



UNITED NATIONS

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ENGLISH ONLY*

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 texts*

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 9804 (30 JUNE 1998)
AMENDING ARTICLE 34 OF LAW 6368 (21 OCTOBER 1996)

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

LAW ESTABLISHING PREVENTIVE CUSTODY

**OFFICIAL NEWSPAPER
02 JULY 1999**

LAW N. 9804 OF 30 JUNE 1999

Alters wording of art. 34 of Law N. 6368 of 21 October 1996, which sets forth on prevention and law enforcement measures against illicit trafficking and abuse of substances which are narcotic or cause physical or psychological dependence.

The PRESIDENT OF THE REPUBLIC, empowered by art. 62 of the Constitution, adopts the following Interim Ruling as law:

Art. 1st Art. 34 of Law N. 6368 of 21 October 1996 is enforced with the following wording:

“Art. 34. Vehicles, boats, airplanes and any other means of transportation, as well as machinery, utensils, tools and objects of any kind, used in the commitment of crimes defined in this Law, after their regular seizure, will be under the custody of the judiciary police authority, except firing arms, which will be seized under the specific legislation.

.....
§ 3rd Once seizure referred to in *caput* is completed, and having been of money or cheques issued as payment orders, the police authority presiding the investigation must require the writ of the Public Ministry immediately.

§ 4th Once the Public Ministry receives the writ, it must require from the court the conversion of the amount seized into the national currency, if applied, the clearance of the cheques after investigation instruction with authentic copies of the respective titles, and the deposit of the corresponding amounts into a judiciary account, with the respective receipt.

§ 5th In case goods unforeseen in the previous paragraphs are seized, the Public Ministry, through an autonomous petition, will require the competent judge, as a custodial measure, to alienate them, except those that the Union, through the National Antidrug Secretariat – SENAD -, determines to be placed under the custody of the police authority, federal or military intelligence organs which are involved in prevention and law enforcement measures against illicit trafficking and abuse of substances which are narcotic or cause physical or psychological dependence.

§ 6th Excluding the goods that, by determination of the Union, through SENAD, fall into the previous paragraph, the alienation petition must contain a list of all remaining seized goods, accompanied by a description and specification of each one of them, as well as by information on who keeps them in custody and where.

§ 7th Once the alienation of the goods is required, the respective petition will be recorded separately and the records will be autonomously channeled in relation to the criminal action.

§ 8th Once the alienation requirement is recorded, the records will be concluded to the judge who, after verifying the coherence between the offence and the tools used in its practice and the risk of loss of economic value through time, will determine the assessment of the listed goods, notifying the Union, the Public Ministry and the interested party, the latter through a citation within a five-day period, if applied.

§ 9th Once the assessment is completed and divergences are solved, the judge will ratify the value attributed to the goods and will determine that they be alienated through auction.

§ 10th After the auction is carried out and the collected amount is deposited in a judicial account, the Union will be summoned to offer, according to the regulation, a receipt equivalent to that amount and to the amounts deposited in the terms of § 4th through certificates issued by the National Treasury with characteristics to be defined in an act by the Ministry of Finance.

§ 11th It is for SENAD to require the issuance of the certificates referred to in the previous paragraph from the National Treasury Secretariat.

§ 12th Once the receipt is issued, the amounts in the judicial account will be transferred to the Union through a deposit into the National Antidrug Fund - FUNAD -, the alienation documents being attached to the main process.

§ 13th In issuing the verdict, the judge will decide about the loss of the goods and values mentioned in §§ 4th and 5th and about the lifting of the bail.

§ 14th In the case of the lifting of the bail, certificates referred to in § 10th must be recovered at face value, the resources for payment being provided by FUNDAD.

§ 15th The National Treasury Secretariat will provide the funds for the payment of the certificates referred to in § 10th.

§ 16th In the case of loss of goods and values on behalf of the Union mentioned in §§ 4th and 5th, the National Treasury Secretariat will take measures for the cancellation of the certificates issued.

§ 17th The appeals against decisions made during the procedure foreseen in this article will not have waiving effect.

§ 18th Through SENAD, the Union can sign an agreement with the states, the Federal District and the organs involved in prevention, law enforcement and treatment of drug dependents aiming at the discharge of funds collected by it in the terms of this article for the implementation and execution of programs against illicit trafficking and abuse of substances which are narcotic or cause physical or psychological dependence.

§ 19th In the course of the penal processes, the judge, at the request of the Public Ministry, may determine the alienation of the seized goods according to this article.

§ 20th SENAD may sign cooperation agreements so as to promote the immediate alienation of goods not sold in auction and whose loss has already been declared on behalf of the Union”.

Art. 2nd Art. 2nd and 5th of Law N. 7560 of 19 December 1986, altered by Law N. 8764 of 20 December 1983, are enforced with the following wording:

“Art. 2nd

VI – funds from the loss, on behalf of the Union, of goods, rights and values resulting from illicit trafficking of narcotic substances or related drugs, foreseen in clause I of art. 1st of Law N. 9613 of 3 March 1998.

“Art. 5th

VII – at the cost of its own management and for the payment of expenses resulting from the fulfilling of SENAD’s mandate;

VIII – to the payment of discharge of the certificates issued by the National Treasury which bailed the resources transferred to FUNAD’S account;

IX – to the payment of expenses related to the fulfilling of the mandate and actions of COAF – Financial Activities Control Council – against the “laundering” or concealing of goods, rights and values foreseen in Law N. 9613 of 1998, up to the limit of proceeds from clause VI of art. 2nd.

Sole paragraph. Observing the limit of forty per cent and according to agreements, at least twenty per cent of proceeds from alienation of goods will be channeled to the Federal Police, state police and Federal District police which are responsible for seizures referred to in art. 4th.

Art. 3rd The actions carried out under Interim Ruling N. 1780-6 of 11 February 1999 are validated.

Art. 4th This Law is enforced on the date of its publication.

Art. 5th § 1st of Art. 34 of Law 6368 of 21 October 1976 is revoked.

Brasilia, 30 June 1999
FERNANDO HENRIQUE CARDOSO