

FREE TRANSLATION

LAW # 9613, DATED MARCH 3, 1998

Provides for the crimes related to laundering or concealment of assets, rights and valuables; lays down the rules to avoid use of the financial system for commitment of the crimes set forth herein; creates the Financial Activities Control Council - COAF; and makes other provisions.

THE PRESIDENT OF THE REPUBLIC.

I hereby make known that the Congress has decreed and I sanction the following Law:

CHAPTER I

**Crimes related to Laundering or Concealment of Assets,
Rights and Valuables**

Article 1. Concealment or dissimulation of the nature, origin, location, availability, handling or ownership of assets, rights or valuables directly or indirectly originated from criminal activities, as follows:

- I. illicit trafficking of narcotic substances or related drugs;
- II. terrorism;
- III. smuggling or trafficking of weaponry, ammunition or materials intended for production thereof;
- IV. kidnapping for ransom;
- V. acts detrimental to the government authorities, including by demanding any advantage, for itself or third parties, as a condition or price for the performance or nonperformance of administrative acts;
- VI. acts detrimental to the Brazilian financial system;
- VII. acts performed by criminal organizations.

Penalty: Imprisonment from three to ten years, and a fine.

Paragraph 1. This same penalty shall apply to whoever takes the actions listed below, in order to conceal or dissimulate the use of assets, rights or valuables originated from the crimes referred to in this article:

- I. conversion thereof into licit assets;
- II. acquisition, receipt, exchange, trade, giving or receipt in security and safekeeping, storage, handling or transfer; and
- III. import or export of assets other than for the actual value thereof.

Paragraph 2. The penalty provided for above shall also apply to whoever:

- I. uses, in economic or financial activities, any assets, rights or valuables knowingly originated from any of the crimes referred to in this article;
- II. participates in a group, association or office, although cognizant of the fact that the major or ancillary activity thereof is directed to commitment of the crimes set out herein.

Paragraph 3. Any attempt at the above practices is punishable pursuant to article 14, sole paragraph of the Criminal Code.

Paragraph 4. The penalty shall be increased by one to two thirds in the events set forth in items I through VI of the main section hereof, if the crime was committed in an ongoing basis or through a criminal organization.

Paragraph 5. The penalty shall be reduced by one to two thirds, and the respective imprisonment penalty may initially be served on bail; the courts may dispense with imposition thereof or otherwise replace it with a penalty in restraint of right, if the principal, coprincipal or participant voluntarily cooperates with the authorities by giving clarifications that lead to investigation of the criminal practices and their authorship, or to location of the assets, rights or valuables germane to such crimes.

CHAPTER II Special Procedural Provisions

Article 2. The development and trial of the crimes set forth in this Law shall:

- I. follow the course of procedural action common to crimes punishable with imprisonment, under the authority of the ordinary courts;
- II. be separate from the development and trial of the crimes referred to in the preceding article, even if committed in another country;
- III. be under the federal court authority if:
 - (a) related to crimes against the financial system or economic/financial order, or detrimental to assets, services or interests of the Government, its instrumentalities or government-owned companies.
 - (b) the crime was under the federal court authority.

Paragraph 1. The corresponding charges shall be substantiated by hard evidence of the perpetration of any crime dealt with herein, and the facts set forth in this law shall be punishable, even if the principal is unknown or immune from punishment.

Paragraph 2. The provisions of article 366 of the Code of Criminal Procedure shall not apply to the cases related to crimes set forth herein.

Article 3. The defendant in crimes regulated by this Law shall not be released on bail or set at provisional liberty and, if the defendant is found guilty, the judge shall resolve on appeal at liberty.

Article 4. At the request of the Public Prosecutor Office or a policy authority representative, after hearing the Public Prosecutor Office within twenty-four hours, and provided that there is hard evidence, the judge may order the seizure or impounding—during the investigation or criminal proceedings—of the assets, rights or valuables held by the accused or in the name thereof and germane to the crimes hereunder, as defined in articles 125 through 144 of the Brazilian Code of Criminal Procedure.

Paragraph 1. The preventive measures set forth in this article shall be discontinued if no criminal action is initiated within one hundred and twenty days as from the date on which the corresponding investigations are completed.

Paragraph 2. The assets, rights or valuables seized or impounded hereunder shall be released by the judge whenever evidence as to the lawful origin thereof has been submitted.

Paragraph 3. No petition for return shall be heard unless the accused appears in person, and the judge may order the performance of all acts required for the safekeeping of assets, rights or valuables, pursuant to article 366 of the Code of Criminal Procedure.

Paragraph 4. An arrest warrant or search/impounding of assets, rights or valuables may be stayed by the judge, after hearing the Public Prosecutor Office, whenever prompt enforcement thereof may be detrimental to the investigations.

