Money Laundering Crime under Brazilian Legislation

Leila Bijos
Renato Lopes de Oliveira
MONEY LAUNDERING CRIME UNDER BRAZILIAN LEGISLATION*

Leila Bijos** and Renato Lopes de Oliveira

ABSTRACT

This research aims to investigate the methodologies used by the Brazilian government to identify money laundering bank accounts specifically through cooperation with international organizations to fight the crime of money laundering. The main objective is to recover the resources sent to tax havens abroad. It will also present the national entities that work in juridical cooperation, exchanging information and signing bilateral treaties that facilitate the recovery of money.

KEYWORDS: Money laundering; drug trafficking; terrorism; arms trafficking; extortion and organized crime; financial system; Brazil.

I. INTRODUCTION

The contemporary scenario shows globalization as a world of advances in the areas of communication and transportation, and also challenges faced with illicit activity. Based on an international pattern to fight transnational crime, Brazil established norms and patterns aiming to criminalize the behavior known as money laundering.

To overcome such situations as the illicit trafficking of goods, people, and weapons, internet crime, and money laundering, Brazil launched public institutions for anticorruption founded on juridical legislation to detect and curtail these activities. Such tools were inserted in the scope of a wide, modern, and effective policy to fight transnational crime—one of the main worries of Brazilian legislators.

The impact of international terrorist activities awakened the need for new procedures for world security, given the breakdown of barriers for the transit of people and merchandise. International networks behave surreptitiously; they do not show their faces, but they attack nations,

* This paper was presented at the 10th Annual Conference, Italian Society of Law and Economics, Università degli Studi di Roma – La Sapienza, Facoltà di Giurisprudenza, December 18, 2014.

** Professor Bijos has a PhD in Sociology from the University of Brasilia (UnB). She is a professor at the Masters Programme in Law at the Catholic University of Brasilia, visiting researcher at the University of California in San Diego and at the University of Tsukuba, Japan.
destabilize governmental systems, and inflate international insecurity.\(^1\)

Security for most people means almost always—and very clear—physical and psychological security for self and family members; and consequently represents peace and preservation. Preservation of peace demands both 1) the ability to avoid the use of force as well as to offer resistance to it; and 2) safeguarding the security of other values generally requires the same ability.

To provide security therefore means organizing the power of the nation state and international organizations in order to enable them to face new situations in which terrorism undermines state structures, aiming for the establishment of international legal cooperation between countries with different legal traditions to eliminate havens of refuge for criminals.\(^2\)

International coalitions need to be grounded to combine actions and commitments to nation states to prevent aggression by one state against another or insurrection of terrorist groups. On engendering a credible threat against a state body or human, through boycotts, economic pressures, military intervention or any kind of aggression, the system of international coalition would inhibit the actors by military endeavor and deter the actions of the terrorist faction. The impact of criminal organizations is reflected in institutions, democracy, economics, politics, and international relations. Money laundering points to the use of effective techniques to use tracks left in the financial system to prosecute perpetrators of crimes naturally elusive and hidden, and the consequent confiscation by the state, identified as capital laundering—namely "asset recovery," legitimized as a way to financially cripple criminal organizations.\(^3\)

In this context, the Brazilian Law 9613 of March 3, 1998,\(^4\) not only combats money laundering crimes and concealment of assets, rights, or values, but also created the Board of Tax Control Activities (COAF).

The effective action of the state was created in French law in 1987,\(^5\) and it was also approved in Switzerland 1990. With respect to the Brazilian legal system, these unlawful acts were only criminalized in 1998, with the advent of Law 9.613. But Law No. 12,683/2012 amended Law 9.613/1998

---


3. Id.


in order to provide more clarity and effectiveness in practical and procedural issues related to crime.

