily on Law 7170/1983 for its criminalisation of terrorist financing[29]. Law 7170/1983 defined crimes against national security, political and social order, and a range of terrorism offences. In particular, Brazil points to the offence of acting with extreme violence against people or property with the aim of acquiring funds for the purpose of maintaining clandestine or subversive political organisations (art.20) and to the offence of constituting, instituting or maintaining a military-like illegal organisation, of any kind, armed or not, with or without uniform, with a fighting objective (art.24). However, these offences, which were originally designed to deter a violent overthrow of the government, do not cover the vast majority of terrorist financing activities of the kind envisaged by Special Recommendation II.

136. First, Special Recommendation II requires countries to criminalise, as a stand alone offence, the wilful provision or collection of funds with the intention or knowledge that they should be used to carry out a terrorist act. However, neither article 20 nor article 24 criminalises the financing of terrorist acts.

137. Second, Special Recommendation II requires countries to criminalise the wilful provision or collection of funds with the intention or knowledge that they should be used by a terrorist organisation for any purpose. For the most part, this aspect is not criminalised although articles 20 and 24 do cover some very limited circumstances in this area. Article 20 criminalises the perpetration of certain violent acts committed for the purpose of acquiring funds intended for maintaining a clandestine or subversive political organisation. However, it does not criminalise the collection (acquisition) of funds through other means (*i.e.* unrelated to the perpetration of a violent act) or the activity of providing funds to such an organisation, and does not apply to terrorist organisations that cannot be characterised as clandestine or subversive political organisations. Article 24 is similarly limited. It criminalises the activity of maintaining a military-like illegal organisation, of any kind, armed or not, with or without uniform, with a fighting objective. However, it does not apply to the collection of funds, and does not apply to terrorist organisations that cannot be characterised as "military-like".

138. Third, Special Recommendation II requires countries to criminalise the wilful provision or collection of funds with the intention or knowledge that they should be used by an individual terrorist for any purpose. Brazil has not criminalised this aspect.

139. Overall, this means that Brazil has only criminalised, as a stand alone offence, the provision of funds to military-like terrorist organisations and the collection of funds, through the perpetration of certain violent acts, for the purpose of maintaining a terrorist organisation that can be characterised as a clandestine or subversive political organisation.

140. Additionally, Brazil points to the article 29 of the *Criminal Code*—a general ancillary offence that provides for the punishment of anyone who contributes "in any way" to the commission of a crime, which would include anyone who aids or abets the commission/attempt of a terrorist act by financing it. Brazil has criminalised a range of acts which generally correspond to the types of activities referred to in the *Terrorist Financing Convention.* By reading these offences with article 29, Brazil could prosecute terrorist financing as an ancillary offence to the commission/attempt of a terrorist act. However, this is inconsistent with Special Recommendation II which requires terrorist financing to be criminalised as a stand alone offence. Moreover, this approach does not resolve the issue that the financing of a terrorist organisation or terrorist individual for any other purpose (*i.e.* unrelated to a terrorist act) is not covered. These are serious deficiencies in relation to Special Recommendation II.

[29] Currently, the House of Representatives is examining the Bill of Law 209/2003 – PL3443/2008, which will reform the Brazilian *AML Law*. This law will make it a crime to provide or to collect funds, directly or indirectly, to be used by any individual or group to commit crimes against a person in order to intimidate a population, or to compel the State or an international organisation to do or to abstain from doing any act. The penalty established is imprisonment from four to 12 years plus a fine.

Definition of "funds"

141. The term *funds,* as used in article 20, does not clearly cover the broad range of funds contemplated by Special Recommendation II (*i.e.* assets of every kind). Article 24 only refers to "maintaining" an illegal military organisation. It does not specify through what means and would, therefore, appear to cover any type of maintenance (*e.g.* by the provision of funds or assets of any other kind).

Predicate offences for money laundering

142. The crime of terrorist financing is a predicate offence for ML (*AML Law*, art.1(II)). Article 29 read together with other offences criminalises the financing of terrorist acts as an ancillary offence, and articles 20 and 24 criminalise an extremely limited range of terrorist financing activities as stand alone offences. However, those terrorist financing activities which are not criminalised are not predicate offences for money laundering (financing a terrorist organisation or individual terrorist for a purpose unrelated to a terrorist act; and providing financing for a terrorist act in circumstances where the terrorist act has not yet been committed/attempted).

Scope of liability

143. As a general rule, the Brazilian criminal laws apply to any act or omission carried out in Brazil and to offences committed abroad, according to the principles of extraterritoriality (*Criminal Code*, art.7) including the principles of nationality (both active and passive), the protective principle, and the principle of universal jurisdiction. In some cases, certain conditions may apply. For example, there should be an extradition request in order to prosecute defendants for some crimes committed outside of Brazil.

144. The mental element for the offences under Law 7170/1983 is wilful intention. The law allows for these mental elements to be inferred from objective factual circumstances (see section 2.1 of this report for further details).

145. Civil or administrative liability does not extend directly to legal persons for committing a terrorist financing offence. Corporate criminal liability is not possible due to fundamental principles of domestic law, as set out in the *Constitution* (see section 2.1 of this report for further details).

146. There is a broad range of ancillary offences to both articles 20 and 24. As noted above in section 2.1, the following ancillary offences in the *Criminal Code* apply to offences established in federal laws (art.12) such as Law 7170/1983: assisting (*i.e.* facilitating), aiding and abetting (art.29), real favouring (art.349) and open incitement (*i.e.* counselling) (art.286). Additionally, it is an offence to attempt to commit any of the offences set out in Law 7170/1983 (art.3). It is also an offence to encourage, plot, direct others or participate in a scheme to commit one of these offences (Law 7170/1983 art.4(II)(b)). However, ancillary offences do not extend to article 29 (the co-perpetration offence) since this, itself, an ancillary offence. Consequently, ancillary offences cannot be applied to the financing of terrorist acts.

Sanctions

147. Convictions for the offences in articles 20 and 24 attract penalties of three to 10 years' imprisonment and two to eight years' imprisonment respectively[30]. These sanctions only apply to natural persons. There are no administrative, civil or criminal sanctions applicable to legal persons.

Statistics and effectiveness

148. There have been no FT prosecutions or convictions in Brazil, and articles 20 and 24 have never been used to combat terrorist financing activity of the sort contemplated by Special Recommendation II. Law 7170/1983 was enacted under Brazil's former military regime and is focused on a very different context from that envisaged by Special Recommendation II. Consequently, for political reasons, it is doubtful whether articles 20 and 24 would ever be used in practice.

2.2.2 Recommendations and Comments

Special Recommendation II

149. Brazil has not criminalised terrorist financing consistent with Special Recommendation II. The financing of terrorist acts is not covered as a stand alone offence, and the financing of individual terrorists and terrorist organisations (other than a very specific type of organisation) are not covered. The Brazilian authorities point to Law 7170/1983 which is a national security law primarily focused on deterring a violent overthrow of Brazil's government. However, this law only covers the following narrow circumstances: *(i)* acquiring funds through the perpetration of a violent act for the purpose of maintaining a clandestine or subversive political organisation (art.20); and *(ii)* maintaining a military-like illegal organisation, of any kind, armed or not, with or without uniform, with a fighting objective (art.24).

150. During the on-site, the Brazilian authorities emphasised their commitment to upholding their international obligations, but most expressed the view that terrorism and FT is not a problem in Brazil. This may explain why Brazil has been so slow to implement Special Recommendation II. However, it should also be noted that this view is not universally shared.

151. As a matter of priority, Brazil should create a stand-alone offence to criminalise terrorist financing in accordance with Special Recommendation II. This offence should criminalise the provision or collection of funds (meaning assets of any kind) to carry out terrorist acts, or for use by a terrorist organisation (broadly defined) or an individual terrorist for any purpose. All aspects of terrorist financing should be predicate offences for ML, and the full range of ancillary offences should apply. Civil or administrative liability should be directly applicable to legal persons who commit FT. The offence should also provide adequate sanctions for FT that apply to both natural and legal persons.

Recommendation 32

152. Once terrorist financing has been criminalised in accordance with Special Recommendation II, Brazil should implement mechanisms that will enable it to maintain accurate and comprehensive statistics on the number of FT prosecutions and convictions.

[30] The authorities have advised the evaluation team that Bill of Law 3443/2008 – which is currently awaiting passage through the House of Representatives - proposes a FT offence punishable by imprisonment from four to 12 years plus a fine. The evaluation team has not seen this Bill of Law.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	**NC**	• Brazil has not criminalised the financing of terrorist acts as a stand alone offence (financing of terrorist acts is criminalised only as ancillary offences to existing criminal offences which generally correspond to the types of acts referred to in article 2 of the *Terrorist Financing Convention*). • Brazil has not criminalised the financing of terrorist organisations for purposes unrelated to a terrorist act other than in two limited circumstances - acquiring funds through the perpetration of a violent act for the purpose of maintaining a clandestine or subversive political organisation, and maintaining a military-like illegal organisation. • Brazil has not criminalised the financing of individual terrorists for purposes unrelated to a terrorist act. • The full range of terrorist financing activities contemplated by Special Recommendation II are not predicate offences for money laundering. • The definition of *funds* in article 20 (collection for a clandestine/subversive political organisation) does not extend to assets of any kind. • Legal persons are not subject to direct civil or administrative sanctions for FT. • The full range of ancillary offences do not apply to the financing of terrorist acts as this activity is itself an ancillary offence. • Effectiveness has not been established as the offences have never been used in practice.

2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)

2.3.1 Description and Analysis

Confiscation

153. Brazil is generally able to confiscate property related to money laundering, terrorist financing and predicate offences. The *Constitution* provides grounds for the determination of confiscation (asset forfeiture) as a criminal penalty in the Brazilian legal system (art.5, XLVI, line b). Additionally, the *Criminal Code* (art.43; art.45, para.3; art.91(II), lines a-b) and the *Criminal Procedure Code* (art.122 and 124) set forth general rules that govern the conduct of confiscation proceedings. These rules are generic owing to the fact that they apply to any criminal act that generates economic advantage for the perpetrator.

154. There are also specific rules for the confiscation of assets in drug trafficking cases (Law 11343/2006 (*Anti-drugs Law*) art.63). In particular, there are provisions providing for the confiscation of any movable and immovable assets or the products or proceeds of crime including the vehicles, vessels, aircrafts and any other means of transportation, machinery, utensils, instruments and objects of any nature used for the perpetration of crime (art.60 and 62). Additionally, the *AML Law* contains a specific regulation on the penalty of confiscation which allows for the forfeiture of "any assets, rights and valuables resulting from any of the crimes referred to in this Law" (art.7(I)). Taken together, the above provisions clearly provide for confiscation in ML cases.

155. Although Brazil has not criminalised terrorist financing in a manner that is consistent with Special Recommendation II, it is nevertheless able to confiscate FT-related property related to: *(i)* the extremely limited range of terrorist financing activities criminalised by articles 20 and 24 of Law 7170/1983; or *(ii)* financing activity which contributes in any way to the commission of offences under Brazilian legislation which generally correspond to the types of activities (terrorist acts) referred to in the *Terrorist Financing Convention*. However, Brazil is unable to confiscate property in cases involving:

(i) the financing of a terrorist organisation (other than in the limited circumstances set out in Law 7170/1983) or a terrorist individual for any other purpose (*i.e.* unrelated to a terrorist act); or *(ii)* the financing of a terrorist act in circumstances where the act has not yet been committed or attempted, unless the assets are found to be connected to some other type of illicit activity.

Types of property subject to confiscation

156. Together, these provisions allow for the confiscation of the following types of property:

- products of crime, meaning any assets, valuables and rights obtained directly from the perpetration of a criminal act (*producta sceleris*);
- proceeds, meaning any property acquired with the products of crime (*pretium sceleris*); and
- instrumentalities of crime, meaning the objects used for the perpetration of the crime (*instrumenta et producta sceleris*).

157. Additionally, it is possible to confiscate the instrumentalities intended for use in a crime (*Penal Code* art.14(II) and 91(II)(a)).

158. Confiscation applies equally to property that is derived directly or indirectly from proceeds of crime (*Criminal Code* art.91; *AML Law* art.7(I)). The formulation in article 91 (which applies to all criminal offences) covers the "product of the criminal offence" or "any good or security constituting a gain made by the offender from committing the criminal offence". The "products of the crime" is interpreted to include both the proceeds of crime (direct proceeds), and any property or assets obtained from those proceeds (indirect proceeds). It is immaterial whether property subject to confiscation is held or owned by a criminal defendant or a third party (CPC art.125; *AML Law* art.7(I)).

159. It is also possible to confiscate property of corresponding value. Brazilian jurisprudence has considered that, to the extent that property or proceeds resulting directly from the criminal activity cannot be found, other assets of the same value belonging to the criminal agents may be liable to the penalty of confiscation.

Provisional measures

160. Provisional measures, including the seizure and detention of property, are available to secure assets that become subject to confiscation, including property related to the commission of a ML, predicate offence or many types of terrorist financing. However, for the same reasons as explained above in relation to confiscation, Brazil is unable to apply provisional measures solely on the basis that the property is related to the financing of a terrorist organisation (other than in the limited circumstances set out in Law 7170/1983) or an individual terrorist for a purpose unrelated to a terrorist act, or where financing is provided for a terrorist act, but that act has not yet been committed or attempted.

161. The seizure of immovable assets shall be ordered by the Judge by his own initiative (injunction relief) or upon request by a member of the Public Prosecution, the Police Authority or the plaintiff, and may be ordered at any phase of the police inquiry or criminal action (CPC art.127). The Judge may also seize movable assets if the perpetrator of the illicit act does not have immovable assets, or if his/her immovable assets are not worth much (CPC art.137).

162. Additional procedures may be applied in the case of ML. During an investigation or judicial proceeding, the judge may order the seizure/detention of property that is the object of the offence (*corpus*

delicti) and which belongs to the perpetrator or is registered under his/her name. Such action may be taken pursuant to a request being made by the prosecutor or a police authority, after consulting the prosecutor within 24 hours, upon the presentation of sufficient evidence (*AML Law* art.4). Provisional measures may be taken on the basis of circumstantial evidence (*AML Law* art.4; CPC art.125-144). Such measures will be suspended if a criminal lawsuit is not initiated within 120 days of the seizure/detention first taking place (*AML Law* art.4, para.1).

163. Similar specific provisions apply in the case of drug trafficking offences, with two particularities. First, there is the possibility to transform seized/restrained assets and bank papers in the course of an inquiry or criminal action. Second, there is the possibility to restrain vehicles, vessels, aircrafts and any other means of transportation, as well as machinery, utensils, instruments and objects of any nature for the use on behalf of the public good, for as long as the seizure lasts (*Anti-Drugs Law* art.60-62).

164. In cases where a crime has been perpetrated against the public finances (including ML), property may be seized in the course of a police inquiry or criminal action, without a hearing. This power extends to assets that were donated after the perpetration of crime, including assets in the possession of third-parties that were acquired deliberately or with gross negligence (Decree-law 3240/1941).

165. The initial application to seize/detain property may be made *ex parte*, without notice (CPC art.127).

166. The authorities are also able to confiscate the proceeds or instrumentalities of crime even in situations where the defendant is acquitted on a technicality, provided that the prosecution is able to prove that the proceeds are illicit (*Criminal Procedure Code*, art.119). This is a type of conviction-based confiscation which is possible in the absence of a conviction for ML (even if the crime was only intended) because possession of the proceeds/assets is, in itself, a crime (*e.g.* possession of counterfeit currency, unregistered or forbidden weapons, explosive materials, false passports and other contraband). If there are any doubts about the origin of the assets, the judge may not return them immediately after sentencing, but must start a new proceeding to verify whether or not the assets are the proceeds of crime (*Criminal Procedure Code* art.120, para.1). In such proceedings, the onus is on the defendant to prove the licit nature of the proceeds,

Powers to identify and trace property

167. Law enforcement and prosecutorial authorities may access the records of a financial institution by way of court order at any phase of a criminal investigation, inquiry or judicial proceeding involving ML or a ML predicate offence (Complementary Law 105/2001 art.1, para.4). Such information may also be accessed for the purpose of investigating public officials for offences perpetrated in the exercise of their offices, or in the context of an investigative administrative proceeding by the CVM (Complementary Law 105/2001 art.3, para.1-2 and art.7). The length of time to obtain a judicial order for access to financial information varies. In parts of the countries where judges are facing a massive workload, the process for obtaining a judicial order may be longer. Some authorities reported that judicial orders authorising access to financial information are easily obtained (*e.g.* within 24 hours, as prescribed in article 4 of the *AML Law*), while others indicated the opposite. The reason is that the judicial authorities across the country do not take a consistent approach. Some authorities report that, in practice, a judicial order to access bank data may be difficult to obtain because some judges will not issue such orders, based on the belief that bank secrecy is an absolute right. The Brazilian authorities confirmed that this approach is wrong as a point of law according to governing jurisprudence. Consequently, when a judge refuses to breach bank secrecy in the context of an investigation, the prosecutor will file an appeal which inevitably results in such decisions being overturned. Although only some judges subscribe to this view, the delay caused by having to bring

such appeals (which may take up to a month) negatively impacts the ability of the authorities to trace property, particularly in urgent cases where time is of the essence.

168. The authorities have wide access to electronic systems and databases that facilitate the tracing of assets. Tax information may be accessed for a number of purposes including: *(i)* by court order, provided that such access is in the interests of justice; *(ii)* by an administrative authority, in the interests of the public administration and in the context of an administrative proceeding to investigate an administrative offence; and *(iii)* to file tax charges for criminal purposes (*National Tax Code* art.198-199).

169. The authorities also have access to a number of public registries and government databases that contain information which is useful for the purpose of tracing the ownership of real estate (Law 6015/1973 *Real Estate Registry Law*), automobile vehicles (Law 9503/1997 *Brazilian Traffic Code*), aircraft (Law 7565/1986 *Brazilian Aeronautics Code*), maritime vessels (Law 7652/1988 *Maritime Property Registry*), and companies (Law 8934/1994 *Commercial Boards*); and the database of taxpayer identification numbers (CNPJ numbers for legal persons and CPF numbers for natural persons).

170. Additionally, all supervisors (with the exception of COAF, in its role as a supervisor) can access financial records being held by the FIs under their supervision, without obtaining prior judicial authorisation, for the purpose of carrying out their supervisory functions, including investigating illicit activities (Complementary Law 105/2001 art.2; also see section 3.4 for further details on the provisions which allow financial secrecy to be broken).

171. Furthermore, some initiatives have been taken jointly by BACEN and the judicial branch to improve the effectiveness of seizure orders, such as the Current Accounts National Database (CCS). Judges can send on-line requests to BACEN through this system to obtain a list of all bank accounts owned by a suspect. There is another tool called BACEN-JUD which may be used jointly with the CCS. Through BACEN-JUD, a judge can send an on-line order to freeze the funds in any Brazilian bank account. Such orders must be fulfilled by financial institutions within 24 hours. A similar tool (Infojud) was developed by the judicial branch and the Federal Revenue Secretariat (RFB) to give judges to access information held on the RFB database. After a proper request by the Federal Prosecutor Office, a judge may use Infojud to access the annual declaration of revenue of an investigated person and identify his/her declared assets.

Bona fide third parties

172. The *AML Law* specifically provides for the protection of the rights of *bona fide* third parties (art.7). Additionally, there are general provisions, applicable to all criminal offences, that allow third parties who have been affected by a seizure measure to bring an interlocutory appeal for judicial review (CPC art.129-133). Movable or immovable assets which are (intended) instrumentalities or evidence will not be returned to a *bona fide* third party until the final disposition of the case. However, in all other cases, a *bona fide* third party may apply for and obtain the return of assets at any time during the proceedings. Although in general, the disposition of immovable assets is to be decided at the end of the case, *bona fide* third parties are able to overcome this presumption by bringing a writ of mandamus (CPC art.130). Restitution of seized property is authorised where it is established that it belongs to a *bona fide* third party or the victim (CPC art.118-120).

173. There are also measures in place to prevent or void actions where persons involved knew or should have know that their actions would prejudice the authorities' ability to recover property subject to confiscation (CPC art.125). In relation to frozen/seized assets, the Judge has the discretion to assign a qualified person to administer the assets for the purpose of preserving them. This action ensures that any profits, income or proceeds generated by the assets remain preserved and subject to confiscation (*AML Law* art.5).

174. In the case of immovable assets being seized, the Judge shall order this coercive measure to be registered at the Notary Public for Real Estate Registry as a legal mortgage on the property (CPC, art.128; Decree-Law 3240/1941 art.4, para.2). A legal mortgage is a real right of guarantee by means of which the immovable asset starts to serve as collateral for the effectiveness of the confiscation penalty. Its enrolment in the Notary Public for Real Estate Registry publicises the act, thereby giving notice to third parties who, if they subsequently acquire the property, shall not qualify as *bona fide* acquirers. A confiscation penalty can also be ensured by the substitution of the legal mortgage by security in cash or public debt titles (CPC art.135, para.6). Such a security is also a legal instrument destined to the guarantee for the meeting of future obligations.

175. In drug cases, when the seized assets are exposed to loss of quality or are liable to become useless over time, the judge may order sale of the assets. The money resulting from the sale is then deposited in an interest-yielding bank account, at the Judge's disposal, until the forfeiture order can be executed (*Anti-drugs Law*).

Additional elements

176. The property of criminal organisations may be frozen, seized and confiscated if it is related to criminal activity, including all the objects that have been used for a criminal act. The same applies to the objects acquired as a result of a criminal act or assets of equivalent value.

177. There are some specific circumstances in which property may be confiscated without a conviction. First, anyone who commits an illicit act is legally obligated to indemnify the victim (*Civil Code* art.927). The property generated from the illicit act may thus be confiscated through a civil judicial procedure instituted by the victim or the government. Second, a public agent or third party who obtains illicit economic advantage detrimental to the public Treasury and the public interest may, in addition to facing criminal charges, be subject to an "Administrative Improbity Action" which could result in the confiscation of any assets/funds that were added to the perpetrator's estate as a result of an act of administrative probity (Law 8429/1992 art.12(I-II)). The Administrative Improbity Action has a civil nature, and its initiation, conduct and judgment do not depend on a criminal action or a criminal conviction. Third, instrumentalities of crime may be confiscated without a conviction.

178. Seized or detained assets must be released if the legality of their origin is established (*AML Law* art.4, para.2). This represents a mitigated form of reversed burden of proof. Also, the benefit from a criminal activity is considered to be the difference between the value of the defendant's actual property and one that is consistent with their lawful income.

Statistics and effectiveness

179. Brazil has not fully implemented mechanisms to maintain comprehensive statistics on the number of cases and amounts of property frozen, seized and confiscated, at the federal and state level, in relation to ML and predicate offences. However, work is currently underway to address this issue. The National System of Seized Properties ("*Sistema Nacional de Bens Apreendidos - SNBA"*) was created by the National Justice Council (*"Conselho Nacional de Justiça - CNJ")* through Resolution 63/2008. Once fully implemented, the SNBA will be an electronic database that will consolidate the collection of statistics and information on seized/detained property in criminal procedures across the country.

180. In 2008, work began to enter data into the SNBA system. The following chart sets out the total number and value of seized assets that were registered in the SNBA as at August 2009. These figures do not reflect any seizures that took place prior to 2008. Approximately 7% of these assets seized during this two-year period have now been confiscated. In relation to the remaining 93%, the proceedings are still

ongoing. No statistics are available concerning the value of assets that have been returned to defendants following an acquittal or sentence of extinction.

Type of asset	No. of assets seized: ML cases	Value of assets seized: ML cases (in BRL)	No. of assets seized: all cases	Value of assets seized: all cases (in BRL)
Automobiles	1 316	BRL 12 164 205	14 452	BRL 229 225 713
Vessels	8	BRL 128 100	197	BRL 17 178 849
Aircraft	7	-	29	BRL 5 489 296
Other means of transportation	-	-	1 364	BRL 41 290
Precious stones and metals	673	BRL 1 144 629	17 658	BRL 3 154 058
Personal or domestic objects	43	BRL 12 679	126 814	BRL 2 078 765
Real estate	383	BRL 150 996 089	1 916	BRL 366 790 588
Forest products	-	-	280	-
Hunting and fishing gear	4	BRL 15 000	121 832	BRL 138 848
Financial assets, cheques and other items	55	BRL 7 166 255	2 137	BRL 64 009 318
Cash	137	BRL 10 808 294	118 845	BRL 36 689 883
Documents	25		6 777	
Electronics	57	BRL 22 960	1 293 711	BRL 9 784 028
Computers, accessories and other technological equipment	569	BRL 15 180	1 286 630	BRL 11 541 217
Animals	4 853	-	123 013	-
Food, drinks and medicine	-	-	2 014	BRL 11 134 139
Biological material	-	-	107	-
Psychotropic substances	2	-	26 462	-
Guns and accessories	9	-	642 800	-
Ammunition	47	-	349 448	-
Explosives	-	-	497	-
Other moveable assets	85	BRL 830	8 804 500	BRL 85 790 924
TOTAL (CURRENCY EXPRESSED IN BRL, EUR AND USD)	**8 273**	**BRL 182 million (EUR 71 million) (USD 105 million**)**	**12 941 483**	**BRL 843 million (EUR 328.8 million) (USD 488.5 million)**

181. The Specialised Federal Courts maintain their own statistics in relation to the ML cases within their jurisdiction, as indicated in the chart below. However, it should be noted that these statistics are incomplete. For instance, the Brazilian authorities estimate that about 50% of the total seizures take place in the São Paulo region; however, no statistics are available to confirm the accuracy of this estimate.

Region	Specialised Federal Court	2006			2007		
		Investigations	Seizures and forfeitures	Total assets, rights and valuables (in BRL)	Investigations	Seizures and forfeitures	Total assets, rights and valuables (in BRL)
1st	2nd Criminal Court of Bahia	5	0	0	8	0	0
	10th Criminal Court of Distrito Federal	209	6	BRL 420 000	113	1	BRL 420 000
	11th Criminal Court of Goiás	-	-	-	11	0	0
	1st Criminal Court of Maranhão	0	0	0	8	1	0
	4th Criminal Court of Minas Gerais	171	2	-	116	10	-
	4th Criminal Court of Pará	7	0	No data	-	-	-
Subtotal		392	8	BRL 420 000	256	12	BRL 420 000
2nd	5th Criminal Court of Rio de Janeiro	199	0	0	23	0	0
	3rd Criminal Court of Rio de Janeiro	205	0	0	15	0	0
	2nd Criminal Court of Rio de Janeiro	208	4	No data	21	0	0
	7th Criminal Court of Rio de Janeiro	198	8	BRL 023 831	28	0	0
	1st Criminal Court of Espírito Santo	31	1	0	24	0	0
Subtotal		841	13	BRL 1 million	111	0	0
3rd	1st Criminal Court of Campinas-SP	11	0	No data	16	0	-
	4th Criminal Court of Ribeirão Preto-SP	11	2	No data	14	2	-
	6th Criminal Court of São Paulo	92	9	No data	79	2	-
	3rd Criminal Court of Mato Grosso do Sul	26	31	BRL 1.2 billion	20	7	BRL 4.2 million
	2nd Criminal Court of São Paulo	166	108	Amounts in several currencies	494	-	-
Subtotal		306	150	BRL 1.2 billion	623	11	BRL 4.2 million
4th	2nd Criminal Court of Curitiba-PR	44	45	BRL 51 878 147	57	21	BRL 4 million
	Criminal Court of Florianópolis-SC	87	-	-	78	-	-
	1st Criminal Court of Porto Alegre-RS	400	20	BRL 4 547 552	69	9	BRL 10 million
	3rd Criminal Court of Curitiba-PR	48	113	No data	69	17	BRL 11.7 million
	2nd Criminal Court of Foz Iguaçu-PR**	-	-	-	-	-	-
Subtotal		579	178	BRL 56 425 669	273	47	BRL 25.6 million
5th	4th Criminal Court of Pernambuco	34	1	BRL 343 103	31	1	BRL 343 000
	11th Criminal Court of Ceará	76	No data	0	17	2	No data

Region	Specialised Federal Court	2006			2007		
		Investigations	Seizures and forfeitures	Total assets, rights and valuables (in BRL)	Investigations	Seizures and forfeitures	Total assets, rights and valuables (in BRL)
Subtotal		110	1	BRL 343 103	48	3	BRL 343 000
TOTAL (CURRENCY IN BRL)		**2 228**	**350**	**BRL 1.2 billion**	**1 311**	**73**	**BRL 30.6 million**
TOTAL (CURRENCY EXPRESSED IN EUR/USD)				**EUR 468 million USD 695 million**			**EUR 11.9 million USD 17.7 million**

182. Information is not available to show the number of seizures and their corresponding value for other Brazilian courts.

183. The Specialised Federal Courts have seized over USD 700 million in only two years (2006-2007) in relation to 423 ML cases. Additionally, the information held in the SNBA system shows seizures of about USD 593.5 million (about USD 105 million of which was seized in relation to 8 273 ML cases). Overall, these statistics demonstrate a sufficient number of seizures are taking place.

184. BACEN alone receives about 60 solicitations from judges per day to freeze assets, with approximately 20 000 such freezes ongoing. On average, it takes BACEN about 24 hours to execute such requests. The authorities confirm that this system works very well.

185. However, the statistics show a low number of confiscations, particularly given the size and crime rate of the country. For example, statistics provided in relation to state-level ML prosecutions show only 23 confiscation decisions being granted during the three-year period from 2007 to 2009 (see the chart of state-level proceedings in section 2.1 of this report), and no statistics were available concerning the number of confiscation orders that have been granted in ML cases from the Specialised Federal Courts. Part of the problem is the lack of reliable statistics—although the recent implementation of the SNBA is beginning to address this issue.[31] Additionally, during the on-site visit, the assessment team was made aware of two additional factors that impact the overall effectiveness of the confiscation regime.

186. First, frozen/seized assets are sometimes released prior to the conclusion of a case (meaning upon final conviction after all possibilities of appeal are exhausted). Prior to 2008, it was general practice that seizure would be maintained until the last appeal in the case, on the basis of article 387 (sole paragraph) of the *Criminal Code*. However, a 2008 amendment to article 387 of the *Criminal Procedure Code* convinced some higher court judges that, when the person is considered innocent in the first instance, the assets must be returned. Consequently, in some cases, provisional measures are now reversed before the appeal process is exhausted which allows the defendant ample opportunity to hide or dissipate the assets long before a confiscation order may be obtained. It should be noted that article 387 provides that, where a defendant is acquitted (*e.g.* on a technicality), the prosecutor may apply for the maintenance of the asset seizure to a second degree court, provided that there is some evidence to support the suspicion over the origin of the assets. Nevertheless, this impacts the overall effectiveness of the AML/CFT regime by seriously prejudicing the ability of the authorities to recover property subject to confiscation.

[31] Judges are now required to enter seizure/confiscation data into the SNBA system—a measure that was introduced outside of the period taken into account by this evaluation.

187. Second, the system for administrating and managing seized assets is very weak and not equipped with sufficient resources or expertise to effectively manage non-cash assets. In many cases, assets are left unattended and they deteriorate as a result. This makes confiscation either not possible or the value realised by the government is negligible. Even if the seizure is maintained throughout the duration of the proceedings, it is commonplace for persons convicted in courts of first instance in Brazil to be acquitted on appeal due to procedural matters. Once the case concludes, the defendant must be compensated for any deterioration of seized assets. Since seized assets are likely to have deteriorated or depreciated significantly, this is a disincentive for such assets to be seized in the first place. During the on-site visit, some authorities expressed the view that a specialised agency and supporting structure dedicated to asset seizure would improve the situation. To address this issue, the courts have the power to sell seized assets, prior to the resolution of the case, with a view to preserving value. The proceeds of sale are then held in a special account until resolution of the matter. Although this power is commonly used in drug cases, it was rarely used in the wider context due to the prevailing judicial culture. However, since 2004, the Ministry of Justice has been working to raise awareness of this issue.[32] It should also be noted that, as there is no seized assets managements system in operation, the courts may assign the defendant himself as the custodian of the seized item. This does not mean that the item has been returned, since limitations are drawn concerning the disposal of the asset (*e.g.* the defendant cannot sell, alienate, lend or change it).

188. The authorities are often impeded in their ability to trace assets because, where the production order relates to a large number of records or older (historical) records, FIs are often not in a position to provide the information requested in a timely fashion. Many of these problems relate to the fact that such information is often not kept electronically or in a standardised format. This makes it difficult for FIs to search through large volumes of records, particularly when they date back more than a couple of years. However, the authorities are taking steps which they believe will substantially diminish this issue. At the last ENCCLA annual meeting of 2009, the authorities adopted a model, developed by the Federal Public Prosecution Office, for receiving and analysing large volumes of financial records. The new process works in the following way. When applying to a judge for financial secrecy to be breached, the prosecutor also asks for research to be conducted on the CCS system (the National Database of Bank Accounts managed by BACEN) with a view to discovering all the bank accounts of a person being investigated. The Prosecutor also indicates that the financial institutions shall send the data via a secure system and in a standardised electronic format to the Research and Analysis Branch (*Assessoria de Análise e Pesquisa da PGR – ASSPA*). The authorities are in the process of introducing this system in the package of software that constitutes the LAB-LDs (the Laboratories for Investigation of Money Laundering) which are being installed in several states as part of the Ministry of Justice's PRONASCI Programme.

2.3.2 Recommendations and Comments

Recommendation 3

189. Since 2004, Brazil has pursued a strategy of enhancing its systems for applying provisional measures and confiscation. This strategy has been formulated and published through the ENLCAA process: see Goals 18 and 19 of ENCCLA 2004; Goals 17 and 18 of ENCCLA 2005; Goals 10 and 17 of ENCCLA 2006; and Goals 11, 13 and 14 of ENCCLA 2007. This strategy has generated some positive results, including the establishment of the SNBA which enhances Brazil's ability to maintain

[32] On 10 February 2010, the National Justice Council (CNJ) issued Recommendation 30 which recommends all criminal judges to sell seized assets in the course of an inquiry or criminal action, and to deposit the corresponding value in a bank account until the end of the criminal proceeding in circumstances where, despite ordinary management actions, the asset is subject to the risk of natural depreciation. The authorities report that the next step will be to create, within the SNBA, a mechanism to facilitate the electronic auction of such assets.

comprehensive statistics on the value of property frozen/seized and confiscated. Other aspects of the ENCCLA strategy have resulted in greater access to information and the centralisation of registry information, which has enhanced the ability of the authorities to trace assets.

190. Brazil is able to apply provisional measures and confiscate property in many (but not all) types of terrorist financing cases, even though it has not criminalised FT in a manner that is consistent with Special Recommendation II. Nevertheless, as a matter of priority, Brazil should criminalise FT in a manner that is consistent with Special Recommendation II and as recommended in section 2.2.2 of this report. This will enable the authorities to apply the relevant provisions of the *Criminal Code, Criminal Procedure Code* and the *AML Law* to all FT cases, including the following cases which are currently not covered: financing of a terrorist organisation or terrorist individual for any other purpose (*i.e.* unrelated to a terrorist act), and financing a terrorist act which has not yet been committed or attempted.

191. The powers to apply provisional measures and confiscation as set out in the *Criminal Code, Criminal Procedure Code,* the *AML Law* and the *Anti-drugs Law* are generally sufficient. However, the available statistics indicate that, in practice, the powers relating to confiscation are very rarely used in ML cases, as very few ML convictions have been obtained. It is recommended that the relevant Brazilian authorities continue pursuing their strategy to ensure that such action will be systematically pursued, and to provide for a stronger system for the administration and management of seized assets, and ensure that assets remain seized until the final disposition of the case.

192. Measures should also be taken to harmonise the approach of the judiciary with a view to ensuring that judicial orders for access to financial information are granted in appropriate cases. In light of the massive workload faced by judges in some parts of the country, and the resulting delays in obtaining judicial orders, Brazil should take measures to increase judicial resources in these areas. Additionally, the authorities should continue pursuing ways to improve the ability of financial institutions to meet requests for information in the context of asset tracing actions (*e.g.* by standardising the format of customer records or requiring them to be kept electronically in a consolidated fashion).

Recommendation 32

193. Brazil should continue implementation of the SNBA for the purpose of enhancing its ability to collect and maintain statistics on the number of cases and amounts of property frozen, seized and confiscated relating to ML and predicate offences (including FT).

2.3.3 Compliance with Recommendations 3

	Rating	Summary of factors underlying rating
R.3	**PC**	• Brazil is unable to apply provisional measures or confiscate property solely on the basis that it is related to the financing of a terrorist organisation (other than in the limited circumstances set out in Law 7170/1983), an individual terrorist for a purpose unrelated to a terrorist act, or financing of a terrorist act which has not yet been committed/attempted. • Effectiveness: Although the number of seizures is adequate, it is not established that the authorities are sufficiently focused on pursuing confiscation. In ML cases, the number of confiscations is very low given the size of the economy and ML risk. Courts may return seized property to defendants prior to the final resolution of the case, making confiscation impossible (although such decisions may be appealed to a higher court before the property is unfrozen). Asset management systems are weak which depreciates seized property. Property tracing is impeded because judicial orders for access to financial information may be difficult and lengthy to obtain and, for large/historical requests, FIs may be unable to provide the information requested in a timely fashion.

2.4 Freezing of funds used for terrorist financing (SR.III)

2.4.1 Description and Analysis

Laws and procedures to freeze pursuant to S/RES/1267(1999)

194. Brazil has issued the following Presidential decrees aimed at implementing S/RES/1267(1999): Decree 3267/1999, Decree 3755/2001, Decree 4150/2002 and Decree 4599/2003. None of these decrees were provided to the assessment team in English. However, for the most part, it appears that they substantially repeat the provisions set out in the underlying United Nations Securities Resolutions (UNSCRs), without specifying how these obligations are to be met in practice. In particular, none of the decrees details the specific steps to be taken when terrorist-related assets are detected in the context of S/RES/1267(1999), how such freezing action is to be undertaken in practice (*e.g.* in relation to assets other than funds), how quickly such action must be taken (*i.e.* how is "without delay" to be interpreted), and which competent authorities are involved in the process.

195. The Ministry of Foreign Affairs (MRE) shares updates to the 1267 list with other competent authorities in Brazil, including the Federal Police (DPF), Ministry of Justice, ABIN and COAF. MRE notifies the authorities by telephone, and then transmits the written information by e-mail and physically in paper form. In turn, COAF informs the supervisory authorities (*e.g.* BACEN, SUSEP, CVM). The authorities indicated that these communications happens very quickly, once an update to the 1267 list has been made.

196. To facilitate the identification of terrorist-related assets, prosecutorial agencies and judges can access a computer-based national database system containing complete information on the clients of FIs, the National Database on Clients of the Financial Sector (CCS) which was created by article 10-A of the *AML Law*, and developed by BACEN. Using the CCS system, a judge can issue an order on-line to immediately freeze any assets deposited with a Brazilian bank, regardless of who they belong to. This mechanism does not extend to assets other than those held in banks.

197. However, once an appropriate target has been identified, Brazil must rely on its normal criminal procedures to carry out the freezing action. In other words, the power to freeze is predicated upon a police inquiry or criminal action being underway, and cannot be executed without obtaining a warrant, issued by a court of law, on the basis of sufficient evidence to establish grounds relating to a crime of terrorism, as defined in Brazilian law. This means that, in practice, there is no legal or policy distinction between the freezing of terrorist related assets in the context of S/RES/1267(1999) and the freezing of other criminal funds. This is not consistent with Special Recommendation III which requires the assets of persons/entities designated pursuant to S/RES/1267(1999) to be frozen until delisted by the United Nations Security Council, regardless of the outcome of domestic proceedings and without delay (a phrase which the FATF has interpreted in this context to mean "ideally within a matter of hours of a designation by the Al-Qaida and Taliban Sanctions Committee"). This is a serious deficiency in Brazil's AML/CFT framework.

Laws and procedures to freeze pursuant to S/RES/1373(2001)

198. Brazil has issued Presidential Decree 3976/2001 which is aimed at implementing S/RES/1373(2001). This decree was not provided to the assessment team in English. However, it is similar to the decrees implementing S/RES/1267(1999) in that it generally repeats the provisions set out in that Resolution. The authorities must then rely on the ordinary domestic criminal procedures to carry out the freezing action. This raises similar concerns as those expressed above in relation to S/RES/1267(1999) in that the direct criminal procedure (seizure) approach is insufficient to adequately and effectively respond to the freezing designations in the context of the relevant UN Resolutions.

199. A further problem is that Brazil's ordinary criminal procedures do not provide the authorities with sufficient powers to freeze terrorist-related assets. The obligation to freeze, pursuant to S/RES/1373(2001), specifically extends to terrorists, terrorist organizations and those who finance terrorism. However, Brazil is unable to freeze assets solely on the basis that they are related to a terrorist organisation (other than in the very limited circumstances of Law 7170/1983) or an individual terrorist in the absence of a connection to a terrorist act (see section 2.3 for further details).

200. Brazil does not have specific laws and procedures to examine and give effect, if appropriate, to the actions initiated under the freezing mechanisms of other jurisdictions. Instead, it relies on its legal and institutional framework to provide mutual legal assistance (MLA) in criminal matters. In practice, an MLA request relating to S/RES/1373(2001) is subject to the same procedures as an MLA request relating to an ordinary criminal matter. MLA requests based on letters rogatory are not always processed in a timely manner—although this deficiency is mitigated as very few MLA requests (less than 2%) are processed through this mechanism (see section 6.3 of this report for further details). In relation to the remaining 98% of MLA requests, they are generally processed in a manner which is timely in the MLA context. However, the international requirements to freeze pursuant to S/RES/1267(1999) and S/RES/1373(2001) are predominantly of a preventive nature and necessitate exceptional measures and adapted procedures to enable countries to freeze assets without delay. The term *without delay* necessitates much swifter action than is generally possible in the MLA context. In relation to S/RES/1373(2001), the FATF requires *without delay* to be interpreted in the context of the need to prevent the flight or dissipation of terrorist-linked funds/assets, and the need for global, concerted action to interdict and disrupt their flow swiftly. In the context of S/RES/1267(1999), the FATF requires *without delay* to mean within a matter of hours of a designation by the United Nations. Overall, the Brazilian approach of relying on the normal criminal and MLA procedures does not adequately address the specific preventive and time-sensitive nature of a request to take freezing action pursuant to S/RES/1373(2001) or S/RES/1267(1999).

201. It should also be noted that there is no mechanism that would allow Brazil to designate persons pursuant to S/RES/1373(2001) in appropriate circumstance.

Definition of funds

202. As Brazil relies on its ordinary criminal procedures, one must look to the *Criminal Procedure Law* and *AML Law* to determine what types of property are covered. As described in section 2.3 above, the Brazilian authorities may freeze the proceeds and instrumentalities of crime, or property of equivalent. However, such action would not necessarily extend to all of the funds or other assets that are owned or controlled by designated persons and terrorists, including property from legitimate sources, as is required by Special Recommendation III.

Communication mechanisms and guidance

203. BACEN distributes such lists to some (but not all) of the financial institutions under its supervision. None of the other supervisory authorities in the financial or DNFBP sectors specifically distribute the lists to the entities under their supervision. COAF publishes lists of designated persons/entities on its public website, which financial institutions and DNFBPs are free to check. In practice, these mechanisms do not appear to be working consistently and effectively across the financial and DNFBP sectors. Some representatives from the private sector noted that it was quicker to obtain the list directly from the UN public website, rather than wait to receive it by other means. Others relied on private sector products to receive updates to the lists, and were not aware of any communication mechanism to receive it by other means.

204. BACEN, CVM, SUSEP, SPC and COAF have issued guidance on this issue, primarily through the issuance of regulatory instruments which constitute regulations (in the case of BACEN) and other enforceable means (in the case of the other supervisors) (see section 3.0 of this report for further details concerning the status of these instruments). BACEN issued Circular Letter 3342/2008 and RMCCI 1-16-2, 1-16-5 which are available on the COAF and BACEN websites respectively. This guidance, which only applies to the financial institutions under BACEN's supervision, advises financial institutions to consider promptly reporting, by means of the BACEN any "transactions conducted or services rendered, or proposals to conduct transactions or to render services, of any value" involving the persons/entities referred to in Decrees 3267/1999, 3755/2001, 4150/2002 and 4599/2003—all of which relate to S/RES/1267(1999)—and Decree 3976/2001 which relates to S/RES/1373(2001). This Circular Letter gives no further guidance on this issue. The CVM has issued CVM Instruction 463/2008 which requires CVM/FIs to report transactions related to those persons/entities identified in alerts published by COAF (such as COAF Resolution 015/2007 which is described below in more detail). The SPC has issued SPC Instruction 26/2008 which sets out a similar obligation applicable to SPC/FIs. SUSEP has issued Circular Letters SUSEP/DECON/GAB 21/2006 and 03/2007 which advise SUSEP/FIs to report transactions involving persons and entities listed on the United Nations website (*i.e.* persons and entities designated pursuant to S/RES/1267(1999)). Additionally, the SUSEP AML/CFT inspection manual advises SUSEP inspectors to consult COAF Resolution 015/2007 to check the list of persons and entities related to the Taliban and al-Qaida who have been designated by the United Nations. Additionally, COAF Resolution 015/2007 (which is issued by COAF and published on its website) requires COAF/FIs to report transactions related to persons/entities designated by the United Nations pursuant to S/RES/1267(1999) and those related to Decree 3976/2001 which implements S/RES/1373(2001).

205. Although these instruments do provide some specific guidance to the financial and DNFBP sectors, no indication of how this guidance is applied in practice was presented. It is important to note that the above guidance goes no further than establishing an obligation to report transactions relating to designated persons and entities. No more specific and practical guidance is provided. For instance, no advice is given on how the financial institution is to act when confronted with a possible terrorist presence and the obligation to report. No clarification is provided concerning how to deal with non-cash assets or transactions being conducted outside of the traditional banking context. This lack of specificity on how to implement these obligations in practice negatively impacts the effectiveness of the existing guidance.

De-listing and unfreezing requests

206. Brazil has not implemented any procedures for considering de-listing requests and for unfreezing the funds/assets of de-listed persons/entities.

207. Brazil does have measures in place for unfreezing the funds/assets of someone inadvertently affected by a freezing mechanism upon verification that they are not a designated person/entity. Such persons (*i.e.* bona fide third parties) may bring an application under the CPC for the restitution of assets frozen by provisional measures (CPC art.118; *AML Law* art.7; *Criminal Code* art.91). However, the assessment team was not provided with any information to confirm that such measures operate in a timely manner.

208. There are no specific provisions for authorising access to funds or other assets that were frozen pursuant to S/RES/1267(1999) and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses, in accordance with S/RES/1452(2002).

209. Brazil does have procedures through which a person/entity whose funds have been frozen can challenge that measure with a view to having it reviewed by a court. Brazil relies on general criminal

justice provisions that allow persons to appeal a judicial decision by bringing an application for *habeas corpus* or an injunction (writ of mandamus). The right of a person not to be deprived of the freedom of his/her assets without the due process of law is protected by the *Constitution* (art.5, Number LIV).

Freezing, seizing and confiscation in other circumstances

210. The provisional and confiscation measures set out in the *Criminal Code* and *Criminal Procedure Code* apply to the freezing, seizing and confiscation of terrorist-related funds or other assets in contexts other than S/RES/1267(1999) and S/RES/1373(2001). However, these provisions suffer from the same deficiencies described in section 2.3 of this report.

Bona fide third parties

211. The measures to protect the rights of bona fide third parties which are described above in section 2.3 of this report also apply to freezing in the context of terrorist-related assets.

Monitoring and sanctions

212. There are no effective measures in place to monitor compliance with Brazil's implementation of S/RES/1267(1999) and S/RES/1373(2001). Although representatives from the banking sector confirmed that BACEN may ask some specific questions during an inspection relating to implementation of the UN Resolutions and this issue is addressed in the BACEN Supervision Manual (MSU 4-30-10-5-08-01, item 5.3.8), this does not appear to be happening systematically in practice. SUSEP Circular Letter 21/2006 states that SUSEP/FIs should report the (attempted) transactions that are undertaken on behalf (or for the benefit) of persons who recognisably have perpetrated or intended to perpetrate terrorist acts, participated in them or facilitated their undertaking. The SUSEP AML/CFT inspection manual advises the inspectors to consult COAF Resolution 015/2007 to check the list of persons, entities and countries related to the Taliban and Al-Qaida who have been designated by the United Nations. Systematic monitoring on this issue does not take place among other types of financial institutions or among the DNFBP sectors.

213. There are no specific civil, administrative or criminal sanctions for failing to comply with the Decrees that implement S/RES/1267(1999) and S/RES/1373(2001). Sanctions are only available if a natural person knowingly aids or abets a criminal act—in which case, they can be charged as an accomplice (*Criminal Code* art.29). Alternatively, if a person is obliged by some rule to prevent an action and fails to comply with it, including by omitting to do an act, he/she may be subject to prosecution if the offence ultimately takes place (*Criminal Code* art.13, para.2). However, there is no way to sanction a financial institution for failing to block funds since criminal liability does not extend to legal persons in these circumstances.

Additional elements

214. The authorities indicate that, to some extent, the *Best Practices Paper for Special* Recommendation III is being implemented. However, the assessment team was not provided with any further details in this regard.

Statistics and effectiveness

215. Brazil has not frozen any property pursuant to S/RES/1267(1999) or S/RES/1373(2001). However, Brazil will be able to use the SNBA mechanism to collect such statistics once it is fully implemented. It is not clear, however, whether this system would distinguish between freezing action taken

pursuant to S/RES/1267(1999) and S/RES/1373(2001), and freezing action taken in ordinary criminal proceedings.

216. In practice, the Brazilian authorities have not yet tested any of the above measures to implement S/RES/1267(1999) or S/RES/1373(2001). Moreover, the authorities could not provide a clear explanation of what would happen if property were frozen pursuant to either resolution, or what the role of particular authorities (such as the MRE) would be. This reflects the fact that the legal and institutional framework surrounding Brazil's implementation of Special Recommendation III is untested and not clearly developed.

217. Representatives from the private sector indicated that, if they found a hit on a terrorist list, they would block the funds (they have no authority to freeze funds without a court order) and contact COAF and/or BACEN. Some representatives from the private sector indicated that, although they could block funds in this manner, if the customer demanded that the funds be returned before a court order had been obtained, they would have to return the funds since they had no authority to freeze them. Others indicated that a specific transaction could be blocked, but the entire customer relationship could not. Different opinions were expressed concerning how long it would take the authorities to obtain a court order to freeze the funds. Overall, this illustrates that Brazil is not able to freeze terrorist related funds "without delay"—meaning "within a matter of hours of a designation by the Al-Qaida and Taliban Sanctions Committee" (in the case of S/RES/1267(1999) and "upon having reasonable grounds, or a reasonable basis, to suspect or believe that a person or entity is a terrorist, one who finances terrorism or a terrorist organisation"[33]—in all cases.

218. Brazil has not designated any person or entity pursuant to S/RES/1373(2001). The authorities were unable to provide any statistics concerning how many requests to freeze assets pursuant to S/RES/1373(2001) have been received. However, they indicated that all requests received have been processed and that no related assets were found in Brazil.

219. It should also be noted that, although the assessment team was told by some authorities that no assets related to either S/RES/1267(1999) or S/RES/1373(2001) have ever been detected in Brazil, Brazil is seriously impeded in its ability to freeze, seize or confiscate assets related to terrorism and terrorist financing, even in the context of the relevant UN Resolutions.

2.4.2 Recommendations and Comments

Special Recommendation III

220. Brazil has transposed S/RES/1267(1999) and S/RES/1373(2001) into its domestic law through Presidential Decrees. However, it relies wholly on its ordinary criminal and mutual legal assistance procedures to implement these Resolutions. This approach significantly undermines Brazil's ability to freeze, in a timely way, terrorist-related assets in the context of the UN Resolutions and the effectiveness of these measures is not established.

221. As a matter of priority, Brazil should implement effective laws and procedures to take freezing action pursuant to of S/RES/1267(1999) and S/RES/1373(2001). Such measures should include a rapid and effective mechanism for examining and giving effect to the requests of other countries in the context of S/RES/1373. Additionally, effective communication mechanisms should be implemented across all of the financial and DNFBP sectors. Brazil should also ensure that freezing action can be taken in relation to all of the types of property foreseen by SR.III.

[33] These definitions of "without delay" are set out in the Interpretative Note to Special Recommendation III.

222. Once such measures are in place, guidance should be issued to all financial and DNFBP sectors on how, in practice, to meet these obligations. As well, Brazil should ensure that the supervisory authorities, in all financial and DNFBP sectors, routinely monitor for compliance and have the authority to apply appropriate sanctions to both natural and legal persons.

223. Brazil should also implement effective and publicly-known procedures for considering delisting requests, unfreezing the funds/assets of persons inadvertently affected by a freezing mechanism, and authorising access to funds/assets pursuant to S/RES/1452(2002).

224. As Brazil has not criminalised FT in a manner consistent with Special Recommendation II, the authorities are not able to seize or confiscate terrorist-related funds or assets in the full range of circumstances outside the context of the relevant UNSCRs. As a matter of priority, Brazil should amend its legislation to ensure that it can freeze terrorist-related funds in all terrorist financing cases falling within the scope of Special Recommendation II. This process might be facilitated through the ENCCLA mechanism.

Recommendation 32

225. Brazil should ensure that its mechanisms for collecting statistics will distinguish between the number of persons/entities and amounts of property frozen pursuant to the UN Resolutions, and the freezing of terrorist-related assets in other contexts.

2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	**NC**	• Laws and procedures for implementing S/RES/1267(1999) rely on ordinary criminal/MLA procedures which do not allow for effective freezing action to be taken without delay, and are inconsistent with the obligation to freeze property of persons designated by the UN Security Council, regardless of the outcome of domestic proceedings. • Laws and procedures for implementing S/RES/1373(2001) rely on ordinary criminal/MLA procedures which do not allow for effective freezing action to be taken without delay. • There is no specific mechanism to examine and give effect to actions initiated under the freezing mechanisms of other jurisdictions pursuant to S/RES/1373(2001), and no mechanism that would allow Brazil to designate persons at the national level. • Communication mechanisms are not working effectively and consistently across the financial and DNFBP sectors. • Insufficient practical guidance has been issued on how to effectively implement the obligations pursuant to S/RES/1267(1999) and S/RES/1373(2001). • Measures to monitor compliance are not being applied consistently across the banking sector, and other sectors (other than SUSEP) are not subject to monitoring. There are no sanctions for failing to comply. • Effectiveness: The effectiveness of Brazil's existing measures to implement S/RES/1267(1999) and S/RES/1373(2001) is not established. • The definition of *funds* does not extend to all of the funds or other assets that are owned or controlled by designated persons and terrorists, including property from legitimate sources; only proceeds, instrumentalities and property of equivalent value are covered. • The power to freeze terrorist-related property in contexts unrelated to the relevant UNSCRs suffer from the same deficiencies set out in section 2.3. • No procedures for considering de-listing requests and unfreezing the funds/assets of de-listed persons/entities. • No specific provisions for authorising access to funds/assets in accordance with S/RES/1452(2002). • It was not established that Brazil's measures for unfreezing the funds/assets of someone inadvertently affected by a freezing mechanism operate in a timely manner.

Authorities

2.5 The Financial Intelligence Unit and its functions (R.26)

2.5.1 Description and Analysis

Structure, functions and operational independence of the FIU

226. In March 1998, Brazil enacted the *AML Law* which established the Brazilian financial intelligence unit (FIU), the Council for Financial Activities Control or *Conselho de Controle de Atividades Financeiras* (COAF).

227. COAF is an administrative FIU, under the jurisdiction of the Ministry of Finance. It is a national inter-ministerial collegiate decision-making body headquartered in Brasilia and led by a Plenary that is composed of the COAF President and one representative of each of the following agencies: BACEN; CVM; SUSEP; the Ministry of Justice, the Ministry of Social Security, the General Attorney Office for the National Treasury; Federal Revenue Office (RFB); the Brazilian Intelligence Agency (ABIN); the Federal Police Department (DPF); and the MRE.

228. The President of COAF is appointed by the President of the Republic by nomination of the Minister of Finance, and acts both as the FIU Director and the Chairperson of the COAF Plenary. The Minister of Finance also appoints all of the members of the Plenary. The organisation and responsibilities of COAF, including the duties, limitations, and prohibitions governing the conduct of the President and the Plenary, are further specified in Decree 2799/1998 and Administrative Rule 330/1998.

229. The COAF Plenary has delegated the authority to receive, analyse and disseminate STRs to the President of COAF (as the FIU Director) and the Director of Analysis (Head of the Department of Financial Intelligence) of the FIU. This means that, in practice, COAF's FIU functions, including its analysis and decision to disseminate, are performed entirely by COAF as an FIU, without any operational influence or interference from the COAF Plenary. Additionally, the President of COAF and the members of the COAF Plenary are subject to administrative and criminal liability if they fail to comply with any applicable provisions, taking into account that, in the Brazilian legal system, if any civil servant refuses, delays, or deviates from his rectitude in accomplishing his/her duties, he/she shall be subject to administrative and criminal action (Law 8112/1990; *Criminal Code*, art.319-320).

230. Article 14 of the *AML Law* also provides for COAF's supervisory role, which is discussed in section 3.10 of this report. The role of the COAF Plenary in co-ordinating Brazil's AML/CFT efforts is separate from the role of COAF as an FIU, and is discussed in more detail in section 6.1 of this report.

Receipt, analysis and dissemination of STRs

231. COAF is authorised to receive pertinent information, examine and identify suspicious transactions related to any of the "crimes" mentioned in article 1 of the *AML Law*, which specifically includes money laundering, and terrorism and its financing (*AML Law*, art.14-15). Technically, this formulation limits the authority of COAF to receive and analyse STRs related to "crimes" which are specifically mentioned in article 1, including terrorism and its financing to the extent that these activities have been criminalised under Brazilian law. The creates a number of technical exclusions. First, nine criminal offences under Brazilian law (human trafficking; sexual exploitation; counterfeiting and piracy of goods; environmental crime; murder and grievous bodily injury; robbery or theft; extortion; forgery; and piracy) are predicate offences for ML (*i.e.* "crimes" mentioned in article 1 of the *AML Law*) only if they are committed by a criminal organisation (see section 2.1 of this report for further details). However, it should be noted that, in practice, this technical deficiency is mitigated as a reporting entity would have to be certain that there is no criminal organisation behind the suspicious activity in order to be satisfied that its reporting obligation had not been triggered. Second, financing a terrorist organisation (other than in the limited circumstances of Law 7170/1983) or an individual terrorist for a purpose unrelated to a terrorist act are also excluded as these activities are not criminalised under Brazilian law (see section 2.2 of this report for further details). Third, the financing of terrorist acts is criminalised, but not as a stand alone offence as is required by Special Recommendation II. Instead, financing terrorist acts is punishable only as an ancillary (co-perpetrator) offence under article 29 of the *Criminal Code:* "Anyone who, in any way, contributes for the crime is liable to the sanctions provided for this crime, to the extent of its culpability" (paragraph 1). This means that in circumstances where there has been a financing, but the terrorist act has not yet been attempted or committed, no crime will have occurred. This is because the ancillary (co-perpetrator) offence is not an independent offence; its application is limited to circumstances in which a crime (including an attempt to commit a crime) has actually been carried out. Nevertheless, the negative impact of this technical deficiency is mitigated since COAF has been receiving STRs related to FT (see section 3.7 of this report for further details) and COAF's authority to disseminate STRs and other relevant information is much broader than its authority to receive and analyse them. Not only is COAF authorised to disseminate information whenever it finds evidence of the crimes mentioned in the *AML Law*, but it is also authorised to disseminate information whenever it finds evidence of "any other illicit activity" (*AML Law*, art.15).

232. Reporting entities provide two types of reports to COAF in accordance with the *AML Law*—suspicious transactions reports (STRs) and currency transaction reports (CTRs). All STRs and CTRs are submitted electronically to COAF in encrypted form through COAF's System of Information (SISCOAF); therefore, COAF is a paperless FIU

233. All STRs and CTRs received by COAF undergo automated analysis by an information technology (IT) system called SISCOAF. The selected STRs are then distributed to COAF's analysts who open the case, counting on the support of the Risk and Priority Center which contains 50 attributes of risks that are divided into five groups (suspicion of crime, obligated sectors, public sector, geographic relation and time frame). Those attributes of the case are set by the analyst who open the case, based on the information available in the report and in SISCOAF, including other reports (STRs and CTRs). These attributes were determined by COAF taking into account international standards, recommendations and best practices on financial intelligence and information analysis, as well as experience acquired from intelligence analysis, statistics of occurrence and the frequency of certain types of operations/transactions/activities. The relevant attributes are selected by the analyst who opens the case, based on the information available in the STR/CTR (including any red flags described therein), SISCOAF and other STRs/CTRs. This system ranks the cases opened in COAF and distributes them to analysts, based on risk order. Cases with a higher risk rating are given priority status and are analysed before those with lower risk rating. This system has enhanced COAF's ability to deal with the volume of STRs that it receives, by ensuring that the analysts are focusing on high risk and priority cases, rather than wasting their resources elsewhere.

234. COAF disseminates its products to all investigative agencies at the federal and state level, including the federal and state police and prosecutors, and the investigative branch of the RFB.

Publications and guidance

235. COAF is required to publish Annual Reports (*Relatório de Atividades*). These reports, which are available on the COAF website and in hard copy, include statistics on STRs and the number of information exchanges with foreign FIUs (Administrative Rule 330/1998, art.93(III)). The annual reports cover five main topics:

- institutional information: ENCCLA and the Ministry of Finance's goals, legislative improvements, and training;
- financial intelligence: global results, analysis of cases, statistics, exchange of information, STRs, geographic information related to the STRs;
- COAF as a supervisor: statistics, and listing the regulations issued by COAF for the sectors under the council's supervision;
- technological information: technological improvements implemented in COAF; and
- international liaisons: FATF, FRSBs, Egmont, and bilateral and multilateral agreements.

236. In 2001, COAF published the Brazilian version of the Egmont sanitised cases. In 2002, it published the Brazilian version of the FATF *Guidelines to Financial Institutions for Identification of Activities related to Terrorist Financing*. In 2008, COAF began work (with the support of the RFB, CVM, DPF, the Public Prosecutor's Office in the State of Rio de Janeiro and the Regional Council of Real Estate Brokers in the State of São Paulo) on a book of 35 Brazilian ML typologies. The aim of this project is to create the first compendium of Brazilian ML cases, entitled *Cases & Cases*. COAF also engages in

awareness raising by participating in seminars, workshops and congresses with a view to disseminating typologies information. The governmental agencies concerned with ML, frequently publish newsletters on real cases, new standards and relevant statistics.

Access to information

237. COAF has access on a timely basis to a wide range of financial, administrative and law enforcement information that it requires to properly undertake its functions. COAF's requests to government authorities for information must be made using specific forms and the requested authority must treat these matters as a high priority (Decree 2799/1998 art.11, para.2-3). For information which is not of a confidential nature, government authorities must establish mechanisms to make their IT systems compatible with COAF's for the exchange of electronic information (art.11, para.5). COAF has developed its own database, SISCOAF (System of COAF), which provides COAF with a direct connection to nine authorities' databases. COAF also accesses 16 databases via web connections, gains access to three databases by way of batch request, and may obtain information on request from a further nine government databases.

Access to database via a web interface	**Access to database via SISCOAF**
Register of Tourism Services Providers	National Register of Legal Entity
Register of Governmental Tourism Projects	National Register of Natural Person
National Register of Auto-motor vehicles	Declaration of Real Estate Operations
National Register of Driver licenses	The Information System of the Central Bank
National System of Rural Register	System of Elections Campaigns Accountability – Electoral Superior Court
ICONE Service of the Presidency of the Republic	Integrated System of Governmental Staff Administration
System of Analysis of Foreign Trade Information	The General Attorney of National Treasury
National Register of Social Security Information	Register of Commercial Establishments
National System of Foreigner Register	Line of Foreign Trade Information
National System of Passports	**Information may be obtained on request**
National System of Wanted and Interrupted People	National Register of Electors – Personal Information
System of Prosecution Accompaniment	Commercial Unions of the Brazilian Federative States
National System of Criminal Information	National Council of Prosecutors
National System of Procedures	National Statistical Data related to Drug Enforcement
National System of International Traffic	System of Generative Information of Tax Action
National System of Chemical Products Control	Register and Tracing of Customs Mediators' Actions
Access to information via batch requests	Declaration of Income Tax of Natural Persons and Legal Entities
Register of Aircrafts	Tax Payers' Dossiers
National Register of Vessels	National Registry of Companies – National Department

e-DPV database of the RFB	of Commerce Registries

238. These arrangements give COAF access to a wide range of information, including direct access to federal law enforcement information. COAF also has indirect access to the law enforcement information of all states, upon request, through the INFOSEG system (a consolidated database) which is handled by the Ministry of Justice. Furthermore, COAF is currently in discussions with several Brazilian states to get access to law enforcement information not included in INFOSEG.

239. COAF is empowered to access financial information held by reporting entities other than by way of a court order, either indirectly through the financial supervisors (for BACEN/FIs, CVM/FIs, SUSEP/FIs and SPC/FIs) or directly from the reporting entities regulated by COAF (COAF/FIs) (Complementary Law 105/2001, art.2, para.6; *AML Law*, art.14, para.2-3; Decree 2799/1998, art.7, item VIII).

240. An exception to Complementary Law 105/2001 provides that banking and securities FIs must provide BACEN or the CVM with information when they are fulfilling their surveillance duties (including the verification, at any time, of illicit activities practiced by comptrollers, managers, members of the board, agents and proxies of financial institutions) or carrying out investigations on an FI subject to a special regime. BACEN and CVM may, in turn, share that information with COAF. In practice, it is primarily through its close relationship with BACEN that COAF gains access to financial records. Notably, COAF has access to BACEN's national register of bank accounts and to SISBACEN, which records all financial institutions' cash deposits or withdrawals, or orders for withdrawal, where the amount involved is greater than BRL 100 000 (EUR 39 007/USD 60 000) and all transactions where there is a suspicion of ML, regardless of amount. This arrangement appears to be working well in the banking and securities sectors, and allows COAF access, in a timely fashion, to the additional information needed to properly undertake its functions.

241. For SUSEP/FIs and SPC/FIs, COAF can only obtain additional information indirectly through their respective supervisors who have full access to it through the exercise of their supervisory powers (see section 3.4 and 3.10 of this report for further details). Once the supervisors have obtained the necessary information, they are authorised by the *AML Law* and Decree 2799/1998 to share it with COAF. In particular, the *AML Law* provides that COAF may require government agencies to provide banking and financial registration information of people involved in suspicious activities (art.14, para.3). Similarly, Decree 2799/1998 provides that the supervisory authorities (BACEN, CVM, SUSEP, SPC), the DPF, the Brazilian Intelligence Agency (ABIN) and other public agencies and entities which are in charge of the surveillance and regulation of legal and natural persons subject to AML obligations, must provide necessary information and collaboration to COAF (art.11).

Confidentiality and security of information

242. STRs are submitted to the COAF electronically and in encrypted form through SISCOAF which was developed by SERPRO (the Federal Service for Data Processing). SISCOAF operates on two servers so as to balance users' access, improve system performance and avoid failures. If one server presents problems, the other assumes the whole service. Each of the servers performs a daily backup in order to secure the data.

243. SISCOAF is accessed through the Intranet (a web environment restricted to the COAF network only). In this module, one can create several user profiles with functionalities and distinct accesses. All other operations performed by the users are saved in the system log. For external users such as reporting entities, access is to the WEBCOAF module via the Internet by way of a digital certificate to authenticate their access to the system. Security measures built into the SISCOAF system include:

- access control routines and procedures;
- different profiles for each user type;
- public key certificate log-in option;
- data encryption and secure identification of the server by hypertext transfer protocol secure (HTTPS) secure sockets layer/transport layer security (SSL/TLS);
- secure development methodology by capability maturity model integration (CMMI) standard;
- service segmentation application/database;
- network segmentation, including firewalls;
- security data room;
- network intrusion prevention and detection IPS/IDS;
- antivirus systems; and
- physical access control.

244. To prevent data loss, monitor system usage and grant data integrity, SISCOAF also has:

- backup routines;
- access control and audit logs;
- risk management methodology;
- random STR and CTR distribution for analysis;
- random report distribution for production; and
- traceable information path by information access audit trail.

245. COAF's offices are located in a secured area within the Ministry of Finance. Access to this area is controlled by a guard and secure electronic card-swipe system. The fact that COAF is a paperless FIU also further protects the information since it means that STRs are not physically lying about within the work area.

246. COAF's staff are required to sign a confidentiality agreement and are subject to criminal proceedings in cases of violation (*Criminal Code* art.325). Additionally, COAF applies certain guidelines that establish internal security policies in its headquarters. Those guidelines deal with the management and storage of sensitive information, rules for communication among employees of COAF and between them and outsiders, access to COAF's headquarters, and the physical security of COAF's office area. The purpose of these policies is to guarantee the integrity and secrecy of the information that COAF manages, establish additional measures with respect to the security of COAF's personnel and facilities, and impose sanctions for any failure to comply. These security policies are mandatory and must be observed by all employees.

Egmont Group

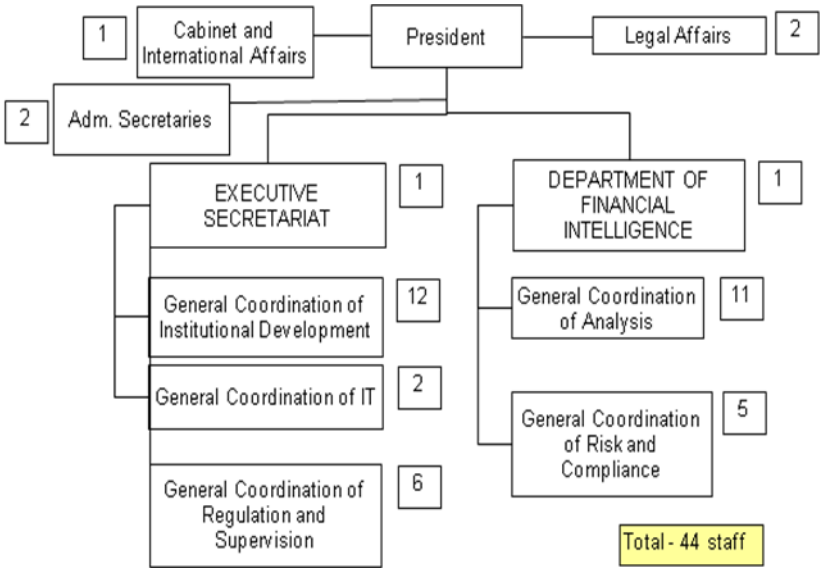
247. COAF has been a member of the Egmont Group since 1999, and an active participant in the main Egmont Group events, working groups and activities.

248. COAF may share information with pertinent authorities of other countries, in accordance with article 12 of Decree 2799/98 and observes, in its relations with other FIUs, the *Egmont Group's Statement of Purpose and its Principles for Information Exchange Between Financial Intelligence Units*. COAF uses the Egmont Secure Web (ESW), a secure network provided by Egmont Group to communicate with its foreign counterparts and to submit intelligence information in support of investigations related to ML/FT. Similarly, it has adopted the format developed by the operative working group to submit and respond to information requests. The memorandum format used by COAF to initiate negotiations with other agencies is substantially based on the model memorandum suggested by the Egmont Group, with basis on the principles of information exchange and best practices. Further details about COAF's ability to co-operate with its foreign counterparts is contained in section 6.5 of this report.

FIU resources

Structure, resources and funding

249. COAF's headquarters are located in Brasilia. Although Decree 2799/1998 specifically provides that COAF may establish branch offices in other locations (art.1), it currently only has one office in Brasilia with a complement of 44 staff. COAF's organisational structure and staffing is shown in the chart below.



250. The two IT persons mentioned are dedicated to day-by-day tasks such as local support, registering users, desktop problems etcetera. The substantive IT services (*e.g.* backup, servers, maintenance, programming) are provided by SERPRO, an IT public company controlled by the Minister of Finance which manages all of the systems of the Ministry of Finance, including COAF, the Treasury, RFB, etcetera. The following chart sets out the budget that has been assigned to COAF and SISCOAF for the past four years. It should be noted that these figures do not cover the salaries of COAF staff or IT maintenance for COAF's systems, but do cover overhead, travel costs and the costs of IT equipment.

Year	COAF budget *(numbers are rounded)*	SISCOAF budget
2006	BRL 415 000 (EUR 162 000/USD 240 000)	BRL 804 899 (EUR 314 000/USD 466 000)
2007	BRL 477 000 (EUR 186 000/USD 276 000)	BRL 1 205 747 (EUR 470 000/USD 699 000)
2008	BRL 715 000 (EUR 279 000/USD 414 000)	BRL 2 146 009 (EUR 837 000/USD 1.2 million)
2009	BRL 1.4 million (EUR 546 000/USD 811 000)	BRL 3 047 468 (EUR 1.2 million/USD 1.8 million)[34]
2010 ***(allocated)***	BRL 2.2 million (EUR 858 000/USD 1.3 million)	

Professional standards, confidentiality and training

251. The FIU has an interdisciplinary staff. The majority of its staff are civil servants from other government ministries and agencies. COAF also has some seconded staff, but these are only involved in administrative duties (*e.g*. secretaries, drivers, assistants, and couriers). It also has one trainee dedicated to the translation of regulations and other public documents.

252. All staff are required to sign a confidentiality agreement. It is a criminal offence to breach the confidentiality agreement (*Criminal Code* art.325).

253. Since its creation, COAF has developed many initiatives to train its staff, with specific courses concerning the execution of internal AML activities. During 2007, COAF's staff received training related to 18 operational, administrative and IT matters, as indicated in the chart below.

Operational matters	
Financial Investigation Techniques	Non-banking activities regulation
Risk Management	Mercosur's tax systems
ML prevention in non financial activities	Production of intelligence knowledge
Evaluator Training	Circulation of capitals, ML and tax systems
Casino Sector	UIF's training day
Simulated investigation of ML cases	
Administrative and IT matters	
Softwares de análise relacional (*Visual Links* e I2)	Documentation Center Administration
Governmental Systems: SIAPE, SIAFI, PPA (SIGPLAN), (SCDP), (COMPROTDOC)	Redação official e gramática da Língua Portuguesa
Public Accountantship	Administrative Law
Database Development	

254. In total, COAF staff participated in a total of 1 840 hours of training in 2008, and 566 training hours in the first nine months of 2009. A chart setting out the names of each course, the course provider, and the number of hours allotted to training is set out in Annex 5 of this report.

[34] January to September only.

Statistics and effectiveness

255. In contrast to most other areas of Brazil's AML/CFT system, COAF collects and maintains a broad and comprehensive set of statistics on its website, and these were also provided to the assessment team, including statistics relating to the number and type of communications received by sector and by reporting entity.

256. The following chart sets out the number of STR and CTR reports received by COAF each year from 2002 until 2009.

Number of reports received by COAF each year								
YEAR	**Until 2002**	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**
STRs	16 987	6 737	8 133	17 227	17 225	24 438	28 996	56 371
CTRs	732	33 789	76 949	141 390	176 745	310 926	616 789	1 746 494
TOTAL	**17 719**	**40 526**	**85 152**	**158 617**	**194 000**	**335 364**	**645 785**	**1 802 865**

257. COAF staff analyse over 415 000 STRs/CTRs each year, as indicated in the chart below. The remaining CTRs are automatically determined, by COAF's computerized filtering system, to be of low priority.

Number of STRs and CTRs analysed by COAF each year				
2006	**2007**	**2008**	**2009 (Jan.-Sept.)**	**Total**
145 489	78 133	79 157	112 535	415 314

258. The fact that COAF is, essentially, a paperless FIU (all STRs and CTRs are received in electronic form) facilitates COAF's ability to manage and analyse the large number of reports that it receives. COAF has technological resources that are capable of filtering out low value CTRs, and assigning them a low priority. As a matter of clarification, the CTRs, which are based on pre-set criteria, are not analysed one-by-one. Instead, they are analysed as a complement of an STR or in groups (aggregate). Moreover, COAF implements analysis process workflow as one of its corporate governance policies. One component of this workflow is the Risk and Priority Center described above. Of the approximately 415 000 STRs/CTRs received each year by COAF, 90% are CTRs which are processed through the automated treatment processes in the system. The remaining 10%, which includes all STRs and some CTRs, go to the ordinary analysis process within the workflow. Those STRs/CTRs are randomically distributed among the analysts who individually analyse each one and decide whether or not to open a case. If the analyst decides to open a case, then he/she must fill in the criteria under the Risk and Priority Center to justify the reason for opening that case, based on those 50 attributes. One case can contain more than one STR/CTR. This procedure is to guarantee the priority order, as ranked by the Risk and Priority Center, for analyzing the cases opened (*i.e.* in other words, it is the priority of cases which is ranked, not the priority of individual STRs/CTRs). Each STR and CTR is analysed within 24 hours of its receipt. The average time that passed between COAF's receipt of a report and its dissemination to authorities was 30 days. From January 2006 to June 2009 COAF produced 4 907 financial intelligence reports, relating to a total of 113 651 STRs and CTRs. These reports concern 41 512 natural and legal persons.

Number of financial intelligence reports disseminated by COAF each year		
Year	**Number of financial intelligence reports**	**Number of related STRs and CTRs**
2006	1 169	28 937

Number of financial intelligence reports disseminated by COAF each year		
Year	**Number of financial intelligence reports**	**Number of related STRs and CTRs**
2007	1 555	24 466
2008	1 431	46 353
2009 (to June)	752	13 895
TOTAL	4 907	113 651

260. Over the four year period from 2006 to 2009, enforcement agencies received 12 037 disseminations from COAF, comprising the 4 907 financial intelligence reports and 7 130 other exchanges of information (not involving financial intelligence reports). These disseminations may occur both electronically and in hard copy. The primary method of dissemination of financial intelligence reports (75% of the 4 907 reports) is by hard copy mail while e-mail is the primary method used for other exchanges of information. The following chart provides a breakdown of those agencies to which financial intelligence reports were disseminated.

	Year				Date limit: 11/06/2010
Agency	2007	2008	2009	2010	Total
Disseminations to criminal justice and operational agencies, including law enforcement and prosecutorial authorities, and courts					
Civil Police	28	33	42	31	134
CGU (Office of the Comptroller General)	21	21	22	8	72
CNJ (National Justice Council)			14	4	18
Court for Labour Issues				2	2
Court for Electoral Issues	1				1
CPI (Congressional Inquiry Commission)		5			5
DPF (Department of Federal Police)	823	614	792	262	2 491
Federal Courts	81	63	61	19	224
Federal Public Prosecution Service	627	412	482	94	1 615
Federal Regional Courts		3		1	4
Federal Supreme Court		1	2		3
Judiciary	3	15	3		21
Military Police	3	3			6
PGR (Federal Prosecution Service)	22	34	27	7	90
Public Prosecution Service for Military Justice	2			1	3
RFB (Secretariat of the Federal Revenue)	163	59	88	23	333
State Courts	34	29	52	20	135
State Public Prosecution Service	693	501	678	184	2 056
State Secretariat of Public Security	2	1			3
Superior Court of Justice	7				7
Subtotals (disseminations to criminal justice and operational agencies)	**2 510**	**1 794**	**2 263**	**656**	**7 223**
Disseminations to federal ministries, state secretariats, and intelligence and defence agencies					
ABIN (Brazilian Agency of Intelligence)	9	7	5	1	22

Army	3	3		1	7
Navy	1				1
Ministry of Finance	2				2
Ministry of Social Security	1				1
State Secretariats of Finance	1				1
Subtotals (disseminations to ministries, state secretariats, and intelligence and defence agencies)	**17**	**10**	**5**	**2**	**34**
Disseminations to financial regulators					
BACEN	4		85	18	107
COAF (as a supervisor)				1	1
CVM		1			1
SPC	1				1
SUSEP	1				1
Subtotals (disseminations to financial regulators)	**6**	**1**	**85**	**19**	**111**
Disseminations to foreign counterparts					
Argentina	2	3	2		7
Austria			1		1
Bahamas			3		3
Belgium	3	3	8		14
Bermuda	1				1
Bolivia			1		1
British Virgens Islands		1			1
Bulgaria	1	1			2
Canada			1		1
Cayman Islands	1				1
Colombia		2			2
Cook Islands		1			1
Croatia	1			1	2
England	1		1		2
Equador		1			1
France			1		1
Gilbraltar			1		1
Guatemala		1			1
Iceland	1				1
Italy			2		2
Jersey			2		2
Liechtenstein		1	2	1	4
Luxemburgo	7	7	5		19
Malta			1		1
Mexico	1		1		2
Monaco			2		2

Netherlands Antilles				1	1
New Zealand			1		1
Panama		1			1
Peru	1		3		4
Portugal	10	6	4	1	21
Russian Federation	1				1
Spain	2	1		1	4
Switzerland	2	3	2		7
Ukraine	1				1
United Kingdom			1		1
United States		1	8	2	11
Uruguay	2	2	2		6
Venezuela			2		2
Other Financial Intelligence Units		1			1
Subtotals (disseminations to foreign counterparts)	**42**	**36**	**57**	**7**	**1 524**
Total Number of Disseminations	**2,571**	**1,841**	**2,410**	**684**	**7,506**
Total Financial Intelligence Reports Produced*	**1,605**	**1,183**	**1,524**	**529**	**4,841**

***The reason why the *Total Number of Disseminations* exceeds the number of *Total Financial Intelligence Reports Produced* is that many Financial Intelligence Reports are distributed to more than one agency.**

259. Overall, COAF appears to be performing its FIU functions effectively. The law enforcement/prosecutorial authorities met with by the assessment team expressed overall satisfaction with the products and co-operation received from COAF. In general, these authorities indicated that the technical quality of COAF's analysis is very high, their reports are generally useful, and COAF is readily accessible and able to provide further support to ongoing investigations and prosecutions.

260. It should also be noted that, currently, COAF appears to have sufficient human, technical and budgetary resources allocated to its FIU functions. (However, see section 3.10 of this report for a discussion of COAF's resource needs in relation to its supervisory functions.)

2.5.2 Recommendations and Comments

261. COAF is the national centre for receiving, analysing and disseminating disclosures of unusual transaction reports. It is an important institution in Brazil's AML framework and is an effective and well-regarded FIU. To ensure that this continues, it could be useful for the authorities to consider establishing a permanent feedback mechanism from the law enforcement and prosecutorial authorities to COAF with a view to ensuring that COAF's intelligence reports continue to add value to investigations and prosecutions. The ENCCLA framework could be a good venue through which to develop such a mechanism and would facilitate the evaluation of the effectiveness of Brazil's AML/CFT regime.

262. As a matter of priority, the assessment team recommends that immediate action be taken to fully implement Special Recommendation II and expand the list of predicate offences as indicated in sections 2.2 and 2.1 of this report. This will enhance COAF's authority to receive and analyse reports related to these offences.

2.5.3 Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	**LC**	• Technically COAF's authority to receive and analyse STRs does not extend to certain types of FT activity which is not criminalised and crimes which are not specifically mentioned in article 1 of the *AML Law* (9 offences are only predicate offences for ML if committed by a criminal organisation), although this deficiency is somewhat mitigated because COAF is receiving FT-related STRs, reporting entities would have to be certain that there is no criminal organisation behind the suspicious activity in order to be satisfied that its reporting obligation had not been triggered, and COAF has a broader dissemination authority.

2.6 Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing (R. 27 & 28)

2.6.1 Description and Analysis

Designated law enforcement and prosecutorial authorities

263. Brazil's prosecution and enforcement authorities are designated with responsibility for ensuring that ML is properly investigated.

264. The role of the ***Department of Federal Police (DPF)*** is broad and encompasses ML and FT. The *Constitution* provides that the role of the Department of Federal Police (DPF) is to:

- investigate criminal offences against the political and social order or to the detriment of property, services and interests of Brazil, its government entities and public companies, as well as other offences with interstate or international effects and those requiring a uniform national approach. This includes the authority to investigate the terrorism offences set out in Law 7170/1983, including terrorist financing to the very limited extent that articles 20 and 24 criminalise such activity (see section 2.2 of this report for further details);

- prevent and repress the illegal trafficking in narcotics and like drugs, as well as smuggling;

- exercise the functions of maritime, airport and border police; and

- be, exclusively, Brazil's national criminal police (art.144, para.1).

265. Further, article 13 of the *Criminal Procedure Code* provides that the police authorities must, amongst other things: provide the judicial authorities with all information necessary for prosecutions and trials; and, take all necessary steps as requested by the public prosecutor or judge.

266. The DPF has specialised units to help fulfil these functions. For instance, in the Organised Crime Fight Directorate, there is the Financial Crime Repression Division (DFIN) which investigates ML related to organised crime. Likewise, there is the Anti-terrorism Service (SANTER) in the Police Intelligence Directorate.

267. The role of the ***Civil Police*** is similarly broad, and is also governed by article 13 of the CPC. The *Constitution* provides that the role of the Civil Police is to exercise the functions of criminal police, as directed by the Police Commissioners, and to investigate criminal offences, with the exception of the military offences, which do not fall under the competence of the DPF (art.144, para.1). This means that the Civil Police in the relevant state are mandated to investigate ML only where it is an entirely local matter

which is not considered to be "against the political and social order or to the detriment of property, services and interests of Brazil, its government entities and public companies, as well as other offences with interstate or international effects and those requiring a uniform national approach". Determinations of jurisdiction between the DPF and Civil Police can thus be complicated and are made on a case-by-case basis. In practice, the Civil Police commonly conducts ML investigations in conjunction with their investigation into predicate offences. If it becomes evident that international or inter-state elements are involved, the investigation is passed from the Civil Police to the DPF (see section 6.1 of this report for further details on how the Civil Police and DPF co-ordinate at the domestic level).

268. Brazilian authorities aver that the ***Secretariat of Federal Revenue (RFB)*** is responsible for investigating ML/FT associated with tax and/or customs matters, though it is not known what instrument provides it with that role. The authorities indicate that usually when the RFB is conducting investigations, it works in a co-operative task force model, with the DPF and prosecutors. The RFB has General Co-ordination for Research and Investigation (COPEI) units which are located in the most important cities in Brazil and are able to investigate cases across the Brazilian Territory.

269. All ***State and Federal Prosecution Services*** are empowered to investigate ML cases. Article 129 of the *Constitution* provides that the functions of the prosecution services (federal and state) are to:

- initiate, exclusively, public criminal prosecutions;
- ensure effective respect by the public authorities for the rights guaranteed in the *Constitution*, taking the action required to guarantee such rights;
- institute civil investigations and proceedings to protect public and social property, the environment and other diffuse and collective interests;
- prosecute constitutional matters and represent the country and/or the States;
- defend judicially the rights and interests of the Indian populations;
- issue notifications in administrative procedures within its competence, requesting information and documents to support them;
- exercise control over police activities;
- request investigatory procedures and the institution of police investigation, indicating the legal grounds of its procedural acts; and
- exercise other functions which may be conferred upon it, provided that they are compatible with its purpose, with judicial representation and judicial consultation for public entities being forbidden.