Article 5. To the extent advisable under the circumstances, the judge may-after hearing the Public Prosecutor Office-order that the assets, rights or valuables seized or impounded be administered by a qualified person, who shall sign a liability commitment to this effect.

Article 6. The administrator of assets hereunder shall:

I. be entitled to compensation as determined by the judge, which may be settled with the proceeds from the assets managed thereby; and

II. render ongoing information, by court order, on the status of the assets under administration, as well as give detailed explanation on any investments or reinvestments made.

Sole Paragraph The acts related to management of the assets seized or impounded hereunder shall be referred to the Public Prosecutor Office, which shall make any requirement deemed advisable thereby.

CHAPTER III The Sentencing Effects

Article 7. In addition to what is provided for in the Brazilian Criminal Code, the

sentencing effects shall be as follows:

I. the assets, rights and valuables related to any crime set forth in this law shall inure to the Government, with due regard for the rights inherent to aggrieved parties or bona-fide third parties; and

II. removal from government offices or other positions such as officer, Board of Director member, or senior manager of the legal entities referred to in article 9 hereof, for twice as long as the imprisonment penalty imposed thereon.

CHAPTER IV Assets, Rights and Valuables arising from Crimes Committed Abroad

Article 8. If there is any international treaty or convention to this effect and at the request of a foreign authority, the judge shall order the seizure or impounding of assets, rights or valuables arising from crimes committed abroad and described in article 1 hereof.

Paragraph 1. The provisions of this article shall apply, irrespective of the existence of international treaty or convention to this effect, whenever the Government of the requesting authority undertakes to offer reciprocal treatment to Brazil.

Paragraph 2. If there is no treaty or convention in this respect, the assets, rights or valuables seized or impounded at the request of a foreign authority, or the proceeds from disposal thereof, shall be equally shared between the requesting State and Brazil, with due regard for the rights afforded to any injured party or bona-fide third parties.

CHAPTER V Legal Entities

Article 9. The obligations referred to in articles 10 and 11 hereof shall apply to the entities permanently or temporarily engaged in any or all of the following activities, on a primary or ancillary basis:

I. raising, intermediation and investment of third-party funds denominated in Brazilian or foreign currency;

II. purchase and sale of foreign currency, gold (as a financial asset), or trade bills; and

III. custody, issuance, underwriting, settlement, trading, intermediation or management of securities.

Sole Paragraph These obligations shall also apply to:

I. stock, futures or commodities exchanges;

II. insurance companies and brokerage firms, private pension funds, or special savings institutions known as *empresas de capitalização*;

III. credit and membership card administrators, as well as companies engaged in the management of purchasing pools for assets or services;

IV. managers or companies using cards or any other electronic, magnetic or related means for transfer of funds;

V. leasing and factoring companies;

VI. companies engaged in the distribution of cash or other movable or immovable assets, real estates, merchandise, services, or otherwise offering discounts for the acquisition thereof, by drawing of lots or similar methods;

VII. the branches or representation offices of foreign entities duly authorized to engage in any of the above activities in Brazil, even on a temporary basis;

VIII. other entities whose operations are contingent on the authorization from a regulatory agency with authority in the financial, currency exchange, securities and insurance markets;

IX. Brazilian or foreign individuals or legal entities operating as agents, managers, attorneys-in-fact, commissaries or in any way representing, in Brazil, the interest of foreign entities engaged in any of the activities referred to in this article;

X. legal entities engaged in real estate promotion or in the purchase and sale of real properties; and

XI. individuals or legal entities trading in jewelry, precious stones and metals, artwork and antiques.

CHAPTER VI

Identification of Clients and Maintenance of Records

Article 10. The persons listed in article 9 hereof shall:

I. identify their clients and keep updated record thereof, in keeping with the instructions laid down by the competent authorities;

II. keep record of every transaction in Brazilian or foreign currency, securities, instruments of credit, metals or other assets convertible into cash, in excess of the limits set out by the competent authorities and in keeping with the instructions laid down by the latter;

III. meet, within the period set out by the competent court authority, the requirements made by the Council created as per article 14 hereof, to be held in secrecy.

Paragraph 1. In the event of corporate clients, the identification referred to in item I above shall encompass the legal entities authorized to represent them, as well as the respective owners.

Paragraph 2. The records and registrations referred to in items I and II of this article shall be kept on file for at least five (5) years as from closing of the account or completion of the transaction, which period may be extended by the competent authorities.

Paragraph 3. The registration requirement set forth in item II of this article shall also be kept if and when an individual or legal entity, or his/its related parties, has entered into transactions with one same person, conglomerate or group in one same

calendar month, the overall amount of which exceeds the limit laid down by the competent authorities.

