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## LAWS AND REGULATIONS

### PROMULGATED TO GIVE EFFECT TO THE PROVISIONS OF THE INTERNATIONAL TREATIES ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

*In accordance with the relevant articles of the international treaties on narcotic drugs and psychotropic substances,  
the Secretary-General has the honour to communicate the following legislative text.*

#### BRAZIL

Communicated by the Government of Brazil

##### NOTE BY THE SECRETARIAT

- (a) Some editing of texts may be done by the Secretariat in the interest of clarity. In this connection, words in square brackets [ ] have been added or changed by the Secretariat.
- (b) Only passages directly relevant to the control of narcotic drugs or psychotropic substances have been reproduced in this document. Non-relevant parts of laws and regulations have been deleted by the Secretariat; such deletions are indicated by [...].

#### LAW N° 9.613 OF 3 MARCH 1998 PERTAINING TO MONEY LAUNDERING AND FINANCIAL ACTIVITIES CONTROL COUNCIL (COAF)

\*Note by the Secretariat: This document is a direct reproduction of the text communicated to the Secretariat by the Government of Brazil.

**OFFICIAL GAZETTE (DOU) OF MARCH 4, 1998**

**Law n°. 9.613 of 03/03/98**

*Pertains to the crimes of laundering or concealment of assets, rights, and valuables<sup>1</sup> (sets forth) measures designed to prevent the misuse of the financial system for illicit actions as described in the Law; creates the Financial Activities Control Council – COAF<sup>2</sup>, and deals with other matters.*

**The President of the Republic**

I hereby state that the National Congress has decreed and I signed the following Law:

**Chapter I - Crimes of laundering or concealment of assets, rights and valuables**

**Section 1<sup>st</sup>** – To hide or disguise the true nature, origin, site, disposition, movement, or ownership of assets, rights and valuables which are known to be directly or indirectly the result of the (following types of) crimes:

I – of illicit trafficking in narcotic substances or similar drugs;

II – of terrorism;

III – of smuggling or trafficking in weapons, munitions or materials used for their production;

IV – of extortion, through kidnapping

V – against the public administration, including by direct or indirect demands for payment, for the benefit of the demanding party or for any other party, in exchange for the performance of any administrative act, or the omission of any act;

VI – against the national financial system;

VII – committed by a criminal organization.

**Sentence:** (strict imprisonment) jail term<sup>3</sup> of 3 (three) to 10 (ten) years and a fine .

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<sup>1</sup> Translation note: The original, Portuguese-language text is somewhat redundant. In the expression: “bens, direitos e valores”, the word “bens” corresponds to “assets” in English and “valores” may also be translated as “assets” – though it is more commonly indicative of financial assets, such as cash and papers (securities, bonds, etc) It also encompasses the notion of precious metals (gold) and gems. We adopted the word “valuables”, because it is sufficiently broad to fit the case.

<sup>2</sup> Translation note: A better translation, and one more attuned to American usage, might have been Financial Activities Control Board, in which case the members of such body would be called board members. On the other hand, the use of the word Council is more in line with Brazilian custom and more literal, thus closer to the Portuguese - language original. Moreover, it goes better with the abbreviation for the new entity, which is COAF in the original language.

<sup>3</sup> Trans. & explanatory note: The original text refers to a sentence of “reclusão” (reclusion) which, under the Brazilian Penal Code, (Decree-Law 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, as distinguished from the sentence of “detenção”, which designates a less rigorous form of incarceration, which involves no solitary confinement.

**Paragraph 1<sup>st</sup>** – The same punishment applies to any party who, in order to hide or conceal the use of the assets, rights and valuables resulting from the crimes set forth in the section:

I – converts them into licit assets;

II – acquires, receives, exchanges, trades in, gives or receives them as guarantee, keeps, stores, moves, or transfers any (such assets, rights and valuables);

III – imports or exports goods at prices which do not correspond to their actual values;

**Paragraph 2<sup>nd</sup>** – The same penalty applies also to anyone who:

I – make use of any assets, rights and valuables, which are known to be derived from the crimes mentioned in this Section, in the economic or financial activity;

II – knowingly takes part in (any) group, association, or office set up for the purpose of hiding or concealing assets, rights and valuables derived from (any of) the crimes dealt with in this Law.