One of the big changes introduced by Law 12.683 is already provided for in Article 1°. A comparative table analyzes the two laws:

<table>
<thead>
<tr>
<th>Article 1° of Law 9.613/98</th>
<th>After Law 12.683/12</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Before Law 12.683/2012(^6)</strong></td>
<td><strong>Art. 1° Concealing or disguising the nature, source, location, disposition, movement or ownership of assets, rights and valuables resulting directly or indirectly from crime:</strong></td>
</tr>
<tr>
<td><strong>Art. 1°</strong></td>
<td><strong>The list of items has been revoked.</strong></td>
</tr>
<tr>
<td>I - illicit trafficking in narcotic substances or similar drugs;</td>
<td><strong>Penalty:</strong> imprisonment from three to ten years and fine.</td>
</tr>
<tr>
<td>II - of terrorism;</td>
<td></td>
</tr>
<tr>
<td>II - of terrorism and its financing;</td>
<td></td>
</tr>
<tr>
<td>III - smuggling or trafficking in weapons, ammunitions or materials used for their production;</td>
<td></td>
</tr>
<tr>
<td>IV - extortion through kidnapping;</td>
<td></td>
</tr>
<tr>
<td>V - against the Government, including the requirement to themselves or others, directly or indirectly, any advantage, as a condition or price for the performance of administrative acts or omissions;</td>
<td></td>
</tr>
<tr>
<td>VI - against the national financial system;</td>
<td></td>
</tr>
<tr>
<td>VII - practiced by criminal organization.</td>
<td></td>
</tr>
<tr>
<td>VIII – practiced by individuals against a foreign government (Articles 337-B, 337- C and 337-D of the Decree-Law No. 2.848, of December 7, 1940 - Penal Code).</td>
<td></td>
</tr>
</tbody>
</table>

In Brazil, criminal offenses can be conceptualized in two species—misdemeanors and felonies. Thus, it can be seen that the change brought by

---

Law 12.683/12 expanded the features of the crime of the law in order to include further unlawful acts that trigger money laundering, even if they are only misdemeanors.8

In practical terms this means that even the lottery “animal game,” provided for in Decree-Law 6.259/44 in Article 58 as a misdemeanor, may penalize its practitioners when it triggers money laundering.9 Consider an entrepreneur who develops activities related to gambling in the back of his shop. Anyone venturing into the area that is unaware of the practice will be regarded as a mere consumer of commercial activity. The main benefactor of the misdemeanor is the entrepreneur. But because the entrepreneur was hiding and profiting from a misdemeanor and disguising the amounts collected, he will be guilty of money laundering. Thus, he will answer for his actions and will have his goods, including the money arising from gambling, confiscated. This change was due to the way crimes relating to money laundering have been presently interpreted.

Reviewing Article 1º of Law 9.613/9, before the reform of 2012,10 will help explain the change. Before money laundering could be characterized, it was necessary that the crime was already provided for by law. The crime of money laundering is a subsequent crime, a logical consequence of an illicit practice. There are three generations that compose the interpretation of money laundering and the crimes that precede it.

First generation: drug trafficking is the only crime that can be considered a predecessor to money laundering crime. This generation occurred as a direct result of international treaties such as the Vienna Convention, which agreed that drug trafficking was used by criminal organizations in order to launder money.11

Second generation are countries that have edited news then realize that these laws could open the door for money laundering. Brazil fits this generation, before the enactment of Law 12.683/12, which featured the exhaustive list specifying exclusive crimes that could precede money laundering in Article 1º of Law 9.613/98.12

Third generation refers to countries that consider that any crime envisaged in the legislation may be able to characterize the origin to money laundering. This is the generation that the Brazilian legal system began to adopt after the enactment of Law 12.683/12, which extended capital

---

8. See id.
II. THE RELEVANCE OF CRIME COMMITTED BY A CRIMINAL ORGANIZATION

It is important to emphasize that before the amendment introduced by Law 12.683/12, the Federal Supreme Court (STF) determined that criminal organization could not be an antecedent to the crime of money laundering, as this was not within the exhaustive list submitted by law 9.613/98. Furthermore, Law 12.683/12 brought to the forefront a new addendum that can expect to receive the punishment of a crime committed by a criminal organization such as money laundering, if the latter is a consequence of the former.

<table>
<thead>
<tr>
<th>Lei 9.613/98</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Before Law 12.683/12</strong></td>
</tr>
<tr>
<td>Art. 2º The prosecution and trial of the crimes defined by this Law</td>
</tr>
<tr>
<td>II – Independent of the prosecution and trial of preceding crimes referred to in the previous article, even if they have been committed in another country;</td>
</tr>
</tbody>
</table>

After the changes of Law 12.683/12, the second part of Article 2 was altered, although keeping with what the courts have been deciding in the sense that the judge does not necessarily need to be the same. The judge who will consider the crime of money laundering and prosecute the crime may take into consideration the criminal history and evidence, and provide the complaint based on money laundering.

