LAW Nº 9.613, OF MARCH 3, 1998

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 commited by an individual against foreign public administration (articles 337-B, 337-C and 337-D of Decree-Law nº 2848, from december 7th, 1940 – Penal 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 consórcios (consumer funds commonly held and managed for the acquisition of consumer goods);

IV. Administrators or companies that use cards or any other electronic, magnetic or similar means, that allow fund transfers;

V. Companies that engage in leasing and factoring activities;

VI. Companies that distribute any kind of property (including cash, real estate, and goods) or services, or give discounts for the acquisition of such property or services by means of lotteries or similar methods;

VII. Branches or representatives of foreign entities that engage in any of the activities referred to in this article, which take place in Brazil, even if occasionally;

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

IX. Any and all Brazilian or foreign individuals or entities, which operate in Brazil in the capacity of agents, managers, representatives or proxies, commission agents, or represent in any other way the interests of foreign legal entities that engage in any of the activities referred to in this article;

X. Legal entities that engage in activities pertaining to real estate, including the promotion, purchase and sale of properties;

XI. Individuals or legal entities that engage in the commerce of jewelry, precious stones and metals, works of art, and antiques;

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 Penal 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 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 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.