**Paragraph 3<sup>rd</sup>** – The attempts at committing (any of the above) crimes are punishable in the manner prescribed in section 14, sole paragraph, of the Criminal Code.

**Paragraph 4<sup>th</sup>** – The sentence shall be increased by one to two-thirds, in any of the instances contemplated in items I to VI of this section when the crime follows a constant pattern or is committed by a criminal organization.

**Paragraph 5<sup>th</sup>** – In the event that the accused or his accomplice, freely agree to cooperate with the authorities by providing information leading to the uncovering of a crime and the determination of those responsible therefore or to the finding of assets, rights and valuables which were the object of the crime, the sentence may be reduced by one or two-thirds and (the accused) may be allowed to start serving it in an open system of imprisonment<sup>4</sup>.

## **Chapter II - Special Procedural Provisions**

**Section 2<sup>nd</sup>** – (The following provisions apply with regard to) (judicial) proceedings and sentencing in the case of the criminal offences encompassed by this Law:

I – the (procedural) rules that apply are those that apply to felonies punishable by extended jail term (“reclusão”), under the jurisdiction of a singular judge.

II – The proceedings pertaining to the crimes (contemplated hereunder) are in no way dependent on the proceedings applicable to any of the criminal offences mentioned in the preceding section, which give origin to the crimes dealt with in this Law, even when such offences originate in another country;

III – the federal courts shall have jurisdiction over such crimes in the following instances.

<sup>4</sup> Tans. & Explanatory Note: An “open system” type 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.

a) in the event of crimes against the financial system and the economic-financial order or detrimental to assets, services or interests of the (Federal) Union<sup>5</sup> or any of its autarchic entities and government companies<sup>6</sup>;

b) in the event the originating crime is subject to the jurisdiction of the federal courts.

**Paragraph 1<sup>st</sup>** – The indictment shall include sufficient indications of the existence of the previous (or originating) crime. The (criminal) acts described in this Law are punishable even when the offender in the originating crime is unknown or exempt from punishment.

**Paragraph 2<sup>nd</sup>** – The provision contained in Sec. 366 of the Code of Criminal Procedure will not apply to the judicial process pertaining to the crimes contemplated in this Law.

**Section 3<sup>rd</sup>** – In the event that the judge deems it appropriate to deny defendants the right to post bond, or to obtain release during the appeal and provides justification for preventive detention, defendants will be denied such benefits, even in the case of first-offenders with a clean record.

**Section 4<sup>th</sup>** – In the course of the police investigation or of the court proceedings, the judge, upon the request of the police authorities or the prosecutor, may order the seizure or freezing of assets, rights and valuables, which constitute the object of the crimes dealt with under this Law, and belong to the accused or are registered under his name, in accordance with the procedure set forth in sections 125 to 144 of Decree-Law n° 3.689 of October 3, 1941 – Code of Criminal Procedure.

**Paragraph 1<sup>st</sup>** – The preventive measures contemplated in this section will be suspended, in the event that the criminal lawsuit is not initiated within a period of 120 (one hundred and twenty) days, counted from the date the judicial proceedings are concluded.

**Paragraph 2<sup>nd</sup>** – Once the legality of the origin of seized or frozen assets, rights and valuables is established, the judge will order their liberation.

**Paragraph 3<sup>rd</sup>** – No request for the liberation of any assets, rights and valuables shall be granted without the presence of the accused. The judge may order that actions be taken in order to preserve any assets, rights or valuables in the instances contemplated under Sec. 366 of the Code of Criminal Procedure.

**Paragraph 4<sup>th</sup>** – In the event that the immediate implementation of the preventive measures (contemplated herein) may compromise the investigations, the judge, acting upon a request from the

<sup>5</sup> The word "União", used in the original text, pertains to the Federal Union as in "the state of the Union address". Henceforth, it shall be used solely in that sense and, as such, without the need of the adjective "federal".