Penal and Criminal Procedure. Habeas corpus attacking decision rejecting exception of *lis pendens*, raised with the goal of requesting the meeting of all deeds filed due to the outbreak of Operation Cardinal Sin.

I- The standard that governs the suppression of money laundering crimes, even before the recent change that occurred with the advent of Law 12683/2012, as prescribed in Article 2, Section II, namely that the prosecution and trial of crimes of this kind are independent of the prosecution and trial of predicate offenses.

II- In turn, current wording departs further doubt about the meeting of unnecessary procedures concerning a single judge trying two or three crimes together, ordering that it is the competent court for the crimes defined in this law to decide on the unit of prosecution and trial.

III- Hence, mindful of the legal rules, case law has always proceeded and advanced in the sense that the computation of the crime of money laundering is autonomous and independent of the processing and sentencing of predicate offenses, and only requires sufficient evidence of the practice, which are pointed previous offenses (HC 137 628, Miniser Haroldo Rodrigues, trial on October 26, 2010).

IV- As it was not enough to provide information, the authority filed the inconvenience reported that the deeds in question are referred to together as the principal, given that they are in the various procedural times, while the prosecution should establish the possible occurrence of money laundering (0007296-34.2011.4.05.8400) is already concluded for sentencing. Thus, there would still be material conditions for the realization of providence collimated by the plaintiffs.

V- Order of habeas corpus denied.18

As exemplified above, the legislators took serious and effective action in the sense of accepting the decisions of the courts, and defining them in a way to accelerate the process of prosecution of money laundering and predicate offenses.

Cavalcante19 provides an example, emphasizing that an international drug dealer who transfers profits to a tax haven, through a money changer, will commit three crimes, which are the international drug trafficking under Article 33 caput Article 40 (I) of Law 11.343/2006,20 tax evasion, which appears in Article 22 of Law 7.492/86,21 and money laundering, as per Law 9.613/98.22

Under the new rules currently legislated, it is not necessary to judge the crimes of international drug trafficking and tax evasion, and then include the money laundering crime. The judge can start the complaint with

money laundering, presenting evidence of authorship and materiality of this crime, as well as showing the criminal background in order to initiate the prosecution.\textsuperscript{23}

As previously stated, another way to think about this example is that the same judge need not preside over all three offenses. It is sufficient that the crimes of money laundering have been considered by another judge. The judge may join or separate the cases to include the original case of money laundering.\textsuperscript{24}

Even if an actor may be exempt from punishment or the predicate offense to money laundering is a barred statute, the actor may still be subject to criminal prosecution for the last illicit or improper act. This renders any impunity-based arguments to escape punishment for crimes that result in money laundering toothless.

The question to ask is: "Is there any difference, when the person to be investigated for money laundering offenses is a public servant?" The answer to this question is yes, and can be found in Article 17(D) of the new statute.\textsuperscript{25} The difference when the actor is a public servant is how the investigation will be organized and the manner in which the authority in charge of coordinating the process will collect all of the evidence to prove that the public servant is guilty of the crime. The punishment is a formal act in which the judge will express to the audience his decision as to the public servant's participation, and will request removal of the public servant.

Removal of the public servant is a way to preserve the evidence during the investigation. Article 5, LVII of the Federal Constitution provides that the public servant is innocent until a final, effective, and conclusive penal sentence.\textsuperscript{26}

This is only a trial injunction, which could possibly be prevented by the investigator if the public servant were in liberty. In order to demonstrate that this public servant is not being treated as guilty, his/her monthly salary will continue as well as governmental remuneration and rights arising from work.\textsuperscript{27}

The precautionary removal occurs without judicial authorization. This is a premise already applied in the parental order. Article 147 of Law 8.112 provides for the public servant to be removed for a period of sixty days, renewable for an additional sixty days when a disciplinary administrative process, at the discretion of the investigative authority, determines

\textsuperscript{24} Id.
\textsuperscript{26} CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] art.3 (Braz.).
that this does not influence the investigation. With these additions, Law 12,683 penalizes money laundering more punitively.