270. The Special Group Against Economic Crimes (GEDEC), in the Public Prosecutor's Office of the Brazilian Federative State of Sao Paulo, was established in 2008 and specialises in prosecutions of economic crimes and ML. Similarly, at the State level, each State Public Prosecutor's Office has created special groups to deal with complex cases involving organised crime, ML and financial crimes.

271. The work of the federal and state prosecutors is governed by the *Criminal Code* and the CPC. This is federal legislation; there are no State level equivalents. Consequently, both federal and state prosecutors handle the same offences, using the same criminal procedures. Commonly, an investigation

commences from a preliminary investigation by a prosecutor, for which the prosecutor will request an investigation to be made by the police. During the investigation, it may be necessary to disclose information otherwise protected by bank secrecy or communication secrecy, or it may be necessary to arrest someone. In this case, the police officer or prosecutor will request a judicial order. The judge analyses the request and decides whether to make the order. The investigation will continue until there is enough evidence to support a case, at which point, the prosecutor will initiate a prosecution by filing a criminal action before the competent judge. The defendant (represented by a lawyer) will be called, and will present a preliminary defence. If the judge decides that there is reasonable cause for the prosecution, the matter goes to trial.

272. There are ***federal judges*** who are specialised in handling ML cases and are located in the federal branches (*Varas Federais Especializadas em Lavagem de Dinheiro*). All prosecutors who work in criminal matters with those judges have responsibility for prosecuting ML offences.

273. The role of the ***courts*** in ML cases varies not only depending on the level of the court but also whether they are at the federal or state level. This is because the competence of judges in ML cases is determined primarily on the basis of which court is competent to hear the case concerning the predicate offences involved in the case.

Power to postpone or waive arrest of suspected persons or seizure of property

274. Procedures for the investigation and prosecution of ML can be found in the *Criminal Procedure Code*, which applies at federal and state levels (art.1) and in the *AML Law*.

275. The arrest of persons or the seizure of money may be postponed for the purpose of conducting a controlled action or controlled delivery, with a view to identifying persons involved in an illicit activity and gathering additional evidence. Such investigative techniques are available when conducting investigations involving organised crime (Law 9034/1995 on organised crime, art.2(II)). Likewise, arrest and seizure may be postponed in the context of monitoring financial operations through authorised means that overrule bank secrecy. Both of these investigative techniques require judicial authorisation. Additionally, arrest/seizure may be postponed in the context of conducting the special investigative technique of plea bargaining. During the on-site visit both the police and prosecutors stated that they have not experienced difficulty or delay in obtaining judicial authorisation to postpone arrests or seizures.

Additional elements

Special investigative techniques

276. In cases involving criminal organisations, Law 9034/1995 provides for the use of special investigation techniques such as controlled action, infiltration of agents and telephone tapping. The legal framework for using special investigative techniques is spread across several legal acts. The following special investigative techniques are available:

- controlled delivery (Law 9034/1995 art.2(II); Law 11343/2006 art.53(II); *AML Law* art.4, para.4);
- undercover operations (Law 9934/1995 art.2(V); Law 11343/2006 art.53(I));
- electronic surveillance (*Constitution* art.129(I and VIII); Law 75/1993 art.6(XVIII); Law 9296/1996);

- other forms of electronic surveillance such as environmental recording, filming or determining the place of someone by the signs emitted by its cell phone are permitted under the general powers of the DPF (*Constitution* art.144(I-II and IV) together with para.4; CPC art.4);

- witness protection (Law 9807/1999); and

- plea bargaining (*AML Law* art.1, para.5; Law 7492/1986 art.25; Law 9269/1996; Law 8072/1990 art.8; Law 8137/1990 art.16, sole paragraph; Law 9034/1995 art.6; Law 9807/1999 art.13-14; and Law 11343/2006 art.14).

277. The most commonly used measures in ML investigations are the search and seizure warrant, provisions to override banking secrecy and the seizure of assets. The extent to which the DPF uses special investigation techniques depends on the complexity of the investigation and the seriousness of the criminal organisation under investigation.

Specialised units

278. The DPF has established, in every Brazilian state, permanent specialised units that are responsible for investigating financial crimes. These units include experts with expertise in accounting, economics and computer science who act directly in the investigations and related documents analysis.

Inter-agency review of ML methods, techniques and trends

279. At the State level, each State Public Prosecutor's Office has created special groups to deal with complex cases involving organised crime, ML and financial crimes. These Groups are usually called *Especial Action Group against Organised Crime* (GAECO). The members of those groups gather twice a year in a meeting of the National Group against Organised Crime (GNCOC). The GNCOC also has a working Group to deal specifically with ML cases and typologies. Brazil's FIU and the DPF also work co-operatively with their foreign counterparts in investigating ML/FT.

280. The National Strategy Against Corruption and Money Laundering – ENCCLA (*Estratégia Nacional de Combate à Corrupção e à Lavagem de Dinheiro*) reviews ML/FT techniques, methods and trends, and also studies ML typologies with a view to adjusting Brazil's criminal policies on the subject. The DPF also carries out several training courses, in co-ordination with the participation of other agencies, with a view to enhancing information exchange and the spreading knowledge of these issues.

Recommendation 28

281. In Brazil, measures relating to the constriction of rights and freedoms, including breaching the confidentiality of records held by financial institutions, can only be taken with judicial authorisation. Thus, the investigative authorities require court orders to: *(i)* compel production of, *(ii)* search persons or premises for, and *(iii)* seize and obtain transaction records, identification data obtained through the CDD process, account files and business correspondence, and other records, documents or information, held or maintained by financial institutions and other businesses or persons.

282. To obtain an order for the production of financial records, the authorities need to have some proof of a financial crime. The length of time and ease with which such orders may be obtained varies. However, in some parts of the country, judges are reluctant to grant such orders or the process may take a long time because of heavy judicial workloads. Additionally, FIs may not be able to comply with such orders in a timely fashion where the request relates to a large volume of records, particularly whether they are more than a couple of years old (see section 2.3 of this report for further details). These issues impede

effectiveness in relation to the ability of law enforcement authorities to compel the production of financial records.

283. The *Criminal Procedure Code* determines rules for carrying out search and seizure warrants in residences, companies and FIs. Upon establishing that there is any possibility of finding documents (including corporate, accounting, financial or tax records) at an address being used by the suspects, the DPF may petition a Federal Judge for the issuance of a search and seizure warrant. Whatever is seized may be then used as evidence during a future penal action or confiscation proceeding.

284. Taking statements from witnesses is considered a normal and often-used power of the federal and state police. In addition, the DPF may obtain and use more formal witness declarations during an investigation. However, use of this power by the public prosecutor is still controversial and the Supreme Court has not yet ruled definitively on this matter. When witness declarations are obtained, the witness is called directly by the police and the declaration is made at a hearing carried out by a judge.

Resources of law enforcement and prosecution authorities – R.30

Department of Federal Police

285. The DPF has offices in each of Brazil's 27 States, including units that are specialised in investigating ML and terrorism. These units are equipped with high technology devices used for surveillance purposes, undercover operations, data and phone monitoring, and information analysis. The personnel of these units have special training in conducting such investigations. The commissioners leading the investigations have the independence to adopt all investigative measures necessary for investigating crimes. The DPF invests permanently in police officer training and regularly acquires new equipment to fight these types of crimes.

286. The DPF actively works to ensure the secrecy of investigations and the protection of information. Any leaking of information from current investigations is considered to be an administrative and criminal infraction. The DPF has an extremely active counter-intelligence and internal affairs section to ensure that these duties are not breached.

287. Federal police officers are trained at the National Police Academy after being admitted to the DPF. The courses include classes on ML and terrorism investigations. Training programs cover classical techniques such as searching for information in official and private databases, using informers, conducting surveillance, holding interviews, analysing documents, seizing property, searching for information on the Internet and conducting forensics tests. Training programs also cover special investigative techniques such as telephone and data monitoring, environmental tapping, undercover operations, police infiltration, rewarded denunciation and the use of discreet equipment. After this training, the police officers have the opportunity to attend to other ML-related courses in Brazil and abroad, alongside respected foreign counterparts by means of international police co-operation.

Civil Police (state-level police)

288. Each of Brazil's 27 states has a Civil Police force. From 2004 to 2009, a total of 5 288 state-level police officers have received AML/CFT training pursuant to the PNLD programme. However, no information was provided about their structure or resources and, consequently, it is not known whether they are sufficiently equipped to handle ML/FT cases.

Federal Prosecution Service (MPF) and State-level Public Prosecution Offices

289. The Federal Prosecution Service (MPF) is present throughout Brazil. Each State has a unit from the MPF in its capital, and several additional units in other cities. The prosecutors are responsible for receiving criminal investigations from the police and, when appropriate and necessary, co-ordinating the investigation.

290. When it comes to operational independence and autonomy, Brazilian prosecutors are subject to a unique situation, in comparison with many other countries. The *Constitution* provides that the Public Prosecution Service is a permanent institution essential to the jurisdictional function of the State (art.127). The Public Prosecution Service is responsible of safeguarding the rule of law, the democratic regime and the indivisible social interests. Prosecutors are protected by several Constitutional guarantees including a lifelong career (appointment for life) (*Constitution* art.128(I)(a-c)). This means that the MPF is not part of the Government, the Ministry of Justice or the Judiciary. It is an independent institution, with specific duties and constitutional guaranties. This ensures that the MPF has sufficient operational independence and autonomy to ensure freedom from undue influence of interference.

291. The unity, indivisibility and functional independence (autonomy) of the Public Prosecution Service is protected by law (Complementary Law 75/1993 art.127, para.1). When it comes to their functions, prosecutors shall follow only the law, the evidence of the case and their conscience. There is no hierarchy within the Public Prosecution Service that would allow the General Prosecutor to order a prosecutor to develop a case in a particular way (art.4). Additionally, a prosecutor can only lose his/her position following a complete judicial proceeding which establishes that it is in the public interest (art.17(I)). Additionally, their salary or income cannot be lowered.

292. The Chief of the MPF (*Ministério Público Federal*) is the General Prosecutor (*Procurador-Geral da República*), who performs his functions before the Superior Courts—the Constitutional Court (*Supremo Tribunal Federal*) (STF); the Superior Court of Justice (STJ) and the Superior Electoral Court (TSE). The General Prosecutor is appointed by the President of Brazil, and comes from amongst the ranks of the MPF itself.

293. There are 925 federal prosecutors that are divided into three career levels.

- The first career level is the federal prosecutors (*Procuradores da República*) who perform their functions before a federal judge (not a court). As at August 2009, there were 650 prosecutors in this category, spread over the 27 States. These prosecutors have both civil and criminal functions. Only federal prosecutors who are located in the state capitals (other than in the State of São Paulo) are responsible for investigating and prosecuting ML cases. This is because the Specialised Federal Courts specialised in ML are only located in the state capitals.

- The second career level is the regional federal prosecutors (*Procuradores Regionais da República*) who perform their functions before Brazil's five Federal Regional Courts, which are appellate courts. There are presently 231 prosecutors in this category, located in Brasília (1st Region), Rio de Janeiro (2nd Region), São Paulo (3rd Region), Porto Alegre (4th Region) and Recife (5th Region).

- The third career level is the subgeneral prosecutors (*Subprocuradores-gerais da República*) who perform their functions before the Superior Court of Justice (STJ). There are presently 62 prosecutors in this category. They are located in Brasília and have (some of them) criminal functions, acting in ML cases.

294. At the federal level, every prosecutor has an office with computers and personnel. The level of staff and resources depends on the size of the city, with larger centres having greater resources. Regardless of where they are located, federal prosecution offices are structured, funded, staffed and provided with sufficient technical and other resources to effectively perform their functions. As of June 2009, the MPF had a total of 7 7562 staff of which 925 were active Federal Prosecutors (650 at the first career level, 213 at the second career level and 62 at the third career level). As of June 2009, there were 285 federal prosecutors dealing with ML investigations and prosecutions (20 at the first career level, 85 at the second and 180 at the third).

295. To become a public prosecutor, one must pass a public contest which guarantees that only highly skilled persons are approved. Public prosecutors are obliged to follow the law, and maintain secrecy of investigations and data received during the course of their duties. Maintaining integrity is another duty that prosecutors have. They are bound by the *Constitution* rules on the principles of public administration, which are: legality, impersonality, morality, transparency and efficiency (art.37). Federal prosecutors are required to follow the law, act impersonally and morally (Complementary Law 75/1993 art.5(I)(h)). They are administratively and criminally liable for any wrongdoing and/or crimes. The MPF has internal affairs offices *(corregedorias)* that analyse the conduct of prosecutors and imposes penalties on them where appropriate (for example, Complementary Law 75/2003 art.63). Additionally, the National Council of the Public Ministry (CNMP – *Conselho Nacional do Ministério Público*), created by the *Constitution* (art.130-A), is the organ responsible for the administrative and financial control of all Prosecution Services (both state and federal), and for controlling the functional duties of prosecutors.

296. The MPF maintains a Superior School (ESMPU – *Escola Superior do Ministério Público da União*) which promotes courses and training for prosecutors and their staff. Since 2005, there have been seven training programs about ML, through which 145 prosecutors from different locations have been trained as follows:

Date	Number of participants	City
2005	54	Brasília
2007	9	Recife
2007	17	São Paulo
2007	24	Brasília
2008	9	São Paulo
2008	7	Brasília
2008	25	Brasília

297. The National Strategy referred above also develops the National Program Training on Corruption and Money Laundering (PNLD) (*Programa Nacional de Capacitação e Treinamento para o Combate à Corrupção e à Lavagem de Dinheiro)*, which provides training courses to federal prosecutors, judges, state prosecutors, police agents, etcetera. Several federal prosecutors have been teaching on this program, which covers topics such as the scope of predicate offenses, ML/FT typologies and special investigative techniques.

298. The Special Action Group against Organised Crime (GAECO) are special groups created by each state Public Prosecutor's Office to deal with complex cases involving organised crime, ML and financial crimes. The members of these groups gather twice a year in a meeting of the National Group Against Organised Crime (GNCOC). The GNCOC has a working Group to deal specifically with ML cases and typologies.

299. In addition, to implement a decision of ENCCLA, the SNJ has created an Anti-Money Laundering Laboratory (LAB-LD) that uses high-end technology and software for the purpose of analysing investigation and prosecution information. This pilot program is aimed at the creation of similar units, based on the same technological standards, in law enforcement agencies throughout the country. Some of these mirror-units have already been established and others are in the process of implementation. Similar units are destined to be implemented in police agencies, including the Federal Police Department, and select Federal and State Prosecution Offices, and State Secretariats of Polices.

Judiciary and the courts

300. In Brazil, there are criminal courts at both state and federal levels. Money laundering can be tried before a state or a federal court, according to Brazilian federal law. Normally, if the predicate offence is tried by a federal judge (*e.g.* in a transnational drug trafficking case) the offence of laundering the proceeds from that crime will also be prosecuted before a federal judge. On the other hand, when the predicate offence is tried by a state judge (*e.g.* if the drug trafficking occurs domestically), the ML offence will also be prosecuted before a state court. The organisation of the Public Prosecution Service follows the same logic.

301. Additionally, the Brazilian Federal Justice system has Courts that are specialised in handling ML cases and crimes against the national financial system - the Specialised Federal Courts (Justice Divisions). The Specialised Federal Courts are part of the Judiciary within the Federal Justice. A single judge hears the cases. Judges of the Specialised Federal Courts have full powers to address all aspects of an investigation/prosecution related to ML and crimes against the national financial system. These judges represent the first career level (the second being the appellate courts (Federal Regional Courts) and the third being the Superior Court of Justice). All 27 of the Federative States have fully operational specialised Courts.

Secretariat of Federal Revenue (RFB)

302. The RFB has signed a Technical Co-operation Agreement with the DPF concerning the co-ordination and execution of integrated actions that are aimed at preventing and combating illicit criminal, tax and customs schemes, as well as an action plan to develop both agencies and projects of common interest. According to this agreement, DPF and RFB will implement integrated actions with a view to combating organised crime. See section 2.7 of this report for a description of the resources of the RFB.

Additional elements

303. The PNLD provides training courses to federal judges and covers topics such as the scope of predicate offences, ML/FT typologies, and special investigative techniques. Between 2003 and 2008, meetings of the federal judges of the 22 Specialised Courts were held every six months and were organised by the Council. These meetings involved training and a special session for the purpose of allowing judges to exchange experiences. At least two judges of the second degree Federal Regional Courts (2nd and 4th Regions) were trained in the courses provided by the DRCI/Ministry of Justice.

Statistics and effectiveness

304. Country-wide statistics on the financial crimes and ML investigated by the DPF are held at the Financial Crime Repression Division (DFIN). Country-wide statistics on terrorism investigations are held at the Antiterrorism Service (SANTER). It is worth highlighting that an information system called CINTEPOL, meant to manage operations and data bases, is at the final implementation stage and will allow the authorities to elaborate faster statistics and managerial reports. Information on investigations being conducted at the state level is held in the INFOSEG system (a consolidated database) which is

handled by the Ministry of Justice. However, it is not clear whether INFOSEG is capable of generating of comprehensive statistics on the number of ML/FT investigations, as is required by Recommendation 32. It should be noted that the assessment team was only provided with limited statistics concerning the number of such investigations at the state level (see section 2.1 of this report).

305. Where an ML offence is not considered to be "against the political and social order or to the detriment of property, services and interests of Brazil, its government entities and public companies, as well as other offences with interstate or international effects and those requiring a uniform national approach", the Civil Police in the relevant state are mandated to investigate it. Determinations of jurisdiction between the DPF and Civil Police can thus be complicated and are made on a case by case basis (see section 6.1 of this report for further details on how the federal and state authorities co-ordinate at the operational level). Decisions as to jurisdiction between the state and federal courts can be similarly complicated.

306. The MPF provided the following statistics regarding disseminations received from COAF and from other sources (Customs, BACEN *etc.*), and the consequent preliminary inquiries conducted. These statistics are published on website of the MPF Working Group on ML and Financial Crimes (GTLD)[35].

Year	Disseminations received from COAF	MPF preliminary inquiries started as a result
2004	350	235
2005	324	195
2006	370	204
2007	489	286
2008	347	294

307. Statistics are not systematically kept concerning what percentage of COAF's disseminations generally lead to the opening of an investigation. Although statistics are available on the number of ML investigations, prosecutions and convictions which have arisen from disseminations received by the MPF from COAF (see the chart below), no similar statistics were provided from other agencies. However, one agency did report that about one third of the disseminations that it receives from COAF result in a formal ML-related investigation being opened, while the remaining two-thirds are placed into the intelligence database for future consultation.

Year	MPF ML investigations	ML prosecutions	ML convictions in the first instance	Acquittals
2004	0	0	0	0
2005	0	0	0	0
2006	2 228	462	14	7
2007	1 311	187	30	13
2008	1 289	0	0	0

308. The RFB also provided statistics on ML investigations it has conducted. From 2007 to October 2009, the RFB conducted 17 ML investigations related to tax evasion and customs offences, which resulted in 370 arrests, the collection of BRL 44 988 777 (EUR 17.5 million/USD 26 million) in

35 http://gtld.pgr.mpf.gov.br, under the link "*Estatísticas*".

taxes, and a number of seizures of property. It is not known how many of these investigations resulted in prosecutions.

309. Some information was also provided in relation to the number of ML investigations conducted at the state level (see section 2.1 of this report); however, these statistics are incomplete as not all Brazilian states were able to provide this information.

310. In some areas, the authorities are still focused on pursuing predicate offences, and are not yet targeting ML effectively. For instance, the new GEDEC initiative, which endeavours to target ML activity is the first experience of its kind in the State of São Paulo. Although this is a very new initiative, the preliminary results are positive. However, the structure of the justice system in the State of São Paulo, and probably throughout the country, is still overly focused on pursuing predicate offences, without an appropriate structure to deal with organised crime and related ML.

2.6.2 Recommendations and Comments

Recommendations 27 and 30

311. Brazil's prosecution and enforcement authorities are designated with responsibility for ensuring that all crimes, including ML and terrorist financing (to the limited extent to which FT is criminalised) are properly investigated. Although Brazil's federal law enforcement authorities appear to be well-resourced and are gaining AML/CFT training, it has not been established that the state-level law enforcement authorities have sufficient resources, as no information was provided on this issue. Overall, there is a lack of focus on ML investigations, although the statistics demonstrate significant improvement since 2006. ML investigations are commonly conducted in conjunction with investigation of the predicate offence. In addition, little preparation appears to have been made for the FT offence which it is said to be contained in the Bill of Law 3443/2008 which may be enacted in the coming months. The assessment team recommends that the ENCCLA convene inter-agency meetings of enforcement authorities to establish a concerted program for increasing the number of ML investigations in Brazil and to prepare for the new FT offence.

312. Brazil should continue taking measures to ensure that the overlapping jurisdiction among federal and state law enforcement authorities does not impede the effectiveness of their ability to investigate ML and the celerity of the system. Current developments with respect to the specialised courts and the databases for court matters may go some way to further addressing this problem. For example, a national database of investigations that can be updated and referred to by both federal and state authorities could assist in this area, as could better co-ordination between the federal and state law enforcement authorities. Brazil should continue to explore ways to enhance this co-ordination. For instance, consideration could be given to forming a group, with participation from both the federal and state law enforcement and prosecutorial authorities, to receive information from COAF, resolve jurisdictional issues on a case-by-case basis at the earliest possible stage, and ensure an effective allocation of investigative resources. Additionally, Brazil should ensure that the law enforcement authorities at the state level are sufficiently structured and resourced to be able to effectively investigate ML/FT.

Recommendation 28

313. The powers to compel production of documents and conduct search and seizure depend on obtaining a judicial order. Although this power is technically sufficient, Brazil should take measures to enhance the effectiveness of its implementation, as set out in section 2.3.2 of this report.

Recommendation 32

314. Brazil should enhance its statistical collection mechanisms to ensure that comprehensive statistics on the number of ML/FT investigations are maintained at both the federal and state level.

2.6.3 Compliance with Recommendations 27 & 28

	Rating	Summary of factors underlying rating
R.27	**LC**	• Effectiveness: In some areas, the authorities are still focused on pursuing predicate offences, and are not yet targeting ML effectively. The number of ML investigations is low when compared to the incidence of revenue-generating predicate crimes. Not established that law enforcement authorities at the state level are sufficiently structured and resourced.
R.28	**LC**	• Effectiveness of the power to compel production of documents authorising access to financial information: Judicial orders may be difficult to obtain, the process may be lengthy and, in some cases, FIs are unable to provide the requested information in a timely fashion.

2.7 Cross Border Declaration or Disclosure (SR.IX)

2.7.1 Description and Analysis

315. Brazil has 721 airports with paved runways[36] (of which 33 are international airports), 50 seaports and extensive land borders with 10 countries.

316. Brazil also has four free trade zones (FTZ) which have separate control points along the borders: Manaus, Macapá/Santana, Tabatinga and Guajaramirim. These FTZ operate somewhat differently from FTZ in other parts of the world. For example, Manaus has a special tax area where there is an exemption on foreign goods that are going to be used in this area to produce other products that will be sold elsewhere in the country. The goods entering this area, remain there, and are used to manufacture other products. There are almost 500 manufacturers doing business in Manaus, including some very large multinational corporations. In the meantime, the taxes that would normally be charged on the import of the foreign goods (which are being used in the manufacturing process) are suspended. Once the finished goods leave the FTZ (*e.g.* for sale in other parts of Brazil), the goods are taxed (*i.e.* the tax suspension ends). The tax is charged on the basis of a reduction coefficient which is calculated, depending on the level of nationalisation of the product manufactured in the FTZ. For example, if the finished manufactured good has a nationalisation of 60%, then about 40% of the taxes are charged. The authorities report that the amounts of cash being detected entering and leaving the FTZ are at about the same level as in other parts of the country. Additionally, the FTZ are in very remote areas of the country (Manaus, for instance, is in the middle of the Amazonian jungle).

Declaration system

317. In 1998, Brazil implemented a declaration system (CMN Resolution 2524/1998) obliging every person crossing Brazilian borders to declare currency or bearer negotiable instrument (BNI) exceeding BRL 10 000 (EUR 3 900/USD 5 800) in value on a Currency Declaration Form (*Declaração de Porte de Valores – DPV*). The declaration system is run by the Secretariat of Federal Revenue (RFB) (which is Brazil's customs authority as well as tax authority) and applies to both incoming and outgoing travellers.

[36] CIA World Factbook, 27 November 2009, accessed at https://www.cia.gov/library/publications/the-world-factbook/geos/br.html .

However, the declaration system does not apply to physical cross-border transportations being made in unaccompanied baggage.

318. Since February 2006, travellers are required to file the Currency Declaration Form (e-DPV) through the web (RFB Normative Instruction 619/2006)[37]. When entering the country, travellers must declare cash, cheques or traveller's checks of BRL 10 000 (EUR 3 900/USD 5 800) or more in value (RFB Normative Instruction 619/2006, art.2). This obligation applies to cross-border transportations of currency, cheques and travellers' cheques, but does not apply to other types of BNI.

319. When leaving the country, travellers must present to the Customs Authority one of the three following documents as well as the e-DPV:

- a foreign currency purchase receipt issued by a bank or financial institution authorised to operate in the currency exchange market in Brazil, in an amount equal or superior to the declared value;
- a copy of the Currency Transportation Report (e-DPV) presented to the RFB upon arrival in Brazil; or
- a money order receipt related to currency payment or traveller's checks received in Brazil or a cash withdrawal receipt by means of using an international credit card (RFB Normative Instruction 619/2006, art.3).

320. In the context of the exchange control regime, the RFB is currently developing a computerised system to control cross-border flows of cash and gold (as financial assets) moved physically by financial institutions. To accomplish this, RFB will launch the "International Values Physical Transport Report" (*Declaração de Movimentação Física de Valores – e-DMOV*). The computerised system will record on the e-DMOV the incoming and outgoing values for each financial institution of: the current stage of all e-DMOVs. This project is currently in the final stages of testing. It is anticipated that the system will enter into force in December 2009.

Transportations through the mail

321. It is prohibited to send undeclared currency/BNI through the mail (Postal Law 6538/1978 art.2).

Transportations in containerised cargo

322. Brazil has not implemented a declaration/disclosure system in relation to transportations made in containerised cargo.

Power to stop/restrain currency and obtain additional information

323. Upon discovery of a false declaration, the customs authorities have the authority to request and obtain further information from the traveller with regard to the origin of currency/BNI and its intended use. However, they are not authorised to stop/restrain currency/BNI in the absence of a false declaration.

324. The customs authorities are empowered to restrain currency/BNI when there is a false declaration (Law 9069/1995 art.65; CMN Resolution 2524/1998 art.5). Such measures may be applied because a false declaration constitutes a violation of article 299 of the *Criminal Code*. Additionally, customs officers are allowed to retain any goods in cases of suspicion of a crime (including ML/FT) or an irregularity.

[37] At the electronic address www.receita.fazenda.gov.br/dpv.

Access to information

325. All traveller declarations are entered into the e-DPV database of the RFB. COAF has on-line access to this database, and may obtain that information in magnetic files, if needed. COAF conducts a download of all e-DPV information each month. Additionally, COAF is able to make on-line inquiries on the database about a specific person, and download that information for inclusion into its own database. In the scope of its activities, COAF can share that information with foreign FIUs. It is intended that COAF will also electronically receive the information registered on the new e-DMOV system once it is operational.

Domestic co-operation and co-ordination

326. The RFB and the DPF (which acts as both the national police and immigration control) usually work together in a task force model when investigating ML. Information sharing occurs between these authorities in the context of investigations. Additionally, the intelligence unit of the RFB is in regular contact with the DPF, and these agencies work together at borders and airports. Overall, the authorities report that this co-ordination works well, both at the national and regional level, including on more complex cases. As well, the DPF maintains an immigration control database that can provide useful information for joint investigations.

International co-operation and co-ordination

327. Brazil has signed agreements with several countries to avoid double taxation and govern MLA in customs matters. Those agreements have dispositions allowing exchange of information between customs authorities on cross-border transportation reports and cash seizures.

328. The customs authorities also have several international co-operation agreements with their foreign counterparts, and are authorised to use controlled deliveries in the course of their investigations. The customs authorities conduct joint operations with their foreign counterparts, and some specific examples of such operations were provided to the assessment team. The Brazilian customs authorities also co-operate internationally through the World Customs Organization (WCO) network, and are using the Operation Atlas to exchange information to address ML.

Sanctions and confiscation

329. The sanction available in case of false declaration or failure to declare, is retention of any currency/BNI that exceeds the declaration threshold value. This sanction is applied at the administrative level which is administered by the RFB itself (Law 9069/1995 art.65; RFB Normative Instruction 619/2006 Item IX.2). The level of sanction is, therefore, determined entirely by the value of currency/BNI being carried. There is no possibility to apply a lesser sanction in less serious circumstances (*e.g.* if the traveller inadvertently made a mistake on the declaration) or a higher sanction in more egregious circumstances (*e.g.* if the traveller is a repeat offender). Consequently, it cannot be said that the range of sanctions is proportionate and dissuasive.

330. Persons who are found to be carrying out a physical cross-border transportation of currency/BNI that is related to ML/FT are subject to criminal prosecution further to the offences set out in the *AML Law* and Law 7170/1983. However, these offences are not sufficient in relation to FT (see sections 2.1 and 2.2 of this report for further details).

331. Currency/BNI retained by the RFB can also be confiscated by the authorities if it is concluded that the funds come from illegal source. Where a cross-border transportation is found to be related to ML/FT, the general freezing/restraint measures described in section 2.3 of this report would apply.

However, the ability of the authorities to freeze/seize property related to terrorist financing is limited and, overall, the system suffers from the same deficiencies as identified above in section 2.3. Additionally, it should be noted that the number of asset seizures made each year is very low.

332. For a cross-border transportation that is related to persons/entities designated pursuant to S/RES/1267(1999) and S/RES/1373(2001), the freezing measures described in section 2.4 of this report would apply; however, these measures are very limited, and suffer from the deficiencies noted above in section 2.4 of this report.

Cross-border movement of gold, precious metals and stones

333. Brazil has not considered notifying, as appropriate, the Customs Service or other competent authorities of the source or destination countries related to an unusual cross-border movement of gold, precious metals or precious stones. However, if an unusual cross-border movement of gold, precious metals or precious stones is discovered, Brazil may rely on its network of bilateral and multilateral MLA agreements in customs matters to exchange information requested by signatory States.

Information management and sharing

334. The system used for reporting cross border transactions is the e-DPV (a secure electronic database), which will soon be complimented by the e-DMOV reporting for financial institutions. Both systems are under the responsibility of the RFB. COAF is able to access e-DPV data, and will be able to access e-DMOV data once that system becomes operational. Officials are required to keep confidential the information obtained pursuant to these processes (Law 8112/1990 art.116).

335. The information obtained through the Brazilian declaration process is also accessible upon request by the Brazilian courts and prosecutors. As at November 2009, the RFB and the DPF were in the process of establishing an MOU concerning information sharing, amongst other matters. Brazil and several other countries have signed agreements on tax and customs matters. Those agreements have dispositions allowing exchange of information on cross-border transportation reports and cash seizures. Additionally, since the FIU (COAF) has access to the Brazilian cross border electronic systems, such information can be shared with foreign FIUs through COAF's network for intelligence purposes.

Resources (Customs authorities) – R.30

336. The Brazilian Customs Administration is located within the RFB which is also the tax authority. The customs authorities leverage off of intelligence and risk analysis in an attempt to cover Brazil's vast territory; however, additional staff are needed. The customs authorities are also in need of further technical resources. It should be noted that a bidding process is currently in progress for the acquisition of a large quantity of scanning equipment to be installed in ports, airports and border points. This equipment should help to improve the situation.

337. Applicants to the RFB are vetted by means of an external public contest and long-term training course. Its employees are forbidden to disclose, for any purpose, any information obtained on account of their position, about the economic or financial situation of taxpayers or third parties, and the nature and condition of their business or activities. A breach of confidentiality is a crime and those responsible are subject to imprisonment for the period of one to four years, without prejudice to other applicable penalties.

338. All Customs employees at the RFB have received training about the e-DPV system. An on-site training programme—the "*Prevenção e Combate à Lavagem de Dinheiro e ao Financiamento do Terrorismo*" (Money Laundering and Terrorism Finance Prevention and Combat)—is made available to all RFB employees, including Customs personnel. Also, along the career of the officer, training towards

certain specific activities can also be obtained. Additionally, as an active member of FATF and GAFISUD, Brazil has developed and applied programs of training, data collection, enforcement and targeting.

Statistics and effectiveness

339. The customs authorities have been working to integrate AML/CFT initiatives into all aspects of their customs control activities, including in relation to the following customs activities: customs valuation (combating under-invoicing, over-invoicing and valuation fraud); tariff classification; origin of goods and other aspects of international trade; in addition to combating smuggling and offences related to tax evasion. Within this context, the RFB has developed projects designed to improve the efficiency of its work, including development of systems such as the "SISCOMEX Cargo" and the computerisation of controls on consignments transported by courier companies, besides the development of programs to improve customs security. Brazil has also been working, in co-operation with other jurisdictions such as the United States, to address trade-based money laundering.

340. Nevertheless, Brazil is a huge country with a long border crossing very remote areas, and a high volume of commerce and traffic with neighbouring countries. In addition, smuggling is an issue, considering Brazil's geography. This presents significant challenges for the customs authorities. Consequently, they rely heavily on risk analysis and intelligence to determine where to best expend their resources, and are currently working to enhance their resources and capacity through training programmes, restructuring coordination, and the acquisition of helicopters.

341. However, despite all of these efforts, the effectiveness of Brazil's systems to implement Special Recommendation IX has not been established. The following chart sets out the number of currency declaration forms received in the past four years.

Year	Currency declaration forms
2006 (April to December)	2 279
2007	5 571
2008	6 684
TOTAL	**14 534**

342. The following chart sets out the number of false declarations and related seizures for the past four years.

Year	Number of false declarations	Value of seizures
2006	339	BRL 2.8 million
2007	1 355	BRL 36 million
2008	42	BRL 8 million
2009	15	BRL 2.6 million
TOTAL	**1 751**	**BRL 49.4 million (EUR 19.3 million) (USD 28.6 million)**

343. Considering the volume of international travellers (over 5.2 million visitors in 2008[38]) and the volume of cargo and post which could be expected for a country and economy of Brazil's size, the number of declarations is very low. Consequently, there is a correspondingly low number of detections of false declarations and related seizures, other than for a spike in 2007 which has not been explained.

344. The following chart sets out the number of ML investigations, relating to customs actions, that were conducted by the RFB.

Year	Number of persons arrested	Value of assets seized	Number of convictions
2007	39	Currency (BRL 1 million) (about EUR 390 000/USD 579 000), BNI (hundreds of thousands), bearer shares, goods	5
2007	0	Goods	0
2007	22	None	0
2007	18	Currency (BRL 800 000) (about EUR 312 000/USD 464 000), Precious metals/stones (BRL 300 000) (about EUR 117 000/USD 174 000), Goods (BRL 2.8 million) (about EUR 1.1 million/USD 1.6 million)	0
2007	29	Goods (BRL 2.3 million) (about EUR 897 000/USD 1.3 million)	0
2007	44	Currency (BRL 930 000) (about EUR 363 000/USD 539 000), Goods (BRL 88 million) (about EUR 34.3 million/USD 51 million)	0
2007	19	Currency (BRL 256 million) (about EUR 99.9 million/USD 148 million) Currency (EUR 2 645) (about USD 3 929), Goods	0
2008	24	Goods	0
2008	25	Currency and goods (BRL 7 million) (about EUR 2.7 million/USD 4.1 million)	0
2008	24	Goods	0
2008	12	Goods	0
2008	11	Goods (BRL 17 million) (about EUR 6.6 million/USD 9.9 million)	0
2008	81	Goods (BRL 2 million) (about EUR 780 000/USD 1.2 million)	0
2009	5	Goods	0
2009	0	Goods (BRL 2 million) (about EUR 780 000/USD 1.2 million)	0
2009	17	Currency and precious stones	0
2009	0	Goods (BRL 6 million) (about EUR 2.3 million/USD 3.5 million)	0

345. It should be noted that only seven of the above-noted 17 cases involved bulk cash smuggling activity, and only one of these resulted in any convictions. In the context of Brazil's vast borders and the level of ML risk, these statistics are very low. In part, these problems are related to the insufficient resources of the customs authorities and the particular geographic challenges faced in the Brazilian context.

[38] Embratur 2009 "Anuário Estatístico de Turismo – 2009 Volume 36 Ano base 2008", accessed at www.embratur.br

2.7.2 Recommendations and Comments

Special Recommendation IX

346. Brazil has had a declaration system in place since 1998. This system appears to provide a solid basis for implementing Special Recommendation IX; however, some broadening of the obligation and relevant powers of the competent authorities in this area are needed. It is recommended that a clear strategy be devised and implemented to do so. Particular issues which should be addressed in that strategy include:

- The declaration system should be broadened to apply to physical cross-border transportations being made in containerised cargo or in unaccompanied baggage.
- The obligation to declare should be extended to include all types of BNI, as defined by the FATF.
- The RFB should have a greater range of sanctions in relation to persons who make a false declaration or who fail to declare as required.
- Particularly considering the nature of Brazil's geography and the problems with smuggling, Brazil should ensure that it notifies, as appropriate, the authorities of countries of origin and destination upon discovery of an unusual cross-border movement of gold, precious metals or precious stones.
- The authorities should focus on enhancing the implementation, overall, as currently the number of false declarations and illicit cross-border transportations being detected is quite low.

347. Additionally, Brazil should fully criminalise FT, as recommended in section 2.2.2 of this report, so as to ensure that adequate sanctions are available for natural and legal persons who carry out physical cross-border transportations of currency/BNI related to terrorist financing.

348. Brazil should also enhance its ability to take provisional measures and confiscate assets, as recommended in section 2.3 of this report, to ensure that can it do so effectively in relation to persons carrying out physical cross-border transportations of currency/BNI.

349. Also Brazil should enhance its ability to freeze the assets of persons designated pursuant to S/RES/1267(1999) and S/RES/1373(2001), as recommended in section 2.4 of this report, to ensure that it can do so effectively in the cross-border context.

Recommendation 30

350. The RFB should be provided with additional human and technical resources. This will help it to meet the significant challenges faced in a country with such vast and, in some places, remote border areas.

2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of factors underlying overall rating
SR.IX	**PC**	• The declaration system does not apply to physical cross-border transportations being made through containerised cargo or in unaccompanied baggage. • The declaration system does not apply to BNI other than cheques and travellers' cheques. • Sanctions for making a false declaration or failure to declare are not proportionate and dissuasive. • Persons who are found to be carrying out a physical cross-border transportation of currency/BNI that is related to FT are not subject to sufficient sanctions (see the deficiencies in the criminalisation of FT noted in section 2.2). • There is limited ability to seize currency/BNI related to terrorist financing, or to apply sanctions in such cases (see the relevant deficiencies noted in section 2.3). • There is limited ability to seize currency/BNI related to persons designated pursuant to S/RES/1267(1999) and S/RES/1373(2001) (see the relevant deficiencies noted in section 2.4). • Effectiveness: The number of declarations received is very low considering the volume of international travellers and cargo moving in/out of Brazil. The number of false declarations detected is correspondingly low. The number of ML investigations and convictions related to bulk cash smuggling is low. Customs authorities are in need of further human and technical resources. • Upon discovery of an unusual cross-border movement of gold or precious metals/stones, Brazil does not consider notifying, as appropriate, the Customs Service or other competent authorities of the source or destination countries.

3. PREVENTIVE MEASURES – FINANCIAL INSTITUTIONS

Scope of application

351. The *AML Law* applies to a broad range of financial institutions (FIs) and covers all of the financial activities that fall within the scope of the *FATF Recommendations*. Financial institutions engaging in the following activities on a permanent or temporary basis, as a principal or secondary part of their business are subject to the preventive measures set out in the *AML Law*:

- the reception, brokerage and investment of client funds in Brazilian or foreign currency;
- the purchase and sale of foreign currency or gold as a financial asset; and
- the custody, issuance, distribution, clearing, negotiation, brokerage or management of securities.

352. Additionally, the *AML Law* applies to the following specific types of financial institutions and entities[39]:

- stock, commodities and futures exchanges;
- insurance and reinsurance companies, capitalisation companies and brokers;
- institutions involved with private pension plans or social security[40];
- payment or credit card administrators;
- *consorcios* (consumer funds commonly held and managed for the acquisition of consumer goods);
- administrators of companies that use cards or any other electronic, magnetic or similar means to allow funds transfers;
- companies that engage in leasing and factoring activities;

[39] The *AML Law* distinguishes between two types of entities. First, the entities performing the types of financial activities listed in the previous paragraph are all considered to be financial institutions by the Brazilian authorities. Second, the entities performing the types of financial activities listed in this paragraph may or may not be considered to be financial institutions by the Brazilian authorities in the context of their system. For example, payment/credit card administrators which are not banks and factoring companies are not considered to be financial institutions by the Brazilian authorities. Nevertheless, all of the entities listed in both categories are considered to be financial institutions, as defined in the *FATF Recommendations.*

[40] In Brazil, the closed pension funds supervised by SPC (now PREVIC) are non-profit making legal entities with the sole business aim of establishing and managing closed pension plans. They may be established by single or multiple employers, or professional associations. The regime is financed by employer and employee contributions on an occupational or associative basis. The assets of the pension fund are legally segregated from the sponsors and submitted to special accounting, financing and actuarial regulations. Although closed pension funds are not considered to be financial institutions in the Brazilian context they are, nevertheless, subject to AML/CFT obligations and do fall within the FATF definition of *financial institutions.*

- all other legal entities engaged in the performance of activities that are dependent upon an authorisation from the agencies that regulate the stock, exchange, financial and insurance markets;

- 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 above activities; and

- branches or representatives of foreign entities that engage in any of the above activities which take place in Brazil, even if occasionally.

Collectively, all of the above financial institutions (FIs) are referred to as "Accountable FIs".

353. Together, Accountable FIs perform all 17 types of financial activities that are covered by the *FATF Recommendations*. It should be noted that, although the *AML Law* does not cover natural persons providing exclusively domestic remittance services this does not create a scope issue because only financial institutions (legal persons) authorised by BACEN may legally conduct remittance activity; a natural person or a legal person acting as a remittance business without BACEN authorisation would be committing a crime[41].

Laws, regulations and other enforceable means

Laws

354. The cornerstone of the legal framework of preventative measures in the financial sector are Law 9613/1998 (the *AML Law*) and Decree 2799/1998. Accountable FIs are required to implement preventative measures (CDD, record keeping, STR reporting, internal controls) in compliance with the instructions and provisions issued by the competent authorities (*AML Law*, art.10-11 and 14).

Regulations and other enforceable means – Overview of the regulatory framework in the financial sector:

355. Regulations (resolutions) issued by the highest regulatory authorities in the banking and security, insurance and closed pension fund sectors (CMN, CNSP and CNPC) set out prudential requirements for the financial sector, including CDD and record keeping provisions which are directly relevant for AML/CFT purposes. The general requirements of the *AML Law* are further elaborated in the various types of regulatory instruments that are issued by BACEN (circulars), CVM (instructions and deliberations), SUSEP (circulars and deliberations), SPC (instructions) and COAF (resolutions). The following chart sets out the regulatory instruments in the financial sector which were considered in the preparation of this report, including whether they qualify as *regulation* or *other enforceable means* as those terms are defined by the FATF.

41 Only certain BACEN/FIs are authorised to perform remittance activity.

REGULATORY INSTRUMENTS IN THE BANKING AND SECURITIES SECTORS			
Regulations issued by CMN		**Regulations issued by BACEN**	**Other enforceable means issued by CVM**
CMN Resolution 1120/1986	CMN Resolution 3040/2002	BACEN Circular 2826/1998	CVM Instruction 122/1990
CMN Resolution 1653/1989	CMN Resolution 3041/2002	BACEN Circular 3006/2000	CVM Instruction 202/1993
CMN Resolution 1655/1989	CMN Resolution 3110/2003	BACEN Circular 3115/2002	CVM Instruction 301/1999
CMN Resolution 1656/1989	CMN Resolution 3203/2004	BACEN Circular 3290/2005	CVM Instruction 325/2000
CMN Resolution 2025/1993	CMN Resolution 3211/2004	BACEN Circular 3342/2008	CVM Instruction 331/2000
CMN Resolution 2554/1998	CMN Resolution 3260/2005	BACEN Circular 3390/2008	CVM Instruction 332/2000
CMN Resolution 2592/1999	CMN Resolution 3426/2006	BACEN Circular 3461/2009	CVM Instruction 380/2002
CMN Resolution 2689/2000	CMN Resolution 3442/2007	BACEN Circular 3462/2009	CVM Instruction 387/2003
CMN Resolution 2747/2000	CMN Resolution 3567/2008		CVM Instruction 389/2003
CMN Resolution 2817/2001	CMN Resolution 3654/2008		CVM Instruction 461/2007
CMN Resolution 2953/2002			CVM Instruction 463/2008
			CVM Deliberation 105/1991
			CVM Deliberation 541/2008

REGULATORY INSTRUMENTS IN THE INSURANCE SECTOR		
Regulations issued by CNSP	**Other enforceable means issued by SUSEP**	
CNSP Resolution 97/2002	SUSEP Instruction 74/1999	SUSEP Instruction 352/2007
CNSP Resolution 118/2004	SUSEP Instruction 234/2003	SUSEP Instruction 380/2008
CNSP Resolution 136/2005	SUSEP Instruction 249/2004	
CNSP Resolution 143/2005	SUSEP Instruction 277/2004	SUSEP Deliberation 135/2009
CNSP Resolution 166/2007	SUSEP Instruction 349/2007	

REGULATORY INSTRUMENTS IN THE CLOSED PENSION FUNDS SECTOR
Other enforceable means issued by SPC
SPC Instruction 26/2008

REGULATORY INSTRUMENTS IN OTHER SECTORS: FACTORING, PAYMENT AND CREDIT CARD ADMINISTRATORS, AND NON-FINANCIAL LEGAL ENTITIES THAT PROVIDE CASH TRANSFER SERVICES (THE POST OFFICE)			
Regulations issued by the Minister of Finance	**Other enforceable means issued by COAF**		
Administrative Rule 330/1998	COAF Resolution 004/1999	COAF Resolution 008/1999	COAF Resolution 014/2006
	COAF Resolution 005/1999	COAF Resolution 009/2000	COAF Resolution 015/2007
	COAF Resolution 006/1999	COAF Resolution 010/2001	COAF Resolution 016/2007
	COAF Resolution 007/1999	COAF Resolution 013/2005	COAF Resolution 018/2009

Regulatory framework in the banking and securities sectors

356. ***CMN Resolutions:*** The National Monetary Council (CMN) generally issues Resolutions to elaborate the powers of BACEN and other participants in the National Financial System (NFS), and prescribe prudential rules for the sector, including market entry requirements, and customer due diligence and record keeping obligations that are prudentially focused, but are directly relevant to AML/CFT. CMN Resolutions fall within the FATF definition of *regulation* for the following reasons.

(a) **Are they issued or authorised by a legislative body?** CMN Resolutions are authorised by a legislative body via a ministerial-level approval process. The CMN is not a legislative body, but is comprised of the Minister of Finance, the Minister of Planning and Budget, and the Governor of BACEN (who is also at the ministerial level). The CMN is authorised by Brazil's primary legislative body (the Congress) to set national monetary policy, and regulate the constitution, functioning and supervision of BACEN and the other participants in the NFS, including the application of penalties, in pursuit of the President's directives further to the national *Constitution* (Law 4595/1964, art.4(VIII)). This is the legal basis pursuant to which CMN may issue Resolutions. CMN Resolutions are promulgated by BACEN, under signature of the Governor of BACEN. When doing so, BACEN is acting in its role as the CMN Secretariat and is, therefore, acting under the control of the CMN (*i.e.* under control of the Ministers comprising the CMN) (Law 4595/1964, art. 11(VIII)). In this context, it is incumbent on BACEN to comply and enforce compliance with the norms promulgated by the CMN and applicable legislation (Law 4595/1964, art.9).

(b) **Are they at the level of secondary legislation?** The CMN is the highest regulatory entity within the NFS, falling immediately under the Congress which is Brazil's primary legislative body responsible for the *Constitution* and issuing laws. According to the hierarchy of laws as established by article 59 of the *Constitution*, the preparation of resolutions is part of the legislative process. As such, CMN Resolutions constitute secondary legislation in the banking/securities sectors.

(c) **Do they impose mandatory requirements?** CMN Resolutions use mandatory language.

(d) **Are there sanctions for non-compliance?** CMN's deliberations are binding on all official entities that are members of the NFS, including BACEN and CVM, and impose mandatory requirements for which there are sanctions for non-compliance (Law 4595/1964, art.5). CMN Resolutions are directly enforceable in one of two ways. In some cases, the relevant sanctions are set out in the CMN Resolution (either directly or by reference to sanctions provisions in another law or regulatory instrument).[42] In other cases, BACEN issues a separate regulatory instrument (a BACEN Circular) for the purpose of implementing the CMN Resolution[43]. The sanctions for breaching a CMN Resolution may be applied to: financial institutions, their directors and managers, and members of their administrative, fiscal and similar councils: warnings; fines; suspension from their functions; temporary or permanent disqualification to exercise the functions of a director or manager; and cancellation of the financial institution's operating licence (Law 4595/1964, art.44).

357. ***BACEN Circulars:*** BACEN issues regulatory instruments (circulars), other than in its role as the CMN Secretariat, that are applicable to banking and non-bank financial institutions. BACEN Circulars fall within the FATF definition of *regulations* for the following reasons.

(a) **Are they issued or authorised by a legislative body?** BACEN Circulars are authorised by a legislative body via a ministerial-level approval process. BACEN is not a legislative body; it is an autonomous federal agency, and is also the primary executing authority for all CMN decisions (Law 4595/1964, art.8). BACEN Circulars are issued in contexts other than those in which BACEN is acting as the CMN Secretariat, under the control of the CMN. BACEN Circulars are approved by the Collegiate Board of Directors of BACEN and authorised/signed

42 See, for example, CMN Resolution 1655/1989 and 1653/1989.

43 For example, see CMN Resolutions 2689/2000, 2592/1999 and 2554/1998—all of which are enforced through implementing Circulars issued by BACEN.

by the Governor of BACEN who, in the Brazilian executive framework, is at the level of a Minister (Law 11036/2004, art.8(III)). BACEN Circulars are issued pursuant to the following legal basis: BACEN is authorised to issue BACEN Circulars for the purpose of further elaborating prudential measures (Law 4595/1967) and the general AML/CFT requirements set out in articles 10 and 11 of the *AML Law* (Law 9613/1988 art.10-11; Decree 2799/1998 art.11, 14 and 15).

(b) **Are they at the level of secondary legislation?** BACEN Circulars qualify as secondary legislation because they are subject to a ministerial-level authorisation/approval process.

(c) **Are they issued by a competent authority?** BACEN Circulars are issued by a competent authority (BACEN) which is the financial supervisory authority for banking and non-bank financial institutions.

(d) **Do they impose mandatory requirements?** BACEN Circulars use mandatory language.

(e) **Are there sanctions for non-compliance either in the same or another document?** BACEN Circulars are directly enforceable either by sanctions specified in the Circular itself or by reference to sanctions provisions in another law or regulatory instrument).

(i) BACEN Circulars are punishable by an adequate range of effective, proportionate and dissuasive sanctions, including those set out in the *AML Law* or, in the case of prudential measures, Law 4595/1967. (These sanctions are described in the discussion of Recommendation 17 in section 3.10 of this report).

(ii) The sanctions in the *AML Law* are directly applicable for failure to comply with the AML/CFT requirements. Likewise, sanctions are directly applicable for failing to comply with those prudential requirements that are relevant to AML/CFT, including those set out in Law 4595/1967 (art.44-45).

(iii) BACEN is empowered to apply these sanctions (Decree 2799/1998 art.14) and there is evidence that they have been applied in practice (see the discussion of Recommendation 17 in section 3.10 of this report).

(iv) Administrative appeals from such decisions are possible and may be made to the Financial System's Council of Appeal (see the discussion of Recommendation 29 in section 3.10 of this report for further details).

358. ***CVM Instructions:*** CVM issues Instructions for the purpose of elaborating prudential measures and AML/CFT requirements for the securities sector. CVM Instructions fall within the FATF definition of *other enforceable means* for the following reasons.

(a) **Are they issued or authorised by a legislative body?** CVM Instructions are not issued or authorised by a legislative body. CVM is not a legislative body; it is an autonomous federal agency, under the jurisdiction of the CMN (Law 6385/1976 art.3(III-IV) and art.5). The CVM relationship with the CMN is similar to BACEN's (except that CVM has no CMN Secretariat role) in that the CVM must act with due regard for CMN policies (Law 6385/1976 art.8(I)). CVM Instructions are not subject to a legislative or ministerial-level authorisation or approval process. Instead, they are issued by the CVM Board of Commissioners, which is comprised of a Chairman and four commissioners appointed by the President of Brazil, and signed by the CVM Chairman. CVM Instructions are issued pursuant to the following legal basis. The CVM is authorised to issue CVM Instructions for the purpose of further elaborating prudential measures

for the securities sector (Law 6385/1976) and the general AML/CFT requirements set out in articles 10 and 11 of the *AML Law* (Law 9613/1988 art.10-11; Decree 2799/1998 art.11, 14 and 15).

(b) **Are they at the level of secondary legislation?** CVM Instructions do not qualify as secondary legislation because they do not fall within the hierarchy of laws in the legislative process, as defined in article 59 of the *Constitution*, and are not otherwise subject to a legislative or ministerial-level authorisation or approval process.

(c) **Are they issued by a competent authority?** CVM Instructions are issued by a competent authority (CVM) which is the financial supervisory authority for the securities sector.

(d) **Do they impose mandatory requirements?** CVM Instructions use mandatory language.

(e) **Are there sanctions for non-compliance either in the same or another document?** CVM Instructions are directly enforceable either through sanctions set out in the Instruction itself or in another legal instrument, such as the *AML Law* (which is cross-referenced in the Instruction).

(i) CVM Instructions are punishable by an adequate range of effective, proportionate and dissuasive sanctions, including those set out in the *AML Law* or, in the case of prudential measures, Law 6385/1976. (These sanctions are described in the discussion of Recommendation 17 in section 3.10 of this report.)

(ii) The sanctions in the *AML Law* are directly applicable for failure to comply with the AML/CFT requirements. Likewise, sanctions are directly applicable for failing to comply with those prudential requirements that are relevant to AML/CFT, including those set out in Law 6385/1976 (art.11).

(iii) CVM is empowered to apply these sanctions (Decree 2799/1998 art.14) and there is evidence they have been applied in practice (see the discussion of Recommendation 17 in section 3.10 of this report).

(iv) Administrative appeals from such decisions are possible and may be made to the Minister of Finance (Decree 2799/1998 art.23).

359. ***CVM Deliberations:*** CVM issues Deliberations for the purpose of elaborating prudential measures for the securities sector. CVM Deliberations fall within the FATF definition of *other enforceable means* on the basis of the same reasons and analysis as applied above in relation to CVM Instructions.

360. For the above reasons, BACEN Circulars fall within the FATF meaning of the term *regulation.* CVM Instructions and CVM Deliberations are classified as *other enforceable means.* They do not fall within the FATF meaning of the term *regulation,* as they are not issued or authorised by a legislative body, and are not at the level of secondary legislation.

Regulatory framework in the insurance sector

361. ***CNSP Resolutions:*** The National Council on Private Insurance (CNSP) was established by Decree-Law 73/1966. It generally issues Resolutions to elaborate the powers of SUSEP and other participants within the National Private Insurance System (SNSP), and prescribe prudential rules for the sector, some of which are directly relevant to AML/CFT. CNSP Resolutions fall within the FATF definition of *regulation* for the following reasons:

(a) **Are they issued or authorised by a legislative body?** CNSP Resolutions are authorised by a legislative body via a ministerial-level approval process. The CNSP is not a legislative body, but is comprised of: the Minister of Finance who serves as Chairman; the Superintendent of SUSEP who serves as Vice-Chairman; and representatives of BACEN, the Ministry of Justice, the Ministry of Social Security and the CVM. The CNSP is authorised by Brazil's primary legislative body (Congress) to set national policy, guidelines and directives for insurance and capitalization companies, and open private pension entities in Brazil (Decree-Law 73/66, art.32(I)). This is the legal basis pursuant to which the CNSP may issue Resolutions. It is also authorised to issue prudential rules for the sector, some of which are directly relevant to AML/CFT (Decree-law 261/1967 art.3). CNSP Resolutions are promulgated by SUSEP, under signature of the Superintendent of SUSEP. When doing so, SUSEP is acting in its role as the CNSP Secretariat and is, therefore, acting under the control of the CNSP (*i.e.* under control of the Minister of Finance) (Decree 60459/1967, art.34(XI)). In this context, it is incumbent on SUSEP to comply and enforce compliance with the norms promulgated by the CNSP and applicable legislation (Decree-law 73/1966 art.36(h)).

(b) **Are they at the level of secondary legislation?** The CNSP is the highest regulatory entity within the SNSP and SNC, positioned immediately under the Congress which is Brazil's primary legislative body responsible for the *Constitution* and issuing laws. According to the hierarchy of laws as established by article 59 of the *Constitution*, the preparation of resolutions is part of the legislative process. As such, CNSP Resolutions constitute secondary legislation in the insurance sector.

(c) **Do they impose mandatory requirements?** CNSP Resolutions use mandatory language.

(d) **Are there sanctions for non-compliance?** CNSP Resolutions are binding on SUSEP and all participants in the SNSP and SNC. They impose mandatory requirements for which there are sanctions for non-compliance (Decree-Law 73/66 art.36(h)).

362. ***SUSEP Circulars:*** SUSEP issues regulatory instruments (circulars), other than in its role as the CNSP Secretariat, for the purpose of elaborating prudential measures and AML/CFT requirements for the insurance sector. SUSEP Circulars fall within the FATF definition of *other enforceable means* for the following reasons.

(a) **Are they issued or authorised by a legislative body?** SUSEP Circulars are not issued or authorised by a legislative body. SUSEP is not a legislative body; it is an autonomous federal agency, under the jurisdiction of the CNSP, and is also the primary executing authority for all CNSP decisions (Decree-law 73/1966 art.34-35; Complementary Law 109/2001 art.74). The relationship between CNSP and SUSEP is similar to the one that the CMN has with BACEN. SUSEP Circulars are issued in contexts other than those in which SUSEP is acting as the CNSP Secretariat, under the control of the CNSP. SUSEP Circulars are not subject to a legislative or ministerial-level authorisation or approval process. Instead, they are issued by the Superintendent of SUSEP, under his/her signature. SUSEP Circulars are issued pursuant to the following legal basis. SUSEP is authorised to issue regulatory instruments for the purpose of elaborating prudential measures for the insurance sector (Decree-law 73/1966) and the general AML/CFT requirements set out in articles 10 and 11 of the *AML Law* (Law 9613/1988 art.10-11; Decree 2799/1998 art.11, 14 and 15).

(b) **Are they at the level of secondary legislation?** SUSEP Circulars do not qualify as secondary legislation because they do not fall within the hierarchy of laws in the legislative process, as

defined in article 59 of the *Constitution*, and are not otherwise subject to a legislative or ministerial-level authorisation or approval process.

(c) **Are they issued by a competent authority?** SUSEP Circulars are issued by a competent authority (SUSEP) which is the financial supervisory authority for the insurance sector.

(d) **Do they impose mandatory requirements?** SUSEP Circulars use mandatory language.

(e) **Are there sanctions for non-compliance either in the same or another document?** SUSEP Circulars are directly enforceable either through sanctions set out in the Circular itself or in another legal instrument, such as the *AML Law*, (which is cross-referenced in the Circular).

(i) SUSEP Circulars are punishable by an adequate range of effective, proportionate and dissuasive sanctions, including those set out in the *AML Law* and CNSP Resolution 97/2002. (These sanctions are described in the discussion of Recommendation 17 in section 3.10 of this report.)

(ii) These sanctions in the *AML Law* and CNSP Resolution 97/2002 are directly applicable for failure to comply with the AML/CFT requirements. Additionally, the sanctions in CNSP Resolution 97/2002 may be applied directly to breaches of prudential requirements that relate to AML/CFT.

(iii) SUSEP is empowered to apply these sanctions (Decree 2799/1998 art.14) and there is evidence that they have been applied in practice (see the discussion of Recommendation 17 in section 3.10 of this report).

(iv) Administrative appeals from such decisions are possible and may be made to the Minister of Finance (Decree 2799/1998 art.23).

363. ***SUSEP Deliberations:*** SUSEP issues Deliberations for the purpose of elaborating prudential measures for the securities sector. SUSEP Deliberations fall within the FATF definition of *other enforceable means* on the basis of the same reasons and analysis as applied above in relation to SUSEP Circulars.

364. For the above reasons, SUSEP Instructions and SUSEP Deliberations are classified as *other enforceable means*. They do not fall within the FATF meaning of the term *regulation*, as they are not issued or authorised by a legislative body, and are not at the level of secondary legislation.

Regulatory framework in the closed pension funds sector[44]

365. ***CNPC Resolutions:*** The National Regulatory Board for Complementary Pension Plans (CNPC) generally issues Resolutions to elaborate the powers of the PREVIC (and formerly, the SPC) and prescribe prudential rules for the sector. CNPC Resolutions fall within the FATF definition of *regulation* for the following reasons.

(a) **Are they issued or authorised by a legislative body?** The CNPC is a legislative body and collegiate agency of the Ministry of Social Security and Welfare (Complementary Law 109/2001). It is comprised of the Minister of Social Security (the chair) and five other government representatives (including the head of PREVIC and representatives from the Ministry of Social Security and Welfare, the Ministry of Finance, and the Ministry of Planning, Budget and Management), and three individuals representing pension fund entities, sponsors, plan members and beneficiaries (Decree 4678/2003 art.2). The CNPC is authorised by Brazil's primary legislative body (the Congress) to regulate, co-ordinate, supervise and control the activities of the closed pension funds sector (Complementary Law 109/2001 art.5 and 74; Decree 6417/2008 art.2 and 19). This is the legal basis pursuant to which the CNPC may issue Resolutions.

(b) **Are they at the level of secondary legislation?** The CNPC is the highest regulatory entity within the closed pension funds sector, falling immediately under the Congress which is Brazil's primary legislative body responsible for the *Constitution* and issuing laws. According to the hierarchy of laws as established by article 59 of the *Constitution*, the preparation of resolutions is part of the legislative process. As such, CNPC Resolutions constitute secondary legislation in the closed pension funds sector.

(c) **Do they impose mandatory requirements?** CNPC Resolutions use mandatory language.

(d) **Are there sanctions for non-compliance?** CNPC Resolutions have mandatory requirements for which there are sanctions for non-compliance.

366. ***SPC Instructions:***[45] SPC issues Instructions for the purpose of elaborating prudential measures and AML/CFT requirements for the closed pension funds sector. SPC Instructions fall within the FATF definition of *other enforceable means* for the following reasons.

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44 Brazil's first comprehensive occupational pension legislation was issued in 1977 (Law 6435/1977). Pursuant to this law, Presidential Decree 81240/1978 created the National Secretariat for Pension Funds as a supervisory body. Private pension systems were introduced when the new *Constitution* came into effect in 1988 (art.202). In 1998, the concept of establishing pension plans complementary to social security was reintroduced (Constitution Amendment EC 20/98). A complementary law project (PLC 9/99) was drafted in the following year, but was never enacted. In May 2001, Complementary Laws 108/2001 and 109/2001 were enacted. Complementary Law 108/2001 applies specifically to: *(i)* closed pension funds sponsored by state controlled enterprises and organisations; and *(ii)* those complementary pension plans now being created for civil servants (employees of the federal, state and local governments). Complementary Law 109/2001 revokes all earlier pension laws and, together with Complementary Law 108/2001, forms the basis of the current legislative framework in the pensions sector. Public sector pension plans are covered by both Complementary Law 108/2001 and 109/2001. Private sector pension plans are covered by Complementary Law 109/2001.

45 As of 23 December 2009, PREVIC is authorised to issue Instructions on these issues, on the same basis as that described in relation to SPC.

(a) **Are they issued or authorised by a legislative body?** SPC Instructions are not issued or authorised by a legislative body. SPC is not a legislative body; it is an autonomous federal agency, under the jurisdiction of the CNPC (Complementary Law 109/2001 art.74; Decree 6417/2008 art.11 and 19). The relationship between the CNPC and SPC is similar to the one that the CNSP has with SUSEP in that the SPC must act with due regard for CNPC policies. SPC Instructions are not subject to a legislative or ministerial-level authorisation or approval process. Instead, they are issued by the SPC itself. SPC Instructions are issued pursuant to the following legal basis. SPC is authorised to issue regulatory instruments for the purpose of elaborating prudential measures for the closed pension funds sector (Decree 6417/2008 art.11 and 14) and the general AML/CFT requirements set out in articles 10 and 11 of the *AML Law* (Law 9613/1988 art.10-11; Decree 2799/1998 art.11, 14 and 15).

(b) **Are they at the level of secondary legislation?** SPC Instructions do not qualify as secondary legislation because they do not fall within the hierarchy of laws in the legislative process, as defined in article 59 of the *Constitution,* and are not otherwise subject to a legislative or ministerial-level authorisation or approval process.

(c) **Are they issued by a competent authority?** SPC Instructions are issued by a competent authority (SPC) which is the financial supervisory authority for the closed pension funds sector).

(d) **Do they impose mandatory requirements?** SPC Instructions use mandatory language.

(e) **Are there sanctions for non-compliance either in the same or another document?** SPC Instructions are directly enforceable either through sanctions set out in the Instruction itself or in another legal instrument, such as the *AML Law,* (which is cross-referenced in the Instruction).

(i) SPC Instructions are punishable by an adequate range of effective, proportionate and dissuasive sanctions, including those set out in the *AML Law.* (These sanctions are described in the discussion of Recommendation 17 in section 3.10 of this report.)

(ii) The sanctions in article 12 of the *AML Law* are directly applicable for failure to comply with the AML/CFT requirements.

(iii) SPC is empowered to apply these sanctions (Decree 2799/1998 art.14). However, as no breaches of the AML/CFT obligations have been detected in this sector to date, these sanctions have not yet been applied in practice.

(iv) Administrative appeals from such decisions are possible and may be made to the Minister of Finance (Decree 2799/1998 art.23).

367. For the above reasons, SPC Instructions are classified as *other enforceable means.* They do not fall within the FATF meaning of the term *regulation,* as they are not issued or authorised by a legislative body, and are not at the level of secondary legislation.

Regulatory framework in the other financial sectors:

368. ***COAF Resolutions:*** COAF is responsible for issuing regulatory instruments (COAF Resolutions) that elaborate the general AML/CFT requirements set out in articles 10 and 11 of the *AML Law* for

factoring companies (*AML Law* art.14, para.1; Decree 2799/1998 art.7(V) and art.2)[46]. COAF Resolutions fall within the FATF definition of *other enforceable means* for the following reasons.

(a) **Are they issued or authorised by a legislative body?** COAF Resolutions are not issued or authorised by a legislative body. COAF is not a legislative body; it is an autonomous collegiate decision-making body (Decree 2799/1998 art.1). The COAF Plenary (which is responsible for issuing COAF Resolutions) is presided over by the COAF Chairperson (who is appointed by the Brazilian President on recommendation of the Minister of Finance) and is also comprised of representatives (civil servants) from BACEN, CVM, SUSEP, the General-Attorney Office for the National Treasury; the RFB, the DPF and the MRE (*AML Law*, art.16; Decree 2799/1998 art.2 and art.7(V)). COAF Resolutions are not subject to a legislative or ministerial-level authorisation or approval process. The legal basis pursuant to which COAF Resolutions are issued is Administrative Rule 330/1998—a regulation issued by the Minister of Finance that approves the internal Rules and Regulations of COAF and gives the COAF Plenary jurisdiction to issue COAF Resolutions directly, under signature of the Executive Secretary of COAF (Decree 2799/1998 art.9(IV)).

(b) **Are they at the level of secondary legislation?** According to the hierarchy of laws as established by article 59 of the *Constitution*, the preparation of resolutions is part of the legislative process. As such, COAF Resolutions constitute secondary legislation for factoring companies, and payment card and credit card administrators which are not banks (*i.e.* cards issued by stores and independent groups).

(c) **Are they issued by a competent authority?** COAF Resolutions are issued by a competent authority—COAF which is the supervisory authority for factoring companies.

(d) **Do they impose mandatory requirements?** COAF Resolutions use mandatory language.

(e) **Are there sanctions for non-compliance either in the same or another document?** COAF Resolutions are directly enforceable through the sanctions set out in article 12 of the *AML Law* (which are cross-referenced in the Resolutions).

    (i) COAF Resolutions are punishable by the sanctions set out in the *AML Law*, which are considered to be effective, proportionate and dissuasive (see the discussion of Recommendation 17 in section 3.10 of this report).

    (ii) The sanctions in the *AML Law* are directly applicable for failure to comply with the AML/CFT requirements.

    (iii) COAF is empowered to apply these sanctions (Decree 2799/1998 art.14) and there is evidence they have been applied in practice in relation to breaches of the STR reporting obligation (see the discussion of Recommendation 17 in section 3.10 of this report.

    (iv) Administrative appeals from such decisions are possible and may be made to the Minister of Finance (Decree 2799/1998 art.23).

[46] COAF is also responsible for issuing COAF Resolutions that elaborate the general AML/CFT requirements applicable to certain categories of DNFBP (real estate agents, and dealers in precious metals and stones), and certain categories of other non-financial businesses and professions (*e.g.* dealers of art objects and antiques). See sections 4.1 to 4.4 of this report for further details.

369. For the above reasons, COAF Resolutions are classified as *other enforceable means.* They do not fall within the FATF meaning of the term *regulation,* as they are not issued or authorised by a legislative body.

Customer Due Diligence & Record Keeping

3.1 Risk of money laundering or terrorist financing

370. The general provisions of the *AML Law* apply to all FIs equally. However, the extent to which each supervisor has elaborated more specific preventative measures varies, and is much less robust outside of the banking, securities and insurance sectors. The application of reduced measures in those areas (closed pension funds and factoring) is not based on an assessment of low or little ML/FT risk in those sectors.

371. Brazil has applied a risk-based approach to countering ML/FT, though not comprehensively of the kind contemplated in the *FATF Recommendations*. Most (but not all) FIs are required to pay special attention to transactions or customer relationships that may imply the existence of the crimes mentioned in the *AML Law*, because of their nature, the parties or amounts involved, the forms of undertaking and instruments used, or the lack of visible economic or legal purpose. In such cases, enhanced monitoring must be applied to the customer relationship, including more rigorous procedures for verifying suspicious situations, and obtaining senior management approval before commencing or maintaining the customer relationship. However, enhanced due diligence for high risk customers is generally not required, except in relation to PEPs and foreign exchange transactions with non-resident customers who have deposit accounts in Brazil. Simplified CDD is generally not allowed, although there are a few limited exceptions, some of which are not in line with the *FATF Recommendations*.

3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)

3.2.1 Description and Analysis

Recommendation 5

372. All Accountable FIs are required to comply with article 10 of the *AML Law* which requires the identification of customers (natural or legal persons, without any restriction as to whether they are permanent or occasional customers) and, in the case of customers who are legal persons, the owners and individuals who are legally authorised to represent them. The term *identification* as used in the *AML Law* and elsewhere includes *verification,* meaning the presentation, by the customer, of a formal document for the purpose of establishing identity (as opposed to the customer making a simple declaration of identity). Additionally, the *AML Law* requires Accountable FIs to keep all CDD information up-to-date.

373. Additionally, Accountable FIs are required to comply with the more specific CDD requirements that have been issued by the competent authorities in various regulatory instruments. The extent to which these regulatory instruments further elaborate the basic and more specific obligations under Recommendation 5 varies significantly, depending on which supervisory authority has issued them (BACEN, CVM, SUSEP, SPC or COAF).

374. In the case of BACEN, the more specific elaborations of the CDD requirements are set out in BACEN Circulars which are regulations. However, for the other financial sectors, the rating is impacted because some of the basic CDD obligations (*i.e.* specifications as to when CDD is required; the obligation to use reliable, independent source documents for the verification process; the obligation to identify the beneficial owner; and the obligation to conduct ongoing due diligence) are set out in regulatory instruments that constitute other enforceable means, rather than law or regulation, as is required by Recommendation 5.

Banking sector (Accountable FIs supervised by BACEN)

375. The following specific CDD requirements apply to the Accountable FIs that are under the supervision of BACEN: commercial banks; multiple banks; development banks; investment banks; Caixa Econômica Federal (CEF); credit, financing and investment societies; real estate credit societies (Law 4380/1964); securities and stocks brokers, and dealers (Law 4728/1965); credit co-operatives (Law 6764/1971); leasing companies (Law 6099/1974); buyers' association management institutions (Law 8177/1991); representation offices of FIs headquartered abroad (the *AML Law*); micro-entrepreneur credit companies (Law 10194/2001); development agencies (Provisional Measure 2192-70/2001); accounting audit companies and independent accounting auditors (Law 6385/1976, art.26(3) and Law 9447/1997); tourist agencies and tourist lodging facilities authorised by BACEN to operate in the foreign exchange market[47]; Brazilian entities managing international credit cards; and the Brazilian Post and Telegraph Company (ECT) when offering international transfers of funds linked to international postal vouchers (Law 4595/1964). It is also responsible for verifying the management and control mechanisms put in place by resource administrators, and the segregation between the fund administrator and management of the administering institution (although CVM is the authority responsible for supervising investment funds in accordance with Law 10313/2001). Collectively, the financial institutions which are under the supervision of BACEN are referred to as "BACEN/FIs" for the purpose of this report.

Anonymous accounts (BACEN/FIs)

376. BACEN/FIs are not permitted to keep anonymous accounts or accounts in fictitious names. They are required to conduct CDD on all of their customers (*AML Law*, art.10). The specific CDD procedures applicable to deposit accounts are elaborated in CMN Resolution 2025/1993 and apply retroactively to all deposit accounts already existing on the date of its publication (art.14). BACEN Circular 2852/1998, replaced by BACEN Circular 3461/1998, further elaborates the CDD obligations of all BACEN/FIs. It is prohibited to pay any income or earnings, or redeem a bond or investment, to a beneficiary who has not been identified (Law 8021/1990, art.1). Any manager or administrator of a financial or similar institution who facilitates the opening of or transaction on an account under a false name or without regular representation is guilty of a crime of forgery (Law 8383/1991, art.64).

When CDD is required (BACEN/FIs)

377. BACEN/FIs must conduct CDD when opening deposit accounts or making any subsequent alterations to them (CMN Resolution 2025/1993, art.1). They are also required to identify customers when carrying out occasional transactions (BACEN Circular 3461/2009, art.3) or when conducting wire transfers of a value equal to or exceeding BRL 1 000 (EUR 390/USD 580) (BACEN Circular 3290/2005, which revokes BACEN Circular 3030/2001).

378. BACEN/FIs are required to conduct CDD when there is a suspicion of ML/FT, regardless of the amount transferred, and the transaction involves a cash deposit or withdrawal, or order for withdrawal of an amount less than BRL 100 000 (EUR 39 000/USD 58 000) (BACEN Circular 3461/2009 art.9), and in all cases (including if there is a suspicion of ML/FT) when the deposit/withdrawal is of an amount equal to or exceeding BRL 100 000 (EUR 39 000/USD 58 000) (BACEN Circular 3461/2009, art.9).

379. BACEN/FIs are required to undertake verification tests, at least once per year, to ensure the accuracy and adequacy of the customer identification information on file (BACEN Circular 3461/2009, art.2, para.5). Additionally, BACEN/FIs are required to pay special attention and adopt enhanced CDD

[47] Since 31 December 2009, there are no more tourist lodging facilities authorised by BACEN to operate in the foreign exchange market (BACEN Communiqué 225/2009.

procedures, including the adoption of procedures for the verification of the suspicious situation, upon evidence of fraudulent identification procedures (BACEN Circular 3461/2009 art.10, item III). However, there is no specific requirement that they conduct CDD when there are doubts about the veracity or adequacy of previously obtained customer identification.

Required CDD measures (BACEN/FIs)

380. CDD information must be verified on the basis of reliable source documents (CMN Resolution 2025/1993[48], art.3). The source documents that BACEN/FIs may use to carry out CDD and the specific information that must be collected are set out in CMN Resolution 2025/1993. The cornerstone of the system is the unique (personal) taxpayer identification numbers that are issued by the federal tax authorities (RFB)—the Individual Taxpayer Identification Numbers (CPF) for natural persons and the Corporate Taxpayer Identification Numbers (CNPJ) for legal persons. These unique (personal) identification numbers facilitate the ability of FIs to verify the identity of their customers. Although there have been problems with customers presenting forged cards, the authorities have mitigated this risk by implementing a system that allows BACEN/FIs to confirm, in real time, whether the taxpayer identification number being presented by the customer is active. Currently, this confirmation system is only available to BACEN/FIs; however, work is underway to extend access to this system to other types of financial institutions. It is estimated that this work will be finished during 2010. Additionally, the authorities are working, through the DPF, to develop a single identification card utilising biometrics and fingerprints that will make it impossible for a single individual to have two identification documents. It is expected that this system will take about five to six years to implement.

381. For natural persons, the amount of CDD information that must be collected varies, depending on the circumstances. However, at a minimum, the (permanent or occasional) customer's full name, CPF and identification document (type, number, date of issue and issuing entity) must be collected.

382. For permanent customers, the following additional information is also required:

- nationality and occupation;
- date and place of birth;
- name of father and mother;
- sex, marital status and name of spouse, if married;
- the values of monthly income and capital;
- commercial and residential address;
- telephone number and direct dialling code;
- references consulted; and
- a signed declaration on the purposes and nature of the business relationship with the financial institution (CMN Resolution 2025/1993, art.1; BACEN Circular 3461/2009, art.2; CMN Resolution 2747/2000, art.1).

[48] It should be noted that BACEN Circular 3461/2009 expanded the requirements in terms of the set of information to be collected in the performance of CDD.

383. If the transaction involves foreign exchange, the customer's residential and professional addresses are also required (BACEN Circular 3401/2008)[49].

384. For legal persons, the amount of CDD information that must be collected varies, depending on the circumstances. However, at a minimum, the (permanent or occasional) customer's corporate name and CNPJ must be obtained (CMN Resolution 2025/1993, art.1; BACEN Circular 3461/20019, art.2-3).

385. For permanent customers, the following additional information is also required:

- the form and date of company's constitution, and registered constituent acts;
- main activity;
- full residential and commercial addresses;
- telephone number with direct dialling code;
- reference sources consulted;
- date of account opening, account number and signature of the account holder;
- the average monthly yields of the previous 12 months; and
- identification information on the natural person(s) authorised to represent the customer (CMN Resolution 2025/1993, art.1; BACEN Circular 3461/2009, art.2).

386. In the case of foreign exchange transactions involving legal persons, the following additional information must be collected:

- a copy of the corporate charter, including a copy of the latest amendment;
- the customer's full address and phone number, including a copy of a document attesting to the validity of the address (*e.g.* a certificate issued by a competent authority or a bill issued by a public utility company);
- a copy of the latest registered balance sheet, if required, referring to a period ending not later than 18 months from the current date;
- the bank(s) with which the customer's agents operate and keep bank accounts; and
- in the case of a manually signed foreign exchange contract or ticket, a signature card containing the name, qualification and sample signatures of the representatives authorised by the company to sign foreign exchange contracts (RMCCI, Title 1, Chapter 6, Item 7).

387. For customers that are investment funds, information on the fund's respective denomination, and information identifying the directors and any other persons responsible for the funds' management must also be collected (BACEN Circular 3461/2009, art.2, para.4).

[49] Also contained in RCMMI, Title 1, Chapter 6, Item 7.

Beneficial ownership (BACEN/FIs)

388. BACEN/FIs are required to conduct CDD on the natural persons who are the controllers, authorised legal representatives and heads/agents authorised to operate the legal person's account (*AML Law* art.10, para.1; CMN Resolution 2025/1993 art.1; BACEN Circular 3461/2009 art.2, para.1).

389. BACEN/FIs are also required to identify the beneficial owners of the legal person, which means following the chain of shareholders until a natural person who qualifies as the final beneficiary is reached. The exception is for legal persons that are public companies or non-profit organisations; however, in those cases, the financial institution must identify the natural persons who are the controllers, managers, directors and authorised representatives of the customer (BACEN Circular 3461/2009, art.2, para.2-3).

Purpose of the business relationship (BACEN/FIs)

390. As part of the CDD process, BACEN/FIs are required to obtain a signed declaration from the customer on the intended purpose and nature of the business relationship (BACEN Circular 3461/2009 art.2(III)).

Ongoing due diligence (BACEN/FIs)

391. BACEN/FIs are required to establish systems that allow them to identify transactions undertaken with the same person, financial conglomerate or group, surpassing BRL 10 000 (EUR 3 900/USD 5 800) per person/institution/entity in the same calendar month, and which imply an attempt to bypass the mechanisms of identification, registering and control, given their usualness, value or form. Additionally, BACEN/FIs are required to gather and register timely, consolidated information about clients for the purpose of enabling them to: identify ML risk; identify the beneficial owners of a transaction; identify the origin of funds; and confirm the accuracy of CDD information (BACEN Circular 3461/2009, art.1). They are also required to verify that the customer's activity and transactions (*i.e.* the movement of resources, economic activity and financial capacity) are compatible with the information held on the customer (BACEN Circular 3461/2009 art.6).

392. As part of ongoing due diligence, BACEN/FIs are required to keep CDD and transaction information up to date, which includes verifying customer information at least once per year to ensure that it is accurate and current (*AML Law*, art.10; BACEN Circular 3461/2009 art.2, para.5).

Risk – Enhanced CDD (BACEN/FIs)

393. BACEN/FIs are required to pay special attention to transactions or customer relationships that may imply the existence of the crimes mentioned in the *AML Law*, because of their nature, the parties or amounts involved, the forms of undertaking and instruments used, or the lack of visible economic or legal purpose. In such cases, enhanced monitoring must be applied to the customer relationship, including more rigorous procedures for verifying suspicious situations, and obtaining senior management approval before commencing or maintaining the customer relationship (BACEN Circular 3461/2009 art.10).

394. Specific enhanced CDD procedures apply to PEPs (BACEN Circular 3461/2009, art.4-5) and foreign exchange transactions with non-resident customers who have deposit accounts in Brazil (BACEN Circular 3331/2006[50]).

[50] Also contained in RMCCI Title 1, Chapter 13.

Risk – Simplified CDD (BACEN/FIs)

395. Aside from the differentiation between permanent and occasional clients, no generally applicable simplified CDD procedures have been established in view of the activity or risk profile of the client. The exception is in relation to eventual financial services, such as the payment of government taxes or utility bills, which are permitted to develop internal procedures aimed at identifying operations and occasional financial services that do not present a ML/FT risk and for which the requirement of filing CDD information is waived (other than such information as is needed to comply with the STR reporting obligation) (BACEN Circular 3461/2009, art.3, sole paragraph). This exception is only applied to transactions or financial services with eventual customers with low risks related to AML/CFT and are seeking to achieve, for example, the payment of government taxes or utility bills.

396. Additionally, for foreign exchange transactions involving legal persons that are public agencies (*i.e.* government agencies) or representatives of a foreign government, if a manual signature is used on the foreign exchange contract or docket, only the signature card containing the name, qualification and sample signatures of the representatives authorised by the juristic person under public law or the foreign government representation to sign foreign exchange contracts is required (BACEN Circular 3401/2008[51]).

397. BACEN/FIs are also exempted from having to maintain CDD information relating to foreign exchange transactions of a value equal or below BRL 10 000 (EUR 3 900/USD 5 800) that are being carried out by authorised foreign exchange agents (BACEN Circular 3401/2008[52]).

398. BACEN/FIs are not permitted to apply simplified or reduced CDD to customers who are resident in other countries, or in high risk situations, including whenever there is a suspicion of ML/FT (BACEN Circular 3461/2009).

399. Aside from the limited exceptions described above, BACEN Circular 3461/2009 does not permit varying levels of CDD to be conducted as a function of risk exposure. CDD procedures apply to all customers indiscriminately. However, there are some specific, differentiated and more rigorous CDD procedures prescribed for higher risk situations, such as relationships with PEPs (BACEN Circular 3461/2009) and non-resident customers (BACEN Circular 3331/2006[53]). Additionally, procedures for account monitoring and verifying suspicious transactions must be strengthened in situations that, by their very nature (parties involved, values, forms of undertaking and instruments used, or for which there is not visible economic or legal purpose), may imply the risk of a crime mentioned in the *AML Law* (BACEN Circular 3461/2009).

Timing of verification (BACEN/FIs)

400. BACEN/FIs are generally required to identify their clients upon opening an account or deposit account (CMN Resolution 2025/1993; BACEN Circular 3006/2000, art.2[54]).

401. For customers holding special deposit accounts with monthly deposit limits and balances equivalent to BRL 1 000 (EUR 390/USD 580), the presentation of CDD documents may be postponed for

51 Also contained in RMCCI, Title 1, Chapter 6, Item 7.

52 Also contained in RMCCI, Title 1, Chapter 6, Item 9.

53 Also contained in RMCCI Title 1, Chapter 13.

54 BACEN Circular 3006/2000 was issued to lay down the rules and adopt the measures necessary for the execution of the provisions in CMN Resolution 2025/1993, and is indirectly enforceable through the penalty provisions set out in that Resolution (CMN Resolution 2025/1993, art.16-17).

a maximum period of six months (CMN Resolution 3211/2004). Likewise, for a Brazilian natural person who is temporarily staying abroad, the obligation to forward a copy of the account holder's CDD information may be postponed for a maximum period of 30 days from opening an account, provided it does not interfere with AML/CFT procedures (CMN Resolution 3203/2004, altered by CMN Resolution 3260/2005).

Failure to satisfactorily complete CDD (BACEN/FIs)

402. BACEN/FIs are only permitted to start a permanent business relationship, or proceed with an already existing one, if the above CDD procedures have been observed (BACEN Circular 3461/2009 art.5).

403. BACEN/FIs are prohibited from opening an account, initiating a permanent business relationship, or maintaining an already established relation of such kind unless CDD procedures are performed (BACEN Circular 3461/2009 art.5). However, BACEN/FIs are not expressly prohibited from conducting a transaction on behalf of an occasional customer (*i.e.* in the absence of a permanent business relationship), commencing business relationships or performing transactions in an instance where CDD cannot be completed. Nevertheless, they are required to close deposit accounts if they identify serious irregularities in the information provided, and must communicate this fact to BACEN (CMN Resolution 2025/1993 art.13). Additionally, BACEN/FIs are required to report when the customer (new or existing) resists providing the information required for opening an account, provides false information, or renders it difficult or onerous to verify the information (BACEN Circular Letter 2826/1998 which exemplifies suspicious situations for the purposes of BACEN Circular 3461/2009 art.13(II)).

