



BRAZIL: FOLLOW-UP TO THE PHASE 3 REPORT & RECOMMENDATIONS

February 2017

This report, submitted by Brazil, provides information on the progress made by Brazil in implementing the recommendations of its Phase 3 report. The OECD Working Group on Bribery's summary of and conclusions to the report were adopted on February 10 2017.

The Phase 3 report evaluated Brazil's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions.

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

TABLE OF CONTENTS

SUMMARY AND CONCLUSIONS BY THE WORKING GROUP ON BRIBERY	4
PHASE 3 EVALUATION OF BRAZIL: WRITTEN FOLLOW-UP REPORT.....	6
PART I: RECOMMENDATIONS FOR ACTION	7
PART II: ISSUES FOR FOLLOW-UP BY THE WORKING GROUP	56

SUMMARY AND CONCLUSIONS BY THE WORKING GROUP ON BRIBERY

Summary of findings

1. In October 2016, Brazil presented its written follow-up report to the OECD Working Group on Bribery (Working Group). The report outlined Brazil's efforts to implement the recommendations it received during its Phase 3 evaluation in October 2014. Of the Working Group's 39 recommendations to Brazil, 18 have been fully implemented, 13 partially implemented and 8 not implemented. This shows positive progress from Brazil. The Working Group hopes Brazil will continue its efforts to implement the remaining unimplemented recommendations.

2. The Phase 3 report recognised Brazil's first indictments in one foreign bribery case, but raised concerns about Brazil's overall level of enforcement. Since Phase 3, Brazil has improved its ability to proactively investigate foreign bribery (recommendations 5d and 5e). In January 2016, Brazil concluded its first foreign bribery case by way of a leniency agreement with a Brazilian company, and cooperation agreements with 10 natural persons. Significant sanctions were imposed for a range of offences, including foreign bribery. In addition, Brazil now has eight ongoing cases, five of which were initiated after Phase 3 (from a total of 21 allegations). One of these cases has led to nine indictments, one judicial pardon and one cooperation agreement. However, the remaining seven cases are still at the investigation stage and do not appear close to prosecution. Mutual legal assistance (MLA) has been sought in all cases, although few other formal investigative steps have been taken. Brazil has also provided prompt and effective MLA in a range of cases (recommendation 9).

3. In Phase 3, the Working Group commended Brazil on its enactment of a new Corporate Liability Law (CLL; Law 12 846), although the Group identified several potential areas for improvement. Brazil has now enacted an implementing Decree and several other legal texts in support of the CLL, which clarify the sanctions available for SOEs, the effect of compliance programmes and mitigating factors on liability, the non-consideration of factors forbidden under Article 5 of the Convention, Brazil's jurisdiction over legal persons and provide guidance on compliance programs and internal controls (recommendations 2a, 3a, 3c, 3d, 5f, 7 and 12). Brazil also clarified the scope of its foreign bribery offence (recommendation 1). However, further clarification is required on the scope of the CLL and the available sanctions, (recommendations 2b, 3b, and 3e). The Group notes that the layers of regulations and legal text added to Brazil's legal framework to implement these recommendations may create difficulties in assessing and implementing Brazil's legal framework. Additionally, if Brazil pursues its intention to enact a criminal corporate liability regime, it should ensure that this is compliant with the approaches detailed in the 2009 Recommendation and consistent with the CLL (recommendation 2c).

4. Brazil's ability to confiscate the bribe and proceeds of bribery remains uncertain, and further guidance and training on confiscation are required (recommendation 4a, 4b and 4c). Law enforcement agencies have received training, but further efforts are required to ensure complete cooperation, resources, specialisation and expertise (recommendations 5a, 5b and 5c). Brazil has displayed a high level of transparency in its enforcement (recommendation 6). However, these positive law enforcement efforts may be hampered by Brazil's current statute of limitations. Brazil has introduced several Bills to rectify this issue which have received significant public support. Once these Bills are enacted, if adopted without changes, recommendation 8 could be deemed fully implemented.

5. On money laundering, Brazil has taken steps to ensure corporate vehicles cannot be used to launder money (recommendation 10a), and has made some efforts to maintain statistics on this offence (recommendation 10b). However, guidance and trainings specifically addressing money laundering predicated on foreign bribery are still required to help relevant institutions detect money laundering in bribery-related transactions (recommendation 10c).

6. Similarly, on accounting and auditing, Brazil has ensured that auditors are required to report suspicions of foreign bribery (recommendation 11c), but further steps are required to enforce accounting offences and promote detection through accountants and auditors (recommendations 11a and 11b).

7. In relation to tax issues, the Working Group welcomes Brazil's ratification of Convention on Mutual Administrative Assistance in Tax Matters (recommendation 13d). However, the Group remains concerned that the denial of tax deductibility is contingent on the opening of a foreign bribery investigation (recommendation 13a). Further steps are also required to ensure detection and reporting of foreign bribery by tax authorities to law enforcement authorities (recommendations 13b and 13c).

8. Similarly, although some positive steps have been taken, more efforts could be made to help public procurement and export credit authorities prevent and detect foreign bribery. In particular, this could be achieved with the publication of a manual which Brazil was developing at the time of this follow-up and which will provide guidance to export credit agencies on anti-corruption measures (recommendations 15a, 15b and 15c).

9. Brazil has been very active in raising private-sector and civil society awareness of foreign bribery, including among SMEs (recommendations 14a and 14b). However, whistleblower protection remains non-existent for private-sector employees creating a severe impediment to the detection of corruption (recommendation 14c).

Conclusions of the Working Group on Bribery

10. 10. Based on these findings, the Working Group concludes that recommendations 1, 2a, 3a, 3c, 3d, 5d, 5e, 5f, 6, 7, 9, 10a, 11c, 12, 13d, 14a, 14b, and 15b have been fully implemented, with recommendation 3a converted to a follow-up issue; recommendations 2b, 4b, 5a, 5b, 5c, 8, 10b, 11a, 11b, 13b, 13c, 15a and 15c have been partially implemented; and recommendations 2c, 3b, 3e, 4a, 4c, 10c, 13a, and 14c have not been implemented. On top of the converted recommendation 3a, the Working Group also agreed to continue to monitor follow-up issues 16a, 16c-k and 16n. Given developments reported by Brazil in domestic cases and in practice, it is proposed that the WGB cease monitoring follow-up issues 16b, 16l, and 16m.

11. The lead examiners note that the Working Group will continue to follow-up on Brazil's enforcement efforts in Brazil's Phase 4 evaluation (currently scheduled for 2022). In addition, should the Working Group have concerns about any significant institutional or legislative changes prior to Brazil's Phase 4 evaluation, the Group may request an *ad hoc* report on these changes.

PHASE 3 EVALUATION OF BRAZIL: WRITTEN FOLLOW-UP REPORT

Instructions

This document seeks to obtain information on the progress Brazil has made in implementing certain recommendations of its Phase 3 evaluation report. Brazil is asked to respond to the recommendations as completely as possible.

Responses to the question about “action taken” should reflect the current situation in your country, not any future or desired situation or a situation based on conditions which have not yet been met. For each recommendation, separate space has been allocated for describing future situations or policy intentions.

Please submit completed answers to the Secretariat by Friday 02 September 2016.

Name of country: BRAZIL

Date of approval of Phase 3 evaluation report: October 2014

Date of information: Friday 02 September 2016

PART I: RECOMMENDATIONS FOR ACTION

Text of recommendation 1:

1. Regarding the foreign bribery offence, the Working Group recommends that Brazil take all appropriate steps to clarify that the foreign bribery offence applies to bribes promised, offered or paid, in return for acts outside of the official's authorised competence. [Convention, Article 1]

Action taken as of the date of the follow-up report to implement this recommendation:

In May, 2015, the Brazilian Federal Prosecution Service (FPS) issued the Technical Note n. 1/2015 (ANNEX 1), addressed to all federal prosecutors. The document gives notice of the Phase 3 evaluation report and sets forth technical guidelines to enhance effectiveness in combating foreign bribery.

According to paragraph II.1.a of the guidelines, the offense [Active Bribery in an International Business Transaction] also applies when undue advantage is promised, offered or paid, in return for acts outside of the foreign public official's authorized competence, albeit related to the his/her public functions.

It also clarifies that the provision of the sole paragraph of Art. 337-B of the Penal Code includes 'promising, offering or providing undue advantage for the practice of an act outside of the authorized competence of a public official, who practices the act by taking advantage of his or her public functions.

The guideline is, therefore, in accordance with Article 1, 4(c) of the Convention and complies with Recommendation 1 as it clarifies that the foreign bribery offence applies to bribes promised, offered or paid, in return for acts outside of the official's authorised competences, whenever he/she takes advantage of his or her public functions.

Cases law related to domestic corruption have reflected the same understanding, as follows:

Superior Court of Justice (STJ) - HABEAS CORPUS HC 134985 AM 2009/0079628-0 (STJ)

Syllabus: HABEAS CORPUS. ACTIVE CORRUPTION (ARTICLE 333, SOLE PARAGRAPH, OF THE PENAL CODE). ALLEGED ATYPICAL CHARACTER OF CONDUCT. ABSENCE OF ACT PRACTICED BY AUDITOR OF THE FEDERAL REVENUE SECRETARIAT IN BENEFIT OF THE PLAINTIFF'S COMPANY. EXISTENCE OF EVIDENCE THAT THE PLAINTIFF PROMISED AND OFFERED UNDUE ADVANTAGE FOR THE CO-DEFENDANT, PUBLIC SERVANT, TO FAVOUR COMPANY OF HIS PROPERTY IN ADMINISTRATIVE TAX PROCEEDINGS AT THE MANAUS' FEDERAL REVENUE OFFICE (STATE OF AMAZONAS). ILLEGAL CONSTRAINT NOT

VERIFIED. REQUEST REJECTED.

(...)

3. In the case, the accusation describes an alleged act practiced, omitted or delayed by auditor of the Federal Revenue Secretariat in exchange of an undue advantage by the then plaintiff. **Even if the fiscal auditor, co-defendant in the legal action in question, did not formally act in administrative proceedings involving the plaintiff's company, it is certain that there is evidence in the judicial records that the above-mentioned public servant, availing himself of his public function, would have acted in a way to benefit it and favour it in administrative tax proceedings** at the Manaus' Federal Revenue Office.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 2(a):

2. Regarding the liability of legal persons, the Working Group recommends that Brazil:

(a) Issue, as a matter of priority, the announced Decree aiming at regulating several aspects of the Corporate Liability Law (CLL); [Convention Article 2; 2009 Recommendation III ii), V, Annex 1B]

Action taken as of the date of the follow-up report to implement this recommendation:

As already informed to the WGB in the one-year follow-up report, Brazil enacted on 18 March 2015 the Decree n. 8,420, which regulates aspects related to the implementation of the Corporate Liability Law (CLL). A translation into English of the Decree has also been provided to the Secretariat and examining countries and is attached to this report (ANNEX 2).

Additionally, the Office of the Comptroller General (CGU) issued Ordinance n. 909, which provides further parameters, rules and procedures to evaluate companies' anticorruption compliance programs (ANNEX 3), and Ordinance n. 910 of April 2015, which sets forth procedural rules for the administrative liability proceeding (ANNEX 4).

The issuance of Ordinance n. 910 was particularly important to ensure that the procedural rules could also be applied to other cases of liability of legal persons initiated under statutes different from CLL, particularly those related to the Public Procurement Law (Law n. 8,666/93). Even though there is still a lack of concluded cases investigated under the offenses provided for in the CLL (it doesn't apply to facts occurred before January 2014 - when it came into effect), several other administrative proceedings of liability of legal persons (PAR) are being conducted based on the procedures set forth by the CLL itself and its implementing normative rules.

Furthermore, Normative Ruling n. 1 was also issued in April 2015 to regulate the methodology for the calculation of the fine referred to in the CLL as an applicable sanction (ANNEX 5). Normative Ruling n. 2 (ANNEX 6) regulates the provision of data and information to feed both the Registry of Ineligible and Suspended Companies (CEIS) and the National Registry of Punished Companies (CNEP).

It is important to recall that the CLL is a self-executing law, which means that it is enforceable since the moment it entered into force. The regulating Decree and other related regulating acts aimed at specifying or clarifying some of its provisions.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 2(b):

2. Regarding the liability of legal persons, the Working Group recommends that Brazil:

(b) Take appropriate steps to clarify: (i) whether, in practice, the CLL covers bribery of foreign public officials in international business transactions, as defined under Article 1 of the Anti-Bribery Convention; (ii) the application of the law to all legal persons, including SOEs, as well as companies receiving financing from BNDES; (iii) the coverage under "undue advantage" of any incentive or advantage, pecuniary or not, received by the public agent from private agents, either to perform activities that go beyond his/her legal attributes, or to perform activities within his/her duties; and (iv) the interpretation of the "interest" and "benefit" criteria to ensure that it covers situations where, for instance, a legal person bribes on behalf of a related legal person (including a subsidiary, holding company, or member of the same industrial structure); [Convention Article 2; 2009 Recommendation III ii), V, Annex 1B]

Action taken as of the date of the follow-up report to implement this recommendation:

The Technical Note n. 01/2015 (ANNEX 1), issued by the FPS, addresses the issues pointed out in this recommendation as follows:

“Guidelines: i) the law [CLL] covers the bribery of foreign public officials in international business transactions; ii) the law applies to all legal entities, including small and medium-sized companies as well as companies financed by the BNDES (Brazilian Development Bank); iii) the term “undue advantage” refers to any incentive or benefit, pecuniary or not, received by the public agent from private agents, either to perform activities that go beyond his/her legal attributes or to perform activities within his/her duties; iv) the interpretation of “interest” and “benefit” also applies to situations in which a legal person resorts to bribery in favor of another legal person (including a branch, a holding company or an entity in the same institutional structure).” (paragraph II.1.b)

(i) Since the CLL has recently entered into force, and it shall be applied solely to facts occurred after January 2014, there is no concluded case law supporting the coverage of bribery of foreign public officials in international business transactions in compliance with Article 1 of the Anti-Bribery Convention. Nevertheless, it is important to highlight once again that the Law covers a set of wrongful acts performed against national and foreign public administration, including foreign bribery, as set forth in Article 5. It is also certain that the term “public official” under CLL encompasses both national and foreign public officials:

“**Article 5.** For the purposes of this Law, wrongful acts against national or **foreign public administration** bodies are acts performed by the legal entities referred to in the Sole paragraph of Article 1 to the detriment of national or **foreign public assets, of public administration principles, or to Brazil’s international commitments**, and are defined as follows:

I – to promise, offer or give, directly or indirectly, an undue advantage to a public official or to a third party related to him/her;

(...)