The typical criticism is that, with the official changes, money laundering will reach even the smallest offenses within Brazilian legislation, such as crimes of lesser offensive potential, which fall under Law 9.099/95 and misdemeanors under Law 3.688/41. Thus, the police and the judicial system will be flooded with cases, which may give rise to money laundering, but where those charged are not the true leaders of criminal organizations.

Rezende infers that the “trivialization of money laundering is not the best trick in combating corruption . . . . What is more pernicious: the one hundred dollars of money laundering obtained by theft or concealment of misappropriated millions of real origin of public coffers?”

Rezende also points out that “instead of including all misdemeanors offenses as background, the Legislature could have elevated to the category of crime the exploitation of gambling or have created specific type that criminalizing the concealment of assets from the game farm gambling by criminal organizations.”

What is clear from the criticism made is that the legislator—instead of repealing all the exhaustive list of crimes of Article 1 of Law 9.613/98—should have inserted the acts of gambling (animal game, bingo, slot machines, etc.), criminalizing them when practiced in communion with criminal organizations. This would add to the list of crimes previously connected to money laundering, and would select specific crimes so as to avoid flooding the judiciary with ridiculous demands.

But we cannot ignore the legislature’s intent; extending the list of predicate offenses to all criminal offenses makes it much easier to characterize and even investigate crimes, which perhaps entail money laundering. Therefore, it is necessary to understand the basic fundamentals of money laundering nuances.

III. MONEY LAUNDERING

Several public institutions are responsible for seeking the collection of evidence that will give rise to the punishment of offenders. The judiciary, which has the duty to ensure the provision of state power, will take appropriate criminal action as a way to reach the truth of the facts and decide with clarity, impartiality, and motivation. Thus, criminal action is the

31. Id.
appropriate initial instrument to achieve the punishment of those responsible for the miserable conditions and the patterns of inequality in Brazilian society.

This process will take a long time until the courts can punish the perpetrators of money laundering crimes. Punishment will take the form of conviction and imprisonment, and repatriation of the embezzled money as a means to compensation of the damages. Punishment for civil servants will consist of job loss.

To establish an effective sentence for corruption crimes, one essential measure is to return the embezzled money and to imprison those convicted. But in most cases, this money cannot be found in Brazil. After all, money laundering is the modus operandi used as a way to rig the financial system and hide the goods and proceeds of crime, as it is premised on the mixture of illegal criminal assets with legal goods that cannot be put under question.

With official procedures, the system of returning money will be effective in achieving its goals. It is understood that repatriation is the legal instrument formalized between countries through international treaties, conventions or international agreements to facilitate the recovery of assets through cooperation among nations.

GianpaoloPoggioSmamion specifis that money laundering is "operations aimed at hiding the criminal origin of money or property, giving them lawful appearance so that they can integrate them into the economic and financing system, as though they were licit assets."33

With the development of technological means, crime also adapted and became more sophisticated. Thus, money laundering offenses are widespread and are not limited by national borders. Money laundering results in sending the illicit product to other countries—thus completing the "perfect crime."

Sergio Moro says:

One of the main characteristics of contemporary crime is its transnational character. Often the criminal activity involves several countries. In one of them the crime is planned, then in another it is executed, while the product of criminal activity is sent to a third party."

This led to the need for increased international legal cooperation. If the crime is transnational, no effective investigation and prosecution will be restricted to national boundaries.

The laundering can have exclusively national character, but it may have transnational character. This will be the case if the proceeds of crime are remitted to a country other than the one in which the criminal activity

was developed. Criminal organizations used money laundering to "smooth out" the illicit origin of goods, trying to make them "clean" in the eyes of society and the authorities. A criminal organization has a legal definition according to Article 10, section 1 of Law 12.850/13 as specified below:

The association of four (4) or more persons structurally ordered and characterized by division of labor, even if informally, in order to obtain, directly or indirectly, an advantage of any kind, through the practice of criminal offenses, whose maximum penalties to be more than 4 (four) years, or are transnational in nature.

Thus, one can see that the law ensures that crimes will be punished even when they reach an international level. It is the legislator himself, aiming at preventing that the crime go unpunished when it reaches transnational dimensions.

To understand how this crime reaches international level, it is necessary to analyze the stages that constitute money laundering, which will be discussed in the next section.