Existing customers (BACEN/FIs)

404. The CDD procedures set out in CMN Resolution 2025/1993 specifically apply to all deposit accounts already existing on the date of its publication and extend to all customers of BACEN/FIs (CMN Resolution 2025/1993, art.14). At a minimum, customer identification information must be re-verified on an annual basis (BACEN Circular 3461/2009 art.2, para.5). Tests on this basis aim to verify and ensure the adequacy of the customers' registration data (*i.e.* the information collected during the CDD procedures which must be followed before commencing and during the business relationship) which financial institutions are obligated to keep up-to-date (BACEN Circular 3461/2009 art.2).

Securities sector

405. The following specific CDD requirements apply to the Accountable FIs that are under the supervision of CVM: entities engaging in the custody, emission, distribution, liquidation, negotiation, intermediation or administration of securities, stock exchanges, over-the-counter organised entities, futures and commodity exchanges. Collectively, these institutions are referred to as "CVM/FIs".

Anonymous accounts (CVM/FIs)

406. CVM/FIs are not permitted to keep anonymous accounts or accounts in fictitious names. They are required to conduct CDD on all of their customers (*AML Law*, art.10). Brokerage houses are required to register their clients and keep customer identification data updated so as to allow complete identification and qualification (CVM Instruction 387/2003, art.9). Additionally, participants with direct settlement are responsible for having a register of the funds that they manage (CVM Instruction 387/2003, art.9, para.2).

When CDD is required (CVM/FIs)

407. CVM/FIs must collect CDD information in relation to all transactions involving securities, regardless of their value (CVM Instruction 301/1999 art.4). This blanket requirement applies to occasional transactions and wire transfers involving securities (CVM Instruction 301/1999 art.4). CDD information must also be collected where there is a suspicion of ML/FT (CVM Instruction 301/1999 art.4 and 7).

408. CVM/FIs are required to implement procedures so as to avoid the use of the account by third parties, and are specifically required to conduct CDD when doubts occur as to the veracity or adequacy of previously obtained customer identification (CVM Instruction 301/1999 art.3-A).

Required CDD measures (CVM/FIs)

409. CVM Instructions 301/1999 and 387/2003 outline the exact information and source documents that CVM/FIs should use to identify the customer. For all customers (natural or legal persons), the customer information collected shall include a declaration, dated and signed by the customer (or the customer's duly assigned attorney) certifying the following:

- that the information supplied in support of the registration is true;
- that the customer will notify the brokerage house within 10 days of any changes to the registration data; the customer operates his/her own account and, whether the customer authorises orders to be transmitted by a duly identified representative or attorney;
- that the customer operates the account through third parties (in the case of administrators of investment funds and managed portfolios);
- whether the customer is a person bound to the brokerage house;
- whether the customer is prohibited to operate in the securities market;
- whether the customer will be transmitting orders exclusively in writing;
- whether the customer is aware of the provisions of CVM Instruction 387/2003 and the rules and parameters that regulate the performance of the brokerage house;
- whether the customer is aware of the norms related to the investor compensation mechanism, and the operational norms issued by the exchanges and by the clearing house, which shall be made available on the website pages of the respective institutions; and
- whether the customer authorises the brokerage house, in case of pending debts in his/her name, to settle, in an exchange or a clearing house, the contracts, rights and assets acquired on his/her own account, and execute assets and rights given in guarantee for his/her transactions, or that are held by the brokerage company, using the sale outcome for the payment of pending debts, regardless of judicial or extra judicial notification (CVM Instruction 387/2003, art.11).

410. For natural persons, CVM/FIs must obtain the following information:

- full name, gender and occupation;
- nationality, date and place of birth;

- marital status, filiation and name of spouse or partner;
- nature and number of the identification document, including the name of the issuing body and date of issue;
- the Individual Taxpayer Identification Number (CPF);
- complete address (location, complement, district, city, federation unit and ZIP code) and telephone number; and
- information related to earnings and net worth (CVM Instruction 301/1999 art.3, para.1(I)).

411. Where the customer is a quota holder of one or more investment clubs whose consolidated balances of applications are less than BRL 10 000 (EUR 3 900/USD 5 800), the CDD requirements, as defined by the exchange where the club is registered, apply. The SRO is responsible for the creation of control mechanisms and is responsible for ensuring compliance (CVM Instruction 387/2003 art.10, para.1).

412. For legal persons, CVM/FIs must obtain the following information:

- denomination or trade name;
- names of major shareholders, managers and attorneys, along with the denomination or trade name of major shareholders, subsidiaries or affiliates of the customer;
- corporate identification number (NIRE) and Corporate Taxpayer Identification Number (CNPJ);
- complete address (location, complement, district, city, federation unit and ZIP code) and telephone number;
- main activity performed; and
- information about the customer's financial status and net worth (CVM Instruction 301/1999, art.3, para.1(II)).

413. For non-resident investors, and resident/non-resident institutional investors, the registration information shall additionally include the names of people authorised to issue orders and, depending on the case, administrators of the institution or those responsible for the portfolio administration, as well as the legal representative or guardian of their securities (CVM Instruction 387/2003 art.10, para.3).

414. Trusts created in other jurisdictions are not prohibited from operating in the Brazilian securities market. However, their registration must comply with the above requirements, and the financial intermediary must comply with the provisions set out in CVM Instruction 301/1999 (art.3-A). In such cases, the CVM/FI must obtain: complete identification of the customer, its representatives and/or managers; and information about their financial status and net worth (CVM Instruction 301/1999 art.3, para.1(III)).

Beneficial ownership (CVM/FIs)

415. CVM/FIs that are responsible for managing securities markets (*i.e.* exchanges) are required to take measures to know the identity of the final investor. Failure to register the final investor (beneficiary) at the exchange is an offence when:

- executing buy/sell orders, involving a final beneficiary, that are sent to brokerage houses by corresponding brokerage firms, distributor companies, multiple banks and investment banks;

- brokerage houses are executing operations involving final beneficiaries; and

- when settling exchange operations involving final beneficiaries of member institutions of the distribution system (CVM Instruction 122/1990 art.1(I-III)).

416. CVM/FIs are required to implement internal controls to identify the beneficial owners of transactions and facilitate the verification of CDD information so as to avoid the use of the account by third parties. Additionally, the names of major shareholders, managers and attorneys of the customer must be registered, along with the denomination or trade name of controlling, controlled or associated legal persons (CVM Instruction 301/1999 art.3 and 3-A(I)).

417. For non-resident investors, and resident/non-resident institutional investors, the registration must additionally include the names of people authorised to issue orders, administrators of the institution or those responsible for the portfolio administration, and the legal representative or guardian of their securities (CVM Instruction 301/1999 art.10, para.3).

Purpose of the business relationship (CVM/FIs)

418. There is no express provision requiring CVM/FIs to obtain information on the purpose and intended nature of the business relationship. During the on-site visit, the authorities mentioned that an instruction contemplating this requirement was in draft form.

Ongoing due diligence (CVM/FIs)

419. CVM/FIs are required to analyse transactions in a consolidated manner, along with other connected transactions that may be part of the same group of transactions or have any sort of relation between them (CVM Instruction 301/1999 art.6, para.2). However, while there is no distinct requirement to conduct ongoing due diligence on the business relationship, there are obligations which in practice guarantee implementation of ongoing due diligence (CVM Instruction 301/1999, art.3, para.3; art.3A, item I; art.6, items I, III-VII and IX-XIII).

420. Customers are required to immediately report any change in their identification data (CVM Instruction 301/1999 art.3, para.2). Additionally, CVM/FIs are required to update the registration forms of active clients at least every 24 months (CVM Instruction 301/1999 art.3, para.3 which was added by CVM Instruction 463/2008).

Risk (CVM/FIs)

421. For non-resident customers, especially those which are constituted in the form of a legal arrangement (*e.g.* a trust) or an association with bearer securities, CVM/FIs are required to conduct enhanced due diligence on the customer relationship. They are also required to pay special attention to transactions involving private banking customers and PEPs (CVM Instruction 301/1999 art.6).

422. Simplified CDD is not generally permitted for CVM/FIs (CVM Instruction 301/1999 art.9).

Timing of verification (CVM/FIs)

423. Generally, brokerage houses are not allowed to accept or carry out orders given by customers who have not been previously registered. Likewise, intermediaries must not carry out orders given by

customers who have not been previously registered, and must not: use collective current accounts, except for the cases of joint accounts with maximum of two holders; or use, in the special activities of the securities distribution system members, people not belonging to this system, or allow the execution of mediation activities or brokerage services by persons not authorised by the CVM for this purpose (CVM Instruction 387/2003 art.13).

424. When dealing with customers who are institutional clients or FIs, the registration form may be accepted with no signature for a maximum period of 20 days from the first transaction ordered by these customers (CVM Instruction 387/2003 art.13). However, there is no requirement to manage the ML risks associated with this timeframe, nor to limit the transactions that can be performed in that timeframe.

Failure to satisfactorily complete CDD (CVM/FIs)

425. CVM/FIs are not expressly prohibited from opening an account, commencing business relations or performing transactions in instances where CDD cannot be completed. Also there is no explicit provision that requires the institution to terminate the business relationship and consider making an STR where CDD cannot be completed for any reason. However, CVM/FIs are specifically required to comply with their own internal controls with a view to fully complying with the required CDD and STR reporting provisions (CVM Instruction 301/1999 art.9(I)).

Existing customers (CVM/FIs)

426. There is no requirement for CVM/FIs to apply CDD requirements to existing customers on the basis of materiality and risk, nor to conduct CDD on such existing relationships at appropriate times.

Insurance sector

427. The following specific CDD requirements apply to the Accountable FIs that are under the supervision of SUSEP: insurance and capitalisation societies; local and admitted reinsurers; open private pension fund entities; co-operative societies; and brokerage houses and individual brokers carrying on insurance, capitalisation, and pension plans business. Collectively, these institutions are referred to as "SUSEP/FIs" for the purpose of this report. As closed pension funds are supervised separately by the SPC, they are discussed separately, below.

Anonymous accounts (SUSEP/FIs)

428. SUSEP/FIs are not permitted to keep anonymous accounts or accounts in fictitious names and must conduct CDD on all of their customers (*AML Law*, art. 10). SUSEP/FIs are required to keep and maintain up-to-date identification records of customers, beneficiaries, third parties and other related parties, both natural and legal persons (SUSEP Circular 380/2008, art.10).

When CDD is required (SUSEP/FIs)

429. SUSEP/FIs are required to conduct CDD (identification and verification) at the time of establishing the business relationship, when carrying out occasional transactions and when there are doubts about the veracity or adequacy of previously obtained customer identification data (SUSEP Circular 380/2008 art.10, para.3-8). SUSEP/FIs are not authorised to carry out wire transfers, so this aspect of Recommendation 5 is not applicable.

430. There is no requirement for SUSEP/FIs to conduct CDD when there is a suspicion of ML/FT.

Required CDD measures (SUSEP/FIs)

431. SUSEP Circular 380/2008 outlines the exact information and source documents that SUSEP/FIs should use to identify the customer.

432. For natural persons, SUSEP/FIs are required to collect the following CDD information:

- full name and occupation;
- unique identification code number, which should be one of the following (in preferential order): the unique identification code number in the Taxpayer Identification Number (CPF); the identification code number in identity document (valid nation-wide) issued by an official body, including the names of document and body that issued it, and the date of that issuance; or the passport number and name of issuing country;
- full address (including postcode, city and state);
- telephone number and respective area code number, if any;
- estimated financial position or monthly income; and
- classification as a PEP, where applicable (SUSEP Circular 380/2008, art.10(I)).

433. For legal persons, SUSEP/FIs are required to collect the following CDD information:

- name and main activity;
- identification code number in the Corporate Taxpayer Identification Number (CNPJ), or in the Register of Foreign Companies of the Central Bank (CADEMP) in the case of companies domiciled abroad, unless there is a legal provision exempting the company from CNPJ or CADEMP registering;
- full address (including postcode, city and state), telephone number and respective area code number;
- names of owners or controllers, main managers and representatives up to the level of each pertinent individual person, whose condition as a PEP should be indicated; and
- information about the customer's financial situation (SUSEP Circular 380/2008, art.10(II)).

Beneficial ownership (SUSEP/FIs)

434. The obligation to conduct CDD extends to customers, beneficiaries, third parties, and other related parties (SUSEP Circular 380/2008 art.9(II)). Additionally, the names of owners or controllers, main managers and representatives up to the level of each pertinent individual person, including whether they are a PEP should be indicated (SUSEP Circular 380/2008 art.10(II)(e)).

Purpose of the business relationship (SUSEP/FIs)

435. There is no express provision requiring SUSEP/FIs to obtain information on the purpose and intended nature of the business relationship. However, in the underwriting process, SUSEP/FIs analyse the

risks and the exposures of potential clients, including the socioeconomic condition, financial situation, or professional occupation of the client, beneficiary, third parties, or other related parties. Thus, an insurance or reinsurance contract, an open private pension plan or a capitalization contract (*i.e.* contracts other than investment-type insurance products) does not lend itself to several purposes, such as a bank account, but only for a particular purpose, defined and detailed in the policy or contract purchased by the customer.

Ongoing due diligence (SUSEP/FIs)

436. SUSEP/FIs are required to develop mechanisms that enable them to monitor the ML/FT risks associated with their business and should be sufficient to monitor the risks of involving themselves in situations associated with ML/FT (SUSEP Circular 380/2008 art.8-9). SUSEP/FIs are also required to verify whether transactions are consistent with the customer's risk profile and the origin of funds. Applications or transactions that are incompatible with the socioeconomic condition, financial situation, or professional occupation of the customer, beneficiary, third party and other related party should be reported to the competent authorities (SUSEP Circular 380/2008 art.9 and 13). Additionally, SUSEP/FIs are required to keep and maintain up-to-date identification records of customers, beneficiaries, third parties, and other related parties (SUSEP Circular 380/2008 art.10).

Risk (SUSEP/FIs)

437. SUSEP/FIs are permitted to determine the extent of CDD measures based on the risks, nature, complexity of their business transactions provided that, in doing so, they sufficiently manage the risks of being exposed to ML/FT (SUSEP Circular 380/2008 art.8-11). This includes establishing criteria and implementing procedures for the identification of clients, beneficiaries, third parties, and other related parties, and for keeping up to date records on products and operations that are exposed to risks of being used for ML/FT. However, there is no specific requirement to perform enhanced CDD for higher risk categories of customer, business relationship or transaction.

438. In terms of simplified CDD, the compliance officer may waive, on a case-by-basis and with express justification, the requirement to maintain full CDD records. For example, for natural persons, the CDD records may be limited to the full name, address and Individual Taxpayer Identification Number, but only provided that it does not weaken the institution's internal AML/CFT controls (SUSEP Circular 380/2008 art.10, para.12 and 11). However, the circumstances in which simplified CDD measures may be applied to customers resident in another country is not limited to countries that the Brazilian authorities are satisfied are in compliance with and have effectively implemented the *FATF Recommendations*. Circular Letter/SUSEP/DEFIS 013/2009 states that SUSEP/FIs should, in their business relationships and transactions, take into account the persons, including companies and financial institutions located in countries which do not (or insufficiently) implement the *FATF Recommendations*. Additionally, it is important to note that the largest SUSEP/FIs have virtually no customers resident abroad. Therefore, in a risk-based approach that could not be a priority issue.

Timing of verification (SUSEP/FIs)

439. In some instances, SUSEP/FIs are not required to conduct CDD before or during the course of establishing a business relationship. CDD may be delayed until the insurance policy is paid out. However, it has not been established that this is essential not to interrupt the normal conduct of business or that the ML risks are effectively managed in such circumstances.

440. For insurance contracts that do not require an application and the policy terms are simplified in standard forms (*e.g.* closed group insurances where the premium is paid through credit card, and open-ended group insurances with a monthly premium not larger than BRL 50 (EUR 20/USD 29)), CDD may be

carried out at the time when a return premium is paid because of cancellation (SUSEP Circular 380/2008 art.10, para.3).

441. For other types of insurance, including open-ended group insurance and complementary pension contracts, CDD must be carried out at the time of entering the contract and at the time of making a claims/benefit/redemption payment (SUSEP Circular 380/2008 art.10, para.4-6).

442. For "popular" capitalisation contracts (as defined in SUSEP Circular 365/2008 art.1, Annex IV), CDD should be carried out when the amount is equal to or greater than BRL 2 000 (EUR 780/USD 1 160) and when a benefit is paid (SUSEP Circular 380/2008 art.10, para.7).

Failure to satisfactorily complete CDD (SUSEP/FIs)

443. SUSEP/FIs are not expressly prohibited from opening accounts, commencing business relationships or performing transactions in instances where CDD cannot be completed. Also there is no explicit provision that requires the institution to terminate the business relationship and consider filing an STR where CDD cannot be completed for any reason. If a client resists producing identification documents, while the SUSEP/FI is not prohibited from opening the account, it is required to file a STR (SUSEP Circular 380/2008 art.13(II-a), and art.14(I)).

Existing customers (SUSEP/FIs)

444. There is no requirement for SUSEP/FIs to apply CDD requirements to existing customers on the basis of materiality and risk, nor to conduct CDD on such existing relationships at appropriate times. However, most insurance policies in Brazil have an annual term, and in practice, SUSEP/FIs would conduct CDD during the annual renewal of policies.

Closed pension fund sector

445. The following specific CDD requirements apply to the closed entity pension funds that are under the supervision of the SPC. They are collectively referred to as "SPC/FIs"[55] for the purpose of this report. In general, the CDD requirements in the closed entity pension fund sector are not as comprehensive as other sectors described in this report. However, given the nature of closed entity pension funds and their clientele (which is limited to known employees), the AML/CFT risk is not as great as other sectors in Brazil.

Anonymous accounts (SPC/FIs)

446. SPC/FIs are not permitted to keep anonymous accounts or accounts in fictitious names. They are required to conduct CDD on all of their customers (*AML Law* art.), and keep and maintain up-to-date identification records of all participants and beneficiaries (SPC Instruction 26/2008 art.5).

When CDD is required (SPC/FIs)

447. SPC/FIs are required to conduct identification (including verification) at the time of establishing the business relationship (SPC Instruction 26/2008 art.5).

[55] It should be noted that, in the Brazilian context, closed pension funds are characterised as non-profit making legal entities with the single business aim of establishing and managing closed pension funds. Nevertheless, they fall within the FATF definition of *financial institution.*

448. There are no CDD requirements when carrying out occasional transactions, when there is a suspicion of ML/FT, or when there are doubts about the veracity or adequacy of previously obtained customer identification data. SPC/FIs are not authorised to carry out wire transfers, so this aspect of Recommendation 5 does not apply.

Required CDD measures (SPC/FIs)

449. SPC Instruction 26/2008 outlines the exact information and source documents that SPC/FIs should use to identify the customer.

450. SPC/FIs are required to collect, at a minimum, the following information regarding their customers:

- full name, gender, nationality, date and place of birth;
- marital status, filiations and name of spouse;
- classification as a PEP, if applicable;
- nature and number of identification document, name of issuing agency and date of issuance;
- Individual Taxpayer Identification Number (CPF);
- full address (street, complement, borough, city, federal unit and zip code) and telephone number;
- professional occupation; and
- information regarding the base income of contribution to the benefit plan, for clients classified as participants of the previdenciary nature benefit plan managed by the closed pension fund (SPC Instruction 26/2008 art.5).

Beneficial ownership (SPC/FIs)

451. The obligation to conduct CDD extends to participants and beneficiaries of SPC/FIs (SPC Instruction 26/2008, art.2 and 5). The term *beneficiary* is not the same as *beneficial owner,* as that term is defined by the FATF. SPC/FIs are not required to not required to identify the beneficial owner, determine if the customer is acting on behalf of another person or take reasonable measures to understand the ownership and control of the customer.

Purpose of the business relationship (SPC/FIs)

452. There is no express provision requiring SPC/FIs to obtain information on the purpose and intended nature of the business relationship.

Ongoing due diligence (SPC/FIs)

453. There is no requirement for SPC/FIs to conduct ongoing due diligence on the business relationship.

Risk (SPC/FIs)

454. The only category of high risk customers which require enhanced due diligence for SPC/FIs are politically exposed persons (SPC Instruction 26/2008, art.6).

455. Simplified CDD is not contemplated by the Regulations governing the SPC/FIs.

Timing of verification (SPC/FIs)

456. There is no requirement for SPC/FIs to verify the identity of the customer and beneficial owner before or during the course of establishing the business relationship, nor when conducting transactions for occasional customers.

457. For closed-entities pensions fund, the identification of customers who are classified exclusively as beneficiaries is required only at the point in time when benefits are paid out; however, there is no indication that this delay is essential not to interrupt the normal conduct of business or that the ML risks are effectively managed (SPC Instruction 26 art.5, para. 2).

Failure to satisfactorily complete CDD (SPC/FIs)

458. SPC/FIs are not expressly prohibited from opening an account, commencing business relations or performing transactions in instances where CDD cannot be completed, nor is there any explicit provision that requires the institution to terminate the business relationship and consider making an STR.

Existing customers (SPC/FIs)

459. There is no requirement for SPC/FIs to apply CDD requirements to existing customers on the basis of materiality and risk, nor to conduct CDD on such existing relationships at appropriate times.

Other types of financial institutions

460. Factoring companies fall under the supervision of COAF and are referred to as "COAF/FIs".

Anonymous accounts (COAF/FIs)

461. COAF/FIs are not permitted to keep anonymous accounts or accounts in fictitious names. They are required to conduct CDD on all of their customers (*AML Law* art.10; COAF Resolution 013/2005).

When CDD is required (COAF/FIs)

462. There is no specific requirement for COAF/FIs to undertake CDD measures when: establishing business relationships; carrying out occasional transactions; when there is a suspicion of ML/FT; or when there are doubts about the veracity or adequacy of previously obtained customer identification data. COAF/FIs are not authorised to carry out wire transfers, so that aspect of Recommendation 5 is not applicable.

Required CDD measures (COAF/FIs)

463. Factoring companies are required to collect the following identification information on their customers who are legal persons (contracting companies):

- corporate name, date of incorporation (registration in the respective trade association);

- Employer Identification Number (EIN);
- principal activity;
- complete address (street, number, district, city, state, zip code) and telephone number;
- visit report with information on gross and net invoice amount, expenditures, within the last six months in the case of small and micro businesses;
- for companies taxed on the basis of real profits, accounting receipts of the last work term, updated to the last six months;
- company records made by a credit reference agency (credit bureau); and
- a risk-based approach valid for up to six months, including a global threshold for financial transactions (COAF Resolution 013/2005 art.3).

Beneficial ownership (COAF/FIs)

464. Factoring companies are required to collect the following identification information on their customers' owners, controllers, managers, representatives, deputies, chief executive officer and chairpersons:

- name, gender, nationality, and date and place of birth;
- names of parents;
- marital status, and name of spouse or companion;
- Inscription number in the Individual Taxpayer Identification Number (CPF);
- number of identification document, name of the issuing institution, and date of issue, or in the case of foreigners, the passport or identity card information;
- complete address (street, number district, city, State, zip code) and telephone number; and
- principal activity (COAF Resolution 013/2005 art.4(II)).

465. Where the company owner is a legal person, the natural person who effectively owns the company (or, in the case of a foreign legal person, the deputies residing in Brazil) must also be identified (COAF Resolution 013/2005, art.4, sole paragraph).

Purpose of the business relationship (COAF/FIs)

466. COAF/FIs are not required to obtain information on the purpose or intended nature of the business relationship.

Ongoing due diligence (COAF/FIs)

467. COAF/FIs are not required to conduct ongoing due diligence on the business relationship.

Risk (COAF/FIs)

468. COAF/FIs are required to conduct enhanced due diligence on relationships with politically exposed persons (COAF Resolution 016/2008 art.2) and persons and transactions linked to terrorism and terrorist financing (COAF Resolution 015/2007, para.445), but not for any other category of high risk customer.

469. Simplified CDD is not contemplated by the COAF Resolutions regulating the COAF/FIs.

Timing of verification (COAF/FIs)

470. COAF/FIs are not required to verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship, nor when conducting transactions for occasional customers.

Failure to satisfactorily complete CDD (COAF/FIs)

471. COAF/FIs are not expressly prohibited from opening an account, commencing business relations or performing transactions in instances where CDD cannot be completed, nor is there any explicit provision that requires them to terminate the business relationship and consider making an STR.

Existing customers (COAF/FIs)

472. There is no requirement for COAF/FIs to apply CDD requirements to existing customers on the basis of materiality and risk, nor to conduct CDD on such existing relationships at appropriate times.

Recommendation 6

473. In 2006, the primary goal for the ENCCLA (Brazilian National Strategy Against Money Laundering and Corruption, from it's Portuguese acronym *Estratégia Nacional de Combate à Corrupção e à Lavagem de Dinheiro*) was to define politically exposed persons (PEPs) pursuant to the provisions of article 52 of the *UN Convention Against Corruption* and FATF Recommendation 6. An additional goal was to urge the five Brazilian regulatory agencies—BACEN, CVM, SUSEP, SPC and COAF—to impose requirements relating to PEPs on those Accountable FIs that they are responsible for supervising.[56]

474. On 1 December 2006, the COREMEC (Committee for Regulation and Supervision of Financial, Stock, Insurance, Pension and Capitalisation markets, from its Portuguese acronym *Comitê de Regulação e Fiscalização dos Mercados Financeiro, de Capitais, de Seguros, de Previdência e Capitalização*) issued Deliberation 002/2006 which sets out guidance on conducting enhanced due diligence over business relationships with PEPs[57].

475. From 2006 to 2009, each of the five federal regulatory agencies issued regulatory instruments addressing the issue of PEPS: BACEN Circular 3339/2006, replaced by BACEN Circular 3461/2009 which consolidated the rules regulating the *AML Law*; CVM Instruction 463/2008; SUSEP Circular 341/2007, replaced by SUSEP Circular 380/2008; SPC Instruction 26/2008; and COAF Resolution 16/2007. It should be noted that Brazil has extended PEPs requirements to both foreign and domestic PEPs.

56 http://www.mj.gov.br

57 http://www.previdenciasocial.gov.br

Identifying customers and beneficial owners as PEPs

476. Accountable FIs are required to implement internal procedures that facilitate the identification of PEPs. In particular, they are required to implement the following procedures with respect to foreign PEPs:

- request a declaration from customers as to their identity, including a statement declaring whether or not the person is a PEP;
- consult publicly available information and commercial electronic databases for the purpose of confirming whether or not the person is a PEP; and
- consider whether the person falls within the definition of PEP in the Glossary of the *FATF 40 Recommendations* (BACEN Circular 3461/2009 art.4; CVM Instruction 463/2008 art.3A-3B and art.6, sole paragraph; SUSEP Circular 380/2008 art.4-5(I); SPC Instruction 26/2008 art.4; COAF Resolution 16/2007 art.1, para.3).

477. In relation to the other aspects of Recommendation 6, the sector-specific requirements are very similar, though not always completely consistent, as described below.

Banking sector

478. BACEN/FIs are required to obtain the prior approval of the manager, owner or person responsible for the institution before establishing or resuming a business relationship with a PEP. BACEN/FIs are also required to obtain senior management approval to continue a business relationship where a customer who has already been accepted is subsequently found to be or becomes a PEP (BACEN Circular 3461/2009 art.10).

479. BACEN/FIs are required to implement internal procedures so as to enable the identification of the source of funds, any beneficial owners identified as PEPs, and the compatibility between the transaction value and the equity stated in the declaration forms being checked (BACEN Circular 3461/2009 art.4).

480. BACEN/FIs are required to pay special attention and conduct enhanced ongoing monitoring of business relationships with PEPs (BACEN Circular 3461/2009 art.10).

Securities sector

481. CVM/FIs are required to have a person at the level of director within the institution who bears the responsibility for deciding whether or not to have a PEP as a client, and who is responsible for ensuring compliance with all related AML/CFT obligations (CVM Instruction 301/1999 art.10, read together with CVM Instruction 463/2008). However, there is no requirement for CVM/FIs to obtain senior management approval to continue a business relationship where a customer who has already been accepted is subsequently found to be or becomes a PEP.

482. CVM/FIs are required to collect information related to earnings and net worth for all clients, including customers identified as PEPs, however there is no requirement to establish the source of wealth or the source of funds for customers identified as PEPs (CVM Instruction 301/1999 art.3(I)).

483. CVM/FIs are required to supervise more rigorously the business relationship maintained with PEPs, pay special attention to transactions involving PEPs, and analyse such transactions along with other connected or related transactions (CVM Instruction 301/1999 art.3A(III) and art.6(III), para.1-2).

Insurance sector

484. SUSEP/FIs may only initiate or maintain a business relationship with a PEP if so authorised by senior management (SUSEP Circular 380/2008 art.6).

485. SUSEP/FIs are required to implement internal controls enabling them to identify the source of funds associated with the transactions of clients who are PEPs, and allow for an evaluation of whether the transaction is consistent with the PEP's financial condition (SUSEP Circular 380/2008 art.5).

486. SUSEP/FIs are required to conduct enhanced due diligence over any business relationship involving PEPs (SUSEP Circular 380/2008 art.7).

Closed pensions fund sector

487. In order to establish a business relationship or continue an already established business relationship with a PEP, SPC/FIs must obtain authorisation from the council that administers the closed pension fund, through which all major decisions must be cleared (the EFPC Deliberative Body) (SPC Instruction 26/2008 art.7).

488. SPC/FIs are required to identify the source of funds of customers who are considered to be PEPs (SPC Instruction 26/2008 art.6(II)).

489. SPC/FIs are required to pay special attention, reinforced and ongoing, to the relations maintained with PEPs (SPC Instruction 26/2008 art.8).

Other types of financial institutions

490. COAF/FIs are required to obtain the prior approval of the manager, owner or persons responsible for the institution before establishing or resuming a business relationship with a PEP (COAF Resolution 016/2007 art.2, para.1).

491. COAF/FIs are required to implement internal procedures enabling them to determine the source of funds used in transactions conducted by individuals and beneficial owners identified as PEPs, including the compatibility between the transaction value and the equity stated in the declaration forms being checked (COAF Resolution 016/2007 art.2(II)).

492. COAF/FIs are required to conduct enhanced ongoing monitoring of business relationships with PEPs (COAF Resolution 016/2007 art.2, para.2).

Additional elements

Domestic PEPs

493. Brazil has adopted a broad concept of PEP that includes prominent domestic public agents, even at the local government level, and each of the regulatory instruments issued by the federal financial supervisors contains detailed guidance for institutions on what constitutes a PEP in Brazil, as set out in the chart below.[58]

[58] BACEN Circular 3461/2009 art.4; CVM Instruction 301/1999 art.3-B; SUSEP Circular 341/2007 art.4; SPC Instruction 26/2008 art.3; and COAF Resolution 016/2007 art.1.

Politically exposed persons in Brazil

Position	Number	Description/observations
Federal elected		
Elected Federal Executive: President	1	*President*
Elected Federal Executive: Vice-President	1	*Vice-President*
Elected Federal Legislative: Congressmen	513	*Congressmen*
Elected Federal Legislative: Senators	81	*Senators*
Federal executive		
Officials of the Federal Executive Branch holding a Minister position or equivalent	28	*Ministers*
Officials of the Federal Executive Branch holding a Special position or equivalent	52	*Special position*
Presidents, vice presidents and directors, or equivalent, in governmental agencies, public foundations, public companies and joint stock companies	294	*Counted as 147 federal governmental agencies and public foundations, excepted public companies/joint stock companies. 1 position of president, 1 position of vice-president for each.*
Senior official position of level six or equivalent	208	*DAS-6*
Federal judiciary		
Members of the National Council for Justice	12	*15 by Constitution, but 3 are already counted as justices of supreme/superior courts.*
Members of the Federal Supreme Court	11	
Member of Federal High Court: STJ	33	
Member of Federal High Court: TST	27	
Member of Federal High Court: TSE	2	*7 by Constitution, but 5 are already counted as justices of supreme/superior courts*
Member of Federal High Court: STM	15	
Federal prosecution		
Member position in National Council of the Public Prosecution Service	13	*14 by Constitution, but 1 is already counted as attorney-general of the Republic*
Attorney General of the Republic and Deputy Attorney General of the Republic	2	
Attorney General of Labour Justice	1	
Attorney General of Military Justice	1	
Under Attorney General of the Republic	62	
Attorney General of Federal District and States Justice	27	
Federal Audit Courts		
Member position in the Federal Audit Court	14	
Attorney General of the Public Prosecution Service in the Federal Audit Court	1	

Position	Number	Description/observations
State level		
State governor, Federal District governor	27	
President of the States Court of Justice	27	
President of Legislative Assembly	27	
President of State or Federal District Audit Court and Audit Council	27	
Municipality level		
Mayors of State capitals	26	
President of Municipal Chambers of State capitals	26	
President of City Court and Audit Council	6	
TOTAL	**1 565**	

United Nations Convention Against Corruption (UNCAC)

494. The National Congress of Brazil signed the UNCAC by way of Legislative Decree 348 on 18 May 2005 which was ratified by the President of Brazil, without any reservations, on 15 June 2005. The UNCAC was implemented in Brazilian law with its publication by Decree 5687 of 31 January 2006. With this procedure, the full text of UNCAC has the same legal hierarchy as an ordinary federal law approved by Congress.

Recommendation 7

495. Financial institutions authorised by BACEN to operate in the foreign exchange market may carry out operations with financial institutions abroad, observing that the financial relationship with the foreign institution must take place, exclusively, by means of a bank authorised to operate in the foreign exchange market (BACEN Circulars 3291/2005, 3385/2008 and 3462/2009[59]). Financial institutions abroad may hold deposit accounts in national currency in Brazil, only in branches that carry out foreign exchange transactions and which belong to banking institutions authorised to operate in that market (BACEN Circulars 3462/2009 and 3331/2006[60]). These provisions cover the branches of Brazilian banks abroad and of foreign banks authorised to operate in Brazil.

Understanding the nature of the respondent institution's business

496. Accountable FIs authorised to operate in the foreign exchange market are required to take measures to understand the AML/CFT procedures adopted by the foreign correspondent, with a view to complying with the *FATF 40+9 Recommendations* (BACEN Circular 3462/2009[61]). In relation to correspondent banking and other similar relationships, Accountable FIs are required to gather sufficient information on the correspondent institution in order to fully understand the nature of its activity and to know, based on publicly available information, its reputation and the quality of its supervision, including if

59 Also contained in RMCCI, Title 1, Chapter 4.

60 Also contained in RMCCI, Title 1, Chapter 13.

61 Also contained in RMCCI, Title 1, Chapter 4, Section 3, Item 7.

it was the object of investigation or an action by a supervisory authority, related to ML/FT (BACEN Circular 3462/2009[62]).

Assessing the respondent institution's AML/CFT controls

497. BACEN/FIs are required to evaluate the AML/CFT controls adopted by the correspondent institution (BACEN Circular 3462-2009[63]).

Approval from senior management

498. BACEN/FIs are required to obtain approval from the director responsible for foreign exchange transactions before establishing new correspondent banking relationships (BACEN Circular 3462-2009[64]).

Document the respective AML/CFT responsibilities of each institution

499. BACEN/FIs are required to document the respective AML/CFT responsibilities of each institution (BACEN Circular 3462-2009[65]).

Payable-through accounts

500. The regulations on correspondent accounts do not foresee the use of subaccounts (payable-through accounts) by the respondent institution. Accounts of non-residents, including those of respondent financial institutions (*i.e.* non-resident institution holders of deposit account in a Brazilian bank authorised to operate in the foreign exchange market), may only undertake transactions of interest to third parties in the case of debits destined to settle payment orders in BRL originating from abroad by institutions authorised to operate on the foreign exchange market (BACEN Circular 3462-2009[66]).

Recommendation 8

501. The requirements relating to Recommendation 8 do not apply to SPC/FIs and COAF/FIs, given the nature of the SPC/FI and COAF/FI clientele and how business practices traditionally occur. With regard to the other financial sectors, there exist some relevant requirements regarding Recommendation 8 which are described below.

Banking sector

Preventing misuse of technological developments in ML/FT schemes

502. BACEN/FIs are required to implement internal policies and control procedures designed to prevent them from being abused for ML/FT. This includes, among other things, analysing new products and services to prevent their misuse and establishing reinforced procedures for commencing business relationships in the non-face-to-face context (*i.e.* clients who are contacted electronically, by means of the correspondents in another country or by other indirect means) (BACEN Circular 3461/2009 art.1(IV)).

62 Also contained in RMCCI, Title 1, Chapter 13, Section 1, Item 9A.

63 Also contained in RMCCI, Title 1, Chapter 13, Section 1, Item 9A.

64 Also contained in RMCCI, Title 1, Chapter 13, Section 1, Item 9A.

65 Also contained in RMCCI, Title 1, Chapter 13, Section 1, Item 9A.

66 Also contained in RMCCI, Title 1, Chapter 13, Section 1, Items 19-21.

Risks associated with non-face to face business relationships or transactions

503. Special procedures apply to opening and maintaining deposit accounts exclusively by electronic means. Deposit accounts may be opened only by natural and legal persons who are resident and headquartered in Brazil, and who already hold cash deposit accounts or savings accounts, in the institution itself or in another FI, which were opened by normal means (meaning that CDD information has already been collected and registered). Such deposit accounts may only receive deposits by means of debits on account of cash deposits or savings from the same holder, opened by normal means, provided that the number of the deposit account, CPF or CNPJ number, and the name(s) of the holder(s) are confirmed by the FI that maintains this information (CMN Resolution 2817/2001 art.1).

Securities sector

Preventing misuse of technological developments in ML/FT schemes

504. Brokerage houses are required to use advanced network safety rules to ensure the safety and secrecy of all customer information, securities buy/sell orders, securities portfolios and customer communications. The electronic brokerage houses are considered to be ultimately responsible for their systems even if the systems themselves are kept by third parties (CVM Instruction 380/2002 art.7-8). However, this provision regarding network safety rules does not address the misuse of technology in the context of ML/FT schemes.

Risks associated with non-face to face business relationships or transactions

505. Regarding the registration of transactions through the web, electronic brokerage houses must retain records for a period of five years, must verify the veracity of any personal information provided by the users, and must ensure the investors are notified of all action relating to their accounts (CVM Instruction 380/2002 art.9-12).

Insurance sector

Preventing misuse of technological developments in ML/FT schemes

506. SUSEP/FIs are allowed to operate only in the traditional form, meaning that a written insurance application setting out the essential elements of the interests and risks subject to coverage must be submitted prior to the insurance policy being issued (Law10406/2002 art.759).

Risks associated with non-face to face business relationships or transactions

507. Where electronic means are used, the electronic documents associated with the insurance, capitalisation and complementary pension plans transactions may be digitally signed, subject to any applicable legislative requirements, provided that this is done through digital certificates within the Infrastructure of Public Key Encryption (ICP-Brazil), and each document is identified with date and time it was sent and received (SUSEP Circular 277/2004 art.1). Documents bearing a digital signature must be stored in an electronic or magnetic medium with an audit trail of their validation (SUSEP Circular 277/2004 art.2).

Effectiveness

Banking sector

508. BACEN/FIs which are banking institutions appear to generally understand the applicable CDD requirements. BACEN Circular 3461, which addresses the majority of the criteria outlined in Recommendation 5, was adopted in July 2009. While some of its requirements had previously been in place through earlier circulars, it also contains many new provisions that have not yet been fully implemented across the banking sector. BACEN/FIs expressed difficulty in complying with some of the new provisions, in particular the requirement to identify the beneficial owner, obtain information on the purpose and intended nature of the business relationship, and apply CDD to existing customers on the basis of materiality and risk. Some of the larger banks indicated they were waiting on additional guidance from BACEN to outline how to apply some of the new requirements.

509. BACEN/FIs which are non-bank financial institutions are currently subject to less than fully adequate supervision for compliance with these measures (see section 3.10 of this report for further details). Consequently, the authorities were unable to provide specific information concerning the effectiveness of implementation across this sector.

Securities sector

510. CVM/FIs appear to generally understand the applicable CDD requirements. CVM Instructions 301/1999 and 387/2003 address the majority of criteria outlined in Recommendation 5. CVM Instruction 301/1999 was amended by CVM Instruction 463 of January 2008. While the recent introduction of these amendments present similar effectiveness issues as mentioned with respect to the banking sector, the securities sector has had some more time to implement the requirements, and appear to be farther along in their implementation. Nevertheless, CVM/FIs are still being challenged by some of the obligations, particularly the obligation to identify the ultimate beneficial owner and source of funds (PEPs). However, the private sector representatives met with by the assessment team asserted that, where these elements cannot be established, the business will not be accepted.

Insurance sector

511. SUSEP/FIs appear to generally understand the applicable CDD requirements. For the insurance sector, SUSEP Circular 380, which was adopted in December 2008, addresses the majority of criteria outlined in Recommendation 5. While recent adoption of this Circular presents similar effectiveness issues as mentioned in the banking sector, the insurance sector has had more time to implement the requirements, as many of these requirements were contained in an earlier circular. SUSEP/FIs reported some difficulty in identifying PEPs. Also, in general, it is also more difficult for SUSEP/FIs to ensure that the independent brokers (*i.e.* those who are not have a relationship with a bank) are meeting their AML/CFT requirements.

Closed pension funds

512. SPC/FIs are not yet being actively supervised for compliance with these measures (see section 3.10 of this report for further details). Consequently, the authorities were unable to provide specific information concerning the effectiveness of implementation across this sector.

Other financial institutions

513. COAF/FIs appear to have a low level of awareness of the nature of the CDD requirements that apply to them. Also, COAF/FIs are not yet being actively supervised for compliance with these measures

(see section 3.10 of this report for further details). Consequently, the authorities were unable to provide specific information concerning the effectiveness of implementation across this sector.

3.2.2 Recommendations and Comments

514. Although Accountable FIs are required to implement CDD measures, the specific requirements vary significantly among the financial sectors. The banking sector is subject to the most explicit requirements, followed closely by the securities and insurance sectors. SPC/FIs and COAF/FIs are subject to much more limited CDD requirements, taking into account the specificities of those markets. In general, COAF/FIs seem to have a low level of awareness of the minimal requirements that do exist. The effectiveness of implementation by SPC/FIs could not be established due to the lack of AML/CFT supervision in this sector. Moreover, since many of the instruments containing CDD obligations were only recently issued or amended (late 2008/early 2009), it is not always possible to measure the effectiveness of their implementation. The authorities should take steps to ensure that all CDD requirements are being implemented effectively (*e.g.* by issuing guidance, where appropriate).

Recommendation 5

515. For CVM/FIs, SUSEP/FIs, SPC/FIs and COAF/FIs, Brazil should amend its legislation to ensure that all basic CDD obligations (*i.e.* those marked with an asterisk) are set out in law or regulation, not just in other enforceable means, as is required by Recommendation 5. Additionally, the Brazilian authorities should take the following sector-specific steps.

BACEN/FIs

516. BACEN Circular 3461/2009 addresses the majority of the criteria outlined in Recommendation 5. However, Brazil should amend its legislation to require BACEN/FIs to immediately conduct CDD when there are doubts about the veracity or adequacy of previously obtained customer identification. At the time of the on-site visit, it was determined that BACEN should issue guidance to assist BACEN/FIs in implementing the new provisions that were not existing in earlier circulars (*e.g.* the requirement to obtain information on the purpose and intended nature of the business relationship, and the requirement to identify the beneficial owner). In February 2010, BACEN issued BACEN Circular Letter 3430/2010 which further clarified the requirements in BACEN Circular 3461/2009. Although this guidance was issued outside of the two-month period following the on-site visit (and is not, therefore, taken into account for the purposes of this assessment), going forward, BACEN should ensure that this additional guidance is implemented and no further questions exist regarding the requirements in BACEN Circular 3461/2009.

CVM/FIs

517. CVM Instructions 301/1999 and 387/2003 address many aspects of Recommendation 5; however, there are still issues that remain unaddressed. Brazil should amend its legislation to ensure that CVM/FIs are required to: obtain information on the purpose and intended nature of the business relationship; conduct ongoing due diligence; and adopt AML/CFT risk management procedures in circumstances where a customer is permitted to use a business relationship prior to verification (e.g. institutional clients are permitted to operate without a signature for a period of 20 days). Additionally, when CDD cannot be completed, CVM/FIs should be expressly prohibited from opening an account, commencing business relations or performing transactions, and then be required to consider making an STR. Where a business relationship has already commenced, and CDD cannot be completed, CVM/FIs should be required to terminate the business relationship and consider making an STR. As well, CVM/FIs should be required to apply CDD requirements to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times.

SUSEP/FIs

518. SUSEP Circular 380/2008 addresses many aspects of Recommendation 5; however, there are still aspects that remain unaddressed. Brazil should amend its legislation to ensure that SUSEP/FIs are required to: conduct CDD measures when there is a suspicion of ML/FT; obtain information on the purpose and intended nature of the business relationship; conduct enhanced due diligence for higher risk categories of customers, relationships or transactions; and conduct CDD before or during the course of establishing a business relationship rather than delaying until the insurance policy is paid out, unless appropriate measures are taken to manage the ML risks. Measures should also be taken to ensure that the circumstances in which simplified CDD measures may be applied to customers resident in another country is limited to countries that the Brazilian authorities are satisfied are in compliance with and have effectively implemented the *FATF Recommendations*. Additionally, when CDD cannot be completed, SUSEP/FIs should be expressly prohibited from opening an account, commencing business relations or performing transactions, and then be required to consider making an STR. Where a business relationship has already commenced, and CDD cannot be completed, SUSEP/FIs should be required to terminate the business relationship and consider making an STR. As well, SUSEP/FIs should be required to apply CDD requirements to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times.

SPC/FIs

519. SPC Instruction 26/2008, adopted in September 2008, is the main instrument addressing CDD for closed pension funds; however, it only addresses requirements relating to a prohibition of anonymous accounts, and the identification and verification of customer (natural or legal) identity. Brazil should amend its legislation to ensure that SPC/FIs are required to: obtain information on the purpose and intended nature of the business relationship; conduct ongoing due diligence on the business relationship; undertake CDD when carrying out occasional transactions, when there is a suspicion of ML/FT, or when there are doubts about the veracity or adequacy of previously obtained customer identification data; apply enhanced due diligence to all categories of high risk customers (not just PEPs); verify the identity of the customer and beneficial owner before or during the course of establishing the business relationship, and when conducting transactions for occasional customers; and requiring CDD to be conducted at the time the customer relationship is being established rather than delaying until when the benefits are paid out unless this is essential not to interrupt the normal conduct of business and the ML risks are effectively managed. Additionally, when CDD cannot be completed, SPC/FIs should be expressly prohibited from opening an account, commencing business relations or performing transactions, and then be required to consider making an STR. Where a business relationship has already commenced, and CDD cannot be completed, SPC/FIs should be required to terminate the business relationship and consider making an STR. As well, SPC/FIs should be required to apply CDD requirements to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times. SPC should also take measures to ensure that SPC/FIs are implementing these requirements effectively, including issuing guidance on how to fully meet these obligations.

COAF/FIs

520. COAF Resolution 013/2005 (factoring companies) is the main instrument addressing CDD obligations for COAF/FIs. These resolutions address the prohibition of anonymous accounts, and the identification and verification of customer (natural or legal) identity. Identification of beneficial owners is addressed, albeit in OEM, for factoring companies. Brazil should amend its legislation to ensure that COAF/FIs are required to: undertake CDD measures when establishing business relationships, carrying out occasional transactions, when there is a suspicion of ML/FT or when there are doubts about the veracity or adequacy of previously obtained customer identification data; obtain information on the purpose or

intended nature of the business relationship; conduct ongoing due diligence on the business relationship; conduct enhanced due diligence on relationships with all categories of high risk customer (not just PEPs); and verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship, or when conducting transactions for occasional customers. Additionally, when CDD cannot be completed, COAF/FIs should be expressly prohibited from opening an account, commencing business relations or performing transactions, and then be required to consider making an STR. Where a business relationship has already commenced, and CDD cannot be completed, COAF/FIs should be required to terminate the business relationship and consider making an STR. As well, COAF/FIs should be required to apply CDD requirements to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times. COAF should also take measures to raise awareness among COAF/FIs, including issuing guidance on how to fully meet these obligations.

Recommendation 6

521. Between 2007 and 2009, all five federal regulatory authorities issued instruments addressing the issue of PEPs. These instruments lay out similar, though not always consistent, obligations which address almost all the requirements outlined in Recommendation 6. However, Brazil should amend its legislation to ensure that CVM/FIs are required to obtain senior management approval to continue a business relationship when an already existing customer or beneficial owner is subsequently found to be or becomes a PEP. CVM/FIs should also be required to take reasonable measures to establish the source of funds of customers and beneficial owners identified as PEPs. While there is a sufficient level of awareness of the PEP requirements in the private sector, a number of the instruments regarding PEPs have been issued quite recently and as a result it is too soon to determine effectiveness. The authorities should ensure that their supervision focuses on whether these new requirements are being implemented effectively.

Recommendation 7

522. BACEN Circular 3462/2009, adopted in July 2009, alters the section of the RMCCI that contemplates cross border correspondent relationships. While the alterations appropriately address the requirements set out in Recommendation 7, there is no way to evaluate effectiveness, as these changes were made shortly before the on-site visit. The authorities should ensure that their supervision focuses on whether these new requirements are being implemented effectively.

Recommendation 8

523. The implementation of the requirements under Recommendation 8 vary greatly by sector in Brazil. BACEN and SUSEP adequately address threats that may arise from new or developing technologies and non-face to face business relationships or transactions for the banking and insurance sectors respectively. However, the BACEN and SUSEP instruments that address these requirements have been amended or approved shortly before the on-site visit, so effectiveness cannot yet be measured. The authorities should ensure that their supervision focuses on whether these new requirements are being implemented effectively. While it was determined that Recommendation 8 does not apply to SPC/FIs and COAF/FIs, Brazil should amend its legislation to require CVM/FIs to have policies in place or take such measures as may be needed to prevent the misuse of technological developments in ML/FT schemes. The authorities should also ensure that their supervision focuses on whether these new requirements are being implemented effectively.

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	**PC**	• The following basic CDD obligations are set out in other enforceable means (not law or

	Rating	Summary of factors underlying rating
		regulation) as is required by Recommendation 5: specifications as to when CDD is required and the obligation to use reliable, independent source documents for the verification process (for CVM/FIs, SUSEP/FIs, SPC/FIs and COAF/FIs); and the obligation to identify the beneficial owner (for CVM/FIs, SUSEP/FIs and COAF/FIs), and the obligation to conduct ongoing due diligence (for SUSEP/FIs). • SPC/FIs and COAF/FIs are not required to conduct CDD when there are doubts about the veracity or adequacy of previously obtained customer identification. • SUSEP/FIs are not required to conduct CDD measures when there is a suspicion of ML/FT. • SPC/FIs are not required to undertake CDD when carrying out occasional transactions or when there is a suspicion of ML. • COAF/FIs are not required to undertake CDD measures when establishing business relationships, carrying out occasional transactions or when there is a suspicion of ML. • SPC/FIs are not required to identify the beneficial owner. SPC/FIs and COAF/FIs are not required to determine if the customer is acting on behalf of another person or take reasonable measures to understand the ownership and control of the customer. • CVM/FIs, SUSEP/FIs (for investment-type insurance products), SPC/FIs and COAF/FIs are not expressly required to obtain information on the purpose and intended nature of the business relationship. • CVM/FIs, SPC/FIs and COAF/FIs are not required to conduct ongoing due diligence. • For SUSEP/FIs, , SPC/FIs and COAF/FIs the obligation to conduct enhanced due diligence for higher risk categories of customers, relationships or transactions only applies to PEPs. • The circumstances in which SUSEP/FIs may apply simplified CDD measures to customers resident in another country is not limited to countries that the Brazilian authorities are satisfied are in compliance with the *FATF Recommendations*. • CVM/FIs may delay the signature of institutional customers for a period of 20 days, and SUSEP/FIs and SPC/FIs may delay CDD until the policy/fund is paid out; however, it was not established that these delays are essential not to interrupt the normal conduct of business or that the ML risks are effectively managed in such circumstances. • Where CDD cannot be completed, CVM/FIs, SUSEP/FIs, SPC/FIs and COAF/FIs are not expressly prohibited from opening an account, commencing business relations or performing transactions, or required to consider making an STR, nor are they required to terminate an existing business relationship and consider making an STR. BACEN/FIs are not expressly prohibited from conducting a transaction on behalf of an occasional customer when CDD cannot be completed. • CVM/FIs, SUSEP/FIs, SPC/FIs and COAF/FIs are not required to apply CDD requirements to existing customers on the basis of materiality and risk, nor to conduct due diligence on such existing relationships at appropriate times. • Effectiveness: BACEN/FIs are experiencing difficulty in implementing the new requirements to identify beneficial owners, obtain information on the purpose and intended nature of the business relationship and apply CDD measures to existing customers on the basis of materiality and risk. It is too soon to measure the effectiveness of newer measures applicable to SUSEP/FIs. COAF/FIs seem to have a low level of awareness of their CDD requirements. Effectiveness of implementation by SPC/FIs was not established.
R.6	**LC**	• CVM/FIs are not required to obtain senior management approval to continue a business relationship when an already existing customer or beneficial owner is subsequently found to be or becomes a PEP. • CVM/FIs are not required to take reasonable measures to establish the source of funds of customers and beneficial owners identified as PEPs. • Effectiveness has not yet been established as these measures for CVM/FIs, SPC/FIs and COAF/FIs are too recent. Effectiveness for SUSEP/FIs is not established. Non-bank BACEN/FIs are currently subject to less than fully adequate supervision and therefore effectiveness is not established.
R.7	**LC**	• Effectiveness has not yet been established.

	Rating	Summary of factors underlying rating
R.8	**LC**	• CVM/FIs are not required to have policies in place or take such measures as may be needed to prevent the misuse of technological developments in ML/FT schemes. • Effectiveness of the measures applicable to BACEN/FIs and SUSEP/FIs has not been established.

3.3 Third parties and introduced business (R.9)

3.3.1 Description and Analysis

524. Recommendation 9 does not apply in the Brazilian context. The requirements relating to Recommendation 9 do not apply to SPC/FIs and COAF/FIs, given the nature of the SPC/FI and COAF/FI clientele and how business practices traditionally occur. The requirements relating to Recommendation 9 do not apply to BACEN/FIs, CVM/FIs and SUSEP/FIs as they are expressly prohibited from relying on third parties outside of the context of agency or outsourcing arrangements (see CMN Resolution 3110/2003 and BACEN Circular 3462/2009; CVM Instruction 387/1999, art.12-A; SUSEP Circular 380/2008, art.10, para.1). Moreover, there is no indication that BACEN/FIs, CVM/FIs and SUSEP/FIs are relying on third parties or introduced business outside of this context.

3.3.2 Recommendations and Comments

525. There are no recommendations or comments in relation to this section. 526.

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	**N/A**	• This Recommendation is not applicable.

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and Analysis

527. Financial secrecy and the protection of financial data in Brazil is sometimes understood as a form of the Constitutional right of intimacy. Privacy rights and the secrecy of correspondence, telegraphic, data and telephone communications are inviolable, except by court order for the purposes of criminal investigation or fact-finding (*Constitution* art.5(X) and (XII)).

528. However, the duty of financial institutions to protect customer information is not absolute. Financial institutions will not be considered to have breached the duty of financial secrecy if they communicate with the competent authorities concerning a crime being committed or financial transactions being performed with illicit funds, or exchange information with other FIs for record purposes, including by means of credit base risk, provided that the norms laid down by CMN and BACEN are observed (Complementary Law 105/2001 art.1(3)).

529. BACEN and CVM are permitted to share otherwise confidential information in order to investigate suspected crimes within their competence, with no need for judicial authorisation, and such information may be forwarded to the Public Prosecutor's Office in such cases (Law 8249/1992). Likewise, the bank and financial data gathered in a criminal investigation may be used by the administrative authorities if so authorised by the competent judge.

530. Financial secrecy cannot be used to prevent BACEN from carrying out its supervisory functions or proceeding with an enquiry of a financial institution (Complementary Law 105/2001 art.2. para.1-2). Likewise, financial secrecy cannot be used to prevent CVM from carrying out its supervisory functions in relation to CVM/FIs and transactions on the securities markets (Complementary Law 105/2001 art.2 para.3). Similar exemptions from this secrecy provision exist with respect to SUSEP and SPC. Article 88 of Decree-Law 73/1966 empowers SUSEP to gather any information it requires without limit to purpose and subsequent use. Similar powers are established for SPC by way of Complementary Law 109/2001 (art.41 in connection with art.5 and 74).

531. However, COAF in its role as a supervisor does not enjoy a similar prerogative, which means that this supervisor is unable to access client information for supervisory purposes absent a judicial authorisation. This inhibits the implementation of Recommendations 23 and 29 and negatively impacts the ability of COAF to properly perform its supervisory functions. While the supervisory arm of COAF is privy to STR and CTR information gathered by COAF in its role as FIU, it does not have an information gathering power for supervisory purposes. This also inhibits implementation of Recommendation 26 to the extent that COAF cannot obtain additional information from COAF/FIs in the absence of a court order (see section 2.5 of this report for further details).

532. BACEN and CVM, in their respective areas of competence, are permitted to sign agreements with foreign supervisory authorities for the purpose of conducting joint supervision of foreign branches and subsidiaries of Brazilian FIs, and facilitating mutual co-operation and information exchange for the purpose of investigating illicit conduct in the banking and securities sectors (Complementary Law 105/2001 art.2(4)(II)(b)). similar provisions do not exist in relation to SUSEP or SPC, their information gathering powers are worded sufficiently widely in the law, without limitations to particular uses of the information, to allow sharing of information with other supervisors, whether domestic or foreign. Similarly, COAF is given wide information sharing powers as the FIU (and, indeed, considers information sharing to be one of its vital tasks), without such authority being limited to its role as an FIU .

533. The financial secrecy law (Complementary Law 105/2001) does not inhibit the implementation of Recommendations 13 or Special Recommendation IV. The federal supervisory authorities (BACEN, CVM, SUSEP and SPC) are all explicitly required to furnish the FIU (COAF) with STR information, under the scope of their respective competencies (Complementary Law 105/2001 art.2(6)).

534. Likewise, the implementation of Recommendation 7 and Special Recommendation VII is not impeded. BACEN/FIs are authorised to exchange information between each other for record purposes, including the exchange made through risk centers, provided that they comply with the relevant rules and regulations issued by the National Monetary Council and BACEN (Complementary Law 105 art.1 para.3(I)). This provision also ensures that the implementation of Recommendation 9 is not impeded in the banking and securities sectors.

Effectiveness

535. Financial secrecy may be broken by a judicial order, for the investigation or prosecution of any crime, especially crimes of ML, terrorism, illicit drug trafficking, weapons trafficking, extortion committed by kidnapping, financial crimes, crimes committed against Public Administration, and crimes committed by organised crime (Complementary Law 105/2001 art.1(4)(I-IX) and art.3). Jurisprudence of the Supreme Court also confirms that financial secrecy may be disclosed by judicial order in the context of a criminal investigation (RE 535478/SC-Relatora: Min. Ellen Gracie Julgamento: 28/10/2008 Órgão Julgador: Segunda Turma do STF). In such cases, the judge, prosecutor and others taking part in an investigation or prosecution shall protect the data and may not disclose it to third parties. On their face, these provisions would seem to ensure that the competent authorities are not impeded in their ability to investigate or prosecute AML/CFT

crimes, or share information with their foreign counterparts in such circumstances. However, some authorities report that it is difficult to obtain orders for the production of financial records in practice as some judges view financial secrecy as an absolute right (see section 2.3 of this report for further details). While apparently wrong as a point of law according to governing jurisprudence, which means that such obstructive decisions can and will be overturned on appeal within 30 days or so, this means that, in practice, the effectiveness of the system is impeded in cases of urgency vis-à-vis the implementation of Recommendations 3 and 28.

3.4.2 Recommendations and Comments

536. Financial secrecy is a constitutionally protected right in Brazil. However, specific exemptions set out in law ensure that, for the most part, it does not impede implementation of the *FATF Recommendations*. However, Brazil should amend its legislation to extend similar exemptions to enhance the implementation of Recommendations 23 and 29 by allowing COAF (as a supervisor) to access client information for supervisory purposes absent a judicial authorisation.

537. Brazil should also take the measures recommended in section 2.3 of this report to ensure that judges take a consistent approach, that is in line with the legal provisions and case law noted above, when considering whether to grant orders for the production of documents.

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**LC**	• The lack of a legal exception to financial secrecy for COAF inhibits its ability as a supervisor to access client information and therefore the implementation of Recommendations 23 and 29. • Effectiveness: Implementation of Recommendation 3 and 28 is impeded in urgent cases because of delays in appealing decisions which misapply the financial secrecy provisions.

3.5 Record keeping and wire transfer rules (R.10 & SR.VII)

3.5.1 Description and Analysis

538. All Accountable FIs are generally required to keep updated CDD records and records of all transactions in national or foreign currency, bonds and securities, credit bonds, metals, or any assets liable for conversion into money, that surpass the limits set by the relevant competent authority and in accordance with the instructions issued thereby. However, there is no specific obligation to maintain records of business correspondence (*e.g.* other documents not related to financial transactions or the CDD process, such as letters to file or other notifications to the customer). Such records are to be kept for a minimum period of five years counting from the closure of the account or conclusion of the transaction. This period may be extended by the relevant competent authority (*AML Law* art.10).

539. Accountable FIs are also required to make records requested from COAF available within the period set by the competent judicial body (*i.e.* on a timely basis) (*AML Law* art.10(III)).

540. The competent authorities have also issued the following sector-specific record keeping requirements for the Accountable FIs under their supervision.

Banking sector

541. BACEN/FIs are required to maintain CDD and transaction records for a period of five to 10 years from the termination of business relations with a permanent customer or the conclusion of a transaction, depending on the type of information concerned (BACEN Circular 3461/2009 art.11). Authorised foreign exchange agents are required to maintain documents relating to transactions on the foreign exchange market, by physical or electronic means, for the period of five years from date of the transaction (BACEN Circular 3401/2008[67]).

542. BACEN/FIs are required to keep records containing consolidated information that is sufficient to allow for the verification of: the compatibility between transactions and the customer's economic and financial profile; the origin of funds moved; the final beneficiaries of fund movements; combined operations which, undertaken with the same person, conglomerate or group, in one calendar month surpass, by institution or entity, BRL 10 000 (EUR 3 900/USD 5 800); and operations that, by their usualness, value or form, may indicate an attempt to bypass the institution's internal controls (BACEN Circular 3461/2009 art.6). Likewise, transaction records must be kept in sufficient detail to permit their reconstruction (BACEN Circular 3461/2009 art.7-9).

543. The minimum transaction information that must be held at BACEN's disposal is: the date and type of transaction; value in BRL; and the CPF or CNPJ number of the account holder (BACEN Circular 2826/1998 art.3; BACEN Circular 3461/2009 art.7).

544. For electronic wire transfers, the following information must be kept: identification of the issuer in the funds transfer settlement system; CPF/CNPJ of the issuer; identification of the receiver in the funds transfer settlement system; CPF/CNPJ of the receiver; value of the transfer in local currency; and date of issue (BACEN Circular 3115/2002 art.4).

545. For foreign exchange transactions involving a private legal person, a copy of the latest registered balance sheet must be kept, if mandatory, related to the period ended not more than 18 (eighteen) months before, with details of all the banks with which it operates and maintains deposit accounts. In addition, in case of a manual signature on the foreign exchange contract or bank slip, a signature card containing the name, qualification and specimen of signatures of the legal person's authorised representative for the signing of foreign exchange contracts must be maintained (Circular 3401/2008[68]).

Availability of customer and transaction records to competent authorities

546. BACEN requires records of deposits, checks and other documents referred to in BACEN Circular 3290/2005 to be kept in electronic form, at BACEN's disposal, for a minimum period of 10 years from the date on which the transaction was undertaken. This information must be remitted to the competent authority, when so required, by electronic means and in the form defined by BACEN (art.5).

547. For deposit accounts, BACEN/FIs must keep, filed together with the account opening application form, legible, and in good order, copies of CDD documentation referred to in CMN Resolution 2025 (see section 3.2 for a detailed description of the information that BACEN/FIs are required to collect pursuant to this Resolution). Such records may be microfilmed after the minimum period of five years (CMN Resolution 2025/1993 art.3).

67 Also contained in RMCCI, Title 1, Chapter 6.

68 Also contained in RMCCI, Title 1, Chapter 6, Item 7(a)(V).

548. Authorised foreign exchange agents are required to maintain documents relating to transactions on the foreign exchange market, by physical or electronic means, for the period of five years from the date of the transaction. BACEN may verify at any time and without cost the original document file and/or the files with digital signatures of parts of the document and of the respective digital certificates in the context of ICP-Brazil, if the regulation requires the upkeep of the original document (BACEN Circular 3401/2008[69]). Authorised foreign exchange agents must provide to BACEN, when requested, CDD information on issuers of foreign currency, including an address (BACEN Circular 3401/2008[70]).

549. Access to banking information is further facilitated by BACEN's SISBACEN system. All cash deposits or withdrawals, or orders for withdrawal where the amount involved is greater than BRL 100 000 (EUR 39 000/USD 58 000) must also be entered in PCAF500 of BACEN's electronic information system, SISBACEN. Additionally, such transactions must be entered into the SISBACEN system where there is a suspicion of ML and the amount involved is less than BRL 100 000 (EUR 39 000/USD 58 000) (BACEN Circular 3461/2009, art.9). The information that must be entered into SISBACEN is:

- the name and Individual Taxpayer Identification Number (CPF) or Corporate Taxpayer Identification Number (CNPJ) of the person conducting the transaction, the owner or beneficial owner of the money, and the holders of the account from which the money is being withdrawn/deposited, if they belong to the same institution;

- the number of the institution, branch, cash deposit current or savings account into which the money will be deposited or from which the money will be withdrawn; and

- the date and value of the deposit, withdrawal or provision (BACEN Circular 3461/2009 art.9).

Securities sector

550. CVM/FIs are required to maintain the registration of all transactions involving securities, regardless of their value (CVM Instruction 301/1999 art.4-5). Such registrations and records must be kept, and remain at CVM's disposal, for at least five years from the account closing or the conclusion of the last transaction performed on behalf of the respective client. This period might be extended indefinitely by CVM in case of an investigation (CVM Instruction 463/2008 art.5).

551. CVM/FIs are required to keep details of the type of orders, time of delivery, issuing form, term of validity, procedures of refusal, registration, compliance, distribution and cancellation. Orders should contain the order receipt time and the identification of the customer who issued the order, and shall have a unified sequential numbering control, chronologically organised. Alternatively, CVM/FIs may maintain a system that records all dialogues between the customers and the brokerage house and its floor operators, including a registration of all executed orders, according to the regulation terms issued by the exchanges, subject to CVM's prior approval (CVM Instruction 387/2003 art.6).

552. All records must be kept and remain at CVM's disposal for at least five years from the account closure or the conclusion of the last transaction performed on behalf of the respective customer. This period might be extended indefinitely by CVM in case of an investigation (CVM Instruction 463/2008 art.5).

69 Also contained in RMCCI, Title 1, Chapter 6, Item 4.

70 Also contained in RMCCI, Title 1, Chapter 3 and Chapter 6, Item 7.

Availability of customer and transaction records to competent authorities

553. CVM is entitled to examine and extract examples of accounting records, books or documents, including electronic programs, magnetic and optical files, as well as any other files, and also the paperwork of independent auditors and other entities it supervises. All such records must be organised and preserved intact for at least five years (Law 6385/1975 art.9; Decree 3995/2001). Additionally, subpoenas may be issued requesting information or clarifications, under penalty of a fine, without prejudice to the penalties set out in article 11 (Law 10303/2001).

Insurance sector

554. SUSEP/FIs are required to keep records with respect to customers, beneficiaries, third parties and other related parties, and business transactions, in either electronic or printed form. Such records should be held for a period ranging from five to 20 years, depending on the type of product (SUSEP Circular 277/2004; SUSEP Circular 380/2008 art.12).

555. SUSEP/FIs are required to keep transaction records in good order. Documentation in respect of each contract should encompass the whole life cycle of the contract (SUSEP Circular 74/1999).

Availability of customer and transaction records to competent authorities

556. Stored documentation should be always available to SUSEP which, when necessary, may determine the time of delivery for the SUSEP/FI to deliver the original documents (SUSEP Circular 74/1999 art.9).

Closed pension fund sector

557. SPC/FIs are required to maintain records of identification documents of all natural persons or legal entities with which they have any business relationship. Such records must be maintained permanently (SPC Instruction 26/2008 art.5).

558. Additionally, SPC/FIs must maintain records reflecting all assets and liabilities operations performed, equal or exceeding BRL 10 000 (EUR 3 900/USD 5 800) on the calendar month. Such records must be maintained for the minimum period of five years, calculated retroactively as of the time of the account closing or the conclusion of the last transaction performed (SPC Instruction 26/2008 art.9). Although this threshold is consistent with article 10 of the *AML Law* which requires Accountable FIs to keep records, subject to the limits set by the relevant competent authorities, this creates a gap because the record keeping obligations in Recommendation 10 apply to all transactions, regardless of their value. However, it should be noted that this deficiency is somewhat mitigated by the fact that the applicable threshold is very low.

Other types of financial institutions

Transaction records

559. ***Factoring companies*** are required to keep records of all transactions for at least five years from the date the transaction concluded (COAF Resolution 013/2005 art.5 and 11). Additionally, they are required to keep records of all transactions that contain: the contractor's qualification; an indication of the securities and receivables involved in the transaction, its essential elements, beneficiaries and transaction value; the date of execution; financial statements; and a description of the services rendered (COAF Resolution 013/2005 art.5).

Availability of customer and transaction records to competent authorities

560. All COAF/FIs are required to comply, at all times, with the requests for information made by COAF, concerning participants and transactions (COAF Resolution 013/2005 art.12).

Special Recommendation VII

Overview

561. Brazil's implementation of Special Recommendation VII is integrated into its exchange control regime. Only financial institutions that are authorised by BACEN to undertake foreign exchange operations may conduct cross-border wire transfers. BACEN may grant authorisations for undertaking foreign exchange operations (including cross-border wire transfers) to the following types of financial institutions: banks, commercial banks, savings banks, investment banks, development banks, foreign exchange banks, credit, financing and investment companies, bonds and securities brokerage companies, bonds and securities distributing companies and foreign exchange brokerage companies. Also covered is the sending of a cross-border wire transfer through an international use card (*e.g.* an international credit card that may be used to transfer money) or an international postal financial transfer, including a postal voucher and international postal refund. The BACEN Circulars dealing with the regulatory provisions and procedures related to the foreign exchange market address many of the elements in Special Recommendation VII and apply to all of the financial institutions mentioned above. These financial institutions also perform domestic wire transfers, as does the Post Office.

Obligations on ordering financial institutions to collect and maintain information

562. When performing any wire transfer (domestic or cross-border), the ordering financial institution (Ordering FI) is required to collect, maintain and verify the customer's full name and CPF/CNPJ number which is a unique identifier. These requirements apply, regardless of whether the originator of the wire is a natural or legal person, or a permanent or occasional customer (see section 3.2 for further details).

563. Additionally, for cross-border wire transfers, the customer's address must be obtained. For purchases and sales in foreign currency, the corresponding value in national currency must be delivered by means of a credit or debit in a deposit account, unless the purchase/sale is less than BRL 10 000 (EUR 3 900/USD 5 800) in value (BACEN Circular 3265/2005, as amended by BACEN Circular 3462/2009[71]). This means that the originator's deposit account number is also kept on record, except when the transaction falls below the BRL 10 000 (EUR 3 900/USD 5 800) threshold, which is a threshold consistent with Special Recommendation VII.

564. For domestic transfers, the Ordering FI is also required to collect and maintain sufficient information so as to be able to identify the type and number of document issued, date of the operation, name and number of the receiver's and issuer's CPF or CNPJ[72] (BACEN Circular 3290/2005 art.2). As well, in the case of a permanent customer, an account number will be on file. The obligation to obtain an address only applies to permanent customers who are legal persons; it does not extend to customers who are natural persons or occasional customers who are legal persons (CMN Resolution 2025/1993, art.1; BACEN Circular 3461/2009, art.2). These provisions apply to all domestic wire transfers, equal to or exceeding BRL 1 000 (EUR 390/USD 580), that are processed via Available Electronic Transfer (TED), administrative cheque issuances, "to the order" cheques, payment orders, Credit Transfers Documents (DOC), and other funds transfer instruments and involving transactions. Similar requirements apply for

71 Also contained in RMCCI, Title 1, Chapter 1, Items 24-26.

72 The requirements of BACEN Circular 3290/2005 were incorporated to BACEN Circular 3461/2009 article 7.

wire transfers conducted through the Brazilian Payments System (BACEN Circular 3115/2002; BACEN Circular 3119/2004).

Information that must accompany the wire transfer

565. For cross-border wire transfers, the Ordering FI must include the following originator information in the payment message: the name, address and number of the banking account (or, in the absence of an account, the customer's CPF/CNPJ number or identification document number), unless the currency is being delivered by a means other than debit into an account (BACEN Circular 3265/2005, as amended by BACEN Circular 3462/2009).

566. For domestic transfers, the Ordering FI is required to keep records that are sufficient so as to identify the type and number of document issued, date of the operation, name and number of the receiver's or issuer's CPF or CNPJ. Such information is contained within the SISBACEN system and is, therefore, available to the competent authorities within three business days.

Obligations on intermediary financial institutions

567. Each financial institution in the payment chain (Intermediary FI) is required to comply with the abovementioned requirements to ensure that the payment message contains the basic required originator information, unless the form of delivery of currency by the issuer is not for debit into account.

568. There is no associated requirement to keep a record for five years of a cross-border wire transfer which, due to technical limitations, does not contain full originator information. However, in practice, BACEN indicated that this situation would not occur because a cross-border wire transfer not containing full originator information would be automatically returned to the Ordering FI by the SISBACEN system, and thus would never reach the receiving intermediary FI.

Obligations on beneficiary financial institutions

569. Beneficiary financial institutions (Beneficiary FIs) are required to pay special attention to payment messages from abroad that do not contain full originator information as required (BACEN Circular 3462/2009[73]).

Monitoring for compliance

570. BACEN monitors the foreign exchange market, with a view to producing information about foreign currency or international transfers in BRL (TIR transactions) by FIs, facilitating a better understanding of the foreign exchange market and related policy making, and mitigating the risk of illicit abuse of the financial system. The principles guiding the monitoring of the foreign exchange market are defined in the *Supervision Manual*, Title 4, Chapter 20-40-20.

571. Supervision of FIs conducting foreign exchange transactions is focused on reviewing the policies and procedures adopted by the FI/conglomerate to ensure compliance with applicable foreign exchange regulations and AML/CFT preventative measures. These monitoring activities are carried out by the BACEN's compliance and internal auditing units, which are responsible for certifying compliance with the policies and procedures applicable to those business areas involved in foreign exchange and TIR transactions (*Supervision Manual* Title 4, Chapter 30-10-50-03-03).

[73] Also contained in RMCCI, Title 1, Chapter 1, Item 13-B.

Sanctions

572. Non-compliance with BACEN's requirements is sanctionable by the following administrative sanctions:

- warning;
- variable pecuniary fines;
- suspension from their functions;
- temporary or permanent disqualification to exercise of the functions of administrative directorship or management of FIs; and
- cancellation of the FI's authorisation to operate (not including federal or private institutions) (Law 4595/1964 art.44).

573. Additionally, infractions of the requirements related to foreign exchange transactions may be penalised by administrative sanctions involving confiscation of from 5% to 100% of the total amount of the transaction involved (Law 4131/1962 art.23). For repeated infractions, the Council of the Superintendency of Currency and Credit may cancel the FI's authorisation to perform foreign exchange activities, and may propose that the same measure be taken by the competent authority in the case of a broker.

574. Conducting unauthorised financial activities is defined as a crime against the financial system which is punishable by two to six years of imprisonment and a fine (Law 7492/1986 art.22).

Statistics and effectiveness

Recommendation 10

575. While FIs in the banking, securities and insurance sector have a high level of awareness of these requirements, it appeared that COAF/FIs had a low level of awareness of their record keeping obligations which may be limiting the effectiveness of implementation in those sectors. Also, non-bank BACEN/FIs, SPC/FIs and COAF/FIs are not yet being actively supervised for compliance with these measures (see section 3.10 of this report for further details). Consequently, the authorities were unable to provide specific information concerning the effectiveness of implementation across these sectors.

Special Recommendation VII

576. Brazil has a centralised method of processing both domestic and foreign wire transfers. All transactions must pass through BACEN's SISBACEN system. SISBACEN relies heavily on automatic filters and triggers to identify inconsistencies in transaction information. This removes the element of human analysis when determining whether to accept or reject wire transfers.

577. The BACEN Supervision Manual indicates that supervision is focused on reviewing the policies and procedures adopted by the FI/conglomerate to ensure compliance with applicable foreign exchange regulations and AML/CFT preventative measures. During the on-site visit, BACEN indicated that if it detects incomplete or incorrect information in a payment message, it will enter the FI engaging in the transaction, and request that the information be corrected. However, there remains cause for concern as to whether or not BACEN has measures in place to effectively monitor the compliance of FIs with the

aforementioned rules and regulations. During the on-site visit, it appeared that BACEN inspectors do not routinely conduct sample testing in the wire rooms at FIs that are authorised to conduct foreign exchange transactions, and no one supervises on-site the transactions conducted by the Post for compliance with these requirements. There is a complete reliance on the automatic system to filter out wire transfers with incomplete or inconsistent information. As there is no effective system for monitoring compliance with the regulations, there cannot be effective application of sanctions for non-compliance. Therefore, while the regulations do outline substantial requirements relating to Special Recommendation VII and potential sanctions for non-compliance, the Brazilian authorities have not established that these measures have been implemented effectively.

578. Through the SISBACEN system, the Brazilian authorities collect comprehensive statistics on the number of international wire transfers.

3.5.2 Recommendations and Comments

Recommendation 10

579. Brazil is generally in compliance with Recommendation 10 both through the general record keeping provisions set out in article 10 of the *AML Law* and more specific requirements set out in regulatory instruments issued by the five supervisory authorities. However, the following issues should be addressed. First, the record keeping obligation should be extended to include business correspondence. Second, in the absence of any proper AML/CFT risk assessment that might justify the record keeping exemption for SPC/FIs when the business relationship involves less than BRL 10 000 (EUR 3 900/USD 5 800) within a calendar month, Brazil should amend its legislation to remove the exemption. Third, the authorities should take measures to raise awareness among COAF/FIs concerning the specific record keeping provisions that apply to them, and ensure that non-bank BACEN/FIs and SPC/FIs are implementing these requirements effectively.

Special Recommendation VII

580. The applicable legal requirements cover most aspects of Special Recommendation VII. However, compliance monitoring is insufficient, including the application of sanctions where appropriate. Brazil should ensure that BACEN supervises more closely for compliance with these requirements and applies sanctions in appropriate circumstances. Additionally, the authorities should actively monitor the Post Office on-site for compliance with these obligations. Such monitoring should include routine sample testing in the wire room to ensure that financial institutions and the Post Office are complying with these requirements. As well, the legislation should be amended to require collection of an address in the case of all domestic transfers.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**LC**	• Accountable FIs are not required to maintain records of business correspondence. • For SPC/FIs, record keeping requirements only apply to business relationships when the transactions reach a monthly threshold of BRL 10 000 (EUR 3 900/USD 5 800). • Effectiveness: COAF/FIs demonstrate a low level of awareness of their specific record keeping obligations. Effectiveness not established for non-bank BACEN/FIs and SPC/FIs.
SR.VII	**LC**	• Effectiveness: The Post Office is not being monitored on-site for compliance with these requirements. In the absence of sufficient monitoring for compliance with these obligations (*e.g.* BACEN does not routinely conduct sample testing in the wire room of an FI), the authorities have not established that the requirements under Special Recommendation VII are being implemented effectively. The lack of monitoring also negatively impacts the effective application of sanctions for non-compliance with these obligations. • For domestic wire transfers, the obligation to obtain an address does not extend to natural persons or occasional customers who are legal persons.

Unusual and Suspicious Transactions

3.6 Monitoring of transactions and relationships (R.11 & 21)

3.6.1 Description and Analysis

Recommendation 11

581. Accountable FIs are generally required to pay special attention to transactions that, in accordance with instructions issued by the competent authorities, may imply serious signs of the crimes foreseen in the *AML Law*, or may be related to them (*AML Law* art.11). Although this is not a direct obligation to pay special attention to complex, unusual large transactions, or patterns of transactions that have no apparent or visible economic or lawful purpose, it does go part of the way towards satisfying Recommendation 11. Additionally, the competent authorities have issued sector-specific requirements in relation to the Accountable FIs under their supervision that, for some sectors, fully satisfy the requirement to pay special attention to unusual transactions.

582. However, even where the obligation to pay special attention to unusual transactions is stated, not all Accountable FIs are explicitly required to examine as far as possible the background and purpose of such transactions, nor to set forth their findings in writing.

583. Additionally, there are no specific provisions that require all Accountable FIs to keep findings of examinations of the background and purpose of complex and unusual transactions available for competent authorities and auditors for at least five years.

Banking sector

584. BACEN/FIs fully meet the requirements of Recommendation 11. BACEN/FIs are required to pay special attention to (attempted) transactions or proposals indicating a risk of being related to the crimes foreseen in the *AML Law*, given their nature, the parties involved, values, forms of undertaking and instruments, or the absence of a visible economic or legal purpose. Additionally, BACEN/FIs are required to pay special attention to:

- proposals to establish business relationships and carry out transactions with PEPs of Brazilian nationality or PEPs originating from countries with which Brazil has a high number of financial and commercial transactions, common borders, or ethnical, linguistic or political proximity;

- signs of cheating in the CDD procedures;

- customers and transactions in which it is not possible to identify the final beneficiary;

- transactions with customers originating from countries that insufficiently apply the *FATF Recommendations*, according to information disclosed by BACEN; and

- situations in which it is not possible to maintain updated CDD information (BACEN Circular 3461/2009 art.10).

585. In such cases, BACEN/FIs must carry out a reinforced monitoring (*i.e.* enhanced due diligence) which includes: adopting more rigorous procedures for the verification of suspicious transactions; analysing such transactions to determine whether they should be reported to the competent authorities; and submitting them to higher management for consideration of whether it is appropriate to commence or maintain relations with the customer (BACEN Circular 3461/2009 art.10). BACEN/FIs are required to keep for five years the documents related to the analyses of transactions and on which the decision to report (or not) to the competent authorities was made (BACEN Circular 3461/2009 art.16). BACEN's supervisory procedures foresee examining these analyses (BACEN *Supervision Manual* Title 4-30-10-50-8-1).

Securities sector

586. CVM/FIs are required to pay special attention to the following types of transactions:

- transactions whose values are objectively incompatible with the professional occupation, earnings, net worth or financial status of any of the involved parties, based on the respective customer information;

- transactions performed between (or on behalf of) the same parties, in which continued gains or losses referring to any of those involved are present;

- transactions evidencing a significant oscillation in relation to the financial amount and/or frequency of business of any of the involved parties;

- transactions showing characteristics that may constitute fraud regarding the identification of the involved parties and/or respective beneficiary;

- transactions whose characteristics and/or developments evidence contumacious actions on behalf of third parties;

- transactions evidencing a sudden and objectively unjustified change regarding the type of transactions generally performed by those involved;

- transactions performed for the purpose of generating losses or gains that objectively present no economic purpose;

- transactions with the participation of resident natural or legal persons or entities constituted in non-co-operative countries and territories, as provided for in the alerts issued by COAF;

- transactions cleared and settled in cash, if and when allowed;

- private transfers, for no apparent reason, of resources and securities;

- transactions whose level of complexity and risk are incompatible with the technical qualification of the customer or the customer's representative;

- deposits or transfers performed by third parties, for the settlement of the client's transactions, or as collateral in transactions in the derivatives market; and

- payments to third parties, in any condition, for the settlement of transactions or redemptions of amounts deposited as guarantee and registered on behalf of the customer (CVM Instruction 463/2008, amending CVM Instruction 301/1999 art.6).

587. CVM/FIs are required to analyse the above transactions, along with other connected transactions that may be part of the same group of transactions or have any sort of relation between them (CVM Instruction 463/2008, amending CVM Instruction 301/1999 art.6). This list is not intended to be exhaustive. Where complex transactions other than those types listed in CVM Instruction 301/1999 are detected, the institution should inform the CVM. However, there is no specific requirement to keep such findings available for competent authorities and auditors for at least five years.

Insurance sector

588. SUSEP/FIs fully meet the requirements of Recommendation 11. SUSEP/FIs are required to report to COAF any transactions that are atypical because of the amount of money they involve, their peculiar characteristics or their complexity (SUSEP Circular 380/2008 art.13). (This is in addition to the obligation to report suspicious transactions.) In practice, SUSEP/FIs are only able to fulfil their obligation to report such atypical transactions (*i.e.* unusual transactions) if they pay special attention to complex, unusual large transactions or unusual patterns of transactions with a view to identifying the types of transactions that are specified in the rules and which must be reported to COAF. SUSEP/FIs are required to keep records of the analyses made on the background and purpose of atypical transactions (SUEP/DEFIS/GAB 27/09, item 20). Such records must be kept for the term specified in SUSEP Circular 380/2008, which is five years.

Closed pension fund sector

589. SPC/FIs are not generally required to pay attention to all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose. However, they are required to pay special attention to the following types of transactions which covers, to some extent, the elements of Recommendation 11:

- a contribution to the benefit plan, by the customer, in an amount that seems objectively incompatible with the customer's professional occupation or income, considered separately or along with other contributions from the same customer;

- a contribution to the benefit plan performed by another natural person (not the customer) or by a legal entity (not the sponsor), the amount which, separately or along with other contributions, on a same calendar month, equals or exceeds BRL 10 000 (EUR 3 900/USD 5 800);

- a substantial increase at the monthly amount of previdenciary contributions, for no apparent reason;

- a negotiation with payment in cash, to the same natural person or legal entity, the amount of which, separately or along with other contributions, equals or exceeds BRL 10 000 (EUR 3 900/USD 5 800); on a same calendar month; and

- the sale of assets with reception, fully or partially, of resources from various origins (*e.g.* checks from various venues, banks or drawers) or from various natures (*e.g.* bonds and real estate values, metals and other assets subject to being converted into cash) (SPC Instruction 26/2008 art.9).

Other types of financial institutions

590. COAF Resolution 013/2005 reiterates the general requirement contained in article 11 of the *AML Law* (*i.e.* the requirement to pay special attention to transactions or proposed transactions that may represent serious evidence of or be related to the crimes set out in the *AML Law*) (art.7). In addition, the COAF/FIs must pay special attention to the following types of transactions which covers, to some extent, the elements of Recommendation 11.