<sup>6</sup> Under Brazilian law, in addition to agencies and government instrumentalities, 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") is the condition of self-sufficiency, esp. Economic, as applied to a state..." Webster's Encyclopaedic 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 national oil company, is a prime example of a federal mixed-economy company.

police authorities, and after hearing the prosecutor, may issue an order suspending an arrest warrant or the seizure of assets, rights or valuables.

**Paragraph 5<sup>th</sup>** – Whenever the circumstances warrant it, the judge, acting on a recommendation of the public prosecutor, may appoint a qualified person to manage the assets, rights or valuables seized or attached and (this manager) shall execute a deed of undertaking<sup>7</sup>

**Section 6<sup>th</sup>** – The manager of the assets:

**I** – will be entitled to receive compensation (for his services), which shall be paid from proceeds of the assets under management;

**II** – acting in response to a court order, will provide periodic information about the status of the assets under his management as well as explanations and detail about investment and reinvestment operations (that may have been) made by him;

**Sole paragraph** – The actions pertaining to the management of the assets seized or attached shall be communicated to the prosecutor, who may file any request before (the court) that he deems appropriate.

### **Chapter III – The effects of a guilty sentence**

**Section 7<sup>th</sup>** – In addition to the results 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 described in this Law, due provision being made for safeguarding the rights of a victim or those of a third party in good faith;

**II** – The suspension of the right to hold positions of director, member of the management council<sup>8</sup> or manager of any of the entities set forth in Sec 9<sup>o</sup>, for a period equal to double the jail term stipulated by the (court's) sentence;

### **Chapter IV - Assets, rights or valuables resulting from crimes committed abroad**

**Section 8<sup>th</sup>** – In the event that there is an international treaty or convention (dealing with the matters encompassed by this Law), the judge will order the seizure or freezing of assets, rights and valuables resulting

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<sup>7</sup> 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 prescriptions or 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.

<sup>8</sup> "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 (or Managing) 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.

from crimes committed abroad provided they pertain to (any of the) crimes listed in Section 1<sup>st</sup> hereof, and that the foreign authorities (in question) have requested such seizure.

**Paragraph 1<sup>st</sup>** – The above provision will be applied also in situations where there is no international treaty or convention, provided the government of the foreign country in question undertakes to grant reciprocity of treatment to Brazil.

**Paragraph 2<sup>nd</sup>** – In the absence of an international treaty or convention, the assets, rights or valuables seized or frozen by request of a foreign official or the funds resulting from their disposal shall be evenly divided between the requesting State and Brazil, due protection being given to the rights of a victim or of a third-party in good faith.

## **Chapter V – Legal Entities**

**Section 9<sup>th</sup>** – The requirements contained in sections 10 and 11 hereof are applicable to any legal entities which engage, either on a permanent or a temporary basis, and whether or not in a cumulative manner, in any of the following activities as their main or secondary activity:

**I** – receiving, acting as brokers and investing third parties funds, in national or foreign currency;

**II** – purchasing and selling foreign currency as a financial asset;

**III** – acting as securities custodian, issuer, distributor, negotiator, broker, or manager;

**Sole paragraph** – The same requirements apply (to the following):

**I** – stock, commodities, and futures exchanges;

**II** – insurance companies, insurance brokers, institutions involved with private or official social security (business);

**III** – credit card managers and managers of consumers consortia for the acquisition of goods and services;

**IV** – managers of companies that use magnetic cards, or any other instrument, for the transfer of funds;

**V** – companies that engage in leasing and factoring;

**VI** – companies that give out discounts for the acquisition of goods or which hand out or provide cash or chattels, real estate, goods or services by means of drawings or by other similar methods;

**VII** – branches or proxies of foreign entities which engage in any of the above-mentioned activities;

**VIII** – all other legal entities engaged in the performance of activities which are dependent upon an authorization from the agencies that regulate the stock, exchange, financial, and insurance markets.