Paragraph 1. Public agencies and entities, or diplomatic representations of a foreign country, at any government level or scope, as well as legal entities directly or indirectly controlled by the government of a foreign country are all considered foreign public administration.

Paragraph 2. For the purposes of this Law, international public organizations will be considered equivalent to foreign public administration bodies.

Paragraph 3. For the purposes of this Law, those who, even transitorily or without compensation, hold a public position, job or office in government agencies and entities, or in diplomatic representations of a foreign country, as well as in legal entities directly or indirectly controlled by the government of a foreign country, or in international public organizations, will be considered foreign public agents.

(ii) The SOEs Statute has been recently enacted (ANNEX 7) – Law n. 13,303/16. This legislation makes it explicit that the CLL is integrally applicable to the SOEs and their subsidiaries, being the only exceptions the sanctions provided by Article 19, II (partial suspension or interdiction of its activities), III (compulsory dissolution of the legal entity), and IV (prohibition from receiving incentives, subsidies, grants, donations or loans from

public agencies or entities and from public financial institutions or government-controlled entities):

Article 94. The sanctions provided for in Law no 12,846, of August 1, 2013, except for those set forth in items II, III and IV of art. 19 of the said Law apply to state-owned and state-controlled enterprises and their subsidiaries.

With regard to the application of the CLL to companies receiving financing from the BNDES there is no room for discussion. Brazil reiterates that one of the sanctions provided by the Law is the prohibition from receiving incentives, subsidies, grants, donations or loans from public agencies or entities and from public financial institutions or government-controlled entities from 1 (one) to 5 (five) years (Article 19, IV). This provision demonstrates that not only the Law is applicable to those legal persons financed by the BNDES, but also that they may be prohibited from receiving such financing if they perform any of the wrongful acts provided by the Law. That understanding is not controversial and there is no reason to question the coverage of the CLL on this matter.

(iii) According to case law related to domestic corruption, the term “undue advantage” covers any incentive or advantage, pecuniary or not, received by the public agent and that does not relate to his/her regular salary.

CASE 1: Federal Circuit Court of Appeals -5th Region (TRF-5) - ACR Criminal Appeal APR 200882010022505 (TRF-5)

Syllabus: CRIMINAL AND CRIMINAL PROCEEDING LAW. ACTIVE CORRUPTION. OFFER OF UNDUE PECUNIARY ADVANTAGE TO FEDERAL HIGHWAY POLICEMAN. SPECIFIC INTENT. APPLICATION OF THE DE MINIMIS PRINCIPLE. IMPOSSIBILITY.

(...)

3. The “active corruption” type of offence aims at protecting probity and good faith of the Administration and its agents, so that the legal interest protected by the criminal legal framework (administrative morality) does not translate itself into a determined economic value, being irrelevant therefore, the nature or the amount of the undue offer perpetrated by the accused.

CASE 2: Court of Justice of the State of Paraná (TJ-PR) – Criminal Appeal ACR 5682555 PR 0568255-5 (TJ-PR)

Syllabus: CRIMINAL APPEAL. ACTIVE CORRUPTION (ARTICLE 333 OF THE PENAL CODE). CONVICTION. ACQUITTAL REQUEST UNDER THE LACK OF MATERIALITY OF THE CRIME SINCE THE MONEY OFFERED WAS NOT SEIZED NEITHER PHOTOCOPIED. LACK OF ADMITTANCE. GENERAL INTENT CRIME. NO NEED TO SEIZE THE MONEY OFFERED. CRIME WHICH, BY ITS NATURE, IS CONSUMMATED WITH THE PRACTICE OF ANY OF THE CONDUCTS DESCRIBED IN THE TYPE OF OFFENCE (OFFER

AND/OR PROMISE ADVANTAGE). EVIDENTIAL CONTENT WHICH, ADDED TO THE CONFESSION OF THE APPELLANT, SUBSTANTIATE THE MAINTENANCE OF THE CONVICTION. CLAIM FOR REDUCTION OF THE PENALTY DUE TO SPONTANEOUS CONFESSION (ARTICLE 65, III, 'D' OF THE PENAL CODE. IMPOSSIBILITY. FIXED PENALTY IN THE LEGAL MINIMUM. INTELLIGENCE OF THE JUDICIAL PRECEDENT NUMBER 231 OF THE SUPERIOR COURT OF JUSTICE (STJ). REQUEST FOR SUBSTITUTION OF THE DEPRIVATION OF LIBERTY SENTENCE FOR ANOTHER TYPE OF SANCTION (ARTICLE 59, IV OF THE PENAL CODE). PLEDGE WAS NOT SET ASIDE. SUBSTITUTION OF THE CORPORAL PUNISHMENT DUE TO THE SENTENCE RENDERED. APPEAL PARTIALLY HEARD AND, FOR THE PART WHICH WAS HEARD, REJECTED.

1. Taking into consideration that the crime of active bribery is a formal crime, it is unnecessary to seize the money offered or its photocopy to prove the commitment of the crime, **especially because the thing on which rests the criminal offence (*objeto material*) of the transfer (*dação*) or promise is the undue advantage (...). This advantage may not be of asset nature. Indeed, it may be any advantage, material or immaterial**, because the legislation did not specify that. It only requires that it is undue”.

Additionally, it should be clarified that the debate on the performance, by the foreign public agent, of activities that go beyond his/her authorized competences is not pertinent in regard to the liability of legal persons for the offence of foreign bribery. As stated in Article 5, I, of the CLL, the provision refers to bribes promised, offered or paid to a public official, making no reference to the commitment of acts either within or outside of his/her authorized competence:

“Article 5. For the purposes of this Law, wrongful acts against national or foreign public administration bodies are acts performed by the legal entities referred to in the Sole paragraph of Article 1 to the detriment of national or foreign public assets, of public administration principles, or to Brazil’s international commitments, and are defined as follows:

I – to promise, offer or give, directly or indirectly, an undue advantage to a public official or to a third party related to him/her;”

(iv) The terms “interest” and “benefit” are broad concepts provided by Article 2, so as to establish the strict liability of legal entities. According to this provision, the company will be held liable, whenever the wrongful act is committed in its benefit, regardless of the will of the directors or whoever may have performed the act on behalf of the company. Additionally, it is important to clarify that the term “interest” is used in a way to enlarge the scope of the Law, eliminating any need of actual monetary or contractual benefit. Also, in regard to situations where, for instance, a legal person bribes on behalf of a related legal person (which includes a subsidiary, holding company, or member of the same industrial structure), Article 2 of CLL may be combined with Article 5, II, III, which states that a wrongful act, sanctioned

by the Law, includes:

“II – to demonstrably finance, defray, sponsor or in any way subsidize the performance of the wrongful acts established in this Law;

III – to demonstrably make use of a third party, either an individual or a legal entity, in order to conceal or dissimulate the entities’ actual interests or the identity of those who benefited from the performed acts”

As an illustrative case of national corruption, we inform that CGU is currently investigating one company for allegedly bribe a public official of an SOE as an intermediary of another company. The case involves Company A, a Brazilian holding that operates in the civil construction, energy and transport sector, naval industry and other business. Company A is being investigated in ‘Lava Jato’ case. Company B, the company allegedly used as an intermediary, is a supplier of steel products for industries and big size construction sites. The SOE is a Brazilian oil enterprise. Company B made overpriced sales operations with Company A. The undue profits obtained from those operations with Company A were allegedly used by Company B to pay bribes to public official of the SOE, on the interest of Company A. Trough that strategy, the money was transmitted from Company A to Company B by using an ordinary business relation, in order to disguise the connection between the payment to public official and Company A. Nevertheless, evidence was built to demonstrate that Company A was the beneficiary of that payment. Company A has innumerous contracts with the SOE.

Besides, we should highlight once again that parent, controlled or affiliated companies or consortium members are jointly held liable for the perpetration of acts provided for in the CLL:

“Article 2. Legal entities shall be held strictly liable, in the administrative and civil spheres, for any of the wrongful acts established in this Law performed in their interest or for their benefit, exclusive or not.

(...)

Paragraph 2. Parent, controlled or affiliated companies or consortium members, within the scope of their respective consortium agreement, shall be held jointly liable for the perpetration of acts provided for in this Law, being such liability restricted to the payment of applicable fines and to the full compensation for occasional damages.”

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 2(c):

2. Regarding the liability of legal persons, the Working Group recommends that Brazil:

(c) Ensure that if the draft Bill to establish the criminal liability of legal persons passes into law, it follows one of the two approaches recommended under Annex I B) of the 2009 Recommendation and either supersedes or operates in a manner that is consistent with the administrative CLL. [Convention Article 2; 2009 Recommendation III ii), V, Annex 1B]

Action taken as of the date of the follow-up report to implement this recommendation:

There are two elements regarding this recommendation that we deem important to clarify. First of all, according to the Brazilian legal system, there is no incompatibility in the co-existence of a civil and administrative regime of liability and a criminal one, which means that, in case a Bill establishing the criminal liability of legal persons passes into Law, it would certainly operate consistently with the CLL, given that the civil, criminal and administrative spheres are independent and run in parallel.

Secondly, the OCDE Working Group on Bribery should not be supposed to assess draft Bills, considering that any Bill is subject to an autonomous legislative process of approval, during which amendments and modifications are likely to be made.

The draft Bill to which the recommendation makes reference still runs the due legislative course. It is pending of approval in the Senate, where it waits for the designation of a Senator to report on it to the Commission of Constitution and Justice.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 3(a):

3. With respect to sanctions, the Working Group recommends that Brazil:

(a) Review the CLL to clarify which sanctions are available to SOEs while ensuring that these are effective, proportionate and dissuasive, including for the largest SOEs; [Convention Article 3; 2009 Recommendation III (ii) and V]

Action taken as of the date of the follow-up report to implement this recommendation:

As informed in section correspondent to Recommendation 2 (b), Brazil has recently enacted the SOEs Statute (ANNEX 7) – Law n. 13,303/16, which makes it explicit that the sanctions provided by the CLL are applicable to the SOEs and their subsidiaries, with the

only exception of those provided by Article 19, II (partial suspension or interdiction of its activities), III (compulsory dissolution of the legal entity), and IV (prohibition from receiving incentives, subsidies, grants, donations or loans from public agencies or entities and from public financial institutions or government-controlled entities):

Article 94. The sanctions provided for in Law no 12,846, of August 1, 2013, except for those set forth in items II, III and IV of art. 19 of the said Law apply to state-owned and state-controlled enterprises and their subsidiaries.

Since the SOEs Statute already clarifies sanctions available to SOEs, there is no need to review the CLL on this matter.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 3(b):

3. With respect to sanctions, the Working Group recommends that Brazil:

(b) Re-consider including debarment as a possible administrative or civil sanction; [Convention Article 3; 2009 Recommendation III (ii) and V]

Action taken as of the date of the follow-up report to implement this recommendation:

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 3(c):

3. With respect to sanctions, the Working Group recommends that Brazil:

(c) Clarify by any appropriate means that: (i) mitigating factors, although inserted in the Chapter of the CLL that regulates administrative liability, will be taken into consideration in determining the judicial/civil liability; and (ii) that “the offender’s economic situation” (under article 7. VII) cannot

encompass considerations forbidden under Article 5 of the Convention, in particular with regard to SOEs but also companies receiving financing from the State, notably through development banks; [Convention Article 3 and Article 5; 2009 Recommendation III (ii) and V]

Action taken as of the date of the follow-up report to implement this recommendation:

(i) Paragraph II.1.c of the Technical Note No. 01/2015 (ANNEX 1), issued by the FPS in May, 2015, presents the following Guidelines to prosecutors:

“i) mitigating factors, although inserted in the Chapter of the Corporate Liability Law that regulates administrative liability, will be taken into consideration in determining the judicial/civil liability; and (ii) “the offender’s economic situation” (under Article 7, VI) cannot encompass considerations forbidden under Article 5 of the Convention, in particular with regard to SOEs, but also companies receiving financing from the State, notably through development banks.”