591. Factoring companies are required to pay special attention to the following types of transactions:

- business transactions worth BRL 50 000 or more, normally conducted through a specific type of securities or services and suddenly changed into another type;

- transactions and proposed transactions worth BRL 50 000 or more, paid by bank account of third parties, unless this payment is part of the customer's production line;

- any cash transactions worth BRL 50 000 or more conducted between the counterparts;

- transactions worth BRL 50 000 or more, conducted in boundary regions;

- transaction worth BRL 50 000 or more, not equivalent to the equity, economic activity or financial standing of the customer;

- transactions or proposed transactions worth BRL 50 000 or more, with unusual customers of other places;

- transaction contracting worth BRL 50 000 or more, conducted through proxy or any other legal document, without society or job commitments;

- transactions under the limit set out from item 1 to 7 of this Annex, which indicate a scheme to deceive the limit, due to the frequency, value or form;

- significantly increased amount of assets contracting companies sell to the factoring companies, with no apparent reason;

- attempt to make an employer of a factoring company to fail to keep record of specific report of any transaction conducted;

- transactions backed by securities, false receivable or simulated business deals;

- unwillingness to provide the information needed to perform transactions or records; act of providing false information or supplying information difficult or costly to verify;
- acting persistently on behalf of third parties or without revealing the true identity of the beneficiary;
- transactions which do not result from activities or normal businesses of customers, or transactions of unknown origin;
- disposal of faculties and prerogatives as differential factors when contracting or rendering services for great transactions, or even other special services which are valuable for any customer under normal circumstances;
- transaction or proposed transaction conducted by companies whose associates or legal representatives are foreigners, residents, domiciled or whose company is headquartered in areas considered of favored taxation, or in jurisdiction considered non-cooperative in the fight against money laundering and terrorist financing;
- any sort of transaction conducted with negotiated securities or receivables issued by companies joint companies, associates or representatives; or
- other transactions or proposed transactions may be considered as evidence of crime, due to their features, such as parties involved, values, form of conduction, means employed or lack of economic and legal basis (COAF Resolution 013/2005, Annex).

Recommendation 21

592. The banking sector has implemented many of the aspects of Recommendation 21, as described below. In contrast, CVM/FIs, SUSEP/FIs, SPC/FIs, and COAF/FIs are not specifically required to: pay special attention to business relationships and transactions with persons from or in countries that do not or insufficiently apply the *FATF Recommendations*; examine the background and purpose of such transactions with persons from or in countries which do not or insufficiently apply the *FATF Recommendations*; create written findings if those transactions have no apparent economic or visible lawful purpose; or apply counter-measures where countries fail to observe the *FATF Recommendations*.

593. The FATF reports are published on COAF's public website which all Accountable FIs are expected to regularly check. With the exception of the banking and insurance sectors, there are no other mechanisms to ensure that Accountable FIs are advised of concerns about weaknesses in the AML/CFT systems in other countries.

Banking sector

594. BACEN/FIs are required to apply enhanced due diligence to relationships involving representatives or correspondent FIs abroad, especially in countries, territories and dependencies that do not adopt record keeping and internal control procedures similar to those required in Brazil (BACEN Circular 3461/2009 art.1).

595. BACEN/FIs are also required to pay special attention to transactions by clients originating from countries that do not (or insufficiently) apply the *FATF Recommendations* (BACEN Circular 3461/2009 art.10).

596. Additionally, financial institutions involved in foreign exchange activity are required to inform themselves of the AML procedures adopted by a bank located abroad which is a counterpart in the transaction (BACEN Circular 3462/2009[74]). They are also required to identify them, and assess their performance, trade procedures and financial capacity (BACEN Circular 3280/2005)[75]. They are also required to examine transactions with natural or legal persons (including societies and FIs) who are located in countries that do not (or insufficiently) apply the *FATF Recommendations*. The findings of the examination must be recorded in writing. If the findings show no apparent economic or visible lawful purpose to the transaction, it must be reported to the competent authorities (BACEN Circular 3462/2009).

597. BACEN advises BACEN/FIs of concerns about weaknesses in the AML/CFT systems in other countries by making known the relevant reports of the FATF. COAF also publishes this information on its public website. BACEN/FIs are expected to regularly check the websites of COAF and the FATF. Additionally, BACEN issues communications to BACEN/FIs notifying them of persons and/or jurisdictions of concern.[76]

598. BACEN/FIs are required to keep for five years the documents related to the analyses of transactions and on which the decision to report (or not) to the competent authorities was made (BACEN Circular 3461/2009 art.16). BACEN's supervisory procedures foresee examining these analyses (BACEN *Supervision Manual* Title 4-30-10-50-8-1).

Ability to apply counter-measures

599. BACEN/FIs are required to pay special attention to transactions by clients originating from countries that do not (or insufficiently) apply the *FATF Recommendations*. This includes conducting strengthened monitoring over such transactions or relationships, adopting more rigorous procedures for verifying suspicious situations, conducting analysis with a view to determining whether there is a need to report to the competent authorities, and submitting to the assessment of higher management the decision of whether or not to commence or maintain relations with the client (BACEN Circular 3461/2009 art.10).

Securities sector

600. While there is no direct requirement to give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the *FATF Recommendations*, CVM/FIs are required to pay special attention to transactions involving the participation of resident natural or legal persons constituted in non-co-operative countries and territories, as provided for in the alerts issued by COAF (CVM Instruction 301/1999 art.6(VIII)).

Insurance sector

601. Likewise, SUSEP/FIs are not explicitly required to give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the *FATF Recommendations.* However, it should be noted that SUSEP does inform SUSEP/FIs about concerns of weaknesses in the AML/CFT systems of other countries. For this purpose, SUSEP has issued Circular-letters SUSEP/DECON/GAB-21/2006 (now cancelled) and SUSEP/DEFIS/GAB/13/2009. In addition, SUSEP/FIs should keep records of the analyses made on the background and the purposes of their

74 Also contained in RMCCI Title 1 Chapter 4, Item 3, s.7.

75 Also contained in RMCCI Title 1, Chapter 6, Item 6.

76 The following is a list of such communications (other than circulars) recently issued by BACEN: Communiqué 1898 (17/09/2009); Communiqué 18177 (13/03/2009); Communiqué 17203 (05/08/2008).

operations, specifying which ones were reported and which ones were not reported to COAF (SUSEP Circular Letter/DEFIS/GAB No. 27/2009).

Effectiveness

Recommendation 11

602. BACEN/FIs appeared to be knowledgeable of their obligation to pay attention to unusual transactions. The authorities were unable to provide specific information concerning the effectiveness of implementation across non-bank BACEN/FIs. CVM/FIs and SUSEP/FIs also had a high awareness of the requirements relating to Recommendation 11. COAF/FIs did not appear to be knowledgeable of their obligation under this Recommendation.

Recommendation 21

603. BACEN/FIs appeared to be knowledgeable of their obligation under this Recommendation and were aware of the lists of high risk jurisdictions of concern issued by BACEN.

3.6.2 Recommendations and Comments

Recommendation 11

604. While all Accountable FIs are required to pay special attention to transactions that may imply serious signs of the crimes foreseen in the *AML Law*, or may be related to them (*AML Law* art. 11), for SPC/FIs and COAF/FIs, this requirement does not fully address the need to have requirements that institutions give special attention to business relationships and financial transactions with persons (including legal persons and other financial institutions) from or in countries which do not or insufficiently apply the *FATF Recommendations*. BACEN, CVM, SUSEP, SPC and COAF have issued additional regulatory instruments that elaborate on the general obligation in the *AML Law* and specifically require the FIs that they supervise to pay special attention to unusual transactions. Brazil should take legislative action to broaden the requirement for SPC/FIs and COAF/FIs to pay attention to all complex, large, unusual transactions, or unusual patterns of transactions that have no apparent visible economic or lawful purpose.

605. Additionally, Brazil should take legislative action to require SPC/FIs and COAF/FIs to examine, as far as possible, the background and purpose of such transactions, set forth their findings in writing, and ensure that these findings are kept and available for competent authorities and auditors for at least five years. Also, Brazil should require CVM/FIs to retain records of their analysis for five years. Brazil should also ensure that, non-bank BACEN/FIs, SPC/FIs and COAF/FIs are effectively implementing the requirements of Recommendation 11.

Recommendation 21

606. The requirements to apply special attention to business relationship and transactions with persons from or in countries which do not or insufficiently apply the *FATF Recommendations* vary by sector. The obligations in place for banking institutions appear to fully satisfy the criteria in Recommendation 21. While there was some demonstrated level of knowledge about these requirements in the securities sector, there are no obligations applicable to brokerage houses to pay special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the *FATF Recommendations*. Brazil should take legislative action to fully extend the requirements of Recommendation 21 to CVM/FIs, SUSEP/FIs, SPC/FIs, and COAF/FIs.

3.6.3 Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
R.11	**LC**	• SPC/FIs and COAF/FIs are required to pay special attention to certain complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose, although this requirement is not comprehensive enough to fully meet the requirements of R11. • SPC/FIs, and COAF/FIs are not required to examine as far as possible the background and purpose of such transactions and to set forth their findings in writing. • CVM/FIs, SPC/FIs and COAF/FIs are not required to keep findings of examinations of the background and purpose of complex and unusual transactions available for competent authorities and auditors for at least five years. • Effectiveness for non-bank BACEN/FIs, SPC/FIs and COAF/FIs not established.
R.21	**PC**	• Scope issue: CVM/FIs, SUSEP/FIs, SPC/FIs, and COAF/FIs are not subject to the specific requirements of this Recommendation.

3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)

3.7.1 Description and Analysis

Recommendation 13 and Special Recommendation IV

STR reporting requirement

607. Accountable FIs are required to report to the competent authorities, within a 24-hour period, any executed or proposed transactions that "may represent serious indications of or being related to any of the crimes referred to in this law" (*i.e.* the *AML Law*), which include ML and FT (art.11). The use of the word *crime* in article 11, therefore, limits the STR reporting obligation to the range of predicate offences that Brazil has criminalised. This negatively impacts the rating for Recommendation 13 to the extent that the range of offences is inadequate in relation to 10 of the FATF 20 categories of designated predicate offences, including terrorist financing(see sections 2.1 and 2.2 of this report for further details). This is inconsistent with Recommendation 13 and Special Recommendation IV which require the reporting of suspicious transactions when an FI suspects that the "funds are the proceeds of a criminal activity, or are related to terrorist financing". The Interpretative Note to Recommendation 13 further clarifies that the reference to *criminal activity* refers to "at a minimum to those offences that would constitute a predicate offence as required by Recommendation 1". Nevertheless, this technical deficiency is mitigated as supervision of compliance with the reporting obligation has not revealed that this issue is having a negative impact on the implementation of the reporting obligation in practice.

608. The extent to which indications of a crime must be shown is not specified in the *AML Law*, but it appears to have been interpreted to mean that a suspicion is sufficient basis upon which to make an STR.

609. All STRs and CTRs are submitted electronically to COAF in encrypted form through COAF's System of Information (SISCOAF) (see section 2.6 of this report for further details).

Attempted transactions

610. The STR reporting obligation also applies to "proposed" (*i.e.* attempted) transactions (*AML Law* art.11(II)). In practice, COAF receives STRs concerning attempted transactions.

STR reporting for transactions which may involve tax matters

611. The requirement to report suspicious transactions applies regardless of whether the transaction is thought, among other things, to involve tax matters. No distinction is made in the *AML Law*, the BACEN Circulars, CVM Instructions, SUSEP Circulars or COAF Resolutions between signs of fiscal irregularities or signs of predicate crimes.

612. The competent authorities have also issued sector-specific regulatory instruments that further elaborate the STR reporting requirements. These are described below in more detail.

613. ***Banking sector:*** BACEN/FIs are required to report (attempted) transactions to COAF, in the form determined by BACEN and elaborated in BACEN Circular 3461/2009.

614. ***Securities sector:*** CVM/FIs are required to report within 24 hours of the transaction being verified (CVM Instruction 301/1999 art.7).

615. ***Insurance sector:*** SUSEP/FIs are subject to a dual reporting requirement. They are required to report suspicious (attempted) transactions within 24 hours of the transaction being verified (as defined in article 11 of the *AML Law* and in article 14, items I and II of SUSEP Circular 380/2008) directly to COAF, and also to SUSEP. If no transactions classified under article 13 of SUSEP Circular 380/2008 have been filed during any given month of the calendar year, the SUSEP/FI must file a negative report directly with SUSEP confirming the no filings.

616. ***Closed pension plans sector:*** SPC/FIs are required to report STRs within 24 hours of a suspicious transaction being verified (SPC Instruction 26/2008 art.11).

617. ***Other types of financial institutions:*** COAF/FIs are required to report STRs within 24 hours of their detection. STRs must be filed electronically or, when that is not possible, by any other means that will maintain the security of the information[77]. Factoring companies that have not filed any STRs for a six month period are required to inform COAF of the reasons for not reporting. This information is to be provided to COAF within 30 days of the end of the six-month period (COAF Resolution 013/2005 art.8 and 10). The requirements to report suspicious transactions related to terrorist financing are further elaborated in COAF Resolution 015/2007.

STR reporting requirement in relation to terrorism and terrorist financing

618. The STR reporting obligations extends to terrorism and terrorist financing as both of these are specifically predicate offences for ML (*AML Law,* art.1(II)). However, as explained in section 2.2 of this report, terrorist financing activity is not criminalized as a stand alone offence in a manner that is consistent with Special Recommendation II. Nevertheless, the reporting obligation does extend to a fairly wide (although not complete) range of terrorist financing activity. The financing of terrorist acts is criminalized as an ancillary (co-perpetrator) offence and the financing of terrorist organizations is criminalised to a very limited extent in Law 7170/1983. Additionally, all of the supervisory authorities in the financial sector have issued sector-specific regulatory instruments (described below) that explicitly extend the FT-related reporting requirement to persons/entities designated pursuant to S/RES/1267(1999) and S/RES/1373(2001). However, none of these measures require the reporting of suspicious transactions related to the financing, for a purpose unrelated to a terrorist act, of a terrorist organisation (other than in the limited context of Law 7170/1983) or an individual terrorist, outside of those persons and entities

[77] COAF Resolution 006/1999 art.7; COAF Resolution 010/2001 art.5; COAF Resolution 013/2005 art.8.

designated pursuant to S/RES/1267(1999) and S/RES/1373(2001). This deficiency negatively impacts the rating for Recommendation 13 and more seriously impacts the rating for Special Recommendation IV.

619. ***Banking sector:*** BACEN/FIs are required to report to COAF, in the form determined by BACEN, concerning (attempted) transactions that are undertaken on behalf or for the benefit of persons who recognisably have perpetrated or intended to perpetrate terrorist acts, participated in them or facilitated their undertaking, as well as the existence of resources pertaining to or controlled by them directly or indirectly, regardless of their value (BACEN Circular Letter 3342/2008 and Circular 3461/2009 art.13(III)). The reporting obligation also applies to transactions/attempted transactions where there is a suspicion of FT (BACEN Circular 3461/2009 art.13(IV) and para.3). In the case of transactions related to terrorism or FT, the reporting must take place within one business day of being verified (BACEN Circular 3461/2009 art.13, para.2).

620. ***Securities sector:*** The reporting obligation applies to (attempted) transactions that may be related to crimes of terrorism or FT (CVM Instruction 301/1999 art.7 and para.3). This is explained further as meaning transactions that are executed by persons who commit or plan to commit terrorist acts, participate in such acts or facilitate their its practice, as well as entities belonging to or controlled by such persons, whether directly or indirectly, and persons or entities acting under the responsibility of these persons or entities. The requirements to report suspicious transactions related to terrorist financing are further elaborated and extended in CVM Instruction 463/2008.

621. ***Insurance Sector:*** The reporting obligation applies to (attempted) transactions that may be related to crimes of terrorism or FT, regardless of their value (SUSEP Circular 380/2008, art.13, item II, letters "c" and "i"). Thus, SUSEP Circular Letter 21/2006, determines that SUSEP/FIs should report the (attempted) transactions that are undertaken on behalf or for the benefit of persons who recognisably have perpetrated or intended to perpetrate terrorist acts, participated in them or facilitated their undertaking. The requirements to report suspicious transactions related to terrorist financing are further elaborated in SUSEP Circular-Letter SUSEP/DECON/GAB/No 21/06.

622. ***Closed pension plans section and other financial institutions:*** SPC/FIs and COAF/FIs are required to promptly report to COAF (attempted) transactions, of any value, involving persons linked to terrorism, or property owned/controlled directly or indirectly by such persons, and persons/entities designated pursuant to S/RES/1267(1999) and S/RES/1373(2001) (COAF Resolution 015/2007; SPC Instruction 26/2008 art.11).

Additional elements

623. Accountable FIs are required to report to the FIU when they suspect or have reasonable grounds to suspect that funds are the proceeds of all criminal acts that would constitute a predicate offence for money laundering domestically.

Recommendation 14

Protection from criminal and civil liability

624. Accountable FIs are protected from civil and administrative liability when they report in good faith (*AML Law* art.11(II), para.2). Neither supervisory authorities nor private sector representatives have ever encountered difficulties in this regard. Additionally, the processes and procedures for STR reporting to COAF (*i.e.* directly through a secure website) are such that it would in practice be very difficult for anyone outside of COAF to track from where and from whom an STR originated, thus establishing an

additional factual hurdle which could hinder a potential plaintiff. These legal requirements have been reiterated by three of the supervisory authorities in sector-specific regulatory instruments.[78]

Prohibition from tipping off

625. Accountable FIs are prohibited from informing the customer (tipping off) of the fact that an STR is being reported (*AML Law* art. 11(I) and (II)). The tipping off provision specifically applies to attempted or executed transactions. These legal requirements have been reiterated by four of the supervisory authorities in sector-specific regulatory instruments.[79] Neither the supervisory authorities nor law enforcement agencies were aware of "tipping off" ever having occurred.

Additional elements

626. There are measures in place to ensure that the names and personal details of staff of FI that make an STR are kept confidential by the FIU. In particular, public servants (including FIU employees) are prohibited from disclosing, without justification, the content of particular documents, confidential correspondence or the information contained in the systems/databases of the public administration (*Criminal Code* art.153). It is an offence to breach this duty of confidentiality (*Criminal Code* art.154). Other provisions imposing secrecy obligations on public servants can be found include article 116(VIII) of Law 8112/1990 and article 11(4) of Decree 2799/1998.

Feedback and guidance related to STRs (Recommendation 25)

627. COAF gives feedback to banks concerning the quantitative and qualitative levels of the STRs filed, and the percentage of their utility in COAF's analysis process. To provide this feedback, COAF uses a 2x2 Matrix that takes into account the quality of the STR based on two variables: *(i)* the form (necessary information provided in the form); and *(ii)* the content (further information provided in the form that adds value to COAF's analysis process). Depending on the combination between form and content, a rating is given to the reporting entity as follows:

- 1 – bad form, bad content;
- 2 – good form, bad content;
- 3 – bad form, good content; or
- 4 – good form, good content.

628. In 2008, COAF prepared a report on financial intelligence and its feedback to the banking sector. That report addressed the quantitative and qualitative levels of the STRs and currency transaction reports (CTRs) filed by all banking institutions, and considered each institution individually under the 2x2 matrix. Finally, the report addressed the perspectives for the future and next steps. The banking sector was chosen as the pilot for this report because of: the volume of transactions involved; the fact that this sector files the highest number of STRs and CTRs; and the portion of Brazil's AML/CFT preventive system represented by this sector. The report was disclosed to BACEN and the Brazilian Federation of Banks Associations during a monthly ordinary plenary of the Federation.

78 CVM Instruction 301/1999 art.7(2); SUSEP Circular 380/2008; COAF Resolution 013/2005, art.9.

79 BACEN Circular 3461/2009 art.14; CVM Instruction 301/1999 art.7, para. 1); SUSEP Circular 380/2008 art.14(3); and COAF Resolution 013/2005 art.10-12.

629. BACEN has included the results of this report in its Annual Program of Supervision when: supervising the compliance with AML/CFT requirements of the nine banking institutions with the highest risk; analysing the most recent STRs from 38 FIs presenting deficiencies based on the 2x2 matrix evaluation; alerting the banking conglomerates of their low performance in filing STRs; addressing misunderstandings; and providing further elaboration on the legal provisions.

630. COAF has started a training program based on the results of this report for all banking institutions for the purpose of giving more precise and detailed feedback to each FI individually. In this context, COAF has been inviting representatives from banks to spend a day working alongside its analysts. COAF also publishes reporting statistics by sector.

631. BACEN indicated that it was quite happy with the feedback issued by COAF on the utility of STRs. Representatives of the banking sector also indicated that the feedback provided by COAF has been helpful in informing their STR reporting processes. In addition, COAF has begun a program in which some employees from reporting entities who are closely involved in STR reporting are seconded to COAF and work on STR processing, in order to sensitise them to the work conducted later in the STR reporting process.

632. However, outside of the banking sector, feedback regarding STR reporting is less effective. While COAF has disseminated feedback for STR reporting either directly or through the supervising entities of other financial sectors, several of these (for example, parts of the insurance sector, including its supervisors) were at a loss to explain why the reporting volume had developed in the way it did, and were uncertain as to how they could increase the utility of their STRs.

633. Additionally, CVM is permanently in contact (meetings, appointments, seminars, etc) with BM&F/BOVESPA, BSM and other SROs—such as AMBIMA, ABBI (Brazilian Association of International Banks), FEBRABAN and ANCOR (National Association of Brokerage Houses)—for the purpose of giving feedback on AML/CFT issues as a whole, particularly with regard to the quality and scope of STRs.

634. It should also be noted that SUSEP has issued some guidance on the reporting obligation. However, this guidance is very limited (only about five lines) and relates specifically to how reports may be sent in batches (SUSEP/DECON/GAB/No 05/07).

Recommendation 19

Currency transaction reporting

635. Brazil has implemented a system where Accountable FIs report all transactions above a fixed threshold to a national central agency (COAF) with a computerised database (*AML Law*, art.11(II)). The applicable threshold varies, depending on the type of FI. For instance, commercial banks, the Caixa Econômica Federal, banks with commercial and/or real estate portfolios, real estate credit companies, savings and loans companies, and credit co-operatives are required to report in the SISBACEN system the following types of transactions where the amount involved is equal to or exceeding BRL 100 000 (EUR 39 000/USD 58 000): deposits; withdrawals; requests for deposit/withdrawal; or issuances of administrative checks, Wire Transfer Available (TED) or any other instrument of funds transfer against payment in kind. Such reports must be filed on the date of the deposit, withdrawal or request (BACEN Circular 3461/2009 art.9 and 12(II)). For the applicable threshold in other sectors see: CVM Instruction 463/2008; SUSEP Circular 380/2008; SPC Instruction 26/2008; and COAF Resolutions 4-8, 10, 13-14 and 17. The reports that must be filed pursuant to all of these requirements are referred to as currency transaction reports (CTRs).

Additional elements

636. All CTRs are filed electronically through the System of Information of COAF (SISCOAF) which is a secure database, and is available to the competent authorities for AML/CFT purposes.

637. CTRs are covered by the constitutional principle of banking secrecy. To ensure such secrecy, this information is filed through a secure and encrypted computerised system, using a private communication network (infovia).

Statistics and effectiveness

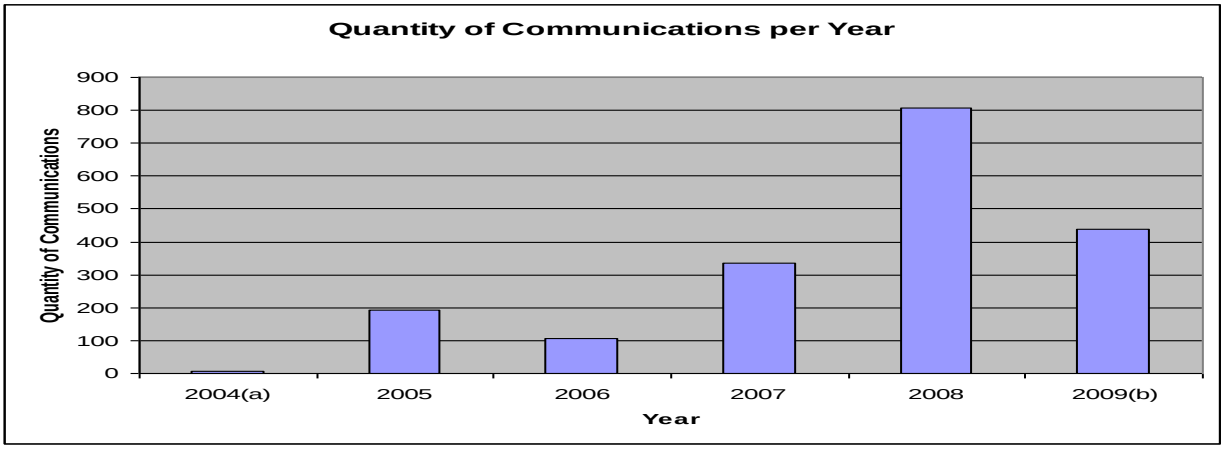
638. COAF maintains comprehensive statistics on the number of STRs that it receives from Accountable FIs, including a breakdown of the type of reporting entity making the report. It also maintains similar statistics on the number of domestic/foreign currency transactions above the prescribed thresholds (*i.e.* the CTRs). This information assists the authorities in assessing whether the reporting requirements are operating effectively across all sectors.

639. The charts below demonstrate both the growth in the number of STRs submitted by BACEN/FIs, and the growth in the number of reporting entities.

640. Most STRs are submitted by the banking sector, which files almost 90% of the total number of STRs. However, and especially since 2003, the number of STRs being filed by non-bank financial institutions has been increasing.

Number of STR reports	2000	2001	2002	2003	2004	2005	2006	2007	2008
Banks	1 798	4 335	4 432	4 254	4 976	10 079	8 286	12 121	12 602
Non-bank FIs	7	71	53	162	179	772	764	1 317	1 890
TOTAL	1 805	4 406	4 485	4 416	5 155	10 851	9 050	13 438	14 492
% of STR reports	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**
Banks	99.6%	98.5%	98.8%	96.3%	96.5%	92.9%	91.6%	90.2%	87.0%
Non-bank FIs	0.4%	1.5%	1.2%	3.7%	3.5%	7.1%	8.4%	9.8%	13.0%

641. The chart below shows the increase of STRs submitted by CVM/FIs over the past six years. In the chart below the statistics for 2004 (marked *(a)*) are from September to December 2004, and the statistics for 2009 (marked *(b)*) are from January until 13 August 2009.

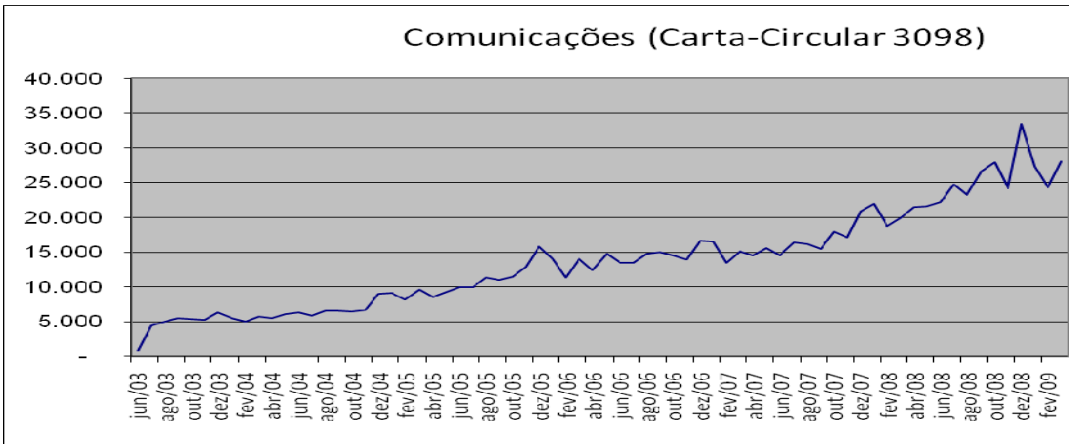


642. The precise number of CVM/FIs communications pictured in the above chart are set out in the chart below, and include an indication of how many persons were involved in these STRs.

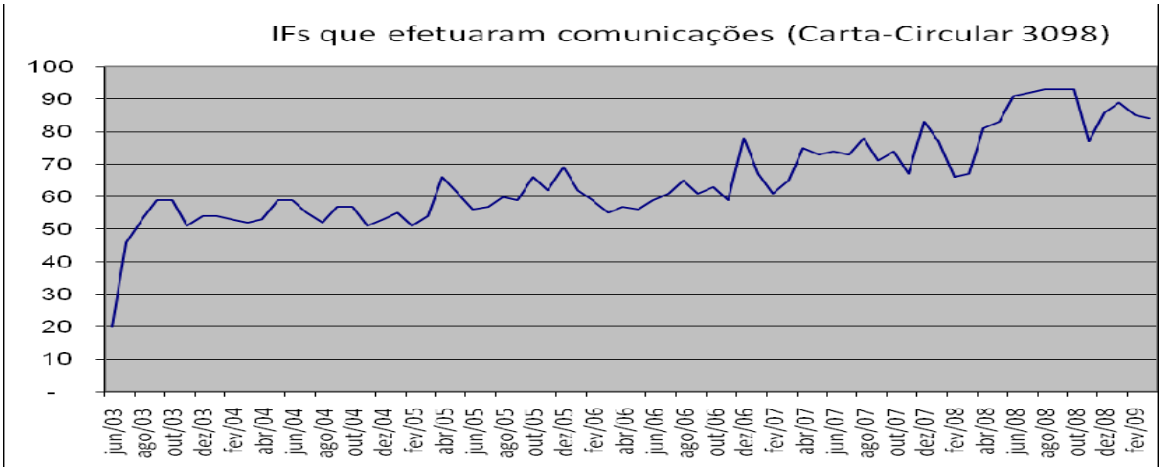
STR communications from the securities market via Internet

Year	Number of STR communications	Number of persons involved
2004	5	5
2005	194	200
2006	107	107
2007	336	336
2008	806	806
2009	438	438
TOTAL	**1 886**	**1 892**

643. As with STRs, the number of CTRs being filed has increased, with banking institutions accounting for over 99% of reports filed. The number of reporting banks was constant during this period. The following chart sets out the number of CTRs that were filed by BACEN/FIs



644. The following chart sets out the number of BACEN/FIs that were reporting CTRs during this same period.



645. Although accounting for less than 1% of the CTRs filed, the non-bank FIs have also been showing significant growth in terms of the number of reporting institutions.

No. of CTR reports	2003	2004	2005	2006	2007	2008
Banks	31 759	73 932	126 040	167 314	191 633	282 698
Non-bank FIs	411	580	631	881	1 791	3 233
TOTAL	32 170	74 512	126 671	168 195	193 424	285 931
% of CTR reports	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**
Banks	98,72%	99,22%	99,50%	99,48%	99,07%	98,87%
Non-bank FIs	1,28%	0,78%	0,50%	0,52%	0,93%	1,13%
No. of FIs that reported	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**
Banks	52	56	53	51	52	48
Non-bank FIs	55	68	96	112	144	173
TOTAL	**107**	**124**	**149**	**163**	**196**	**221**

646. The following chart sets out the number of STRs filed by SUSEP/FIs, SPC/FIs and COAF/FIs for the past eight years.

DNFBP	Until 2002	2003	2004	2005	2006	2007	2008	2009 (partial)	TOTAL
SUSEP/FIs	275	605	965	2 464	3 003	2 392	1 623	1 814	13 141
SPC/FIs	9	2	28	100	201	585	910	347	2 182
Factoring companies	84	1	27	1 795	2 877	3 417	5 212	3 654	17 067
Payment and credit card administrators	101	88	4	3	0	70	96	266	628

647. Overall, the CTR reporting system is generating a massive amount of reports. In general, COAF considers CTRs to be a fundamental tool for the performance of its financial intelligence duties. However, from COAF's perspective, some of the CTRs add very little value to the STR reporting system as regards combating ML/FT, though the supervisory agencies concerned saw some value in them for depicting market developments. The value of CTRs from a ML/FT perspective is diminished by the fact that they apply to all transactions above a particular threshold—not just transactions in currency, as is suggested by Recommendation 19. The extremely high volume of reports might otherwise overwhelm COAF if it were not for the fact that all reports are received electronically (COAF is a paperless FIU) and COAF has technological resources that are capable of filtering out low value reports, and assigning them a low priority. Nevertheless, the CTR reporting system is causing other problems that have the potential to negatively impact the effectiveness of the system. In particular, the STR and CTR reporting obligations are intertwined and somewhat confusing for SUSEP/FIs and SPC/FIs. This may explain why the number of reports are so high—particularly in the closed pension funds sector. In the insurance sector, cash business is common which may go some way to explaining the higher number of reports.

648. Finally, the STR reporting obligation in relation to terrorist financing is not very well articulated and COAF has received a low number of FT-related STRs: 13 in 2007, 20 in 2008, and 4 in 2009 (up until June of that year). Although the regulatory instruments issued by the supervisory authorities usefully extend the requirements beyond what would strictly be required pursuant to the *AML Law*, key terms, such as *terrorist act* and *terrorist organisation* remain undefined, and no guidance has been issued to clarify how these concepts are to be interpreted. This is confusing for reporting entities and means that there is not

a common understanding across the financial sector concerning the exact scope of the FT-related reporting obligation, which negatively impacts effectiveness.

3.7.2 Recommendations and Comments

649. The obligation to report STRs applies to both transactions and attempted transactions, but is limited to where there is a suspicion of one of the "crimes" mentioned in the *AML Law*. This means that the deficiencies noted in sections 2.1 and 2.2 in relation to the range of offences in 10 of the 20 FATF designated categories of predicate offences, including FT, directly impact the ratings for Recommendations 13 and Special Recommendation IV. It is hoped that Project Law 3443/2008, the bill for which is currently being considered by the Parliament, will rectify these limitations.

Recommendation 13 and Special Recommendation IV

650. As a matter of priority, Brazil should amend its legislation (law or regulation) to ensure that the STR reporting obligation, as set out in law or regulation, applies, at a minimum, to all offences that would constitute a predicate offence, as required by Recommendation 1, including the full range of terrorist financing offences (as contemplated by Special Recommendation II) and a sufficient range of other predicates.

651. Brazil should also take steps to remedy the lack of clarity in the reporting in practice of SUSEP/FIs and SPC/FIs which has the potential to undermine effectiveness. It is recommended that COAF and the supervisory authorities work jointly on addressing these areas. This might be facilitated by issuing guidance to the private sector which, for example, clarifies the distinction between the STR and CTR reporting obligations.

Recommendation 25

652. COAF appears able to provide high quality feedback to the banking sector regarding the quality of STRs received. Brazil should take measures to ensure that this type of feedback is provided to the rest of the financial sector. Such feedback should focus, initially, on clarifying scope of the FT reporting obligation for all sectors, and the reporting practice of SUSEP/FIs and SPC/FIs vis-à-vis STR and CTR reporting.

3.7.3 Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2), and Special Recommendation IV

	Rating	Summary of factors underlying rating
R.13	**LC**	• Deficiencies in the range of predicate offences and its criminalisation of FT impact on the scope of the STR reporting requirement which only covers "crimes", although this technical deficiency is mitigated as supervision of compliance with the reporting obligation has not revealed that this issue is having a negative impact on the implementation of the reporting obligation in practice. • Effectiveness: A low number of FT-related STRs has been received. FIs do not have a common understanding of the scope of the FT-related reporting obligation. The intertwined nature of the STR and CTR requirements cause confusion for SUSEP/FIs and SPC/FIs, and the lack of feedback from the FIU to these sectors means that they do not understand how to improve the quality of their STRs.
R.14	**C**	• This Recommendation is fully met.
R.19	**C**	• This Recommendation is fully met.
R.25	**PC**	• STR reporting feedback is too sharply focussed on banks at the expense of other sectors.

	Rating	Summary of factors underlying rating
SR.IV	**LC**	• Deficiencies in Brazil's criminalisation of FT impact on the scope of the STR reporting requirement because it is not a "crime" to: finance a terrorist organisation (other in very limited situations pursuant to Law 7170/1983) or an individual terrorist in circumstances unrelated to a terrorist act), other than in the context of persons/entities designated by S/RES/1267(1999) and S/RES/1373(2001) as set out in the regulatory instruments which extend the reporting obligation to those contexts. • Effectiveness: A low number of FT-related STRs has been received. FIs do not have a common understanding of the scope of the FT-related reporting obligation. The intertwined nature of the STR and CTR requirements cause confusion for SUSEP/FIs and SPC/FIs, and the lack of feedback from the FIU to these sectors means that they do not understand how to improve the quality of their STRs.

Internal controls and other measures

3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)

3.8.1 Description and Analysis

Recommendation 15

653. SPC/FIs are not subject to any of the requirements of Recommendation 15.

Banking sector

Internal procedures, policies and controls

654. BACEN/FIs are generally required to implement internal policies and procedures so as to prevent their use in the practice of the crimes listed in the *AML Law* (BACEN Circular 3461/2009 art.1). Specifically, BACEN/FIs are required to develop and implement internal control procedures to adequately identify and verify their customers, conduct ongoing due diligence, keep records and detect transactions that may be indicative of the crimes foreseen in the *AML Law.* Additionally, BACEN/FIs are required to provide adequate training to their employees concerning the internal controls (BACEN Circular 3461/2009 art.5-6).

655. The internal control policies must be approved by the institution's administration council or, in its absence, by the board of directors. Additionally, they must:

- specify, in an internal document, the responsibilities of each level of the FI's hierarchy;
- encompass the gathering and recording of timely information about customers, so as to permit the identification of risks of the mentioned crimes occurring;
- include the analysis of new products and services, from the perspective of preventing the above-mentioned crimes;
- require the verification of CDD information and the identification of the beneficial owner of a transaction; and
- make possible the identification of PEPs.

656. Internal controls must be implemented, regardless of a financial institution's size, consistent with the nature, complexity and risk of the transactions it performs. The content of the internal controls must be made available to all employees of the financial institution (CMN Resolution 2554/1998).

657. Compliance with these obligations appears to be regularly tested. Both the employees of BACEN and the relevant private sector representatives met indicated that these requirements are well known, are regularly checked for and any weaknesses identified are subsequently followed up on. In the case of credit co-operatives, the central co-operatives are responsible for inspecting their affiliates to ensure that, *inter alia*, they have adequate internal control systems in place (BACEN Circular 3400/2008, art.1; BACEN Circular 3337/2008).

Compliance management arrangements and independent audit function

658. BACEN/FIs are required to designate a director or manager who is responsible for implementing and ensuring compliance with the institution's internal controls, and inform BACEN of that person's identity (BACEN Circular 3461/2009 articles 7 and 18). BACEN maintains a database with the contact information of these persons. There is no specific requirement to ensure that the compliance officer has timely access to CDD, transaction records and other relevant information. However, in practice, it appears that compliance officers in BACEN/FIs do have access to the relevant information required to exercise their functions.

659. BACEN/FIs are required to ensure that all applicable laws and regulations are being complied with and to promptly correct any deviations. The internal auditing activity must be integrated into the internal control system. In the absence of a specific auditing unit at the FI, this function may be exercised by an independent auditing firm or entity/class association (CMN Resolution 2554/1998 art.2).

Employee training and screening

660. BACEN/FIs are required to "define the criteria and procedures for selection, training and monitoring of the economic and financial situation of the institution's employees" (BACEN Circular 3461/2009 art.1(III)). This provision was widely understood by both the private sector representatives and their supervisors to encompass a requirement to provide adequate training. In particular, it is clear that the major banks maintain regular training programs. In the context of screening for suspicious transactions, BACEN/FIs must also screen for suspicious activity by their employees or representatives, including unexpected changes in their lifestyle, behaviour or work patterns and any transaction performed by the employee/representative involving an unknown final beneficiary, contrary to the normal procedure for this type of transaction (BACEN Circular Letter 2826/1998 item I-IV).

Securities sector

Internal procedures, policies and controls

661. CVM/FIs are required to implement internal controls that enable full compliance with the provisions of CVM Instruction 301/1999 which requires CVM/FIs to conduct adequate CDD, keep records and report STRs (CVM Instruction 301/1999 as amended by CVM Instruction 463/2008, art.9 sub I). Additionally, they are to ensure continuous communication of these policies to their employees (CVM Instruction 301/1999 art.9, sub.II).

Compliance management arrangements and independent audit function

662. CVM/FIs are required to designate a director with responsibility for ensuring compliance with internal controls (CVM Instruction 301/1999 art.10). The compliance officer must be granted access to the

customer information data and any information regarding the transactions performed (CVM Instruction 301/1999 art.10).

663. CVM/FIs are not specifically required to maintain an adequately resourced and independent audit function to test compliance (including sample testing) with the internal controls.

Employee training and screening

664. CVM/FIs are required to maintain a continuous training program for their employees, to ensure that they are kept informed of new developments regarding AML (CVM Instruction 301/1999 art.9(II)).

665. CVM/FIs are not specifically required to put in place screening procedures to ensure high standards when hiring employees.

Insurance sector

Internal procedures, policies and controls

666. SUSEP/FIs are required to implement internal control procedures that are effective and consistent with the nature, complexity, and risks of the transactions being conducted by the business. Such internal controls must encompass the identification, evaluation, control, and monitoring of the ML/FT risks in the context of product marketing, private negotiations, the purchase and sale of assets, and the carrying on of business transactions (SUSEP Circular 380/2008 art.8).

667. At a minimum, the internal controls must include criteria and procedures for the identification of clients, beneficiaries, third and other related parties, and for maintaining records for products and practices exposed to ML/FT risk (SUSEP Circular 380/2008, art.9).

668. SUSEP/FIs—other than brokers whose total amount of brokerage in the previous financial year was less than BRL 10 000 000 (EUR 3.9 million/USD 5 8 million) ("Exempted Insurance Brokers")—must also implement:

- AML/CFT policies that include directives on risk evaluation in the underwriting business, hiring of third or other related parties, product development, private negotiations and asset transactions; and

- procedures and handbooks for the identification, monitoring and reporting of transactions that may constitute an indication of ML/FT, or be associated with these crimes.

Compliance management arrangements and independent audit function

669. SUSEP/FIs are required to appoint a director to be responsible for compliance with the *AML Law* (SUSEP Circular 380/2008 art.2, para.2). For admitted reinsurers, that person is the representative of the reinsurer who is responsible for its representative office in Brazil (SUSEP Circular 380/2008 art.2, para.3).

670. There is no provision that specifically requires the AML/CFT compliance officer and other appropriate staff to have timely access to customer identification and other CDD information, transaction records, and other relevant information.

671. SUSEP/FIs (other than Exempted Insurance Brokers) are required to develop and implement an internal audit program to verify annually their compliance with SUSEP Circular 380/2008. The society, reinsurer, or broker has the option to have this verification carried out either by its own internal audit department or independent auditors (SUSEP Circular 380/2008 art.9(V)).

Employee training and screening

672. SUSEP/FIs (other than Exempted Insurance Brokers) must also implement specific training programs to qualify staff for ensuring compliance with the *AML Law* and SUSEP Circular 380/2008 (SUSEP Circular 380/2008 art.9(VI)).

673. SUSEP/FIs (other than Exempted Insurance Brokers) are required to implement policies concerning the hiring of third or *other related parties* - a term that is defined to include the FI's employees, intermediaries, service providers, independent auditors, consultants, fund managers, third party administrators and custodians (SUSEP Circular 380/2008 art.9(I) and 3(VII)).

674. It should be noted that the exemptions noted above in relation to brokers whose total amount of brokerage in the previous financial year was less than BRL 10 000 000 (EUR 3.9 million/USD 5.8 million) allow these brokers to reduce their internal control procedures to those dealing with CDD, which is not consistent with Recommendation 15 which is applicable to all financial institutions, regardless of their size.

Factoring companies

675. Factoring companies are required to implement internal controls, in line with their size, to detect transactions that may be related to crime (COAF Resolution 013/2005 art.5, sole paragraph). Factoring companies are not subject to any of the other specific requirements of Recommendation 15.

Additional elements

676. Accountable FIs are not required to ensure the AML/CFT compliance officer is able to act independently and to report to senior management above the compliance officer's next reporting level or the board of directors. However, as noted above, for banking, securities and insurance institutions the designated compliance officer must be at the level of director, or may alternatively be at the level of manager for banking institutions. In actual practice, as far as could be ascertained by the evaluation team, there did not appear any problems with respect to the independence and reporting of compliance officers in these types of institutions.

Recommendation 22

677. CVM/FIs and COAF/FIs are not subject to any of the specific requirements of Recommendation 22. SPC/FIs do not have foreign branches or subsidiaries, so Recommendation 22 is not applicable to this sector. Foreign branches and subsidiaries (albeit not majority owned subsidiaries) of SUSEP/FIs are subject to the same provisions of SUSEP Circular 380/2008 (art.2, para.1).

678. BACEN/FIs are not specifically subject to any of the requirements of Recommendation 22 either. However, as part of the normal supervision process in relation to banks , BACEN verifies that AML/CFT policies extend to such foreign branches and offices (BACEN *Supervision Manual*, Title 4-30-10-50-08-01). Moreover, the BACEN Inspection Manual advises inspectors to ensure that there is effective compliance with home country requirements where those are higher than the host country's requirements. The evaluation team was advised by private sector representatives that where the host country requirements are more stringent than Brazil's requirements, the host country authorities regularly supervise the Brazilian institution's branch to ensure compliance with these more stringent requirements. Thus it appears that while there is no requirement in law, regulation or OEM that foreign branches and subsidiaries apply the higher of the two standards (home or host country), in practice this is the case.

Effectiveness

679. For Recommendation 15, the knowledge and awareness of these obligations was quite high among BACEN/FIs, CVM/FIs and SUSEP/FIs. However, as non-bank BACEN/FIs and factoring companies are not yet being actively supervised for compliance with these requirements (see section 3.10 of this report for further details), the authorities were unable to provide specific information concerning the effectiveness of implementation in these sectors.

680. For Recommendation 22, the team considered that those BACEN/FIs active internationally, are complying effectively, based on the written supervisory inspection manual of BACEN. Although the inspection manual is not itself a law, regulation or other enforceable means, it is a driver which was issued by a competent authority (BACEN), is understood by financial institutions to have directional effect, and which addresses the specific issues required under the essential criteria for this Recommendation. Additionally, BACEN routinely monitors for compliance, on the basis of the inspection manual and has enforcement powers which may be (and have been) invoked on the basis of non-compliance (see section 3.10 of this report for further details). Consequently, although BACEN/FIs are not specifically subject to any of the specific requirements of Recommendation 22, their effective compliance with the BACEN inspection manual (which is considered to be a relevant driver) is taken into account as a positive factor in determining the rating.

3.8.2 Recommendations and Comments

Recommendation 15

681. Brazil has implemented many of the elements of Recommendation 15 in the banking, securities and insurance sectors. However, Brazil should take legislative action to extend the specific requirements of Recommendation 15 to the closed pension funds sector (SPC/FIs), and fully extend them to factoring companies.

682. Additionally, for BACEN/FIs, Brazil should take legislative action to require them to ensure that the compliance officer has timely access to CDD, transaction records and other relevant information.

683. For CVM/FIs, Brazil should take legislative action to require them to maintain an adequately resourced and independent audit function to test compliance (including sample testing) with the internal controls, and put in place screening procedures to ensure high standards when hiring employees.

684. For SUSEP/FIs, Brazil should remove the exemption for brokers whose total amount of brokerage in the previous financial year was less than BRL 10 000 000 (EUR 3.9 million/USD 5.8 million) are exempted from the requirements of Recommendation 15.

685. Once these measures are in place, the authorities should ensure that these requirements are being implemented effectively across all sectors.

Recommendation 22

686. Other than the foreign branches and minority-owned subsidiaries of SUSEP/FIs, Brazil has not made Accountable FIs subject to the specific requirements of Recommendation 22, although it appears that, in practice, many banking institutions are implementing them. Brazil should take legislative action to requires all Accountable FIs that have foreign branches and subsidiaries to comply with the specific requirements of Recommendation 22. This will not be necessary in the case of closed pension funds (SPC/FIs) since they do not have foreign branches or subsidiaries.

3.8.3 Compliance with *Recommendations 15 & 22*

	Rating	Summary of factors underlying rating
R.15	**LC**	• Scope issue: SPC/FIs are not covered. The exemptions for insurance brokers whose total amount of brokerage in the previous financial year was less than BRL 10 000 000 (EUR 3.9 million/USD 5.8 million) are not consistent with R.15. Factoring companies are only covered to the extent that they are generally required to implement internal controls relating to STR reporting. • BACEN/FIs and SUSEP/FIs are not specifically required to ensure that the compliance officer has timely access to CDD, transaction records and other relevant information. • CVM/FIs are not specifically required to maintain an adequately resourced and independent audit function or have employee screening procedures. • Effectiveness has not been established for non-bank BACEN/FIs and COAF/FIs.
R.22	**PC**	• Except for foreign branches and subsidiaries (other than majority owned subsidiaries) of SUSEP/FIs, Brazil has not implemented any requirements in relation to this Recommendation, although BACEN/FIs appear to observe them based on an indirect requirement in BACEN's inspection manual.

3.9 Shell banks (R.18)

3.9.1 Description and Analysis

Establishment or continued operation of shell banks

687. To legally operate in Brazil, banks must be authorised by BACEN. The authorisation process requires the applicant to meet the following conditions which, according to the Brazilian authorities, make it impossible for a shell bank to be licensed and operate in Brazil:

- submission of the following documents, comprising the bank's three first years of activities:

  a) an economic-financial feasibility study that, at a minimum, must contain: an economic and financial analysis of the market segments in the region where the bank intends to operate; the projected participation in these segments, including an indication of the principal competitors in each one; a profitability expectation, including expected returns in each of the selected market segments; and financial projections showing the balance sheet evolution throughout the period and identifying the sources of inflows which make this evolution possible;

  b) a business plan detailing the bank's proposed organisational structure, with a clear determination of the responsibilities attributed to each level of the institution;

  c) specifics of the internal control structure, showing mechanisms that guarantee adequate supervision by management, and effective use of internal and external auditing as control instruments;

  d) the strategic objectives; a definition of main products, services and target public; technologies to be used in product placement and measuring network attendance; a definition of the maximum timeline for commencing business activities after BACEN issues its authorisation to do business; and a description of the criteria used in the selection of managers as well as in their designation whenever requested by BACEN; and

e) the standards of corporate governance to be observed, including details of the incentive structure and remuneration policy;

- indications of the composition of the bank's control group;
- demonstration that the bank's economic-financial capacity is compatible with the size, nature and objective of the undertaking, to be complied with, at BACEN's discretion, individually by controlling shareholders or by the control group;
- express authorisation by all members of the control group and all those holding qualified participation: a) to the Federal Revenue Secretariat, for provision to BACEN of a copy of the declaration of incomes, goods and rights, debts and real onuses, related to the three last tax periods, for sole use in the authorisation process; and b) to BACEN for access to person information as contained in any public or private system of record; and
- confirmation of the inexistence of restrictions that may, at BACEN´s discretion, affect the reputation of controllers, by applying, wherever fit, the other legal or regulatory norms related to the conditions required for exercising managerial duties in the bank (CMN Resolution 3040/2002).

688. Additionally, the authorisation to operate depends on BACEN's approval of the bank's formal constitutional acts, and is conditioned on proof being provided by all control group members and those holding qualified participation of the origin of the resources that will be used in the undertaking.

689. The start of the bank's activities must observe the schedule foreseen in the business plan. Once the authorisation to operate is obtained, and prior to the start of its activities, the bank must forward to BACEN a declaration proving that its infrastructure conforms to the business plan that was submitted. During the first three years of business activities commencing, the bank is required to present, in its management report accompanying the half-year financial statements, evidence of adequacy of the transactions conducted with established strategic objectives. An independent auditor will provide his/her opinion of the financial statements, in a specific item of the report.

Correspondent banking relationships with shell banks

690. BACEN FIs are not specifically prohibited from entering into or continuing correspondent relationships with shell banks (BACEN Circular 3462/2009[80]). However, Brazilian banks are only allowed to hold correspondent banking accounts for banks with which they regularly interact in the course of ongoing correspondent banking business and, in the context of foreign exchange transactions, BACEN/FIs are required to make themselves aware of the AML/CFT procedures adopted by a foreign bank which is a counterpart in the transaction (BACEN Circular 3462/2001[81]). Additionally, FIs are not permitted to have sub-accounts (*i.e.* payable through accounts) in relation to accounts held by non-resident financial institutions (BACEN Circular 3462/2009[82]).

691. BACEN/FIs are not specifically required to satisfy themselves that respondent FIs in a foreign country do not permit their accounts to be used by shell banks.

80 This Circular is also available in the following compilation of BACEN Circulars: RMCCI, Title 13, Chapter 1.

81 This Circular is also available in the following compilation of BACEN Circulars: RMCCI, Title I, Chapter 4, Item 3, s.7.

82 This Circular is also available in the following compilation of BACEN Circulars: RMCCI, Title 13, Chapter 1.

Effectiveness

692. The evaluation team is satisfied that the licensing process for banks makes it impossible for a shell bank to be licensed and operate in Brazil.

3.9.2 Recommendations and Comments

693. While there is no explicit prohibition on operating a shell bank in Brazil, the licensing process for banks makes it impossible for a shell bank to be licensed and operate. However, Brazil should take legislation to prohibit FIs from entering into or continuing correspondent relationships with shell banks, and require FIs to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	**PC**	• FIs are not specifically prohibited from entering into or continuing correspondent relationships with shell banks. • FIs are not required to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

Regulation, supervision, guidance, monitoring and sanctions

3.10 The supervisory and oversight system - competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)

3.10.1 Description and Analysis

<u>Authorities/SROs roles, duties, structures and resources – Recommendations 23 and 30</u>

AML/CFT regulation and supervision of financial institutions (R.23)

694. The four primary supervisory authorities in the financial sector are the: *(i)* Central Bank of Brazil (*Banco Central do Brasil*) (BACEN); *(ii)* Securities and Exchange Commission of Brazil (*Comissão de Valores Mobiliários*) (CVM); *(iii)* Superintendence of Private Insurance (*Superintendência de Seguros Privados*) (SUSEP); and *(iv)* Secretariat of Complementary Providence (*Secretaria de Previdência Complementar*) (SPC). The following table shows their competence to regulate and supervise the different sectors of the market.

Sectors – financial market		National monetary council			
		BACEN	CVM	SUSEP	SPC
FIs that receive demand deposits	Multiple or universal banks with a commercial bank portfolio	√			
	Commercial bank	√			
	Saving banks	√			
	Credit co-operatives	√			
Other financial Institution	Multiple or universal banks without a commercial bank portfolio	√			
	Investment banks	√	√		

Sectors – financial market		National monetary council			
		BACEN	CVM	SUSEP	SPC
	Development banks	√			
	Consumer finance companies	√			
	Savings and loan companies	√			
	Mortgage companies	√			
	Savings and loan associations	√			
Other financial intermediaries or auxiliaries	Commodities and futures exchanges	√	√		
	Stock exchange		√		
	Securities brokers	√	√		
	Securities dealers	√	√		
	Leasing companies	√			
	Exchange brokerage companies	√			
	Independent agents for investments	√	√		
Insurance and pension entities	Private closed pension funds				√
	Private open pension funds			√	
	Insurance companies			√	
	Capitalisation companies			√	
	Health insurance management companies			√	
Portfolio management entities	Mutual investment funds	√	√		
	Investment clubs	√	√		
	Foreign investors portfolios	√	√		
	Consortia managers for self-acquisition of durable consumer	√			
Liquidation and clearing systems	Special system for liquidation and custody of government bonds	√			
	Center for the custody and financial liquidation of private issues (CETIP)	√	√		
	Stock exchange clearing system		√		

695. In addition, the Council for Financial Activities Control (COAF) supervises factoring companies[83].

[83] Payment card and credit card administrators which are not banks (*i.e.* cards issued by stores and independent groups) are also supervised by COAF. In Brazil, about 565.2 million debit/credit cards have been issued, of which 65% (368.7 million debit/credit cards) were issued by banks and the remaining 35% (196.4 million credit only cards) were issued by shops and independent groups. The entire 35% of cards issued by shops and independent groups are "credit only" cards (*i.e.* cards for the purchase of goods and services). These credit cards are limited in their use in that they do not allow prepayment of transactions; their sole use is for use as "deferred payment". There are currently 81 institutions registered with COAF providing such a product. Traditional credit/debit cards (*e.g.* VISA, Mastercard, American Express) may

Central Bank of Brazil (BACEN)

696. As a member of the COAF Plenary, BACEN is the designated competent authority responsible for ensuring compliance with the *AML Law* and related instruments (such as BACEN Circular 3461/2009), including applying sanctions where appropriate (*AML Law*, art.12; Decree 2799/1998, art.2 and 7). It is also responsible for exercising permanent surveillance of the operations and procedures of the legal entities operating in the financial and capital markets (Law 4595/1967, art.10-11).

697. BACEN supervises the following types of banking institutions: commercial banks; multiple banks; development banks; investment banks; and the Caixa Econômica Federal (CEF). All banks in Brazil are subject the same licensing requirements, rules and supervision by BACEN, regardless of whether they are private, national, foreign, federal or state government institutions.

698. BACEN also supervises the following types of non-bank financial institutions: credit, financing and investment societies (Portaria 309/1959 of the Ministry of Finance); real estate credit societies (Law 4380/1964); securities and stocks brokers, and dealers (Law 4728/1965); credit co-operatives (Law 5764/1971; Complementary Law 130); leasing companies (Law 6099/1974); buyers' association management institutions (Law 11795/2008); representation offices of FIs headquartered abroad (the *AML Law*); micro-entrepreneur credit companies (Law 10194/2001); state development agencies (Provisional Measure 2192-70/2001); accounting audit companies and independent accounting auditors (Law 6385/1976 art.26(3) and Law 9447/1997); tourist agencies[84]; Brazilian entities managing international credit cards; and the Brazilian Post and Telegraph Company (ECT) when offering international transfers of funds linked to international postal vouchers (Law 4595/1964).

699. BACEN is also responsible for verifying the management and control mechanisms put in place by resource administrators, and the segregation between the fund administrator and management of the administering institution (although CVM is the authority responsible for supervising investment funds in accordance with Law 10313/2001).

Securities and Exchange Commission (CVM)

700. The Securities and Exchange Commission (CVM) is the designated competent authority for ensuring that entities operating in the Brazilian securities market comply with their AML/CFT obligations (*AML Law*; CVM Instruction 301/1999 art.9). The CVM is also responsible for:

- regulating the matters expressly provided for in Law 6385/1976 and Law 6404/1976 (the *Corporation Law*), with due regard for the policies defined by the National Monetary Council, and administering the registrations issued under Law 6385/1976;

- permanently controlling the activities and services of the securities market, and disclosing information relating to the market, individuals participating in it and the securities traded thereon;

only be issued by banks supervised by BACEN, and are subject to the AML/CFT requirements set out in BACEN Circular 3461/2009 and 3462/2009.

84 According to Resolution 3661/2008, the authorisation held by tourism agencies and through lodging tourism facilities expired on 29 December 2009. To continue to operate in the exchange market, such companies had until 29 May 2009 to ask BACEN for authorisation for transforming into exchange brokers which are entities regularly supervised by BACEN. The companies that have not requested such authorisation within the prescribed period can only operate as correspondents of institutions authorised to deal in foreign exchange.

- proposing to the National Monetary Council the establishment of maximum limits for prices, commissions, fees and any other benefits charged by the market brokers;

- controlling and inspecting publicly held corporations, giving priority to those not recording a profit on their balance sheets or those failing to pay the minimum compulsory dividend; and

- pursuant to its regulations, publishing draft rules and undertaking consultation processes for the purpose of improving the regulatory framework (Law 6385/1976 art.8).

701. In addition to the role of the CVM as the primary securities supervisor, the stock exchanges, commodities and futures exchanges, organised over-the-counter (OTC) market entities, and clearing and settlement entities (collectively referred to as the Securities SROs) have some supervisory authority over their members and the securities traded thereon (Law 6385/1976 art.8, para.1; Decree-Law 3995/2001). The Securities SROs role only extends to CVM/FIs in Brazil. Foreign branches and subsidiaries fall under the exclusive supervision of CVM.

702. Law 6385/1976 establishes that the Securities SROs have administrative and financial autonomy, but are ancillary entities of the CVM, operating under its supervision (art.17). The Securities SRO are specifically required to supervise their respective members and the securities transactions carried out by them (art.1, para.1). The CVM leverages off the supervisory activities of the Securities SROs (particularly the two main self-regulatory organisations for this sector—Brazil's securities, commodities and futures exchange (BM&FBOVESPA) and BOVESPA Market Supervision (BSM)—including for the purpose of supervising compliance with AML/CFT requirements. The role of the Securities SROs is to assist the CVM which has ultimate responsibility for supervising the securities markets.

Superintendence of Private Insurance (SUSEP)

703. SUSEP is the supervisory authority for the insurance, reinsurance, opened pension plan, and capitalisation industries. It is designated with authority to supervise SUSEP/FIs for compliance with AML/CFT obligations and for prudential purposes.

704. As the designated competent authority in charge of supervising the creation, organisation, and operations of insurers (Decree 73/1966, art.36), SUSEP's role entails:

- processing applications for the authorisation, formation, organisation, procedures, merger, takeover, grouping, transfer of control, and reformation of by laws of insurers, and expressing its opinion about these matters to CNSP;

- issuing instructions and circulars to regulate the insurance business, according to CNSP guidelines;

- establishing compulsory policy wordings, operational plans and rates for the insurance industry;

- approving operational limits for insurers, according to criteria established by CNSP;

- reviewing and approving the conditions for special covers, and establishing the applicable rates;

- authorising transactions of assets compulsorily registered in segregate accounts as a guarantee of reserves legally required;

- supervising the compliance of SUSEP/FIs with the general accounting and statistical standards established by CNSP;

- supervising the operation of SUSEP/FIs, including their compliance with Decree 73/1966, CNSP Resolutions, and other applicable legislation and regulations, and imposing penalties;
- liquidating insurers whose authorisation to carry on insurance business has been withdrawn; and
- organising and budgeting its services.

Secretariat of Complementary Providence (SPC)

705. SPC is the designated competent authority responsible for supervising closed pension funds for compliance with their obligations under the *AML Act* and other applicable legislation.

Council for Financial Activities Control (COAF)

706. COAF is the designated competent authority for ensuring that Accountable FIs, which do not otherwise have a supervisor, comply with their AML/CFT obligations (*AML Law,* art.10 and 14; Decree 2799/1988, art.7(V)). COAF is responsible for supervising factoring companies.

Structure and resources of supervisory authorities (R.30)

Central Bank of Brazil (BACEN)

707. All units of BACEN play a role in AML/CFT.

- The Department of Prevention Against Financial Illicit Acts and of Attendance to Information Demands of the Financial System (DECIC) (under the Deputy Governor for Supervision) is responsible for working with BACEN's supervision units, with a view to ensuring that they take action to prevent ML/FT and other illicit abuses of the financial system.
- The Department of Financial System Surveillance and Information Management (DESIG) monitors the markets regulated by BACEN. It is responsible for signalling situations or events that are not in conformity with the behavioural standards expected in relation to normative questions, exposure to risks and financial/balance sheet irregularities.
- The Department of Analysis and Control of Disciplinary Actions (DECAP) is responsible for adjudicating administrative penalty proceedings, including those undertaken pursuant to the *AML Law*.
- The Department of Supervision of Banks and Banking Conglomerates (DESUP) and Department of Supervision of Credit Unions and of Non-Banking Institutions (DESUC) evaluate the sufficiency of the AML/CFT measures adopted by BACEN/FIs.
- The Financial System Organisation Department (under the Deputy Governor for Financial System Regulation and Organisation) applies AML/CFT criteria in its licensing of FIs.

708. There is some concern that, among the staff of the banking supervision and non-banking supervision areas of BACEN, there are only six that are specialists in AML issues. While the evaluation team understood that the specialists are employed as multipliers in giving training to other inspectors and are sometimes brought in to inspect specific AML criteria of banks, given the volume of the supervisory workload entailed by the supervisory cycle of the Brazilian banking sector, there remains strong concern that six specialists is not a sufficient number of staff for the task. It is understood by the team that BACEN uses inspectors who are supposed to be employable to check compliance with any of the requirements of

supervised entities and that many inspectors have attended a training session on AML issues within the last two years. There remains concern that some inspections are carried out only by inspectors who have never had such training.

709. In addition, given the very large non-bank sector of FIs under the jurisdiction of BACEN, it appears that it may need additional resources in order to progress past mere awareness-raising to regular inspection and enforcement of AML/CFT obligations.

710. BACEN staff are hired through a process that involves a public contest, examinations of relevant knowledge and a review of qualifications.

711. BACENs staff are subject to the duties established in Law 8112/1990, Law 8419/1992, Law 8730/1993, Law 9650/1998, Decree 1171/1994 (Code of Ethics), BACEN's regulations and internal norms, and other and normative rules applicable to federal public civil servants.

712. BACEN staff in the supervision area frequently participate, as facilitators or trainees, in training courses concerning AML/CFT and foreign exchange controls. From January 1999 to June 2009, 57 courses concerning foreign exchange matters were provided for a total of 699 participants. In the ten years between 1998 and 2008, 29 AML/CFT training courses were provided for BACEN supervision staff (a total of 382 participants). A full list of the AML/CFT training courses provided is set out in Annex 6 of this report. Additionally, in the seven years from 2002 to 2008 inclusive, BACEN supervision staff participated in 15 international training courses related to AML (see Annex 7 for further details).

Securities and Exchange Commission (CVM)

713. The chart below shows the staff and the core attributions of the five CVM divisions which work directly or indirectly in prudential and AML/CFT issues. The on-site inspection function is also supported by the on-sight inspection teams of the Securities SROs. The Securities SROs have significantly more staff dedicated to on-site inspections. For instance, BSM/BOVESPA has 30 inspectors, and the BM&F/BOVESPA (the stock exchange) is currently in the process of hiring additional inspectors. Consequently, the CVM appears to have sufficient staff to carry out its supervisory role because it manages to leverage off the inspection teams employed by the Securities SROs of BM&FBOVESPA and BSM.

Division	Staff	Core Attributions
Division of Relations with the Market and Financial Intermediaries (SMI)	50	Coordinate, follow and supervise the securities distribution system entities, ensuring that the equitable commercial practices and the efficient and regular operations of exchange, counter, organised over-the-counter and derivative markets are observed; Coordinate, follow and supervise the registration of members of the securities distribution system and the entities that operate in the securities market, as well as service providers, such as custody, liquidation, bookkeeping and issuance of security certificates. Propose and supervise the compliance with the norms related to the operation of the securities distribution system and the operation of derivatives markets; and Supervise the services and activities of entities that operate in the securities market and derivatives market, including the dissemination of information.
Division of Relations with Institutional Investors (SIN)	48	Coordinate, follow and supervise records for the collection of funds, formation of investment companies, portfolios of foreign investors and investment clubs; Coordinate, follow and supervise accreditations to perform activities of

		securities portfolio administrator, consultant and analyst; and Coordinate, follow and supervise the activities of domestic and foreign institutional investors registered at the CVM, and propose and supervise the compliance with the norms related to the records and dissemination of data of these institutional investors.
Division of External Oversight (SFI)	55	Directly follow, supervise and guide participants in the securities markets, and also conduct on-site inspections.
Division of Sanctioning Processes (SPS)	36	Conduct administrative procedures linked to enforcement activities.
Division of Foreign Relations (SRI)	9	Manage the execution of agreements established for technical cooperation, exchange of information about joint oversight between the CVM and the corresponding entities in other countries; and Represent the CVM at foreign institutions related to regulatory entities, or other entities that act in the securities area, coordinating the execution of all required activities.
TOTAL	**198**	

714. CVM staff are subject to the same normative rules applicable to all federal public civil servants (see above in relation to BACEN staff). CVM staff are hired through a process that involves a public contest, examinations of relevant knowledge and a review of qualifications. This process does not give rise to any concerns with respect to their professional standards, including standards concerning confidentiality, integrity or skills.

715. CVM inspectors receive ongoing training specifically on AML/CFT matters. This expertise is then shared informally through regular contact with the Securities SROs. Inspectors of the CVM appear to have access to sufficient training to fulfil their role as AML/CFT supervisors. Although there are no similar training programs for the inspectors of Securities SROs, the CVM shares its AML/CFT knowledge and expertise with them, including through official letters of information. Additionally, inspectors of BSM/BOVESPA use a comprehensive audit methodology that sets out 176 types of tests to check compliance with both AML/CFT and prudential measures.

Superintendence of Private Insurance (SUSEP)

716. In its organisational structure, SUSEP has established a permanent AML/CFT committee (SUSEP Order 2985/2008). The committee has seven members that, in addition to their routine jobs, are responsible for advising the superintendence on AML/CFT policies and procedures, and making decisions on relevant internal operational issues. The committee has the necessary independence to perform its duties.

717. SUSEP has 24 inspectors (12 teams, of two inspectors each) in its Supervision Department that carry out on-site inspections which include an AML component. Additionally, the Economic Control Department of SUSEP verifies the source of funds of the shareholders of SUSEP/FIs. SUSEP's internal rules and organisation are set out in Deliberation 132/2008. Since SUSEP implemented the continuous inspection model in June 2008, it has become apparent that more inspectors will be needed. SUSEP has already recognised this issue and is in the process of recruiting about 130 more people.

718. SUSEP's staff are recruited through official examinations and must meet the requirements of Law 8112 (art.116(VIII)). SUSEP staff are subject to the Professional Code of Professional Ethics of the

Staff of SUSEP which establishes rules on the duty to observe strict confidentiality (Annex of SUSEP Deliberation 83/2003 art.3(XVII)).

719. SUSEP administers training programs for its inspectors that include components on AML/CFT, the structure of COAF, the new AML/CFT requirements of SUSEP Circular 380/2008, ML/FT typologies and handbooks of inspection procedures.

Secretariat of Complementary Providence (SPC)

720. The SPC has six regional offices, in addition to its headquarters. The SPC structure also includes a dedicated supervisory department.

721. The SPC does not have any inspectors in its own budget. Instead, it uses 120 inspectors that were seconded to it from the tax authority, following the merger of the Brazilian income tax and social security authorities which were merged into one entity several years ago. These inspectors were originally hired through the standard competitive test that applies to all civil servants (the concurso public). Additionally, it should be noted that all of these inspectors formerly worked in the social security area of the tax authority—an area which is relevant to the closed pension fund business. Of these 120 inspectors, approximately 80 to 90 conduct on-site inspections. The remainder conduct off-site monitoring and other activities. SPC inspectors are required to comply with the confidentiality provisions set out in Law 8112/1990 (art.116(VIII)).

722. SPC inspectors receive little training on AML/CFT. Instead, their training is predominantly aimed at internal controls and risk management, focusing on the prudential activities of closed pension funds.

Council for Financial Activities Control (COAF)

723. COAF has only four staff members[85] allocated to its supervisory work. This is not a sufficient number of staff to carry out effective supervision of all of the entities that COAF is responsible for supervising.

724. The hiring principles of COAF's supervisory staff are in line with those relating to its FIU function. Additionally, these staff receive adequate training related to AML/CFT issues. Further information about COAF's structure, resources and training for employees is contained in section 2.6 of this report.

Authorities powers and sanctions – Recommendations 29 and 17

Supervisory powers (R.29)

Central Bank of Brazil (BACEN)

725. BACEN has various supervisory and sanctioning powers over entities that directly or indirectly operate in the financial and capital markets (Law 4595/1964, art.10(IX) and art.11(VII)).

726. BACEN actively exercises these powers to supervise the banking institutions for compliance with AML/CFT requirements. However, BACEN has not yet undertaken active supervision of the non-bank

[85] As of January 2010, there are six members on COAF's supervisory team. The two new members were added following a staff reshuffling and resource allocations provided by the Ministry of Finance.

institutions that fall within its jurisdiction. To date, BACEN's activities in the non-bank sector have been limited to awareness raising on AML/CFT issues. This means that, currently, non-bank BACEN/FIs are not subject to adequate supervision for compliance with the *FATF Recommendations.*

727. Until July 2007, BACEN's AML/CFT supervision of banks was carried out by the Financial System's Department of Prevention against Financial Illicit Acts and of Attendance to Information Demands (DECIC), one of the units of BACEN´s surveillance area. This supervision involved three primary strategies:

- ACICs (Internal Controls and Conformity Evaluation), under which the AML/CFT processes of banks were verified through off-site analysis and on-site visits;

- Rating – Classification of FIs, whereby working papers were issued concerning AML/CFT risks and internal controls, with a view to providing DESUP with information about risks and the adequacy of the internal AML/CFT procedures and controls being implemented by banks; and

- ACIC-Follow-up, under which BACEN checks whether banks have taken action to remedy the deficiencies identified during the ACIC.

728. DESUP and DESUC have responsibility for evaluating the AML/CFT processes being implemented by BACEN/FIs and ensuring that any deficiencies are corrected (BCB Directive 40356/2007, Vote 133/2007).

729. The new version of the *Supervision Manual* (published by Directive 47744/2008) foresees the following steps in the AML/CFT supervision undertaken by DESUP and DESUC:

- VE-AML – Special Verification entails evaluating the adequacy of the AML/CFT procedures and controls implemented by BACEN/FIs, particularly their compliance with the obligations contained in the *AML Law*, Decree 5640/2005 (which enacted the *Terrorist Financing Convention*) and BACEN´s norms. It is an in-depth verification that includes conducting adherence tests to evaluate the quality of the detection, analysis and reporting of STRs. The tests include cross-referencing the FI's customer base with information on persons who have been reported by other FIs, on the basis of a suspicion of ML. This work is equivalent to the foregoing assignments of ACIC, except that it is performed on-site.

- VE-FOLLOW-UP verifies the improvements to the AML process implemented by the institution/conglomerate as part of correcting the deficiencies pointed out during supervision, and has a scope is similar to that of ACIC-Follow-up.

- VE-PPE which focuses on evaluating the adequacy of the internal controls implemented by FIs/conglomerates, with a focus on whether adequate measures are in place with respect to PEPs.

730. In addition, DESUP carries out assignments in the context of the SRC – Risk and Control Evaluation System, which is BACEN's framework for risk-based supervision. It consists of a comprehensive procedure of evaluating the activities of banking institutions and their financial conglomerates, and includes a consideration of the relevant ML/FT risk, and the existing procedures and controls to mitigate this risk.

731. Banking institutions are subject to periodic inspections. The BACEN *Supervision Manual* sets out the following specific procedures relating to AML/CFT supervision:

- evaluating the FI's organisational structure, as it relates to AML/CFT;
- evaluating the procedures and tools for detecting, selecting, analysing and reporting operations for which reporting is mandatory and independent of suspicion (*i.e.* operations carried out in relation to pre-paid cards);
- evaluating CDD procedures and know-your-employee procedures;
- evaluating AML/CFT training programs; and
- evaluating the institution's auditing work to verify compliance with internal controls and applicable AML/CFT laws/regulations (Title 4-30-10-50-08-01).

732. For banking institutions, the inspection process is risk-based. In general, inspections of smaller institutions will occur every 18 months. However, if a problem arises, a specific inspection (including an AML/CFT thematic inspection) can be carried out at any time. In addition, the primary steps involved in AML/CFT supervision conducted by DESUP and DESUC, as detailed in new version of the Supervision Manual published by Directive 47744/2008, include a process under which requests for corrections may be issued during on-site visits. Whether or not these corrections have been made may be verified in later follow-up. Inspections of large institutions may take up to three months and involve eight to 10 inspectors. For smaller institutions, an inspection may take 20 to 30 days and involve two to three inspectors.

733. For non-bank BACEN/FIs, a risk-based approach to supervision has not yet been implemented and the inspection process is not comprehensive. It is an issue that, currently, the process is focused mainly on awareness raising and ensuring that non-bank institutions have internal controls in place. Part of the challenge is that there is a large number of non-bank institutions which are smaller and may be located in remote areas.

734. Financial secrecy in relation to deposit accounts, applications and investments cannot be used as a basis for preventing BACEN from carrying out its supervisory role or compromising its power to verify, at any time, any illicit conduct by the FI's controllers, managers, members of statutory councils, associate managers, heads or representatives (Complementary Law 105/2001, art.2, para.1).

735. Records of deposits, checks and other documents referred to in BACEN Circular3290/2005 must be maintained in the form of electronic files, at the disposal of BACEN, for the minimum period of 10 years from the time of the transaction or other activity (art.5). In the case of deposit accounts, proposal cards and identification documents must be kept in their original form for at least five years, after which time they may be converted to micro-film (CMN Resolution 2025/1993, art.3).[86]

736. Agents authorised to operate in the foreign exchange market are required to keep documents concerning the identification of the issuer of funds from abroad, including the address, for the information of BACEN when so required (RMCCI, Title 1, Chapter 3, s.2(2)). Unless otherwise prescribed by legislation, authorised agents must also keep, in physical or electronic form, documents related to foreign exchange transactions, for five years from the end of any exercise in which the contracting, liquidation, cancellation or write-off, takes place, so that BACEN may verify the records immediately and without cost. Such records must include the original documents and files with the digital signatures of the parties, the respective digital certificates in the context of ICP-Brazil (if required by regulation) or the document

[86] BACEN Circular 3461/2009, which revoked BACEN Circulars 2852/1998, 3339/2006, 3422/2008, and articles 1 and 2 of BACEN Circular 3290/2005, consolidating the *Anti-Money Laundering/Counter Terrorism Financing (AML/CFT) Central Bank´s regulation*, did not alter the conditions previously established related to the period for keeping documents and records, as dealt with in its article 11.

file (if the applicable regulation does not require the original to be retained) (BACEN Circular 3401/2008[87]).

737. The exemption from the protection of otherwise confidential information under Complementary Law 105 was clearly understood by both the supervisors and private sector representatives with whom the evaluation team met to extend to any supervisory purpose.

738. BACEN is authorised to apply the sanctions set out under article 11(VII) of the *AML Law* in relation to breaches of AML/CFT requirements. Additionally, it may enforce AML/CFT compliance through the exercise of its general sanctioning powers contained in Law 4595/1964 art.10(IX). The Minister of Finance is the recourse body in the administrative penalty processes issued by BACEN.

Securities and Exchange Commission (CVM)

739. CVM is authorised to supervise all institutions that operate in the securities market. In particular, the CVM is required to check whether CVM/FIs are effectively observing article 9 of CVM Instruction 301/1999 which references compliance with the *AML Law*.

740. CVM conducts both off-site on on-site inspections. To conduct off-site inspections, CVM uses a system of real-time, on-screen access to all operations being conducted in the securities markets. This allows CVM to know in real time who is buying, selling or intermediating at any given time, with a view to determining whether there is a need to look deeper and conduct an investigation. To facilitate this work, CVM is supported by the Securities SROs which develop market oversight routines, keep track of buyers and sellers in the market, cross-check information over the phone and provide their reports to the CVM. Additionally, the CVM has a centralised registration system which means that it does not need to physically go to an intermediary's premises to obtain information on buyers.

741. On-site inspections are also conducted by CVM. CVM inspections are generally more targeted than those conducted by the Securities SROs, and are used to check compliance with AML/CFT requirements, including CDD measures. Additionally, CVM has the power to summon any person, at its discretion, to provide it with information (Law 6385/1976, art.8, para.3).

742. Additionally, on-site inspections are conducted by the Securities SROs. BSM/BOVESPA inspects all brokers on an annual basis with teams of two inspectors visiting an institution for about one month conducting audit tests. To facilitate this work, BSM/BOVESPA implemented a new audit methodology in 2009, which includes sample testing for compliance with AML/CFT requirements as well as prudential issues. BSM/BOVESPA is able to audit about eight to nine CVM/FIs per month. The Securities SROs report regularly to the CVM on the results of market supervision and audits. If any evidence of violations are found, the Securities SROs are required to report immediately to the CVM, even outside of the monthly reporting cycle. Likewise, BM&F/BOVESPA inspects each market participant on an annual basis. These inspections focus very heavily on compliance with CDD measures.

743. CVM/FIs shall make available, whenever requested by the CVM, all data and documents related to their transactions performed or recorded in the securities market (Law 6385/1976). Specifically, CVM has the power to:

(a) examine and extract examples of accounting records, books or documents, including electronic programs, magnetic and optical files, as well as any other files, and the paperwork of independent auditors, of the following entities:

87 This Circular is also available in the following compilation of BACEN Circulars: RMCCI, Title 1, Chapter 6.

(i) individuals and corporations pertaining to the securities distribution system (art.15);

(ii) publicly-held corporations and other issuers of securities and, whenever there are indicia of illegal activities, of the corresponding controlling and controlled companies, affiliated companies and companies under common control;

(iii) investment funds and corporations;

(iv) securities portfolios and custodians (art.23-24);

(v) independent auditors;

(vi) securities analysts and consultants; and

(vii) other individuals or legal entities whenever they participate in any irregularities, which shall be investigated according to item V of this article, to ensure the non-occurrence of any illegal acts and inequitable acts;

(b) issue subpoenas requesting information or clarifications of the above-noted persons, under penalty of a fine, without prejudice to other applicable penalties;

(c) request information from any government agency, autarchy or public corporation;

(d) require publicly-held corporations to republish their financial statements, reports or information released, duly corrected or amended;

(e) investigate, through administrative proceedings, illegal acts and inequitable practices of managers, members of the finance committee and shareholders of publicly-held corporations, intermediaries, and other market participants; and

(f) apply penalties to any person committing the violations referred to in the previous item, regardless of civil or criminal responsibility (Law 6385/1976 art.9 and 11).

744. As is the case with BACEN, the CVM is authorised to access otherwise confidential client data for supervisory purposes without the need for judicial authorisation further to an exemption in Complementary Law 105/2001 (art.2).

745. CVM is authorised to apply the sanctions set out under article 11(VII) of the *AML Law* in relation to breaches of AML/CFT requirements. As well, it may leverage off of its general investigation and sanctioning powers. In particular, the CVM has the authority to investigate and impose sanctions in relation to violations of the securities market laws whenever the material actions or omissions occurred in Brazil or whenever there have been damages to individuals living in Brazil, regardless of where the incident occurred (Law 6385/1976 art.9, para.6).

746. The Securities SROs also have the authority to take administrative action and apply sanctions in relation to breaches of the securities law or stock exchange rules. The Securities SROs use independent auditors to confirm that changes requested by them have been implemented.

Superintendence of Private Insurance (SUSEP)

747. SUSEP has powers to supervise compliance with AML/CFT obligations which are defined in Decrees 73/1966 and 261/1967, Complementary Laws 109/2001 and 126/2007, the *AML Law*, CNSP Resolution 97/2002 and SUSEP Circular 380/2008.

748. SUSEP conducts both off-site and on-site inspections. Off-site inspections involve analysing information on the institution's financial situation, including its assets and liabilities (*i.e.* prudential information) and STR information (SUSEP/FIs are subject to a dual reporting obligation and must report simultaneously to both the FIU and SUSEP, as described in section 3.7 of this report). SUSEP reviews such information and, if irregularities are detected, may proceed with an on-site inspection.

749. On-site inspections are conducted to ensure that SUSEP/FIs are complying with AML/CFT obligations. Such on-site inspections may cover exclusively AML/CFT, or may encompass this within a broader scope of compliance with prudential measures. The inspections carried out by SUSEP regularly include AML/CFT risk as one risk in a broader envelope of (mostly prudential) risks being examined. In so doing, the SUSEP inspectors follow their own supervision manual and are also able to leverage off the AML-specific reporting requirements of those businesses which conduct annual audits. SUSEP also exercises its inspection power to ensure that SUSEP/FIs have taken corrective action as directed.

750. In June 2008, SUSEP adopted a model of continuous supervision which means that, for larger SUSEP/FIs, inspectors remain permanently on-site at the institution. For smaller SUSEP/FIs, they are subject to on-site inspection of a frequency determined by SUSEP's risk model. Higher risk institutions are visited more frequently and, in any case, SUSEP endeavours to ensure that even very low risk institutions are visited at least every five years. Spot inspections may also occur outside of the ordinary inspection cycle if, for example, an irregularity is discovered. Additionally, SUSEP/FIs are subject to inspection by independent auditors. The reports of the independent auditors cover both AML/CFT and prudential issues, and are forwarded to SUSEP for review. However, SUSEP relies mainly on its own inspection procedures to determine the level of compliance.

751. SUSEP has the power to enforce compliance with internal controls and impose sanctions on SUSEP/FIs and their management for failure to comply with provisions of SUSEP Circular 380/2008 (the *AML Law* and CNSP Resolution 97/2002). SUSEP Circular 380/2008 establishes that the infringement of its provisions shall be punished according to the *AML Law* (art.12), and the regulations in force. CNSP Resolution 97/2002 defines the sanctions to be imposed on SUSEP/FIs.

Secretariat of Complementary Providence (SPC)

752. At the time of the on-site visit, the SPC was not supervising on the basis of a risk-based approach. However, the authorities indicated that, within the following month, they would be implementing such a system. This involves both off-site monitoring and on-site inspections. SPC inspections mostly focus on prudential matters, but also involve an AML component. In that regard, the inspectors verify whether internal controls have been established, are operational and incorporate the elements of the most recent AML/CFT norm applicable to this sector (from 2008). Additionally, inspectors meet with members of the compliance department and conduct sample testing with a view to detecting weaknesses in implementation of the reporting obligation. Nevertheless, the main focus in compliance with investment rules and controls. To date, the SPC has not conducted any AML-specific thematic inspections.

753. The SPC (like SUSEP) is not limited in its ability to access customer-specific information for supervisory purposes. It is able to access the confidential, customer-specific financial information held by SPC/FIs for supervisory purposes without first obtaining a judicial order.

754. SPC is authorised to apply the sanctions set out under article 11(VII) of the *AML Law* in relation to breaches of AML/CFT requirements.

Council for Financial Activities Control (COAF)

755. COAF does not have adequate powers to monitor and ensure compliance with AML/CFT requirements beyond STR or CTR reporting information. COAF is not authorised to do on-site inspections of COAF/FIs or compel the production of documents for general supervisory purposes, without first obtaining a judicial order. COAF is not included in the exemption from confidentiality for supervisory purposes that is contained in Complementary Law 105/2001 (an exemption which was granted to BACEN and CVM). Together, these limitations on COAF's powers seriously impede its ability to exercise its AML/CFT supervisory role effectively.

756. COAF seeks to work around this handicap by initiating a preliminary administrative proceeding, which is the first step in a sanctioning process, in circumstances where information gained from its role as an FIU indicate a likely weakness in AML/CFT compliance. As part of this process, COAF is able to demand answers to specific questions and compel the production of evidence. However, this is not an effective supervisory tool since it can only be used if an STR is filed which raises a concern about the compliance of a COAF/FI.[88]

757. COAF is a designated competent authority for the purpose of applying sanctions, cumulatively or not, for breaches of the AML/CFT requirements (*AML Law* art.10-12; Decree Annex 2799/1998).