CHAPTER VII Disclosure of Financial Transactions

Article 11. The persons referred to in article 9 hereof shall:

I. afford special attention to the transactions that, pursuant to the instructions emanated by the competent authorities, may serve as substantial indicia of the crimes set forth in or related to this law;

II. make proper disclosure of the following items to the competent requirements within twenty-four hours, without making such fact known to the clients:

(a) all transactions set out in article 10, II that exceed the cap established by the same authorities for such purpose, in the manner and on the conditions spelled out thereby;

(b) any proposal or performance of the transactions set forth in item I of this article.

Paragraph 1. In the instructions referred to in item I above, the competent authorities shall list all transactions the features, parties, values, manners and instruments of which, or the lack of economic or legal grounds thereof, may characterize the commitment of a crime thereunder.

Paragraph 2. Notices made in good faith hereunder shall entail no civil or administrative whatsoever.

Paragraph 3. The persons for which there is no inspection or regulatory body shall make the respective notices hereunder to the Financial Activities Control Council - COAF as determined thereby.

CHAPTER VIII Administrative Liability

Article 12. The persons referred to in article 9 above, as well as the senior management of legal entities, who fail to comply with the obligations set forth in articles 10 and 11 above shall be subject to any or all of the following penalties, to be imposed by the competent authorities:

I. warning;

II. a pecuniary fine ranging from one percent through twice the transaction amount, or up to two hundred percent of the profit actually or purportedly obtained from the transaction, or a fine of up to two hundred thousand reais (R\$ 200.000,00);

III. temporary disqualification, for a period of up to ten years, to act as manager of the legal entities referred to in article 9 above; and

IV. cancellation of one's authorization or license to operate.

Paragraph 1. The warning penalty shall be imposed on the irregular fulfillment of the instructions referred to in article 10, I and II hereof.

Paragraph 2. The fine shall be imputed on the persons referred to in article 9 above, whenever they maliciously or negligently:

I. fail to remedy the irregularities on which warning is being served, during the period established by the competent authority for such purpose;

II. do not make proper identification or registration as set forth in article 10, I and II above;

III. fail to timely meet any requirements posed in article 10, III; and

IV. fail to either comply with the prohibition set out in article 11 hereof or make proper disclosure thereunder.

Paragraph 3. The temporary disqualification penalty shall apply whenever a severe noncompliance with the obligations set forth in this law is found to occur, or else in the event of specific recidivism regarding violations previously punished with a fine.

Paragraph 4. The cancellation penalty shall apply in the event of specific recidivism regarding violations previously punished as established in item III of the main section of this article.

Article 13. The procedures for imposition of the sanctions provided for in this Chapter shall be regulated by decree, subject to due process of law and full defense rights.

CHAPTER IX The Financial Activities Control Council

Article 14. The Financial Activities Control Council - COAF reporting to the Ministry of Finance is hereby created, for the purpose of regulating, imposing administrative sanctions, receiving, reviewing, and identifying the suspected occurrence of illicit activities under this law, without prejudice to the spheres of authority of other agencies and entities.

Paragraph 1. The instructions referred to in article 10 above and intended to the persons set out in article 9 hereof shall be issued by COAF to the extent that there is no specific regulatory or investigative agency therefor. In these cases, COAF shall impose the penalties listed in article 12 hereof.

Paragraph 2. COAF shall also coordinate and propose cooperation and information exchange mechanisms towards the adoption of fast, effective action against the concealment or dissimulation of assets, rights and valuables.

Article 15. COAF shall advise the competent authorities of its conclusion as to either the commitment of crimes set forth in this law or the existence of hard evidence regarding the performance of such or other crimes, so that these authorities may take proper action in this regard.

Article 16. COAF shall be composed of public servants of renowned competence and unblemished reputation, duly appointed by an act of the Minister of Finance, and

selected from among the staff members of the Central Bank of Brazil, the Securities Commission, the Private Insurance Authority, the Attorney-General Office of the National Treasury, the Federal Revenue Office, the Executive Branch intelligence agency, the Federal Police Department, and the Ministry for Foreign Affairs, following an indication of the respective Ministries in the latter three cases.

Paragraph 1. The COAF Chairman shall be appointed by the President of the Republic by indication of the Ministry of Finance.

Paragraph 2. The COAF decisions on the imposition of administrative penalties may be appealed to the Minister of Finance.

Article 17. The COAF organization and operations shall be set in the bylaws approved by an executive decree.

Article 18. This law takes effect on the date of its publication.

Brasília, March 3, 1998; 177th year of Independence, and 110th of the Republic.

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