We should also mention that the FPS and the Attorney General’s Office (AGU) are actively taking part of the negotiations of leniency agreements led by the CGU. There are currently 13 agreements being negotiated with the participation of at least one of those two agencies, which are responsible for undertaking the judicial/civil liability under the CLL. In that sense, even though the analysis of the mitigating factors is limited to the section on the CLL regarding administrative proceedings, practice is showing that the FPS and the AGU participate in the negotiations of leniency agreements, where such factors are being taken into account, notably the cooperation of the legal entity to the investigations of the offenses and the existence of internal mechanisms of compliance.

(ii) The CGU Ordinance n. 910 (ANNEX 4), issued in April, 2015, clearly states in its Article 40 that the decision about either **initiating or closing** the preliminary investigation, the liability administrative proceeding (PAR) and the negotiation of leniency agreement must not be influenced by:

- I – considerations of national economic interest;
- II – the potential effect in Brazil affairs with other countries; or
- III – the identity of involved individuals or legal entities.

That provision clarifies, therefore, that the factors forbidden under Article 5 of the Convention cannot be taken into account in the decision of initiating, conducting or closing an administrative proceeding against legal persons.

According to Article 17, IV, of the CLL’s implementing Decree (ANNEX 2), the offender’s economic situation (under article 7. VII) will be considered solely in terms of the calculation of the fine, in order to ensure that the sanction will be effective and dissuasive:

“Article 17. Calculation of the fine begins with the sum of the values corresponding to the following percentages of gross revenue of the legal entity from the last fiscal year prior to the initiation of PAR proceedings, excluding taxes:

(...)

IV – one percent for the offender’s economic situation based in the presentation of General Solvency (GS) and General Liquidity (GL) index higher than one and of net profits in the last fiscal year prior to the occurrence of the wrongful act;”

There is still no concluded case law on foreign bribery that could be quoted. However, in order to illustrate that considerations of national economic interest don’t influence the decision of initiating an investigation, we inform that CGU has recently issued a sanction of debarment to a Brazilian big company (Mendes Júnior Trading e Engenharia SA) that used to hold numerous of contracts with Brazilian public administration. The investigations were conducted under the procedures set forth by CLL. The penalties applied, however, were those of the Public Procurement Law (Federal Law 8.666/90), because the offences were committed before the CLL entered into force. Additionally, other companies are currently under investigation. All of them are big sized Brazilian companies with several contracts with Brazil’s public administration.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 3(d):

3. With respect to sanctions, the Working Group recommends that Brazil:

(d)Take the necessary steps to ensure that the Decree implementing the CLL, to be issued by the Federal Executive Branch (i) clarifies that internal controls and compliance programs provided under article 7.VIII can only be taken into account as mitigating factors and cannot be used as a complete defence from liability by companies; (ii) provides a sufficient level of detail on “the parameters of evaluation of the mechanisms and procedures provided” to allow both the companies to anticipate what they may be able to expect from good internal controls and compliance and the CGU and the judiciary to make a consistent use of this mitigating factor; and (iii) clarifies that the impact of the ethics and compliance programs will not be limited to mitigating administrative sanctions and will also be taken into account when determining civil sanctions; [Convention Article 3; 2009 Recommendation III (ii) and V]

Action taken as of the date of the follow-up report to implement this recommendation:

(i) Compliance programs provided under article 7.VIII can only be taken into account as mitigating factors and cannot be used as a complete defence from liability by companies, meaning that all aspects deriving from this liability, such as the obligation of full compensation for occasional damages, will remain regardless the evaluation of companies’

compliance programs.

Concerning the evaluation of companies' compliance programs for the purposes of mitigating sanctions, Article 18 of the implementing Decree determines that the fine may be reduced in up to 4% of the gross revenue if the company proves to have an effective compliance program in place:

“Article 18. The resulting sum of the factors from Article 17 will be subtracted by the values corresponding to the following percentages of gross revenue of legal entity from the last fiscal year prior to initiation of PAR proceedings, excluding taxes:

(...)

V – one percent to four percent if it is corroborated that the legal entity has and applies an integrity program, pursuant to parameters established in Chapter IV.”

Following the CLL's rationale (the Law itself does not authorize compliance programs to be used as a complete defense), the parameters defined in the Decree and in Ordinance n. 909 (ANNEX 3) clarify that sound compliance programs shall only be taken into account as a mitigating factor in the limit of four percent of the gross revenue and will not waive companies' liability. In that sense, both Decree and Ordinance reinforce the understanding that internal controls and compliance programs provided under Article 7, VIII, shall only be taken into account as mitigating factors, according to a specific methodology for the calculation of the applicable sanction, and not as a complete defense from liability.

(ii) Article 42 of the implementing Decree (ANNEX 2) provides for detailed parameters for the evaluation of compliance programs:

“Article 42. For the purposes of the provisions of Paragraph 4 of Article 5, the integrity program will be evaluated concerning as to its existence and enforcement in accordance with the following parameters:

I – commitment by the senior management of the legal entity, including directors, as evidenced by their visible and unequivocal support for the program;

II – standards of conduct, code of ethics, integrity policies and procedures applicable to all employees and administrators, regardless of position and duties;

III - standards of conduct, code of ethics, integrity policies and procedures extended, when necessary, to third parties such as suppliers, service providers, intermediaries and associates;

IV – periodical training on the integrity program;

V – periodical risk assessment to make any necessary adaptations to the integrity program;

VI – accounting records that accurately and fully reflect the transactions of the legal entity;

VII- internal controls that ensure the prompt preparation and reliability of the financial reports and statements of the legal entity;

VIII – specific procedures to prevent fraud and illicit acts within tendering proceedings, execution of administrative contracts or in any interaction with public sector, even if intermediated by third parties, such as in payment of taxes, submission to supervision, or obtainment of authorizations, licenses, permissions and certificates;

IX – independence, structure and authority of the internal body responsible for enforcing the integrity program and monitoring its performance;

X – channels for reporting irregularities which are open and widely disseminated to

employees and third parties, and mechanisms for the protection of whistleblowers;
XI – disciplinary measures in cases of violations of the integrity program;
XII – procedures that ensure the prompt interruption of violations or irregularities and the timely reparation of the damage caused;
XIII – due diligence for hiring and, as the case may be, supervising third parties such as suppliers, service providers, intermediaries and associates;
XIV – verification, during mergers, acquisitions and corporate restructuring, of any irregularities or illicit acts or of the existence of vulnerabilities of legal entities involved in such operations;
XV – continuous monitoring of the integrity program, aiming at improving its effectiveness to prevent, detect and combat the occurrence of wrongful acts as provided for in Article 5 of Law n° 12.846 of 2013; and
XVI – transparency of the legal entity regarding donations made to candidates and political parties.

Paragraph 1. In the evaluation of the parameters to which this Article refers, the size and the specific characteristics of the legal entity will be considered, such as:

I – the number of officials, employees and collaborators;
II – the complexity of the internal hierarchy and the number of departments, directorates or sectors;
III – the use of intermediaries as consultants or commercial representatives;
IV – the market sector in which it operates;
V – the countries in which it operates, directly or indirectly;
VI – the level of interaction with the public sector and the importance of government authorizations, licenses and permits in its operations; and
VII – the number and location of legal entities that integrate the economic group; and
VIII – the qualification as microenterprise or small-sized enterprise.

Paragraph 2. The effectiveness of integrity program regarding the wrongful act under investigation will be considered for the purposes of evaluation to which this Article refers.

Paragraph 3. In the evaluation of microenterprises and small-sized enterprises the formalities of the parameters in this Article will be reduced, and the Items III, V, IX, X, XIII, XIV and XV of this Article will not be specifically applied.

Paragraph 4. The Minister of State Head of the Office of the Comptroller General is responsible for issuing supplementary guidelines, rules and procedures related to the evaluation of integrity program to which this Chapter refers.

Paragraph 5. The reduction in evaluation parameters for microenterprises and small-sized enterprises described in Paragraph 3 may be subject to joint regulation by the Minister of State of the Secretariat of Micro and Small-Sized Enterprise and the Minister of State Head of Office of the Comptroller General.”

Both Decree and Ordinance n. 909 (ANNEX 3) are valuable guides for companies to anticipate what to expect from good internal controls and compliance programs. Likewise, the CGU and the Judiciary, when assessing such programs, shall be guided by these two pieces of regulation.

(iii) As already informed in section related to Recommendation 3 (c), the impact of the ethics and compliance programs is not to be limited to the context of administrative sanctions, as well as the impact of the other mitigating factors. According to the paragraph II.1c of the guidelines issued by the FPS (ANNEX 1), the mitigating factors, despite being inserted in the CLL chapter regarding administrative liability, must also be taken into consideration in the establishment of civil (judicial) liability of legal persons. In practice, the FPS and the Attorney General’s Office (AGU) are actively taking part to the negotiations of leniency

agreements led by the CGU, where such factors are being taken into account. As mentioned, the FPS and the AGU are the agencies responsible for undertaking civil liability.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 3(e):

3. Regarding investigation and prosecution of foreign bribery, the Working Group recommends that Brazil:

(e) (i) Review the range of sanctions available for successor companies and in case of joint liability under article 4 paragraphs 1 and 2 of the CLL with a view to providing more flexibility and, in particular, to allow for the confiscation of the profit of foreign bribery and the imposition of sanctions that will be better adapted to each company's situation; and (ii) remove the limitation of the liability of the successor companies to the "transferred assets". [Convention Article 3; 2009 Recommendation III (ii) and V]

Action taken as of the date of the follow-up report to implement this recommendation:

(i) Article 4 of the CLL establishes the liability of successor companies and the joint liability of parent, controlled or affiliated companies or consortium members, being part of the applicable sanctions in both cases the payment of fines. According to Article 20, para. 1, I, of the implementing Decree (ANNEX 2), fines applied to successor companies and to companies held jointly liable will never be less than the value of the obtained advantage, which, for that end, encompasses the value of the profit of foreign bribery.

“Article 20. (...)

Paragraph 1. In all cases, the final amount of the fine will have the following limits:

I – minimum, the highest value between the **obtained advantage** and that established in Article 19;

(...)

Paragraph 2. The value of the **obtained or intended advantage** is equivalent to the **obtained or intended gains by the legal entity which would not have occurred without the practice of a wrongful act**, adding, when applicable, to the corresponding value any improper advantage promised or given to a public agent or to thirds parties related thereto.”

It is also important to recall that Article 3, 3, of the Convention provides that:

“Each Party shall take such measures as may be necessary to provide that the bribe and the proceeds of the bribery of a foreign public official, or property the value of which corresponds to that of such proceeds, are subject to seizure and confiscation **or that monetary sanctions of comparable effect are applicable.**”

In that sense, the range of sanctions available for successor companies and in case of joint liability under Article 4, paragraphs 1 and 2, of the CLL are deemed as dissuasive and allow for a monetary equivalent of the confiscation of the profit of foreign bribery, in compliance with the terms of the Convention.

(ii) The limitation of the liability of the successor companies to the transferred assets is consistent with the Brazilian legal system as a whole, in order to limit the sanctioning to those actors and assets involved in the wrongdoing. Nevertheless, it is important to reiterate that Article 4, para. 1, provides for an exception to the restriction of sanctions available in case of simulation or evident fraud intention. In such circumstances, the liability of the successor encompasses all sanctions available under the CLL.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 4(a):

4. Regarding confiscation, the Working Group recommends that Brazil:

(a) Adopt necessary measures, including reviewing its legislation as necessary: (i) to allow for the confiscation of a bribe or its monetary equivalent in cases of foreign bribery; (ii) to ensure that confiscation of the proceeds of foreign bribery is always available, including in the case of successor companies, companies held jointly liable, and when concluding leniency agreements with cooperative offenders; [Convention Article 3; 2009 Recommendation III (ii) and V]

Action taken as of the date of the follow-up report to implement this recommendation:

(i) The obligation brought by Article 3 of the Convention states that either the bribe and the proceeds of the bribery of a foreign public official shall be subject to seizure and confiscation or a monetary sanction of comparable effect shall be applied.

Article 20, paragraph 1, I, and paragraph 2, of the Decree n. 8,420/15 (ANNEX 2) establishes that the fine must not be lower than the value of the obtained advantage, which, for its part, shall be summed to the value of the bribe. This provision allows for a monetary sanction of comparable effect to the confiscation of the bribe, in compliance with the terms of the

Convention.

Article 20, para.1, I, and para. 2, of the implementing Decree state that:

“(…)

Paragraph 1. In all cases, the final amount of the fine will have the following limits:

I – minimum, the highest value between the **obtained advantage** and that established in Article 19;

(…)

Paragraph 2. The value of the obtained or intended advantage is equivalent to the obtained or intended gains by the legal entity which would not have occurred without the practice of a wrongful act, adding, when applicable, to the **corresponding value any improper advantage promised or given to a public agent** or to thirds parties related thereto.”

(ii) Based upon the same above-mentioned provisions of the implementing Decree, fines applied to companies punished under the terms of the CLL, including successor companies and companies held jointly liable, will never be less than the value of the obtained advantage. This provision allows for a monetary sanction of comparable effect to the confiscation of the bribe, then in compliance to the terms of the Convention. Please refer to section related to recommendation 3(e).