Sanctions (R.17)

758. All five supervisors—BACEN, CVM, SUSEP, SPC and COAF—are authorised to apply the penalties for non-compliance with AML/CFT requirements which are set out in article 12 of the *AML Law*, in relation to those Accountable FIs within their jurisdiction.

759. The penalties in article 12 of the *AML Law* may be applied to both the institutions themselves and their *managers*. It was pointed out to the evaluation team during the on-site visit that both supervisors and private sector representatives consider the term "manager" (as used in the *AML Law*) to apply both to directors and to senior management and, indeed, sanctions have been applied to both.

760. Article 12 provides a broad range of sanctions—from warnings and fines, to prohibiting someone from holding a management position in an FI or cancelling the FI's licence to operate.

- Warnings may be applied for failure to comply with CDD and record keeping requirements.

88 Between November 2008 and November 2009, the supervisory and management teams designed a risk matrix for supervision which consisted of 16 criteria and was designed to assess the likelihood a reporting entity does not comply with AML/CFT requirements and the potential risk to the AML/CFT system that such non-compliance represents. On 1 December 2009, the risk matrix and general criteria for the initiation of preliminary proceedings against COAF/FIs was instituted (COAF Internal Instruction 13/2009). In December 2009, COAF's IT department built a system in Microsoft Access on which to run this matrix. By the end of January 2010, implementation of the system had been achieved. However, the first results of this system were not generated until after the two-month period following the on-site visit (which ended on 6 January 2010). Consequently, for the period covered by this report, effectiveness had not yet been established. On 27 January 2010, the IT department of COAF finished importing the tax-authority database, which contains information on COAF/FIs, and generated a list of approximately 5 200 reporting entities, ranked according to risk (highest to lowest). Immediately thereafter, a total of 18 administrative proceedings were initiated against the top-ranked reporting entities (*i.e.* those at highest risk).

- Variable monetary fines ranging from 1% of up to two times the value of the transaction, or up to 200% percent of the profit (presumably) obtained from the transaction, or up to BRL 200 000 (EUR 78 000/USD 116 000) must be applied whenever an Accountable FI, acting negligently or harmfully, fails to correct irregularities identified by a competent authority, fails to comply with CDD and record keeping requirements, fails to comply with a direction from COAF, or fails to report STRs or CTRs as required (art.12, para.2). Such fines may be applied to natural or legal persons.

- A temporary prohibition for a period up to 10 years, from holding a management position in any Accountable FI referred to in article 9 must be applied where there is a serious violation of the *AML Law* or evidence of the recurrence of offences that had previously been sanctioned with a fine (para.3).

- Cancellation of the legal entity's authorisation to operate or function must be applied where offences that were previously sanctioned by a temporary prohibition recur (para.4).

761. A fine shall be applied whenever an institution is acting negligently or harmfully and:

- fails to correct irregularities that provoked a warning, within the time limit set forth by the competent authorities;

- fails to carry out CDD or record keeping, as prescribed by article 10(I)-(II) of the *AML Law*;

- fails to comply, within the stipulated time limit, with instructions issued by COAF, as set forth in article 10(III) of the *AML Law*; and

- disregards a prohibition or fails to report STRs or CTRs as required by article 11 of the *AML Law* (*AML Law* art.2, para.2).

762. These penalties are clearly described as a set of sanctions that should be applied progressively, depending on the nature and severity of the breach.

763. Article 12 of the *AML Law* provides for an adequate range of sanctions. These penalties are clearly described as a set of sanctions that should be applied progressively, depending on the nature and severity of the breach. Additionally, the following sector-specific provisions apply.

Central Bank of Brazil (BACEN)

764. BACEN also has the authority to apply the specific sanctions set out in the Law 4595/1964 in relation to breaches of prudential measures that are directly relevant to AML/CFT.

Securities and Exchange Commission (CVM)

765. In addition to being the designated competent authority for the purpose of applying sanctions to CVM/FIs for breaches of the AML/CFT requirements, the CVM has the power to apply the following sanctions against CVM/FIs for violations of the securities legislation, the *Corporation Law* and any other law/resolution that CVM is responsible for enforcing, including those relating to AML/CFT:

- warnings;

- fines not exceeding the larger of the following amounts: BRL 500 000 (EUR 195 000 /USD 290 000); 50% of the amount of the securities issuing or irregular operation; or, three times

the amount of the economic advantage gained or the loss avoided due to the violation (para.1). In cases involving repeated offences, these fines can be multiplied by up to three times or, alternatively, the harsher penalties listed below may be applied (para.2);

- suspension from duties of a director administrator or member of the fiscal council statutory audit committee of a publicly-held corporation, an entity taking part in the distribution system, or any other bodies requiring authorisation or registration by CVM;
- temporary disqualification, up to a maximum period of 20 years, from occupying the above-mentioned posts;
- suspension of the authorisation or registration to conduct securities activities;
- cancellation of the registration or authorisation to carry out securities activities;
- temporary prohibition, up to a maximum period of 20 years, from practicing certain activities or transactions, in entities that comprise the distribution system or depend on authorisation or registration by CVM; and
- temporary prohibition, for a maximum period of 10 years, to operate, directly or indirectly, in one or more types of transaction in the securities market (Law 6385/19 art.9(VI) and 11).

766. These sanctions (other than warnings or fines) only apply when there has been a serious breach, as defined by the CVM rules (para.3).

767. Additionally, the CVM has the power to obtain a letter of commitment from a CVM/FI committing to refrain from certain activities or correct certain deficiencies. Such letters of commitment may be published in the Federal Official Gazette and, if not fulfilled, will result in opening or re-opening administrative proceedings against the institution (para.5-8).

768. In cases of non-compliance with an order from the CVM, fines of up to BRL 5 000 (EUR 1 950/USD 2 900) may be imposed for each day of delay (para.11).

769. In order to prevent or correct abnormal market situations, the CVM also has the power to:

- suspend trading of securities or declare the recess of a stock exchange;
- suspend or cancel the registrations provided for in the securities law;
- publish information or recommendations for the purpose of informing or advising market participants; and
- prohibit market participants, under the penalty of fine, from performing any activities that the CVM considers to be harmful to normal market functioning (Law 6385/1976 art.9, para.1).

770. The CVM has authority to investigate and impose penalties on violators whenever material actions or omission have occurred in Brazil, or where there has been damages to individuals living in Brazil, regardless of where the incident occurred (art.9, para.6).

771. As well, CVM has the authority to apply the specific sanctions set out in CVM Instructions, including those relating specifically to AML/CFT.

Superintendence of Private Insurance (SUSEP)

772. In addition to being responsible for applying sanctions against pursuant to the *AML Law*, SUSEP is also authorised to apply the sanctions set out in CNSP Resolution 97/2002. The sanctions in CNSP Resolution 97/2002 are administrative, and may be imposed against natural or legal persons who fail to comply with AML/CFT obligations.

773. Additionally, CNSP Resolution 97/2002 establishes criteria (in line with the provisions of the *AML Law*) for imposing sanctions against SUSEP/FIs. Among the sanctions that may be imposed, either on a cumulative or non-cumulative basis, are: reprimand; fine; declaration that managers are unfit or non-qualified; and withdraw of authorisation to carry on business. Aggravating or mitigating circumstances are taken into consideration.

Market entry – Recommendation 23

Central Bank of Brazil (BACEN)

774. BACEN is the licensing authority in relation to the financial institutions that it supervises. CMN Resolution 3040/2002 sets out requirements and procedures for the establishment, licensing, functioning, transfer of control and reorganisation, and revocation of the licences of BACEN/FIs.

775. As part of the licensing process, BACEN reviews the constitutional documents and financial records of the applicant to determine if it is appropriate to approve the institution's operation (CMN Resolution 3040/2002 art.7). Similar licensing criteria and conditions apply to credit co-operatives (CMN Resolution 3442/2007), buyers' association management institutions (BACEN Circular 3433/2009), micro-entrepreneur credit societies (CMN Resolution 3567/2008) and foreign exchange banks (CMN Resolution 3426/2006). Additional licensing conditions must be met if the applicant is an institution in which there is direct or indirect foreign participation (BACEN Circular 3317/2006 art.3).

776. Directors and senior management are evaluated on the basis of "fit and proper" criteria, and may only take office and assume statutory positions in BACEN/FIs upon approval by BACEN of their election and designation to that position (CMN Resolution 3041/2002 art.1). In determining whether to approve the designation of a director or senior management, BACEN must take the public interest into account. Additionally, the applicant must meet the following specific criteria:

- have a clean reputation;
- be a Brazilian resident (in the case of directors, associate managers and fiscal counsellors);
- not be ineligible, even temporarily, from holding a public position (*e.g.* by virtue of being prevented by a special law, or having been convicted of any of the following types of crimes: bankruptcy; tax evasion; prevarication; active or passive corruption; extortion; governmental service related bribery; crimes against the popular economy, public faith, property or the national financial system);
- not be prohibited or suspended from exercising the position of a director or associate manager of a FI or other institutions subject to the authorisation, control and (direct/indirect) supervision of a public administrative body/entity, including the complementary social security entities, insurance companies, capitalisation companies and open capital companies;

- not have been found responsible, in the capacity of a controller or administrator of a company, for pending debts related to title protests, judicial charges, issuing checks with insufficient funds, defaulting in obligations, or other similar occurrences or circumstances; and

- not be declared bankrupt or defaulting, or having participated in the administration or having controlled a firm or society that is in default or receivership (CMN Resolution 3041/2002 art.2).

777. BACEN may revoke its approval for an appointment, at any time, if information is received indicating that there is any irregularity or falsity of the declarations and documents presented during the selection/appointment process (CMN Resolution 3041/2002 art.8). In such cases, BACEN may also commence administrative proceedings.

Securities and Exchange Commission (CVM)

778. When an intermediary of the securities market applies for registration, BACEN sends (via SISBACEN) the general data of the applicant to the CVM for its analysis. As part of the registration process, the applicant must designate a director in charge of ensuring compliance with the AML/CFT obligations referred to in CVM Instructions 301/1999 and 387/2003 (specifically, CDD requirements and other rules of conduct). The CVM is also responsible for registering brokerage houses, and market intermediaries of bonds and securities. Rules also apply to the establishment of brokerage houses and market intermediaries (*Distribuidoras de Valores Mobiliários*) (CVM Deliberation 105/1991).

779. In sharing information with BACEN via SISBACEN, CVM leverages off the "fit and proper" criteria employed by BACEN. The same criteria are therefore employed vis-à-vis directors and senior managers of securities companies as are used regarding the directors and senior managers of banks.

Superintendence of Private Insurance (SUSEP)

780. SUSEP is responsible for authorising entities to carry on insurance, reinsurance, capitalisation and opened pension plan business. The authorisation process involves reviewing the constitution of such entities. SUSEP is also responsible for authorising the transfer of control/ownership or capital restructuring of such entities and, in appropriate circumstances, may cancel its authorisation to conduct such business (CNSP Resolution 166/2007).

781. SUSEP evaluates any potential restrictions that may, according to its understanding, affect the reputation of controllers and qualified shareholders of SUSEP/FIs. It also ensures that persons holding managerial posts or functions in a SUSEP/FI meet the necessary legal requirements and rules concerning the election/appointment of members of governing and advisory bodies of insurers, capitalisation companies, and managers of complementary open-end pension plans funds (CNSP Resolution 166/2007 art.5(VII); CNSP Resolution 136/2005). SUSEP also requires from all members of the controlling group and all qualified shareholders information concerning the source of funds to be used in the business (CNSP Resolution 166/2007 art.5(VIII)).

782. SUSEP conducts fit and proper tests on the members of the governing and advisory bodies (board of directors, fiscal council, audit committee, directorate, and others) of SUSEP/FIs based on their adequacy, expertise and integrity (CNSP Resolutions 136/2005 and 118/2004 which concerns independent auditors). A person can only be a member of the governing/advisory bodies of an insurance society, capitalisation society or complementary open-end pension fund if his/her election/designation has been ratified by SUSEP and the person meets the following criteria:

- their election/designation is not impeded by any general or special legislation;

- has a spotless reputation;
- is a resident in Brazil (for directors or fiscal counsellors);
- is not under demand for non-payment of debts, issuing checks backed by insufficient funds, non-compliance with obligations or other similar types of misconduct, either in his/her personal capacity or as part of a company of which he/she manages or has a controlling interest;
- is not personally bankrupt or insolvent, or possessing a controlling interest in or having been part of the management of any bankrupt, liquidated (or in liquidation), or insolvent company; and
- is not under a suspension penalty, and has not been declared unqualified to be a member of a governing or advisory body of any type of institution regulated by a government body or agency (CNSP Resolution 136/2005, art.2-3).

783. In addition to the basic criteria listed above, a member of the governing/advisory body of any supervised society should also have the following professional qualifications:

- having been, for at least two years, a member of the board of directors, deliberation council, consultation council, or audit council, or a director of a stock company, public or private entity, municipal, state, or federal body, or be a person of good reputation in is his/her [business or professional] activities;
- having been, for at least two years, a director, manager or directorate members (for supervised societies) of any public or private entity with responsibilities similar to those of a member of a governing/advisory body. A director responsible for a technical area of the institution have also have a background in the area concerned (insurance, capitalisation or pension plans business); or
- in the case of an application to be a member of the audit council, must have a college degree from any university in Brazil or abroad, as stipulated in the legislation for societies organised as stock companies (art.4).

784. SUSEP advised that there have been instances where a person has been denied the right to be a director of an insurance company—although there are no recent cases of refusals.

785. Additionally, SUSEP may ratify an elected/designated member of a governing/advisory body who has a minimum of three years experience as a senior advisor in any insurance society, complementary open-end pension fund, capitalisation society, or in any public or private entity authorised to operate by SUSEP or BACEN, or in the financial area of any public or private entity (art.4, para.1).

786. Independent auditors of supervised societies must be registered with the CVM and meet the minimum requirements established by this CNSP Resolution 118/2004 (art.3, para.1) and a regulation to be published by SUSEP.

Secretariat of Complementary Providence (SPC)

787. SPC is responsible for authorising the establishment of closed pension funds. There are no restrictions on the size of a company which is qualified to set up such a fund. Consequently, some are very large, while others are very small (*e.g.* in the case of small, privately-held companies).

788. As part of the authorisation process, the SPC must approve the bylaws and benefits of the fund. It also ensures that board members meet the necessary knowledge and technical requirements. However, in

considering the suitability of persons to establish and manage such funds, the focus is on the fiscal/economic situation of the person. Other issues that are particularly relevant to preventing criminals from holding or controlling such funds (*e.g.* the person's background, including whether they have a criminal history) are not considered. Additionally, no "fit and proper" tests are carried out to verify the suitability of applicants, except for members of a funds' "Executive Directorate", which need to present a clean criminal record according to article 20 of Complementary Law 108/2001.

Council for Financial Activities Control (COAF)

789. Factoring companies are not subject to any licensing or registration requirements with COAF. Consequently, for COAF/FIs, there are no measures in place to prevent criminals or their associates from owning (legally or beneficially) a significant/controlling interest or holding an executive/management function in these institutions.

Ongoing supervision and monitoring – Recommendation 23 and 32

AML/CFT and prudential regulation of FIs subject to the Core Principles

790. ***BACEN:*** According to its legal mandate, the primary objective of BACEN´s supervision is to ensure the soundness of the National Financial System (SFN) and the regular functioning of the FIs under its supervision (*Supervision Manual*, Title 3-10-20). To meet this objective, BACEN has implemented a supervisory approach that is based on the following principles: supervision focused on risk, continuous supervision and transparency. BACEN evaluates the Accountable FIs under its supervision on the basis of the risks assumed by the business and the managerial capacity within both regulatory and prudential limits. It verifies each institution's compliance with applicable laws, regulation and other norms, and facilitates the disclosure of information by BACEN/FIs, with a view to enhancing corporate governance, transparency and equity, and preventing misuse of the financial system for ML, FT or other illicit financial acts. BACEN also attends to denouncements, complaints and requests for information. BACEN also assesses the AML/CFT controls of BACEN/FIs, with a view to verifying their adequacy and quality, and ensuring that they are complying with relevant AML/CFT laws and regulations.

791. ***CVM:*** There is no specific regulation requiring the regulatory and supervisory measures applicable to CVM/FIs for prudential purposes and which are also relevant to ML, to be applied in a similar manner for AML/CFT purposes. However, in practice, the inspectors rely heavily on the real-time data they receive as part of their prudential and market conduct supervision to identify weaknesses in the compliance structure of the supervised entities.

792. ***SUSEP:*** In line with IAIS Insurance Core Principle 28, SUSEP is authorised to enforce compliance with the AML/CFT regulations. SUSEP, when conducting its general supervisory work, uses the tools at its disposal also for supervision of AML/CFT obligations. Its inspectors look at a number of risk factors that, among prudential risk factors, also includes AML/CFT risk.

793. ***SPC:*** SPC conducts prudential supervision, including inspections, of closed pension funds and incorporates some elements of AML/CFT into this work.

Monitoring money service businesses and currency exchange business (BACEN)

794. Only institutions licensed and authorised by BACEN, or entities having agreements with such institutions, are authorised to conduct foreign exchange operations, in accordance with the conditions established by BACEN (BACEN Circular 3430/2009[89]) (see above for a description of BACEN's licensing

[89] This Circular is also available in the following compilation of BACEN Circulars: RMCCI, Title 2, Chapter 2.

regime). This includes the Post Office, which is authorised to conduct international money transfer operations.

Guidance for financial institutions (other than on STRs) – Recommendation 25

795. The concept of providing written guidance on how to meet AML/CFT requirements is not a very well developed concept in Brazil. Overall, the supervisors tend to provide guidance in the form of seminars and workshops, and consultations in preparation for the issuance of a new regulatory instrument. Mainly these events are focused on raising awareness, rather than elaborating how, practically, to meet particular AML/CFT obligations. Moreover, this approach is somewhat limited in that it only reaches those institutions who are participating in such events.

796. The authorities also rely on feedback from inspection processes to provide some guidance to financial institutions. However, this approach is also limited in that the feedback may only be received by those involved directly in the inspection process (*e.g.* the compliance department, senior management) and will not, necessarily, be disseminated more broadly to all employees and front-line staff.

797. It should be noted that, in some cases, the private sector representatives met with by the assessment team indicated that the regulatory instruments (circulars, instructions, resolutions) were sufficiently detailed and needed no further elaboration. While it is true that some regulatory instruments are extremely detailed (*e.g.* the BACEN Circular 3339/2006 on PEPs; SUSEP Circular 380/2008), this is not universally the case. For instance, the COAF Resolutions set out more general requirements.

798. Moreover, other private sector representatives indicated that further guidance on some issues would be welcome. For instance, one of the areas causing particular trouble for some Accountable FIs is the identification of beneficial owners. Although the specific requirements are generally quite clear in the legislation and regulatory instruments, there is no elaboration on how this might be achieved in practice within each sector's particular business environment. Likewise, no guidance has been given to institutions on how to apply the risk-based approach and, as a result, approaches vary with some institutions doing better at incorporating AML/CFT risk into their considerations than others. Even in the banking sector, some institutions are postponing their implementation of new AML/CFT requirements, until they obtain more clarification from the supervisor.

799. To varying degrees some (but not all) private sector industry groups have issued guidance relating to AML/CFT requirements. However, guidance that is not issued by the competent authorities themselves does not fall within the scope of Recommendation 25

800. Overall, it is a serious deficiency that virtually no written guidance has been issued for any Accountable FIs concerning how to meeting their AML/CFT obligations relating to CDD, record keeping and internal controls.

Statistics and effectiveness

801. Except for BACEN and COAF, the supervisory authorities do not routinely maintain comprehensive statistics on the total number of on-site examinations conducted by it relating to or including AML/CFT, the number of breaches detected and the types of sanctions imposed, as is required by Recommendation 32. They were, however, able to provide the following information for the assessment team.

Central Bank of Brazil (BACEN)

802. BACEN (through DESUP and DESUC) carries out inspections using its SRC – Risk and Control Evaluation System. The SRC is the model adopted by BACEN to implement the process of risk-based supervision, and consists of a comprehensive procedure of evaluating the activities of financial institutions, including their internal controls, in consideration of their level of risk. AML/CFT is one of eleven risk factors taken into account by the system. The table below summarises the inspections undertaken by BACEN up to 2009 (including those planned for the second semester of 2009) for banking and non-banking institutions.

Inspections of Banking Institutions carried out by BACEN (DESUP)											
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	
										developed	planned
Acic - AML	5	24	33	20	5	7	7	4	0	0	0
Acic – Follow-up			4	10	7	24	40	5	0	0	0
Assignments abroad			0	0	0	1	8	0	0	0	0
SRC	0	0	0	0	0	0	0	19	44	24	34
VE-AML	0	0	0	0	0	0	0	0	0	2	3
VE-PPE	0	0	0	0	0	0	0	1	11	0	0
VE-Follow-up			0	0	0	0	0	0	16	1	10 (3 PPE)
VE – Foreign exchange				0	0	0	0	0	2	5	3
Inspections of Non- Banking Institutions carried out by BACEN (DESUC)											
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	
										developed	planned
Acic - AML	0	1	3	8	0	1	0	1	0	0	0
Acic – Follow-up			0	0	0	2	4	2	0	0	0
IG's	0	0	0	0	0	0	0	1	60	0	0

803. For banks, there exists an inspection cycle with a risk-based approach that mandates an inspection annually or every 18 months, or occasionally longer. Normally, AML thematic inspections are only conducted in severe cases. Prior to the on-site visit in 2009, a number of additional inspections were carried out which focused on AML specific areas, particularly regarding representative offices of financial institutions located overseas and account opening procedures of deposit account holding institutions.

804. As a result of the inspection process, BACEN has detected some breaches of the AML/CFT obligations and has applied sanctions accordingly, as indicated in the chart below.

Sanctions issued by BACEN for breaches of AML/CFT obligations

	2001	2002	2003	2004	2005	2006	2007	2008	TOTAL
Commitment Letters	3	2	1	2	4	7	4	1	**24**
Administrative penalties issued	1	4	3	1	5	7	6	2	**29**
TOTAL	**4**	**6**	**4**	**3**	**9**	**14**	**10**	**3**	**53**

805. Decisions have been taken in 17 of the above-noted Administrative Penalty Proceedings—11 of which await a decision from the appellate body, the Minister of Finance. Penalties applied to date total

approximately BRL 27 million (EUR 10.5 million/USD 15.6 million). Five managers of BACEN/FIs have been punished with prohibitions for periods ranging from one to six years.

806. In addition, BACEN has forwarded 348 reports to COAF, of potentially suspicious transactions, that were identified during its supervision activities, as indicated in the chart below.

Reports referred to COAF by BACEN

2000	2001	2002	2003	2004	2005	2006	2007	2008
18	28	78	54	62	32	31	32	13

807. No information was provided concerning what types of AML/CFT breaches these issues related to, although it was noted during the on-site visit that no severe deficiencies were detected in STR reporting. However, there is some concern that the supervisory efforts of BACEN in relation to the banking sector are overly focused on prudential issues and that this may negatively impact its overall enforcement of AML/CFT.

808. A more serious issue is the degree of supervision for the 1 952 non-bank BACEN/FIs. Prior to 2007, all AML/CFT supervisory activities pertaining to institutions supervised by BACEN were handled by one unit, which due to personnel restrictions, focused almost exclusively on the banking sector. Since the restructuring, AML/CFT supervision in the non-banking sector is carried out by the department of DESUC. The inspection process and degree of actual oversight in this area has begun with an awareness-raising campaign and is only beginning to progress towards a full-fledged supervisory regime. Not all non-bank BACEN/FIs are aware of their AML/CFT obligations, and few have been audited with regard to their compliance with such obligations. The majority of non-bank institutions (over 70%) are credit co-operatives, which are affiliated to either an independent central co-operative or a central co-operative within a co-operative system, or are unaffiliated. Central co-operatives are responsible for periodically inspecting their affiliate singular co-operatives to ensure, *inter alia*, the adequacy of their internal control systems (CMN Resolution 3342/2007, art.18; BACEN Circular 3400/2008, art.1). Additionally, each of the four large co-operative systems has a Confederation responsible for setting policy strategies and directives, management, control and supervision activities, and institutional manuals for the whole co-operative system. The composition of the credit co-operative sector in Brazil is set out in the chart below.

Co-operative systems	Affiliates	Percentage	Centrals	Percentage
Co-operative System #1	608	43.6%	14	36.8%
Co-operative System #2	134	9.6%	5	13.2%
Co-operative System #3	130	9.3%	9	23.7%
Co-operative System #4	158	11.3%	5	13.2%
Independent Centrals	60	4.3%	38	13.2%
Unaffiliated Co-operatives	304	21.8%	0	0%
TOTAL	**1 394**	**100%**	**38**	**100%**

809. BACEN targets its supervision primarily on the 38 central co-operatives and the four Confederations of the large co-operative systems, rather than on the much larger number (1 394) of unaffiliated or affiliate singular co-operatives. In 2007, BACEN conducted one work evaluating the Confederation of a large credit co-operative system (encompassing 14 central co-operatives and 621 singular co-operatives), with a view to consolidating the methodology for other supervisory works in the co-operative sector. In 2008, BACEN evaluated the Confederation and all nine central co-operatives of

another large credit co-operative system (encompassing nine central co-operatives and 130 singular co-operatives). In 2009, BACEN conducted three works in co-operative systems (encompassing 28 central co-operatives and 882 singular co-operatives). Overall, the results showed inadequate internal controls and a general lack of awareness of AML/CFT issues, although subsequent follow-up verifications of the co-operative systems previously inspected showed considerable improvement.

810. Another issue is that it does not appear that BACEN conducts any active on-site AML/CFT supervision of the Post Office's remittance activity (although it should be noted that the overall and incremental volume of the Post Office's business in this area is relatively small).

811. As well, BACEN is not currently enforcing its most recent circular; Circular 3461/2009. Inspections for the updated obligations are currently being rolled out, with enforcement to begin in April of 2010.

Securities and Exchange Commission (CVM)

812. CVM does not have a specific cycle for conducting thematic AML/CFT inspections. However, the following chart sets out the number of inspections that it has carried out in the past six years and which were exclusively focused on AML/CFT.

Year	Number of on-site inspections focused exclusively on AML/CFT
2009 (until August)	9
2008	1
2007	8
2006	9
2005	13
2004	22

813. CVM also checks for compliance with AML/CFT obligations in the contexts of non-thematic (*i.e.* general inspections). However, it was unable to provide statistics on the number of on-inspections conducted by it which were not exclusively focused on, but related to, AML/CFT.

814. The following chart sets out the number of sanctions applied by CVM, in relation to breaches that were detected both through on-site and off-site inspections.

Year	Administrative proceedings	Sanctioning proceedings	Acquitted	Warnings	Fines	Exclusions
1999	0	0	0	0	0	0
2000	21	0	0	0	0	0
2001	11	22	3	39	2	0
2002	7	7	2	12	0	0
2003	13	9	6	14	0	0
2004	4	9	5	8	4	1
2005	8	5	2	8	2	0
2006	4	10	10	4	11	0
2007	1	6	6	6	4	0
2008	2	1	1	0	2	0
2009	0	0	0	0	0	0
TOTAL	71	69	35	91	25	1

815. No information was provided concerning what types of AML/CFT breaches these issues related to.

816. BSM/BOVESPA also provided the following statistics concerning the results of its AML/CFT inspection processes for the past two years.

Date proceeding commenced	General type of AML/CFT breach to which the case relates	Status	Offer of settlement
9/22/2008	Reporting obligation	Finished	BRL 40 000* (EUR 15 600/USD 23 100)
9/22/2008	Reporting obligation	Finished	BRL 50 000* (EUR 19 500/USD 29 000)
11/18/2008	Reporting obligation	Ongoing	BRL 100 000 (EUR 39 000/USD 58 000)
1/20/2009	Reporting obligation	Finished	BRL 100 000 (EUR 39 000/USD 58 000)
2/13/2009	Internal controls	Finished	BRL 200 000* (EUR 78 000/USD 116 000)
4/9/2009	Internal controls	Ongoing	N/A
04/9/2009	Internal controls	Ongoing	N/A
10/23/2009	Internal controls	Ongoing	N/A

817. It should be noted that BSM/BOVESPA has not issued any sanctions for breaches of AML/CFT. To date, all cases have been resolved by way of an offer of settlement. Those marked with an asterisk (*) have already been paid by the CVM/FI involved.

818. Overall, the number of inspections conducted by CVM is very low; generally, a CVM inspection is not triggered unless transactional irregularities are detected in market conduct. In practice, CVM inspectors rely heavily on the real-time data they receive as part of their prudential and market conduct supervision to identify weaknesses in the compliance structure of the supervised entities. While this is positive from a resource allocation standpoint, it appeared from discussion with supervisors that absent indications from such real-time data, in-depth inspections of AML/CFT compliance issues were rare. However, this creates an issue because the data available to the CVM is geared towards inspection of market conduct and therefore not always able to pinpoint specific AML/CFT weaknesses. Moreover, this

approach places a very heavy focus on STR reporting issues and assigns insufficient importance to the concomitant obligations regarding, *inter alia*, CDD.

819. The CVM also leverages off the annual inspections carried out by the Securities SROs, the SRO inspectors are geared even more strongly towards market conduct issues. The Securities SROs do annual on-site inspections of CVM/FIs, and check for compliance with AML/CFT requirements. However, they do not have specific training in this area and are also heavily focused on market conduct. Consequently, there is concern that supervision of AML/CFT requirements (other than STR reporting) is not effective.

820. Another issue is that the number of AML/CFT-related sanctions is very low. About half of the administrative proceedings that are commenced result in acquittals and, in the past four years, only 10 warnings and 17 fines have been issued. Given the size of the securities sector, and the level of risk in the country, these numbers seem low.

Superintendence of Private Insurance (SUSEP)

821. SUSEP has adopted a risk-based approach to supervision, and focuses its inspections on high risk institutions. The table below shows the number of on-site inspections related to AML/CFT that were carried out from January 2006 to June 2009.

On-site inspections conducted by the SUSEP

2006	2007	2008	Jan – June 2009*	TOTAL
28	43	39	4	114

* AML/CFT thematic on-site inspections started July 2009 because of the issuance of SUSEP Circular 380/2008.

822. In the period from January 2006 to June 2009, SUSEP issued nine "tables of weaknesses" identifying 26 weaknesses in the internal AML/CFT controls of SUSEP/FIs. Each of those institutions responded with an action plan to resolve the deficiencies identified. Additionally, eight administrative sanction proceedings related to 48 findings were initiated during the same period.

Results of the inspection process on AML/CFT	2006	2007	2008	to June 2009*	TOTAL
Internal controls weaknesses – table of weaknesses	4	3	24	0	31
Findings	1	11	35	1	48
TOTAL	5	14	59	1	79

* AML/CFT thematic on-site inspections started July 2009 because of the issuance of SUSEP Circular 380/2008.

823. The following chart specifies what type of AML/CFT deficiencies were identified through the inspection process.

Weaknesses/findings, by type	Number
STR	45
CDD	2
INTERNAL CONTROL	27
PEPs	5
TOTAL	79

824. SUSEP reports that the above breaches were generally mild to moderate in severity, with smaller institutions having more difficulty meeting the applicable requirements. Representatives from the private sector confirmed that fines are actively being imposed by SUSEP in the first instance, and these are considered to be dissuasive.

825. SUSEP penalties may be appealed to the Ministry of Finance in the second instance. At this point, SUSEP is no longer kept involved, and was unable to say how many of their sanctions had been appealed or what had become of such appeals. This is of some concern since SUSEP would, presumably, be in the best position to advance and justify the continued application of the sanction.

Secretariat of Complementary Providence (SPC)

826. The SPC has conducted inspections of about 77% of SPC/FIs: 132 in 2007, 128 in 2008 and 88 in 2009. Additionally, the SPC conducts some off-site monitoring. This supervision focuses mainly prudential supervision and monitoring of business plans and investments. AML/CFT issues are generally not part of these inspections, although the SPC may check to see if internal controls are in place to meet the requirements of SPC Instruction 26/2008. Inspectors may also do some sample testing to confirm whether the reporting obligation is being implemented. No breaches of AML/CFT requirements have been detected and no sanctions imposed.

827. However, overall, the supervisory focus on AML/CFT is very light. This may be because the SPC appears to believe the sector to be of extremely low risk for ML/FT. However, the SPC has not undertaken any proper research or analysis of the ML/FT risks in this sector which would support this conclusion. Consequently, it is not established that AML/CFT supervision is being applied effectively to closed pension funds.

Council for Financial Activities Control (COAF)

828. Overall, the effectiveness of implementation of AML/CFT measures among COAF/FIs is not established because COAF has insufficient staff and the fact that COAF/FIs are not subject to any licensing or registration requirements, which makes it difficult for COAF to properly assess the size and nature of its regulated market. COAF does not conduct any on-site or off-site inspections or supervision. Moreover, given COAF's lack of supervisory powers generally COAF/FIs are not subject to effective supervision for compliance with AML/CFT requirements. Nevertheless, COAF has managed to leverage off its FIU function to monitor (off-site) compliance with the STR reporting obligation. This has lead to the detection of some breaches. In total, 20 administrative processes were commenced, and about BRL 2.6 million (EUR 1 million/USD 1.5 million) worth of fines imposed. This action is positive; however, since the CDD, record keeping and internal control requirements are, essentially, unsupervised, sanctions are, in practice, not being applied to breaches of those obligations.

829. COAF has good mechanisms for collecting statistics, as is demonstrated by the statistics that it is able to generate in relation to its FIU functions. However, there are no statistics relating to its supervisory function. This is because COAF/FIs are not subject to any licensing or registration requirements (which means that COAF has no way of ascertaining how many entities are in each sector), and COAF does not actually conduct on-site inspections or apply sanctions.

3.10.2 Recommendations and Comments

830. Overall, the supervisory framework and powers in the banking, securities and insurance sectors are generally adequate, but are not being implemented effectively. The framework for supervision in the closed pension fund sector also suffers from some deficiencies and is being implemented to a much lesser extent. Factoring companies are not subject to effective AML/CFT supervision because COAF neither has

adequate supervisory powers nor sufficient staff. For all sectors, there is a sufficient range of sanctions available to deal with natural or legal persons who are subject to AML/CFT requirements. However, other than in the banking sector, it is not established that these are being applied effectively. Additionally, there is an overall lack of guidance that needs to be addressed in all sectors.

Recommendation 17

831. Brazil should enhance its supervision of all sectors with a view to ensuring the application of sanctions is being effectively applied in relation to all of the AML/CFT requirements.

832. For the insurance sector, SUSEP should remain involved and work to advance sanctions matters even after they are appealed. Additionally, the authorities should consider ways to streamline the drawn-out appeals process to the Ministry of Finance.

Recommendation 23, Recommendation 30 and Recommendation 32

833. BACEN should begin full active supervision of non-bank BACEN/FIs (to date, the focus has been mainly on awareness raising and very few compliance audits have been conducted). BACEN should also begin enforcing the more recent obligations imposed on its supervised entities by BACEN Circular 3461/2009, and BACEN should be provided with additional staff to support this work, including additional AML/CFT-specific staff, and particularly in relation to non-bank BACEN/FIs. BACEN should also give ML/FT risk more weight in its supervisory schedule, specifically scheduling AML/CFT-compliance inspections not only in instances where a mainly prudential-risk-oriented inspection has highlighted a weakness in AML/CFT matters.

834. There is concern that the heavy reliance on market conduct data and results from the inspections carried out by SRO inspectors (who are heavily focused on market conduct and have no AML/CFT training) creates a blind spot regarding AML/CFT risk. CVM should develop inspection strategies and in-depth compliance (particularly AML/CFT compliance) inspection triggers or cycles that are not solely dependent on market conduct data. As well, inspections should: occur more frequently; have an AML/CFT-focus; and occur in circumstances other than just when there is a market conduct concern, as is currently the case. Additionally, the CVM and SROs should ensure that, when AML/CFT supervision does take place, it focuses on compliance with all AML/CFT obligations (currently there is an overt emphasis on STR issues). Additionally, the inspectors of Securities SROs should receive AML/CFT training.

835. The supervisory powers of COAF should be enhanced to enable it to obtain from COAF/FIs customer-specific information (beyond the STR-related information), for supervisory purposes.

836. SPC inspectors should be provided with AML/CFT training, and should be encouraged to enhance their focus on AML/CFT issues during inspections.

837. As a matter of priority, COAF's supervision arm should be built up into a proper supervisory agency, including a legal mandate empowering it to undertake proper on-site supervisions and the power to compel documents for supervisory purposes. Additionally, COAF should be provided with sufficient staff to undertake this work. However, these staff should not be reallocated from COAF's FIU functions as that would risk leaving the FIU under-resourced.

838. The authorities (BACEN) should undertake active on-site supervision of the Post Office in its conduct of remittance activity.

839. The SPC should take additional measure to ensure that criminals cannot own or manage closed pension funds (*e.g.* background checks, criminal record checks, fit and proper tests). Additionally, the

CVM, SUSEP and SPC should routinely maintain statistics on the number of on-site examinations conducted relating to or including AML/CFT, and any sanctions applied.

Recommendation 25

840. All five federal supervisors (BACEN, CVM, SUSEP, SPC and COAF) should issue guidelines to the entities that they supervise and which will assist them in complying with their AML/CFT requirements. As a matter of priority, BACEN should focus on ensuring that the new guidance in relation to the new requirements that were introduced by BACEN Circular 3461/2009 is being implemented effectively, as the financial sector has expressed a need for such guidance and is waiting for further clarification on how to implement these new requirements.

Recommendation 29

841. As a matter of priority, COAF should be given powers of inspection.

842. The supervisory powers of COAF should be enhanced by extending to it the ability to conduct inspections and obtain access to the full range of customer-specific information needed for supervisory purposes.

843. All five supervisors should take measures to improve effectiveness in relation to how they exercise their powers of supervision and enforcement.

3.10.3 Compliance with Recommendations 23, 30, 29, 17 & 25

	Rating	Summary of factors underlying overall rating
R.17	**LC**	• Effectiveness: Although there is a sufficient range of sanctions in place, due to weaknesses in AML/CFT supervision for all sectors, effectiveness is not established. Number of sanctions applied is low (CVM/FIs). No information available on final outcome of sanctioning process (SUSEP/FIs). Sanctions not being applied to breaches of requirements other than the reporting obligation (COAF/FIs).
R.23	**PC**	• Effectiveness: Supervisory approach of CVM and Securities SROs is overly focused on market conduct and reporting, with insufficient attention to other AML/CFT obligations. Low number of inspections by CVM and the inspectors of Securities SROs (on which CVM heavily relies) receive no AML/CFT training. No AML/CFT training for SPC inspectors and insufficient focus on AML/CFT issues during inspections. COAF has insufficient staff to handle supervisory role. • Non-bank BACEN/FIs: Subject to less than fully adequate supervision (mainly awareness raising being conducted in the past). Sector has low awareness of its AML/CFT obligations. • No on-site supervision of Post Office in its conduct of remittance activity. • Banking sector: No enforcement of more recent AML/CFT obligations for BACEN/FIs. Effectiveness not established as supervision is overly focused on prudential issues, and small number of AML/CFT specialists who do not routinely participate in inspections. • SPC does not take sufficient measures to ensure that criminals cannot own or manage closed pension funds.
R.25	**PC**	• No written guidance has been issued for any Accountable FIs that will assist them to implement and comply with the applicable AML/CFT requirements.
R.29	**PC**	• COAF has no powers of inspection. • COAF cannot compel production of customer-specific information for supervisory purposes without a court order. • Effectiveness: BACEN is only beginning to exercise its supervisory powers in relation to

	Rating	Summary of factors underlying overall rating
		non-bank BACEN/FIs (it has mostly conducted awareness raising in the past) or banking institutions (strong focus on prudential issues, few AML/CFT specialists). CVM does not exercise its supervisory powers effectively (few CVM inspections, no AML/CFT training for inspectors of Securities SROs, supervision primarily focused on market conduct). Effective application of sanctions not established for any sector.

3.11 Money or value transfer services (SR.VI)

3.11.1 Description and Analysis

Registration and licensing of MVTS operators

844. BACEN is the designated competent authority responsible for licensing money or value transfer service (MVTS) operators that conduct international and domestic remittance activity. This licensing regime is part of Brazil's exchange control regime. Foreign exchange transactions, including international remittances or wire transfers, may only carried out by institutions authorised and supervised by BACEN or by entities which have entered into agreements with institutions to conduct some activities related to foreign exchange transactions (BACEN Circular 3462/2009[90]). No natural or legal persons (other than BACEN/FIs) are, therefore, authorised to conduct remittance activity.

845. BACEN/FIs that conduct exclusively domestic remittance activity are also subject to BACEN's licensing and supervision.

846. As the designated licensing authority, BACEN maintains a current list of the names and addressed of BACEN/FIs authorised to conduct such activity. Where a remittance service has contracted with an FI to conduct some foreign exchange business, its details must be filed in the BACEN Information System (Unicad) before it commences these operations (BACEN Circular 3462/2009[91]). Likewise, the Post Office maintains a list of its branches throughout Brazil.

Application of the FATF Recommendations

847. MVTS Providers are subject to the requirements of the *AML Law*. The deficiencies identified above in relation to Recommendations 5-11, 13-15 and 21-23, and Special Recommendation VII apply to MVTS Providers (see sections 3.2-3.3, 3.5-3.8 and 3.10 for further details).

848. It is illegal to conduct remittance activity without BACEN authorisation. The assessment team was advised that, where illegal money remitters are detected, the case is handled by the police as a criminal matter, and that the authorities have been working to crack down on illegal operators. According to statistics provided by the DPF, approximately 218 persons were arrested as illegal exchange operators or dollar dealers (*doleiros*) during the three-year period from 2007 to 2009. As well, the parallel (black market) exchange is reportedly decreasing in Brazil. This is because BACEN has decided to authorise more foreign exchange dealers, which increases the number of legitimate operators providing money remittance services. Also, following strong deregulation of the currency exchange rules, there is much greater access to foreign currency. This means that the exchange rate in the black market is not

90 This Circular is also available in the following compilation of BACEN Circulars: RMCCI, Title 1, Chapter 2, art.1 and 8A.

91 This Circular is also available in the following compilation of BACEN Circulars: RMCCI, Title 1, Chapter 2, art.10-A.

substantially different from the exchange rate in the legitimate market, which significantly lowers the profit margins for persons offering illegal remittance services.

Supervision, monitoring and sanctions

849. BACEN is responsible for monitoring the BACEN/FIs and the Post Office which are authorised to conduct remittance activity. BACEN monitors the foreign exchange market with a view to mitigating the risks of illicit activity (including ML) occurring. The principles guiding BACEN's supervision of the foreign exchange market are set out in the BACEN *Supervision Manual* (Title 4, Chapter 20-40-20). Supervision is focused on assessing whether the institution has implemented adequate policies and procedures for handling foreign exchange transactions and international wire transfer in BRL, and whether they are in compliance with both foreign exchange regulations and AML/CFT obligations. BACEN also considers the implementation of the institution's internal controls, and the monitoring carried out by the institution's compliance and internal audit areas (*Supervision Manual* Title 4, Chapter 30-10-50-03-03). See section 3.10 for further details of BACEN's powers of supervision and sanction.

850. BACEN is legally empowered to sanction the MVTS Providers under its supervision. The sanctions available are broad and proportionate, and can target both legal entities and their management (see section 3.10 of this report for further details).

Effectiveness

851. It does not appear that any active on-site supervision has been undertaken in relation to the Post Office, although the Post Office handles an admittedly small part of the overall volume of remittances in Brazil (0.43%). As well, there are some general concerns about the effectiveness of BACEN's supervision, particularly in relation to non-bank BACEN/FIs and the requirements of Special Recommendation VII relating to wire transfers (see section 3.5 of this report for further details).

3.11.2 Recommendations and Comments

852. Brazil should take action to address the deficiencies identified in relation to the implementation of FATF Recommendations as it applies to BACEN/FIs, as identified in sections 3.2-3.3, 3.5-3.8 and 3.10 of this report.

853. Brazil should ensure that sanctions are effectively applied to MVTS providers that are found to be in breach of their AML/CFT obligations (see section 3.10 of this report in relation to BACEN/FIs for further details).

854. Brazil should enhance the effectiveness of its supervision of BACEN/FIs which carry out MVT services.

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	**LC**	• The application of the FATF Recommendations to MVTS Providers suffers from the same deficiencies as identified in relation to the BACEN/FIs as set out in sections 3.2-3.3, 3.5-3.8 and 3.10 of this report. • The Post Office remittance service is not being monitored or supervised on-site. • Effectiveness: Supervision of BACEN/FIs (particularly in relation to non-bank institutions and Special Recommendation VII) suffers from the same effectiveness concerns as described in section 3.10.

4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

Scope of AML/CFT requirements

855. In Brazil, AML/CFT obligations apply to two types of designated non-financial businesses and professions (DNFBPs):

- real estate agents, meaning legal persons that engage in activities pertaining to real estate, such as the promotion, purchase and sale of properties, and including builders, merging companies, real estate agencies, developers, property auction companies, property asset management companies and housing cooperative societies (*AML Law*, art.9(X)); and

- dealers in precious metals and stones, meaning natural or legal persons who engage, either on a permanent or temporary basis, as their principal or secondary activity, in the commerce, and importation or exportation of jewellery, and precious stones and metals (*AML Law*, art.9(XI); COAF Resolution 004/1999, art.1), collectively referred to as "Accountable DNFBPs".

856. Casinos (land, ship-based, internet) have been prohibited from operating in Brazil since 1946 (Decree-Law 9215/1946). In addition, there are no persons/entities authorised to establish trusts. Nevertheless, foreign trusts are recognised and may hold accounts or otherwise do business in Brazil. When doing so, foreign trusts are treated as legal persons, required to obtain a Legal Persons Taxpayer Identification Number (CNPJ) and must be identified in accordance with the requirements of Recommendation 5 (see above in section 3.2 for further details).

857. The following businesses and professions do exist in Brazil, but are not subject to any AML/CFT obligations as is required by the *FATF Recommendations*: accountants; lawyers and notaries; and, company service providers.[92] There is a further gap because the AML/CFT requirements do not apply to natural persons conducting real estate business; only legal persons providing such services are covered. Collectively, these are referred to as Uncovered DNFBPs. These gaps in the scope of the regime are an overall deficiency that negatively impacts on the ratings of Recommendations 12, 16 and 24.

Applicable legal framework

858. The general requirements of the *AML Law* apply to Accountable DNFBPs in the same way that they apply to Accountable FIs (see section 3 of this report for further details).

859. As the designated competent authority for Accountable DNFBPs, COAF has issued COAF Resolution 014/2006 (which was intended to apply to real estate agents, but is in reality unenforceable and *sui juris* for the reasons described below in section 4.3) and COAF Resolution 004/1999 (applicable to dealers in precious metals and stones) which further elaborate the AML/CFT requirements for these sectors. As noted above, at the beginning of section 3 of this report, COAF Resolutions constitute *other enforceable means*. This section of the report will focus only on these aspects of the legal framework which are specific to Accountable DNFBP.

[92] Lawyers, notaries, other independent legal professionals and accountants are not, to date, subject to any AML/CFT obligations. However, a Bill has been prepared (Bill of Law 3443/2008) that, if approved, will extend the STR reporting obligation to these professions.

4.1 Customer due diligence and record-keeping (R.12)
(applying R.5, 6, and 8 to 11)

4.1.1 Description and Analysis

Scope issue

860. Uncovered DNFBPs are not subject to any AML/CFT obligations. Dealers in precious metals and stones are not subject to any requirements relating to Recommendations 8, even though there is some non-face-to-face business in this sector in the form of retail jewellery sales over the internet. Real estate agents are not subject to any requirements relating to Recommendations 6, 8, 9 and 11. These are scope issues that negatively affects the rating for Recommendation 12.

Applicable legal framework

861. Article 10 of the *AML Law* sets out very general CDD and record keeping requirements that relate to Recommendations 5 and 10 respectively. Article 10 of the *AML Law* applies to all Accountable DNFBPs in the same way that they apply to Accountable FIs (see sections 3.2-3.3 and 3.5 of this report for further details). Additionally, the following sector-specific requirements have been issued by COAF in relation to dealers in precious metals and stones.

Dealers in precious metals and stones

Applying R.5 - CDD requirements

862. The CDD obligations of the *AML Law* apply to "individuals or legal entities that engage in the commerce of jewellery, precious stones and metals, works of art, and antiques" (art.9(XI)), regardless of the nature or value of the transactions they are involved in. This goes farther than Recommendation 12 which requires dealers in precious metals and stones to be subject to the requirements of Recommendation 5 only when they engage in cash transactions with a customer equal to or above USD/EUR 15 000 in value.

863. Dealers in precious metals and stones are required to identify and maintain up-to-date records of their customers (COAF Resolution 004/2006, art.2).

864. For natural persons, dealers in precious metals and stones are required to collect the following CDD information:

- name and complete address (street, number, district, city, state, ZIP code), telephone number;
- number of identification document, name of the issuing institution and date of issuance, or in the case of foreigners, passport or identity card information; and
- Individual Taxpayer Identification Number (CPF).

865. For legal persons, dealers in precious metals and stones are required to collect the following CDD information:

- corporate name, complete address (street, number, district, city, state, ZIP code) and telephone number;
- Corporate Taxpayer Identification Number (CNPJ);

- principal activity; and
- name of parent, subsidiary or associate entities.

866. Dealers in precious metals and stones are not subject to any of the other specific requirements of Recommendation 5 (*e.g.* requirements to identify beneficial owners; confirm whether the customer is acting on behalf of another person; understand the ownership and control structure of customers who are legal persons; obtain information on the purpose and intended nature of the business relationship; conduct on-going due diligence; or conduct enhanced CDD on high risk customers).

Applying R.6 - PEPs

867. COAF Resolution 016/2007 on PEPs applies to all entities supervised by COAF, including dealers in precious metals and stones. These requirements are comprehensive and generally meet the requirements of Recommendation 6 (see section 3.2 of this report for further details).

Applying R.8 – New technologies and non-face-to-face business

868. The requirements of Recommendation 8 do not apply to dealers in precious metals and stones, even though there is some non-face-to-face business in this sector in the form of jewellery sales over the internet. The authorities confirmed, however, that such arrangements are limited to the retail sector, and that all payments must be made through the use of a credit card.

Applying R.9 – Third parties and introduced business

869. The authorities confirmed that dealers in precious metals/stones do not rely on introduced business or third parties to perform certain elements of the CDD process, given the nature of their clientele and the business environment. Consequently, Recommendation 9 does not apply to this sector.

Applying R.10 – Record keeping

870. Dealers in precious metals and stones are required to maintain updated customer records (COAF Resolution 004/1999, art.2). Records must also be maintained of all transactions that exceed BRL 5 000 (EUR 1 950/USD 2 900) in retail sales or BRL 50 000 (EUR 19 500/USD 29 000) in industrial sales. At a minimum, such transaction records must contain:

- a detailed description of the merchandise;
- the date and value of the transaction; and
- the form of payment (COAF Resolution 004/1999, art.4-5).

871. However, the record keeping obligation does not extend to business correspondence, and the threshold for record keeping is somewhat problematic. This threshold is currently fixed at BRL 5 000 (EUR 1 950/USD 2 900) which is well below the permitted threshold. However, the threshold for record keeping with regard to "industrial sector sales" is BRL 50 000 (EUR 19 500/USD 29 000) which is well above the EUR/USD 15 000 threshold permitted by the *FATF Recommendations* (COAF Resolution 004/1999 art.4).

872. These records and registries must be kept by dealers in precious metals and stones during a minimum period of five years from the date the transaction is concluded (COAF Resolution 004/1999, art.10).

873. Dealers in precious metals and stones must comply, at all times, with requests received from COAF concerning customers and transactions (COAF Resolution 004/1999, art.11).

Applying R.11 – Unusual transactions

874. Dealers in precious metals and stones are required to pay special attention to transactions or attempted transactions that may represent serious evidence of, or be related to, the crimes listed in the *AML Law* (COAF Resolution 004/1999, art.6). Although this is not a direct obligation to pay special attention to complex, unusual large transactions, or patterns of transactions that have no apparent or visible economic or lawful purpose, it does go part of the way towards satisfying Recommendation 11.

Effectiveness

875. COAF is not yet actively monitoring or supervising dealers in precious metals/stones for compliance with these requirements, and real estate agents are not yet subject to AML/CFT supervision (see section 4.3 of this report for further details). Consequently, the authorities are unable to provide specific information concerning the effectiveness of implementation in these sectors.

4.1.2 Recommendations and Comments

Scope issue

876. As mentioned above, there is a large gap in DNFBP coverage in Brazil: AML/CFT obligations do not apply to: *(i)* lawyers, notaries, other independent legal professionals and accountants; *(ii)* company service providers; or *(iii)* real estate agents who are natural persons. Brazil should fully extend the requirements of Recommendations 5, 6, 8, 9, 10 and 11 to these sectors as a matter of priority.

Dealers in precious metals and stones

877. For dealers in precious metals and stones, the requirements regarding Recommendation 6 (PEPs) and Recommendation 10 (record keeping) are generally sufficient. However, as a matter of priority, COAF should amend its requirements for dealers in precious metals/stones to fully implement FATF Recommendations 5, 8 and 11. Recommendation 9 is not applicable to dealers in precious metals/stones given the nature of their business environment and clientele.

878. For Recommendation 5, dealers in precious metals/stones should be required to: verify the customer's identity; identify beneficial owners; confirm whether the customer is acting on behalf of another person; understand the ownership and control structure of customers who are legal persons; obtain information on the purpose and intended nature of the business relationship; conduct on-going due diligence; conduct enhanced CDD on high risk customers; and take appropriate steps when CDD cannot be satisfactorily completed.

879. For Recommendation 10, the record keeping obligation should be extended to include business correspondence and the threshold for record keeping with regard to "industrial sector sales" should be lowered to no more than EUR/USD 15 000.

880. Additionally, COAF should issue resolutions to fully extend the requirements of Recommendations 8 and 11 to dealers in precious metals/stones

Real estate agents

881. Real estate agents who are legal persons are only subject to the basic CDD and record keeping provisions set out in the *AML Law*. The Federal Council of Real Estate Brokers (COFECI) (which is the appropriate competent authority for this sector) should, as a matter of priority, issue instruments to fully extend the requirements of Recommendations 5, 6, 8, 9 and 11 to them.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors underlying overall rating
R.12	**NC**	• ***Scope issue:*** The requirements of R.5-6 and 8-11 do not apply to: *(i)* lawyers, notaries, other independent legal professionals and accountants; *(ii)* company service providers; or *(iii)* real estate agents/brokers who are natural persons. • ***Applying R.5:*** Accountable DNFBPs are not required to: identify beneficial owners; confirm whether the customer is acting on behalf of another person; understand the ownership and control structure of customers who are legal persons; obtain information on the purpose and intended nature of the business relationship; conduct on-going due diligence; or conduct enhanced CDD on high risk customers. Nor do obligations exist for this sector with respect to failure to satisfactorily complete CDD or application of CDD measures to existing customers. • ***Applying R.6:*** Real estate agents are not subject to any specific requirements in relation to PEPs. Effectiveness is not established for dealers in precious metals/stones. • ***Applying R.8:*** Real estate agents are not subject to any requirements in relation to this Recommendation. • ***Applying R.9:*** Real estate agents are not subject to any requirements in relation to this Recommendation. • ***Applying R.10:*** Accountable DNFBPs are not required to keep business correspondence. Real estate agents are not required to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon request. The record keeping threshold for dealers in precious metals/stones in relation to industrial sector sales is too high. • ***Applying R.11:*** Accountable DNFBPs are not subject to comprehensive requirements in relation to this Recommendation**.** • ***Effectiveness:*** Effectiveness is not fully established.

4.2 Suspicious transaction reporting (R.16)
(applying R.13 to 15 & 21)

4.2.1 Description and Analysis

Scope issue

882. Uncovered DNFBPs are not subject to any AML/CFT obligations. Accountable DNFBPs are not subject to any requirements relating to Recommendations 15 and 21. These are scope issues that negatively affects the rating for Recommendation 16.

Applicable legal framework

883. Article 11 of the *AML Law* sets out an obligation to report suspicious transactions, and also provides protections from liability and a prohibition against tipping off. These requirements apply to all Accountable DNFBPs in the same way that they apply to Accountable FIs (see section 3.7 of this report for further details). Additionally, the following sector-specific requirements have been issued by COAF.

Dealers in precious metals and stones

Applying R.13 - STR reporting

884. Dealers in precious metals/stones are required to report any suspicious transactions, regardless of their value. This goes further than Recommendation 16 which requires dealers in precious metals/stones only to report STRs when then engage in any cash transaction equal to or above EUR/USD 15 000. Such reports must be sent to COAF within 24 hours of the (attempted) transaction being verified, and may be sent electronically (COAF Resolution 004/1999, art.6-7 and 9).

Applying R.14 – Protection from liability and tipping off

885. Dealers in precious metals and stones are protected from civil or administrative liability when filing an STR in good faith as are other Accountable FIs due to the specific language in article 11(2) of the *AML Law*, and reiterated in COAF Resolution 004/1999 art.8.

886. Dealers in precious metals and stones are also prohibited from informing their customers that an STR has been filed (*AML La*w art.11(2), also reiterated in COAF Resolution 004/1999 art.7).

Statistics and effectiveness

887. COAF maintains comprehensive statistics on the number of STRs that it receives from Accountable DNFBPs, including a breakdown of the type of reporting entity making the report. It also maintains similar statistics on the number of domestic/foreign currency transactions above the prescribed thresholds (*i.e.* the CTRs). This information assists the authorities in assessing whether the reporting requirements are operating effectively across all sectors.

DNFBP	Until 2002	2003	2004	2005	2006	2007	2008	2009 (partial)	TOTAL
Dealers in precious metals/stones	9	0	1	0	0	0	5	3	18
Real estate agents	1 633	619	8	90	39	1 736	2 766	63	6 954
TOTAL	**1 642**	**619**	**9**	**90**	**39**	**1 736**	**2 771**	**66**	**6 972**

888. The level of reporting by real estate agents has been quite robust in recent years (the statistics for 2009 are incomplete). However, it should be noted that the level of reporting by dealers in precious metals/stones is very low. This is somewhat surprising considering that Brazil is the largest producer of coloured gems in the world, and also has a large precious metals industry. This raises concern that the reporting obligation is not effectively implemented in this sector.

4.2.2 Recommendations and Comments

889. For dealers in precious metals/stones and real estate agents, the requirements regarding Recommendation 14 (Protection from liability and tipping off) are generally sufficient. However, as a matter of priority, Brazil should amend its legislation to fully extend the requirements of Recommendations 15 and 21 to dealers in precious metals/stones and real estate agents.

Scope issue

890. As mentioned above, there is a large gap in DNFBP coverage in Brazil: AML/CFT obligations do not apply to: *(i)* lawyers, notaries, other independent legal professionals and accountants; *(ii)* company service providers; or *(iii)* real estate agents who are natural persons. Brazil should fully extend the

requirements of Recommendations 13, 14, 15 and 21 to these sectors as a matter of priority. Brazil has the third largest legal profession by number of lawyers in the world, although it should be noted that in the Brazilian context lawyers rarely act as financial intermediaries. For instance, they do not perform trust services, are not involved in real estate transactions, and are not permitted to hold money belonging to third parties in their trust accounts, although they may provide company formation services in instances where a particularly complicated corporate structure is being established. The reporting obligation should be extended to this sector.

Dealers in precious metals/stones and real estate agents

891. For Recommendation 13, Brazil should take the measures recommended in section 3.7 of this report. Brazil should also take legislative action to fully extend the requirements of Recommendations 15 and 21 to these sectors.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors underlying overall rating
R.16	**NC**	• ***Scope issue:*** The requirements of R.13-15 and 21 do not apply to: *(i)* lawyers, notaries, other independent legal professionals and accountants; *(ii)* company service providers; or *(iii)* real estate agents/brokers who are natural persons. • ***Applying R.13:*** Deficiencies noted in section 3.7 of this report apply to Accountable DNFBP in the same manner as they apply to Accountable FIs. • ***Applying R.15:*** Dealers in precious metals/stones and real estate agents are not subject to any requirements relating to this Recommendation. • ***Applying R.21:*** Dealers in precious metals/stones and real estate agents are not subject to any requirements relating to this Recommendation. • ***Effectiveness:*** Effectiveness is not established for dealers in precious metals/stones.

4.3 Regulation, supervision and monitoring (R.24-25)

4.3.1 Description and Analysis

Recommendation 24

Scope issue

892. Uncovered DNFBPs are not subject to any AML/CFT obligations and are, consequently, not subject to any monitoring or supervision for compliance with AML/CFT requirements. This is a scope issue that negatively affects the rating for Recommendation 24.

Dealers in precious metals and stones

893. COAF is the designated competent authority responsible for monitoring and ensuring that dealers in precious metals/stones comply with their AML/CFT requirements (*AML Law*, art.10 and 14; Decree 2799/1988, art.7(IV)).

894. However, it is a serious deficiency that COAF does not have sufficient supervisory powers to perform its functions. In particular, it has no powers to inspect or compel the production of documents. Moreover, it is unable to request customer-specific information for the purpose of fulfilling its supervisory function since the exemption from the constitutionally mandated financial secrecy granted to BACEN and

CVM by Complementary Law 105/2001 has not been extended to COAF. Additionally, COAF does not have sufficient staff to carry out effective supervision, given the number of entities that it is responsible for supervising (see section 3.10 for further details). Consequently, it cannot be said that this sector is subject to effective systems for monitoring and ensuring compliance with the *FATF Recommendations*.

895. COAF is authorised to apply the sanctions set out in the *AML Law* to dealers in precious metals/stones who breach the general AML/CFT requirements contained in the *AML Law* and the more specific requirements set out in COAF Resolutions 004/1999 and 016/2007 (Administrative Rule 330 art.5(IV); COAF Resolution 004/1999 art.12; COAF Resolution 016/2007 art.4). The range of these sanctions is sufficient, and may be applied to both natural and legal persons. However, since COAF has not yet undertaken any active monitoring or supervision of dealers in precious metals/stones (other than off-site monitoring in relation to implementation of the reporting obligation), it cannot be said that sanctions are being applied effectively to this sector. See section 3.10 of this report for further details concerning COAF's supervisory powers and ability to sanction.

Real estate agents

896. Real estate agents are legally under the supervision of their own self-regulatory organisation—the COFECI. Membership in COFECI is mandatory for Brazilian real estate dealers. As the supervisor of this sector, COFECI is the competent authority to supervise the compliance of its members with the *AML Law*. However, until recently, the Brazilian authorities were not aware that COFECI was the competent authority in the real estate sector for AML/CFT purposes.

897. Until 2008, it was believed that there was no supervisor for the sector and, consequently, real estate agents fell under the supervisory jurisdiction of COAF. Consequently, COAF issued two resolutions with the intention of further elaborating the AML/CFT obligations that apply to real estate agents: COAF Resolutions 014/2006 and 016/2007. However, in 2008, when the role of COFECI became better known, the authorities realised that COAF cannot be considered a competent authority for this sector. This is because COAF's supervisory authority is predicated on the entities in question not being subject to the jurisdiction of any other monitoring or regulatory agency (AML Law art.14, para.1). This also means that COAF Resolutions 014/2006 and 016/2007 are *sui juris*, and of no legal effect vis-à-vis the real estate sector.

898. COFECI has not yet undertaken any AML/CFT monitoring or supervision. Like COAF, COFECI does not have adequate supervisory powers to perform its supervisory function. It has no powers to inspect or compel the production of documents, and is unable to request customer-specific information for the purpose of fulfilling its supervisory function since (unlike BACEN and CVM) it has not been granted an exemption from the financial secrecy law (Complementary Law 105/2001). Additionally, COFECI does not have any dedicated staff for AML/CFT inspections or supervision, or sufficient expertise in this area. Consequently, real estate agents are not currently subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements.

899. As the competent authority for this sector, COFECI is authorised to apply the sanctions set out in the *AML Law* to real estate agents who breach its general AML/CFT requirements. The range of these sanctions is sufficient, and they may be applied to both natural and legal persons. However, since COFECI has not yet undertaken any monitoring or supervision of real estate agents, it cannot be said that sanctions are being applied effectively to this sector.

Recommendation 25 (Guidance for DNFBPs other than guidance on STRs)

900. COAF has not produced any guidance for dealers in precious/metals and stones to assist them in their implementation of the AML/CFT requirements.

901. COFECI has produced guidance in the form of a newsletter advertising the soon-to-come AML/CFT circular, though this newsletter was not widely distributed, and cannot be said to constitute guidance as to how real estate agents may meet their AML/CFT obligations.

Effectiveness

902. For both dealers in precious metals/stones and real estate agents, the systems of monitoring and applying sanctions are ineffective. COAF does not undertake any monitoring or supervision of dealers in precious metals/stones (other than reviewing the STRs they submit), and is not able to provide information on how many entities are operating in this sector since there is no applicable registration or licensing regime. Likewise, COFECI has not yet undertaken any steps to conduct AML/CFT-related monitoring or supervision of this sector, and currently does not have the institutional framework, resources or technical know-how to do so. In general, real estate agents seem to be generally unaware of the fact that they have AML/CFT obligations under the law and even COFECI itself is under the mistaken impression that a circular which it is currently in the process of formulating will establish such obligations for the first time—even though the *AML Law* has applied to this sector for over 10 years.

4.3.2 Recommendations and Comments

Recommendation 24

Scope issue

903. As mentioned above, there is a large gap in DNFBP coverage in Brazil: AML/CFT obligations do not apply to: *(i)* lawyers, notaries, other independent legal professionals and accountants; *(ii)* company service providers; or *(iii)* real estate agents who are natural persons. Consequently, they are not subject to monitoring and supervision for compliance with such requirements. As a matter of priority, Brazil should fully extend AML/CFT obligations to these sectors and designate competent authorities responsible for monitoring and ensuring compliance with such requirements. These authorities should be equipped with adequate supervisory powers and resources to undertake this work.

COAF

904. Brazil should amend its legislation to equip COAF with adequate supervisory powers, including the power to inspect, compel the production of documents, and request customer-specific information for the purpose of fulfilling its supervisory function, as an exemption from the financial secrecy otherwise established under the *Constitution*. Additionally, COAF should be provided with additional resources so as to enable it to effectively undertake supervision of the large number of entities for which it is responsible. Once these measures are in place, COAF should commence active monitoring of dealers in precious metals/stones for compliance with AML/CFT requirements.

COFECI

905. Brazil should take similar action in relation to COFECI (provide it with additional powers and resources). Once these measures are in place, COFECI should commence active monitoring of real estate agents for compliance with AML/CFT requirements.

Recommendation 25

906. COAF and COFECI should issue adequate AML/CFT guidance to the Accountable DNFBPs within their jurisdiction.

Recommendation 30

907. COAF and COFECI should be provided with sufficient resources to enable them to properly carry out their supervisory functions. This step will also enhance the implementation of Recommendation 24.

4.3.3 Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)

	Rating	Summary of factors underlying overall rating
R.24	**NC**	• ***Scope issue:*** As the following Uncovered DNFBP are not yet subject to AML/CFT requirements, they are not being monitored or supervised for compliance: *(i)* lawyers, notaries, other independent legal professionals and accountants; *(ii)* company service providers; or *(iii)* real estate agents/brokers who are natural persons. • ***Dealers in precious metals/stones and Real estate agents:*** COAF and COFECI do not have sufficient supervisory powers (no powers to inspect or compel the production of documents, and no ability to request customer-specific information for the purpose of fulfilling its supervisory function). • ***Effectiveness:*** Monitoring and supervision of Covered DNFBPs is not being undertaken at this time, and the competent authorities (COAF and COFECI) have insufficient staff and resources to do so.
R.25	**PC**	• Accountable DNFBPs have not received any AML/CFT guidance.

4.4 Other non-financial businesses and professions (R.20)

4.4.1 Description and Analysis

Other non-financial businesses and professions

908. Brazil has applied AML/CFT obligations to the following non-financial businesses and professions (other than DNFBP): legal entities directly or indirectly distributing money, assets or real estate by way of lotteries (COAF Resolution 017/2009); and individuals or legal entities engaging in the commerce of works of art and antiques (COAF Resolution 008/1999). No underlying assessment has been conducted of the ML/FT risks in these sectors.

Lottery businesses

909. Lottery businesses are required to keep records of any delivery or prize payment. At a minimum, such records must contain the following information. For the prize winner(s): full name; ID number and details; individual registration number (CPF); full address; and telephone numbers. For the payment of a ticket or winning bet: the type or modality of lottery; contest number and date; prize payment date; description and price of the prize; and the payment method. For an entity responsible for the reception of bets: corporate name and corporate fantasy name; DNPJ registration number; CPF name and registration number of any commission agent(s), partner(s) and/or legal representative(s); full address; and telephone numbers. For the entity responsible for the payment of the prize: corporate name and corporate fantasy name; CNPJ registration number; full address; and telephone numbers. These records must be kept for a minimum of five years from the prize delivery or payment date (COAF Resolution 017/2009, art.3-4).

Lottery businesses are also subject to COAF Resolution 016/2007 which sets out requirements relating to PEPs that apply to all entities supervised by COAF (see section 3.2 of this report for further details). Lottery businesses are required to report (attempted) transactions showing serious indications of any of the crimes mentioned in the *AML Law*. Such reports must be submitted to COAF within 24 hours of detection (COAF Resolution 017/2009, art.5-6). Lottery business are required to implement internal controls procedures to detect operations that may relate to the crimes set out in the *AML Law* (COAF Resolution 017/2009, art. 9). COAF is the designated competent authority responsible for monitoring and ensuring that lottery businesses comply with their AML/CFT obligations (*AML Law*, art.10 and 14; Decree 2799/1988, art.7(IV)). COAF is authorised to apply the sanctions set out in article 12 of the *AML Law* for breaches of its general AML/CFT requirements and the more specific requirements of COAF Resolution 017/2009 (Administrative Rule 330, art.5(IV); COAF Resolution 017/2009, art.12). See section 3.10 of this report for a detailed description of these sanctions.

Individuals and businesses which engage in the commerce of works of art and antiques

910. Art and antiquities dealers are required to collect and maintain the following CDD information on natural persons: name; complete address; ID document details; and details of inscription in the Natural Persons Registry. For legal persons, the following information must be kept: corporate name; National Registry of Legal Entities inscription number; complete address; principal activity; and name of any parent, subsidiary, or associate entities. Additionally, transaction records must be kept for all transactions that exceed BRL 5 000 (EUR 1 950/USD 2 900)in value. Transaction records must include, at a minimum, a detailed description of each object, the date and value of the transaction, and the form of payment. Records must be kept for a minimum of five years from the date of the transaction (COAF Resolution 008/1999, art.2-3 and 10). Art and antiquities dealers are also subject to COAF Resolution 016/2007 which sets out requirements relating to PEPs that apply to all entities supervised by COAF (see section 3.2 of this report for further details). Art and antiquities dealers are subject to similar requirements, supervision and sanctions as lottery businesses (COAF Resolution 008/1999, art.6-7 and 12).

Modern secure transaction techniques

911. Brazil has taken a measure to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to ML in the form of a card payment system. The highest denomination banknote in circulation is denominated at BRL 100 (EUR 39/USD 58).

912. Additionally, Brazil has improved penetration of the banking system into remote areas. During the on-site visit, the assessment team was advised that, even large scale business transactions (*e.g.* in the mining and resources sectors), were conducted in cash because no other payment mechanisms were available. Increased penetration of the banking sector through the opening of branches in even remote areas of the Amazon basin region has improved this situation, and reduced the reliance on cash.

Effectiveness

913. As COAF does not actively supervise the entities within its jurisdiction (see section 3.10 and 4.3 for further details), it is not known how effectively lottery businesses, and art and antiquities dealers are implementing these requirements.

914. Brazil's steps to reduce reliance on cash have made some progress. Nevertheless, it should be noted that, particularly in very remote rural area, there remains a marked reliance on cash as a payment method. Given the vast geographical areas and formidable terrain in large parts of the country (particularly in the Amazonas region), this will remain a significant challenge for the Brazilian authorities in the future.

4.4.2 Recommendations and Comments

915. Brazil has clearly complied with the requirement to consider imposing AML/CFT obligations to some of the sectors mentioned in Recommendation 20 and has taken a steps towards more secure transaction techniques. Brazil should take additional steps to reduce the reliance on cash as a payment method. As well, Brazil should take the measures recommended in section 3.10 of this report to ensure that COAF can effectively supervise these sectors.

4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	**LC**	• ***Effectiveness:*** Although Brazil has taken some important steps to reducing the reliance on cash as a payment method, there remains a marked reliance on cash as a payment method in very remote rural areas.

5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS

5.1 Legal Persons – Access to beneficial ownership and control information (R.33)

5.1.1 Description and Analysis

916. In preventing the use of legal persons for illicit purposes, Brazil relies primarily on a system of centralised federal-level tax registration and state-level company registration, corporate record keeping and financial reporting requirements, and the investigative powers of competent authorities.

Tax registration

917. All legal entities[93] doing business in Brazil are required to register with the federal tax authority (the RFB). Additionally, this requirement applies to individuals deemed to act as a business (*e.g.* an individual acting as a sole partner in the real estate industry). Upon registration, the RFB issues, at the national level, a unique tax identification number—the National Register of Legal Persons *(Cadastro Nacional da Pessoa Jurídica)* (CNPJ).

918. Likewise, all Brazilian citizens and residents must have a CPF number. In the case of persons born in Brazil, the CPF number is assigned at birth. The CPF number is widely used as a means of identification and, in practice, the officially-issued card showing the CPF number must be produced whenever a transaction is being carried out. The CPF number is also reproduced on other types of identification, including drivers licences.

919. All CNPJ numbers are registered on the CNPJ database which is managed by the RFB. All legal persons doing business in Brazil, including foreign legal persons who are physically located in Brazil, must obtain a CNPJ number.

920. Foreign legal persons who wish to invest in a publicly-traded Brazilian company must also apply for and obtain a CNPJ number, even if they have no physical presence in Brazil, and must also appoint, as their representative, a natural person in Brazil who has a CPF number. However, the same requirements do not apply to legal persons who are the owners of the investing foreign legal person.

921. In practice, this means that the beneficial owner (meaning the natural persons who ultimately owns the company) may be identified, provided that all parties in the chain of ownership have CNPJ and CPF numbers. In practice, this means that the beneficial owner may always be identified in the following circumstances.

- The legal person is owned by other (domestic or foreign) legal persons which have been issued CNPJ numbers.

[93] This requirement applies to all legal entities, including *inter alia*: corporations; public-owned and state-owned companies; resident or non-resident companies, branches and subsidiaries; partnerships; government agencies; federal, state and local level offices of the executive, legislative and judiciary; non-profit organisations; notary offices; embassies and other diplomatic offices; joint ventures, consortiums and groups of entities; international organisations and institutions; financial and investment real estate funds; private condominiums; drill platforms, and gas and oil storage areas.

- The legal person is owned by (domestic or foreign) natural persons who, at one time, were issued CPF numbers (*e.g.* by virtue of having been Brazilian citizens or residents).

922. However, this method will not work if the chain of ownership is broken by persons who have not been issued CNPJ/CPF numbers. This will occur, for instance, in the following circumstances.

- The legal person is not publicly traded (*i.e.* it is a privately owned company) and is owned by foreign legal persons which have no physical presence in Brazil.

- The legal person is publicly traded and owned by foreign legal persons which have no physical presence in Brazil and are, in turn, owned by foreign legal persons with no physical presence in Brazil. In this case, the chain of ownership could be traced up to the first level of ownership (due to the requirement that a foreign company investing in a Brazilian public company must obtain a CNPJ number). However, the chain can be traced no further if the owning foreign company is itself, in turn, owned by foreign companies with no physical presence in Brazil and, therefore, no CNPJ numbers.

923. To request a CNPJ number, the taxpayer must download a documents generator (PGD CNPJ) from the internet. Once the taxpayer has completed the electronic forms, the archive generated is recorded and transmitted to the tax administration data centre. If no errors or problems are found, the software PGD CNPJ allows a Basic Document for Register (DBE) or tracking number receipt to be printed. The taxpayer is immediately informed about the tax office where the required supporting documentation must be presented (either in original form or certified copy), including the DBE or tracking number receipt of the Basic Information of the Legal Entity Form (FCPJ Form). The tracking number also allows the taxpayer to follow up on the process, over the internet, at any time. The following is a list of the documents that must be provided to the RFB in support of a request for a CNPJ number:

- the corporate registration form of the legal entity which, in the case of a society, is accompanied by a list of the society's partners and/or managers;

- an authenticated copy of the constitutive/deliberative act which is duly registered in the Commercial Registry Office; and

- the formal request signed by the natural person who is responsible for the legal entity or his/her attorney with a document registered by a public notary and recognizing the signature. If the formal request is signed by an attorney (*e.g.* in cases where the natural person or legal entity partner of the Brazilian company lives abroad), a copy of the power of attorney must also be provided and authenticated by the public notary. If the power of attorney was granted abroad, it must be accompanied by a visa from the Brazilian Consulate of the jurisdiction where the grant was given, accompanied by an official translation.

924. Information in the CNPJ database is kept up-to-date and is reconfirmed on an annual basis in the course of filing a declaration with the tax authorities (RFB). To change registration information (*e.g.* the names of owners/partners, address, legal nature of the entity, etcetera) or cancel a registration, the following documents must be provided to the RFB:

- the DBE or the tracking number receipt of the FCPJ Form, transmitted to the RFB through the internet; and

- an FCPJ Form identifying the owners/partners/shareholders of the entity.

925. The RFB takes steps to verify the authenticity of the information provided, including conducting cross-checks of information with internal and external databases with a view to detecting discrepancies, missing points and other errors. The verification process conducted by the RFB is formalistic, requiring the person filing the application to present: an original power of attorney authorizing him/her to act on behalf of the legal person; original or certified copies of the articles of incorporation and proof of registration with the Trade Board; and documents demonstrating any changes of ownership of the legal persons, with the signature recognized by a notary. Additionally, the identity of the signatory is authenticated.

926. The RFB will only issue the CNPJ number if the legal person is duly registered at the Trade Board. The RFB then enters the information from the articles of incorporation into the CNPJ database. It is the responsibility of the Trade Board to verify the authenticity of the underlying information contained in the articles of incorporation, and the RFB relies on the Trade Boards to perform that aspect of the verification without taking any further steps to re-verify the underlying information. However, as noted below, the Trade Boards only confirm that all of the formal registration requirements have been met (*i.e.* all of the required documents and information have been provided). The Trade Boards do not take additional measures to further verify the validity of the underlying documents and information presented by the applicant. This means that the information in the articles of incorporation, which is being relied upon by the RFB in its verification process, is not necessarily accurate. However, this issue is mitigated since the RFB may verify the authenticity of the CNPJ/CPF numbers of any legal/natural persons who are mentioned in the articles of incorporation or other supporting documentation, by cross-checking them with the CNPJ/CPF database.

927. Other registration procedures that entities are required to undergo before doing business in Brazil are:

- obtaining approval from the relevant official agency of the business name;
- registering/notifying with the Commercial Court, Trade Register, Companies Agency, Craft Register or equivalent, as applicable, depending on the nature of the business;
- registering with Trade Association/Chamber of Commerce;
- obtaining a stamp/certification from the Tax Office (or equivalent) of the company records or account books;
- publishing the registration in the Official Journal (or equivalent);
- applying for a tax identification card/number; and
- applying for an opening licence from the local/municipal authorities.

Company registers

928. Commercial (for-profit) companies are required to register at the Trade Board located in the state where they are doing business. The Trade Boards (there is one in each of Brazil's 27 states) are administratively subordinate to the National Department of Corporate Registration (DNRC) which was created in 1960 under the Ministry of Development, Industry and International Trade. The DNRC does not supervise the Trade Boards since it currently does not have the authority, structure or resources to do so. Instead, the DNRC focuses on standardising corporate registration information, making it as widely available as possible, and organising such information for better use in policy making.

929. Corporate registration requirements are largely similar in all 27 states, and apply equally to domestic and foreign companies. However, certain procedural aspects do differ. The DNRC is working to simplify and harmonise the registration procedures of the Trade Boards (*e.g.* procedures relating the recognition of signatures).

930. Each Trade Board collects and maintains the following information relating to the legal ownership and control of companies: the company name and trade name (if any); full address; tax identification number of the company, its partners and shareholders; the company's articles of incorporation or constitution; and its legal nature. However, the Trade Boards do not collect and maintain information on the beneficial ownership and control of companies, which is the focus of Recommendation 33.

931. Registration (and the issuance of a unique registration number—the Number Identifier of Business Register (NIRE)) is automatic upon presentation of the required documents. Although the Trade Boards check to confirm that all of the formal registration requirements have been met (*i.e.* all of the required documents and information have been provided), the validity of the underlying documents and information presented by the applicant is not further verified[94]. This means that information held by the Trade Boards is not necessarily accurate.

932. Technically, companies are required to advise the Trade Board where they are registered of any changes to their ownership, shareholdings or other registration information. For the following reasons, it is in a company's interest to do so. First, when performing credit and banking operations, companies are normally required to produce current company registration documents showing their existence and authorisation to do business. Second, a Trade Board will not accept a new change to a company's registration information unless previous changes have been registered. Third, the company's registration may be cancelled after 10 years if it has not been updated during that time. Although these factors provide some incentive for companies to keep their registration information updated, there is no system for monitoring compliance and no explicit sanctions for failing to comply with this requirement. Consequently, the information held by the Trade Boards is not necessarily up-to-date and current.

Access to information by competent authorities

933. The information held by the RFB in the CNPJ/CPF database is currently available to 536 entities, including: federal, state and municipal governments, including most of the Brazilian judiciary; BACEN; organs of state and local tax authorities; organs of state and federal police; COAF; the federal and state prosecutors; financial institutions; state Trade Boards; and federal, state and local Courts of Audit. Access is direct (through a search system, under identification and password, to access individual files) or indirect (usually to obtain information concerning several CNPJ numbers at the same time). In the latter case, it usually take about a month of fulfil the request. For the FIU, access to the CNPJ/CPF database is immediate and has been integrated into COAF's database. These measures ensure that beneficial ownership information (where it exists) is available to the competent authorities on a timely basis.

934. The information held by the Trade Boards is publicly available for a small fee, and freely available to the competent authorities. However, in the past, accessing information on a particular company was complicated because the registration information was not centralised. Each Trade Board had to be contacted separately to determine whether it held information on a particular company.

94 The authorities note that corporate registration procedures could be further enhanced if draft Law 11 580, which would create a National Registry of Lost Identity Cards, were enacted.

935. This problem was resolved by the establishment of the National Database of Enterprises (*Cadastro Nacional de Empresas*) (CNE) which was launched in December 2008. The CNE is a web-based database containing information on all legal persons registered in Brazil and their representatives, thereby centralising all of the company registration information held by the 27 Trade Boards. Additionally, this information is also held centrally by the RFB in the CNPJ register since every company registering with a Trade Board is also required to inform the RFB of the registration information for the purpose of obtaining its CNPJ number. The CNPJ register of the RFB includes the same information that is presented to the Trade Boards, except for copies of the company's articles of incorporation/constitution (the company name and trade name, if any; full address; tax identification number of the company, its partners and shareholders; and its legal nature). The CNPJ register may be accessed by any public or private organisation which has signed an MOU with the RFB.

936. Even though Brazil's system of company registration dates back 250 years, all registrations (even those originally stored in paper, microfilm or digitalised image form) have been entered into the CNE's electronic database. Although it may take a few days or weeks to retrieve the original paper registration form of an older company, the underlying registration information is immediately available on-line over the internet.

937. The CNE registry will soon be publicly available. In the meantime, free on-line access has already been given to all Brazilian Ministries, public administration entities, law enforcement and prosecutorial agencies, and the judiciary. This allows the competent authorities to access company registration information in a timely manner, without prior judicial authorisation, regardless of where the company originally registered. However, as the CNE is very new (it has been operational for less than a year), some implementation issues remain.

938. In particular, DNRC continues to receive a lot of paper requests for company registration information because some authorities remain unaware that they currently have on-line access to the CNE. The DNRC is working to address this issue by conducting an awareness raising campaign. For instance, flyers have been sent to the Federal Police notifying them that they now have on-line access to the CNE.

939. Another issue is that copies of incorporation certificates obtained on-line do not have the same evidential value as certified copies obtained from the DNRC in paper form. Although the DNRC continues to co-operate with regulatory agencies and the judiciary on an almost daily basis, it sometimes takes a long time to fulfil requests. The DNRC is currently considering ways to resolve this issue via a digital signature system that would guarantee the validity and receipt of incorporation certificates obtained on-line, thereby allowing judges direct and immediate access to documentation with formal evidential value.

Corporate record keeping requirements

940. Companies (domestic and foreign) are required to maintain a record of their shareholders at their registered office in Brazil. The shareholder register must be updated whenever there is a change in ownership, address, number of shares, capital and shareholders. These events must be registered with the Registrar of Companies. Any changes must also be communicated to the RFB by the time of the delivery of the annual Income Tax Declaration which contains all information in the CNPJ register, including the legal entity's corporate structure.

941. In the case of foreign companies, the authorized legal representative is required to present the statutes/memorandum or articles of association where the shareholders/owners are identified (provided that any identification, other than that of nominees, is provided on these documents).

Access to information by competent authorities

942. Shareholder registers are publicly available upon request. Additionally, in the course of an investigation, the law enforcements/prosecutorial authorities may exercise their ordinary investigative powers of search and seizure, as described in section 2.6 of this report.

Bearer shares

943. The issuance of bearer shares has been prohibited in Brazil since 1990 (Law 8021). Prior to that, the government had issued bearer shares in the following two limited circumstances. First, the state-owned telephone company issued bearer shares to new customers for the purpose of funding expansions to the national telephone network. Customers living in areas without telephone service would purchase bearer shares from the telephone company on the expectation that the telephone network would eventually be extended to those regions. Second, the government issued bearer shares to German descendants following government confiscations of property after World War II.

944. Bearer shares existing prior to Law 8021/1990 coming into force may not be used, cashed-in, negotiated or traded in the securities exchange, their voting rights may not be exercised, and dividends may not be received until the bearer has been fully identified in accordance with the provisions described in section 3.2 of this report, and a full declaration concerning the source of the shares has been made to the RFB. There is no market for these bearer shares; only a residue material (but not large) number remain outstanding, in the hands of unidentified investors who never came forward to provide notification of their names.

945. Although bearer shares do exist, in these circumstances, it appears that the ML/FT risk posed by them is minimal since only a very limited number which were issued in very narrow circumstances exist, and no economic benefit may be obtained or voting rights exercised without full CDD being conducted and a declaration of their source being made. It should also be noted that there is currently a Bill in the National Congress which would allow these remaining residual bearer shares to be sold on the open market if the current holders not come forward and identify themselves within six months of the legislation coming into force (Bill of Law 2550/2000).