**IX** – any and all national or foreign individuals or entities, who operate in Brazil and act in the capacity of agents, managers, representatives or proxies, commission agents, or who, in any other manner, represent the interests of foreign legal entities that engage in the performance of any of the activities set forth in this section;

**X** – legal entities which engage in the performance of activities pertaining to real estate, including the promotion, purchase and sale (of such properties);

**XI** – individuals or legal entities engage in the commerce of jewelry, precious stones and metals, objects of art, and antiques.

## **Chapter VI - Client Identification and Registry-Keeping**

**Section 10** – The parties mentioned in Section 9<sup>th</sup> hereof shall:

**I** – identify their clients and maintain an updated registry, in a manner such as will be determined in instructions to be issued by the appropriate authorities;

**II** – keep an up-to-date registry, setting forth, in a specific and itemized manner, all transactions in national and foreign currency, or involving securities and bonds, credit instruments, metals, or any assets that may be converted into cash and which exceeds an amount set forth by the competent authority, as prescribed in the provided instructions to be issued by the latter;

**III** – comply with notices sent by the Council established under Section 14<sup>th</sup> hereof, within the time period set by the appropriate judicial authority. The judicial proceedings pertaining (to such matters) shall be conducted in a confidential manner.

**Paragraph 1<sup>st</sup>** – In the event that the (above mentioned) client is a legal entity, the identification mentioned in item I of this Section must comprise the individuals who are their authorized representatives, as well as their owners.

**Paragraph 2<sup>nd</sup>** – The reference files and registries mentioned in items I and II of this Section must be kept during a minimum period of five years, counted from the (date of the) closing of the account or of the date of conclusion of a transaction. This period of time may be extended by a (decision of the) official having jurisdiction over the matter.

**Paragraph 3<sup>rd</sup>** – The registration required under item II of this Section shall be likewise required whenever an individual or legal entity, or any (individuals or legal entities) connected with them, enter into more than one financial transaction with the same individual, legal entity, conglomerate or group, the aggregate amount of which exceeds the limit (or ceiling) set (for such cases) by the authority having jurisdiction over such matters.

## **Chapter VII – Reports about Financial Operations**

**Section 11** – The parties mentioned in Section 9<sup>th</sup> hereof:

**I** – must pay special attention to any transactions which, pursuant to instructions issued by the appropriate officials may be meaningful indications of occurrence of (any of) the crimes defined hereunder, or which may have a relationship therewith;

**II** – must give notice to the appropriate officials, within a period of twenty-four hours, and abstain from informing their clients of this action, in connection with any of the following:

- a) any and all transactions listed in item II of Section 10 which entail an amount which exceeds a ceiling established by the same officials in accordance with terms and conditions (likewise) set by those officials;
- b) a transaction which fits the description contained in item I of this section, or a proposal regarding the (entering into such a transaction).

**Paragraph 1<sup>st</sup>** – The officials having jurisdiction over the above matters will include in the instructions mentioned in item I hereof a list of transactions which could characterize the kind of operation contemplated in that item, by reason either of the (nature of) the parties, or the assets, or due to the type of instruments used to implement (the transaction), or because of the lack of economic or legal justification (for carrying out such a transaction).

**Paragraph 2<sup>nd</sup>** – Information imparted in good faith, in the manner prescribed in this Section, shall not generate any civil or administrative liability.

**Paragraph 3<sup>rd</sup>** – If any parties are not subject to specific control or oversight agency, they will be required to send the reports contemplated in this Section to the Financial Activities Control Council – COAF, in the manner prescribed by the Council.

## **Chapter VIII – Administrative Liability**

**Section 12** – The parties mentioned in Section 9<sup>th</sup>, as well as the managers of legal entities which fail to comply with the determinations set forth in sections 10 and 11 shall be subject to the following sanctions, which will be applied singly or cumulatively, by the appropriate authorities

**I** – warning;

**II** – monetary fine of variable amount, ranging from one percent to double the amount of the transaction, or up to two hundred percent of the profits derived therefrom or which would have been presumably obtained, as a result of the transaction, or a fine of up to R\$ 200.000,00 (two hundred thousand reais);

**III** – temporary prohibition against holding any position in the management of (any of the) legal entities set forth in the sole paragraph to section 9<sup>th</sup>, within a period of until 10 (ten) years;

**VI** – cancellation of the authorization to operate;

**Paragraph 1<sup>st</sup>** – The sanction of warning will be applied in the event of failure to adequately comply with the instructions contained in items I and II of Section 10.