A. PHASES OF MONEY LAUNDERING

Money laundering operates in three steps. The first phase is called placement (or conversion, or introduction), where the perpetrator obtains money in an illicit way and then inserts it into the financial system to hide its illicit origin. Placement is generally directed to tax havens, countries with favorable tax systems and lax governmental supervision. The criminal will hide the money by purchasing assets (houses, apartments, cars, etc.), which makes it more difficult to trace. In essence, placement can be conceived as "undoing" an illicit stream of income.

The second phase is known as layering (or camouflage, or diffusion), where money is "moved, dispersed, and disguised" to distance it from its illegal origin. The criminal will hide the money by purchasing assets (houses, apartments, cars, etc.), which makes it more difficult to trace. In essence, placement can be conceived as "undoing" an illicit stream of income.

Finally, integration (or absorption, assimilation, or incorporation) is the
third phase.\textsuperscript{42} At this stage, the perpetrator will reap the fruits of his crime by reintroducing the illicit money into the formal economy—investing in “legitimate or illegitimate business” or spending “to support [his] lifestyle.”\textsuperscript{43} The perpetrator will also purchase other goods through front meant to increase the number of illegal assets that are mixed with the lawful property, making it more difficult to separate the values, as well as preventing proper investigation by the authorities. The role of the legal authorities will be to conduct research and return the assets.

IV. REPATRIATION OF ASSETS

The repatriation of assets is integral in preventing criminals from enjoying the money they obtained illegally and deterring future instances of money laundering.\textsuperscript{44} The assets to be returned should always be determined by the Brazilian judiciary system. It is not possible to confiscate the property of a person without knowing if he/she really practiced the crime of money laundering. The judiciary is the agency with sufficient powers and duties to ensure that the process of prosecution and other decisions conform to an understanding of social justice.

The repatriation of assets assumes that the illicitly obtained property lies in another country other than where the money laundering took place. The Brazilian government will need to establish a system of international legal cooperation to prevent the expansion and dissemination of the values obtained by illegal means by criminal organizations.

To facilitate the recovery of assets, countries that aim to act swiftly will make use of reciprocity provisions, which will enable them to create mutual aid ties without the initial need to draw up a treaty or convention—which would give the offenders adequate time to disappear with the values. This illustrates that it is necessary to make commitments to achieve this goal. One example is the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) in its Article 7, which establishes the need for mutual legal assistance to facilitate investigations, trials, and the process as a whole.\textsuperscript{45}

The UN Convention against Corruption in Article 46 emphasized and broadened the list of activities that may be considered legal assistance objects between countries in order to demonstrate that the listed points are not exhaustive.\textsuperscript{46} It is necessary for each country to have a central department, which would assist investigations and interactions with for-

\textsuperscript{42} Id.
\textsuperscript{43} Id.
\textsuperscript{45} United Nations Conference for the Adoption of a Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, supra note 11, at art. 7.
eign countries. Through this efficient measure, the money launders will be investigated, arrested, and charged before they spend the profits and hide their illicit operations in different countries.

A. Asset Recovery Department and International Legal Cooperation-DRCI

The Department of Asset Recovery and International Legal Cooperation (DRCI) under the Ministry of Justice was created by Decree No. 4991 on February 18, 2004. This department is responsible for accelerating asset recovery and the conviction process in Brazil.

The DRCI was built under Decree n° 6.061, dated 15 March 2007, and its main functions are as follows:

(i) articulate, integrate and propose Governmental actions in all aspects related to money laundering, transnational organized crime, recovery of assets and international legal cooperation; (ii) promote the coordination of the public organs of the Executive, Legislative and Judiciary, including the Federal Government Ministries and State, regarding the fight against money laundering and transnational organized crime; (iv) negotiate agreements and coordinate the implementation of international legal cooperation; (v) instruct opinions and coordinate the implementation of active and passive international legal cooperation, including letters rogatory; and (vii) promote the dissemination of information on asset recovery and international legal cooperation, preventing and fighting money laundering and transnational organized crime in the country.

This office is the central authority for international legal cooperation that will review and process requests to assist other states or enable letters rogatory to exercise their function in the country.

Anselmo emphasizes that "the figure of this central authority consists of a kind of centralized intermediate office, where all applications are processed, and it is responsible for receiving the active orders in Brazil, directing them to their addressees and receiving Brazil's liabilities requests by distributing them to be carried out."