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 4(b):

4. Regarding confiscation, the Working Group recommends that Brazil:

(b) Make full use of the expertise available in the CGU by conferring on a specialised unit the responsibility for calculating the proceeds of bribery; and ensure this unit is promptly issued with the guidelines that have been prepared to determine how the proceeds of bribery should be calculated and that the unit receives training to this effect; [Convention Article 3; 2009 Recommendation III (ii) and V]

Action taken as of the date of the follow-up report to implement this recommendation:

The CLL’s implementing Decree (ANNEX 2) provides some important parameters for the

calculation of the proceeds of bribery, which will be considered for the purposes of calculating the applicable fine. According to Article 20, such values will be defined within the administrative liability proceeding (PAR) and will be included in the final report of the commission, which shall also contain an estimative of the values correspondent to the obtained advantage:

“Article 20. (...)

Paragraph 2. The value of the obtained or intended advantage is equivalent to the obtained or intended gains by the legal entity which would not have occurred without the practice of a wrongful act, adding, when applicable, to the corresponding value any improper advantage promised or given to a public agent or to thirds parties related thereto.”

Additionally, the CGU experts are making full use of the OECD-StAR joint analysis “Identification and Quantification of the Proceeds of Bribery”, which was translated into Portuguese and made available to the officers involved in the calculation of the fine and related aspects, such as the proceeds of the bribery.

It is also relevant to reiterate that there is one specific unit responsible for the coordination of all the administrative liability proceedings (PAR) within CGU. This unit is directly under the supervision of the National Disciplinary Board, a CGU department with more than 13 years of expertise on investigations and production of administrative evidence of wrongdoing. COREP has a permanent staff, but the commissions responsible for the PARs are frequently formed also by public servants from other departments of CGU due to their specific skills on investigation, audit or public policy - when these skills are relevant for the cases under investigation. In addition, audit experts are assigned as advisors of the commissions whenever more complex evidence or analysis are needed to support the calculation of the proceeds of bribery and the fine. With this strategy, CGU is not only taking advantage of its multidisciplinary teams to conduct the administrative liability proceedings, but also increasing the number of public servants with expertise on the CLL.

The efforts made by CGU are demonstrated by the increasing number of proceedings initiated each year to investigate legal entities, especially after the CLL came into force: in 2013, three proceedings were initiated; in 2014, eight cases were initiated; in 2015, 21 proceedings were initiated. The numbers include proceedings initiated under CLL and other statutes, such as the Public Procurement Act – for those cases that investigate acts committed before the CLL was implemented.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 4(c):

4. Regarding confiscation, the Working Group recommends that Brazil:

(c)Take the necessary steps to ensure that data and statistics are maintained at the federal level regarding the confiscation of the proceeds of foreign bribery and other corruption and serious economic crimes. [Convention Article 3; 2009 Recommendation III (ii) and V]

Action taken as of the date of the follow-up report to implement this recommendation:

The FPS launched in December 2014 a portal entirely dedicated to the fight against corruption (combateacorrupcao.mpf.mp.br), which constitutes a valuable tool for the monitoring and control over anti-corruption proceedings conducted by the agency. The system is integrated to the Transparency Portal of the FPS and presents statistics on corruption in Brazil. It lists the criminal offences, including the crimes against foreign public administration, and presents emblematic cases and updates related to big corruption cases.

Besides, the Portal provides two statistical tools that enable anyone to visualize data on the judicial or extrajudicial actions initiated by the FPS to combat corruption. The first one is a tool of Business Intelligence that allows for the assessment of graphics and interactive tables for the follow-up of cases under investigation. Data regarding the number of indictments per year, by state of the Federation and by criminal offence may be consulted. Additionally, the Corruption Map presents information on the geographic distribution of proceedings initiated by the FPS throughout the country, presenting links to the “Único System”, and allowing for the consultation on the status of proceedings. The “Único” is an integrated system of institutional information of the FPS and it aims at assisting its users with the management of the proceedings’ flows. The tool was created in order to streamline and unify the processing of judicial and administrative documents, allowing for the national integration among the FPS units and enhancing celerity and security.

The section related to statistics is available at: <http://www.combateacorrupcao.mpf.mp.br/estatistica>

Additionally, it is worth mentioning the FPS initiative called “Ten Measures Against Corruption”, which encompasses proposals regarding the fight against corruption and impunity. The Measures are grouped into twenty Bills, already sent to the National Congress for appreciation and vote. The initiative counted on a massive campaign for mobilizing public opinion, and the Bills were endorsed as popular initiatives. Among the Measures there is one targeting accountability of judicial courts and prosecution services, including through the obligation of making publicly available annual statistics regarding the number of improbity and criminal actions of corruption initiated, the number of proceedings with a final conviction, filed or pending of decision, along with the processing period. The Bill provides for corrective measures in case such statistics point to unjustified delays.

Furthermore, within the National Strategy to Combat Corruption and Money Laundering

(ENCCLA) – an initiative created in 2003 that encompasses more than 60 agencies from each of the three branches for the development of actions to prevent and fight corruption and money laundering – the National Council of Justice (CNJ) proposed and coordinated the Action n. 15 in 2015, in order to propose and demand permanent statistics from every court in its jurisdiction in regard to cases involving corruption and money laundering.

In order to implement such Action, joint meetings between representatives of the Judiciary Research Directorate and the councillors of the CNJ were held, also involving some interested governmental bodies, including the CGU and representatives of the FPS and the Federal Police. Those meetings aimed at better defining the methodology to collect statistical data among the Courts of Justice.

Currently, the Judiciary Research Directorate is developing a draft appendix to the resolution n. 76, which institutes the Judiciary Statistics System, in order to make it possible the collection of information regarding the proceedings and procedures related to corruption, money laundering and administrative improbity. It is expected that the inclusion of specific questions on such matters will generate better results and accurate data.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 5(a):

5. Regarding the investigation and prosecution of foreign bribery, the Working Group recommends that Brazil:

(a) Ensure cooperation between the prosecutors and the police as necessary for foreign bribery investigations and conclude an MOU between the CGU and the Federal Prosecution Service (FPS) providing a detailed framework for the enhanced cooperation between the two agencies in the context of the administrative proceedings, the judicial/civil proceedings and the criminal proceedings, including information on the initiation of proceedings against natural and legal persons; [Convention Article 5; 2009 Recommendation XIII and Annex I D]

Action taken as of the date of the follow-up report to implement this recommendation:

Prosecutors, the police and the CGU have maintained a productive cooperation aiming at combating foreign bribery. Until August 2016, a total of 228 special operations were initiated, as a result of the joint work between the CGU, the Federal Police Department (DPF) and the FPS.

As previously demonstrated to lead examiners, the Office of the Comptroller General (CGU) and the Federal Prosecution Service (FPS) signed in September 2014 a Technical Cooperation

Protocol (ANNEX 8) that aims to increase the coordination between the two institutions for the fight against corruption. The Protocol's goals include the development of joint actions, the shared use of the information available in the respective databases, and the promotion of exchange of information for the criminal and civil liability of persons involved in acts of corruption. Among the commitments, the Protocol states that the parties shall provide each other with relevant information for the instruction of their respective proceedings.

Practical examples of cooperation and exchange of information are evident in the "Lava-Jato" case. The FPS has shared information on a list of over 500 investigative proceedings, which included, for instance, information regarding a big size Brazilian construction company. In this specific case, the administrative liability proceeding (PAR) commission formed within CGU counted on the support of federal prosecutors, who provided the commission with documents related to the criminal action initiated against the directors of the company.

Besides, as already mentioned in the section correspondent to recommendation 3 (c), the FPS is working in close collaboration with the CGU in the negotiations of leniency agreements. Before initiating its work, the commission assigned to coordinate each leniency agreement within CGU shall contact the FPS for the designation of a prosecutor who will be accompanying the relevant steps of the negotiations. Practice has shown, therefore, that investigations within the administrative and judicial spheres are coordinated, including in what it relates to the sharing of information regarding the initiation of proceedings.

Finally, it is also important to mention that the CGU works in close cooperation with the DPF, particularly in the context of special operations and in the conduct of investigations into fraud in procurement, embezzlement of public funds and corruption.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 5(b):

5. Regarding the investigation and prosecution of foreign bribery, the Working Group recommends that Brazil:

(b) Intensify efforts to provide guidance and regular training to the Federal Police Department (DPF), the FPS, and the CGU on the foreign bribery offence, the CLL, the basis and method of calculation of the proceeds of the bribe, and, as necessary, the new investigative techniques available under the Organised Crime Law; [Convention Article 5; 2009 Recommendation XIII and Annex I D]

Action taken as of the date of the follow-up report to implement this recommendation:

With regard to guidance and regular training to the CGU on the CLL and the foreign bribery offence, a detailed manual for the conduction of administrative liability proceedings (PAR) is

being prepared – COREP, the unit responsible for the coordination of PAR within CGU already submitted a draft version for publication. Besides, the CGU has provided international training through the TRACE Anti-Bribery Specialist Accreditation (TASA) for 25 public servants acting in the conduction of such proceedings, including those involved in the calculation of the fine and the proceeds of the bribe and in the analysis of compliance programs. Guidance has also been provided through the dissemination of the OECD-StAR joint analysis “Identification and Quantification of the Proceeds of Bribery”, which was translated into Portuguese and made available as a basis document.

Additionally, workshops on PAR have been provided to public agents acting in regional units of the CGU and other relevant anti-corruption agencies, such as FPS, Department of Federal Police, Office of the Attorney General, courts of account, as well as local authorities. These workshops include guidance on the conduction of the administrative proceedings against legal persons and the parameters to be followed in the analysis of compliance programs. Until August 2016, 07 courses had already been offered for 473 participants. Eight other workshops are to be offered until the end of the year for more 600 participants and 10 more workshops are already planned to occur during 2017. CGU has also undertaken specific courses for its own public officials: one about Compliance Programs and CLL for 31 participants, one for 43 participants about Integrity Audit within SOEs, one about Leniency Agreement for 62 participants, and one course on CLL for 43 participants – more than 30 senior public officials from other agencies were also invited to participate on these events. Besides that, CGU collaborated with PNLDC courses (an ENCCLA initiative) indicating 11 lecturers on CLL and PAR all around the country. Other 7 CGU officials participated of a workshop about Corruption and Money Laundry, and other servants participated of courses related to this matter such as Compliance and Ethics (Compliance&Ethics Academy – São Paulo). CGU senior officials are regularly attending events as lecturers about CLL in other countries such as Thailand (Bangkok – UNODC/ONU), Mexico (OECD – PIN), Colombia and others.

Reference should also be made to the Annual Conference on the Corporate Liability Law mentioned in the section correspondent to the recommendation 12. Two conferences have already been held by the CGU in partnership with the members of steering committee of the Pro-Ethics Program, such as the Ethos and ETCO Institutes. The Conferences aim at promoting debates on the impact of the CLL in the business *modus operandi* and counts on the participation of representatives of all relevant agencies, such as the FPS, the Central Bank, the Administrative Council of Economic Defense (CADE) and internal control bodies, as well as representatives of the private sector and the academy. Videos of the panels presented in the last Conference were made available in the Internet (<http://www.cgu.gov.br/sobre/institucional/eventos/anos-anteriores/2014/conferencia-lei-da-empresa-limpa>) and the third Conference is expected to be held in November 2016, when the companies incorporated to the 2016 Pro-Ethics will be announced.

It is also relevant to notice that the FPS School – *Escola Superior do Ministério Público da União* (ESMPU) has been promoting several courses and workshops for the FPS, the Federal Police Department and other participants. Those are some examples:

- Investigation and criminal persecution of corruption and economic crimes;
- Clean Company Act and Compliance;

- Civil aspects of fighting corruption: Administrative Improbability;
- Clean Company Act;
- Corruption Prevention – public integrity;
- International Symposium Brazil/France – Corruption and Administrative Improbability – prevention and repression;
- Instruction Technics for civil and criminal investigations on corruption cases.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 5(c):

5. Regarding the investigation and prosecution of foreign bribery, the Working Group recommends that Brazil:

(c) Ensure that sufficient resources and skills are available within the DPF, the FPS, and the CGU in order to fight foreign bribery; and consider creating a national corruption-fighting unit within the Federal Prosecution Service and specialised police units within the Federal Police Department; [Convention Article 5; 2009 Recommendation XIII and Annex I D]

Action taken as of the date of the follow-up report to implement this recommendation:

As previously informed to lead examiners, the FPS 5th Coordination and Review Chamber, the body within the FPS in charge of coordinating activities related to the fight against corruption, besides providing technical assistance, acts as articulator and facilitator of joint activities with other oversight and control institutions, especially the CGU and the Federal Police. Also, the Service for Investigations of the Misuse of Public Funds (SRDP) is responsible for coordinating, monitoring and regulating the activities carried out by the Federal Police in the context of corruption-related investigations. The SDRP is placed under the Department of Investigations of Organized Crime (DICOR), the central unit that coordinates the Federal Police Stations to Fight Financial Crimes and Misuse of Public Funds (DELEFINs) spread across the country to perform investigative actions as needed in the context of foreign bribery.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 5(d):

5. Regarding the investigation and prosecution of foreign bribery, the Working Group recommends that Brazil:

(d) Encourage law enforcement authorities to make full use of the broad range of investigative measures available in foreign bribery investigations, including special investigative techniques and access to financial information; and ensure by any appropriate means that the use of the general and special investigative techniques contained in the Code of Criminal Procedure is available in practice in the context of the administrative and civil proceedings under the CLL; [Convention Article 5; 2009 Recommendation XIII and Annex I D]

Action taken as of the date of the follow-up report to implement this recommendation:

Brazilian legal framework allows for the sharing of evidence, which makes it possible that administrative authorities, such as the CGU, make use of the evidences produced through specific investigative techniques pertinent to other enforcement bodies.