Additional elements

946. The following measures allow financial institutions to more easily verify the identification data of customers that are legal persons: company registration data is public; and financial institutions have access to the RFB database for the purpose of verifying the accuracy of the taxpayer identification numbers of both legal persons and the natural persons who are registered as being company owners or shareholders.

Statistics and effectiveness

947. The following types of companies (called *partnerships* in the Brazilian system) are registered in the CNE, as set out in the following chart.

Type of legal entity	No. registered
Partnerships that are legal entities	
• Anonymous partnerships (sociedade anônima)	72 352
• Partnership by shares (sociedade limitada)	5 676 694
• Simple partnerships (sociedade simples)	182

Type of legal entity	No. registered
Partnerships that are legal entities	
• Entrepreneurial activity partnerships (sociedade empresária)	
• Interconnected partnerships	44 379
• Limited co-partnerships (sociedade em comandita simples)	43
• Limited by shares partnership (sociedade em comandita por ações)	17
• Co-operative partnership (sociedade cooperativa)	29 699
• Collective partnership (sociedade em nome coletivo)	18 650
Partnerships that are not legal entities	
• Unregistered partnerships (sociedade em comum)	15 238
• Joint venture partnerships (sociedad em conta de participação)	11

Source: National Department of Commerce Registration

948. The establishment of the National Database of Enterprises (*Cadastro Nacional de Empresas*) (CNE) was a very positive step in that it centralised access to some information on the legal ownership and control of legal persons. However, this and the other measures being implemented by Brazil do not operate effectively to ensure that accurate information on beneficial ownership and control is available to the competent authorities in a timely manner, as is required by Recommendation 33.

949. A greater number of legal persons (10 557 846) is registered in the National Register of Legal Persons *(Cadastro Nacional da Pessoa Jurídica)* (CNPJ). This difference is explained by the fact that all legal entities are required to register with the RFB, but not all types are required to register with the Trade Boards. For example, simple partnerships are required to register with the RFB and the Legal Persons Notaries (not with the Trade Boards).

Types of Legal Entity (according to CNPJ/RFB)	QUANTITY
State-owned Companies	1 144
Mixed private and state-owned companies	410
Corporations	2
Partnerships, limited liability companies and limited liability partnerships	4 299 474
Sole partnerships	3 741 543
Bi-national state-owned Companies	2
Subsidiaries and branches of non-resident companies	391
Special regimes of small businesses(simples)	784 951
Notary offices	14 670
Non-profit organisations	21 848
Non-resident companies	57 585
Joint-ventures, consortiums, groups of entities	8 157
Political party offices	36 175
Candidates in public elections	828 144

Types of Legal Entity (according to CNPJ/RFB)	QUANTITY
International organisations and other international institution offices	22 777
Farmers	281 587
Real estate partnerships (sole partner)	217 388
Labour unions	36 113
Private condominiums (apartment houses)	181 857
Others	23 628
TOTAL	**10 557 846**

5.1.2 Recommendations and Comments

950. Brazil has implemented a comprehensive system of tax registration which allows the authorities timely access to beneficial ownership information in circumstances where all parties in the ownership chain have been issued a CNPJ/CPF number. The requirement to obtain a CNPJ/CPF number extends to broad range of persons including: all natural persons who are Brazilian citizens/residents; all legal persons located or doing business in Brazil; and foreign legal persons with no physical presence in Brazil, but who have invested in publicly traded Brazilian companies. Nevertheless, a gap remains because this method of tracing does not work if the chain of ownership is broken by parties who do not have CNPJ/CPF numbers; in such cases, beneficial ownership information is not available. Brazil should implement requirements to ensure that, in such circumstances, information on the beneficial ownership and control is readily available to the competent authorities in a timely manner. Such measures could include, for example, requiring such information to be filed in the national company register (the CNE) requiring company service providers to obtain and maintain this information, or requiring the legal persons themselves to maintain full information on their beneficial ownership and control. Such information would then be available to the law enforcement/prosecutorial and supervisory authorities upon the proper exercise of their existing powers.

951. Although a small number of bearer shares which were issued before the prohibition came into effect still exist, the ML/FT risk is minimal as they were issued in very narrow circumstances and cannot be used until full CDD is conducted and a declaration of their source is made. Nevertheless, the authorities should ensure that the legislation which is currently before the Congress, and would address this remaining residue, is enacted as soon as possible.

952. It should be noted that the creation of the CNE, as a centralised national company register, has also greatly enhanced the ability of the competent authorities to access information on the legal ownership and control of companies in a timely manner, and will also facilitate the tracing of assets. However, like most company registries, the CNE does not collect and maintain information on beneficial ownership and control which is the focus of Recommendation 33. Nevertheless, deficiencies in the CNE system are mitigated by the tax registration system which, in practice, is more commonly used by the authorities to trace beneficial ownership information.

5.1.3 Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R.33	**PC**	• Competent authorities do not have access in a timely fashion to adequate, accurate and current information on the beneficial ownership and control of legal persons where the chain of ownership is broken by parties who do not have a CNPJ/CPF number (*e.g.* where the legal person is: privately owned by foreign legal persons with no physical presence in Brazil; or publicly traded and owned by foreign legal persons which have no physical presence in Brazil and are, in turn, owned by foreign legal persons with no physical presence in Brazil). • A small number of unidentified investors hold bearer shares that were issued prior to the issuance of such shares being prohibited; however, the ML/FT risk is minimal as the shares were issued in very narrow circumstances and cannot be used until full CDD is conducted and a declaration of their source is made.

5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)

5.2.1 Description and Analysis

953. The legal concept of a trust does not exist in Brazilian law. Brazilian law does not allow for the creation of trusts or similar types of legal arrangements.

954. Brazil has not signed or ratified the *Hague Convention* of 1 July 1985 on the Law Applicable to Trusts and on their Recognition.

955. A foreign trust may hold a bank account or operate in the Brazilian securities market, provided that it has registered with the RFB and obtained a Corporate Taxpayer Identification Number (CPNJ). The law of the jurisdiction where the trust was created governs how the trust may be operated and how much information on the trust (*e.g.* the trust deed) will be available in Brazil. Generally, foreign trusts are considered to be high risk clients (*e.g.* CVM Instruction 301 art.6, para.1(I)).

Additional elements

956. Financial institutions have access to the RFB database for the purpose of verifying the accuracy of the taxpayer identification numbers of both legal persons and the natural persons who are registered as being owners or shareholders.

5.2.2 Recommendations and Comments

957. This Recommendation is not applicable in the Brazilian context.

5.2.3 Compliance with Recommendation 34

	Rating	Summary of factors underlying rating
R.34	**N/A**	• This Recommendation is not applicable.

5.3 Non-profit organisations (SR.VIII)

5.3.1 Description and Analysis

Reviews of the non-profit sector

958. It is estimated that Brazil has between 150 000 and 300 000 NPOs. The absence of comprehensive statistics concerning this sector makes it difficult to provide a more accurate estimate. The sector includes the following types of NPOs for which registration/oversight systems are in place[95]:

- 16 339 public utility entities registered with the Ministry of Justice, comprising: 3 647 public interest civil society organisations; 11 451 federal public utility entities; 99 foreign NPOs authorised to work in Brazil; and 1 384 other, uncategorised, NPOs;
- 21 848 NPOs which have been issued an identification by the RFB so they may carry out financial activities. This group overlaps to some unknown extent with the NPOs registered with the Ministry of Justice;
- 5 408 NPOs which receive public funds and are thus registered with the CGU. This group overlaps to some unknown extent with both of the groups of NPOs noted above; and
- around 2 000 foundations in Sao Paulo which have their annual account reviewed by the local prosecutor's office. This group overlaps to some unknown extent with all of the groups of NPOs noted above.

959. Brazil has not conducted a review of the domestic laws and regulations that relate to non-profit organisations (NPOs), nor has it reviewed the activities, size and other relevant features of the sector for the purpose of identifying the features and types of NPOs that are at risk of being misused for FT by virtue of their activities or characteristics. Brazil has not assessed the NPO sector's potential vulnerabilities to terrorist activities of FT. That said, authorities have indicated that they believe the risk of FT in this sector is low.

Outreach and awareness raising

960. Brazil has not undertaken any outreach to the NPO sector with a view to protecting the sector from FT abuse. However, as noted above, various authorities have initiatives designed to promote transparency and accountability to prevent corruption in the sector. Given the perception presented to the evaluation team by Brazilian officials that FT risk in the sector is low, it is not currently foreseen that there will be outreach to the sector to protect it from such activity.

Licensing, supervision, monitoring and record keeping

961. There are some registration and supervision activities of relevance to the NPO sector. These controls cover a relatively small percentage of the estimated 150 000 to 300 000 NPOs in Brazil. The controls are not focused on FT prevention; their purpose is anti-corruption and/or to avoid the misuse of public funds.

- The Ministry of Justice operates a voluntary registry that contains information on the objectives and the person(s) that exercise control of NPOs. Registration is mandatory for a specific type of

[95] Numbers are valid as at November 2009.

NPO—a special kind of NPO called *civil organisations of public interest* (*Oscip*) and for foreign legal persons which do not have a domestic legal person associated with them.

- The RFB, as part of its fiscal control functions, requires NPOs to register in order to get an identification number to carry out any financial activity.

- The CGU supervises the projects funded by public resources conducted by entities that receive public resources. State-owned enterprises, municipalities and all kind of NPOs fall under this supervision. As this oversight does not cover the operation and constitution of NPOs, it would not contribute to preventing the misuse of a NPO by criminals to collect or provide funds to terrorists unless public funds are deviated to finance terrorism. In 2008, the CGU conducted a study of the NPOs receiving federal public resources. This study concerned a small subset—5 000 of Brazil's estimated 300 000 NPOs. It did not address FT risks or other CFT matters.

- State Public Ministries: NPOs that are organised as foundations are subject to the oversight of the local prosecutor's office (*Civil Code* art.66). These measures do not apply to civil associations and as such do not cover all NPOs at a state level. This oversight is of the authorisation and analysis of the annual accounts of foundations only.

962. NPOs are not subject to record-keeping requirements. They are not required to maintain, and make available to appropriate authorities, records of domestic and international transactions that are sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objectives of the organisation.

963. Those NPOs which are subject to oversight are obliged to provide information to different government agencies, usually on an annual basis, and these obligations result in a need to keep records.

- The registration requirements of the Ministry of Justice, RFB, CGU and state prosecution office of Sao Paulo require NPOs to submit records including those which indicate: their activities; and the identity of person(s) who own, control or direct their activities, including senior officers (SNJ Administrative Rule 24/2007; Law 9790/1999; Law 91/1935; Decree 3100/1999; Decree 50517/1961).

- The CGU keeps copies of all agreements with NPOs which have been provided with public funding.

- Some of the forms of NPOs registered with the Ministry of Justice provide financial information to government authorities. The 11 451 federal public utility entities registered with the Ministry of Justice are required to submit to the Ministry an annual report on the services they have provided to society, accompanied by their accounts (Law 91/1935 art.4; Decree 50517/1961 art.5). In addition, the other 4 888 entities registered with the Ministry are invited, but not required, to submit annual accounts to the Ministry (SNJ Administrative Rule 24/2007 art.8).

- Financial information is received by the RFB from the 5 408 NPOs registered with it and the various government authorities which provide public monies to NPOs receive specific financial information from them on use of the public funds.

964. The information received by the Ministry of Justice is contained in the national public utility entities database, which is accessible on the Internet by other competent authorities and by the public, free of charge. This database contains information on the entities it supervises and also information on other

NPOs which wish to be part of the registry in order to provide information to the public[96]. The information on each entity comprises: *(i)* basic entity information (*e.g.* CNPJ, address, contact details, date of registration/incorporation, board of directors, staffing, information, the organisation's by-laws); *(ii)* information on the NPO's activities (objective, scope, source of funds, partnerships and subsidies); and *(iii)* its end of year financial balance. This information is provided by the NPOs themselves and is not verified by the Ministry.

965. As is the case for all legal persons in Brazil, NPOs are subject to administrative penalties for illegal acts, and are subject to criminal liability for crimes against the environment, and crimes against the economic and financial order. Additionally, the 11 451 federal public utility entities registered with the Ministry of Justice may have their registration cancelled if they fail do not submit their annual reports on the services they have provided to society, accompanied by their accounts (Law 91/1935 art.4).

Information sharing, investigation and domestic co-ordination

966. The RFB, the Ministry of Justice, the CGU, the National Social Assistance Council and some state prosecutors hold some information on the source of funding obtained by NPOs under their supervision. However, only a relatively small proportion of the NPO sector is known to the authorities. Information held by these authorities is usually general information and does not specifically address the source and use of the NPO's finances unless the finances derived from public funds.

967. As can be seen from section 6.1 of this report, Brazil has good mechanisms in place to support domestic policy and operational co-operation between the agencies involved in AML initiatives. All of the agencies which hold some information on NPOs are involved in these initiatives. However, in practice it appears that there is limited information sharing and limited co-ordination being conducted specifically with respect to NPOs.

968. There has been no development or implementation of mechanisms for the prompt sharing of information among all relevant competent authorities in order to take preventative or investigative action when there is suspicion or reasonable grounds to suspect that a particular NPO is being exploited for FT purposes or is a front organisation for terrorist fundraising. Information contained in the national public utility entities database, maintained by the Ministry of Justice, is however available to other competent authorities and may be used by investigative agencies.

969. As noted previously in section 2.6 of this report, there are no shortcomings regarding the powers of law enforcement authorities to obtain documents and information, though the requirement that a court order be obtained in order to obtain financial records, as well as for search and seizure, and the difficulties experienced in obtaining such warrants may result in a relatively limited use of these powers in cases of ML/FT. The ability of the authorities to exercise these powers is further curtailed in terrorist financing cases since terrorist financing is not criminalised (other than to a very limited extent), as noted previously in section 2.2 of this report. As there are no record-keeping requirements applicable to NPOs, use of the authorities' powers to trace assets is impeded by the fact that the NPOs are often not able to provide the information.

970. Brazilian authorities have indicated that they believe the risk of FT in this sector is low. Investigative agencies are not concerned with the knowledge and skills of their staff with respect to gathering information on and investigating NPOs. Brazil does not have a stand-alone FT offence and there have not yet been any FT investigations in Brazil.

96 www.mj.gov.br/cnes

Responding to international requests for information about an NPO of concern

971. Brazil has not identified points of contact or procedures to respond to international requests for information regarding NPOs that are suspected of FT or other forms of terrorist support. However, general mechanisms for mutual legal assistance and administrative co-operation might be used by authorities seeking information from foreign counterparts.

Statistics and effectiveness

972. It can be seen that Brazil does not have an effective system to prevent the misuse of the NPO sector by those who finance terrorism. The limited obligations and systems which are in place with respect to this sector are anti-corruption mechanisms. Currently there is no co-ordination among the different agencies in charge of the controls applied to the NPO sector.

973. There is a perception that the risk of FT in this sector is low, and this has resulted in a lack of priority being given to potential FT abuse of the NPO sector.

974. Statistics and other information which might demonstrate effective oversight of this sector are not available.

5.3.2 Recommendations and Comments

975. Brazil has not: *(i)* reviewed the adequacy of its laws and regulations that relate to NPOs; *(ii)* used all available sources of information to undertake domestic reviews of size and other relevant features of this sector for the purpose of identifying the features and types of NPOs that are at risk of being misused for FT; or *(iii)* conducted periodic reassessments of such reviews. There has been no outreach to the NPO sector with a view to protecting the sector from terrorist financing abuse. NPOs are not subject to record-keeping requirements though a small proportion of the sector is currently subject to registration and must submit some information to competent authorities. Generally, a court order is required in order to obtain information submitted to another competent authority or to obtain financial information concerning an NPO, and the authorities may be limited in their ability to exercise this power in terrorist financing cases, since terrorist financing is not adequately criminalised. Additionally, the ability to gather information and investigate NPOs, where necessary is seriously restricted due to the absence of information. A limited range of sanctions are available where there are violations of oversight measures or rules by NPOs or persons acting on behalf of NPOs. Brazil has not identified points of contact or procedures to respond to international requests for information regarding NPOs that are suspected of FT or other forms of terrorist support.

976. It is recommended that Brazil, possibly through the ENCCLA mechanism:

- conduct a review of the domestic laws and regulations that relate to NPOs, and review the activities, size and other relevant features of the sector for the purpose of identifying the features and types of NPOs that are at risk of being misused for FT by virtue of their activities or characteristics;

- develop best practices to address FT risks, conduct regular outreach events with the sector to discuss scope and methods of abuse of NPOs, emerging trends in FT and new protective measures, and the issuance of advisory papers and other useful resources regarding FT prevention;

- implement a system of registration for all NPOs in the country; and

- require NPOs to keep records, including those of domestic and international transactions.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	**NC**	• Brazil has not implemented any of the requirements of SR VIII.

6. NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and co-ordination (R.31)

6.1.1 Description and Analysis

Policy co-ordination

ENCCLA and GGI-LD

977. The National Strategy Against Corruption and Money Laundering (ENCCLA), which is co-ordinated by the Ministry of Justice, is the primary policy-co-ordination mechanism in Brazil with respect to ML, FT and corruption. The Integrated Management Cabinet for Prevention and Combat against Corruption and Money Laundering (GGI-LD), composed of 60 agencies, meets once a year to identify ML/FT activities and review the effectiveness of the national system in order to determine the main objectives for the ENCCLA for the following year. The document that results from this meeting establishes joint actions for the GGI-LD members. ENCCLA is in charge of delivering this national policy and also seeks to enhance the co-ordination of relevant government institutions and the private sector. The full ENCCLA meets once per year, and a core group of ENCCLA's members meet every three months. Since 2008, the ENCCLA has had three Working Groups: the Legal Working Group which reviews national legislation and proposes legal reforms; the Operational and Strategic Working Group which identifies domestic trends and emerging typologies of ML and corruption; and the Information Technology Working Group which provides technology support to the other working groups and facilitates the integration of national databases. The Working Groups meet in the days before the annual Plenary and on an ad-hoc basis. For example, the Legal Working Group held nine meetings in 2009.

978. ENCCLA brings together a broad range of government ministries and agencies. In 2009, the following bodies participated in ENCCLA: the General Attorney's Office (AGU); Brazilian Intelligence Agency (ABIN); Brazilian Telecommunications Agency; Federal Judge Association; National Association of the Federal Prosecutors; Association of Magistrates of the State of Rio de Janeiro; National Association of State Attorneys; BACEN; Bank of Brazil; Chamber of Deputies; Republic Presidency's Civil House; Federal Savings Bank; CVM; Federal Justice Council; COAF; National Council of Justice; National Council of Public Prosecution; National Council of the Attorneys-General of the Federal and State Public Prosecution; National Council of State Chief of Police; CGU; DPF; DRCI; Republic Presidency's Institutional Security Cabinet; National Social Security Office; Ministry of Defense; Ministry of Finance; Ministry of Justice; Ministry of Social Security; MRE; Ministry of Labor; Ministry of Planning, Budget and Management; Public Prosecutor's Office; the National Finance Attorney General; Secretariat of the Federal Revenue of Brazil; Legislative Issues Secretariat; Economic Rights Secretariat; SPC; Secretariat for the Reform of the Judiciary; National Treasury Secretariat; National Anti-drugs Secretariat; National Secretariat of Justice; National Public Security Secretariat; Federal Budget Secretariat; Federal Senate; SUSEP; Superior Court of Justice; Federal Supreme Court; Federal Court of Audit; Brazilian Public Prosecutor Schools Board of Directors; National Collegiate of Correctors of Justice; Brazilian Federation of Banks Association; Government of the State of Bahia; National Group for the Combat against Organised Criminal Groups; State Public Prosecution of Bahia; State Public Prosecution of São Paulo; State Public Prosecution of Rio de Janeiro; Bahia Secretariat of Public Security; Bahia Court of Justice; and the Electoral Superior Court.

979. An important outcome of ENCCLA's policy making role was the preparation by its members of a Bill to amend the *AML Law* which, amongst other matters, would criminalise terrorist financing. This Bill

was introduced to the National Congress in 2006, approved by the Senate in 2007 and has been under examination by the House of Representatives (*Câmara dos Deputados*) since 2008. One of ENCCLA's roles is to follow the progress of the draft Bill through Congress.

COAF Plenary

980. The COAF Plenary is responsible for deliberating on issues related specifically to COAF's activities as an FIU and supervisor. The COAF Plenary meets monthly and comprises the President and representatives of: BACEN, CVM, SUSEP, the General Attorney Office of the National Treasury, ABIN, the DPF, the Secretariat of Federal Revenue (RFB), the MRE, the Ministry of Justice and the CGU. One of the objectives of structuring COAF as an inter-ministerial, collegiate decision-making body was to facilitate standardisation of the regulations, actions and measures applied to the reporting entities. It should be noted that its role as a deliberative Plenary does not extend to deciding on operational mechanisms; that is the role of COAF as an FIU.

CMN, COMOC and CNSP

981. The National Monetary Council (CMN), as the peak regulatory organisation in the national financial system, is responsible for formulating Brazil's currency and credit policies, promoting currency stability and social and economic development in the country. The Technical Commission on Currency and Credit (COMOC) acts as a technical advisory body to the CMN in the formulation of Brazil's currency and credit policy. The National Council on Private Insurance (CNSP) plays a similar role to CMN in relation to the insurance market.

COREMEC

982. The Committee for Regulation and Supervision of Financial Securities and Exchange, Private Insurance, Complementary Pensions and Capitalisation Markets (COREMEC) was established in January 2006 by Presidential Decree 5685/2006. The main objective of COREMEC is to co-ordinate the regulation and supervisory activities of BACEN, CVM, SUSEP and SPC with a view to harmonising regulation and supervision procedures, particularly in relation to financial conglomerates. To further this objective, COREMEC has the power to: (a) propose the adoption of measures to improve the functioning of the financial markets; (b) discuss initiatives to harmonise regulation and monitoring procedures that may impact the activities of more than one of the supervisory authorities; (c) facilitate and co-ordinate information exchange among the four supervisory authorities, foreign entities and international organisations; and (d) discuss and propose coordinated regulation and supervision actions, including for financial conglomerates.

Working Group on Money Laundering and Financial Crimes

983. The Federal Prosecution Office (MPF) has established a Working Group on Money Laundering and Financial Crimes which, amongst other activities, represents the Federal Prosecution Office in the ENCCLA, FATF Plenary meetings and other national events. The group develops support activities for all prosecutors. For instance, it has developed *Guides for Investigation and Prosecution of Money Laundering Cases* and created a website of relevant AML information, for both public and restricted access. Although State level prosecutors are not members of the Working Group, the specialised State level GEDEC and GAECO groups have access to the restricted area of the Working Group's website. This mechanism facilitates experience sharing and communication between the federal and state levels of the public prosecution service.

Resources (policy makers) - R.30

984. Overall, Brazil's policy makers are adequately structured, resourced and trained, and are required to maintain sufficiently high standards of confidentiality. Further details concerning the resources of each policy-making body are set out below.

ENCCLA and GGI-LD

985. Due to the inter-agency nature of the ENCCLA and GGI-LD, they do not have a fixed staff or technological structure. Instead, its activities are supported by a permanent staff, within the structure of DRCI, exclusively dedicated to perform the role of an Executive Secretariat, as explained below. Partner agencies provide staff *ad-hoc* for their activities. ENCCLA is planned, co-ordinated and executed with the use of resources from the more than 60 Brazilian agencies which participate in it. The annual GGI-LD meeting for the definition of ENCCLA usually takes place in one of the Brazilian states. The host state regularly provides for hotel and convention costs, whereas the Ministry of Defence generally provides air transportation from Brasília to the host state. Sometimes, state-owned companies also provide funding and, in many cases, the participants' own agencies pay their travel costs. As the main fixed sponsors of ENCCLA, the National Secretariat of Justice (*Secretaria Nacional de Justiça - SNJ*) and the CGU provide the remaining funds for this meeting. In 2008, the SNJ spent BRL 673 000 (about EUR 262 500/USD 390 000) in ENCCLA related activities, including the costs of the ENCCLA Working Group meetings, the GGI-LD Executive Committee meetings and the courses of the National Program of Qualification and Training for the Combat to the Money Laundering (PNLD).

986. The Department of Assets Recovery and International Legal Co-operation of the National Secretariat of Justice (DRCI/SNJ) performs the role of ENCCLA's Executive Secretariat and is responsible for organising its meetings. DRCI/SNJ has 52 staff comprised of civil servants from different public careers (*e.g.* State Attorneys, Governmental Managers, Federal Police Officers and others). All DRCI/SNJ staff sign a confidentiality document when they are recruited. All DRCI/SNJ staff are equipped with modern computers and peripherals, linked through a secure network which relies on high-speed broadband access to the Ministry of Justice's regular network and the internet.

987. ENCCLA members are subject to the hiring standards, duties of confidentiality and training of their individual agencies, as is described elsewhere in this report. For instance, as federal civil servants, the ENCCLA members are required to comply with the Code of Conduct of Federal Civil Servants. They are also subject to duties of confidentiality, and requirements to safeguard data, information, documents and secret materials relating to the security of society and the State (Laws 8112/1990, 9650/1990 and 8159/1991 and Decree 4553/2002). All are subject to the general rule that applicants for positions in the Brazilian government must pass a public examination process.

988. In 2004, the authorities who gathered at the first meeting of the ENCCLA pointed out that one of the main shortcoming in the Brazilian AML system was the lack of an integrated program for qualifying and training public officials, and issuing guidance to society. Following that observation, the number of qualifications, training courses, seminars and congresses increased significantly. Initially, programs with the same content for the same target audience were often being held at the same time, which undermined their efficiency and effectiveness. As a result, Goal 25 of the ENCCLA for 2005 was to establish a training program, with short (seminars), medium (updating) and long period (specialisations) courses, designed for the public agents who carry out AML activities. To accomplish that goal, the Executive Secretariat of ENCCLA created the National Qualification and Training Program for Combating Money Laundering (the PNLD). A basic principle of the PNLD is to not limit the qualification and training initiatives of each of the participating bodies of the GGI-LD. AML initiatives are explored in an integrated and rational way, thereby creating a learning community. Each GGI-LD member is considered a provider, for the whole

system, of learning resources and expert knowledge in its corresponding field of action. Since its creation, the PNLD has provided more than 60 courses and trained more than 5 000 public officials, including public prosecutors, police officers, judges, revenue officers and comptrollers.

COAF Plenary

989. Due to its inter-agency nature, COAF's Plenary does not have a permanent structure of funding and staff. The members of the COAF Plenary are subject to the hiring standards, duties of confidentiality and training of their individual agencies, as is described elsewhere in this report.

CMN, COMOC and CNSP

990. The CMN is comprised of the Minister of Finance as its President, the Minister of Planning and the President of BACEN. BACEN is the Executive Secretariat of both the CMN and COMOC, through its Secretary of Directory and CMN (Secre/Sucon) unit which is comprised of 25 civil servants, and is responsible for organising and advising its deliberative sessions (Laws 4595/1964 and 9650/1998). This includes preparing, advising and providing support in meetings, writing its meetings registers and keeping its historical files.

991. COMOC is comprised of: the President of BACEN who acts as its Co-ordinator; the President of the CVM; the Executive Secretary of the Ministry of Planning, Budget and Management; the Executive Secretary of the Ministry of Finance; the Secretary of the National Treasury (STN); the Secretary of Economic Policy of the Ministry of Finance (SPE); and four Directors of BACEN who are appointed by its President.

992. The CNSP is comprised of the Finance Minister (or his/her representative), the Superintendent of SUSEP, and representatives of the Minister for Legal Affairs, the Minister for the National Social Security System, BACEN and the CVM. The CNSP is chaired by the Finance Minister and in his/her absence by the Superintendent of SUSEP. The CNSP Secretariat is housed at the SUSEP. The ethical principles and norms of conduct included in the *Professional Code of Ethics of the Civil Public Servant of the Federal Executive Power*, approved by Decree 1171/1994, and in the *Code of Conduct of the High Federal Administration* apply to all members of CNSP, who are nominated by the Minister of Finance.

993. The members of the CMN, COMOC and CNSP are also subject to the hiring standards, duties of confidentiality and training of their individual agencies, as is described in section 3.10 of this report.

COREMEC

994. The COREMEC is comprised of high-level representatives from the four main financial sector supervisory authorities: BACEN (the Governor and one Deputy Governor); the CVM (the Chairman and one Director); SUSEP (the Superintendent and one Director); and the SPC (the Secretary and one Director). The chairmanship of COREMEC rotates every six months among the four supervisory authorities. The chairing supervisory authority is also responsible for providing secretariat services during that period. COREMEC members are subject to the hiring standards, duties of confidentiality and training of their individual agencies, as is described in section 3.10 of this report.

Working Group on Money Laundering and Financial Crimes

995. The Working Group is a specialised group of federal prosecutors, all of whom have expertise in conducting ML investigations and prosecutions. See section 2.6 for a description of the hiring standards, duties of confidentiality and training applicable to federal prosecutors.

Operational co-operation

Specialised federal courts

996. The specialised federal courts facilitate the prosecution of money laundering cases by bringing together judges and prosecutors who are specialised in dealing with such cases. The Brazilian authorities report that this approach has facilitated addressing the more complex legal issues generally associated with cases involving ML and other financial crimes, and has resulted in such cases being tried in a more timely manner.

COAF

997. In additional to playing an important role in policy co-ordination, COAF is responsible for co-ordinating information exchange among the agencies that comprise the COAF Plenary and applying administrative sanctions for breaches of the *AML Law* (art.14, para.2 and art.16).

GAECO, GEDEC and GNCOC

998. Each of Brazil's 27 states has established a specialised unit (Special Action Group Against Organised Crime – GAECO), to facilitate the investigation and prosecution of complex cases involving organized crime, ML and other financial crimes. A similar function is performed by the Special Group Against Organised Crime (GEDEC) which was recently created in Sao Paulo. The GEDEC was created within the Public Prosecutor's Office of the Brazilian Federative State of Sao Paulo, and supervises the work of the police in the investigation of ML cases. The GAECO groups meet biannually at the National Group Against Organised Crime (GNCOC) meeting which has a working group that specifically addresses emerging ML cases and typologies.

General co-ordination of research and investigation (COPEI) of the Secretariat of Federal Revenue (RFB)

999. COPEI units are located in Brazil's major cities. Their objective is to co-ordinate ML investigations across the country, usually employing task forces comprised of both Federal Police and Prosecutors. To facilitate this work, the RFB and Federal Police have signed a Technical Co-operation Agreement that regulates the co-ordination and execution of integrated actions aimed at preventing and combating illicit criminal, tax and customs schemes. This initiative includes an action plan aimed at leveraging the human, intelligence and technical resources of both agencies, and allowing them to conduct joint operations to combat organised crime, and related ML.

Joint task forces

1000. Brazilian law enforcement and prosecution agencies have been developing their capacities to work together by exchanging information and forming joint task forces. For example, from 2003 to 2006, the Federal Prosecution Service, Federal Police, RFB and BACEN worked together to investigate and prosecute hundreds of natural persons involved in a major scheme of tax evasion, capital flight and ML. Additionally, joint task forces comprised of the Federal Police, and Public Prosecutions (both federal and states) are regularly established. There are also some permanent task forces consisting of members of the following bodies: *(i)* Federal Police, Public Prosecution, Ministry of Social Security and ABIN; *(ii)* RFB, Federal Police and Public Prosecution; and *(iii)* General Comptroller of the Republic, Public Prosecution and Federal Police (specifically tasked to deal combat corruption); and *(iv)* Department of Assets Recovery and International Legal Cooperation – DRCI. Although Brazil lacks clear legislative rules for establishing and operating such task forces, the legitimacy of these operations has been confirmed by a decision of the superior court.

Co-ordination among federal and state law enforcement and prosecution agencies

1001. Money laundering is investigated and prosecuted at the federal or state level, depending on which federal/state agency has the jurisdiction to investigate and prosecute the predicate offence. For example, the following predicate offences and related ML are investigated/prosecuted at the federal level: financial crimes; drug trafficking involving an international or inter-state border; and corruption offences occurring at the national level or having repercussions in more than one state. The following predicate offences and related ML are investigated/prosecuted at the state level: kidnapping; extortion; drug trafficking occurring entirely within a single state; and corruption offences occurring entirely at the local level. In practice, co-ordination among the federal and state investigation/prosecution agencies works as follows. COAF disseminates its reports simultaneously to the federal and state prosecution agencies. If the state agencies' investigation does not reveal an offence within state jurisdiction, the case is forwarded to the federal authorities. Likewise, if the federal prosecutor's investigation does not reveal a federal predicate offence, the case is forwarded to the state authorities.

Co-ordination between supervisory and enforcement authorities

1002. The supervisory entities (BACEN, CVM, SUSEP and SPC) are authorized to share information with COAF in the absence of a court order. Additionally, the supervisors may share information with each other for supervisory purposes.

Resources (operational agencies)

1003. The resources of the operational agencies are discussed above in section 2.6 of this report.

Additional elements

1004. The ENCCLA serves as a mechanism for consultation between the competent authorities and the private sector. For example, over the years, the FEBRABAN and Bank of Brazil (which is half-state owned) have participated in ENCCLA's annual meeting, and meetings of its Legal and Operational Working Groups. In addition, BACEN conducted an informal consultation program with the banking sector prior to updating its circular of 23 July 2009

Effectiveness

1005. The Integrated Management Cabinet for Prevention and Combat against Corruption and Money Laundering (GGI-LD) meets once a year to review the effectiveness of the national AML/CFT system and determine ENCCLA's main objectives for the upcoming year. The document generated from this meeting establishes joint actions for the GGI-LD members. An Executive Committee, comprised of core GGI-LD members, meets every three months to verify that these actions have been accomplished and to assess the implementation and effectiveness of ENCCLA's strategic plan and operational activities. This allows ENCCLA to function as a co-ordination mechanism among the participating agencies. The DRCI plays the role of an Executive Secretariat for the GGI-LD. All GGI-LD decisions are taken by a consensus of all participants.

1006. Brazil has implemented a number of mechanisms that facilitate both policy and operational co-ordination among a sufficiently broad range of relevant authorities. For the most part, these bodies are working effectively, although some issues remain concerning the operational co-ordination among federal and state level law enforcement and prosecutorial authorities. For example, the Brazilian authorities admit that the complex system of concurrent federal and state competence to investigate and prosecute ML has led to some problems of investigations overlapping at the federal and state levels.

1007. The GGI-LD process for annually reviewing and readjusting the objectives of the ENCCLA for the upcoming year is impeded in some areas by the deficiencies in relation to statistics collection in relation to ML investigations and prosecutions, provisional measures and confiscation, mutual legal assistance and supervisory processes, as described in sections 2.1, 2.3, 3.10, 6.3 and 6.4 of this report.

Recommendation 32 – Reviewing the effectiveness of the AML/CFT regime

1008. The ENCCLA provides a mechanism through which the Brazilian authorities systematically review the effectiveness of their systems for combating ML/FT on a regular basis. Each year, the ENCCLA sets a number of concrete goals, with a view to enhancing its implementation of AML/CFT measures, and reviews progress in achieving the goals set in the previous year. The ENCCLA mechanism has been in place since 2003, and was used to address the deficiencies identified in Brazil's last mutual evaluation (which was conducted in 2004), as described in more detail in section 1.5 of this report.

6.1.2 Recommendations and Comments

1009. Work is already underway to facilitate enhanced operational co-ordination among federal and state law enforcement and prosecutorial authorities, including through the consolidation and centralisation of federal and state databases. For instance, SINTEPOL, which is currently in its last phases of implementation, will consolidate 16 separate state criminal record databases and function as both a database and analysis tool. Once it is fully operational, SINTEPOL will improve the authorities' ability to filter, analyse and handle information in a timely manner. The Brazilian authorities report that initiatives such as this are improving the ability of the federal and state law enforcement and prosecutorial agencies to co-ordinate at the operational level. This work and related initiatives are being and should be continued.

1010. The authorities should improve their mechanisms for collecting statistics, so as to enhance their ability to review AML/CFT measures on a periodic basis.

6.1.3 Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	**LC**	• Operational co-ordination: Some operational co-ordination problems are evident where investigations at the federal and state levels overlap.

6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)

6.2.1 Description and Analysis

Vienna and Palermo Conventions

1011. Brazil has signed and ratified the *United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (the *Vienna Convention*), through Decree 154/1991.

1012. Brazil has signed and ratified the *United Nations Convention against the Transnational Organized Crime* (the *Palermo Convention*) through Decree 5015/2004. Brazil has also signed and ratified the supplemental Protocols to the Palermo Convention: the *Protocol against the Smuggling of Migrants by Land, Sea and Air* (Decree 5016/2004); the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (Decree 5017/2004); and the *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition* (Decree 5941/2006).

1013. Brazil has implemented the Vienna and Palermo Conventions through the *AML Law* which criminalises money laundering. However, there is a minor technical deficiency in the criminalisation of the conversion/transfer of proceeds which is not in line with the *FATF Recommendations*. Also, the range of offences in 10 of the 20 FATF designated categories of predicate offences is insufficient. Additionally, civil or administrative liability for ML has not been extended to legal persons directly for committing ML, and implementation of the ML offence is not effective (see section 2.1 of the report for further details).

Terrorist Financing Convention

1014. Brazil has signed and ratified the *United Nations Convention for the Suppressing of the Financing of Terrorism* (the *Terrorist Financing Convention*) through Decree 5640/2005.

1015. Brazil has not implemented the *Terrorist Financing Convention* because it has not criminalised the financing of terrorist acts as a stand-alone offence, consistent with article 2 of the Convention, as is required by Recommendation 35 and Special Recommendation I (see section 2.2 of this report for further details).

United Nations Security Council Resolutions

1016. Brazil does not have effective laws and procedures to implement S/RES/1267(1999) and S/RES/1373(2001) (see section 2.4 of this report for further details).

Additional elements

1017. Brazil has signed and ratified the following relevant international conventions[97]:

- *Inter-American Convention Against Terrorism* (Decree 5639/2005);
- *Convention on Offences and Certain Other Acts Committed on Board Aircraft* (Decree 66520/1970);
- *Convention for the Suppression of Unlawful Seizure of Aircraft* (Decree 70201/1972);
- *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation* (Decree 77383/1973);
- *Convention on the Physical Protection of Nuclear Material* (Decree 95/1991);
- *Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation* (Decree 2611/1998);
- *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons* (Decree 3167/1999);
- *International Convention against the Taking of Hostages* (Decree 3517/2000);
- *Convention on the Marking of Plastic Explosives for the Purpose of Iden*tification (Decree 4021/2001);

97 The 1990 *Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime* is not relevant to Brazil in its context as a non-European country.

- *International Convention for the Suppression of Terrorist Bombings* (Decree 4394/2002); and

- *Convention for Suppression of Unlawful Acts Against Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf* (Decree 6136/2007).

1018. Brazil has also concluded bilateral treaties with Panama, China and Italy seeking partnership in the combating of transnational criminal organisations.[98]

6.2.2 Recommendations and Comments

1019. Brazil has signed and ratified the *Vienna Convention* and the *Palermo Convention*. However, there are gaps in the implementation of both Conventions that relate to deficiencies in the criminalisation of ML, the range of offences in 10 categories of predicate offence, and effectiveness of implementation. Additionally, civil or criminal liability is not directly applicable to legal persons for committing ML. Brazil should take the action recommended in section 2.1.2 of this report to address these gaps.

1020. Brazil has signed and ratified the *Terrorist Financing Convention;* however, there are serious gaps in its implementation because terrorist financing has not been criminalised as a stand alone offence in a manner that is consistent with the elements specified in article 2 of the Convention, as is required by Recommendation 35 and Special Recommendation I. Additionally, civil or criminal liability is not directly applicable to legal persons for committing FT. Brazil should take the action recommended in section 2.2.2 of this report to address these gaps.

1021. Brazil does not have effective laws and procedures to implement the relevant United Nations Security Council Resolutions. Brazil should take the action recommended in section 2.4.2 of this report to address these gaps.

[98] See respectively Decrees 5814/2006, 268/2009 and 34/1998.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**PC**	• Implementation of the Vienna and Palermo Conventions: Technical deficiencies in the criminalisation of the conversion/transfer of proceeds. Insufficient range of offences in 10 designated categories of predicate offence. No direct civil or administrative liability to legal persons who have committed ML. Ineffective implementation of the ML offence. • Implementation of the Terrorist Financing Convention: Brazil has not criminalised terrorist financing as a stand-alone offence, consistent with the Convention.. Brazil has not extended civil or administrative liability directly to legal persons who have committed FT.
SR.I	**NC**	• Implementation of the Terrorist Financing Convention: Brazil has not criminalised terrorist financing as a stand-alone offence, consistent with the Convention. Brazil has not extended civil or administrative liability directly to legal persons who have committed FT. • The effectiveness of laws and procedures to implement S/RES/1267(1999) and S/RES/1373(2001) is not established.

6.3 Mutual Legal Assistance (R.36-38, SR.V)

6.3.1 Description and Analysis

Recommendation 36 and Special Recommendation V (Mutual legal assistance)

1022. There is no framework law on mutual legal assistance (MLA) in Brazil.[99] Instead, Brazil provides MLA in criminal matters on the basis of multilateral conventions, bilateral agreements or reciprocity, and on the basis of specific provisions in the *AML Law*.

1023. Brazil has signed the following multilateral conventions that allow it to provide mutual legal assistance:

- the *Vienna Convention* (Decree 154/1991 art.7, para.2);
- the *Palermo Convention* (Decree 5015/2004 art.18, para.3);
- the *United Nations Convention Against Corruption (Merida Convention)* (UNCAC) (Decree 5687/2006 art.46, para.3);
- the *Inter-American Convention on Mutual Legal Assistance in Criminal Matters (Nassau Convention)* (Decree 6340/2008 art.7); and
- the *Protocol on Mutual Legal Assistance in Criminal Matters (Protocol of San Luis)* signed by the State Parties of the MERCOSUL (Decree 3468/2000 art.2).

1024. Brazil has also signed bilateral mutual legal assistance treaties with Canada, China, Colombia, Cuba, France, Italy, Korea, Peru, Portugal, Spain, Suriname, Ukraine and the United States[100].

99 The authorities report that the implementation of a national law on international co-operation is currently being discussed.

100 Decree 6747/2009 art.1, para.5; Decree 6282/2007 art.1, para.2; Decree 6462/2008 art.1, para.4; Decree 3895/2001 art.II; Decree 3988/2001 art.3, para.1; Decree 3324/1999; Decree 862/1993 art.1, para.2 and art.2, paras.10-13 and 15-16; Decree 1320/1994 art.1, para.2; Decree 5721/2006 art.1, para.3;

1025. These multilateral and bilateral treaties allow it to provide all the types of mutual legal assistance referred to in Recommendation 36 and Special Recommendation V in relation to both money laundering, terrorist financing and other predicate offences.

Processes for executing MLA requests

1026. Brazil provides and receives mutual legal assistance through the following processes: the MLA request, the letter rogatory and the enforcement of foreign decisions.

MLA requests

1027. Requests for direct mutual legal assistance (*i.e.* requests made on the basis of a treaty) are used to take procedural or investigative action, provisional measures, and other acts in the interest of the authorities involved in a criminal prosecution or criminal investigation, that may be effected regardless the intervention of the Judicial Branch (Decree 6061/2007 art.11(I, IV and VI); Superior Court of Justice-STJ Resolution 09/2005).

1028. Brazil's Central Authority for processing MLA requests is the ***Department of Assets Recovery and International Legal Co-operation (DRCI)*** of the Ministry of Justice (or, in the case of MLA between Brazil/Canada and Brazil/Portugal, the ***Bureau of International Legal Co-operation (ASCJI)*** of the General Prosecutor's Office.

1029. Incoming direct MLA requests are received from the requesting country by the DRCI which analyses the request to ensure that it complies with the applicable prerequisites. If those prerequisites are met, the request is transmitted to the appropriate competent national authority for its execution (*e.g.* the Public Prosecution or Police Authority). If execution of the request depends on the initiative of the Judicial Branch, the Federal Public Prosecution shall, in turn, submit the request to the competent Court.

1030. Outgoing MLA requests are transmitted by the national competent authorities to the DRCI which analyses the request to ensure that it complies with the prerequisites set out in the applicable treaty. If those prerequisites are met, the request is transmitted to the Central Authority of the requested country for execution.

Letters rogatory

1031. Letters rogatory are used to take procedural or investigative action, and provisional measures (*Constitution* art.105(I)(line i); CPC art.783-786); Decree 6061/2007 art.11(VI); Administrative Rule 26/1990; Superior Court of Justice-STJ Resolution 09/2005).

1032. Brazil's Central Authority for processing letters rogatory is the DRCI. However, the ***International Legal Co-operation Division (DCJI)*** of the Ministry of Foreign Affairs also plays an important role.

1033. Incoming Letters Rogatory are received by the DCJI (diplomatic channel) which transmits them to the Ministry of Justice which, after analyzing the prerequisites, sends them to the Superior Court of Justice (STJ). The STJ conducts an analysis to ensure that the request meets the formal requirements, and is in accordance with Brazil's public order, national sovereignty and fundamental principles. If the request meets all of the mandatory prerequisites, the *exequatur* is granted, and the request is transmitted to the Lower Federal Court which is competent to execute the requested measure.

Decree 6681/2008 art.3; Decree 6832/2009 art.1, para.3; Decree 5984/2006 art.1, para.2; Decree 3810/2001 art.I, para.2.

1034. Outgoing Letters Rogatory are transmitted by the national judicial authority to the DRCI which then transmits them to the DCJI for transmission to the requested state via diplomatic channels.

Enforcement of a foreign decision

1035. The mechanism of enforcing a foreign decision is used: to compel a convicted person to pay compensation for damages, restitutions and other civil penalties; to compel effects; and to enforce penalty measures against a convicted person. This mechanism is initiated upon request by an interested party or by the Chief Federal Prosecutor or the Ministry of Justice. (*Criminal Code* art.9; CPC art.787-790; *Constitution* art.105(I)(line i); Superior Court of Justice-STJ Resolution 09/2005). This mechanism may also be used to enforce foreign freezing and confiscation orders, as is described below in more detail in the discussion of Recommendation 38.

Range of mutual legal assistance available

1036. Brazil relies on its domestic criminal procedure powers to provide mutual legal assistance. The police authorities have full competence to investigate criminal offences, and obtain court orders for the purpose of executing acts and proceedings that are not otherwise within their competence (CPC art.4). These provisions allow Brazil to provide the following types of MLA.

(a) ***Production of documents and records, including financial records, search and seizure:*** The Public Prosecution is authorised to request the practice of acts and production of documents from public agents and the Police Authority (CPC art.13(II) and 45). Additionally, even before a criminal action is initiated, a judge may order, *ex officio*, the early gathering of evidence (*e.g.* through search and seizure) that is considered to be urgent and relevant, observing the need, adequacy and proportionality of the measure (CPC art.156(I-II)).

(b) ***Taking evidence or statements:*** At any relevant point during the preliminary investigation phase or before rendering sentence, a judge may also order the execution of actions to facilitate answering any question on a relevant point (CPC art.156(I-II)).

(c) ***Providing originals or copies:*** Originals or copies may be provided; however, court authorization is needed if, for instance, the records are subject to the confidentiality provisions of Complementary Law 105/2001.

(d) ***Service of process:*** Brazil can provide this sort of assistance, including serving a summons or subpoena, without the need to establish dual criminality.

(e) ***Facilitating the voluntary appearance of persons***

(f) ***Identification, seizure and confiscation of assets:*** The national judicial authorities also have the competence to execute provisional measures (seizure and forfeiture) on assets, funds and rights obtained illicitly (CPC art.127 and 137; *AML Law* articles 4 and 8; Law 11343/2006 art.60-62; Decree 3240/1941). The authorities may also compel the production of financial records, with a view to tracing assets. Brazil has also signed a number of international agreements and conventions that enable it to render MLA in criminal matters for the purpose of executing confiscation actions.

1037. The above provisions apply in general equally to ML, terrorist financing and predicate offence cases. As noted in sections 2.2 and 2.1 of this report, terrorist financing is not criminalized as a stand-alone offence in accordance with Special Recommendation II and there is an insufficient range of offences in some designated categories of predicate offences. Nevertheless, these factors do not negatively impact the

ratings for Recommendation 36 and Special Recommendation V because Brazil can provide MLA in the absence of dual criminality and has demonstrated its ability to do so in practice.

Timeliness

1038. The authorities report that both of Brazil's central authorities for MLA in criminal matters try to provide such assistance in a timely and effective manner. However, in practice delays may arise at the level of the police, prosecution authorities and/or the courts since the central authorities themselves do not have executive powers. The execution of a mutual legal request may also be slower in cases involving the involvement of the Brazilian states. Finally, further delay arises in instances where the MLA request is understood by the Superior Court of Justice as a letter rogatory (*Constitution*; Superior Court of Justice Resolution 9/2005 art.105). The authorities were not in a position to provide information indicating the time that assistance under letters rogatory takes as this varies greatly and may be impacted by factors particular to each request. Thus it appears the processes involved in assistance using letters rogatory is not efficient and clear, because its resolution varies on a case by case basis. However, this deficiency is somewhat mitigated as very few MLA requests proceed by way of letters rogatory. For example, in 2009, the DRCI of Brazil received 1 245 new MLA requests, of which only 16 (1.2%) were letters rogatory. The remaining 98.2% were treated as direct legal assistance, as the requests were based on treaties. As well, delays may result where the request involves an order to compel the production of financial records (see sections 2.3 and 2.6 of this report for further details).

Prohibitions and conditions

1039. Brazil does not prohibit or make the provision of MLA subject to unreasonable, disproportionate or unduly restrictive conditions.

1040. Letters rogatory and direct requests for Assistance are executed by the Brazilian authorities regardless of whether a preliminary conviction has been obtained, or an investigation, inquiry or criminal proceeding is underway in the requesting country. Where MLA is being provided on the basis of reciprocity, all that is required is a submission by the requesting state of a Verbal Note that includes an undertaking to reciprocate in similar cases.

1041. Brazil is able to provide all mutual legal assistance regardless of dual criminality.[101] Dual criminality is not a prerequisite to Brazil being able to provide MLA involving *first degree arrangements* (summons, subpoena, notification and evidence gathering). Where dual criminality is required, it need only be established that the same underlying conduct is criminalised (either as a stand alone offence or otherwise) in both Brazil and the requesting country. It is not necessary to establish that each element of the offence is identical. In some of the MLA treaties to which Brazil is a party, establishing dual criminality is an optional prerequisite to Brazil being able to provide MLA.

1042. Brazil does not refuse MLA requests on the grounds that the offence is considered to involve fiscal matters. Although some of the multilateral treaties to which Brazil is a party do provide that a requested state may refuse assistance in such cases, Brazil does not exercise these options. For example, Brazil is a party to the *Inter-American Convention on Mutual Legal Assistance in Criminal Matters*

[101] Brazil has ratified bilateral and multilateral treaties that provide the possibility of assistance regardless of dual criminality, such as, for instance, the *Agreement on Cooperation and Mutual Legal Assistance in Criminal Matters between Brazil and Spain* (ratified in December 2008), the *US-Brazil Mutual Legal Assistance Treaty* (17 October 1997) and the *(OAS) Interamerican Convention on Mutual Assistance in Criminal Matters* (ratified in January 2008). Such provision was also included in the texts that are still being negotiated by Brazil.

(Decree 6340/2008). Article 9(f) of that Convention provides that a requested state may refuse to provide MLA when it determines that the request pertains to a tax crime, except where the offence is committed by way of an intentionally false statement or failure to declare income derived from any other offence covered by the Convention. However, Brazil is also a party to the Optional Protocol to this Convention (promulgated by the same Decree) which provides that countries shall not exercise their right to refuse to provide MLA solely on the ground that the request concerns a tax crime if the requesting country is also a party to this Protocol" (art.1) or if the act specified in the request corresponds to a similar tax crime under the laws of the requested state (art.2). As well, Brazil's bilateral MLA agreements with the following countries specifically do not provide for refusing a request on the basis that the offence involves fiscal or tax matters: Cuba, China, Colombia, France, Italy, Korea, Peru, Portugal, Ukraine and the United States.

1043. The Brazilian judicial authorities may issue court orders allowing competent authorities to access financial records, regardless of bank secrecy or confidentiality, at any stage of an investigation or legal proceedings involving any illicit activity, and particular in cases involving crimes of: ML or concealment of assets, rights and valuables; terrorism; drug trafficking; arms trafficking; extortion through kidnapping; acts against the Brazilian financial system or Public Administration; acts against the fiscal and social security order; and acts committed by a criminal organisation (Complementary Law 105/2001 art.1, para.4). Similarly, BACEN and CVM must provide any information required from them by the Judicial branch under court order, on the condition that such information shall not be used for purposes other than those pertaining to the investigation (Complementary Law 105/2001 art.3).

Conflicts of jurisdiction

1044. There is no national law dealing with the selection of jurisdiction as between Brazil and another country in criminal cases because, in the Brazilian legal system, the authorities are obliged to prosecute any case which has a connection to Brazil (*Criminal Code*, art.7; *Constitution* art.129(I)); the doctrine of *foreign non conveniens* cannot be applied. There are specific mechanisms in place for transferring proceedings from a foreign country to Brazil, either through provisions set out in applicable treaties or on a case-by-case basis. Additionally, the provisions of the *Palermo*, *Vienna* and *Merida Conventions* relating to the transfer of criminal proceedings could be invoked, as Brazil is a party to these Conventions. It should also be noted that Brazil is able to provide MLA in circumstances where a case related to the same facts is proceeding simultaneously in Brazil.

Additional elements

1045. The powers of competent authorities required under Recommendation 28 are not available for use when there is a direct request from foreign judicial or law enforcement authorities to domestic counterparts, as there is no possibility to process an MLA request without the intervention of the Central Authority in the Brazilian context.

Recommendation 37 and Special Recommendation V (Dual criminality relating to MLA)

1046. Brazil does not require dual criminality when providing mutual legal assistance, even for coercive measures, provided that a formal procedure has been started in the foreign country. Dual criminality is not a prerequisite for assistance involving first degree arrangements (summons, subpoena, notification and evidence gathering). This has been recognized by the Supreme Court.

1047. Brazil may provide MLA in the absence of dual criminality regardless of whether such assistance is being provided on the basis of a treaty, Convention or reciprocity. For example, the *Inter-American Convention on Mutual Legal Assistance in Criminal Matters* (Decree 6340/2008) provides that requests for provisional measures, confiscation, and searches may be granted in the absence of dual criminality (art.5).

Likewise, MERCOSUL's *Mutual Legal Assistance Protocol in Criminal Matters* also provides for the possibility of render MLA in the absence of dual criminality where the request relates to the execution of provisional measures, service of documents, inspections, and delivery of objects, documents and background information (art.1, para.4; art.22-23). When providing MLA pursuant to these instruments, Brazil waives the requirement for dual criminality.

1048. In cases where a foreign state requires dual criminality as a condition of an MLA agreement, Brazil aims to interpret and invoke the condition of dual criminality as narrowly as possible, resulting in broader co-operation. Where dual criminality is required, it need only be established that the same underlying conduct is criminalised in both Brazil and the requesting country. It is not necessary to establish that each element of the offence is identical. Brazil's bilateral MLA agreements with the following countries provide the option of denying an MLA request on the basis of the absence of dual criminality: China, Cuba, France, Korea and the United States. Its bilateral MLA agreements with Italy, Peru and Surinam clearly dismiss the possibility of invoking dual criminality as a basis for refusing an MLA request. The bilateral agreements with Colombia and the Ukraine are silent on the issue of dual criminality, and the agreement with Portugal provides for a very restrictive interpretation of its application.

Recommendation 38 and Special Recommendation V (MLA relating to provisional measures and confiscation)

1049. The MLA mechanisms described above may be applied in relation to provisional measures and confiscation. For instance, the mechanism of enforcing a foreign order may be used to enforce a foreign order to freeze, seize or confiscate assets. This mechanism may be applied in relation to the direct or indirect proceeds of crime, instrumentalities and property of corresponding value. Additionally, the multilateral conventions and bilateral treaties listed above contain specific provisions that allow for the search, seizure and forfeiture of these types of property. The Brazilian authorities report that these mechanisms allow it to respond rapidly to requests of this nature, and to repatriate assets to the requesting state.

1050. Financial records can be obtain in Brazil by administrative process or judicial order pursuant to the procedures described above in section 2.3 of this report. It also must be noted that the centralized information system of BACEN allows the MLA requests to be served anywhere in Brazil with only the name or identity number of a person. This means that it is not necessary for the Central Authority to provide further information concerning the identity of the owner or location of the bank account before proceeding with the MLA request. BACEN has also developed a system (BACEN-JUD)[102] that allows judges from across the country to verify the amount of money in an account and take freezing action in real time. However, the concerns raised above and in sections 2.3 and 2.6 of this report in relation to the difficulties and delays that sometimes result when seeking to obtain an order to compel the production of financial records also apply here.

1051. Article 8 of the *AML Law* provides that, 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 the *AML Law*, with no prejudice to rights of third parties. Although the *AML Law* does not set out a process for giving effect to this provision, the Brazilian authorities were able to provide an example of how the process works in practice. In 2005, Paraguay sent an MLA request to Brazil, based on the MERCOSUL Protocol. The defendant was accused of stealing, money laundering and criminal association. Paraguay requested seizure of a property worth more that USD 11 million which was purchased by the defendant in Brazil, on the border with Paraguay. In 2006, a Brazilian Judge ordered the property to be frozen, pending the final determination of the case in Paraguay. The property remains

[102] BACEN-JUD was created in 2008 by Resolution 61/2008.

frozen, and the Brazilian authorities have decided to promote an early restraint order to sell the property, so as to preserve its real value.

1052. Provisional and confiscation measures may be applied to licit property of corresponding value, for the purpose of compensating the State for the damages caused by the criminal conduct, fines and judicial costs, in instances where the defendant has insufficient proceeds of crime to meet these obligations (CPC art.137).

1053. The above provisions apply equally to ML, terrorist financing and predicate offence cases. As noted in sections 2.2 and 2.1 of this report, terrorist financing is not criminalized as a stand-alone offence in accordance with Special Recommendation II and there is an insufficient range of offences in some designated categories of predicate offences. Nevertheless, these factors do not negatively impact the ratings for Recommendation 38 and Special Recommendation V because Brazil can provide MLA in the absence of dual criminality and has demonstrated its ability to do so in practice.

Co-ordinating actions and asset sharing

1054. The DRCI has jurisdiction to co-ordinate, internally and externally, the taking of seizure and confiscation actions with other countries (Decree 6061/2007, art.11). This includes responsibility for: (a) articulating, integrating and proposing Government actions in matters related to money laundering, transnational organised crime, asset recovery and international legal co-operation; (b) negotiating and co-ordinating the implementation of international legal co-operation; (c) co-ordinating the activities of the Brazilian State in international forums on AML, transnational organised crime, asset recovery and international legal co-operation; and (d) instructing, commenting and co-ordinating the implementation of outgoing and incoming international legal co-operation, including rogatory letters. When performing these tasks in relation to seizure and confiscation operations, the Brazilian Central Authority co-ordinates with the Brazilian judiciary, Prosecutor's Office and Police, and mediates their contact with foreign Central Authorities. These arrangements can be applied to co-ordinating seizure and confiscation actions with other countries.

1055. Brazil has established an asset forfeiture fund, the National Penitentiary Fund (FUNPEN) into which the proceeds from the sale of confiscated property are deposited (*Criminal Code* art.45, para.3; Complementary Law 79/1994 art.1-2(IV)). FUNPEN was established within the jurisdiction of the Ministry of Justice, with management assigned to the Department of Penitentiary Affairs. FUNPEN resources shall be applied to: the construction, reform, expansion and improvement of criminal facilities; penitentiary service maintenance, training and development; implementation of educational, training, rehabilitation and work programs for prisoners and inmates; social assistance programs for crime victims; legal assistance programs for the dependants of prisoners and inmates; the maintenance of shelters for the victims of domestic crimes; and research in the area of criminology (Complementary Law 79/1994 art.3; Decree 1093/1994).

1056. A similar fund—the Anti-drugs National Fund (FUNAD)—exists in relation to confiscated property from drug offences. FUNAD resources are used for law enforcement, health and education purposes (Federal Law 11343/2006 art.61-63, para.8-9).

1057. Brazil explicitly authorises the sharing of confiscated assets with other countries when the confiscation directly or indirectly results from a co-ordinated law enforcement action (*AML Law* art.8, para.2). However, it should be noted that there are no underpinning procedures to give effect to that provision, or mechanisms for dealing with specific cases.

Additional elements

1058. Brazil can enforce non-criminal confiscation orders (*i.e.* civil forfeiture orders) through a procedure named the "homologation of foreign decisions". It involves a preliminary analysis by the Superior Court of Justice of a court decision no longer subject to appeal in order to authorise its implementation within Brazil (*Constitution* art.104(I), line i; STJ Resolution 09/2005).

Resources (Central authority for sending/receiving MLA/extradition requests)

1059. For the purpose of mutual legal assistance, there are two central authorities in Brazil. The most important is the ***Department of Assets Recovery and International Co-operation (DRCI)***, within the Ministry of Justice (Executive branch). DRCI is in charge of the majority of MLA treaties that Brazil has concluded, and handles both incoming and outgoing MLA requests (Decree 6061/2007).

1060. The ***Bureau of International Legal Co-operation (ASCJI) of the General Prosecutor´s Office*** has been designated to be the Central Authority for the MLATs between Brazil/Canada and Brazil/Portugal.

1061. The ***Department of Foreigners (DEEST)*** of the Ministry of Justice, by means of its Division of Compulsory Measures, is the Brazilian Central Authority for the purpose of extradition proceedings.

1062. The Ministry of Justice has, in total a BRL 9 million (EUR 3.5 million/USD 5.2 million) annual budget for the maintenance of its activities. Overall, it is well equipped with a wide range of technical resources. Within the Ministry of Justice there is the National Secretariat of Justice (SNJ) which is where the DRCI and DEEST are located.

1063. The DRCI staff is comprised of 52 professionals, comprised of civil servants from different public careers (*e.g.* State Attorneys, Governmental Managers, External Control Auditors, Federal Police Officers, and others). Although this number of staff is not ideal in proportion to the number of cases, the authorities are continuing to improve the situation through a comprehensive effort to increase the number of permanent public civil servants. The DRCI is housed in a separate space, outside of the main Ministry of Justice building, where is easier to control the access of the general public and to preserve the confidentiality of the sensitive documentation. It also has a very good technological structure, with 56 computers, 15 printers, one high-speed scanner and five other scanners.

1064. The staff of the central authorities all have high professional standards and integrity, and are appropriately skilled. The employees of the DRCI and DEEST who deal with MLA and extradition matters are required to have, at a minimum, a college degree in Law or Foreign Affairs. They are also required to have oral and written fluency in English, and it is desirable to have knowledge of Spanish and French. It is an asset, but not a mandatory requirement, to have international experience and availability to represent the Ministry of Justice in national and international meetings.

1065. In terms of confidentiality standards, the Ministry of Justice has a very thorough selection process when hiring employees, involving curriculum analysis and personal interviews. Additionally, DRCI and DEEST employees are required to sign a commitment agreement stating that they are aware of the administrative and judicial penalties they will face in case of breach of confidentiality. In particular, they are subject to administrative and criminal liability if they fail to comply with their duties (Law 8112/1990 and *Criminal Code* art.319-320). Additionally, the DRCI has a formal internal rule about this matter: the Service Order nº1, of the year 2004 that settles the rules to be followed regarding organic security.

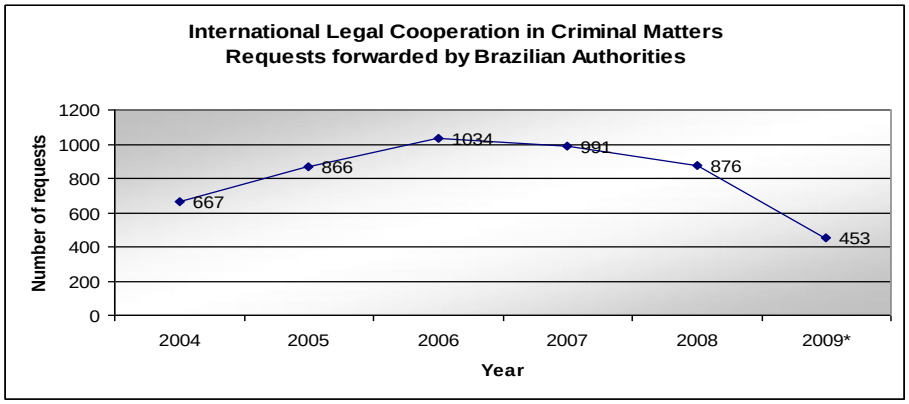
1066. The DRCI organises annual training courses on ML. With input from other agencies, several specialised training courses have been offered, such as the Training Course on Financial Intelligence. In 2004, the National Program of Qualification and Training for the Combat to the Money Laundering (PNLD) was held for the purpose of raising awareness of AML, asset recovery and the importance of international legal co-operation. Since then, more than 2 400 government officials have been trained through the PNLD program.

1067. The Prosecutor-General is the Central Authority for international co-operation based on Brazil's MLA treaties with Canada and Portugal. The following chart sets out the number of requests received by the Prosecutor General from Canada and Portugal. All of these requests were granted. These statistics are also published on the GTLD´s website (Federal Prosecution Service´s Working Group on Money Laundering and Financial Crimes).[103]

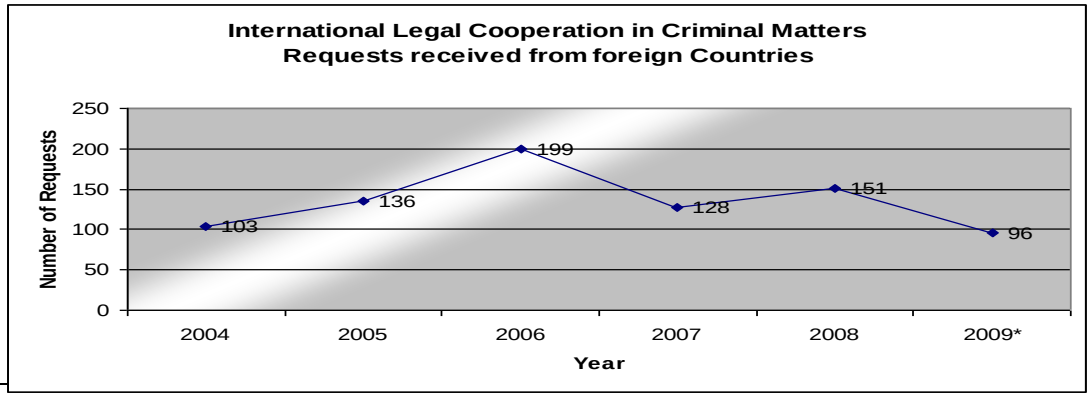
Number of MLA requests received and granted from Canada and Portugal

	2005	2006	2007	2008
Canada	0	0	1	0
Portugal	2	0	1	1

1068. From 2004 to 2009, Brazil made the following number of outgoing MLA requests.

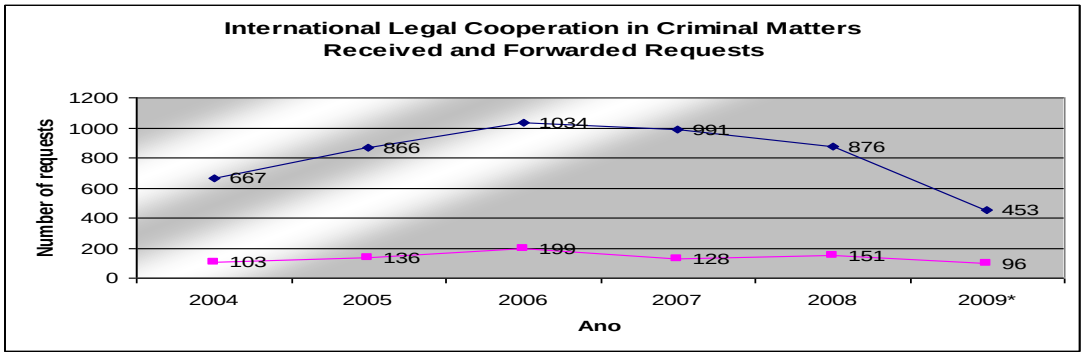


1069. During that same period, the following number of incoming requests MLA requests was received by the DRCI.



103 http://gtld.pgr.mpf.gov.br, under the link "Estatísticas"

1070. From 2004 to 2009, the DRCI received and forwarded MLA requests as shown below.



Statistics and effectiveness

1071. Brazil maintains comprehensive statistics on the number of MLA requests that are made and received, including the nature of the request and whether it was granted or refused. However, Brazil does not maintain statistics on: whether these requests related to ML, FT or predicate offences; or the time required to respond.

Requests received by Brazil under treaty

1072. The following table provides details of the total number of MLA requests received by Brazil under treaty from 2007 to 2009, not including the letters rogatory sent directly from the MRE to the Brazilian Supreme Court.

2007		2008		2009 (Jan.–June)	
Argentina	30	Argentina	29	Argentina	15
Italy	13	France	24	Spain	9
The Netherlands	12	Spain	14	Switzerland	8
Switzerland	9	Switzerland	9	France	6
Paraguay	7	Uruguay	7	The Netherlands	6
France	7	Portugal	7	Colombia	5
Uruguay	5	Italy	7	Portugal	5
Colombia	5	USA	6	Germany	4
Peru	4	Colombia	6	Bolivia	4
Spain	4	Germany	6	Italy	4
United Kingdom	4	Peru	5	Paraguay	4
Japan	3	Poland	4	Austria	3
Poland	3	The Netherlands	3	USA	3
Israel	2	Belgium	3	Romania	3
Panama	2	United Kingdom	3	Czech Republic	2
Portugal	2	Czech Republic	2	Venezuela	2

2007		2008		2009 (Jan.–June)	
Monaco	2	Sweden	2	Mexico	2
USA	2	Bolivia	2	Poland	1
Ecuador	1	Norway	2	Peru	1
Mexico	1	Panama	1	Latvia	1
Norway	1	Paraguay	1	Greece	1
New Zealand	1	Mexico	1	Denmark	1
Liechtenstein	1	Chile	1	Sweden	1
Brazil	1	Australia	1		
Bulgaria	1	Austria	1		
Wales – United Kingdom	1	Denmark	1		
		Egypt	1		
TOTAL	**124**	**TOTAL**	**149**	**TOTAL**	**92**

1073. The 365 treaty-based requests referred to in the chart above were requests for the following types of mutual legal assistance.

Type of assistance requested	2007	2008	2009 (Jan.-June)
Provision of Documents	40	42	6
Service of Process, Summons and Interrogatory	28	35	1
Interrogatory/Questioning/Hearing	18	14	11
Notification	8	14	9
Request for Information	8	13	13
Lift of Bank Secrecy	6	10	1
Location of individuals	4	7	0
Others	4	6	0
Service of Process	4	3	6
Service of Process and Summons	1	2	2
Service of Process and Notification	1	1	2
Summons	1	1	0
Notification and Summons	1	1	0

1074. The following table provides details of the status of each of the treaty-based requests referred to in the above two charts.

Status of request	2007	2008	2009 (Jan.–June)
Ongoing	82	142	92
Fully executed	22	3	0

Returned for correction	15	4	0
Partially executed	1	0	0
Not executed	4	0	0
Not proceeding	0	0	0

Requests received by Brazil under letters rogatory

1075. The following table provides details of the total number of MLA requests received by Brazil under letters rogatory from 2007 to 2009.

2007		2008		2009 (Jan.–June)	
Belgium	1	Argentina	2	Argentina	5
Switzerland	1			Italy	2
Uruguay	1			Paraguay	1
				Spain	1
				France	1
				Germany	1
TOTAL	**3**	**TOTAL**	**2**	**TOTAL**	**11**

1076. The 16 letters rogatory requests referred to in the chart above were requests for the following types of mutual legal assistance.

Type of assistance requested	2007	2008	2009 (Jan.-June)
Service of Process, Summons and Interrogatory	0	0	1
Interrogatory/Questioning/Hearing	0	0	1
Notification	0	1	2
Request for Information	0	1	0
Lift of Bank Secrecy	2	0	0
Service of Process	1	0	3
Service of Process and Summons	0	0	4

1077. The following table provides details of the status of each of the letters rogatory-based requests referred to in the above two charts.

Status of request	2007	2008	2009 (Jan.–June)
Ongoing	0	2	10
Fully executed	2	0	0
Returned for correction	1	0	0
Partially executed	0	0	0
Not executed	0	0	1

Not proceeding	0	0	0

1078. Although Brazil has not criminalized terrorist financing as a stand-alone offence in accordance with Special Recommendation II (see section 2.2 of this report for further details), this does not negatively impact the rating for Recommendations 36 and 38 because dual criminality is not a condition of providing MLA. Brazil has received a few MLA requests (about four) related to terrorist financing, in the circumstances envisaged by Recommendations 36, 38 and Special Recommendation V. None of these requests were refused. In all cases, Brazil demonstrated that it is able to provide MLA in terrorist financing matters in the absence of dual criminality, either on the basis of the *Terrorist Financing Convention,* an MLA agreement or reciprocity.

1079. Although letters rogatory are, reportedly, slow to obtain, this deficiency is mitigated as very few MLA requests proceed on this basis. For instance, in 2009, the DRCI of Brazil received 1 245 new MLA requests, of which only 16 (1.2%) were letters rogatory. The remaining 98.8% were treated as direct legal assistance because they were based on treaties. Also, in the absence of any specific information concerning the length of time taken to respond to MLA requests, effectiveness has not been established.

6.3.2 Recommendations and Comments

Recommendations 36 and 38, and Special Recommendation V

1080. The current MLA system seems to be working, and there has been not a single case where the Brazilian authorities have not provided assistance in MLA cases where there has been a promise of reciprocity (other than where the formal prerequisites were not met). Nevertheless, as regards international co-operation and mutual legal assistance in general, it is recommended that Brazil give serious consideration to enacting a comprehensive and unified MLA system. The current provisions in the *AML Law* provide the basis for such measures, but these need expansion to cover the full breadth of MLA measures expected by the *FATF Recommendations* and need to be underpinned by processes and procedures to ensure effective implementation. Brazil is currently undertaking a full review of its *Criminal Procedure Code,* with a view to fortifying the role of the Central Authority, streamlining procedures, and enhancing its ability to provide the following types of MLA: process service, hearings and legal evidence procedures.

1081. Brazil should also follow the recommendations made in sections 2.3 and 2.6 of this report to harmonise the judicial approach to orders compelling the production of financial records, and reducing the difficulty and time taken to obtain such orders.

1082. Brazil should take measures to ensure that MLA requests are processed in a timely manner, and that assistance provided under letters rogatory proceeds more quickly.

Recommendations 30 and 32

1083. The current arrangements for executing MLA requests are relatively new, having developed after the designation of a Central Authority in 2004. Since then, the Brazilian Central Authority has been working to improve its internal procedures of registry and statistics so as to obtain the greatest amount of information possible related to the nature and origin of MLA requests. Nevertheless more work is needed in this area. A system to ensure that more comprehensive data and statistics regarding MLA requests (made and received) should be implemented. The lack of information of this nature, particularly in relation to the time taken to respond, undermines the ability of agencies to identify any weaknesses in the MLA provided to other countries. The system should also collect statistics on whether these requests related to ML, FT or predicate offences. Additionally, as the number of DRCI staff is not ideal in proportion to the number of

cases, it is recommended that the authorities continue to improve the situation through the ongoing comprehensive effort to increase the number of permanent public civil servants.

6.3.3 Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors underlying overall rating
R.36	**LC**	• Effectiveness: Letters rogatory may take a long time to obtain, although this is mitigated because few MLA requests are processed via letters rogatory. No information on the time taken to respond to MLA requests generally. Concerns about the length of time it may take to compel the production of financial records (see R.3) also impact on Brazil's ability to provide MLA under R.36.
R.37	**C**	• This Recommendation is fully observed.
R.38	**LC**	• Effectiveness: Concerns about the length of time it may take to compel the production of financial records (see R.3) also impact on Brazil's ability to provide MLA under R.36. Letters rogatory may take a long time to obtain, although this is mitigated because few MLA requests are processed via letters rogatory. No information on the time taken to respond to MLA requests generally.
SR.V	**PC**	• ***Applying R.36:*** Effectiveness – Concerns about the length of time it may take to compel the production of financial records (see R.3) also impact on Brazil's ability to provide MLA under R.36. Letters rogatory may take a long time to obtain, although this is mitigated because few MLA requests are processed via letters rogatory. No information on the time taken to respond to MLA requests generally. • ***Applying R.37:*** This aspect of the Recommendation is fully met. • ***Applying R.38:*** Effectiveness – Concerns about the length of time it may take to compel the production of financial records (see R.3) also impact on Brazil's ability to provide MLA under R.36. Letters rogatory may take a long time to obtain, although this is mitigated because few MLA requests are processed via letters rogatory. No information on the time taken to respond to MLA requests generally.

6.4 Extradition (R.37, 39, SR.V)

6.4.1 Description and Analysis

Recommendation 39 and Special Recommendation V

Extradition

1084. ML is an extraditable offence. Extradition may be granted regardless of whether a foreign criminal conviction has been obtained. It is sufficient for an investigative criminal procedure to be underway in the requesting state, where a person's detention has been ordered (Law 6815/1980 (*Foreigners Statute*) art.78(II)).

1085. Currently, Brazil has 21 extradition treaties in force with the following countries: Argentina; Australia; Belgium; Bolivia; Chile; Colombia; Ecuador; France; Italy; Korea; Lithuania; Mexico; Paraguay; Peru; Portugal; Spain; Switzerland; Uruguay; the United Kingdom; the United States; and Venezuela.[104]

[104] See, respectively, Decrees 62979; 2010/1996; 41909/1957; 9920/1942; 1888/1937; 6330/1940; 2950/1938; 5258/2004; 863/1993; 4152/2002; 4528/1939; 2535/1938; 16925/1925; 15506/1922; 1325/1994; 99340/1990; 23997/1934; 13414/1919; 2347/1997; 55750/1965; and 5362/1940.

1086. Extradition may also be granted on the basis of reciprocity (*Foreigners Statute* art.76).

1087. Extradition is provided for in the *Constitution* art.102(I)(g), *Foreigners Statutes* art.9(II) and Decree 6061/2007. These measures aim at extraditing a person in the context of a criminal or investigatory proceeding to ensure that the person will serve their sentence in the foreign country. In urgent cases, preventive custody for the purposes of extradition may be requested from the Requested State though diplomatic channels or INTERPOL.

1088. The ***Department of Foreigners (DEEST)*** of the Ministry of Justice is Brazil's Central Authority in extradition matters.

1089. Outgoing extradition requests are received from the Judicial Branch by the DEEST, by means of its Division of Compulsory Measures. The DEEST reviews the corresponding documentation, in order to verify the conformity of the request with the relevant legislation, and then transmits the request by Ministerial Note to the MRE for submission to the requested country. If the Requested State grants extradition, the Brazilian authorities remove the extradited person the foreign territory within the time period provided in the relevant international treaty, or on the date designated by the Requested State.

1090. Incoming extradition requests are received from the requesting State by the DEEST through diplomatic channels (MRE). If the request is in conformity with the applicable international treaty or the *Statute of Foreigners*, it is transmitted, by means of a Ministerial Note, to the Federal Supreme Court. Once the Federal Supreme Court approves extradition in the time period established in international treaty or in Law 6815/1980, the Requesting State shall remove the individual from the national territory.

1091. The above provisions apply equally to ML, terrorist financing and predicate offence cases. As noted above in section 2.1 of this report, nine of the designated categories of predicate offence are only predicate offences for ML when committed by an organized criminal organization; however, this issue does not negatively impact the rating for Recommendation 39 because the underlying activity is criminalized in other contexts (*i.e.* when committed by persons other than a criminal organisation) and, therefore, the dual criminality requirement for extradition may be met.

1092. Brazil has not criminalized terrorist financing as a stand-alone offence, consistent with Special Recommendation II (see section 2.2 for further details). Nevertheless, because Brazil interprets dual criminality very broadly, it is able to extradite in the context of terrorist financing, provided that there is a link to underlying activity which is criminalized in Brazil. In practice, this means that Brazil is able to extradite a defendant who has attempted/committed the financing of the terrorist acts referred to in the *Terrorist Financing Convention*, provided that the terrorist act had been committed or attempted. The dual criminality provision is met because Brazil has criminalised a range of acts that generally correspond to the types of activities referred to in the *Terrorist Financing Convention* and, by reading these offences with article 29 of the *Criminal Code* (the ancillary co-perpetrator offence), the financing of such acts is covered. Additionally, Brazil is able to extradite in relation to the very limited types of terrorist activity covered by Law 7170/1986. However, gaps remain in relation to the following types of terrorist financing activity which are not criminalized in Brazil:

- terrorist financing with the intention that it be used to commit a terrorist act, but where the act has not yet been attempted or committed;
- financing a terrorist organisation for a purpose unrelated to a terrorist act (other than in the very limited circumstances covered by Law 7170/1983); and
- financing an individual terrorist for a purpose unrelated to a terrorist act.

1093. In those circumstances, the dual criminality requirement would not be met because Brazil has not criminalized FT consistent with Special Recommendation II or otherwise. Consequently, Brazil would be unable to extradite in such cases. This does not impact the rating for Recommendation 39 (which only applies to ML), but seriously impacts the rating for Special Recommendation V, as further elaborated below.

Extradition of nationals

1094. Brazil does not extradite its own nationals as this is prohibited by the *Constitution* (art.5, item LI). However, in such cases, the Brazilian authorities are required to prosecute the national who has committed the crime (*Criminal Code,* art.7(II)(b)). In such instances, the matter must be referred to the Prosecutors Office as soon as the request is received by the competent authority from the requesting state.

1095. Brazil has specific legal provisions governing the conduct of such prosecutions. As soon as it is determined that an extradition request involves a Brazilian national, the Requesting State is informed of the refusal and, at the same time, is requested to amend the extradition request to facilitate the fact-finding phase of the Brazilian criminal proceedings. Decree-Law 394/1938 provides that the Brazilian authorities will seek from the Requesting State the evidentiary elements required for the proceeding, so that the competent judge may proceed, in accordance with Brazilian procedural rules. The Requesting State will be informed of the final decision or resolution (art.1, para.3).

1096. The fact that Brazil does not extradite its own nationals has serious implications for its implementation of Special Recommendation V. Brazil is severely limited in its ability to prosecute terrorist financing cases because it has not criminalised FT as a stand-alone offence in a manner that is consistent with Special Recommendation II. First, the offences in Law 7170/1983 only apply to very narrow circumstances. Second, although a Brazilian national could be prosecuted for financing a terrorist act pursuant to the article 29 co-perpetrator offence[105], a prosecution for an ancillary offence does not carry the same weight as a prosecution for a stand-alone offence. Consequently, this approach is inadequate to meet the requirements of Special Recommendation V, particularly given the serious nature of terrorist financing. Third, Brazil would be unable to prosecute its own nationals in relation to those types of terrorist financing activity which are not criminalised in Brazil (*i.e.* providing financing with the intention that it be used to commit a terrorist act, but where the act has not yet been attempted or committed; financing a terrorist organisation for a purpose unrelated to a terrorist act, other than in the very narrow circumstances covered by Law 7170/1983); or financing an individual terrorist for a purpose unrelated to a terrorist act.

Time taken to extradite

1097. In Brazil, there are no specific provisions that would allow for faster processing of extradition requests in certain cases; all extradition requests must follow the same procedures laid down in domestic law. There are no measures or procedures in place that are designed to support processing of extraditions without undue delay.

[105] Read the co-perpetrator offence of article 29 of the *Criminal Code* together with the terrorism offences.

Year	Number of requests received relating to ML	Number of requests received relating to FT	Number of requests granted	Time taken to respond (average)
2006	4	0	3	15 months
2007	4	0	4	8 months
2008	4	0	1	15 months
2009 (to July)	0	0	0	---

International transfer of prisoners

1098. Brazil also has specific mechanisms that allow for the transfer of Sentenced Persons (Decree 6061/2007 art.9(III)). This Decree aims to transfer persons to serve their sentences in their own countries. The ***DEEST*** is Brazil's Central Authority in such matters.

1099. Outgoing prisoner transfer requests are received by the DEEST from Brazilian citizens serving sentences abroad. The corresponding documents are transmitted to the Criminal Enforcement Court where the Brazilian convict's family lives, and the Court shall arrange a place at a Brazilian correctional facility. If the Central Authorities of both the transferring and receiving State render a final decision approving the transfer, the Brazilian public officials transport the convict to the sentencing State for the purpose of serving the remainder of the foreign sentence.

1100. Incoming prisoner transfer requests are received by the DEEST from foreign convicts serving sentences in Brazil. The DEEST brings the application, including any supporting documents, before the Judicial Branch and translates the documents into the official language of the foreign convict's country of origin. Following acquiescence by the National Secretariat of Justice, the proceeding is transmitted to the receiving country through diplomatic channels. If the foreign authorities grant the request, the receiving country shall arrange the removal of the convict from the Brazilian territory, at a place and on a date agreed upon by the Parties. The transfer of custody of the foreign convict to the police officers of his/her country of origin occurs at the same time as the rendition act.

1101. Brazil has signed treaties in order to regulate the Transfer of Sentenced Persons to serve their sentences in their countries of origin with the following countries: Argentina; Chile; Canada; Paraguay; Peru; Portugal; Spain; and the United Kingdom of Great Britain and Northern Ireland.[106] In addition, Brazil has implemented the *Inter-American Convention on Serving Criminal Sentences Abroad* (Decree 5919/2006).[107]

Additional elements

1102. Some treaties to which Brazil is signatory provide for the possibility of simplified extradition, including the *Treaty of Extradition of Mercosur* (art.27). In simplified extradition cases, the defendant agrees to be extradited without trial in the Supreme Court of Brazil.

106 See, respectively, Decrees 3875/2001; 3002/1999; 2547/1998; 4443/2002; 5931/2006; 5767/2006; 2576/1998; and 4107/2002.

107 Brazil is about to implement the *Convention on the Transfer of Sentenced Persons within the Member-States of the Community of Portuguese speaking Countries* (Legislative Decree 174/2009) and the MERCOSUR's *Agreement on the Transfer of Sentenced Persons among States-Parties* (Legislative Decree 291/2007).

Recommendation 37 and Special Recommendation V (dual criminality relating to extradition)

1103. Dual criminality is required in extradition matters (Law 6815/1980, art.77(II)). For the offence of ML, the express provisions of the *AML Law* apply. These provisions apply equally to ML and FT cases.

1104. Brazil does not apply the principle of dual criminality in an overly restrictive manner (see above in section 6.3 for further details). For instance, it does not require the elements of the offence to be the same, or to use the same terminology. Where dual criminality is required, it need only be established that the same underlying conduct is criminalized (either as a stand alone offence or otherwise) in both Brazil and the requesting country. It is not necessary to establish that each element of the offence is identical.

1105. Incidentally, the *Treaty of Extradition of Mercosur* expressly provides that extradition may be provided if the underlying acts are criminalized under the laws of both the requesting State Party and the requested State Party, regardless of the name given to the crime (art.2(I)).