With the implementation of this representative office, created in 2004, a growing demand for international assistance requests was noticed. In the same year of the implementation of this office, 2,907 requests for

50. Id.
cooperation were officially received.\textsuperscript{52} Statistical data reveals that this number increased to nearly 3,700 requests in 2007.

It is noteworthy that these requests emanate from big cases disseminated in the Brazilian press. Known cases of money laundering, seeking the recovery of irregularly sent assets abroad totaled about 600 requests, which further demonstrate the importance of the mentioned office.\textsuperscript{53} Relevance of this central authority's importance reveals that about 38 percent of the requests, in civil matters, are to international benefits of alimony, which is known to be a way of important survival and livelihood for many of those people.\textsuperscript{54}

The DRCI is a central office of legal cooperation and is responsible for bringing together all of the elements that propose to relate to another state, even if that relationship rises from another Brazilian agency. For this reason, the DRCI does not work in isolation in Brazil.

As a partner of the Ministry for Foreign Affairs, which works to formulate foreign policy on cooperation and processing applications that will go through diplomatic channels, the DRCI exerts important short functions, which include keeping the relationships between the members clear, cohesive, and respectful.\textsuperscript{55} It is important that two states have strong relationships and avoid any misunderstanding concerning a specific political point of view, which would affect the disbursement of international aid.

The Public Ministry and the Attorney General’s Office (AGU) maintain essential legal and consulting functions. On the other side, the Internal Revenue Service, Federal Police, and the Controller General should not fail to fulfill their duties with excellence, following the necessary investigations and controlling demands.

The essential feature of the judiciary is to give testimonials, answer the requests for cooperation through letters rogatory and approval of foreign judgments, and always protect the integrity and sovereignty of the national legal system.

\section*{B. Central Department Title Transfer}

Central department of ownership may be transferred to another authority in certain situations. For example, the central organ of ownership will be transferred to the Attorney General in criminal matters, the implications of the Treaty of Mutual Assistance in Criminal Matters between Brazil and the Portuguese government, and in the cases set out in the 1956 New York Convention on the provision of food abroad.\textsuperscript{56} In these

\begin{itemize}
\item \textsuperscript{52} \textit{Ministerio da Justica [Ministry of Justice] et al., supra note 48, at 12.}
\item \textsuperscript{54} \textit{Id.}
\item \textsuperscript{55} \textit{Ministerio da Justica [Ministry of Justice] et al., supra note 48, at 17.}
\item \textsuperscript{56} Decreto No. 10, de 31 de dezembro de 1956, D.O.U. (Braz.), \textit{available at} http://www.planalto.gov.br/ccivil_03/Constituicao/Congresso/DLG/DLG-10-1958.htm.
\end{itemize}
situations, ownership of the clearinghouse is passed onto the Special Secretariat for Human Rights, the implications of the Hague Convention on Civil Aspects of International Abduction of Children, 1980; and the Hague Convention on International Cooperation and Protection of Children and Adolescents on International Adoption 1993.57

C. THE CONTROL COUNCIL FOR FINANCIAL ACTIVITIES (COAF)

Unlike DRCI, which operates in the headquarters of the Ministry of Justice, the COAF is linked to the Ministry of Finance, and helps in fighting and in the prosecution of crimes against the national financial system.58 Besides regulating money laundering offenses, Law 9.613/98 also created the COAF.59 Article 9 of Law 9.613/98 provides actions relating to the subjects of financial relations may be investigated by COAF.60

D. HOW INVESTIGATIVE ACTIONS ARE PROCESSED BY COAF

The Minister of the Supreme Court, Mr. Gilmar Mendes, referring to the petition 3898-3 in a vote cast on August 27, 2009, mentioned the procedure adopted by COAF in situations that present evidence of crime.61 All official financing authorities should inform COAF of all suspicious acts when evidence is collected. Karina Zucoloto states that “it is the duty of the financial institutions to send, through computerized system (SISBACEN), any suspicious transaction to COAF, so that the institution in possession of the received information can forward it to the public prosecutor, who will analyze the findings and take appropriate action.”62

When the competent financial authorities do not have any regulatory authority or oversight over Article 9 of the money laundering law, but have strong evidence of the crimes provided for by Law 9613/98,63 they shall report to COAF for review and, if necessary, immediate collection of the factual elements of the offense, transitioning to the Public Prosecutor.64