CGU conducts investigations of domestic cases that frequently receive banking and financial information. Forms of request and standard documentation are used to support the procedure of demanding banking and financial information to judicial or administrative authorities. CGU is also implementing a software to make banking information analysis entirely electronic and more efficient – the same system is used by the Federal Police and FPS and has been adapted for administrative analysis.

In 2015, CGU developed a training programme on ‘Producing Evidence on Administrative Investigations’ for 112 public officials. In 2016, the same training was provided for 200 attendees.

Please also refer to the action reported in section correspondent to recommendation 5(e) below, regarding paragraph II.2.a, of the Technical Note n. 1/2015 (ANNEX 1).

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 5(e):

5. Regarding the investigation and prosecution of foreign bribery, the Working Group recommends that Brazil:

(e) Take necessary measures to: (i) ensure that all credible foreign bribery allegations are proactively investigated; and (ii) gather information from diverse sources at the pre-investigative stage both to

increase sources of allegations and enhance investigations; [Convention Article 5; 2009 Recommendation XIII and Annex I D]

Action taken as of the date of the follow-up report to implement this recommendation:

(i) The Technical Note n. 1/2015 (ANNEX 1), issued by the FPS, provides guidelines for the operational plan to be followed by prosecutors when investigating foreign bribery cases. According to paragraph II.2.a:

“All foreign bribery allegations, even those based on minimum grounds of evidence, must be investigated by the relevant offices. The relevant offices must seek for information from all existent sources so as to strengthen the evidence basis, as well as to increase the feasibility of prosecution, by improving the demonstration of materiality of the crime and authorship.

For such, the prosecution offices may make use of a wide range of investigative measures available for identifying the existence and authorship of foreign bribery, trading in international influence, or other acts against the national or foreign public administration. Accordingly, the Research and Analysis Section of Office of the Prosecutor General (Secretaria de Pesquisa e Análise da Procuradoria-Geral da República, SPEA/PGR) and the Research and Analysis Advisory Groups in the states (Assessorias de Pesquisa e Análise, ASSPAs) may assist prosecutors with available investigation tools.”

(ii) The CGU counts on a broad range of channels for receiving information on irregularities, including foreign bribery. For instance, the Federal Ombudsman’s Office receives any manifestation from the citizens and gives it the due treatment, including in regard to the protection of the identity. If pertinent, such information is forwarded to the General Coordination of the Liability of Legal Entities (COREP), the unit within CGU responsible for the conduction of investigative procedures and of administrative liability proceedings (PAR). Furthermore, the information gathered from international press reports by the OECD Working Group on Bribery is also used as a source of allegations that gives rise to deeper investigations.

It is also important to clarify that the Brazilian legal framework allows authorities to undertake prior investigative proceedings under the CLL (‘preliminary investigations’), which may precede the punitive proceedings. During such investigative proceedings, a commission searches for enough evidences to initiate a PAR. The gathering of information that precedes the punitive proceeding is done in order to avoid any unfruitful action and also to assist future investigations. With regard to information gathered from international press reports by the OECD Working Group on Bribery, for instance, preliminary investigations within CGU were initiated with reference to four allegations, involving four companies from varied countries.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

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Text of recommendation 5(f):

5. Regarding the investigation and prosecution of foreign bribery, the Working Group recommends that Brazil:

(f) Clarify in the implementing Decree to the CLL that factors forbidden under Article 5 of the Convention cannot be taken into account in the decision to initiate, conduct or close the proceedings against a legal person. [Convention Article 5]

Action taken as of the date of the follow-up report to implement this recommendation:

As already informed in the section correspondent to recommendation 3(c), the CGU Ordinance n. 910 (ANNEX 4) clearly states that the decision about either initiating or closing the preliminary investigation, the liability administrative proceeding (PAR) and the negotiation of leniency agreement must not be influenced by:

- I – considerations of national economic interest;
- II – the potential effect in Brazil affairs with other countries; or
- III – the identity of involved individuals or legal entities.

That provision clarifies, therefore, that the factors forbidden under Article 5 of the Convention cannot influence the decision to initiate, conduct or close administrative proceedings against legal persons.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 6:

6. Regarding cooperation agreements and leniency agreements, the Working Group recommends that Brazil: (i) make public, where appropriate, certain elements of leniency and cooperation agreements concluded in foreign bribery cases, such as the reasons why an agreement was deemed appropriate in a specific case and the terms of the arrangement; and (ii) take all necessary measures to ensure diversion (under Law 9.099), cooperation agreement (under the Organised Crime Law) and leniency agreements (under the CLL) are applied consistently, including by providing training to prosecutors and issuing guidance on the elements that may be taken into consideration in deciding whether to enter into such agreements. [Convention Articles 3 and 5; Commentary 27; 2009]

Action taken as of the date of the follow-up report to implement this recommendation:

(i) With regard to the publicity of certain elements of leniency agreements, it is certain that such agreements will be made public as long as it does not affect the interest of ongoing investigations. Some provisions of the CLL and related normative corroborate that understanding, especially in reference to the creation and maintenance of the National Registry of Punished Companies (CNEP), which is a registry freely accessible through the Internet, that does not require login or identification. Accordingly, Article 22 of the CLL states that:

“Article 22. It is hereby created, in the sphere of the Federal Executive Branch, the National Registry of Punished Companies (CNEP), which will consolidate the sanctions applied based on this Law by agencies or entities from the Executive, Legislative and Judicial Branches of all spheres of government.

(...)

Paragraph 3. The authorities competent to execute the leniency agreements provided for in this Law shall also inform and keep updated in the CNEP the information about the signed leniency agreements, unless such practice affects the interest of ongoing investigations and related administrative proceeding.

Paragraph 4. In the event the legal entity does not comply with the conditions of the leniency agreement, in addition to the information set forth in Paragraph 3, reference to such default shall be included in the CNEP.

Paragraph 5. Upon request of the agency or entity applying the sanctions, the records of the sanctions and leniency agreements will be excluded after the end of the term previously established in the sanctioning act or after full compliance with the leniency agreement and restitution for the damage caused.”

Additionally, the implementing Decree (ANNEX 2) states that:

“Article 45. The National Registry of Punished Companies (CNEP, in its acronym in Portuguese) will contain information on:

I – the sanctions imposed on the basis of Law n° 12.846 of 2013; and

II – any breach of a leniency agreement signed within the scope of Law n° 12.846 of 2013.

Sole Paragraph. Information about the leniency agreements signed within the scope of Law n° 12.846 of 2013, will be registered in CNEP after the conclusion of the agreement, unless it causes any damage to investigations or administrative

proceedings.”

Also with regard to the CNEP, Ordinance n. 910 (ANNEX 4), in its Article 34, determines that the Federal Disciplinary Board (CGU/CRG) must keep information regarding leniency agreements updated in the CNEP:

“Article 34. The CRG must keep updated in CNEP the information about the celebrated leniency agreement, except if this procedure causes any damage to the investigations and administrative process.”

Finally, Normative Ruling n. 2/2015 (ANNEX 6) also contains important provisions regarding the publicity of leniency agreements:

“Article 7. The agencies and entities of Executive, Legislative and Judiciary Branches of each government sphere will register and keep updated in CNEP information concerning leniency agreements and sanctions applied by them based on Law n° 12,846 of 2013.

Paragraph 1. Information about leniency agreements will be registered in CNEP after the contract celebration, except if registration may cause damage to investigations or to the administrative process.

Paragraph 2. The non-fulfillment of leniency agreements will be registered in CNEP, and the information will remain registered for three years, in accordance with article 1, paragraph 8 of Law n° 12,846 of 2013.

Article 8. CEIS and CNEP will contain, depending on the case, the following information:

- I – individual or legal entity’s name or business name;
- II – inscription number in Individual Taxpayer Registry (CPF) or in Corporate Taxpayer Registry (CNPJ);
- III – applied sanction, leniency agreement celebration or its non-fulfillment;
- IV – decision legal basis
- V – number of the process in which the decision was based;
- VI – starting date of the decision’s limiting or deterrent effect, or date of the sanction’s application or date of the leniency agreement celebration or date of the decision's non-fulfillment;
- VII – final date of decision’s limiting or deterrent effect;
- VIII – name of the agency or entity which sanctioned or which celebrated the leniency

agreement; and

IX – the amount of the fine

Sole Paragraph. Leniency agreement registries must contain information concerning its effects.

(...)

Article 12. The Office of the Comptroller General (CGU) can update CEIS and CNEP with information that it becomes aware by other official means such as legal decisions and publications in official gazettes.”

It is important to mention, for instance that three out of the five leniency agreements negotiated under CLL within the judicial sphere are public.

As to the publicity of cooperation agreements, the Law on Organized Crime (ANNEX 9) states that such agreements will cease to be confidential after the return of the indictment, considering the rights of the collaborator in regard to his/her name, image, qualification and personal information:

Article 7. The request for ratification of the agreement will be assigned confidentially, featuring solely information that prevent the identification of the collaborator of Justice and the object of the said agreement.

(...)

Paragraph 3. After criminal charges are accepted, the plea agreement will no longer remain confidential pursuant to the provisions established in Article 5.

The publicity of cooperation agreements follows the same rationale of the CLL provisions on leniency agreements. As a rule, the agreement shall be made publicly available, but taking into account the interest of the ongoing investigations. Practice shows that cooperation agreements signed in domestic cases are following this general rule, and access to elements such as the reasons why an agreement was deemed appropriate in a specific case and the terms of the arrangement is granted. There is still no case related to foreign bribery, but important examples that illustrate that understanding may be found in the context of the “Lava-jato” case.

(ii) As already informed above, the FPS and the AGU are actively taking part to the negotiations of leniency agreements led by the CGU. There are currently 13 agreements being negotiated with the participation of at least one of those two agencies, which are responsible for the civil actions under the CLL. The cooperation agreement under the Organized Crime Law and diversion under Law n. 9,099 will be coordinated by the FPS, which has access to the negotiations of leniency agreements in order to apply all instruments in a consistent manner, taking into consideration all information available.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 7:

7. Regarding jurisdiction, the Working Group recommends that Brazil clarify by any appropriate means that the jurisdiction over legal persons under article 28 of the CLL should be broadly interpreted and cover, in particular i) companies not incorporated in Brazil if their main seat is in Brazil; and (ii) companies that have their main management and control situated in Brazil even if some part of this function is located outside of Brazil. [Convention Article 4]

Action taken as of the date of the follow-up report to implement this recommendation:

The FPS issued the following guideline in item II.1.d of the Technical Note No. 01/2015 (ANNEX 1):

“Art. 28 encompasses companies incorporated in Brazil, if their headquarter is in Brazil, and companies that have their main management and control bodies situated in Brazil, even if some part of this function is located abroad.”

It is also relevant to notice that the sole paragraph of Article 1 of CLL indicates that any foreign company that have main office, branch or representative office in Brazil is subjected to its provisions. According to Brazilian legislation, foreign companies cannot make any operation in Brazilian territory without being regularly registered, and they have to comply with some requirements in order to file that authorization request – Civil Code, Article 1.134. One of these requirements is having one representative in Brazil with enough powers to represent the company including before the Brazilian courts of justice – Article 1.134, first paragraph, V and Article 1.138. That registration is considered itself a branch of the company in Brazil, and therefore subjected to CLL. That means that if a company has its main seat in Brazil or if it has any part of their board or operation in Brazil, it necessarily has a representative office or branch in the country.

Article 28 of CLL, therefore, provides the rule of territoriality confirming that any Brazilian legal entity – including branches or representatives of foreign companies – will be held liable if they commit wrongful acts overseas.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 8:

8. Regarding the statute of limitations, the Working Group recommends that Brazil (i) urgently take steps to ensure that the statute of limitations for natural and legal persons for foreign bribery allows adequate time for investigation, prosecution, sanctioning, and the completion of the full judicial process, including in cases where the final sentence is at the lower end of the scale; and (ii) clarify its ability to extend the timeframe for administrative proceedings against legal persons. [Convention Article 6]

Action taken as of the date of the follow-up report to implement this recommendation:

(i) With regard to the statute of limitations for natural and legal persons for foreign bribery, the FPS has presented to the National Congress Bills that aim at improving the fight against corruption and reducing impunity in Brazil. These Bills were presented in the context of the above-mentioned initiative “Ten Measures Against Corruption”.

The Bills currently under the consideration in the National Congress include proposals that aim to deal with the issue of the statute of limitations within the criminal sphere, by promoting changes to the Penal Code, particularly in relation to articles 110, 112, 116 and 117.

One of these bills aims at altering Article 110 of the Penal Code, to increase to one-third the limitation period for the enforceable claim. The principle underlying the difference between the enforceable and punitive claims’ statutes of limitations is that, when the State’s punitive claim results in conviction, there is a clear demonstration of its activity in promoting sanctioning, which justifies the extension of the period during the State’s inertia that could mean lack of interest to act. The Bill also aims to extinguish the retroactive statute of limitations.

Another proposed change refers to Article 112. After the final sentence is issued for the accusation, as it is today, the limitation period for enforceable claim starts to flow, even if there are still appeals from the defence that may take years to be appreciated, preventing the execution of the sentence. The Bill under consideration seeks to address this issue, thus contributing to enhancing the execution of the sentences, particularly of those related to “white-collar crimes”.