Statistics and effectiveness

1106. Brazil does not maintain comprehensive statistics on: whether extradition requests relate to ML, FT or predicate offences; and the time required to respond, as is required by Recommendation 32. However, Brazil was able to provide the following information.

1107. The following chart sets out the number of general extradition requests made and received by Brazil in the past three and a half years.

Type of request	2006	2007	2008	2009 (January to July)
Incoming (to Brazil)	83	58	61	24
Outgoing (from Brazil)	60	94	62	36
TOTAL	**143**	**152**	**123**	**60**

1108. Brazil has completed action under 55 extradition requests in the three-year period from 2006 to 2009, as indicated in the chart below. Of these, eight requests were related to ML.

Date request received	Requesting State	Request basis	Date of Supreme Court decision	Further information
04.04.2006	Portugal	Brazil-Portugal Treaty	19.12.2006	Positive for the crime of fraud; negative for counterfeiting
06.09.2006	Uruguay	MERCOSUR Member States Treaty	09.08.2007	Negative (art. 12 of the Treaty – he already is being processed in Brazil- and the documents are incomplete)
01.02.2006	France	Brazil-France Treaty	03.05.2007	Negative (requesting State's lack of interest)
21.03.2006	Germany	Reciprocity	21.06.2007	Positive
22.05.2006	Italy	Brazil-Italy Treaty	19.12.2006	Positive
07.04.2004	Paraguay	Brazil-Paraguay Treaty	21.06.2007	Positive
06.07.2006	Spain	Brazil-Spain Treaty	11.09.2008	Positive
07.08.2006	Germany	Reciprocity	21.06.2007	Positive for robbery and kidnapping; negative for assault

Date request received	Requesting State	Request basis	Date of Supreme Court decision	Further information
04.04.2006	Peru	Brazil-Peru Treaty	30.04.2008	Positive for counterfeiting and embezzlement; negative for illicit enrichment
03.01.2007	Uruguay	MERCOSUR Member States Treaty	04.06.2009	Positive
30.12.2005	Spain	Brazil-Spain Treaty	17.05.2007	Positive for drug trafficking; negative for counterfeit cash and fraud
04.04.2006	Chile	Brazil-Chile Treaty	23.04.2007	Positive
26.11.2008	Germany	Reciprocity	10.05.2007	Positive
08.12.2005	Germany	Reciprocity	15.12.2006	Positive
04.12.2006	USA	Brazil-USA Treaty	27.06.2007	Negative (crimes were not foreseen in the Treaty)
13.04.2006	Belgium	Brazil-Belgium Treaty	18.10.2007	Positive
23.01.2006	Portugal	Brazil-Portugal Treaty	02.04.2007	Positive
25.07.2006	Peru	Brazil-Peru Treaty	15.10.2007	Positive
22.05.2006	Netherlands	Reciprocity	27.09.2007	Positive
13.01.2006	Portugal	Brazil-Portugal Treaty	13.09.2006	Positive for the crime of electronic fraud; negative for counterfeiting
09.11.2006	Argentina	Brazil-Argentina Treaty	15.05.2008	Positive
05.05.2006	USA	Brazil-USA Treaty	21.05.2009	Positive for the plot regarding drug trafficking; negative for money laundering
08.11.2006	Portugal	Brazil-Portugal Treaty	09.08.2007	Positive
05.03.2006	Lebanon	Reciprocity	10.10.2007	Negative (incomplete documentation)
04.09.2006	Italy	Brazil-Italy Treaty	17.05.2007	Negative (incomplete documentation)
21.09.2006	France	Brazil-France Treaty	28.02.2008	Positive
09.06.2007	UK	Brazil-UK Treaty	14.04.2008	Positive for the plot regarding the hiding of criminal objects; negative for the plot regarding the obtaining of criminal objects
24.05.2007	Paraguay	MERCOSUR Member States Treaty	19.12.2008	Positive
14.02.2007	France	Brazil-France Treaty	27.03.2008	Positive for burglary, criminal gang formation and using of fake identity; negative for receiving of stolen assets and misusing of public documents
24.04.2007	Panama	Reciprocity	27.03.2008	Negative (incomplete documents)
05.01.2007	France	Brazil-France Treaty	17.03.2008	Partially positive (lapse of time for the executory pretention)
22.12.2006	Germany	Reciprocity	21.11.2007	Positive

Date request received	Requesting State	Request basis	Date of Supreme Court decision	Further information
23.02.2007	Uruguay	MERCOSUR Member States Treaty	06.12.2007	Negative (absence of crime, intention to extradite the person to a third State)
19.03.2007	France	Brazil-France Treaty	15.10.2007	Positive
14.12.2006	Germany	Reciprocity	20.06.2007	Positive
10.07.2007	USA	Brazil-USA Treaty	13.03.2008	Positive
29.06.2007	Italy	Brazil-Italy Treaty	13.03.2008	Positive
29.06.207	Chile	Brazil-Chile Treaty	11.09.2008	Positive
28.05.2006	Norway	Reciprocity	23.10.2008	Positive for murder; negative for arm possession
17.09.2007	Norway	Reciprocity	03.04.2008	Positive
15.02.2007	Germany	Reciprocity	03.04.2008	Positive for pimp activity; negative for human trafficking
28.11.2008	Sweden	Reciprocity	04.06.2009	Deferimento
01.04.2008	UK	Brazil-UK Treaty	18.12.2008	Negative (sentence lower than 1 year of prison)
28.08.2008	Portugal	Brazil-Portugal Treaty	19.12.2008	Positive
27.12.2007	Portugal	Brazil-Portugal Treaty	23.10.2008	Negative (lapse of time)
02.09.2008	France	Brazil-France Treaty	17.09.2009	Positive for drug trafficking; negative for smuggling
22.07.2008	Portugal	Brazil-Portugal Treaty	10.09.2009	Positive for lenocinium, promoting illegal migration and contracting illegal workers; negative for coercion
24.04.2008	Israel	Reciprocity	21.05.2009	Positive for the crime of using violence against minors, assault on minors and plotting; negative for the incitement to violence and assaults against minors
12.03.2008	Germany	Reciprocity	11.12.2008	Positive
29.04.2008	Germany	Reciprocity	23.10.2008	Positive
26.08.2008	South Korea	Brazil-South Korea Treaty	01.07.2009	Positive for counterfeiting and fraud negative for burglary and misuse of labour laws
30.01.2008	Portugal	Brazil-Portugal Treaty	18.09.2008	Positive
29.04.2008	Germany	Reciprocity	16.04.2009	Positive
31.03.2008	Switzerland	Brazil-Switzerland Treaty	18.09.2008	Positive for robbery and fraud; negative for assault
13.01.2008	Chile	Brazil-Chile Treaty	12.06.2008	Positive

1109. Brazil has received 12 extradition requests relating to ML, of which eight were granted. There have been no extradition cases, or requests received for extradition, with respect to FT. The average time for granting an extradition request is about 17 months.

1110. Details are not available concerning the cases where Brazilian nationals have been prosecuted in lieu of being extradited.

6.4.2 Recommendations and Comments

Recommendation 39 and Special Recommendation V

1111. Money laundering is an extraditable offence and a specific legal framework (the *Foreigners Statute*) and procedures are in place to facilitate extraditions. Additionally, Brazil may extradite based on bi-lateral extradition treaties and multi-lateral conventions, and on the basis of reciprocity.

1112. The fact that terrorist financing is not criminalised in a manner consistent with Special Recommendation II impedes Brazil's ability to extradite (or prosecute its own nationals) in such cases, as dual criminality is required. Brazil should follow the specific recommendations that have been made in section 2.2 to fully criminalise FT.

1113. Brazil should adopt measures to ensure that extradition requests and proceedings related to ML will be handled without undue delay.

Recommendation 32

1114. Brazil should maintain comprehensive statistics on whether extradition requests relate to ML, FT or predicate offences; and the time required to respond.

6.4.3 Compliance with Recommendations 37 & 39, and Special Recommendation V

	Rating	Summary of factors underlying overall rating
R.39	**LC**	• Measures are not in place to ensure extradition requests and proceedings related to ML will be handled without undue delay.
R.37	**C**	• This Recommendation is fully met.
SR.V	**PC**	***Applying R.37:*** This aspect of the Recommendation is fully met. ***Applying R.39***: Terrorist financing has not been criminalised as a stand alone offence, consistent with Special Recommendation II, which undermines Brazil's ability to provide extradition in terrorist financing matters and seriously undermines its ability to prosecute its own nationals in such cases. Measures are not in place to ensure extradition requests and proceedings related to FT will be handled without undue delay.

6.5 Other Forms of International Co-operation (R.40 & SR.V)

6.5.1 Description and Analysis

1115. Brazil has implemented measures that enable its competent authorities to co-operate with their foreign counterparts.

1116. Provisions in the financial secrecy law (Complementary Law 105/2001) permit BACEN and CVM to exchange financial information with their foreign counterparts in the context of an MOU. As well, CVM is able to exchange information with other IOSCO members, or non-IOSCO members provided that it obtains a signed undertaking from the requesting party. SUSEP and SPC are able to share information with their foreign counterparts without limitations to particular uses of information. COAF also has very

wide information sharing powers as the FIU, and its ability to share information with its foreign counterparts is not limited to its FIU role, but may also be exercised in its supervisory role.

1117. There are controls and safeguards in place to ensure that information received by the competent authorities is used only in an authorized manner. A breach of confidentiality is a crime for which the penalty is from one to four years imprisonment and a fine. Administrative sanctions are also available (Complementary Act 105/2001, art.10). It is an offence to reveal or facilitate the revelation of a confidential fact of which one became aware in the fulfilment of one's functions or duties (*Criminal Code*, art.325). It is a crime to disclose to someone, without justification: *(i)* the content of particular documents or confidential correspondence, under one's possession or control, since this disclosure can produce harm to others (*Criminal Code*, art.153); and *(ii)* confidential or classified information, as defined by law, contained in the information systems or database of the Public Administration (*Criminal Code*, art.153, para.1). It is also an offence to declare to someone, without justification, secrecy known due to one's function, ministry, or profession, since this revelation can produce damage to others (*Criminal Code*, art.154). Additionally, one of the duties of a civil servant is to maintain the confidentiality of matters dealt with in the public office (Law 8112/90, art.116(VIII)). Additional confidentiality provisions are set out in the *Financial Secrecy Act* and the *Securities Act.*

Co-operation by law enforcement agencies and the FIU

Police and prosecutors

1118. As a member of Interpol, the Brazilian Federal Police has been exchanging information regarding investigations with its international counterparts. Likewise, other Brazilian law enforcement authorities have been exchanging information based on reciprocity. The Brazilian law enforcement authorities keep records of the information exchanged. During the on-site visit, the authorities indicated that these arrangements are working effectively.

1119. The DPF is facilitated in its ability to conduct enquiries on behalf of agreements with the traffic authorities, social security and tax authorities that allow for the exchange of basic information, such as contact information or data on car registrations.

1120. 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 the collection of other evidence for which no judicial authorization is required.

1121. Exchanges of information are not made subject to disproportionate or unduly restrictive conditions and are not refused on the sole ground that the request is also considered to involve fiscal matters. Additionally, the Federal Public Prosecutors may request information and data from the Secretariat for Federal Revenue (*Receita Federal - RFB*) in order to prosecute or to assist other authorities in the investigation of crimes of ML/FT (Complementary Law 75/1993 (Nota/COSIT 01/2008)).

1122. The state level police authorities are also able to provide international co-operation to their foreign counterparts, consistent with Recommendation 40. In practice, they do so using either the Mercosul mechanism or they go through the federal police, leveraging off of their framework (*e.g.* through the Interpol network). Additionally, in the border areas, the state level police authorities are sometimes involved in joint investigations, particularly involving human trafficking, drug trafficking and cybercrimes.

COAF

1123. Chapter IV of Decree 2799/1998 governs COAF's duties and powers regarding the exchange of information and co-operation arrangements. Information can be shared with competent authorities of other countries and international organisations based on reciprocity or agreements (art.12). Whenever COAF receives requests from foreign competent authorities for information concerning the crimes defined in the *AML Law*, it must respond or forward such requests, as the case may be, to the competent agencies, so that the necessary measures are taken for a response (art.13).

1124. As a member of the Egmont Group of FIUs, COAF can exchange information with other FIUs. COAF observes, in its relations with other FIUs, the principles for the exchange of information of the Egmont Group. COAF uses the Egmont Secure Web (ESW), a secure network provided by Egmont Group to communicate with its foreign counterparts and to submit intelligence information in support of ML/FT investigations. Similarly, it has adopted the format developed by the operative working group to submit and respond to information requests. COAF can also forward requests for information to other agencies in Brazil for necessary action (Decree 2799/1998, art.11, para.4 and art.13).

1125. COAF has signed a number of MOUs with other FIUs, and is also able to exchange information with foreign counterparts on the basis of reciprocity. This enables it to provide information spontaneously, provided that the reciprocity requirement is met.

1126. COAF generally uses the Egmont Secure Web (ESW) to exchange information with its foreign counterparts in a very informal, rapid, effective and secure manner.

1127. COAF is authorized to conduct inquiring on behalf of foreign counterparts (Decree 2799/1998 art.130.

1128. As an administrative model FIU, COAF receives and processes foreign counterparts' requests, providing all available information from the databases to which it has access. COAF also notifies the competent authorities whenever it finds evidence of the crimes defined in the *AML Law* or of any other unlawful activity, for said authorities to take appropriate action (art.15). COAF may also forward foreign requests for information to other agencies in Brazil (Decree 2799/1998, art.11, para.4 and art.13).

1129. COAF bases its MOUs on the model suggested by the Egmont Group. Exchanges of information are not made subject to disproportionate or unduly restrictive conditions. COAF may request other agencies to provide banking and financial data and information related to people involved in suspicious activities (*AML Law*, art.14(3)). Requests for such co-operation will not be refused on the sole ground that the request is also considered to involve fiscal matters.

1130. The information requested to COAF shall be sent to the requesting party through specific forms or reports which shall imply the transfer of responsibility for preserving the confidentiality of the information (Decree 2799/1998, art.11, para.4). See section 2.5 of this report for further details on COAF's ability to co-operate with its foreign counterparts.

Customs

1131. The customs authorities have entered into agreements with several countries to facilitate information exchange and cooperation with foreign counterparts. These agreements allow the customs authorities to provide assistance in a timely manner, upon request. This includes the ability to conduct enquiries and conduct joint investigations. Additionally, the customs authorities actively involved in the Trade Transparency Unit network which allows it to exchange information with its foreign counterparts on

a systematic basis, with a view to detecting ML/FT through the trade system. Brazil also provides information to its foreign counterparts on cash movements through the GAFISUD mechanism.

1132. The customs authorities are able to exchange information spontaneously with their foreign counterparts.

1133. Exchanges of information are not made subject to disproportionate or unduly restrictive conditions, or refused on the sole ground that the request is also considered to involve fiscal matters.

1134. See section 2.7 of this report for further details on the ability of the customs authorities to co-operate with their foreign counterparts.

Co-operation by regulatory authorities

Central Bank of Brazil (BACEN)

1135. BACEN is able to provide a wide range of assistance, in a timely manner, on the basis of MOUs. BACEN has signed 17 MOUs with authorities from 12 countries: Argentina, Bahamas, Cayman, Germany, Indonesia, Mexico, Panama, Paraguay, Portugal, Spain, United States and Uruguay. During the on-site visit, the authorities reported that these MOUs are used frequently. In fact, BACEN will not authorize a financial institution to open a foreign branch or subsidiary in Brazil unless it has established an MOU with the institution's home country.

1136. BACEN may enter into co-operation agreements with other public institutions that regulate FIs in order to carry out joint surveillance, and with foreign central banks or regulatory entities (*Securities Act*, art.10, para.4). One of the purposes of such agreements may be to co-operate and exchange information for the investigation of activities or transactions involving investment, negotiation, concealment, or transfer of financial assets and securities related to the practice of illicit activities.

1137. Absent an MOU, BACEN is not able to co-operate spontaneously or upon request.

1138. Exchanges of information are not made subject to disproportionate or unduly restrictive conditions, or refused on the sole ground that the request is also considered to involve fiscal matters.

Securities and Exchange Commission (CVM)

1139. Article 10 of the *Securities Act* (Law 6385/1976) provides for the co-operation and the exchange of information with foreign counterparts, allowing the CVM to enter into agreements with similar entities in other countries, or with international entities, for assistance and co-operation in the investigations relating to the breach of laws and regulations pertaining to the securities market, occurring in Brazil and abroad.

1140. The CVM can co-operate or exchange information with other securities regulators as long as there is an MOU in place or the regulatory authority is an IOSCO member. Information exchanges can also occur with authorities outside of an MOU or IOSCO membership if the authority establishes an undertaking with the CVM, outlining the confidentiality requirements attached to any information provided by the CVM.

1141. The CVM has Memoranda of Understanding on Co-operation and the Exchange of Information (MOUs) which detail the procedures for the co-operation and the exchange of information with counterparts. The CVM has signed MoUs with 29 counterparts (Argentina, Australia, Bolivia, Canada (Quebec), Cayman Islands, Chile, China, Chinese Taipei, Ecuador, France, Germany, Greece, Hong Kong

(China), India, Israel, Italy, Luxembourg, Malaysia, Mexico, Paraguay, Peru, Portugal, Romania, Russia, Singapore, South Africa, Spain, Thailand and the United States (SEC and CFTC). Negotiations are underway to establish MOUs with Colombia and Ukraine. In addition, there are undertakings with Angola, Cape Verde and Iran. The CVM has also subscribed to the IOSCO Multilateral MOU in October 2009, which is currently under analysis.

1142. The CVM is a member of several international organisations of regulators: the International Organisation of Securities Commissions (IOSCO); Council of Securities Regulators of the Americas (COSRA); Ibero-American Institute of Securities Regulators (IIMV); Boca Raton Declaration, Enlarged Contact Group on the Supervision of Investment Funds (ECG); and the International Forum of Independent Audit Regulators (IFIAR).

1143. Given that there is an MoU in place, CVM appears capable of producing assistance in a rapid, constructive and effective manner. The co-operation and the exchange of information occurs by way of fax or e-mail transmission.

1144. CVM, within its jurisdiction, may enter in co-operation agreements with other public institutions that regulate FIs in order to carry out joint surveillance, and with central banks or regulatory entities from other countries (*Securities Act* art.10, para.4). One of the purposes of such agreements may be to co-operate 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. CVM is also able to exchange information spontaneously, provided that the condition of reciprocity is met.

1145. CVM bases its MOUs on the IOSCO mode. Exchanges of information are not made subject to disproportionate or unduly restrictive conditions, or refused on the sole ground that the request is also considered to involve fiscal matters, provided that the information to be provided falls within the scope of the CVM's duties and powers.

Superintendence of Private Insurance (SUSEP)

1146. There are no provisions in law or regulation which authorise or prohibit SUSEP from co-operating and exchanging information with foreign insurance supervisors. In practice, MOUs are expected to be signed establishing procedures for the co-operation and information exchange with counterparts.

1147. SUSEP has a Technical Co-operation Agreement with the National Association of Insurance Supervisors (NAIC) and the Monetary Authority of Macao (AMCM) which, among other objectives, aims at providing information exchange and technical assistance in order to keep the insurance markets efficient, fair, safe and stable, for the benefit and protection of the insured, within the limits permitted by law, rules and requirements of Brazil. Other MoUs are expected to be signed this year with the insurance supervisors of Spain, Portugal and Angola.

1148. SUSEP is a member of the ASEL (Association of Portuguese-speaking Insurance Supervisors), which brings together eight insurance supervisors and similar entities from jurisdictions that have Portuguese as their official language: Brazil, Portugal, Macau, Angola, São Tomé and Príncipe, Mozambique, Cape Verde and East-Timor. The SUSEP has hosted two annual conferences of ASEL, in 1997 and 2006. The SUSEP is also a member of the ASSAL (Association of Insurance Supervisors of Latin America), that is an association of 21 Latin America insurance supervisors and two invited members (Portugal and Spain). Finally, SUSEP is a member of IAIS (International Association of Insurance Supervisors), which represents insurance regulators and supervisors of some 190 jurisdictions and works

closely with other financial sector standard setting bodies and international organisations to promote financial stability.

1149. The co-operation and the exchange of information occurs by way of fax or e-mail transmission, which allows SUSEP to provide assistance in a rapid manner.

1150. SUSEP's international co-operation and the exchange of information may be conducted upon request or unsolicited; and may focus on any matter involving the insurance market.

1151. Exchanges of information are not made subject to disproportionate or unduly restrictive conditions, and are not refused on the sole ground that the request is also considered to involve fiscal matters, provided that the information to be provided falls within the scope of SUSEP's duties and powers.

Secretariat of Complementary Providence (SPC)

1152. There are no limitations on the ability of SPC to exchange information and cooperate with its foreign counterparts, either spontaneously or upon request. SPC has never made or received a request from any of its foreign counterparts and, in practice, it is unlikely that such a situation would arise given the nature of the closed pension funds sector which only applies to persons living and working in Brazil.

Additional elements

1153. In addition to the direct exchanges with counterparts, mentioned above, information can be obtained through the Tax and Customs Attachés, requests sent to foreign embassies in Brazil or to Brazilian embassies abroad, as well as the use of WCO's project, RILO (Regional Intelligence Liaison Offices).

1154. Brazil has, with several countries, information exchange agreement in the revenue area, agreements to avoid double taxation and mutual administrative assistance agreements in customs area. When requesting information about a taxpayer, it is necessary to provide details such as the identification of the taxpayer that is under inspection, identification of the individuals or legal persons that shall be audited, a detailed report of the case at issue and the reasons to believe that the information can be found in the territory of the requested administration. The agreements in question mention that the information requested can only be used for the purposes contained therein.

1155. COAF can obtain from other authorities relevant information requested by a foreign counterpart, if this exchange does not affect internal legislation (Decree 2799/1998 art.13).

Statistics and effectiveness

1156. With the exception of BACEN and CVM, there is concern that the number of MOUs signed by the relevant authorities does not spread the blanket of co-operation wide enough, particularly in circumstances where the foreign supervisor/FIU requires an MOU in order to be able to exchange information. For instance, SUSEP has not signed many MOUs, SPC has not signed any MOUs (although given the nature of the closed pension funds sector, it is unlikely that a situation requiring information exchange with a foreign counterpart would arise), and COAF has not signed any MOUs with foreign supervisors (see section 3.10 of this report for more details on COAF's supervisory role).

6.5.2 Recommendations and Comments

1157. SUSEP, SPC and COAF should consider signing more MOUs with their foreign supervisory counterparts (particularly, where applicable, in the form of Multilateral MOUs) and should be explicitly empowered to engage in broad co-operation even absent an MOU.

6.5.3 Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of factors underlying overall rating
R.40	**LC**	• Effectiveness: Although SUSEP is expected in practice to establish MOUs for the co-operation and information exchange with counterparts, only a small number of MOUs have been entered into by SUSEP. COAF has not signed any MOUs with foreign supervisors. SPC has not signed any MOU.
SR.V	**PC**	***Applying R.40:*** • Effectiveness: Although SUSEP is expected in practice to establish MOUs for the co-operation and information exchange with counterparts, only a small number of MOUs have been entered into by SUSEP. COAF has not signed any MOUs with foreign supervisors. SPC has not signed any MOU.

7. OTHER ISSUES

7.1 Resources and statistics

1158. The text of the description, analysis and recommendations for improvement that relate to Recommendations 30 and 32 is contained in all the relevant sections of the report (*i.e.* all of section 2, parts of sections 3 and 4, and in section 6). There is a single rating for each of these Recommendations, even though the Recommendations are addressed in several sections. The ratings box in this section of the report consolidates all of the deficiencies identified elsewhere in the report.

	Rating	Summary of factors underlying overall rating
R.30	**PC**	• Not established that the state-level police authorities are adequately structured and resourced, and judicial resources are insufficient in some areas of the country. • Customs authorities do not have adequate human and technical resources. • BACEN and COAF need further human resources to properly perform their supervisory functions. • The inspectors of SPC and the Securities SROs receive little AML/CFT training. • COFECI does not have and resources dedicated to supervising real estate agents for AML/CFT compliance, and does not currently have the expertise needed to do so.
R.32	**PC**	• Insufficient statistics on ML investigations, prosecutions and convictions. • Insufficient statistics on number of cases and amounts of property confiscated. • Insufficient statistics by CVM, SUSEP and SPC on the total number of on-site examinations relating to or including AML/CFT, number of breaches detected or type of sanctions imposed. • Insufficient statistics on whether MLA and extradition requests relate to ML/FT or predicate offences, and the time taken to respond.

7.2 Other relevant AML/CFT measures or issues

1159. There are no additional measures or issues that are relevant to the AML/CFT system which are not covered elsewhere in this report.

7.3 General framework for AML/CFT system (see also section 1.1)

1160. There are structural elements within the general legal and institutional framework of the criminal justice system which significantly impair the ability of the authorities to prosecute and obtain final convictions for ML/FT. In particular, Brazil has a complex system of appeals and statutes of limitations (SOL), and an extremely liberal application of the defendant rights.

1161. The statute of limitations doctrines (*Criminal Code* art.110), which were reformed in 1984 near the end of Brazil's military regime, are very complex and create significant challenges for prosecutors. Several SOL doctrines apply to criminal cases. The abstract SOL is based on the maximum sentence applicable to the particular crime. For example, crimes punishable by three to 10 years imprisonment (such as ML) have an abstract SOL of 16 years. The second type of SOL is retroactively applied to the case on the basis of the length of sentence ultimately imposed by the court. In other words, if a person were convicted of ML and ultimately sentenced to four years imprisonment (which is significantly less than the 10 maximum sentence), a much shorter SOL (based on the four year sentence) is applied. The third doctrine is that the SOL continues to count even once the prosecution of the case has started in the courts,

and the final SOL is not determined until the sentence is imposed by the courts. In practice, this means that the prosecution has no way of knowing what the SOL will be in relation to a particular case, until all appeals have been exhausted and final judgment has been obtained. Many levels of appeal are possible (the right to *habeas corpus* is also often used as an appeal) and the appeal process is lengthy. Consequently, by the time a final judgment is obtained, it is often not possible to obtain a final conviction because the SOL is determined to have expired retroactively, based on the final sentence imposed. Additionally, criminal defendants enjoy a constitutional "right to lie" and "right to present false evidence" in court proceedings.

1162. The above issues are systemic and apply to all criminal proceedings in Brazil (not just cases involving ML/FT). The authorities noted that there have been some attempts to amend the law to address the problems being created by the existing SOL doctrines. However, such draft amendments have not been accepted by Congress.[108]

[108] On 5 May 2010 (which is outside the period of this assessment), a law to reform the statute of limitations framework was adopted by Congress and came into effect.

TABLES

Table 1. Ratings of Compliance with FATF Recommendations

The rating of compliance vis-à-vis the *FATF Recommendations* has been made according to the four levels of compliance mentioned in the 2004 Methodology[109] (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or, in exceptional cases, Not Applicable (N/A).

Compliant	The Recommendation is fully observed with respect to all essential criteria.
Largely Compliant	There are only minor shortcomings, with a large majority of the essential criteria being fully met.
Partially Compliant	The country has taken some substantive action and complies with some of the essential criteria.
Non Compliant	There are major shortcomings, with a large majority of the essential criteria not being met.
Not Applicable	A requirement or part of a requirement does not apply, due to the structural, legal or institutional features of a country *e.g.* a particular type of financial institution does not exist in that country.

Recommendations	Rating	Summary of Factors Underlying Rating[110]
Legal systems		
1 – ML offence	**PC**	• Effectiveness: Very few final convictions for ML and number of convictions in the first instance is also low given the level of ML risk and size of the financial sector. Very low penalties for conversion/transfer in the exceptional circumstances when the intention to conceal/disguise cannot be inferred from the circumstantial evidence (art.348-personal favouring offence) (1-6 months imprisonment and fine). • Insufficient range of predicate offences in 10 FATF designated categories of predicate offences (serious deficiencies in the criminalisation of FT; and offences in nine other designated categories are only considered predicates if they are committed by a criminal organisation). • Minor technical deficiencies in the criminalisation of the conversion/transfer of proceeds (self-laundering cases involving conversion/transfer performed for the purpose of helping a person to evade legal consequences not covered in those limited instances where the intention to conceal/disguise cannot be inferred from the circumstantial evidence).

109 *Methodology for Assessing Compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations*, 27 February 2004 (Updated as of February 2007).

110 These factors are only required to be set out when the rating is less than Compliant.

Recommendations	Rating	Summary of Factors Underlying Rating[110]
2 – ML offence – mental element and corporate liability	**PC**	• Legal persons are not subject to direct civil or administrative liability for committing ML offences (corporate criminal liability not possible due to fundamental principles of domestic law). • Natural and legal persons are not subject to effective sanctions for ML because systemic problems in the court system seriously hamper the ability to obtain final convictions and sentences, and legal persons are not subject to direct civil/administrative sanctions for committing a ML offence. Very low penalties for conversion/transfer in the exceptional circumstances when the intention to conceal/disguise cannot be inferred from the circumstantial evidence (art.348-personal favouring offence) (1-6 months imprisonment and fine). • Effectiveness: Very few final convictions for ML and convictions in the first instance is low given the level of ML risk and size of the financial sector.
3 – Confiscation and provisional measures	**PC**	• Brazil is unable to apply provisional measures or confiscate property solely on the basis that it is related to the financing of a terrorist organisation (other than in the limited circumstances set out in Law 7170/1983), an individual terrorist for a purpose unrelated to a terrorist act, or financing of a terrorist act which has not yet been committed/attempted. • Effectiveness: Although the number of seizures is adequate, it is not established that the authorities are sufficiently focused on pursuing confiscation. In ML cases, the number of confiscations is very low given the size of the economy and ML risk. Courts may return seized property to defendants prior to the final resolution of the case, making confiscation impossible (although such decisions may be appealed to a higher court before the property is unfrozen). Asset management systems are weak which depreciates seized property. Property tracing is impeded because judicial orders for access to financial information may be difficult and lengthy to obtain and, for large/historical requests, FIs may be unable to provide the information requested in a timely fashion.
Preventive measures		
4 – Secrecy laws	**LC**	• The lack of a legal exception to financial secrecy for COAF inhibits its ability as a supervisor to access client information and therefore the implementation of Recommendations 23 and 29. • Effectiveness: Implementation of Recommendation 3 and 28 is impeded in urgent cases because of delays in appealing decisions which misapply the financial secrecy provisions.
5 – Customer due diligence	**PC**	• The following basic CDD obligations are set out in other enforceable means (not law or regulation) as is required by Recommendation 5: specifications as to when CDD is required and the obligation to use reliable, independent source documents for the verification process (for CVM/FIs, SUSEP/FIs, SPC/FIs and COAF/FIs); and the obligation to identify the beneficial owner (for CVM/FIs, SUSEP/FIs and COAF/FIs), and the obligation to conduct ongoing due diligence (for SUSEP/FIs). • SPC/FIs and COAF/FIs are not required to conduct CDD when there are doubts about the veracity or adequacy of previously obtained customer identification. • SUSEP/FIs are not required to conduct CDD measures when there is a suspicion of ML/FT. • SPC/FIs are not required to undertake CDD when carrying out occasional transactions or when there is a suspicion of ML. • COAF/FIs are not required to undertake CDD measures when establishing business relationships, carrying out occasional transactions or when there is a suspicion of ML. • SPC/FIs are not required to identify the beneficial owner. SPC/FIs and

Recommendations	Rating	Summary of Factors Underlying Rating[110]
		COAF/FIs are not required to determine if the customer is acting on behalf of another person or take reasonable measures to understand the ownership and control of the customer. • CVM/FIs, SUSEP/FIs (for investment-type insurance products), SPC/FIs and COAF/FIs are not expressly required to obtain information on the purpose and intended nature of the business relationship. • CVM/FIs, SPC/FIs and COAF/FIs are not required to conduct ongoing due diligence. • For SUSEP/FIs, , SPC/FIs and COAF/FIs the obligation to conduct enhanced due diligence for higher risk categories of customers, relationships or transactions only applies to PEPs. • The circumstances in which SUSEP/FIs may apply simplified CDD measures to customers resident in another country is not limited to countries that the Brazilian authorities are satisfied are in compliance with the *FATF Recommendations*. • CVM/FIs may delay the signature of institutional customers for a period of 20 days, and SUSEP/FIs and SPC/FIs may delay CDD until the policy/fund is paid out; however, it was not established that these delays are essential not to interrupt the normal conduct of business or that the ML risks are effectively managed in such circumstances. • Where CDD cannot be completed, CVM/FIs, SUSEP/FIs, SPC/FIs and COAF/FIs are not expressly prohibited from opening an account, commencing business relations or performing transactions, or required to consider making an STR, nor are they required to terminate an existing business relationship and consider making an STR. BACEN/FIs are not expressly prohibited from conducting a transaction on behalf of an occasional customer when CDD cannot be completed. • CVM/FIs, SUSEP/FIs, SPC/FIs and COAF/FIs are not required to apply CDD requirements to existing customers on the basis of materiality and risk, nor to conduct due diligence on such existing relationships at appropriate times. • Effectiveness: BACEN/FIs are experiencing difficulty in implementing the new requirements to identify beneficial owners, obtain information on the purpose and intended nature of the business relationship and apply CDD measures to existing customers on the basis of materiality and risk. It is too soon to measure the effectiveness of newer measures applicable to SUSEP/FIs. COAF/FIs seem to have a low level of awareness of their CDD requirements. Effectiveness of implementation by SPC/FIs was not established.
6 – Politically exposed persons	**LC**	• CVM/FIs are not required to obtain senior management approval to continue a business relationship when an already existing customer or beneficial owner is subsequently found to be or becomes a PEP. • CVM/FIs are not required to take reasonable measures to establish the source of funds of customers and beneficial owners identified as PEPs. • Effectiveness has not yet been established as these measures for CVM/FIs, SPC/FIs and COAF/FIs are too recent. Effectiveness for SUSEP/FIs is not established. Non-bank BACEN/FIs are currently subject to less than fully adequate supervision and therefore effectiveness is not established.
7 – Correspondent banking	**LC**	• Effectiveness has not yet been established.
8 – New technologies & non face-to-face business	**LC**	• CVM/FIs are not required to have policies in place or take such measures as may be needed to prevent the misuse of technological developments in ML/FT schemes. • Effectiveness of the measures applicable to BACEN/FIs and SUSEP/FIs has not been established.

Recommendations	Rating	Summary of Factors Underlying Rating[110]
9 – Third parties and introducers	**N/A**	• This Recommendation is not applicable.
10 – Record keeping	**LC**	• Accountable FIs are not required to maintain records of business correspondence. • For SPC/FIs, record keeping requirements only apply to business relationships when the transactions reach a monthly threshold of BRL 10 000 (EUR 3 900/USD 5 800). • Effectiveness: COAF/FIs demonstrate a low level of awareness of their specific record keeping obligations. Effectiveness not established for non-bank BACEN/FIs and SPC/FIs.
11 – Unusual transactions	**LC**	• SPC/FIs and COAF/FIs are required to pay special attention to certain complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose, although this requirement is not comprehensive enough to fully meet the requirements of R11. • SPC/FIs, and COAF/FIs are not required to examine as far as possible the background and purpose of such transactions and to set forth their findings in writing. • CVM/FIs, SPC/FIs and COAF/FIs are not required to keep findings of examinations of the background and purpose of complex and unusual transactions available for competent authorities and auditors for at least five years. • Effectiveness for non-bank BACEN/FIs SPC/FIs and COAF/FIs not established.
12 – DNFBPs – R.5, 6, 8-11	**NC**	• ***Scope issue:*** The requirements of R.5-6 and 8-11 do not apply to: *(i)* lawyers, notaries, other independent legal professionals and accountants; *(ii)* company service providers; or *(iii)* real estate agents/brokers who are natural persons. • ***Applying R.5:*** Accountable DNFBPs are not required to: identify beneficial owners; confirm whether the customer is acting on behalf of another person; understand the ownership and control structure of customers who are legal persons; obtain information on the purpose and intended nature of the business relationship; conduct on-going due diligence; or conduct enhanced CDD on high risk customers. Nor do obligations exist for this sector with respect to failure to satisfactorily complete CDD or application of CDD measures to existing customers. • ***Applying R.6:*** Real estate agents are not subject to any specific requirements in relation to PEPs. Effectiveness is not established for dealers in precious metals/stones. • ***Applying R.8:*** Real estate agents are not subject to any requirements in relation to this Recommendation. • ***Applying R.9:*** Real estate agents are not subject to any requirements in relation to this Recommendation. • ***Applying R.10:*** Accountable DNFBPs are not required to keep business correspondence. Real estate agents are not required to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon request. The record keeping threshold for dealers in precious metals/stones in relation to industrial sector sales is too high. • ***Applying R.11:*** Accountable DNFBPs are not subject to comprehensive requirements in relation to this Recommendation**.** • ***Effectiveness:*** Effectiveness is not fully established.
13 – Suspicious transaction	**LC**	• Deficiencies in the range of predicate offences and its criminalisation of

Recommendations	Rating	Summary of Factors Underlying Rating[110]
reporting		FT impact on the scope of the STR reporting requirement which only covers "crimes", although this technical deficiency is mitigated as supervision of compliance with the reporting obligation has not revealed that this issue is having a negative impact on the implementation of the reporting obligation in practice. • Effectiveness: A low number of FT-related STRs has been received. FIs do not have a common understanding of the scope of the FT-related reporting obligation. The intertwined nature of the STR and CTR requirements cause confusion for SUSEP/FIs and SPC/FIs, and the lack of feedback from the FIU to these sectors means that they do not understand how to improve the quality of their STRs.
14 – Protection & no tipping-off	**C**	• This Recommendation is fully met.
15 – Internal controls, compliance & audit	**LC**	• Scope issue: SPC/FIs are not covered. The exemptions for insurance brokers whose total amount of brokerage in the previous financial year was less than BRL 10 000 000 (EUR 3.9 million/USD 5.8 million) are not consistent with R.15. Factoring companies are only covered to the extent that they are generally required to implement internal controls relating to STR reporting. • BACEN/FIs and SUSEP/FIs are not specifically required to ensure that the compliance officer has timely access to CDD, transaction records and other relevant information. • CVM/FIs are not specifically required to maintain an adequately resourced and independent audit function or have employee screening procedures. • Effectiveness has not been established for non-bank BACEN/FIs and COAF/FIs.
16 –DNFBPs–R.13-15 & 21	**NC**	• ***Scope issue:*** The requirements of R.13-15 and 21 do not apply to: *(i)* lawyers, notaries, other independent legal professionals and accountants; *(ii)* company service providers; or *(iii)* real estate agents/brokers who are natural persons. • ***Applying R.13:*** Deficiencies noted in section 3.7 of this report apply to Accountable DNFBP in the same manner as they apply to Accountable FIs. • ***Applying R.15:*** Dealers in precious metals/stones and real estate agents are not subject to any requirements relating to this Recommendation. • ***Applying R.21:*** Dealers in precious metals/stones and real estate agents are not subject to any requirements relating to this Recommendation. • ***Effectiveness:*** Effectiveness is not established for dealers in precious metals/stones.
17 – Sanctions	**LC**	• Effectiveness: Although there is a sufficient range of sanctions in place, due to weaknesses in AML/CFT supervision for all sectors, effectiveness is not established. Number of sanctions applied is low (CVM/FIs). No information available on final outcome of sanctioning process (SUSEP/FIs). Sanctions not being applied to breaches of requirements other than the reporting obligation (COAF/FIs).
18 – Shell banks	**PC**	• FIs are not specifically prohibited from entering into or continuing correspondent relationships with shell banks. • FIs are not required to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

Recommendations	Rating	Summary of Factors Underlying Rating[110]
19 – Other forms of reporting	**C**	• This Recommendation is fully met.
20 – Other NFBP & secure transaction techniques	**LC**	• ***Effectiveness:*** Although Brazil has taken some important steps to reducing the reliance on cash as a payment method, there remains a marked reliance on cash as a payment method in very remote rural areas.
21 – Special attention for higher risk countries	**PC**	• Scope issue: CVM/FIs, SUSEP/FIs, SPC/FIs, and COAF/FIs are not subject to the specific requirements of this Recommendation. •
22 – Foreign branches & subsidiaries	**PC**	• Except for foreign branches and subsidiaries (other than majority owned subsidiaries) of SUSEP/FIs, Brazil has not implemented any requirements in relation to this Recommendation, although BACEN/FIs appear to observe them based on an indirect requirement in BACEN's inspection manual.
23 – Regulation, supervision and monitoring	**PC**	• Effectiveness: Supervisory approach of CVM and Securities SROs is overly focused on market conduct and reporting, with insufficient attention to other AML/CFT obligations. Low number of inspections by CVM and the inspectors of Securities SROs (on which CVM heavily relies) receive no AML/CFT training. No AML/CFT training for SPC inspectors and insufficient focus on AML/CFT issues during inspections. COAF has insufficient staff to handle supervisory role. • Non-bank BACEN/FIs: Subject to less than fully adequate supervision (mainly awareness raising being conducted in the past). Sector has low awareness of its AML/CFT obligations. • No on-site supervision of Post Office in its conduct of remittance activity. • Banking sector: No enforcement of more recent AML/CFT obligations for BACEN/FIs. Effectiveness not established as supervision is overly focused on prudential issues, and small number of AML/CFT specialists who do not routinely participate in inspections. • SPC does not take sufficient measures to ensure that criminals cannot own or manage closed pension funds.
24 – DNFBP: regulation, supervision and monitoring	**NC**	• ***Scope issue:*** As the following Uncovered DNFBP are not yet subject to AML/CFT requirements, they are not being monitored or supervised for compliance: *(i)* lawyers, notaries, other independent legal professionals and accountants; *(ii)* company service providers; or *(iii)* real estate agents/brokers who are natural persons. • ***Dealers in precious metals/stones and Real estate agents:*** COAF and COFECI do not have sufficient supervisory powers (no powers to inspect or compel the production of documents, and no ability to request customer-specific information for the purpose of fulfilling its supervisory function). • ***Effectiveness:*** Monitoring and supervision of Covered DNFBPs is not being undertaken at this time, and the competent authorities (COAF and COFECI) have insufficient staff and resources to do so.
25 – Guidelines & Feedback	**PC**	• STR reporting feedback is too sharply focussed on banks at the expense of other sectors. • No written guidance has been issued for any Accountable FIs that will assist them to implement and comply with the applicable AML/CFT requirements. • Accountable DNFBPs have not received any AML/CFT guidance.
Institutional and other measures		
26 – The FIU	**LC**	• Technically COAF's authority to receive and analyse STRs does not

Recommendations	Rating	Summary of Factors Underlying Rating[110]
		extend to certain types of FT activity which is not criminalised and crimes which are not specifically mentioned in article 1 of the *AML Law* (9 offences are only predicate offences for ML if committed by a criminal organisation), although this deficiency is somewhat mitigated because COAF is receiving FT-related STRs, reporting entities would have to be certain that there is no criminal organisation behind the suspicious activity in order to be satisfied that its reporting obligation had not been triggered, and COAF has a broader dissemination authority.
27 – Law enforcement authorities	**LC**	• Effectiveness: In some areas, the authorities are still focused on pursuing predicate offences, and are not yet targeting ML effectively. The number of ML investigations is low when compared to the incidence of revenue-generating predicate crimes. Not established that law enforcement authorities at the state level are sufficiently structured and resourced.
28 – Powers of competent authorities	**LC**	• Effectiveness of the power to compel production of documents authorising access to financial information: Judicial orders may be difficult to obtain, the process may be lengthy and, in some cases, FIs are unable to provide the requested information in a timely fashion.
29 – Supervisors	**PC**	• COAF has no powers of inspection. • COAF cannot compel production of customer-specific information for supervisory purposes without a court order. • Effectiveness: BACEN is only beginning to exercise its supervisory powers in relation to non-bank BACEN/FIs (it has mostly conducted awareness raising in the past) or banking institutions (strong focus on prudential issues, few AML/CFT specialists). CVM does not exercise its supervisory powers effectively (few CVM inspections, no AML/CFT training for inspectors of Securities SROs, supervision primarily focused on market conduct). Effective application of sanctions not established for any sector.
30 – Resources, integrity and training	**PC**	• Not established that the state-level police authorities are adequately structured and resourced, and judicial resources are insufficient in some areas of the country. • Customs authorities do not have adequate human and technical resources. • BACEN and COAF need further human resources to properly perform their supervisory functions. • The inspectors of SPC and the Securities SROs receive little AML/CFT training. • COFECI does not have and resources dedicated to supervising real estate agents for AML/CFT compliance, and does not currently have the expertise needed to do so.
31 – National co-operation	**LC**	• Operational co-ordination: Some operational co-ordination problems are evident where investigations at the federal and state levels overlap.
32 – Statistics	**PC**	• Insufficient statistics on ML investigations, prosecutions and convictions. • Insufficient statistics on number of cases and amounts of property confiscated. • Insufficient statistics by CVM, SUSEP and SPC on the total number of on-site examinations relating to or including AML/CFT, number of breaches detected or type of sanctions imposed. • Insufficient statistics on whether MLA and extradition requests relate to ML/FT or predicate offences, and the time taken to respond.
33 – Legal persons – beneficial owners	**PC**	• Competent authorities do not have access in a timely fashion to adequate, accurate and current information on the beneficial ownership and control of legal persons where the chain of ownership is broken by parties who do

Recommendations	Rating	Summary of Factors Underlying Rating[110]
		not have a CNPJ/CPF number (*e.g.* where the legal person is: privately owned by foreign legal persons with no physical presence in Brazil; or publicly traded and owned by foreign legal persons which have no physical presence in Brazil and are, in turn, owned by foreign legal persons with no physical presence in Brazil). • A small number of unidentified investors hold bearer shares that were issued prior to the issuance of such shares being prohibited; however, the ML/FT risk is minimal as the shares were issued in very narrow circumstances and cannot be used until full CDD is conducted and a declaration of their source is made.
34 – Legal arrangements – beneficial owners	**N/A**	• This Recommendation is not applicable.
International Co-operation		
35 – Conventions	**PC**	• Implementation of the Vienna and Palermo Conventions: Technical deficiencies in the criminalisation of the conversion/transfer of proceeds. Insufficient range of offences in 10 designated categories of predicate offence. No direct civil or administrative liability to legal persons who have committed ML. Ineffective implementation of the ML offence. • Implementation of the Terrorist Financing Convention: Brazil has not criminalised terrorist financing as a stand-alone offence, consistent with the Convention.. Brazil has not extended civil or administrative liability directly to legal persons who have committed FT.
36 – Mutual legal assistance (MLA)	**LC**	• Effectiveness: Letters rogatory may take a long time to obtain, although this is mitigated because few MLA requests are processed via letters rogatory. No information on the time taken to respond to MLA requests generally. Concerns about the length of time it may take to compel the production of financial records (see R.3) also impact on Brazil's ability to provide MLA under R.36.
37 – Dual criminality	**C**	• This Recommendation is fully observed.
38 – MLA on confiscation and freezing	**LC**	• Effectiveness: Concerns about the length of time it may take to compel the production of financial records (see R.3) also impact on Brazil's ability to provide MLA under R.36. Letters rogatory may take a long time to obtain, although this is mitigated because few MLA requests are processed via letters rogatory. No information on the time taken to respond to MLA requests generally.
39 – Extradition	**LC**	• Measures are not in place to ensure extradition requests and proceedings related to ML will be handled without undue delay.
40 – Other forms of co-operation	**LC**	• Effectiveness: Although SUSEP is expected in practice to establish MOUs for the co-operation and information exchange with counterparts, only a small number of MOUs have been entered into by SUSEP. . COAF has not signed any MOUs with foreign supervisors. SPC has not signed any MOU.
Nine Special Recommendations		
SR.I – Implement UN instruments	**NC**	• Implementation of the Terrorist Financing Convention: Brazil has not criminalised terrorist financing as a stand-alone offence, consistent with the Convention. Brazil has not extended civil or administrative liability directly to legal persons who have committed FT. • The effectiveness of laws and procedures to implement S/RES/1267(1999) and S/RES/1373(2001) is not established.

Recommendations	Rating	Summary of Factors Underlying Rating[110]
SR.II – Criminalise TF	**NC**	• Brazil has not criminalised the financing of terrorist acts as a stand alone offence (financing of terrorist acts is criminalised only as ancillary offences to existing criminal offences which generally correspond to the types of acts referred to in article 2 of the *Terrorist Financing Convention*). • Brazil has not criminalised the financing of terrorist organisations for purposes unrelated to a terrorist act other than in two limited circumstances - acquiring funds through the perpetration of a violent act for the purpose of maintaining a clandestine or subversive political organisation, and maintaining a military-like illegal organisation. • Brazil has not criminalised the financing of individual terrorists for purposes unrelated to a terrorist act. • The full range of terrorist financing activities contemplated by Special Recommendation II are not predicate offences for money laundering. • The definition of *funds* in article 20 (collection for a clandestine/subversive political organisation) does not extend to assets of any kind. • Legal persons are not subject to direct civil or administrative sanctions for FT. • The full range of ancillary offences do not apply to the financing of terrorist acts as this activity is itself an ancillary offence. • Effectiveness has not been established as the offences have never been used in practice.
SR.III – Freeze and confiscate terrorist assets	**NC**	• Laws and procedures for implementing S/RES/1267(1999) rely on ordinary criminal/MLA procedures which do not allow for effective freezing action to be taken without delay, and are inconsistent with the obligation to freeze property of persons designated by the UN Security Council, regardless of the outcome of domestic proceedings. • Laws and procedures for implementing S/RES/1373(2001) rely on ordinary criminal/MLA procedures which do not allow for effective freezing action to be taken without delay. • There is no specific mechanism to examine and give effect to actions initiated under the freezing mechanisms of other jurisdictions pursuant to S/RES/1373(2001), and no mechanism that would allow Brazil to designate persons at the national level. • Communication mechanisms are not working effectively and consistently across the financial and DNFBP sectors. • Insufficient practical guidance has been issued on how to effectively implement the obligations pursuant to S/RES/1267(1999) and S/RES/1373(2001). • Measures to monitor compliance are not being applied consistently across the banking sector, and other sectors (other than SUSEP) are not subject to monitoring. There are no sanctions for failing to comply. • Effectiveness: The effectiveness of Brazil's existing measures to implement S/RES/1267(1999) and S/RES/1373(2001) is not established. • The definition of *funds* does not extend to all of the funds or other assets that are owned or controlled by designated persons and terrorists, including property from legitimate sources; only proceeds, instrumentalities and property of equivalent value are covered. • The power to freeze terrorist-related property in contexts unrelated to the relevant UNSCRs suffer from the same deficiencies set out in section 2.3. • No procedures for considering de-listing requests and unfreezing the funds/assets of de-listed persons/entities. • No specific provisions for authorising access to funds/assets in accordance with S/RES/1452(2002).

Recommendations	Rating	Summary of Factors Underlying Rating[110]
		• It was not established that Brazil's measures for unfreezing the funds/assets of someone inadvertently affected by a freezing mechanism operate in a timely manner.
SR.IV – Suspicious transaction reporting	**LC**	• Deficiencies in Brazil's criminalisation of FT impact on the scope of the STR reporting requirement because it is not a "crime" to: finance a terrorist organisation (other in very limited situations pursuant to Law 7170/1983) or an individual terrorist in circumstances unrelated to a terrorist act), other than in the context of persons/entities designated by S/RES/1267(1999) and S/RES/1373(2001) as set out in the regulatory instruments which extend the reporting obligation to those contexts. • Effectiveness: A low number of FT-related STRs has been received. FIs do not have a common understanding of the scope of the FT-related reporting obligation. The intertwined nature of the STR and CTR requirements cause confusion for SUSEP/FIs and SPC/FIs, and the lack of feedback from the FIU to these sectors means that they do not understand how to improve the quality of their STRs.
SR.V – International co-operation	**PC**	• ***Applying R.36:*** Effectiveness – Concerns about the length of time it may take to compel the production of financial records (see R.3) also impact on Brazil's ability to provide MLA under R.36. Letters rogatory may take a long time to obtain, although this is mitigated because few MLA requests are processed via letters rogatory. No information on the time taken to respond to MLA requests generally. • ***Applying R.37:*** This aspect of the Recommendation is fully met. • ***Applying R.38:*** Effectiveness – Concerns about the length of time it may take to compel the production of financial records (see R.3) also impact on Brazil's ability to provide MLA under R.36. Letters rogatory may take a long time to obtain, although this is mitigated because few MLA requests are processed via letters rogatory. No information on the time taken to respond to MLA requests generally. • ***Applying R.39***: Terrorist financing has not been criminalised as a stand alone offence, consistent with Special Recommendation II, which undermines Brazil's ability to provide extradition in terrorist financing matters and seriously undermines its ability to prosecute its own nationals in such cases. Measures are not in place to ensure extradition requests and proceedings related to FT will be handled without undue delay. • ***Applying R.40:*** Effectiveness: Although SUSEP is expected in practice to establish MOUs for the co-operation and information exchange with counterparts, only a small number of MOUs have been entered into by SUSEP. COAF has not signed any MOUs with foreign supervisors. SPC has not signed any MOU.
SR.VI – AML requirements for money/value transfer services	**LC**	• The application of the FATF Recommendations to MVTS Providers suffers from the same deficiencies as identified in relation to the BACEN/FIs as set out in sections 3.2-3.3, 3.5-3.8 and 3.10 of this report. • The Post Office remittance service is not being monitored or supervised on-site. • Effectiveness: Supervision of BACEN/FIs (particularly in relation to non-bank institutions and Special Recommendation VII) suffers from the same effectiveness concerns as described in section 3.10.

Recommendations	Rating	Summary of Factors Underlying Rating[110]
SR.VII – Wire transfer rules	**LC**	• Effectiveness: The Post Office is not being monitored on-site for compliance with these requirements. In the absence of sufficient monitoring for compliance with these obligations (*e.g.* BACEN does not routinely conduct sample testing in the wire room of an FI), the authorities have not established that the requirements under Special Recommendation VII are being implemented effectively. The lack of monitoring also negatively impacts the effective application of sanctions for non-compliance with these obligations. • For domestic wire transfers, the obligation to obtain an address does not extend to natural persons or occasional customers who are legal persons.
SR.VIII – Non-profit organisations	**NC**	• Brazil has not implemented any of the requirements of SR VIII.
SR.IX – Cross-border Declaration & Disclosure	**PC**	• The declaration system does not apply to physical cross-border transportations being made through containerised cargo or in unaccompanied baggage. • The declaration system does not apply to BNI other than cheques and travellers' cheques. • Sanctions for making a false declaration or failure to declare are not proportionate and dissuasive. • Persons who are found to be carrying out a physical cross-border transportation of currency/BNI that is related to FT are not subject to sufficient sanctions (see the deficiencies in the criminalisation of FT noted in section 2.2). • There is limited ability to seize currency/BNI related to terrorist financing, or to apply sanctions in such cases (see the relevant deficiencies noted in section 2.3). • There is limited ability to seize currency/BNI related to persons designated pursuant to S/RES/1267(1999) and S/RES/1373(2001) (see the relevant deficiencies noted in section 2.4). • Effectiveness: The number of declarations received is very low considering the volume of international travellers and cargo moving in/out of Brazil. The number of false declarations detected is correspondingly low. The number of ML investigations and convictions related to bulk cash smuggling is low. Customs authorities are in need of further human and technical resources. • Upon discovery of an unusual cross-border movement of gold or precious metals/stones, Brazil does not consider notifying, as appropriate, the Customs Service or other competent authorities of the source or destination countries.

Table 2. Recommended Action Plan to Improve the AML/CFT System

AML/CFT System	Recommended Action (listed in order of priority)
1. General	
2. Legal System and Related Institutional Measures	
2.1 Criminalisation of ML (R.1 & 2)	• The authorities should criminalise terrorist financing in a manner that is consistent with Special Recommendation II, and work closely with the legislature to ensure quick passage of Project Law 3443/2008, which is designed to at least resolve the problem with respect to the coverage of predicate offences. • Brazil should take legislative action to establish direct civil or administrative corporate liability for ML and ensure that effective, proportionate and dissuasive sanctions may by applied to legal persons. • Brazil should continue to support the Specialised Federal Courts and other measures (such as the reform of the statute of limitations framework) to ameliorate the negative impact of some of the systemic problems in the court system which are undermining the ability to effectively apply final sanctions for ML. Brazil should also continue the PNLD training programme and extend it as widely as possible to ensure that police, prosecutors and judges at both the state and federal levels have sufficient training in the investigation and prosecution of ML cases. • Brazil should also amend its legislation to criminalise the conversion/transfer of proceeds by a self-launderer in those limited circumstances where the conversion/transfer is performed for the purpose of evading the legal consequences of his/her crime, and the intention to conceal/disguise cannot be inferred on the basis of the circumstantial evidence.
2.2 Criminalisation of FT (SR.II)	• As a matter of priority, Brazil should create a stand-alone offence to criminalise terrorist financing in accordance with Special Recommendation II. This offence should criminalise the provision or collection of funds (meaning assets of any kind) to carry out terrorist acts, or for use by a terrorist organisation (broadly defined) or an individual terrorist for any purpose. All aspects of terrorist financing should be predicate offences for ML, and the full range of ancillary offences should apply. Civil or administrative liability should be directly applicable to legal persons who commit FT. The offence should provide adequate sanctions for FT that apply to both natural and legal persons.

AML/CFT System	Recommended Action (listed in order of priority)
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	• As a matter of priority, Brazil should criminalise FT in a manner that is consistent with Special Recommendation II, which will enable the authorities to apply the relevant provisional measures and confiscation provisions of the Criminal Code, Criminal Procedure Code and the AML Law to all FT cases, including the following cases which are currently not covered: financing of a terrorist organisation or terrorist individual for any other purpose (*i.e.* unrelated to a terrorist act), and financing a terrorist act which has not yet been committed or attempted. • The relevant authorities should continue pursuing their strategy to ensure that provisional measures and confiscation will be systematically pursued, and to provide for a stronger system for the administration and management of seized assets, and ensure that assets remain seized until the final disposition of the case. • Measures should also be taken to harmonise the approach of the judiciary with a view to ensuring that judicial orders for access to financial information are granted in appropriate cases. In light of the massive workload faced by judges in some parts of the country, and the resulting delays in obtaining judicial orders, Brazil should take measures to increase judicial resources in these areas. Additionally, the authorities should continue pursuing ways to improve the ability of financial institutions to meet requests for information in the context of asset tracing actions (e.g. by standardising the format of customer records or requiring them to be kept electronically in a consolidated fashion).
2.4 Freezing of funds used for FT (SR.III)	• As a matter of priority, Brazil should implement effective laws and procedures to take freezing action pursuant to S/RES/1267(1999) and S/RES/1373(2001). Such measures should include a rapid and effective mechanism for examining and giving effect to the requests of other countries in the context of S/RES/1373(2001). Additionally, effective communication mechanisms should be implemented across all of the financial and DNFBP sectors. Brazil should also ensure that freezing action can be taken in relation to all of the types of property foreseen by SR.III. • Once such measures are in place, guidance should be issued to all financial and DNFBP sectors on how, in practice, to meet these obligations. • Brazil should ensure that the supervisory authorities, in all financial and DNFBP sectors, routinely monitor for compliance and have the authority to apply appropriate sanctions to both natural and legal persons. • Brazil should implement effective and publicly-known procedures for considering delisting requests, unfreezing the funds/assets of persons inadvertently affected by a freezing mechanism, and authorising access to funds/assets pursuant to S/RES/1452(2002). • As a matter of priority, Brazil should amend its legislation to criminalise FT in a manner consistent with Special Recommendation II which will enable it to freeze terrorist-related funds in the full range of circumstances outside the context of S/RES/1267(1999) and S/RES/1373(2001). This process might be facilitated through the ENCCLA mechanism.

AML/CFT System	Recommended Action (listed in order of priority)
2.5 The Financial Intelligence Unit and its functions (R.26)	• As a matter of priority, Brazil should take immediate action to fully implement Special Recommendation II and expand the list of predicate offences as indicated in sections 2.2 and 2.1 of this report. This will enhance COAF's authority to receive and analyse reports related to these offences. • It could be useful for the authorities to consider establishing a permanent feedback mechanism from the law enforcement and prosecutorial authorities to COAF with a view to ensuring that COAF's intelligence reports continue to add value to investigations and prosecutions. The ENCCLA framework could be a good venue through which to develop such a mechanism and would facilitate the evaluation of the effectiveness of Brazil's AML/CFT regime.
2.6 Law enforcement, prosecution and other competent authorities (R.27 & 28)	**Recommendation 27:** • Brazil should take measures to ensure that law enforcement authorities increase their focus on conducting ML investigations. The authorities should also take steps to prepare for the FT offence which it is said to be contained in the Bill of Law 3443/2008 and may be enacted in the coming months. These issues could be addressed by the ENCCLA convening inter-agency meetings of enforcement authorities to establish a concerted program for increasing the number of ML investigations in Brazil and to prepare for the new FT offence. • Brazil should continue taking measures to ensure that the overlapping jurisdiction among federal and state law enforcement authorities does not impede the effectiveness of their ability to investigate ML and the celerity of the system. Current developments with respect to the specialised courts and the databases for court matters may go some way to further addressing this problem. For example, a national database of investigations that can be updated and referred to by both federal and state authorities could assist in this area, as could better co-ordination between the federal and state law enforcement authorities. Brazil should continue to explore ways to enhance this co-ordination. For instance, consideration could be given to forming a group, with participation from both the federal and state law enforcement and prosecutorial authorities, to receive information from COAF, resolve jurisdictional issues on a case-by-case basis at the earliest possible stage, and ensure an effective allocation of investigative resources. • Brazil should ensure that the law enforcement authorities at the state level are sufficiently structured and resourced to be able to effectively investigate ML/FT. **Recommendation 28:** • Brazil should take measures to enhance the effectiveness of its implementation of the power to compel the production of documents, as set out in section 2.3.2 of this report.

AML/CFT System	Recommended Action (listed in order of priority)
2.7 Cross-border Declaration & Disclosure (SR.IX)	• Brazil should devise and implement a clear strategy to broaden the requirements and relevant powers of the competent authorities in this area. Particular issues which should be addressed in that strategy include: – The declaration system should be broadened to apply to physical cross-border transportations being made in containerised cargo or in unaccompanied baggage. – The obligation to declare should be extended to include all types of BNI, as defined by the FATF. – The RFB should have a greater range of sanctions in relation to persons who make a false declaration or who fail to declare as required. – Particularly considering the nature of Brazil's geography and the problems with smuggling, Brazil should ensure that it notifies, as appropriate, the authorities of countries of origin and destination upon discovery of an unusual cross-border movement of gold, precious metals or precious stones. – The authorities should focus on enhancing the implementation, overall, as currently the number of false declarations and illicit cross-border transportations being detected is quite low. • Brazil should fully criminalise FT, as recommended in section 2.2.2 of this report, so as to ensure that adequate sanctions are available for natural and legal persons who carry out physical cross-border transportations of currency/BNI related to terrorist financing. • Brazil should enhance its ability to take provisional measures and confiscate assets, as recommended in section 2.3 of this report, to ensure that can it do so effectively in relation to persons carrying out physical cross-border transportations of currency/BNI. • Brazil should enhance its ability to freeze the assets of persons designated pursuant to S/RES/1267(1999) and S/RES/1373(2001), as recommended in section 2.4 of this report, to ensure that it can do so effectively in the cross-border context.
3. Preventive Measures – Financial Institutions	
3.1 Risk of ML or TF	• Brazil should fully extend AML/CFT requirements to COAF/FIs as the current application of reduced measures in those areas is not justified on the basis of a ML/FT risk assessment. • Brazil should enhance its application of the risk-based approach to countering ML/FT by, for instance, requiring FIs to conduct enhanced due diligence for all categories of high risk customers and not allowing simplified CDD other than in situations that are low risk, in line with the *FATF Recommendations*.
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)	**Recommendation 5:** • For CVM/FIs, SUSEP/FIs, SPC/FIs and COAF/FIs, Brazil should amend its legislation to ensure that all basic CDD obligations (i.e. those marked with an asterisk and setting out: specifications as to when CDD is required; the obligation to use reliable, independent source documents for the verification process; the obligation to identify the beneficial owner; and the obligation to conduct ongoing due diligence) are set out in law or regulation, not just in other enforceable means, as is required by Recommendation 5. • The authorities should take steps to ensure that all CDD requirements are being implemented effectively (*e.g.* by issuing guidance, where appropriate). Additionally, the Brazilian authorities should take the following sector-specific steps.

AML/CFT System	Recommended Action (listed in order of priority)
	For BACEN/FIs: • Brazil should amend its legislation to require BACEN/FIs to immediately conduct CDD when there are doubts about the veracity or adequacy of previously obtained customer identification. • BACEN should ensure that the recent guidance issued in February 2010 to assist BACEN/FIs in implementing the new provisions of BACEN Circular 3461/2009 which were not existing in earlier circulars (e.g. the requirement to obtain information on the purpose and intended nature of the business relationship, and the requirement to identify the beneficial owner) is implemented and no further questions exist regarding the requirements in BACEN Circular 3461/2009. *For CVM/FIs:* • Brazil should amend its legislation to ensure that CVM/FIs are required to: obtain information on the purpose and intended nature of the business relationship; conduct ongoing due diligence; and adopt AML/CFT risk management procedures in circumstances where a customer is permitted to use a business relationship prior to verification (e.g. institutional clients are permitted to operate without a signature for a period of 20 days). • When CDD cannot be completed, CVM/FIs should be expressly prohibited from opening an account, commencing business relations or performing transactions, and then be required to consider making an STR. Where a business relationship has already commenced, and CDD cannot be completed, CVM/FIs should be required to terminate the business relationship and consider making an STR. • CVM/FIs should be required to apply CDD requirements to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times. *For SUSEP/FIs:* • Brazil should amend its legislation to ensure that SUSEP/FIs are required to: conduct CDD measures when there is a suspicion of ML/FT; obtain information on the purpose and intended nature of the business relationship; conduct enhanced due diligence for higher risk categories of customers, relationships or transactions; and conduct CDD before or during the course of establishing a business relationship rather than delaying until the insurance policy is paid out, unless appropriate measures are taken to manage the ML risks. • Measures should be taken to ensure that the circumstances in which simplified CDD measures may be applied to customers resident in another country is limited to countries that the Brazilian authorities are satisfied are in compliance with an have effectively implemented the *FATF Recommendations*. • When CDD cannot be completed, SUSEP/FIs should be expressly prohibited from opening an account, commencing business relations or performing transactions, and then be required to consider making an STR. Where a business relationship has already commenced, and CDD cannot be completed, SUSEP/FIs should be required to terminate the business relationship and consider making an STR. • SUSEP/FIs should be required to apply CDD requirements to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times. *For SPC/FIs:* • Brazil should amend its legislation to ensure that SPC/FIs are required to: obtain information on the purpose and intended nature of the business relationship; conduct ongoing due diligence on the business relationship; undertake CDD when carrying out occasional transactions,

AML/CFT System	Recommended Action (listed in order of priority)
	when there is a suspicion of ML/FT, or when there are doubts about the veracity or adequacy of previously obtained customer identification data; apply enhanced due diligence to all categories of high risk customers (not just PEPs); verify the identity of the customer and beneficial owner before or during the course of establishing the business relationship, and when conducting transactions for occasional customers; and requiring CDD to be conducted at the time the customer relationship is being established rather than delaying until when the benefits are paid out unless this is essential not to interrupt the normal conduct of business and the ML risks are effectively managed. • When CDD cannot be completed, SPC/FIs should be expressly prohibited from opening an account, commencing business relations or performing transactions, and then be required to consider making an STR. Where a business relationship has already commenced, and CDD cannot be completed, SPC/FIs should be required to terminate the business relationship and consider making an STR. • SPC/FIs should be required to apply CDD requirements to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times. • SPC should take measures to ensure that SPC/FIs are implementing these requirements effectively, including issuing guidance on how to fully meet these obligations. *For COAF/FIs:* • Brazil should amend its legislation to ensure that COAF/FIs are required to: undertake CDD measures when establishing business relationships, carrying out occasional transactions, when there is a suspicion of ML/FT or when there are doubts about the veracity or adequacy of previously obtained customer identification data; obtain information on the purpose or intended nature of the business relationship; conduct ongoing due diligence on the business relationship; conduct enhanced due diligence on relationships with all categories of high risk customer (not just PEPs); and verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship, or when conducting transactions for occasional customers. • When CDD cannot be completed, COAF/FIs should be expressly prohibited from opening an account, commencing business relations or performing transactions, and then be required to consider making an STR. Where a business relationship has already commenced, and CDD cannot be completed, COAF/FIs should be required to terminate the business relationship and consider making an STR. • COAF/FIs should be required to apply CDD requirements to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times. • COAF should take measures to raise awareness among COAF/FIs, including issuing guidance on how to fully meet these obligations. **Recommendation 6:** • Brazil should amend its legislation to ensure that CVM/FIs are required to obtain senior management approval to continue a business relationship when an already existing customer or beneficial owner is subsequently found to be or becomes a PEP. • CVM/FIs should be required to take reasonable measures to establish the source of funds of customers and beneficial owners identified as PEPs • The authorities should ensure that their supervision focuses on whether the new PEPs requirements are being implemented effectively. **Recommendation 7:**

AML/CFT System	Recommended Action (listed in order of priority)
	• The authorities should ensure that their supervision focuses on whether the new requirements of BACEN Circular 3462/2009 are being implemented effectively. **Recommendation 8:** • The authorities should ensure that their supervision focuses on whether the new requirements applicable to BACEN/FIs and SUSEP/FIs are being implemented effectively. • Brazil should amend its legislation to require CVM/FIs to have policies in place or take such measures as may be needed to prevent the misuse of technological developments in ML/FT schemes. Once these measures are in place, the authorities should ensure that their supervision focuses on whether these new requirements are being implemented effectively.
3.3 Third parties and introduced business (R.9)	• There are no recommendations or comments in relation to this section .
3.4 Financial institution secrecy or confidentiality (R.4)	• Brazil should amend its legislation to enhance the implementation of Recommendations 23 and 29 by allowing COAF (as a supervisor) to access client information for supervisory purposes absent a judicial authorisation; • Brazil should also take the measures recommended in section 2.3 of this report to ensure that judges take a consistent approach, that is in line with the legal provisions and case law noted above, when considering whether to grant orders for the production of documents.
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	**Recommendation 10:** • The record keeping obligation should be extended to include business correspondence. • In the absence of any proper AML/CFT risk assessment that might justify the record keeping exemption for SPC/FIs when the business relationship involves less than BRL 10 000 (EUR 3 900/USD 5 800) within a calendar month, Brazil should amend its legislation to remove the exemption. • The authorities should take measures to raise awareness among COAF/FIs concerning the specific record keeping provisions that apply to them, and ensure that non-bank BACEN/FIs and SPC/FIs are implementing these requirements effectively. **Special Recommendation VII:** • Brazil should ensure that BACEN supervises more closely for compliance with the requirements relating to Special Recommendation VII and applies sanctions in appropriate circumstances. Additionally, the authorities should actively monitor the Post Office on-site for compliance with these obligations. Such monitoring should include routine sample testing in the wire room to ensure that financial institutions and the Post Office are complying with these requirements. • Brazil should amend its legislation to require collection of an address in the case of all domestic transfers.
3.6 Monitoring of transactions and relationships (R.11 & 21)	**Recommendation 11:** • Brazil should take legislative action to broaden the requirements for SPC/FIs and COAF/FIs to pay attention to all complex, large, unusual transactions, or unusual patterns of transactions that have no apparent visible economic or lawful purpose. • Brazil should take legislative action to require SPC/FIs and COAF/FIs to examine, as far as possible, the background and purpose of such transactions, set forth their findings in writing, and ensure that these

AML/CFT System	Recommended Action (listed in order of priority)
	findings are kept and available for competent authorities and auditors for at least five years. • Brazil should require CVM/FIs to retain records of their analysis for five years. • Brazil should ensure that SPC/FIs and COAF/FIs are effectively implementing the requirements of Recommendation 11. **Recommendation 21:** • Brazil should take legislative action to fully extend the requirements of Recommendation 21 to CVM/FIs, SUSEP/FIs, SPC/FIs and COAF/FIs.
3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	**Recommendation 13 and Special Recommendation IV:** • As a matter of priority, Brazil should amend its legislation (law or regulation) to ensure that the STR reporting obligation, as set out in law or regulation, applies, at a minimum, to all offences that would constitute a predicate offence, as required by Recommendation 1, including the full range of terrorist financing offences (as contemplated by Special Recommendation II) and a sufficient range of other predicates. • Brazil should take steps to remedy the lack of clarity in the reporting in practice of SUSEP/FIs and SPC/FIs which has the potential to undermine effectiveness. This might be facilitated by issuing guidance to the private sector which, for example, clarifies the distinction between the STR and CTR reporting obligations. It is recommended that COAF and the supervisory authorities work jointly on addressing these areas. **Recommendation 25:** • COAF appears able to provide high quality feedback to the banking sector regarding the quality of STRs received. Brazil should take measures to ensure that this type of feedback is provided to the rest of the financial sector. Such feedback should focus, initially, on clarifying scope of the FT reporting obligation for all sectors, and the reporting practice of SUSEP/FIs and SPC/FIs vis-à-vis STR and CTR reporting.
3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)	**Recommendation 15:** • Brazil should take legislative action to extend the specific requirements of Recommendation 15 to the closed pension funds sector (SPC/FIs), and fully extend them to factoring companies. • For BACEN/FIs, Brazil should take legislative action to require them to ensure that the compliance officer has timely access to CDD, transaction records and other relevant information. • For CVM/FIs, Brazil should take legislative action to require them to maintain an adequately resourced and independent audit function to test compliance (including sample testing) with the internal controls, and put in place screening procedures to ensure high standards when hiring employees. • For SUSEP/FIs, Brazil should remove the exemption for brokers whose total amount of brokerage in the previous financial year was less than BRL 10 000 000 (EUR 3.9 million/USD 5.8 million) are exempted from the requirements of Recommendation 15. • Once these measures are in place, the authorities should ensure that these requirements are being implemented effectively across all sectors. **Recommendation 22:** • Brazil should take legislative action to require all Accountable FIs (not just the foreign branches and minority-owned subsidiaries of SUSEP/FIs) that have foreign branches and subsidiaries to comply with the specific requirements of Recommendation 22. This will not be necessary in the case of closed pension funds (SPC/FIs) since they do not have foreign branches or subsidiaries.

AML/CFT System	Recommended Action (listed in order of priority)
3.9 Shell banks (R.18)	• Brazil should take legislation to prohibit FIs from entering into or continuing correspondent relationships with shell banks, and require FIs to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.
3.10 The supervisory and oversight system: competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)	**Recommendation 17:** • Brazil should enhance its supervision of all sectors with a view to ensuring the application of sanctions is being effectively applied in relation to all of the AML/CFT requirements. • For the insurance sector, SUSEP should remain involved and work to advance sanctions matters even after they are appealed. Additionally, the authorities should consider ways to streamline the drawn-out appeals process to the Ministry of Finance. **Recommendation 23:** • BACEN should begin full active supervision of non-bank BACEN/FIs (to date, the focus has been mainly on awareness raising and very few compliance audits have been conducted). • BACEN should begin enforcing the more recent obligations imposed on its supervised entities by BACEN Circular 3461/2009, and BACEN should be provided with additional staff to support this work, including additional AML/CFT-specific staff, and particularly in relation to non-bank BACEN/FIs. • BACEN should give ML/FT risk more weight in its supervisory schedule, specifically scheduling AML/CFT-compliance inspections not only in instances where a mainly prudential-risk-oriented inspection has highlighted a weakness in AML/CFT matters. • CVM should develop inspection strategies and in-depth compliance (particularly AML/CFT compliance) inspection triggers or cycles that are not solely dependent on market conduct data. • Inspections of CVM/FIs should: occur more frequently; have an AML/CFT-focus; and occur in circumstances other than just when there is a market conduct concern, as is currently the case. Additionally, the CVM and SROs should ensure that, when AML/CFT supervision does take place, it focuses on compliance with all AML/CFT obligations (currently there is an overt emphasis on STR issues). Additionally, the inspectors of Securities SROs should receive AML/CFT training. • The supervisory powers of COAF should be enhanced to enable it to obtain from COAF/FIs customer-specific information (beyond the STR-related information), for supervisory purposes. • SPC inspectors should be provided with AML/CFT training, and should be encouraged to enhance their focus on AML/CFT issues during inspections. • As a matter of priority, COAF's supervision arm should be built up into a proper supervisory agency, including a legal mandate empowering it to undertake proper on-site supervisions and the power to compel documents for supervisory purposes. Additionally, COAF should be provided with sufficient staff to undertake this work. However, these staff should not be reallocated from COAF's FIU functions as that would risk leaving the FIU under-resourced. • BACEN should undertake active on-site supervision of the Post Office in its conduct of remittance activity. • The SPC should take additional measure to ensure that criminals cannot own or manage closed pension funds (e.g. background checks, criminal record checks, fit and proper tests). **Recommendation 25:** • All five federal supervisors (BACEN, CVM, SUSEP, SPC and COAF)

AML/CFT System	Recommended Action (listed in order of priority)
	should issue guidelines to the entities that they supervise and which will assist them in complying with their AML/CFT requirements. • As a matter of priority, BACEN should focus on ensuring that the new guidance in relation to the new requirements that were introduced by BACEN Circular 3461/2009 is being implemented effectively, as the financial sector has expressed a need for such guidance and is waiting for further clarification on how to implement these new requirements. **Recommendation 29:** • As a matter of priority, COAF should be given powers of inspection. • The supervisory powers of COAF should be enhanced by extending to it the ability to conduct inspections and obtain access to the full range of /customer-specific information needed for supervisory purposes. • All five supervisors should take measures to improve effectiveness in relation to how they exercise their powers of supervision and enforcement.
3.11 Money value transfer services (SR.VI)	• Brazil should take action to address the deficiencies identified in relation to the implementation of FATF Recommendations as it applies to BACEN/FIs, as identified in sections 3.2-3.3, 3.5-3.8 and 3.10 of this report. • Brazil should ensure that sanctions are effectively applied to MVTS providers that are found to be in breach of their AML/CFT obligations (see section 3.10 of this report in relation to BACEN/FIs for further details). • Brazil should enhance the effectiveness of its supervision of BACEN/FIs which carry out MVT services.
4. Preventive Measures – Non-Financial Businesses and Professions	
4.1 Customer due diligence and record-keeping (R.12)	• As a matter of priority, Brazil should fully extend the requirements of Recommendations 5, 6, 8, 9, 10 and 11 to the following sectors: (i) lawyers, notaries, other independent legal professionals and accountants; (ii) company service providers; and (iii) real estate agents who are natural persons. **Dealers in precious metals and stones:** • For Recommendation 5, dealers in precious metals/stones should be required to: verify the customer's identity; identify beneficial owners; confirm whether the customer is acting on behalf of another person; understand the ownership and control structure of customers who are legal persons; obtain information on the purpose and intended nature of the business relationship; conduct on-going due diligence; conduct enhanced CDD on high risk customers; and take appropriate steps when CDD cannot be satisfactorily completed. • For Recommendation 10, the record keeping obligation should be extended to include business correspondence and the threshold for record keeping with regard to "industrial sector sales" should be lowered to no more than EUR/USD 15 000. • COAF should issue resolutions to fully extend the requirements of Recommendations 8 and 11 to dealers in precious metals/stones. **Real estate agents:** • COFECI (which is the appropriate competent authority for this sector) should, as a matter of priority, issue instruments to fully extend the requirements of Recommendations 5, 6, 8, 9 and 11 to this sector as, currently, only the basic CDD and record keeping provisions set out in the *AML Law* apply.
4.2 Suspicious transaction reporting (R.16)	• As a matter of priority, Brazil should fully extend the requirements of Recommendations 13, 14, 15 and 21 to the following sectors: (i) lawyers,

AML/CFT System	Recommended Action (listed in order of priority)
	notaries, other independent legal professionals and accountants; (ii) company service providers; and (iii) real estate agents who are natural persons. **Dealers in precious metals/stones and Real estate agents:** • For Recommendation 13, Brazil should take the measures recommended in section 3.7 of this report. • Brazil should take legislative action to fully extend the requirements of Recommendations 15 and 21 to these sectors.
4.3 Regulation, supervision and monitoring (R.24-25)	**Recommendation 24:** • Once AML/CFT obligations have been extended to Uncovered DNFBPs--(i) lawyers, notaries, other independent legal professionals and accountants; (ii) company service providers; and (iii) real estate agents who are natural persons—competent authorities should be designated with responsibility for monitoring and ensuring compliance with such requirements. These authorities should be equipped with adequate supervisory powers and resources to undertake this work. *Dealers in precious metals/stones and Real estate agents:* • Brazil should amend its legislation to equip COAF and COFECI with adequate supervisory powers, including the power to inspect, compel the production of documents, and request customer-specific information for the purpose of fulfilling their supervisory functions, as an exemption from the financial secrecy otherwise established under the *Constitution*. • COAF and COFECI should be provided with additional resources so as to enable them to effectively undertake supervision of the large number of entities for which they are responsible. • Once these measures are in place, COAF and COFECI should commence active monitoring of dealers in precious metals/stones (COAF) and real estate agents (COFECI) for compliance with AML/CFT requirements. **Recommendation 25:** • COAF and COFECI should issue adequate AML/CFT guidance to the Accountable DNFBPs within their jurisdiction.
4.4 Other non-financial businesses and professions (R.20)	• Brazil should take additional steps to reduce the reliance on cash as a payment method. • Brazil should take the measures recommended in section 3.10 of this report to ensure that COAF can effectively supervise the non-financial businesses and professions (other than DNFBP) to which AML/CFT requirements have been extended (businesses operating lotteries, bingos and similar games, and art and antiquities dealers).
5. Legal Persons and Arrangements & Non-Profit Organisations	
5.1 Legal Persons – Access to beneficial ownership and control information (R.33)	• Brazil should implement requirements to ensure that, where the chain of ownership is broken by parties who do not have CNPJ/CPF numbers, information on the beneficial ownership and control of legal persons is readily available to the competent authorities in a timely manner. Such measures could include, for example, requiring such information to be filed in the national company register (the CNE), requiring company service providers to obtain and maintain beneficial ownership information, or requiring the legal persons themselves to maintain full information on their beneficial ownership and control. Such information would then be available to the law enforcement/prosecutorial and supervisory authorities upon the proper exercise of their existing powers. • The authorities should ensure that the legislation which is currently before the Congress, and would address the remaining residue by requiring the identification of those investors holding bearer shares

AML/CFT System	Recommended Action (listed in order of priority)
	issued prior to the prohibition on bearer shares, is enacted as soon as possible.
5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)	• This Recommendation is not applicable in the Brazilian context.
5.3 Non-profit organisations (SR.VIII)	• Brazil, possibly through the ENCCLA mechanism, should: – conduct a review of the domestic laws and regulations that relate to NPOs, and review the activities, size and other relevant features of the sector for the purpose of identifying the features and types of NPOs that are at risk of being misused for FT by virtue of their activities or characteristics; – develop best practices to address FT risks, conduct regular outreach events with the sector to discuss scope and methods of abuse of NPOs, emerging trends in FT and new protective measures, and the issuance of advisory papers and other useful resources regarding FT prevention; – implement a system of registration for all NPOs in the country; and – require NPOs to keep records, including those of domestic and international transactions.
6. National and International Co-operation	
6.1 National co-operation and co-ordination (R.31)	• Work and initiatives to improve the ability of the federal and state law enforcement and prosecutorial authorities to co-ordinate at the operational level should continue (e.g. the implementation of SINTEPOL which will consolidate 16 separate state criminal record databases and improve the authorities' ability to filter, analyse and handle information in a timely manner).
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	• Brazil should take the action recommended in section 2.1.2 of this report to address gaps in its implementation of the *Vienna Convention* and *Palermo Convention*. • Brazil should take the action recommended in section 2.2.2 of this report to address serious gaps in its implementation of the *Terrorist Financing Convention*. • Brazil should take the action recommended in section 2.4.2 of this report to address serious gaps in its implementation of S/RES/1267/1999 and S/RES/1373(2001).
6.3 Mutual Legal Assistance (R.36-38 & SR.V)	• As regards international co-operation and mutual legal assistance in general, it is recommended that Brazil give serious consideration to enacting a comprehensive MLA system. The current provisions in the AML Law provide the basis for such measures, but these need expansion to cover the full breadth of MLA measures expected by the *FATF Recommendations* and need to be underpinned by processes and procedures to ensure effective implementation. Brazil should taken these considerations into account in the context of the full review of its *Criminal Procedure Code,* which is currently being undertaken, with a view to fortifying the role of the Central Authority, streamlining procedures, and enhancing its ability to provide the following types of MLA: process service, hearings and legal evidence procedures. • Brazil should follow the recommendations made in sections 2.3 and 2.6 of this report to harmonise the judicial approach to orders compelling the production of financial records, and reducing the difficulty and time taken to obtain such orders. • Brazil should take measures to ensure that MLA requests are processed

AML/CFT System	Recommended Action (listed in order of priority)
	in a timely manner, and that assistance provided under letters rogatory proceeds more quickly.
6.4 Extradition (R.39, 37 & SR.V)	• The fact that terrorist financing is not criminalised in a manner consistent with Special Recommendation II impedes Brazil's ability to extradite (or prosecute its own nationals) in such cases, as dual criminality is required. Brazil should follow the specific recommendations that have been made in section 2.2 to fully criminalise FT. • Brazil should adopt measures to ensure that extradition requests and proceedings related to ML will be handled without undue delay.
6.5 Other Forms of Co-operation (R.40 & SR.V)	• SUSEP, SPC and COAF should consider signing more MOUs with their foreign supervisory counterparts (particularly, where applicable, in the form of Multilateral MOUs) and should be explicitly empowered to engage in broad co-operation even absent an MOU.
7. Other Issues	
7.1 Resources and statistics (R.30 & 32)	**Recommendation 30:** • Brazil should ensure that the law enforcement authorities at the state level are sufficiently structured and resourced to be able to effectively investigate ML/FT. Also, in light of the massive workload faced by judges in some parts of the country, and the resulting delays in obtaining judicial orders, Brazil should take measures to increase judicial resources in these areas. It is also recommended that the authorities continue their PNLD training programme and extend it as widely as possible to ensure that police, prosecutors and judges at both the state and federal levels have sufficient training in the investigation and prosecution of ML cases. • The RFB should be provided with additional human and technical resources to help it to meet the significant challenges faced in a country with such vast and, in some places, remote border areas. The bidding process which is currently in progress for the acquisition of a large quantity of scanning equipment to be installed in ports, airports and border points should help to improve the situation. • BACEN should be provided with additional staff to support is supervisory work, particularly in relation to non-bank BACEN/FIs. • The inspectors of Securities SROs should receive AML/CFT training. • SPC inspectors should be provided with more AML/CFT training. • As a matter of priority, COAF's supervision arm should be built up into a proper supervisory agency and provided with sufficient staff to undertake this work. However, these staff should not be reallocated from COAF's FIU functions as that would risk leaving the FIU under-resourced. • COAF and COFECI should be provided with sufficient resources to enable them to properly carry out their supervisory functions. • As the number of DRCI staff is not ideal in proportion to the number of cases, it is recommended that the authorities continue to improve the situation through the ongoing comprehensive effort to increase the number of permanent public civil servants. **Recommendation 32:** • Brazil should implement mechanisms that will enable it to maintain accurate and comprehensive statistics on: – the number of ML investigations, prosecutions and convictions at both the federal and state level; and – the time taken to respond to MLA and extradition requests, and whether such requests (made or received) relate to ML, FT or predicate offences. • Brazil should finish its work to implement the SNBA system with a view

AML/CFT System	Recommended Action (listed in order of priority)
	to enhancing its ability to collect and maintain statistics on the number of cases and amounts of property frozen, seized and confiscated relating to ML and predicate offences (including FT, once that offence has been fully criminalised as recommended in section 2.2.2 of this report). • Brazil should ensure that its mechanisms for collecting statistics will distinguish between the number of persons/entities and amounts of property frozen pursuant to the UN Resolutions, and the freezing of terrorist-related assets in other contexts. • The CVM, SUSEP and SPC should routinely maintain statistics on the number of on-site examinations conducted relating to or including AML/CFT, and any sanctions applied. • Once terrorist financing has been criminalised in accordance with Special Recommendation II, Brazil should implement mechanisms that will enable it to maintain accurate and comprehensive statistics on the number of FT investigations, prosecutions and convictions.
7.2 Other relevant AML/CFT measures or issues	• There are no additional measures or issues that are relevant to the AML/CFT system which are not covered elsewhere in this report.
7.3 General framework – structural issues	• Brazil should consider whether additional measures are necessary, in consideration of the effect that the reform of the statute of limitation framework (which came into effect on 5 May 2010) has had on ameliorating the negative impact of some of the systemic problems in the court system which are undermining the ability to effectively apply final sanctions for ML.