COAF, since its inception, allowed Brazil to become more involved in international forums, discussing themes and forms of repression of crimes against the financial system, money laundering, and also provided a plat-
form to train the most skilled agents to better help fight national and transnational crimes. COAF received 1,477,000 communications; performed over 7,400 information exchanges with the main authorities, such as establishing a close cooperation with the Judicial Police (2,300), the Public Prosecutor (2,800) and the Judiciary (1,000); and informed them that accounts had been locked by the Brazilian Courts. Positive accounts should be recorded, based upon their official reports, which show that more than $360 million have been blocked in 2008.65

The need to have a department responsible for such activity is apparent. COAF pledges its efficiency, aims to repatriate goods, strengthen international legal cooperation, and even extinguish crimes that begin and end in the country.

V. RETURN OF GOODS

The return of goods is the instrument most regularly cited by scholars to ensure that money laundering practitioners do not enjoy the advantage of the crime or seek to repeat it.66

The assets to be repatriated should be decided by the Brazilian judiciary. It is necessary to investigate the crime before taking measures to confiscate the person’s properties to ascertain if he/she really practiced the crimes taken for money laundering.

The Judiciary is the branch with sufficient powers and duties to ensure that the process of prosecution and other decisions are closer to the understanding of social justice. The repatriation of assets assumes that the crime of income property, if by money laundering, is in another country than the one that gave rise to the crime.

It is important to mention the case of the former mayor of Sao Paulo, Paulo Maluf, who was convicted for embezzling funds from City Hall. In May 2014, the Minister of the Supreme Court, Ricardo Lewandowski, authorized the prosecutor to take the appropriate measures to repatriate approximately $53 million, which would have been equivalent at the time to R117 million reais (the Brazilian currency).67

The Federal Superior Tribunal communicated through the official Brazilian press the following: “According to projections from the Public Ministry of Sao Paulo, there are $13 million dollars in Switzerland, 8 million U.S. dollars in Luxembourg, 5 million U.S. dollars in France, and 27 million U.S. dollars in the Islands Jersey, frozen in the name of Paulo Maluf. Maluf denies offshore accounts.”68

65. Custódio & Senna, supra note 62, at 52.
66. Best Practices on Confiscation (Recommendations 4 and 38) and a Framework for Ongoing Work on Asset Recovery, supra note 44.
The decision of the Minister was also based on the Merida Convention against Corruption, which Brazil entered as domestic legislation in 2003.69 The convention itself ensures international cooperation in asset recovery in Article 1b.70

There are several consequences to international conventions adopted by Brazil. An example is Law 11.343/2006,71 establishing the National System of Public Policies on Drugs (SISNAD). Its Article 65 prescribes the provision of information to other countries as a way to suppress and prevent money laundering. This article is the result of the Vienna Convention against illicit traffic in narcotic drugs and psychotropic substances.

It is understood, therefore, that the legal cooperation and international policies are essential to truly combat money laundering. Without this cooperation, even the courts and the essential jurisdictional bodies' efforts would be hampered because the activities of the Public Prosecutor Ministry would be restricted to geographical boundaries, which would facilitate the concealment of crimes in tax havens.

A. IMPORTANCE OF FORFEITURE IN CAPITAL LAUNDERING

The country that is condemning the criminal for money laundering cannot be limited in scope to territorial boundaries, and shall exercise its sovereignty, but reap international support if the money was sent to a tax haven, which should be returned to the origin nation as a way to effectively perform the condemnatory sentence. For only through seizure will the punishment be truly effective. This is why Brazil envisages the signing of international treaties, agreements, and international conventions. The aim is, in principle, the collaboration with other countries.

Countries, even with different legal systems, can seek the cooperation of foreign states in the struggle to combat tax evasion through international treaties. This reciprocity is an essential element of the parties of an international agreement. “International treaties are, in short, the tools that states and intergovernmental organizations can, at the same time, accommodate their conflicting interests and cooperate with one another to meet their common needs.”72 These interests may be composed by goals, which may seek to recover the money to their respective countries (i.e., values that were deposited in foreign banks in order to escape from the domestic tax in their country of origin).

---
70. Id.
Based upon these treaties, the DRCI, as a competent Brazilian agency, will work with the objective of seeking better integration and effective punishment of criminals. This is the representative office, which assists the international cooperation.