Furthermore, a change in Article 116 of the Penal Code is being proposed in order to avoid the flow of the limitation period while special and extraordinary appeals are pending a final decision (a change also provided in Bill n. 8,045/10, regarding the reformulation of the Criminal Procedure Code). Article 117, I, would then provide for the interruption of the limitation period after the return of indictment, in harmony with the principle of prosecution.

Two additional modifications are being proposed for Article 117. The limitation period would be interrupted by decisions given after the sentence and by the filing of appeal by the accusation requesting priority in the judgment, having the case arrived to the competent court a long time before the request and still pending of decision.

Finally, besides the above-mentioned initiatives, the FPS International Cooperation Secretariat (SCI) has created a specific communication group for the members of the SCI and the ones involved in the investigations regarding foreign bribery, in order to expedite and enhance the communication flow regarding the cases. This initiative has already improved the quality of the work developed, since it facilitates the exchange of ideas and experiences.

(ii) In respect to the extension of the timeframe for administrative proceedings, as provided by the CLL, in Article 10, para. 3, the administrative proceeding to determine the liability of legal entities will be conducted by a committee that shall conclude the proceeding within 180 days

by presenting a report on the investigated facts, adequacy of liability, and correspondent sanctions. If it is not possible to reach a conclusion within 180 days, the president of the committee can request for an extension, in order to conduct further investigative measures or receive additional information requested to other governmental bodies. The decision on whether to extend the timeframe relies upon the authority responsible for initiating the proceeding, who should decide on reasonable grounds. There is no limit to the number of times the extension of the timeframe may be granted.

Article 9 of Decree n. 8,420/15 refers to the timeframe for administrative proceedings as follows:

“The term for conclusion of the PAR shall not exceed one hundred eighty days. Such term can be extended through a request submitted by the president of the commission to the respective competent authority, who shall take a reasoned decision.”

Ordinance n. 910 also addresses the deadline for the conclusion of the administrative proceeding:

“Article 10. At the moment the PAR is initiated, the competent authority will appoint a commission composed by two or more permanent civil servants.

Paragraph 1. PAR establishment will be made by an ordinance published in the Official Gazette (DOU), which will contain:

- I – the name, position and enrollment number of commission members;
 - II – the indication of the member who will preside the commission;
 - III – the number of the administrative process where are described the facts to investigated;
- and
- IV – the deadline for process’ conclusion.

(...)

Paragraph 3. The deadline for PAR conclusion will not exceed one hundred eighty days, allowed extension by a request of the commission president to the established authority that will decide in a reasoned manner.”

It is important to note that the same proceeding of assigning a committee to investigate a case with a specific timeframe that can be extended several times is applied for administrative investigations of federal public official’s misconducts under Law 8112/90. For that piece of rule, there is a consolidated Brazilian Federal Courts’ understand that the timeframe can be extended if necessary to continue investigating the cases:

Syllabus: This High Court has already ratified its understanding that missing a deadline for the conclusion of the disciplinary administrative proceeding does not lead to a nullity likely to invalidate the proceeding
(Superior Court of Justice, Writ of Mandate Number 7.962)

Moreover, the procedure of extending of the timeframe enables the judging authorities to

receiving reports of the work of the committee responsible for the investigation. It is relevant to notice that the authority that applies the penalties is not the same that produces evidence.

The management of the commissions' deadlines, both in regard to their duration and to the statute of limitations of a specific proceeding, is made by the COREP, which also requests for the extension of the timeframe of the PARs to the Minister, after grounded justification sent by the commissions. A computerized system is being developed in order better control such deadlines. The system shall be concluded within the next months.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 9:

9. With respect to mutual legal assistance, the Working Group recommends that Brazil take steps to ensure bank secrecy does not cause unnecessary delays in providing MLA in foreign bribery cases. [Convention Article 9; 2009 Recommendation XIII.i]

Action taken as of the date of the follow-up report to implement this recommendation:

Between January 2015 and July 2016, Brazil answered 28 passive requests of mutual legal assistance in criminal matters where breach of bank secrecy figured in some extent in the objectives of the request. The average response time in those cases was of 12 months, and only two requests were not at least partially fulfilled by Brazilian authorities – in one of them, the bank account informed did not exist, being the authorities therefore unable to fulfill it. Besides, many cases remain months pending from adjustments by the requesting authorities in order to adequately provide the necessary information so that the FPS may solicit the bank data to the competent judge. Thus, within this average period of 12 months, it is also counted the time required for these adjustments that must be made by requesting States. Despite the fact that the vast majority of the requests don't refer to foreign bribery, the mechanisms to be applied are the same, so that the standards observed are alike.

Additionally, it's important to mention that the Department of Asset Recovery and International Legal Cooperation within the Ministry of Justice of Brazil also provide assistant to other countries about the requirements of the international cooperation requests.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 10(a):

10. Regarding money laundering, the Working Group recommends that Brazil:

(a) Take the necessary measures to ensure that offenders cannot escape liability when laundering the proceeds of foreign bribery through legal persons; [Convention, Article 7; 2009 Recommendation V]

Action taken as of the date of the follow-up report to implement this recommendation:

With regard to the prosecution of money laundering offences related to foreign bribery, the FPS issued the following guideline (paragraph II.1.e, of Technical Note n. 1/2015):

“To endeavour efforts to deepen the investigation of foreign bribery so as to check if it involves money laundering.”

We also clarify that even if the offender makes use of a legal entity to launder the proceeds of foreign bribery, he/she will be held liable in the criminal sphere, as provided by Law n. 9,613/98 (amended by Law n. 12,683/12). Also, CLL provides for the lifting of the corporate veil:

“Article 14. The corporate personality may be disregarded whenever it is used with abuse of right to ease, conceal or dissimulate the performance of the wrongful acts provided for in this Law or to cause property confusion, and all effects of the sanctions applicable to the legal entity shall be extended to its managers and shareholders with management powers, in compliance with the due process and full defense principles.”

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 10(b):

10. Regarding money laundering, the Working Group recommends that Brazil:

(b) Maintain statistics on investigations, prosecutions and sanctions for money laundering, including data on whether foreign bribery is the predicate offence; [Convention, Article 7 and 2009 Recommendation, III (i)];

Action taken as of the date of the follow-up report to implement this recommendation:

As informed in the section related to recommendation 4(c), the National Council of Justice

(CNJ) coordinated Action n. 15 within the National Strategy to Combat Corruption and Money Laundering (ENCCLA), in order to develop a methodology for systematize a permanent collection of data from Courts related to cases involving corruption, money laundering and administrative improbity.

In order to implement this Action, joint meetings between representatives of the Judiciary Research Directorate and the councillors of the CNJ were held, also involving some interested governmental bodies, including the CGU and representatives of the FPS and the Federal Police. Those meetings aimed at better defining the methodology to collect statistical data among the Courts of Justice.

Currently, the CNJ's Judiciary Research Directorate is developing the Judiciary Statistics System, in order to make it possible the collection of information regarding the proceedings and procedures related to corruption, money laundering and administrative improbity.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 10(c):

10. Regarding money laundering, the Working Group recommends that Brazil:

(c)Ensure that institutions and professions required to report suspicious transactions, their supervisory authorities, as well as the Council of Control of Financial Activities receive appropriate directives, including typologies on money laundering related to foreign bribery and training on the identification and reporting of information that could be linked to foreign bribery. [Convention, Article 7; 2009 Recommendation III.i]

Action taken as of the date of the follow-up report to implement this recommendation:

As stated along the phase 3 evaluation process, the Council of Control of Financial Activities (COAF), as well as other supervisory authorities, publish guides, guidelines and typologies related to tendencies and practical cases of money laundering. Besides, courses are frequently offered and capacity building events, seminars and workshops are constantly held for public agents and for the private sector. Those initiatives are based on the money laundering offence linked to a variety of predicate crimes, considering the acquired experience in dealing with oversight and analysis of financial intelligence.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:



Text of recommendation 11(a):

11. Regarding accounting and auditing, the Working Group recommends that Brazil:

(a) In regards to false accounting (i) ensure that the full range of conduct described in Article 8(1) of the Convention is prohibited; (ii) ensure that both natural and legal persons can be held liable for false accounting; (iii) raise awareness of the false accounting offence among accounting professionals and law enforcement; and (iv) ensure false accounting is vigorously investigated and prosecuted, where appropriate; [Convention Article 8(1); 2009 Recommendation X.A.i]

Action taken as of the date of the follow-up report to implement this recommendation:

(i) The absence of bookkeeping or irregularities in its maintenance may result in the configuration of crimes established in the Penal Code, such as falsification of public and private documents (Articles 297 and 298) and social security tax evasion (Article 337-A). The Penal Code also punishes any relevant omission in declarations and the inclusion of false declarations in a document in order to alter a legally relevant fact (Article 299). Also, conducts described in Article 8 of the Convention may result in the configuration of crimes related to Law n. 8,137 (the Tax Crimes Act), which establishes the offence of avoiding or reducing tax or social contributions by providing a false declaration to tax authorities or entering inaccurate elements or omitting transactions in books or documents required by tax law. The Tax Crimes Act also provides for the offence of making a false statement or omitting a statement of income, assets or facts for the purpose of evading tax. Furthermore, Law n. 11,101/05 provides for the obligation of bookkeeping after the bankruptcy adjudication (Article 178 – bankrupt crime). Besides, the tax legislation considers the bookkeeping an accessory obligation and its non-compliance may result in the application of a fine and even in the impossibility of benefiting from tax advantages, such as provided in Article 14 of CTN. Breach in the provisions of the Civil Code also prevents the company from asking for judicial reinstatement (Article 51, II of Law n. 11,101/05). Case law on fraud can be quoted, to illustrate the persecution on that matter:

Superior Court of Justice (STJ) – APPEAL IN HABEAS CORPUS Nº 35.987 – FEDERAL DISTRICT (DF)

CRIMINAL PROCEEDING. APPEAL IN HABEAS CORPUS. USE OF FALSE DOCUMENT. (1) FORMAL INEPTITUDE. SUFFICIENT DESCRIPTION OF CRIMINAL CONDUCT. FULL DEFENCE. RIGHT EXERCISED. (2) ATYPICAL BEHAVIOR ATTRIBUTED. NO OCURRENCE. ILLEGALITY. ABSENCE 1. (...) The Federal Prosecution Service has described the existence of **an alleged scheme to cheat on judicial order to freeze assets. The crimes of use of false documents, either materially or ideologically false, as sufficiently described**, authorizing clearly

the exercise of full defence. (...) 2. The conducts attributed to the plaintiff are equivalent to the type of offence of use of false document, as announced by the Prosecution at the accusatory instrument. 3. Appeal rejected.

(ii) (iv) It is relevant to notice that the Article 8(1) of the Convention describes means that can be used for the purpose of *bribing foreign public officials or of hiding such bribery*. According to Brazilian Penal Code (Article 70), if any crime is committed in order to practice another crime, the former will be absorbed by the last one – which is considered the principal crime. In practice, that means that in those cases either the final penalty will be aggravated or the respective penalties will be summed (Articles 69 and 70). As illustrative examples under CLL, CGU has recently applied penalties in two cases where companies were charged for domestic bribery. In both cases, the companies used false accounting (according to the definition of the Convention) in order to hide the bribes. There are currently at least 10 administrative liability proceedings (PARs) where bribes hidden through false accounting is under investigation. These cases involve big size construction companies and others.

(iii) The Federal Accounting Council (CFC), under its Governing Law, develops oversight actions in order to detect and sanction false accounting. Within those actions (developed by the CFC/CRCs system) the accountant is subject to the penalties of suspension and cancellation of the professional registry, in case it is detected any fraud in bookkeeping or crimes against the economic and financial order.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 11(b):

11. Regarding accounting and auditing, the Working Group recommends that Brazil:

(b) Raise awareness of foreign bribery among accountants and auditors, including by providing training on foreign bribery indicators and auditors' reporting obligations in respect of foreign bribery; [2009 Recommendation X]

Action taken as of the date of the follow-up report to implement this recommendation:

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 11(c):

11. Regarding accounting and auditing, the Working Group recommends that Brazil:

(c) Require auditors to report all suspicions of foreign bribery to corporate monitoring bodies, where appropriate, and consider requiring them to report to the competent law enforcement authorities. [2009 Recommendation X.B.iii and v]

Action taken as of the date of the follow-up report to implement this recommendation:

Brazilian Accountant Ordinance NBC TA 260 provides for the independent auditors' obligations, especially those related to the communication of wrongdoings to corporate monitoring bodies. The ordinance establishes the obligation of the auditor to perform communication actions – meetings, reports, correspondences – towards the corporate monitoring bodies and also other related committees or relevant decision makers. It also establishes the auditor's obligation of reporting and communicating unconformities or information required by law or other regulations. NBC TA 260 also provides for the obligation to disclosure fraud and vulnerabilities, internal controls problems, suspicion of fraud or detected fraud. Finally, it provides for the necessity to communicate about integrity problems within the high level administration. It is also relevant to notice that NBC TA 260 takes as reference the already analyzed NBC TA 240.