**Paragraph 2<sup>nd</sup>** – A fine shall be applied whenever any of the parties mentioned in Section 9<sup>th</sup>, acting negligently or maliciously.



**I** – fail to cure the irregularities which gave cause to the issuance of the warning, within the required time period, (as ordered) by the appropriate officials;

**II** – fail to carry out the identification or registration contemplated in items I and II of Section 10;

**III** – fails to comply, within the prescribed time period, with the requirement contained in item III of Section 10;

**IV** – disregards the prohibition set forth in action 11, or fails to make the communication contemplated therein.

**Paragraph 3<sup>rd</sup>** – The (penalty) of temporary suspension activities shall be applied whenever it is found that serious breaches of this Law have occurred or whenever there is an specific, duly ascertained, recurrence of a previous transgression which was punished with the application of a fine.

**Paragraph 4<sup>th</sup>** – The penalty of cancellation of the authorization to operate shall be applied in instances of specific recurrence of transgressions which were previously punished with the application of the penalty set forth in item III of the initial portion of this Section.

**Section 13** - The procedure for the application of the sanctions contemplated in this Chapter will be regulated by a decree which will ensure the right of rebuttal and ample rights of defense to the (interested) parties.

#### **Chapter IX – Financial Activities Control Council**

**Section 14** – The Financial Activities control Council – COAF – is hereby instituted, under the jurisdiction of the Treasury Ministry, for the purpose of disciplining, applying administrative sanctions, examining and identifying, any activities that raise suspicion of occurrence of any of the illegal acts contemplated in this Law, and receiving (all pertinent information). (The actions of COAF) will not conflict with the regulatory powers of other agencies.

**Paragraph 1<sup>st</sup>** – COAF shall be the agency responsible for issuing the instructions mentioned in Section 9<sup>th</sup>, to the parties which do not come under any (specific) regulatory agency, as well as for applying the sanctions set forth in Section 12.

**Paragraph 2<sup>nd</sup>** – COAF shall also be responsible for coordinating and advancing suggestions for (the adoption of) systems of cooperation and exchange of information designed to bring about a rapid and efficient response in the struggle against the (practice of) hiding or concealment of assets, rights and valuables.

**Section 15** – COAF shall notify the appropriate officials whenever it finds evidence of the existence of any of the crimes defined in this Law, or of the existence of clear indications of the occurrence of any such crimes or of any other illicit activity, so as to enable such officials to take appropriate measures.

**Section 16** – The members of COAF shall be civil servants of outstanding reputation and capability, appointed by act of the Minister of the Treasury and (chosen) from the ranks of career personnel of the Central Bank of Brazil, the Insurance, the Office of the Public Attorney for the National Treasury, the Internal Revenue Secretariat, an intelligence agency of the Executive Branch, the Federal Police Department, and the Ministry of Foreign Affairs. In the latter three cases, the members shall be nominated by the Ministers (having jurisdiction over each such entity).

**Paragraph 1<sup>st</sup>** – The President of the Council shall be appointed by the President of the Republic, acting on a recommendation of the Treasury Minister.

**Paragraph 2<sup>nd</sup>** – The decisions of COAF regarding the application of administrative sanctions may be appealed to the Minister of the Treasury.

**Section 17** – The (internal) organization and manner of operation of COAF will be set forth in by-law, which will be approved by a decree of the Executive Branch.

**Section 18** – This Law shall come into effect on the date of its publication.

Brasilia, March 03, 1998; the 177<sup>th</sup> year of Independence and 110<sup>th</sup> year of the Republic.

*FERNANDO HENRIQUE CARDOSO*  
*IRIS REZENDE*  
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