In order to sign an international cooperation agreement, it is necessary to fulfill specific requirements. These elements are contained in the United Nations Convention against Transnational organized crime, which was signed in the city of Palermo (Italy) in 2000. Brazil ratified the Convention, through Decree No. 5015 of March 12, 2004.

Official rules imply that all cooperation requests should be presented through official written correspondences, as specified by Article 18, item 14 of the Convention of Palermo; requests can be done verbally by the country's representatives in case of urgency.

VI. CONCLUSIONS

Through international agreements, Brazil can identify the banking accounts of money laundering agents, which will help in country investigations. It is through this strategy that the country, which supports the illicit values, will cooperate in the investigations by forwarding the Brazilian authorities the necessary banking data; this aims to recover the resources as patrimony devolution. All the laundered money which is sent to tax havens with the objective of hiding illicit transactions from Brazilian authorities will be requested back to the country as per the enacted Law 9.613 of March 3, 1998, criminalizing money laundering related to drug trafficking, terrorism, arms trafficking, extortion, and organized crime, regulated by COAF. Law 9.613 also created a Financial Intelligence Unit (FIU), which is housed within the Ministry of Finance. All actions are also jointly coordinated by the DRCI. The COAF consists of representatives from regulatory and law enforcement agencies, including the Central Bank and Federal Police. The Brazilian financial sectors, which are not already under the jurisdiction of another supervising entity, will be regulated by COAF.

Money laundering in Brazil is a widespread problem and measures have been taken by the government in the context of an Anti-Money Laundering (AML) and a regulatory system in place. The major sources of illegal proceeds are crimes against the financial system (such as fraud and embezzlement), drug trafficking, and tax evasion. This issue has been primarily associated with domestic crime, including the smuggling of goods and corruption, narcotics trafficking and organized crime, which

generates funds that may be laundered through the banking system, real estate investment or financial asset markets.

On discussing terrorism, Law 10.701 of 2003 criminalizes terrorist financing as a predicate offense for money laundering. The Central Bank maintains a registry of information on all bank account holders, and enables the COAF to request financial information from all government entities on any subject suspected of involvement in criminal activity. International juridical cooperation, conventions, and international agreements among several countries with different juridical traditions have been established, aiming to eliminate the refuge of criminals.

The Board of Tax Control Activities has made effective changes to recover assets through Law 12.683/2012, identifying the nature, source, location, disposition, movement or ownership of assets, rights and valuables, resulting directly or indirectly from crimes of illicit trafficking in narcotic substances or similar drugs, smuggling or trafficking of weapons, ammunition, or material used for their production.

In the 1990’s, the country registered a lot of extortion through kidnapping, even related to members of the diplomatic corps, which has been stopped through the immediate action of the Federal Police, Ministry of Justice, the Central Bank, Bank of Brasil, which in a joint action can detect evidence of withdrawn banking, mobile contacts, internet, and cameras. Clients or members of the family are informed of any suspected action by criminals. Imprisonment from three to ten years is common practice nowadays, even if the person is a state public servant, a Mayor of City Hall, a senator of the Republic, or a federal deputy member of the Congress, implicating the return of assets and fine.

All evidence will be collected for testimony if the public servant is the actor or co-actor of the crime. The civil servant may stop working as per judicial request, will be under license for 60 or 120 days, to avoid obstructing the investigation. Law 12.683/2012 is more punitive than past measures. The punishment of offenders will be conducted properly, under the law, with transparency, impartiality, and open to the media and society. The perpetrators of money laundering will be imprisoned, convicted, and fined, and forced to return the embezzled money.

On achieving positive results, countries sign international agreements, treaties, and approve conventions aimed at recovering the assets and punishing the criminals. Legal assistance is provided by UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substance (1988), UN Convention against Corruption, the Merida Convention against Corruption ratified by Brazil in 2003.

Other partnerships are settled by the DRCI under the Ministry of Justice, COAF, Ministry of Finance, Ministry for Foreign Affairs, the Public

Ministry, the AGU, the Internal Revenue Service, the Federal Police, and the Controller General, all of them investigating and controlling demands.

At present, Brazil is sending experts abroad to attend international forums, conferences, and congresses to discuss the most important criminal issues, exchange information, get new ideas for the repression of crimes against the financial system, and to fight national and international crimes.