Additionally, as per already informed to lead examiners, according Law 9.613/98 – Anti-Money Laundry Act, auditors and accountants (Article 9, XIV) are subjected to the obligation of keeping enough information about suspicious operations (Article 10) and also to inform those operations to COAF, without reporting them to the client or any other person. The Financial Activities Control Council – COAF – issued an ordinance (Resolução COAF n. 24, of January 16 of 2013) to detail and regulate those obligations, including the competent law enforcement authorities.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 12:

12. Regarding corporate compliance, internal controls and ethics, the Working Group recommends that Brazil continue to encourage companies, particularly unlisted companies and SMEs, to (i) develop, and adopt adequate internal controls, ethics and compliance systems to prevent and detect foreign bribery, including by providing guidance in the context of the implementing Decree to the CLL and by promoting the OECD Good Practice Guidance, and (ii) to develop monitoring bodies. [2009 Recommendation X.C.i]

Action taken as of the date of the follow-up report to implement this recommendation:

Brazilian institutions have worked with the private sector in order to encourage the adoption of effective internal controls and compliance programs, along with the provision of guidance in relation to the CLL and its implementing Decree and related regulations.

The Office of the Comptroller General has taken some important initiatives in that regard. Firstly, it is noteworthy the development of Guidelines that aim at clarifying the concept of Integrity Program under the CLL and the implementing Decree. The document provides guidance to assist companies in the development or improvement of policies and instruments to prevent, detect and remedy wrongful acts committed against the public administration, including foreign bribery. The focus is to present the necessary steps to implement a good compliance program, taking into consideration some pillars, such as the commitment and support of the legal entity's senior management; a specific internal department; the profile of the company and risk analysis; the structuring of rules and instruments, and continuous monitoring strategies. The Guidelines make reference to the OECD Good Practice Guidance on Internal Controls, Ethics, and Compliance.

Also considering the legal framework regarding compliance programs, such as the CLL and its implementing Decree and the CGU Ordinance n. 910, and the importance of providing incentives and guidance to the private sector, another document presenting guidelines was developed – a more specific one, targeting SOEs. This document also considers the pillars presented to the private sector in general, but takes into account the specificities of the SOEs (available, in Portuguese, in: http://www.cgu.gov.br/Publicacoes/etica-e-integridade/arquivos/programa_integridade_estatais.pdf)

Secondly, it is also worth mentioning the partnership with the Brazilian Trade and Investment Promotion Agency (Apex-Brasil) for the launch of the booklet “Brazilian Companies Abroad – Relationship with the Foreign Public Administration”. The document clarifies the main aspects of regulation related to the offering of undue advantage to foreign officials. It also presents guidance on the policies of hospitality and gifts. There is a special section about the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the Penal Code and the CLL. It also presents a view on the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act. The booklet (in Portuguese) may be found in www.cgu.gov.br/Publicacoes/etica-e-integridade/arquivos/cartilha_anticorrupcao.pdf

Furthermore, we should mention the partnership between the CGU and SEBRAE (Brazilian Support Service for SMEs) to encourage SMEs to develop compliance programs, signed in December 2014. The Work Plan of this partnership establishes a Program for Integrity in Business. Within the Program, two booklets were developed, containing guidelines for the SMEs (available in Portuguese in: <http://www.cgu.gov.br/Publicacoes/etica-e-integridade/arquivos/integridade-para-pequenos-negocios.pdf>) and for municipal managers, with concepts of ethics and compliance. A smaller, more user-friendly version of the booklets to SMEs was also designed, containing a more direct and interactive content and some infographics. Besides, SEBRAE included a whole chapter in the booklets that were already disseminated by the Service, in order to include the CLL among the legal framework governing the business relations between SMEs and the public administration. Such booklets were designed by SEBRAE for suppliers and for public agents that work with public procurement, and present as a new paradigm the legal provisions set forth by the CLL, which are also applicable to SMEs.

The Program also aims at offering training for small and micro-entrepreneurs and local public managers in those issues, and will provide online and face-to-face courses, in the context of SEBRAE's capacity building events all over the country.

Also, we should mention that the CGU has redesigned the Pro-Ethics Registry, considering the lessons learned since its launch in 2010 and the coming into force of the CLL. On May 7, 2015, the Pro-Ethics 2015 was officially launched with a more comprehensive evaluation process, focused on the companies' risk-profile. The Pro-Ethics Program entails now one annual list, rather than a registry, and the efforts are concentrated in a one-year calendar, with the conduction of a public event after the end of the evaluation process in order to announce the companies incorporated.

In that sense, after being reformulated the Pro-Ethics 2015 counted on the participation of 97 companies, belonging to a diversity of lines of business and of different sizes, including SMEs. Out of 97 companies enrolled, 56 have sent the evaluation questionnaire properly fulfilled and within the dateline. After the evaluation process, 19 companies were approved and recognized as a Pro-Ethics Company for the year. The award ceremony was part of the Second Conference on the Corporate Liability Law,

The 2016 edition of the Pro-Ethics program was launched in March and the inscription period lasted until May. A total of 195 companies showed interest in participating, a number 101% superior to the past edition, a record since the creation of the program. From 195 companies, 91 have sent the questionnaire fulfilled according to the rules and in the date limit. A preliminary admissibility analysis was made and 74 companies will be evaluated – 125% more companies in comparison to the 2015 edition. The results will be announced in the Third Conference of the Corporate Liability Law,

Additionally, regarding the promotion of adequate internal controls, ethics and compliance systems to prevent and detect foreign bribery, it is noteworthy the work done by Brazil's NCP among SOEs, specially by the implementation of the 'Statement of Commitment to the OECD Guidelines for Multinational Enterprises', that publically recognizes the efforts to comply with the recommendations for responsible business conduct by the companies. It is important to

highlight that the Guidelines present a chapter on “Combating Bribery, Bribe Solicitation and Extortion”.

Also, the promotion of the OECD Guidelines for Multinational Enterprises was reinforced through the publication of information, including the anticorruption provisions, in the websites of the National Investment Information Network (RENAI) and the Social Responsibility Governmental Forum (FGRS). The Investor Portal is a useful tool for the federal government to publish information on the productive investments in Brazil, whose network includes partners such as the Ministry of Development, Industry and Commerce (MDIC), state departments of industry and commerce, industry federations and others. The FGRS aims at promoting the discussions and initiatives related to social responsibility, coordinating the governmental spheres.

Finally, the NCP organized in 2014 the second edition of the “International Seminar about the OECD Guidelines for a Responsible Corporate Conduct”, in São Paulo. Besides, in the same year it promoted the “Seminar about the OECD Guidelines for Multinational Enterprises: implementation by the financial sector”, specifically held for the implementation of the Guidelines by the Brazilian financial sector. In 2015, the NCP organized the “III International Workshop about the OECD Guidelines”, in Rio de Janeiro, in partnership with the NCPs of Norway and the United Kingdom, which counted on the participation of thirty people from different sectors.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 13(a):

13. In respect of tax measures to combat bribery of foreign public officials, the Working Group recommends that Brazil:

(a) Take appropriate measures to ensure that the denial of tax deductibility is not contingent on the opening of an investigation by law enforcement authorities or on court proceedings; [2009 Recommendation III. iii, VIII; 2009 Tax Recommendation I]

Action taken as of the date of the follow-up report to implement this recommendation:

After the phase 3 evaluation report, and taking into account the recommendations made to Brazil by the WGB, the Federal Revenue Service (RFB) included the following guidelines in the Auditing Manual:

“Section 4.1.1 (Title: Operational Expenses and Costs; Chapter: General Expenses; Section: Initial Verifications)

Notes after 2.2.3:

c) The payments made by way of rewarding for the practice of legal wrongdoing or related acts, in particular those mentioned in Article 1 of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, are not deductible in the determination of the basis of calculation of the Income Tax and the Social Contribution over the Net Profit (Sole Article of the ADI/RFB n. 32/2009).

d) Complementing the note “c”, and in accordance with recommendation made by the Organization for Economic Cooperation and Development, under which the aforementioned Convention was adopted, the identification of payments made by way of rewarding the practice of legal wrongdoing or related acts to foreign public officials in international business transactions must also be communicated to the relevant competent Brazilian authorities.

e) The amounts paid as bribe in general and/or bribe to public agents, foreign or not, are not deductible in the determination of the basis of calculation of the IRPJ (*Income Tax for Legal Persons*) and the CSLL (*Social Contribution over the Net Profit*)”.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 13(b):

13. In respect of tax measures to combat bribery of foreign public officials, the Working Group recommends that Brazil:

(b) Provide adequate guidelines and training on the types of expenses that constitute bribes to foreign public officials, including through disseminating the OECD Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors, and extend such dissemination to relevant taxpayers; [2009 Recommendation VIII; 2009 Tax Recommendation I]

Action taken as of the date of the follow-up report to implement this recommendation:

With regard to guidelines and training in general, please refer to the amendments to the Auditing Manual reported above in section related to recommendation 13 (a).

In relation to the OECD Bribery and Corruption Awareness Handbook for Tax Examiners and

Tax Auditors, we inform that this document is disseminated to all auditors and Federal Revenue public servants, including through the RFB's Intranet. Besides, many of the issues covered in the Handbook, such as analysis of ways of payment and auditing techniques, are part of RFB Auditing Manual and fully integrated into the daily routines of tax auditors.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 13(c):

13. In respect of tax measures to combat bribery of foreign public officials, the Working Group recommends that Brazil:

(c) Remind tax auditors of their obligation to report to law enforcement authorities any instances of bribery of foreign public officials that come to their knowledge in the performance of their functions; [2009 Recommendation III. iii, VIII; 2009 Tax Recommendation II]

Action taken as of the date of the follow-up report to implement this recommendation:

Please refer to the amendments to the Auditing Manual reported above in section related to recommendation 13 (a).

RFB Tax Auditors are obliged to inform to the head of his/her unit any evidence of crimes, including those crimes committed against Foreign Public Administration. All reports are sent to the Prosecutor's Office (in case of crimes) or to the competent government body. This is a binding activity and the head of the department has no say on whether or not to send this report. RFB Ordinance n. 2,439, of 2010, currently details this procedure, which is also reinforced in internal manuals. Below is a part of the act in which this is stated:

“Art. 3, § 5. The communication referred to in § 4 shall be presented by the auditor to the head of the department responsible for the control of the administrative process, who shall send it to the Prosecutor's Office.”

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 13(d):

13. In respect of tax measures to combat bribery of foreign public officials, the Working Group recommends that Brazil:

(d) Consider ratifying the Convention on Mutual Administrative Assistance in Tax Matters and consider systematically including the language of Article 26 of the OECD Model Tax Convention in all future bilateral tax treaties with countries that are not signatories to the Convention on Mutual Administrative Assistance in Tax Matters. [2009 Recommendation VIII; 2009 Tax Recommendation I].

Action taken as of the date of the follow-up report to implement this recommendation:

The National Congress ratified the Convention on Mutual Administrative Assistance in Tax Matters through the Legislative Decree n. 105, of April 14th 2016, and the Presidential Decree n. 8.842, of August 29 of 2016, has already internalized its provisions.

Furthermore, the RFB is committed to reproduce the language of Article 26 of the OECD Model Tax Convention in bilateral tax treaties signed with countries that are not signatories to the Convention on Mutual Administrative Assistance in Tax Matters, such as South Africa, South Korea and Norway – all three currently under ratification process. Additionally, the negotiations are already finished with the Philippines.

In addition, some previously signed treaties have already been renegotiated according to such language. However, it is relevant to notice that all the countries that were addressed on the recommendation by the Global Forum regarding this renegotiation are part of the Convention on Mutual Administrative Assistance in Tax Matters. In that sense, there will be no need to adopt new terms of these treaties.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 14(a):

14. With respect to awareness-raising and reporting of foreign bribery, the Working Group recommends that Brazil:

(a) Increase civil society's awareness of foreign bribery, and continue its foreign bribery awareness-raising efforts within the public and private sectors, across all states, and particularly amongst SMEs; [2009 Recommendation VIII, IX.i and ii; 2009 Tax Recommendation II]

Action taken as of the date of the follow-up report to implement this recommendation:

With regard to awareness-raising of foreign bribery among public sector, reference should be made to the above-mentioned PAR courses provided to public agents acting in regional units of the CGU and other relevant anti-corruption agencies, such as the FPS, courts of accounts, Federal Police, Office of the Attorney General, and local authorities. These courses include guidance on the conduction of the administrative proceedings against legal persons and the parameters to be followed in the analysis of compliance programs. Please refer to the information provided on the Recommendation 5(b) for more examples.

Regarding awareness-raising of foreign bribery among private sector, including amongst SMEs, please refer to the initiatives pointed out in the section correspondent to recommendation 12, especially the partnership between the CGU and SEBRAE, which, among other things, aims at offering training for small and micro-entrepreneurs and local public managers, and will provide online and face-to-face courses, in the context of SEBRAE's capacity building events all over the country.

Additionally, please refer to information provided on the two Conferences on the Corporate Liability Law and the organization of the third Conference. As already informed, the Conferences aimed at promoting debates on the impact of the CLL in the business relations and counted on the participation of representatives of important agencies, such as the FPS, the Central Bank, the Administrative Council of Economic Defense (CADE) and internal control bodies, as well as representatives of the private sector and the academy. Reference should also be made to the seminars promoted by the Brazilian NPC.

It is also worth mentioning the OECD Convention Guide formulated by the CGU and made publicly available in its website, in order to raise awareness among civil society (a Portuguese version of the Guide is accessible in: <http://www.cgu.gov.br/assuntos/articulacao-internacional/convencao-da-ocde/arquivos/cartilha-ocde-2016.pdf>).