ANNEX 1: Abbreviations

ABBREVIATION	FULL TERM
ABECS	Brazilian Association of Credit Card Companies and Services
ABIN	Brazilian Agency of Intelligence
ABONG	Brazilian Association of Non-Governmental Organisations
ACIC	BACEN's internal controls and conformity evaluation
Accountable/DNFBPs	Designated non-financial businesses and professions that are subject to AML/CFT obligations
Accountable/FIs	Financial institutions that are subject to AML/CFT obligations
AFRFB	Auditors of Secretariat of the Federal Revenue of Brazil
AGU	Attorney General (*Advogado Gerald a União*)
AML	Anti-money laundering
AML Law	Law 9613/1998
AnFAC	National Association of Factoring
Art.	Article
ASCJI	Bureau of International Co-operation of the Prosecutor General's Office
ASEL	Association of Portugese-speaking Insurance Supervisors
ASSAL	Association of Insurance Supervisors of Latin America
ATM	Automatic teller machine
BACEN	Central Bank of Brazil (*Banco Central do Brasil*)
BACEN/FIs	Financial institutions under the supervision of BACEN
BM&F	Brazilian Mercantile & Futures Exchange
BM&FBOVESPA	Brazil's securities, commodities and futures exchange
BNI	Bearer negotiable instruments
BOVESPA	São Paulo Stock Exchange
Brazil	Federative Republic of Brazil
BRL	Brazilian Real (*Reais*)
BSM	BOVESPA Market Supervision
CADEMP	Register of Foreign Companies (BACEN)
CBLC	Brazilian Clearing and Depository Corporation
CCS	BACEN's National Database on Clients of the Financial Sector
CDD	Customer due diligence
CEF	Caixa Econômica Federal
CETIP	Center for the custody and financial liquidation of private issues (the organised OTC market)
CFT	Combating the financing of terrorism
CGU	Office of the Comptroller General (*Controladoria-Geral da União*)
CINTEPOL	Law enforcement information system
CMMI	Capability Maturity Model Integration
CMN	National Monetary Council
CNE	National Database of Enterprises
CNJ	National Justice Council (*Conselho Nacional de Justiça*)
CNMP	National Council of the Public Ministry (*Conselho Nacional do Ministério Público*)
CNSP	National Council on Private Insurance
COAF	Council for Financial Activities Control
COAF/FIs	Financial institutions under the supervision of COAF
COFECI	Federal Council of Real Estate Brokers
COMOC	Technical Commission on Currency and Credit
Constitution	Constitution of the Republic of Brazil, 1988
COPEI	Secretariat of Federal Revenue General Co-ordination for Research and Investigation
COREMEC	Committee for Regulation and Supervision of Financial Securities and Exchange, Private Insurance, Complementary Pensions and Capitalisation Markets
CPC	Criminal Procedure Code (Decree-Law 3689/1941)
CPF	Individual Taxpayer Registration Number

ABBREVIATION	FULL TERM
CPF/MF	National Registration of Natural Persons in the Ministry of Finance
CPNJ	Corporate Taxpayer Registration Number
CPNJ/MF	National Registration of Legal Persons in the Ministry of Finance
Criminal Code	Decree-Law 2848/1940
CTR	Currency Transaction Report
CVM	Securities and Exchange Commission of Brazil (*Comissão de Valores Mobiliários*)
CVM/FIs	Financial institutions under the supervision of CVM
DCJI	International Legal Co-operation Division of the Ministry of Foreign Affairs
DECAP	BACEN's Department of Analysis and Control of Disciplinary Actions
DECIC	BACEN's Department of Prevention against Financial Illicit Acts and of Attendance to Information Demands
DECIF	BACEN's Department of Struggle to Exchange and Financial Illicit
DEEST	Department of Foreigners
DESIG	BACEN's Department of Financial System Surveillance and Information Management
DESUC	BACEN's Department of Supervision of Credit Unions and of Non-Banking Institutions
DESUP	BACEN's Department of Supervision of Banks and Banking Conglomerates
DFIN	Financial Crime Repression Division
DNFBP	Designated non-financial businesses and professions
DNRC	National Department of Commerce Registration
DOC	Credit documents
DPF	Department of Federal Police
DRCI	Ministry of Justice Department of Assets Recovery and International Legal Co-operation
ECG	Enlarged Contract Group on the Supervision of Investment Funds
ECT	Brazilian Post and Telegraph Company
e-DMOV	International Values Physical Transport Report (*Declaração de movimentação física de valores*)
e-DPV	Currency Declaration Form (*Declaração de porte de valores*)
EFPC	Deliberative body (council) administering closed pension funds
EIN	Employer Identification Number
ENCCLA	The national strategy against corruption and money laundering (*Estratégia nacional de combate à corrupção e à lavagem de dinheiro*)
ESMPU	Superior School of the Public Ministry (*Escola Superior do Ministério Público da União*)
ESW	Egmont Secure Web
EUR	Euro currency
FATF	Financial Action Task Force
FBI	Federal Bureau of Investigation (United States)
FEBRABAN	Brazilian Federation of Banks Association
FEBRAFAC	Brazilian Federation of Factoring
FI	Financial institution
FIU	Financial intelligence unit
FT	Financing of terrorism
FTZ	Free trade zone
FUNAD	Anti-Drugs National Fund
FUNPEN	National Penitentiary Fund
GAECO	Special Action Group against Organised Crime
GAFISUD	Grupo de Acción Financiera de Sudamérica
GDP	Gross domestic product
GEDEC	Public Prosecutor's Office of the Brazilian Federative State of Sao Paulo – Special Group against Economic Crimes
GGI-LD	Integrated management cabinet for prevention and combat against money laundering
GNCOC	National group against organised crime
GTLD	MPF Working Group on Money Laundering and Financial Crimes

ABBREVIATION	FULL TERM
HTTPS	Hypertext Transfer Protocol Secure
IAIS	International Association of Insurance Supervisors
ICP Brazil	Infrastructure of Public Encryption
ID	Identification
IFIAR	International Forum of Independent Audit Regulators
IIMV	Ibero-American Institute of Securities Regulators
INFOSEG	National system of the integration of justice and public security information
INTERPOL	International Criminal Police Organization
IOSCO	International Organisation of Securities Commissions
IT	Information technology
LAB-LD	AML Laboratory of the National Secretariat of Justice
LTDA	Partnership by shares (limited liability company) (*sociedade limitada*)
MERCOSUL or MERCOSUR	Regional trade agreement among Argentina, Brazil, Paraguay and Uruguay founded in 1991
Merida Convention	United Nations Convention Against Corruption (UNCAC)
ML	Money laundering
MLA	Mutual legal assistance
MLAT	Mutual legal assistance treaty
MOU	Memorandum of understanding
MPF	Federal Prosecution Service
MPS	Security and assistance
MRE	Ministry of Foreign Affairs
MRP	Investor compensation mechanism
MVTS	Money value transfer service
NBFI	Non-bank financial institution
NGO	Non-government organisation
NIRE	Corporate identification number
NPO	Non-profit organisation
OAB	Brazilian bar association
OECD	Organisation for Economic Co-operation and Development
OTC	Over-the-counter
Palermo Convention	2000 UN Convention against Transnational Organised Crime
Para.	Paragraph
PEP	Politically exposed person
PGR	Federal Prosecution Service
PNLD	National program training on corruption and money laundering (*Programa nacional de capacitação e treinamento para o combate à corrupção e à lavagem de dinheiro*)
R.	Recommendation
RFB	Secretariat of the Federal Revenue of Brazil
RILO	Regional Intelligence Liaison Offices
RMCCI	International Capital and Foreign Exchange Market Regulation (compilation of BACEN circulars)
S.	Section
S/A	Anonymous partnership (joint stock company) (*sociedade anônima*)
SANTER	Antiterrorism Service
SCP	Joint venture partnership (*sociedade em conta de participação*)
Securities SROs	SROs in the securities sector (*e.g.* BSM/BOVESPA and BM&F/BOVESPA)
SENASP	National Secretariat of Public Security
SERPRO	Federal Service for Data Processing
SFN	National Financial System
SISCOAF	COAF's system of information
SISCOMEX	Computerised system of controls on consignments and transports by courier companies
SNBA	Sistema Nacional de Bens Apreendidos - National System of Seized Properties

ABBREVIATION	FULL TERM
SNC	National System of Capitalisation
SNJ	National Secretariat of Justice
SNSP	National system of private insurance
SOL	Statute of limitations
SPC	Secretariat of Complementary Providence (*Secretaria de Previdência Complementar*)
SPC/FIs	Financial institutions under the supervision of SPC
SPCI	Corruption Prevention and Strategic Information Secretariat
SR	Special Recommendation
SRC	BACEN's Risk and Control Evaluation System
S/RES/1267(1999)	United Nations Security Council Resolution 1267(1999)
S/RES/1373(2001)	United Nations Security Council Resolution 1373(2001)
SRO	Self-regulatory organisation
SSL/TLS	Secure sockets layer / Transport layer security
STF	Federal Supreme Court
STJ	Superior Court of Justice
STR	Suspicious transaction report
SUSEP	Superintendence of Private Insurance (*Superintendência de Seguros Privados*)
SUSEP/FIs	Financial institutions under the supervision of SUSEP
TED	Available Electronic Transfer
Terrorist Financing Convention	International Convention for the Suppression of the Financing of Terrorism (1999)
TIR transactions	International transfers in Brazilian Real
TSE	Superior Electorate Court
Uncovered/DNFBPs	Designated non-financial businesses and professions that are not subject to AML/CFT obligations
Uncovered/FIs	Financial institutions that are not subject to AML/CFT obligations
UN	United Nations
USD	United States Dollar
UNCAC	United Nations Convention against Corruption
UNSCR	United Nations Security Council Resolution
VD-AML	BACEN special verification system
VD-PPE	BACEN system for evaluating the adequacy of internal controls
Vienna Convention	UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances
WCO	World Customs Organization
ZIP Code	Postal code

ANNEX 2: All bodies met during the on-site visit

Government agencies

Brazilian Agency of Intelligence (ABIN)	Ministry of Finance
Brazilian Customs Administration of the SFR	National Department of Commerce Registration
Central Bank of Brazil (BACEN)	Office of General Attorney
Council for Financial Activities Control (COAF)	Post Office of Brazil
Department of Asset Recovery	Secretariat of Complementary Providence (SPC)
Department of Federal Police (DPF)	Secretariat of Federal Revenue
ENCCLA	Securities and Exchange Commission of Brazil (CVM)
Federal Judge of São Paulo	State/Civil Police
Federal Prosecution Service (MPF)	State Prosecutors
General Comptroller's Unit (CGU)	**Error! Hyperlink reference not valid.** (SUSEP)
Ministry of Foreign Affairs	Superior Court of Justice and Specialized Courts on ML
Ministry of Justice	

Industry bodies and private sector

Banco do Brasil S.A.	CM Capital Markets CCTVM Ltda
Banco Industrial do Brasil S.A.	Dealer in precious metals/stones
Banco Rural S.A.	Factoring company representative
BM&F/BOVESPA (Stock and Exchange)	Federal Council of Accountants
Brazilian Association of Bureaux de Change and Casa de Cambio (ABRACAM)	Federal Council of Real Estate Brokers and Dealers (COFECI)
Brazilian Bar Association (OAB)	Grupo Bradesco
Brazilian Federation of Banks Association (FEBRABAN)	Grupo Mapfre
Brazilian Federation of Factoring (FEBRAFAC)	HSBC
Brazilian Federation of Insurance Companies	ICAP do Brasil CTVM Ltda
Brazilian Institute of Gems and Precious Metals	Itaú Corretora de Valores S.A.
BSM-BM&F/BOVESPA Market Supervision	J. Malucelli Seguradora S/A
Caixa Econômica Federal	Lawyers, accountants and real estate agents
Casa de cambio representative	Organised OTC Market

ANNEX 3: Provisions of key laws, regulations and other measures

Law 9613/1998 (*AML Law)* on the ML offence and preventative measures

Decree 2799/1988 on the bylaws of the FIU

Law 7170/1983 on national security, including terrorism

Complementary Law 105/2001 on confidentiality of transactions

Law 9613/1998 (the *AML Law*)

This law addresses the crimes of money laundering or concealment of assets, rights, and valuables, the measures designed to prevent the misuse of the financial system for illicit actions as described in this law, creates the Council for Financial Activities Control (COAF), and addresses other matters.

THE PRESIDENT OF THE REPUBLIC

I hereby state that the National Congress has decreed and I sign the following Law:

CHAPTER I
CRIMES OF MONEY LAUNDERING OR CONCEALMENT OF ASSETS, RIGHTS, AND VALUABLES

Article 1 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 following crimes:

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. Acts committed by an individual against foreign public administration (articles 337-B, 337-C and 337-D of Decree-Law nº 2848, from December 7th, 1940 – Criminal Code).

Sentence: incarceration(1) for a period of 3 (three) to 10 (ten) years and a fine.

Paragraph 1 The same punishment shall apply to anyone who, in order to conceal or disguise the use of the assets, rights and valuables resulting from the crimes set forth in this article:

I. Converts them into licit assets;

II. Acquires, receives, exchanges, trades, gives or receives as guarantee, keeps, stores, moves, or transfers any such assets, rights and valuables;

III. Imports or exports goods at prices that do not correspond to their true value;

Paragraph 2 The same penalty also applies to anyone who:

I. Through economic or financial activity, makes use of any assets, rights and valuables that he/she knows are derived from the crimes referred to in this article;

II. Knowingly takes part in any group, association, or office set up for the principal or secondary purpose of committing crimes referred to in this Law.

Paragraph 3 The attempts to commit any of the crimes referred to in this Law are punishable in accordance with the provisions set forth in article 14, sole paragraph, of the Criminal Code.

Paragraph 4 The sentence shall be increased by one to two-thirds, in any of the instances contemplated in items I to VI of this article when the crime follows a constant pattern or is committed by a criminal organization.

Paragraph 5 In the event that the accused or his/her accomplice freely agrees to cooperate with the authorities by providing information that lead to the detection of a crime and the identification of those responsible for it, or to the discovery of assets, rights and valuables that were the object of the crime, the sentence may be reduced by one or two-thirds. The accused may also be allowed to start serving time in an open system of imprisonment(2). The judge may also decide whether to apply the penalty or substitute it for the restriction of rights.

CHAPTER II
SPECIAL PROCEDURAL PROVISIONS

Article 2 The judicial proceedings and sentencing of the crimes referred to in this Law:

I. Shall be subject to the same provisions that apply to crimes punishable by extended incarceration, and that are under the jurisdiction of an order court;

II. Are not dependent on the judicial proceedings and sentencing applicable to prior crimes referred to in the previous article, even if these crimes were committed abroad;

III. Shall be subject to federal court jurisdiction in the following instances: a) In the event of crimes against the financial system and the economic-financial order or detrimental to assets, services or interests of the Union or any of its autarchic entities or government companies(3); b) In the event the prior crime is subject to federal court jurisdiction.

Paragraph 1 The charge shall include sufficient indications of the existence of the prior crime. The criminal acts referred to in this Law shall be punishable even when the offender in the prior crime is unknown or exempt from punishment.

Paragraph 2 The provisions of section 366 of the Criminal Procedure Code shall not apply to the judicial process pertaining to the crimes referred to in this Law.

Article 3 The crimes referred to in this Law shall not be subject to bail or temporary release, and, in the event of a conviction, the judge shall accordingly decide if the defendant may be released pending appeal.

Article 4 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. This process shall take place in the form prescribed in articles 125 to 144 of Decree-Law No 3689 of October 3, 1941 – Criminal Procedure Code.

Paragraph 1 The provisional measures referred to in this article shall be suspended if the criminal lawsuit is not initiated within 120 (one hundred and twenty) days, beginning on the date the judicial proceedings are concluded.

Paragraph 2 The judge shall order the liberation of seized or detained assets, rights and valuables after the legality of their origin has been established.

Paragraph 3 No request for the liberation of any assets, rights, and valuables shall be accepted without the presence of the accused. The judge may order that action be taken in order to preserve any assets, rights or valuables in the instances referred to in article 366 of the Criminal Procedure Code.

Paragraph 4 In the event that the immediate implementation of the preventive measures referred to herein may compromise the investigations, the judge—upon consultation with the prosecutor—may issue an order suspending an arrest warrant or the seizure or detention of assets, rights or valuables.

Article 5 Whenever the circumstances justify it, the judge, upon consultation with the prosecutor, shall appoint a trustee a person qualified to manage the assets, rights or valuables that were seized or detained who shall execute a deed of undertaking (4).

Article 6 The trustee:

I. Shall be entitled to receive remuneration for his services, which shall be paid with proceeds of the assets under his/ her management;

II. Acting in response to a court order, shall provide periodic information on the status of the assets under his/her management as well as explanations and details about investment and reinvestment operations he/she may have executed;

Sole paragraph The actions pertaining to the management of the assets seized or detained shall be reported to the prosecutor, who may file in any motion he/she deems appropriate.

CHAPTER III
THE EFFECTS OF A GUILTY VERDICT

Article 7 In addition to the provisions set forth in the Criminal Code, a guilty sentence entails the following:

I. The 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;

II. The suspension of the right to hold positions of any nature in the public service, positions as directors, members of management councils(5) or managers of any of the legal entities referred to in article 9, for a period equal to double the imprisonment term stipulated by the judicial sentence;

CHAPTER IV
ASSETS, RIGHTS OR VALUABLES RESULTING FROM CRIMES COMMITTED ABROAD

Article 8 If there is an international treaty or convention dealing with the matters referred to in this Law and upon request of a competent foreign authority, the judge shall order the seizure or detention of assets, rights and valuables resulting from the crimes committed abroad referred to in article 1.

Paragraph 1 These provisions shall also apply, regardless of the existence of an international treaty or convention, provided the government of the foreign country in question undertakes to grant reciprocity of treatment to Brazil.

Paragraph 2 In the absence of an international treaty or convention, the assets, rights or valuables seized or detained upon request of a competent foreign authority or the proceeds resulting from their detention shall be evenly divided between the Country that makes the request and Brazil, safeguarding the rights of victims or third parties in good faith.

CHAPTER V
LEGAL ENTITIES SUBJECT TO THIS LAW

Article 9 The obligations set forth in articles 10 and 11 hereof shall apply to any legal entity that engages on a permanent or temporary basis, as a principal or secondary activity, together or separately, in any of the following activities:

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 consortia (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;

XII – Individuals or legal entities that trade luxurious goods or those with high prices or that perform activities that involve great amounts in cash.

CHAPTER VI
CUSTOMER IDENTIFICATION AND RECORD KEEPING

Article 10 The legal entities referred to in article 9 hereof shall:

I. Identify their customers and maintain updated records in compliance with the provisions set forth by the competent authorities;

II. 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;

III. Comply with the instructions issued by the Council established under article 14 hereof, within the time limit stipulated by the competent judicial authority. The judicial proceedings pertaining to such matters shall be conducted in a confidential manner.

Paragraph 1 If the customer is a legal entity, the identification mentioned in item I of this article shall include the individuals who are legally authorized to represent it, as well as its owners.

Paragraph 2 The records mentioned in items I and II of this article shall be kept during a minimum period of five years, beginning on the date the account is closed or the date the transaction is concluded. However, the competent authorities may decide, at their own discretion, to extend this period .

Paragraph 3 The records mentioned in item II of this article shall also be made whenever an individual or legal entity, or their associates execute, during the same calendar month, transactions with the same individual, legal entity, conglomerate or group that exceed, in the aggregate, the limits set forth by the competent authorities.

Article 10A. The Central Bank will keep centralized registries forming a general database with the current-account holders and financial institutions clients, as well as with their representatives.

CHAPTER VII
REPORTS OF FINANCIAL TRANSACTIONS

Article 11 The legal entities referred to in article 9 hereof:

I. Shall 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;

II. Shall report to the competent authorities, within twenty-four hours, abstaining from informing their customers of this reporting:

a) All transactions listed in item II of article 10 that involve an amount that exceeds the limit fixed, to this end, by the same authority and in the form and conditions set forth by that authority, being mandatory the presentation of the identification referred to in item I of that same article;

b) The proposal or the execution of a transaction referred to in item I of this article.

Paragraph 1 The competent authorities referred to in item I hereof shall establish a list of transactions that could characterize the kind of operations mentioned herein, in regard to their basic features, the parties and amounts involved, the implementation, the means of execution, or the lack of economic or legal grounds for them.

Paragraph 2 Information provided in good faith, pursuant to the provisions set forth in this article, shall not generate any civil or administrative liability.

Paragraph 3 If The individuals or legal entities that are not subject to any specific monitoring or regulatory agency shall provide the information referred to in this article to the Council for Financial Activities Control (COAF), in the form prescribed by the Council.

CHAPTER VIII
ADMINISTRATIVE LIABILITY

Article 12 The legal entities referred to in article 9 as well as their managers that fail to comply with the provisions set forth in articles 10 and 11 shall be subject to the sanctions defined below. Therefore, the competent authorities shall apply, together or separately, the following sanctions:

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 R$200,000.00 (two hundred thousand Reals);

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 article 9;

IV. The cancellation of the authorization to operate;

Paragraph 1 The warning sanction shall be applied for failure to comply with the provisions set forth in items I and II of article 10.

Paragraph 2 A fine shall be applied whenever any of the legal entities mentioned in article 9, acting negligently or harmfully:

I. Fails to correct the irregularities which provoked the warning, within the time limit set forth by the competent authorities;

II. Fails to carry out the identification or the record keeping referred to in items I and II of article 10;

III. Fails to comply, within the stipulated time limit, with the requirements set forth in item III of article 10;

IV. Disregards the prohibition or fails to provide the reports referred to in article 11.

Paragraph 3 The penalty of temporary suspension of activities shall be applied to those responsible for serious violations of the provisions of this Law or whenever there is evidence of the recurrence of the offenses that were previously punished with fines.

Paragraph 4 The penalty of cancellation of the authorization to operate shall be applied in instances of specific recurrence of the offenses that were previously punished with the penalty set forth in item III of this article.

Article 13 The application of the sanctions set forth in this Chapter shall be regulated by a decree that shall ensure the right of rebuttal and ample rights of defense to the parties concerned.

CHAPTER IX
COUNCIL FOR FINANCIAL ACTIVITIES CONTROL

Article 14 This law creates the Council for Financial Activities Control (COAF), under the jurisdiction of the Ministry of Finance, for the purpose of regulating, applying administrative sanctions, receiving pertinent information, examining and identifying any suspicious occurrence of the illicit activities defined in this Law. The actions of COAF shall not conflict with the jurisdiction of other agencies.

Paragraph 1 COAF shall issue the instructions set forth in article 10 for the legal entities specified in article 9 which are not subject to any specific monitoring or regulatory agency. In these cases, COAF shall also define the entities included in this category and apply the sanctions set forth in article 12.

Paragraph 2 COAF shall also coordinate and suggest systems of cooperation and exchange of information designed to enable rapid and efficient responses in the struggle against the practice of concealment or disguise of assets, rights and valuables.

Paragraph 3 COAF may require the agencies of the Public Administration to provide banking and financial registering information of people involved in suspicious activities.

Article 15 COAF shall notify the competent authorities whenever it finds evidence of the crimes defined in this Law or of any other illicit activity, so as to enable such authorities to take the appropriate legal measures.

Article 16 The members of COAF shall be civil servants of outstanding reputation and capability, named by an act of the Minister of Finance and chosen among the career personnel of the Central Bank of Brazil, the Securities and Exchange Commission, the Superintendence of Private Insurance, the General Attorney Office for the National Treasury, the Federal Revenue Office, the Brazilian Agency of Intelligence, the Federal Police Department, the Ministry of Foreign Affairs, the General-Controller Office of the Union, and the Ministry of Justice. The members from the last five entities shall be nominated by the respective Ministers.

Paragraph 1 The Chairperson of the Council shall be appointed by the President of the Republic, acting on a recommendation of the Minister of Finance.

Paragraph 2 The decisions of COAF regarding the application of administrative sanctions may be appealed to the Minister of Finance.

Article 17 COAF's internal organization and mode of operation shall be set forth in its bylaws which shall be approved by a decree of the Executive Branch of Government.

Article 18 This Law shall come into force on the date of its publication.

Brasilia, March 3, 1998, the 177th year of Independence and the 110th year of the Republic.

NOTES:

(1) Trans. & Explanatory Note: The original text refers to a sentence of "reclusão" (reclusion) which, under the Brazilian Criminal Code, (Decree-Law No. 2848 of December 7, 1940), corresponds to a harsher form of imprisonment, involving some form of solitary confinement for a minimum period of time and limitation of the right of parole. It differs from the sentence of "detenção", which designates a less rigorous form of incarceration, which involves no solitary confinement.

(2) Trans. & Explanatory Note: An "open system of imprisonment" is one that, under certain conditions, may be converted into a restriction of rights, which may involve features of US systems such as work release and community service.

(3) Under Brazilian law, in addition to agencies and government institutions, there are three distinct types of entities controlled by the State, which enjoy a greater or lesser degree of administrative autonomy, as follows: autarchical entities, public companies, and mixed-economy companies. Autarchical entities (from the "Greek autárkeia")—the condition of self-sufficiency, especially economic, as applied to a state..." Webster's Encyclopedic Unabridged Dictionary of the English Language (Portland House- New York) 1989 Ed.)—are those which have the power of raising revenues through fees charged to the public. As such, they are not exclusively dependent on fund allocations in the federal budget for funding their operations. There are federal, state, and municipal "autarquias". A typical example is the social security entity. Public companies are those which operate in the private sector, just as any private concern, but whose shares are wholly owned by the state. A good example is INFRAERO, the company that operates the country's major airports. Mixed-economy companies differ from public companies in that they have private shareholders, in addition to the government. Petrobrás, the Brazilian oil company, is a prime example of a federal mixed-economy company.

(4) The original expression translated here as "deed of undertaking" is "termo de compromisso", which is a signed document someone entrusted with the performance of a job or a task formally accepts such obligation, promises to perform it in accordance with a predetermined set of instructions, and agrees to be penalised or held accountable for failure to conduct himself in the manner set forth in that document. It is the equivalent of an oath of office.

(5) "Management Council" is used as a translation of the Portuguese original term "Conselho de Administração", which, pursuant to the corporation law, is the highest management board in a Brazilian corporation. The expression Management Board was avoided because many local companies have both a "Management Board" (called "Diretoria Executiva", or simply "Diretoria") and a higher board, known as "Conselho de Administração", which is the term used here.

Decree 2799/1998 on the Bylaws of the FIU (COAF)

This decree approves the Bylaws of the Council for Financial Activities Control (COAF).

THE PRESIDENT OF THE REPUBLIC, In the exercise of the powers conferred by article 84, items IV and VI of the Constitution, HAS DECREED:

Article 1 The Bylaws of the Council for Financial Activities Control (COAF), created by Law No. 9613, of March 3, 1998, are hereby approved as set forth in the Annex to this Decree.

Article 2 This Decree shall come into force on the date of its publication.

Brasília, October 8, 1998, the 177thyear of Independence and the 110th year of the Republic.

Annex to Decree 2799/1998 – Bylaws of the COAF

CHAPTER I
NATURE AND PURPOSE

Article 1 The Council for Financial Activities Control (COAF) is a collegiate decision-making body whose jurisdiction includes the whole Brazilian territory. COAF was created by Law No. 9613, of March 3, 1998, as an integral part of the Ministry of Finance, with headquarters in the Federal District. Its purpose is to discipline, apply administrative penalties, receive, examine, and identify the suspicions of illicit activities referred to in the law that created it, with no prejudice to the competence of other offices and entities.

Sole Paragraph COAF may maintain some branches, by using the infrastructure of regional units of the offices to which the Council members belong, with the purpose of providing the adequate coverage of the whole Brazilian territory.

CHAPTER II
ORGANIZATION
Section I
Plenary Meeting Composition

Article 2 The plenary meeting shall be presided over by the Chairperson of COAF and shall be composed of one representative of each one of the following agencies or entities:

I. Central Bank of Brazil;

II. Securities and Exchange Commission;

III. Superintendence of Private Insurance (SUSEP);

IV. General-Attorney Office for the National Treasury;

V. Federal Revenue Office;

VI. Intelligence Division of the Military Department of the Presidency;

VII. Federal Police Department;

VIII. Ministry of Foreign Relations.

Sole Paragraph The Council members shall belong to the effective staff of their respective organizations, and they shall be appointed by the Minister of Finance, who will accept in the case of items VI, VII, and VIII the indication made by the respective Ministers of State.

Article 3 The Council shall have the support of an Executive Secretariat, directed by an Executive Secretary, who shall be appointed by the Minister of Finance.

Section II
Duties of the Chairperson

Article 4 The Chairperson of COAF shall perform his/her duties in an exclusive manner, so that he/she shall be forbidden to perform other functions, except for those established by the constitution.

Paragraph 1 The office of Chairperson shall be subject, whenever applicable, to the provisions in articles 5 and 6.

Paragraph 2 The President of the Republic shall appoint the Chairperson of the Council upon indication by the Minister of Finance.

Section III
Term of Office for Council Members

Article 5 The Council Members shall serve a three-year term, but they may be reappointed.

Paragraph 1 The Council Members shall lose their offices in case of:

I. Absolute civil incapacity;

II. Criminal conviction resulting from final sentencing decision;

III. Administrative improbity proven by disciplinary proceedings under the provisions of Law No. 8112, of December 11, 1990, and Law No. 8429, of June 2, 1992;

IV. Loss of effective position in their original agencies, or retirement;

V. Infraction to the provisions of article 6.

Paragraph 2 COAF Members shall also automatically lose their offices whenever they fail to attend three consecutive or a total of ten ordinary meetings without any justification.

Paragraph 3 Should the Council Members lose their offices or resign, a substitute shall be appointed, and he/she shall serve the regular term of office as set forth in this article.

Paragraph 4 The office of Council Members shall be exercised without prejudice to their regular duties in the original agencies to which they belong.

Section IV
Restrictions

Article 6 COAF's Chairperson, Council Members, and Executive Secretariat staff shall not:

I. Participate as comptrollers, managers, representatives or employees in legal entities with activities related to article 9 and sole paragraph of Law No. 9613/1998;

II. Issue any opinion on matters (even if hypothetical) of their specialty, which is not part of their duties, or act as consultants of any of the legal entities referred to in the previous item;

III. Express, by any means of communication, an opinion on any proceeding awaiting trial by the Council.

CHAPTER III
JURISDICTION AND DUTIES
Section I
Plenary Meeting

Article 7 COAF's plenary meeting shall:

I. Monitor the compliance with current legislation and with the Council's Bylaws and Internal Rules and Regulations;

II. Discipline the matter under its jurisdiction as provided by Law No. 9613/1998;

III. Receive, examine, and identify the suspicions of illicit activities, under the provisions of article 1 of Law No. 9613/1998;

IV. Deliberate upon infractions and apply the administrative penalties referred to in article 12 of Law No. 9613/1998, to the legal entities defined in article 9 of that Law, which are not subject to any specific surveillance or regulatory agency;

V. Issue the instructions for the legal entities referred to in the previous item;

VI. Elaborate the list of suspicious transactions and activities, according to the provisions of Paragraph 1 of article 11 of Law No. 9613/1998;

VII. Coordinate and propose mechanisms of cooperation and exchange of information, which allow for fast and efficacious measures to prevent and repress the concealment or disguise of assets, rights, and valuables;

VIII. Require information or documents from legal entities, which are not subject to any specific surveillance or regulatory agency, or through a competent agency, as the case may be;

IX. Report to the competent authorities, whenever it verifies the existence or grounded indication of crimes or of any other illicit activity;

X. Express an opinion on proposals of international agreements, in matters of its jurisdiction, consulting other agencies or public entities involved with the matter, as the case may be.

Section II
Executive Secretariat

Article 8 The Executive Secretariat shall:

I. Receive identification information and information on cash transfers considered suspicious under articles 10 and 11 of Law No. 9613/1998, provided by the institutions mentioned in article 9 of that same Law, directly or through other surveillance or regulatory agencies;

II. Centralize the requests addressed to COAF branches;

III. Receive reports, including anonymous ones, referring to suspicious activities;

IV. Catalog, classify, identify, compare, and file information, reports, and data received and requested;

V. Request information kept in data basis of public and private agencies and entities;

VI. Analyze the reports, data, and information received and requested; elaborate and file dossiers containing the inquiries made;

VII. Request investigations from federal agencies and entities whenever there is any indication of suspicious activities in the received or requested information, or suspicions arising from the analysis performed;

VIII. Perform secretary functions during the Council sessions on a permanent basis;

IX. Prepare, for the decision of the Minister of Finance, the appeals against decisions by the competent authorities referred to in the previous article;

X. Do other duties that might be assigned by the plenary meeting or the Chairperson.

Section III
Chairperson

Article 9 COAF's Chairperson shall:

I. Preside over the Council's Plenary meeting with voting rights including the casting vote;

II. Issue regulatory acts that might be necessary to improve the Council's performance;

III. Convene meetings and organize the corresponding agenda;

IV. Sign the official acts of COAF, as well as the plenary meetings' decisions;

V. Order the summons of those people concerned;

VI. Orient, coordinate, and supervise the administrative activities of the Council and Executive Secretariat;

VII. Officially report to the competent authorities whenever the investigations show strong indications of irregularities;

VIII. Nominate an expert to help fulfill the Council's duties, whenever the matter demands specific technical knowledge;

IX. Invite representatives of public or private agencies or entities to participate in the meetings, without voting rights.

Section IV
Council Members

Article 10 The Council Members shall:

I. Vote on the proceedings and matters submitted to the plenary meeting;

II. Publish and register the decisions on the proceedings in which they act as reporters;

III. Submit to the plenary meeting the request for information and documents that concern the proceedings respecting the applicable legal confidentiality and determine the necessary actions for the fulfillment of their duties;

IV. Do other tasks that might be assigned to them in accordance with the Council's Internal Rules and Regulations;

V. Perform other assignments as determined by the plenary meeting or the Chairperson.

CHAPTER IV
EXCHANGE OF INFORMATION

Article 11 The Central Bank of Brazil, the Securities and Exchange Commission, the Superintendence of Private Insurance, the Federal Police Department, the Intelligence Division of the Military Department of the Presidency, and other public agencies and entities which are in charge of surveillance and regulation of the persons subject to the obligations referred to in articles 10 and 11 of Law No. 9613/1998, shall provide the necessary information and collaboration for COAF and its Executive Secretariat to accomplish their mission.

Paragraph 1 The exchange of confidential information between COAF and the entities referred to above, made with judicial authorization, implies the transfer of responsibility for the preservation of confidentiality.

Paragraph 2 The requests for information referred to above shall be addressed through specific forms, signed by the competent administrative authority, or electronically through data bases that can only be accessed by a duly accredited civil servant.

Paragraph 3 The requests for information from the entities that compose COAF and from COAF to these entities shall be responded on a priority basis.

Paragraph 4 The information requested to COAF shall be sent to the requesting party through specific forms or reports, and this shall imply the transfer of responsibility for the preservation of applicable legal confidentiality.

Paragraph 5 The entities referred to above shall establish mechanisms to make their data systems compatible for the exchange of electronic information which are not protected by legal confidentiality.

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

Article 13 Whenever COAF receives requests for information concerning the crimes defined in article 1 of Law No. 9613/1998, from competent authorities or entities abroad, it shall respond or forward the requests, as the case may be, to the competent agencies, so that the necessary measures are taken for a response.

CHAPTER V
ADMINISTRATIVE PROCEEDINGS

Article 14 The administrative infractions defined in Law No. 9613/1998, shall be investigated, and punished by means of administrative proceedings with the right to contest and ample defense.

Sole Paragraph The Central Bank of Brazil, the Securities and Exchange Commission, the Superintendence of Private Insurance, and other agencies or entities responsible for the application of administrative penalties defined in article 12 of Law No. 9613/1998 shall comply with the established procedures, and, whenever applicable, with the provisions in these Bylaws.

Article 15 COAF and the entities that monitor and regulate the persons referred to in article 9 of Law No. 9613/1998 shall be entitled to perform preliminary investigations on a reserved basis.

Sole Paragraph In preliminary investigations, the competent authority, pursuant to the internal regulations of his/her respective agency or entity, may request explanations from individuals or legal entities directly related to the object of investigation.

Article 16 When the preliminary investigations are concluded, the responsible authority shall propose the initiation of administrative proceedings or determine its dismissal, but submitting in this case the decision to his/her superior for review.

Article 17 The competent authority shall initiate the administrative proceedings through an official act specifying the facts to be investigated. This shall take place within no more than 10 (ten) business days after being informed of the infraction, receiving the reports referred to in item II of article 11 of Law No. 9613/ 1998, or being informed of the conclusions of preliminary investigations.

Article 18 The defendants shall be summoned to present their defense within 15 (fifteen) days. They shall present evidence in their interest, but they may present new documents at any time before the case investigation is concluded.

Paragraph 1 The summons shall disclose the full terms of the notification that initiated the administrative proceedings.

Paragraph 2 The defendants' summons shall be made by mail, with proof of delivery, or, if summons by mail is not possible, by public notice published only once in the Official Federal Gazette (Diário Oficial da União, D.O.U.). The time limits shall be counted either from the summons' receipt or from its publication, respectively.

Paragraph 3 The defendants may follow the administrative proceedings personally or through a legal representative, if they are legal entities, or through a lawyer legally qualified. They shall be allowed to have ample access to the proceedings, which shall remain in the premises of the agency or entity in charge of the case, and to obtain copies of the documents included in the proceedings.

Article 19 The defendants who do not present a defense after being summoned within the stipulated time referred to in the previous article shall be deemed non-compliant and they shall be considered guilty of the issues in question and subject to the other time limits, regardless whether another summons is made.

Sole Paragraph The non-compliant defendants may intervene in any phase of the proceedings, but with no rights to the repetition of any act already performed.

Article 20 After the deadline established for the presentation of defense, the authority responsible for the proceedings may order investigations and the collection of relevant evidence. He/she may also request from the defendants new information, explanations, or documents, to be presented within the time established by the requesting authority, by keeping legal confidentiality whenever necessary.

Article 21 The decision shall be disclosed within no more than 60 (sixty) days after the case investigation is finished.

Article 22 The agencies and entities responsible for the application of administrative penalties referred to in Law No. 9613/1998 shall supervise the compliance with their decisions.

Paragraph 1 Should there be a partial or total failure to comply with the decision, the fact must be reported to the competent authority that shall decide on the measures to be taken for its judicial execution.

Paragraph 2 Whenever decided by COAF, the judicial representation shall be made by a General Attorney.

Article 23 One may appeal against COAF's decisions to the Minister of Finance within 15 (fifteen) days after being informed of the decision.

CHAPTER VI
FINAL AND TRANSITORY PROVISIONS

Article 24. The expenses of installation and functioning of COAF and the Executive Secretariat shall be imputed to the budget of the Ministry of Finance.

Article 25. The General Attorney Office shall appoint a General Attorney to act at COAF.

Article 26. The Internal Rules and Regulations of COAF shall be approved by means of an act of the Minister of Finance.

Law 7170/1983 on national security (excerpts)

This Law defines crimes against the national security, political and social order, and establishes their proceedings and judgement, and provides for related matters.

Article 1. This law sets forth crimes that harm or threaten harm to:

I – the territorial integrity and national sovereignty;

II – the representative and democratic regime, the Federation and the State of Law;

III – the individuality of the heads of the Branches of the Federal Government.

Article 20. Devastating, pillaging, extorting, robbing, kidnapping, keeping in false imprisonment, setting fire, wrecking, provoking explosion, assaulting individuals or carrying out terrorist attempt, for political inconformism or acquisition of funds intended for maintaining clandestine or subversive political organizations.

Punishment: imprisonment, from 3 to 10 years.

Sole paragraph. Should the assault result in aggravated battery, the punishment shall be increased in up to double; should it result in death, the punishment shall be increased up to three times.

Article 24. Constituting, joining or maintaining illegal military organization, of any type armed nature or not, with or without uniform, aiming to combat.

Punishment: imprisonment, from 2 to 8 years.

Complementary Law 105/2001 on confidentiality of transactions

This law addresses the confidentiality of transactions performed by financial institutions and other matters.

THE PRESIDENT OF THE REPUBLIC

I hereby state that the National Congress has decreed and I sign the following Complementary Law:

Article 1. The financial institutions shall keep the confidentiality of their active and passive transactions and services rendered.

Paragraph 1. For the purposes of this Complementary Law, financial institutions are the following:

I. banks of any kind;

II . securities dealers;

III. foreign currency and securities brokerage houses;

IV. credit, financing, and investment companies;

V. real estate financing companies;

VI . credit card administrators;

VII. leasing companies;

VIII. organized over-the-counter markets;

IX. cooperative credit entities;

X. savings and loans associations;

XI. stock, commodities, and futures exchanges;

XII. settlement and clearing entities;

XIII. other entities that due to the nature of their operations might be included in this list by the National Monetary Council.

Paragraph 2. For the purposes of this Complementary Law, the factoring companies shall comply with the regulations applicable to financial institutions set forth in Paragraph 1.

Paragraph 3. The actions listed below shall not be considered a violation of the duty of confidentiality:

I. the exchange of information between financial institutions for record purposes, including the exchange made through risk centers in compliance with the rules and regulations issued by the National Monetary Council and the Central Bank of Brazil;

II. the provision of information contained in the records of bad check writers and defaulters to credit protection entities in compliance with the rules and regulations issued by the National Monetary Council and the Central Bank of Brazil;

III. the provision of information referred to in Paragraph 2 of article 11 of Law No. 9311, of October 24, 1996;

IV. the reporting of illicit activities to the competent authorities, including information on transactions that involve funds deriving from criminal activities;

V. the disclosure of confidential information with the express consent of those concerned;

VI. the provision of information as set forth in articles 2,3,4,5,6,7, and 9 of this Complementary Law.

Paragraph 4. The breach of confidentiality may be ordered, when it is necessary to verify the occurrence of any illicit activity, in any stage of investigations or legal proceedings, and especially in the case of the following crimes:

I. terrorism;

II. illicit trafficking in narcotic substances or similar drugs;

III. smuggling or trafficking in weapons, munitions, or materials used for their production;

IV. extortion through kidnapping;

V. acts against the Brazilian financial system;

VI. acts against the Public Administration;

VII. acts against the fiscal and social security order;

VIII. money laundering or concealment of assets, rights, and valuables;

IX. acts committed by a criminal organization.

Article 2. The duty of confidentiality also applies to the Central Bank of Brazil in regard of the transactions it performs and the information it receives in the fulfillment of its duties.

Paragraph 1. Confidentiality in regard of deposit accounts and investments kept in financial institutions cannot be denied to the Central Bank of Brazil:

I. when the Central Bank is 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;

II. when the Central Bank is carrying out investigations on a financial institution subject to a special regime.

Paragraph 2. The committees charged with the investigations mentioned in item II of paragraph 1 shall be entitled to examine all the documents concerning assets, rights, and obligations of financial institutions, their comptrollers, managers, members of the boards, agents and proxies, including information on current accounts and transactions with other financial institutions.

Paragraph 3. The provisions in this article apply to the Securities and Exchange Commission (CVM), in regard of surveillance of transactions and services performed in securities markets, including the financial institutions that are open companies.

Paragraph 4. The Central Bank of Brazil and the Securities and Exchange Commission, within their respective jurisdiction, may sign cooperative agreements:

I. with other public institutions that regulate financial institutions in order to carry out combined surveillance, respecting their respective jurisdiction;

II. 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.

Paragraph 5. The duty of confidentiality referred to in this Complementary Law also applies to the surveillance entities mentioned in Paragraph 4 and their agents.

Paragraph 6. The Central Bank of Brazil, the Securities and Exchange Commission, and other surveillance entities, within their respective jurisdiction and for the purposes defined in article 14 of Law No. 9613, of March 3, 1998, shall provide to the Council for Financial Activities Control (COAF) the identification information and the cash transfer reports concerning the transactions referred to in item I of article 11 of that same Law.

Article 3. The Central Bank of Brazil, the Securities and Exchange Commission and financial institutions shall provide the information required by Court Order, preserving their confidential character by restricting access to the parties involved that shall not be allowed to use such information for purposes other than those pertaining to the investigation.

Paragraph 1. The provision of information and confidential documents requested by an administrative investigation committee designed to verify the responsibility of a public servant for a violation made in the fulfillment of his/her duties or which is related to the duties of the position he/she holds shall require prior judicial authorization.

Paragraph 2. In the cases mentioned in Paragraph 1, the requests for the breach of confidentiality does not require that judicial proceedings have been previously initiated.

Paragraph 3. In addition to the cases defined in this article, the Central Bank of Brazil and the Securities and Exchange Commission will provide the General-Attorney Office with the necessary information and documents for the Government's defense in proceedings in which the Government is one of the parties.

Article 4. Within their respective jurisdiction, the Central Bank of Brazil and the Securities and Exchange Commission, and the financial institutions shall provide the Federal Legislative Branch with the confidential information and documents that are undoubtedly necessary for the fulfillment of their respective constitutional and legal duties.

Paragraph 1. The parliamentary inquiry commissions (CPI) in the fulfillment of their constitutional and legal duties of broad investigation shall obtain the necessary confidential information and documents directly from the financial institutions or through the Central Bank of Brazil or the Securities and Exchange Commission.

Paragraph 2. The information requests referred to in this article shall be subject to prior approval by the plenary meeting of the House of Representatives, of the Senate, or of their respective parliamentary inquiry commissions.

Article 5. The Executive Branch of Administration shall regulate the criteria (including the periodicity and amount limits to be reported) that the financial institutions shall follow to inform to the federal tax administration the financial transactions performed by their customers.

Paragraph 1. For the purpose of this article, financial transactions are the following:

I. cash and long-term deposits, including those made in savings accounts;

II. payments made in current currency or in checks;

III. issuance of credit orders or similar documents;

IV. withdrawals in cash or long-term deposit accounts, including savings accounts;

V. loan agreements;

VI. abatement of promissory notes, debtor's obligations or any other credit instrument;

VII. purchases and sales of fixed or variable-income securities;

VIII. investments made in investment funds;

IX. purchases of foreign currency;

X. exchanges of foreign currency for Brazilian currency;

XI. money transfers made to a recipient established abroad;

XII. transactions of gold as a financial asset;

XIII. transactions of credit cards;

XIV. leasing transactions; and

XV. any other transaction of similar nature that might be authorized by the Central Bank of Brazil, the Securities and Exchange Commission, or another competent agency.

Paragraph 2. The information provided in accordance with the provisions of this article shall be restricted to information related to the identification of the transaction parties and the total amounts monthly moved. It shall not be allowed to insert any element that enables to identify their origin or the nature of consequent expenses.

Paragraph 3. The information referred to in this article does not include the financial transactions conducted by direct or indirect administrations at Federal, State, Municipal, or Federal District levels.

Paragraph 4. After receiving the information referred to in this article, if the competent authority detects indications of lapses, mistakes, omissions or tax evasion, he/she may request other necessary information or documents and submit them to surveillance or auditing to adequately investigate the facts.

Paragraph 5. The information referred to in this article shall be kept under fiscal confidentiality pursuant to current legislation.

Article 6. 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.

Sole Paragraph. The results of the examination of the information and documents referred to in this article shall be kept confidential pursuant to current fiscal legislation.

Article 7. Without prejudice to the provisions in paragraph 3 of article 2, the Securities and Exchange Commission, after an administrative investigation has been initiated, may request to the competent judicial authority the release of confidentiality in financial institutions concerning information and documents on assets, rights, and obligations of individuals or legal entities subject to CVM's regulating jurisdiction.

Sole Paragraph. The Central Bank of Brazil and the Securities and Exchange Commission shall keep a permanent exchange of information on the results of inspections they carry out, the proceedings they initiate, or the penalties they apply, whenever this information is necessary for the fulfillment of their duties.

Article 8. The compliance with the requirements and formalities mentioned in articles 4, 6, and 7 shall be expressly declared by the competent authorities in the requests addressed to the Central Bank, the Securities and Exchange Commission, or the financial institutions.

Article 9. When the Central Bank of Brazil and the Securities and Exchange Commission, in the fulfillment of their duties, verify the occurrence or indications of a crime defined by the law as a public action, they shall report them to the Department of Justice and attach to such report the necessary documents for the verification and demonstration of the facts.

Paragraph 1. The report referred to in this article shall be made by the chairpersons of the Central Bank of Brazil and the Securities and Exchange Commission (with the possibility of delegation of powers) within no more than fifteen days beginning on the date the proceedings are received, with acknowledgement of the respective legal services.

Paragraph 2. Regardless of the provisions in this article, the Central Bank of Brazil and the Securities and Exchange Commission shall report to the competent public agencies the administrative irregularities and torts that they have knowledge or indications of their occurrence, and they shall attach to said report all the pertinent documents.

Article 10. The breach of confidentiality, except for that authorized by this Complementary Law, constitutes a crime and those responsible for it shall be subject to confinement from one to four years and a fine, and the applicable penalties prescribed by the Penal Code, without prejudice to other applicable sanctions.

Sole Paragraph. The same penalties shall apply to those that omit, unjustifiably delay, or falsely provide the information requested pursuant to this Complementary Law.

Article 11. The civil servant that uses or enables the use of any information obtained as a result of the breach of confidentiality referred to in this Complementary Law shall be liable personally and directly for the damages that result from this breach, without prejudice to the public entity's objective responsibility, whenever it is proven that the civil servant has acted according to official orientation.

Article 12. This Complementary Law shall come into force on the date of its publication.

Article 13. This Complementary Law revokes article 38 of Law No. 4595, of December 31, 1964.

Brasília, January 10, 2001, the 180th of Independence and the 113th of the Republic.

ANNEX 4: List of all laws, regulations and other material received

Laws, Decree-Laws and Complementary Laws
Constitution of the Republic of Brazil, 1988
Compilation of Brazilian AML laws
Decree-Law 2848 The Criminal Code
Decree-Law 3689 The Criminal Procedure Code
Decree-Law 9215
Law 3443 on the ML offence
Law 4131 on foreign investment and international remittances
Law 4595 on monetary policy
Law 5726 on drug trafficking
Law 6368 on drug trafficking
Law 6385 on securities
Law 6404 on corporations
Law 7170 on national security
Law 7492 on crimes against the financial system
Law 7560 creating the anti-drug squad
Law 8112
Law 9034 on criminal organisations
Law 9447 on obligations of financial institutions
Law 9613 on crime of ML and creation of COAF
Law 10217 on criminal organisations
Law 10303 on corporations
Law 10406
Complementary Law 105 on confidentiality of transactions
Complementary Law 108 concerning pensions matters
Complementary Law 109 on the pension fund system
Complementary Law 126 on insurance
Decrees
Decree 73 on the national private insurance system
Decree 2321 on financial institutions
Decree 2799 on the COAF Bylaws
Decree 2848/40 amending the Brazilian Criminal Code
Decree 4942 on violations of requirements of the pension fund system
Decree 5687
By-law
Inter-ministerial by-law 145 establishing multiagency working group for ME
BACEN
BACEN Foreign Exchange Market Regulation, Title 1 Index
BACEN Foreign Exchange Market Regulation, Title 1 Chapter 1
BACEN Foreign Exchange Market Regulation, Title 1 Chapter 2
BACEN Foreign Exchange Market Regulation, Title 1 Chapter 4 Section 1
BACEN Foreign Exchange Market Regulation, Title 1 Chapter 4 Section 2
BACEN Foreign Exchange Market Regulation, Title 1 Chapter 4 Section 3
BACEN Foreign Exchange Market Regulation regarding CDD, Title 1 Chapter 6
BACEN Foreign Exchange Market Regulation, Title 1 Chapter 10
BACEN Foreign Exchange Market Regulation, Title 1 Chapter 13 Section 1
BACEN Foreign Exchange Market Regulation, Title 1 Chapter 13 Section 2
BACEN Foreign Exchange Market Regulation, Title 1 Chapter 16 Section 5
BACEN Foreign Exchange Market Regulation, Title 3 Chapter 2 Section 1
CMN Resolution 1653
CMN Resolution 1655
CMN Resolution 2025

CMN Resolution 2554
CMN Resolution 2592
CMN Resolution 2689
CMN Resolution 2747
CMN Resolution 2817
CMN Resolution 2953
CMN Resolution 3040
CMN Resolution 3041
CMN Resolution 3110
CMN Resolution 3654
BACEN Circular Letter 2826 on reports to the Central Bank
BACEN Circular 2852 on financial institutions' obligations *(revoked by BACEN Circular 3461/2009)*
BACEN Circular number 2865 *(revoked by BACEN Circular 2943/1999)*
BACEN Circular 3030 on cheques *(revoked by BACEN Circular 3290/2005)*
BACEN Circular 3115 on electronic transfers
BACEN Circular 3290 on cheques
BACEN Circular 3339 on PEPs *(revoked by BACEN Circular 3461/2009)*
BACEN Circular 3461 on the CFT Convention
BACEN Circular 3462 on the Foreign Exchange and International Capital Markets Regulation
Explanation of changes made to the RMCCI by BACEN Circular 3462
BACEN Supervision Manual
BACEN Circular-letter 3006 on deposit accounts
BACEN Circular-letter 3342 on transactions related to terrorism
BACEN Press release: reorganisation of bank supervision
BACEN information on licensing procedures for foreigners
COAF
COAF Administrative Ruling 330
COAF Resolution 004
COAF Resolution 005
COAF Resolution 006
COAF Resolution 007
COAF Resolution 008
COAF Resolution 009
COAF Resolution 010
COAF Resolution 013
COAF Resolution 014
COAF Resolution 015
COAF Resolution 016
COAF Resolution 017 *(revoked by COAF Resolution 018)*
CVM
CVM Instruction 122
CVM Instruction 202
CVM Instruction 301
CVM Instruction 325
CVM Instruction 331
CVM Instruction 332
CVM Instruction 380
CVM Instruction 387
CVM Instruction 461
CVM Instruction 463
CVM Deliberation 105
CVM Deliberation 541

SUSEP and CNSP
SUSEP Normative Instruction 38
SUSEP Deliberation 135
Annex to SUSEP Deliberation 135
SUSEP Circular 74 on document retention
SUSEP Circular 200 on customer identification *(revoked by Circular 327/2006)*
SUSEP Circular 234 on directors of insurance institutions
SUSEP Circular 249 on internal controls
SUSEP Circular 277 on directors of institutions
SUSEP Circular 327 on internal controls *(revoked by Circular 380/2008)*
SUSEP Circular 333 amending Circular 327 *(revoked by Circular 380/2008)*
SUSEP Circular 341 on PEPs *(revoked by Circular 380/2008)*
SUSEP Circular 349 amending Circular 327
SUSEP Circular 352 amending Circular 341
SUSEP Circular 380 on internal controls
SUSEP Circular letter 21/06 re the CFT Convention *(Cancelled by Circular-letter 03/2007)*
SUSEP Circular letter 01/07 regarding Circular 327 *(revoked by Circular 380/2008)*
SUSEP Circular letter 03/07 regarding the CFT Convention
SUSEP Circular letter 05/07 regarding batch reports to COAF
SUSEP Circular letter 13/09 regarding FATF statements
CNSP Resolution 97 on sanctions
CNSP Resolution 118 on supervision
CNSP Resolution 136 on management of institutions
CNSP Resolution 143 on record keeping
CNSP Resolution 166 on authorisation to institutions to conduct business
SPC
SPC Instruction 26 on closed entity pension funds
Secretariat of the Federal Revenue (RFB)
FRS Normative Instruction RFB No. 619
Annex: Currency Declaration Form
Statistics
BACEN (Central Bank) statistics
BACEN administrative proceedings
BACEN - Capital markets statistics
BACEN - Financial sector daily turnover
BACEN inspection statistics
COAF proceedings
COAF training statistics (2007-2009)
COAF - various statistics
COAF - Training offered by COAF in 2008
COAF - Training received by COAF in 2008
COAF - Training offered by and received by COAF in 2009
DFIN investigations
Extradition statistics
FEBRABAN statistics on AML training
ML cases in the courts 2006
ML cases in the courts 2007
ML Investigation statistics
MPF - Number of prosecutors
MLA statistics
NPOs - Statistics on the number of NPOs
Seized assets
RFB - Number of false declarations and seizures
RFB – Number of ML cases

STRs related to terrorist financing
Other materials
BSM administrative proceedings
COAF - Information on international exchanges of information
Company registration - Chart showing the information available from the companies' registry
COREMEC - General information
CVM - Information on administrative proceedings (2008-2009)
CVM - MOU
CVM - Public hearing notice 04/09 on 2 new draft CVM Instructions
Designated financial activities carried out by Brazilian FIs – Chart
FEBRABAN - AML publication
Legal persons - Chart showing the number of each type of legal person in Brazil
ML cases - Information on convictions in 2 ML cases, and text of the 5 related decisions
NGO review report (2006)
Predicate offences for ML – Chart
Private sector – General corporate and internal control information
RFB - Information on the falsification of documents, including related penalties
SUSEP - AML Handbooks 9 and 10
SUSEP - MOU
RFB - Information on ML investigations and seizures

ANNEX 5: COAF training statistics

2007 – COAF TRAINING OFFERED			
Training course/provider	**Location**	**Number of staff**	**Number of training hours/days**
Seminário de Prevenção e Controle de LD/FT	Montevideo, Paraguay	2	3 days
Gestão de Risco no Setor Público	Brasilia, Brazil	1	4 days
Investigação Simulada de um caso de Lavagem de Ativos	Lima, Peru	1	5 days
Seminário -Sistema Tributário nos Países do Mercosul	Paraguay	1	4 days
Jornada de Capacitação das UIF's GAFISUD	Buenos Aires, Argentina	1	4 days
Workshop de Apoio Institucional Angola Banco Mundial	Bogotá, Colombia	1	4 days
2007 – COAF TRAINING RECEIVED			
Training course/provider	**Location**	**Number of staff**	**Number of training hours/days**
Procedimentos administrativos	Brasilia, Brazil	9	54 hours
CEDOC	Brasilia, Brazil	6	2 months
Treinamento do novo serviço de Correio Eletrônico (carteiro)	Brasilia, Brazil	2	3 days
Oficina Preparatória para Elaboração do PPA 2008-2011	Brasilia, Brazil	4	2 days
COMPROT	Brasilia, Brazil	1	3 days
SCDP – Sistema de Concessão de Diárias e Passagens	Brasilia, Brazil	6	7 days
Gramática e Língua Portuguesa/ Redação Oficial	Brasilia, Brazil	Analysis and Administrative areas	5 days
Seminário Internacional de Contabilidade Pública	Brasilia, Brazil	1	3 days
Aulas de Direito Administrativo	Brasilia, Brazil	7	1 year
Curso Sobre Técnicas de Investigação Financeira - OTA - ILEA	Lima, Peru	1	14 days
Curso - Cassino e jogos - Treinamento Fase 1 - GAFISUD - OTA	Santiago, Chile	1	12 days
Curso de Técnicas Investigativas Análise de dados e Gerenciamento de Casos	Brasilia, Brazil	1	5 days
Curso de Redação Oficial e Gramáica Portuguesa - ESAF/MF	Brasilia, Brazil	12	5 days
Gesão de Risco no Setor Público	Brasilia, Brazil	2	3 days
Seminário Financeiro de Medidas de Luta contra LD - FMI	Brasilia, Brazil	1	4 days
XV Reunião Plenária de Grupo de EGMONT	Bermuda	1	9 days
Curso de Formação de Avaliador - GAFISUD	Santiago, Chile	1	5 days
Jornada de Capacitação das UIF's GAFISUD	Buenos Aires, Argentina	1	4 days
Treinamento Operacional de I2 – TCU	Brasilia, Brazil	1	23 days
Reunião do Comitê Grupo de EGMONT	Liechtenstein	1	38 days
3ª Jornada de Puertas Abiertas - UIF da Colômbia	Bogotá, Colombia	2	5 days

2008 – COAF TRAINING OFFERED			
Training course/provider	**Location**	**Number of staff**	**Number of training hours/days**
PNLD - Minitério Público Estadual e Justiça Estadual de Pernambuco	Caruaru, Brazil	150	1 day
BID - Felaban/Febraban - Compliances - Lavagem de dinheiro	São Paulo, Brazil	50	5 days
II Jornada de Capacitación Horizontal de UIFs do GAFISUD	Brasilia, Brazil	15	2 days
Palestra Operacional para Oficiais da Inteligência do Exército	Brasilia, Brazil	15	1 day
IC-Financial Crimes - Seminário Internacional de Perícias em Crimes Financeiros - Monitor	Brasilia, Brazil	200	1 day
PNLD Polícia Civil/RJ - Monitora	Rio de Janeiro, Brazil	100	1 day
Treinamento Operacional para Área de Compliance do Unibanco	Brasilia, Brazil	14	1 day
PNLD - Ministério Público do Distrito Federal e Territórios	Brasilia, Brazil	70	1 day
Palestra sobre atuação do COAF para participantes do Curso Superior de Inteligência Estratégica - CSIE da Escola Superior de Guerra - ESG	Brasilia, Brazil	44	1 day
Treinamento Operaional para Área de Compliance do banco BNP Paribas	São Paulo, Brazil	20	1 day
Treinamento SICOV - Goiás Central - Cooperativas de Crédito	Goiânia, Brazil	95	1 day
Técnicas de Investigação em Crimes Financeiros - Departamento de Polícia Federal (DPF/MJ)	Gramado, Brazil	50	1 day
PNLD - Polícia Civil de São Paulo	São Paulo, Brazil	110	1 day
Seminário Internacional sobre crime organizado e lavagem de dinheiro	Salvador, Brazil	150	1 day
PNLD - Polícia Civil do Rio Grande do Sul	Porto Aegre, Brazil	100	1 day
Treinamento para o Compliance do HSBC	Curitiba, Brazil	50	1 day
PNLD - Polícia Civil do DF	Brasilia, Brazil	100	1 day
Ciclo de Palestras sobre Lavagem de Dinheiro - Tribunal de Justiça do Estado do Rio de Janeiro/Escola da Magistratura do Estado do Rio de Janeiro (EMERJ)	Rio de Janeiro, Brazil	30	1 day
Influência das Diretrizes Internacionais - estudos de normas, recomendações e diretrizes inernacionais: GAFI, Egmont, Wolfsberg, Sistemas ONU/OEA/OCDE e UE" - PC/SP	Brasilia, Brazil	20	1 day
Unidades de Inteligência Financeira - conceito, contextualização, espécies, atribuições, atividades, direito comparado, legislação, caso brasileiro	Brasilia, Brazil	45	1 day
Análise e Identificação de Movimentações Financeiras Suspeitas - sistemas, métodos, identificação de risco, padrões, rotinas	Porto Velho, Brazil	150	1 day
Curso de Inteligência Financeira - DPF/MJ	Belo Horizonte, Brazil	70	1 day

Curso de Capacitação de Chefes de Organismos de Inteligência promovido pela Secretaria Nacional de Segurança Pública - SENASP	Brasilia, Brazil	52	1 day
PNLD - Minitério Público Estadual de São Paulo - Monitor	São Paulo, Brazil	200	1 day
Private Banco do Brasil - Monitor	São Paulo, Brazil	40	1 day
Capacitação para o BRB	Brasilia, Brazil	180	1 day
II Seminário sobre Técnicas de Investigação em Crimes Financeiros e Lavagem de Dinheiro	Natal, Brazil	-	2 days
Workshop Instrução SPC 26 - Aspectos jurídicos e operacionais	São Paulo, Brazil	-	1 day
Técnicas de Investigação em Crimes Financeiros - Departamento de Polícia Federal (DPF/MJ)	Natal, Brazil	80	1 day
Conferência Internacional de Combate à Pirataria e Proteção da Propriedade Intelectual	Rio de Janeiro, Brazil	-	2 days
Seminário de Controles Internos, Auditoria e Gestão - FENASEG	São Paulo, Brazil	-	1 day
PNLD - Polícia Cívil Mato Grosso do Sul	Campo Grande, Brazil	-	2 days
Treinamento FEBRABAN	São Paulo, Brazil	350	1 day
PNLD - Polícia Civil de São Paulo	São Paulo, Brazil	300	1 day
Técnicas de Investigação em Crimes Financeiros e LD - Monitor - Polícia Civil - Várias UF	São Paulo, Brazil	70	2 days
Treinamento Especial na Prevenção e Combate à Lavagem de Dinheiro, ao Crime Organizado e ao Financiamento do Terrorismo	Brasilia, Brazil	-	4 days
2008 – COAF TRAINING RECEIVED			
Training course/provider	**Location**	**Number of staff**	**Number of training hours/days**
Novos Instrumentos Financeiros e Mercados Financeiros – FMI	Brasilia, Brazil	1	40 hours
IC - Financial Crimes - Seminário Internacional de Perícias em Crimes Financeiros	Brasilia, Brazil	2	48 hours
2ª Jornada de Capacitação Horizontal de UIFs - GAFISUD	Brasilia, Brazil	1	16 hours
1º Encontro Regional de Tipologias sobre Lavagem de Dinheiro - GAFISUD	Quito, Ecuador	1	16 hours
Seminário para UIFs sobre Técnicas de Análise Antilavagem de Dinheiro e contra o Financiamento do Terrorismo	Brasilia, Brazil	3	120 hours
Workshop para Sensibilização de Autoridades da Tanzânia - Banco Mundial	Bagamoyo, Tanzania	1	16 hours
Exercício de Tipologias sobre Lavagem de Dinheiro e Financiamento do Terrorismo	Caracas, Venezuela	1	16 hours
Workshop sobre Prevenção à Lavagem de Dinheiro e Combate ao Financiamento do Terrorismo para Serviços Financeiros por Telefonia Móvel	Bangkok, Thailand	1	24 hours

As redes entre a corrupção, os crimes contra o Sistema Financeiro e a Lavagem de Dinheiro	Brasilia, Brazil	1	24 hours
Seminário de Prevenção à Lavagem de Dinheiro - GAFISUD	La Paz, Bolivia	1	32 hours
Seminário sobre Combate ao Financiamento do Terrorismo - CICAD	Mexico	1	24 hours
Seminário de Prevenção da Lavagem de dinheiro e financiamento do terrorismo em atividades e profissões não financeiras (APNFD - Atividades e Profissões Não Financeiras Designadas)	Santiago, Chile	1	24 hours
Treinamento especial na prevenção e combate à lavagem de dinheiro, ao crime organizado e ao financiamento do terrorismo:Estrutura Normativa e Cooperação Internacional	Brasilia, Brazil	1	24 hours
Excel Básico	Brasilia, Brazil	4	80 hours
Excel Avançado	Brasilia, Brazil	2	40 hours
Access Básico	Brasilia, Brazil	6	192 hours
Curso de Introdução a Inteligência de Sinais e Imagens	Brasilia, Brazil	1	120 hours
Treinamento no SCDP	Brasilia, Brazil	4	16 hours
Introdução aos Métodos Quantitativos para Avaliação de Políticas Públicas	Brasilia, Brazil	1	40 hours
Redação Oficial e Língua Portuguesa	Brasilia, Brazil	4	320 hours
Segurança Coorporativa I	Brasilia, Brazil	2	80 hours
Português, Inglês e Raciocínio Lógico	Brasilia, Brazil	3	384 hours
Segurança Coorporativa II	Brasilia, Brazil	1	40 hours
Matemática Financeira	Brasilia, Brazil	2	64 hours

2009 – COAF TRAINING OFFERED			
Training course/provider	**Location**	**Number of staff**	**Number of training hours/days**
Capacitação do Banco Mundial a Países membros da CPLP	Praia, Cabo Verde	40	40 hours
Programa Nacional de Capacitação e Treinamento para o Combate à Corrupção e á Lavagem de Dinheiro	Goiâna, Brazil	150	2 hours
Treinamento Operacional para funcionários do "Compliance" da Caixa	Brasilia, Brazil	12	8 hours
Juri Simulado	Brasilia, Brazil	65	2 hours
Prev. Crimes Econômicos	Rio de Janeiro, Brazil	100	2 hours
Prevenção à Lavagem de Dinheiro	Natal, Brazil	50	8 hours
Atuação do COAF	Brasilia, Brazil	150	2 hours
PNLD - ENCCLA (Obrigação de Reportar Operações Financeiras)	Recife, Brazil	200	2 hours
Prevenção à Lavagem de Dinheiro	João Pessoa, Brazil	90	8 hours
Cooperação Técnica para Treinamento Operacional para Dirigentes e Analistas da UIF Paraguai	Assunção, Paraguay	20	8 hours
Introdução à Inteligência Tecnológica	Brasilia, Brazil	35	3 hours
Análise do Terrorismo	Brasilia, Brazil	30	1 hour
PNLD - ENCCLA (Capacitação e Treinamento para o Combate a Corrupção e à Lavagem de Dinheiro)	Florianópolis, Brazil	150	3 hours
Capacitação Operacional Banco Santander	Brasilia, Brazil	6	5 hours
I Seminário de Supervisão de Cooperativas no Ambiente de Basiléia II	Brasilia, Brazil	100	2 hours
I Workshop sobre melhores práticas de controle internos nas Cooperativas de Créditos	São Paulo, Brazil	133	1 hour
V Encuentro Nacional sobre Prevención y Control del lavado de Activos	Buenos Aires, Argentina	150	2 hours
Seminário sobre Prevenção à Lavagem de Dinheiro	Buenos Aires, Argentina	150	2 hours
II Encontro VIGAT (Vice-Presidência de Atendimento da Caixa) - Conformidade e Auditoria	Brasilia, Brazil	180	1 hour
A experiência Brasileira no Combate à Lavagem de Dinheiro e o uso da Informação de Inteligência Finenceira como Elemento de Prova	Rio de Janeiro, Brazil	200	2 hours
O Processo de Produção de Inteligência do COAF	São Paulo, Brazil	35	3 hours
Treinamento Operacional para Agentes de Polícia Federal	Brasilia, Brazil	3	60 hours
Treinamento Operacional para analistas da UIF paraguaia	Assunção, Paraguay	12	2 hours
Capacitação para altos executivos do banco Itaú BBA	São Paulo, Brazil	150	1 hour
Programa de Apoio ao Estabelecimento e Fortalecimento de UIF nos Paíse de Língua Potuguesa	Brasilia, Brazil	5	25 hours

Seminário de Supervisão	Curtiba, Brazil	110	2 hours
Treinamento Operacional da Área de Compliace	Brasilia, Brazil	12	8 hours
Congresso Anual da ABRAJI. Palestra sobre “Crime Organizado e Lavagem de Dinheiro”	São Paulo, Brazil	400	2 hours
Capacitação Operacional Safra	Brasilia, Brazil	7	5 hours
Capacitação Operacional Banco Rural	Brasilia, Brazil	7	6 hours
IX Congresso Panamericano de Riesgo de Lavado de Activos y Financiación del Terrorismo	Cartagena de Índia, Colombia	220	40 hours
Programa de Apoio aoFortalecimento da UIF do Peru	Brasilia, Brazil	5	20 hours
Capacitação e treinamento para Combate e Corupção e Lavagem de Dinheiro para a Secretaria de Segurança Pública do Estado de Maranhão	Maranhão, Brazil	250	40 hours
I Encontro Nacional de Delegacias de Repressão a Crimes Financeiros - DELEFINs /DPF	Brasilia, Brazil	36	3 hours
Seminário sobre Estrutura e Funcionamento de Órgãos que atuam na Prevenção e Repressão ao Terrorismo no Brasil. " O Papel do COAF ne Prevenção ao Finaciamento ao Terrorismo"	Brasilia, Brazil	36	2 hours
PNLD - II Oficina de Aperfeiçoamento no Combate à Lavagem de Dinheiro para Delegados da Plícia Civil do Brasil. Tema Unidade de Inteligência financeira.	Florianôpolis, Brazil	65	3 hours
Programa de Apoio ao Estabelecimento e Fortalecimento de UIF Paraguai	Brasilia, Brazil	3	24 hours
Treinamento Operacional	Brasilia, Brazil	15	8 hours
Ciclo de Palestras para Instituições do Mercado de Câmbio	São Paulo, Brazil	65	3 hours
II Conferência Internacional de Combate à Pirataria e Proteção da Propriedade Intelectual. Tema COAF: Lavagem de Dinheiro: Panorama, Prejuízos e Mecanismos de Prevenção e Repressão	Rio de Janeiro, Brazil	60	3 hours
Avaliação PNLD para Polícias Civil de São Paulo	São Paulo, Brazil	150	3 hours
Seminário internacional "Estrategias de Lucha Contra el Lavado de Dinero y Financiamiento del Terrorismo"	Cochambamba, Bolivia	80	2 hours
Treinamento Operacional	Brasilia, Brazil	7	4 hours
Seminário Subregional sobre Transporte Transfronteiriço de Dinheiro em Espécie e Instrumento Financeiro ao Portador	Lima, Peru	-	3 days
2009 – COAF TRAINING RECEIVED			
Training course/provider	**Location**	**Number of staff**	**Number of training hours/days**
Mercados Financeiros e Novos Instrumentos Financeiros	Brasilia, Brazil	1	72 hours
Juri Simulado	Brasilia, Brazil	3	120 hours
Estágio Especial de Inteligência para Órgãos Públicos Civis (foco em Contra-Inteligência)	Brasilia, Brazil	7	280 hours

I Curso de Capacitação Profissional da AGU para a Atuação no Âmbito da Probidade Administrativa e da Defesa do Patrimônio Público	Brasilia, Brazil	1	40 hours
Curso de Formação de Avaliadores	Paris, France	1	40 hours
Introdução à Inteligência Tecnológica	Brasilia, Brazil	1	192 hours
Treinamento SIAFI	Brasilia, Brazil	2	16 hours
Treinamento BlackBerry	Brasilia, Brazil	2	8 hours
Foro sobre Estrategias Nacionales en la Lucha contra el Lavado de Dinero y el Financiamiento del Terrorismo	Brasilia, Brazil	5	160 hours
Ensino a Distância, Nova Regra Ortogrfíca	Brasilia, Brazil	1	40 hours
Programa da Apoio ao Fortalecimento UIF - Cabo Verbe	Brasilia, Brazil	1	32 hours
International Tools of the Trade Workshop	Washington, D.C., United States	1	48 hours
Curso Sobre Gestão da Ética Pública - Turma 2	Brasilia, Brazil	1	16 hours
Treinamento em Analyst's Notebook e Text Chart (Pacote I2)	Brasilia, Brazil	1	432 hours
Metodología para Evaluar el Cumplimento Com Las 40+9 Recomendaciones del GAFI	Rio de Janeiro, Brazil	9	40 hours
Capacitação Operacional Banco Rural	Brasilia, Brazil	1	8 hours
Programa da Apoio ao Fortalecimento UIF - Peru	Brasilia, Brazil	1	48 hours
Proteção ao Conhecimento Sensível (Palestra DISBIN)	Brasilia, Brazil	2	16 hours
Ameaças Cibernéticas	Brasilia, Brazil	2	16 hours
I Seminário Regional de Inteligência de Segurança Pública da Região Sedeste	Belo Horizonte, Brazil	1	24 hours
Programa de Pasantías do SGT-4/Mercosul	Buenos Aires, Argentina	1	40 hours
Estágio Especial de Inteligência para Órgãos Públicos Civis (foco em Contra-Inteligência)	Brasilia, Brazil	1	80 hours
Análise de Risco em Infraestrrutura Crítica (Palestra DISBIN)	Brasilia, Brazil	2	16 hours
Programa da Apoio ao Fortalecimento UIF - Peru	Brasilia, Brazil	1	24 hours
Forum Internacional de Gestão por Processos no Setor Público	Brasilia, Brazil	2	32 hours
Sistema de Conhecimento de Segurança Pública	Brasilia, Brazil	1	40 hours
Seminário Subregional sobre Transporte Transfronteiriço de Dinheiro em Espécie e Instrumento Financeiro ao Portador	Lima, Peru	1	32 hours
Curso Básico de Inteligência - CBI	Brasilia, Brazil	1	72 hours
Sistema de Demanda	Brasilia, Brazil	2	6 hours
Projeto de Cooperação Técnica com foco em Corrupção Pública	Washington, D.C., United States	6	240 hours

ANNEX 6: BACEN – Training on AML/CFT for employees in the supervision area

Nº	Title of the Event	Date	Number of Participants
1	I Seminário Internacional sobre Lavagem de Dinheiro	04-Dec-98	1
2	Lavagem de dinheiro, uma abordagem da Lei 9.613/98	24-Mar-99	5
3	Lavagem de dinheiro	24-Mar-99	1
4	Lavagem de dinheiro - histórico e situação atual	26-Mar-99	5
5	Compliance - controles para evitar a Lavagem de Dinheiro	15-Oct-99	3
6	Mecanismos de prevenção de lavagem de dinheiro	18-Nov-99	6
7	Seminário Taller Anti-Lavagem de Dinheiro	17-May-02	1
8	Prevenção contra crimes de "lavagem" ou ocultação de bens, direitos e valores - Lei n. 9.613	26-May-04	1
9	Prevenção contra crimes de "lavagem" ou ocultação de bens, direitos e valores - Lei nº 9.613	16-Dec-04	1
10	Palestra: Prevenção à Lavagem de Dinheiro	03-Jul-06	79
11	Análise da legislação de prevenção da lavagem de dinheiro vis-a-vis as atividades dos escritórios de representação	11-Sep-06	1
12	Avaliação de Controles Internos de Prevenção à Lavagem de Dinheiro	12-Dec-06	16
13	Avaliação de Controles Internos de Prevenção à Lavagem de Dinheiro	02-Feb-07	21
14	Workshop Financeiro sobre o Combate à Lavagem de Dinheiro	13-Apr-07	1
15	Prevenção a Fraude e Lavagem de Dinheiro nas Empresas	23-Aug-07	5
16	Curso de Prevenção à Lavagem de Dinheiro	27-Nov-07	36
17	Curso de Prevenção à Lavagem de Dinheiro	30-Nov-07	27
18	Curso de Prevenção à Lavagem de Dinheiro	29-Feb-08	20
19	Projeto BID/Felaban sobre ações de prevenção à lavagem de dinheiro	14-Mar-08	5
20	Avaliação de Controles Internos de Prevenção à Lavagem de Dinheiro	25-Apr-08	18
21	Avaliação de Controles Internos de Prevenção à Lavagem de Dinheiro	09-May-08	18
22	Workshop em Prevenção à Lavagem de Dinheiro	20-May-08	1

Nº	Title of the Event	Date	Number of Participants
23	Avaliação de Controles Internos de Prevenção à Lavagem de Dinheiro	21-May-08	29
24	Avaliação de Controles Internos de Prevenção à Lavagem de Dinheiro	13-Jun-08	22
25	Programa Nacional de Capacitação e Treinamento para o Combate à Lavagem de Dinheiro	15-Aug-08	0
26	Curso de Prevenção à Lavagem de Dinheiro	18-Nov-08	25
27	Fraude e Lavagem de Dinheiro	19-Nov-08	1
28	Técnicas de Prevenção contra Crimes de Lavagem e/ou Ocultação de Bens, Direitos e Valores - Lei 9613	24-Nov-08	7
29	Curso de Prevenção à Lavagem de Dinheiro	10-Dec-08	21

BACEN: Training on foreign exchange for employees in the supervision area

Nº	Title of the Event	Date	Number of Participants
1	Monitoramento de câmbio	27-Jan-99	2
2	Monitoramento de câmbio	29-Jan-99	4
3	Política econômica, câmbio e taxa de juros	02-Mar-99	1
4	Mercado interbancário de câmbio	11-Mar-99	2
5	Treinamento em câmbio	16-Apr-99	6
6	Câmbio e Comércio Exterior - módulo básico	26-Apr-99	3
7	Câmbio - derivativos - casos práticos	10-Mai-99	1
8	Câmbio e Fluxo de Exportação	21-Mai-99	3
9	Tributos em operações de câmbio	24-May-99	4
10	Contratação de câmbio - frete aéreo	25-May-99	9
11	Operações de câmbio e trade finance	28-May-99	4
12	Proj. Monit. Câmbio: preços de transferência	01-Jun-99	4
13	Câmbio e comércio exterior- módulo básico	18-Jun-99	1
14	Operações de câmbio	06-Aug-99	1

Nº	Title of the Event	Date	Number of Participants
15	Contabilidade de câmbio	25-Aug-99	1
16	Contabilidade de Carteira de Câmbio	29-Oct-99	1
17	Mercado de câmbio - visão crítica e histórica	11-Nov-99	8
18	Câmbio Importação	03-Dec-99	5
19	Câmbio e Comércio Exterior (curso avançado)	29-Sep-00	12
20	Câmbio e Comércio Exterior (curso avançado)	06-Oct-00	24
21	Câmbio e Comércio Exterior (curso avançado)	20-Oct-00	21
22	Câmbio e Capitais Estrangeiros - Uma visão prática	14-Jun-02	1
23	Sistemática de Câmbio (Prods. e Serv. Bancários de Com. Exterior	04-Oct-02	1
24	Câmbio	14-Nov-02	20
25	Câmbio	13-Dec-02	19
26	Câmbio	27-Jun-03	25
27	Câmbio, Comércio Exterior e Capitais Estrangeiros - CAMEXT	08-Aug-03	0
28	Câmbio	17-Dec-03	20
29	Câmbio	27-Aug-04	30
30	Mercado de Câmbio - Futuro e Opções de Dólar	28-Sep-04	3
31	Curso de Produtos de Câmbio e Estratégias Operacionais	04-Oct-04	1
32	Tópicos Específicos sobre Capitais Estrangeiros e Câmbio	29-Oct-04	25
33	Câmbio	24-Nov-04	23
34	Tópicos Específicos sobre Capitais Estrangeiros e Câmbio	10-Dec-04	19
35	Câmbio	31-Dec-04	71
36	Mercado de Câmbio – Estrutura e Legislação	31-Dec-04	71
37	Sisbacen/Câmbio - Siscomex	08-Mar-05	16
38	Contabilidade nas Operações da Carteira de Câmbio	19-May-05	1

Nº	Title of the Event	Date	Number of Participants
39	Demanda de derivativos de câmbio no Brasil : hedge ou especulação	24-Jun-05	1
40	Mercado Futuro de Taxa de Câmbio	01-Oct-05	1
41	Câmbio	28-Oct-05	0
42	Básico de Câmbio e Comércio Exterior para Bancários	01-Dec-05	2
43	Contabilidade de Câmbio	15-Dec-05	1
44	Produtos de Câmbio e Estratégias Operacionais	26-Jun-06	2
45	Contabilidade das Operações de Câmbio	14-Sep-06	2
46	Mercado de Câmbio no Brasil e Fluxos de Capitais com o Exterior	15-Sep-06	2
47	Curso Básico de Câmbio	22-Sep-06	24
48	Contabilidade Bancária - COSIF - Módulo II - Câmbio e Operações de Crédito	29-Sep-06	8
49	Contabilização de Operações de Câmbio	30-Nov-06	2
50	Mercado de Câmbio – Estrutura e Legislação	16-Apr-08	22
51	Mercado de Câmbio – Estrutura e Legislação	30-May-08	16
52	Mercado de Câmbio – Estrutura e Legislação	13-Jun-08	22
53	Mercado de Câmbio – Estrutura e Legislação	19-Jun-08	23
54	Curso Aspectos Jurídicos sobre Mercado de Câmbio e Comércio Exterio	07-Nov-08	2
55	Mercado Interbancário de Câmbio	24-Apr-09	56
56	Curso Mercado de Câmbio	21-May-09	25
57	Mercado de Câmbio: Estrutura, Supervisão e Requerimento de Capital (Basiléia II)	04-Jun-09	25

ANNEX 7: BACEN: International training on AML/CFT for employees in the supervision area

Nº	Title of the Event	Date	Location	Number of Participants
1	Annual International Money Laundering Conference	22-Feb-02	USA	1
2	Seminário Anti-Lavagem de Dinheiro	17-May-02	Panama	1
3	2002 Conference on International Tax Planning, Money Laundering and Compliance	06-Dec-02	USA	1
4	Anti-Lavado de Dinero	04-Apr-03	Mexico	1
5	Prevencion del lavado de dinero y financiamiento al terrorismo	13-Jun-03	Bahamas	1
6	Anti-Money Laundering School	18-Jul-03	Panama	1
7	Anti-Money Laundering and Terrorist Financing for Foreign Bank Supervisors	17-Sep-03	USA	1
8	Anti-Lavado de Dinero	07-May-04	Brazil	15
9	Financial Crimes Seminar	07-Oct-04	USA	1
10	Cambios Estructurales em el Sector Financiero y su Impacto em la Estabilidad Monetaria y Financiera	19-Nov-04	Mexico	1
11	Prevención del Lavado de Activos en el Mercado Cambiario y Financiero	20-Aug-05	Argentina	1
12	Workshop Financeiro sobre o Combate à Lavagem de Dinheiro	13-Apr-07	Brazil	1
13	Seminar on Anti-Money Laundering	27-Sep-07	Switzerland	1
14	Curso de Capacitação para Avaliadores do GAFISUD	13-Nov-08	Uruguay	1
15	Curso Blanqueo de Capitales	17-Dec-08	Spain	1