Finally, CGU is also appointing senior public officials to perform lecturers at conferences promoted by the private sector, such as Compliance&Ethics Academy in São Paulo (2016) and Latin Lawyer – GIR Annual Anti-Corruption and Investigations Conference (2015).

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 14(b):

14. With respect to awareness-raising and reporting of foreign bribery, the Working Group recommends that Brazil:

(b) Continue to systematically provide clear guidance to officials in foreign representations on their reporting obligations in respect of foreign bribery and take steps to increase detection efforts; [2009 Recommendation VIII, IX.i and ii]

Action taken as of the date of the follow-up report to implement this recommendation:

With a view to continuing contributing to anti-bribery efforts in Brazil, the Ministry of Foreign Affairs has systematically provided clear guidance to its representations abroad regarding foreign bribery. The Ministry of Foreign Affairs of Brazil has instructed all its representations abroad to circulate information among Brazilian natural and legal persons in their jurisdictions about the OECD Anti-Bribery Convention. Brazilian representations were provided with a booklet developed by the Ministry of Transparency, Monitoring and Oversight, which aims at presenting the main aspects of the OECD Convention and its implementation in Brazil.

Brazilian diplomatic representations were also instructed to report allegations of foreign bribery involving Brazilian companies. This is a standing instruction which has been periodically clarified and updated in the past few years. The most recent communication on this regard (August 2016) reiterated to all embassies, consulates and representation offices the instruction to broadly circulate, on a systematic and regular basis, information about the OECD Convention among Brazilian natural and legal persons in their jurisdictions. Furthermore, they were requested to report, on a regular basis, any allegations of bribery of foreign public officials against Brazilian and non-Brazilian companies operating in their jurisdictions that may come to their knowledge, including allegations that have arisen in local media. The information received by the Ministry of Foreign Affairs regarding allegations of foreign bribery is transmitted to the Ministry of Transparency, Monitoring and Oversight.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 14(c):

14. With respect to awareness-raising and reporting of foreign bribery, the Working Group recommends that Brazil:

(c) Regarding whistleblowing, put in place appropriate measures to ensure that private sector employees who report in good faith and on reasonable grounds suspected acts of foreign bribery to competent authorities are protected from discriminatory or disciplinary action [2009 Recommendation IX.iii and Annex I.A]

Action taken as of the date of the follow-up report to implement this recommendation:

The parameters to evaluate companies' compliance program set by Decree n. 8,420/15 (ANNEX 2) include the existence of whistleblower protective measures:

“Article 42. For the purposes of the provisions of Paragraph 4 of Article 5, the integrity program will be evaluated concerning as to its existence and enforcement in accordance with the following parameters:

(...)

X – channels for reporting irregularities which are open and widely disseminated to employees and third parties, and mechanisms for the protection of whistle-blowers”

The existence of reporting channels is also object of evaluation by credit agencies that adopted the form to which reference is made in recommendation 15 (a). A section on this matter is included in the manual of procedures of compliance.

The CGU also developed an Integrity Guide for the Private Sector, which includes guidelines for the companies to put in place the above-mentioned channels for the employees to report irregularities (an English version of the Guide is available in: <http://www.cgu.gov.br/Publicacoes/etica-e-integridade/arquivos/integrity-program.pdf>).

Furthermore, as part of the National Strategy to Combat Corruption and Money Laundering (ENCCLA), Action 4 aims at elaborating a diagnosis and a proposal of improvement of the national system of protection and incentives to whistleblowers. The Action is coordinated by the Federal Judges Association and counts on the participation of several government bodies and agencies, such as the CGU, the FPS, the Federal Police, the RFB, among others. The participants are discussing the development of a draft Bill to present to the National Congress and a Conference, in order to bring international specialists and present successful experiences and best practices.

It is also worth mentioning that, within the above-mentioned FPS initiative “Ten Measures Against Corruption”, a Bill was submitted to the National Congress in order to set forth so that the law clearly enables the Prosecution Service to protect its sources of information when such action is necessary for the safety of an informant or the attendance to any relevant public interest. The bill stipulates that no one can be convicted solely on the word of an informant

and that the identity of the informant might be revealed in case the information provided regarding crimes is proven to be false. The Bill was submitted after a campaign that counted on the massive support of Brazilian citizens.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 15(a):

15. Regarding public advantages, the Working Group recommends that Brazil:

(a) Establish formal guidelines for all three export credits agencies addressing (i) the conduct of due diligence of potential exporters and applicants; (ii) the consequences of a client or applicant being the subject of credible allegations or convictions of foreign bribery, either before or after approving support; and (iii) the disclosure of credible evidence of foreign bribery to law enforcement authorities; [2009 Recommendation XII.ii; 2006 Export Credit Recommendation]

Action taken as of the date of the follow-up report to implement this recommendation:

(i) In relation to the conduct of due diligence of potential exporters and applicants, since March 1st 2016 every request for Credit Insurance for Exports is conditioned to the filling of a Compliance Form (available in Portuguese in: www.sain.fazenda.gov.br/assuntos/credito-e-garantia-as-exportacoes/arquivos/FORMULARIOPARAEXPORTADOR2016.pdf). This form is in line with the WGB recommendation in regard to the requesting of information of exporters and presents additional questions necessary to the compliance procedure within the Credit Insurance for Exports. The document must be filled and signed by the exporter for each operation, in the moment of the request for official support. It should be highlighted that, for the consent of Credit Insurance for Exports, the compliance procedure aims at preventing not only the crime of bribery of foreign public official, but also money laundering, financing terrorism, and the acts of corruption defined in the CLL.

It should also be noted that the financing bank must also fill a declaration asserting that it proceeded to the due diligence of the exporter before consenting the credit.

The information gathered through the form, among others, are analysed having as parameters a list of red flags, which is determinant in the decision to proceed to a deeper process of diligence on the operation. Throughout this process the following actions may be adopted: (a) raise more detailed information of the operation among the exporter, importer, financing bank and law firms; (b) analyse if the exporter presents proper systems and controls for preventing unlawful acts; (c) verify which corrective measures shall be adopted by the exporter in case an irregularity is identified.

Additionally, it is noteworthy the development of a manual of procedures of compliance, which presents details regarding every action to be adopted by the credit agency from the moment that the request for official support is made until the monitoring phase after the credit is granted. There are also

sections that deal with subjects such as reporting channels and training of employees.

(ii) Regarding the consequences of a client or applicant being the subject of credible allegations or convictions of foreign bribery, either before or after approving support, an important measure adopted since the adoption of the phase 3 report is the current review of the Statement of Commitment for Exporters.

The document has many objectives, such as informing the exporter of the legal consequences of corruption in international business transactions and demanding the exporter to declare that neither he/she nor any legal or natural person acting on his/her behalf has committed any wrongful act within the operation. The adoption of the Statement is a requirement for receiving official credit for exports, including financing, re-financing, equalization of interest taxes, credit insurance or any combination of these modalities of credit.

The current version of the Statement provides that if an exporter or any of its employees or representatives are held liable for foreign bribery, under the Penal Code or the CLL, the exporter will be subject to the loss of export financing for 5 years from the date of the conviction.

The Statement is under review and a new version shall be published this year. The goal of this update is to better align the text to be signed by the exporters with the commitments made by Brazil in the international sphere, along with establishing in a clearer way the consequences regarding the Credit Insurance for Exports in case of non-compliance with its provisions, before or after the concession of the official support.

Furthermore, it is important to mention that the BNDES, in April 2016, established a work flow to proceed to consultations to the CGU on the existence of allegations of foreign bribery regarding applicants to credits to be granted by the Bank. The procedures of consultation were defined as follows: 1) after meetings with the CGU, focal points were defined for the initial contact between the two agencies, after an applicant or client requests financing. The names of the legal entities and their National Register number is informed, so that the CGU may answer based on the results regarding the existence of credible allegations or liability proceedings opened against the legal entities object of consultation. The CGU will also follow-up on the entities, so that if any new information appears on the data base, it may be promptly informed to the BNDES. 2) Any positive results that may eventually be obtained should not be mandatorily treated as impeditive to the granting of support by the BNDES, but should be taken into consideration in the credit analysis.

The data base consulted by the CGU contains information that range from media news to ongoing investigations, so that further due diligence may be necessary.

(iii) Finally, with regard to the disclosure of credible evidence of foreign bribery to law enforcement authorities, it is important to reiterate that every public servant in Brazil has the legal duty to report to the higher authorities the irregularities that may come to his/her knowledge and represent against any illegality, omission or misuse. In that sense, any concrete evidence of foreign bribery that may arise within operations of credit to exports will be forwarded to competent authorities, as indicated in the manual of procedures of compliance.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 15(b):

15. Regarding public advantages, the Working Group recommends that Brazil:

(b) Extend its Registry of Ineligible and Suspended Companies to cover enterprises that are determined under Brazilian law to have committed foreign bribery; [2009 Recommendation III.vii; XII.ii]

Action taken as of the date of the follow-up report to implement this recommendation:

The Registry of Ineligible and Suspended Companies (CEIS) currently enrolls the companies convicted under the Public Procurement Law. The CLL establishes a specific registry that gives publicity to sanctions applied to the companies held liable for committing the wrongful acts provided by this law, which includes foreign bribery. Such registry – the National Registry of Punished Companies (CNEP) – is provided for in Article 22 of the CLL:

“Article 22. It is hereby created, in the sphere of the Federal Executive Branch, the National Registry of Punished Companies (CNEP), which will consolidate the sanctions applied based on this Law by agencies or entities from the Executive, Legislative and Judicial Branches of all spheres of government.”

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 15(c):

15. Regarding public advantages, the Working Group recommends that Brazil:

(c) Encourage public contracting authorities to consider, as appropriate, internal controls, ethics and compliance programs in their decisions to grant public procurement contracts. [2009 Recommendation X.C]

Action taken as of the date of the follow-up report to implement this recommendation:

Within the National Strategy to Combat Corruption and Money Laundering (ENCCLA), there is an ongoing initiative (Action n. 5) that aims to present proposals on the creation of mechanisms for encouraging the adoption of compliance programs as a parameter in public

procurement contracts. The Action is coordinated by the CGU and counts on the participation of public bodies and companies, such as the Bank of Brazil, BNDES, Caixa, the FPS, the Federal Court of Accounts, among others.

Taking into consideration this recommendation made by the WGB, the agencies involved are currently discussing the best and most appropriate strategies to stimulate the consideration of compliance programs in the decisions regarding public procurement, also considering the existing regulations.

Additionally, the CGU created a Working Group (Ordinance n. 1,080, of June, 2016) for discussing possible improvements to the Public Procurement Law. During the Group's meetings, recommendation 15 (c) is under discussion, in light of the possible amendments that might be proposed by the Group to the National Congress to current legal framework. The results of the discussions of the Group will be later presented to the FPS and the Federal Court of Accounts.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

PART II: ISSUES FOR FOLLOW-UP BY THE WORKING GROUP

16. The Working Group will follow up the issues below as case law and practice develops:

Text of follow-up item 16(a):

16 (a) Whether the foreign bribery offence in the Penal Code (i) covers all elements of the definition of foreign public official; and (ii) covers all bribes offered, promised or paid in return for acts which provide an advantage in the conduct of international business.

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

(i) With regard to the definition of “foreign public official”, case law already provided to lead examiners throughout the phase 3 evaluation process has shown that the definition of “public official” is interpreted in a broad manner in the domestic context.

The same interpretation should be expected for foreign bribery cases, especially because Article 337-D of the Brazilian Penal Code, which brings the concept of foreign public official, has the same terms as those of the article 327, which, in turn, provides for the concept of public official for domestic corruption. The definition covers even who is exercising a public function without payment, in any agency or public enterprise or even working for companies that are directly or indirectly under the control of a foreign country - a definition even broader than the terms of the Convention.

(ii) The Penal Code’s definition of foreign bribery covers any undue advantage (pecuniary or not) promised, offered or paid – directly or indirectly – in return for acts, omissions or delaying of official acts.

Domestic cases provide support to that explanation, as mentioned on Item 2(b)(iii). The same explanation mentioned for the item (i) applies, since the only difference between the Article 333 and the Article 337-B of the Brazilian Penal Code is that the last one has the connection with international business transaction.

Text of follow-up item 16(b):

16 (b) Brazil’s offence of *concussão* to ensure it cannot be used as a basis to preclude the prosecution of a perpetrator for the offence of bribery of a foreign public official.

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

This debate is not pertinent in the context of foreign bribery. *Concussão* is a crime set forth in the Penal Code’s section addressed to offences perpetrated by Brazilian public officials against the national Public Administration. Foreign bribery is situated in the section of the Penal Code on offences perpetrated by individuals against Foreign Public Administration; thus, even if a foreign public official were to demand a bribe while in the Brazilian sovereign territory, he/she would not be held liable for the crime of *concussão*. In that same sense, it would not be a valid defence in the context of a bribe that is promised or paid to a foreign public official, even if on demand.

Additionally, domestic cases show that a briber cannot escape liability on the basis of *concussão*. This would also be valid for foreign bribery, in which prosecutors would present

an indictment if concrete evidences showed criminal intent of the private agent.

There is also one relevant difference when contrasting the articles related to active domestic corruption and foreign bribery. For the domestic active bribery, Article 333 of the Penal Code, the action verbs are **offer or promise**. However, Article 337-B action verbs are promise, offer or **give**. This insertion of the verb give is another evidence that, even when asked or demanded, the responsible for the foreign bribery offense will be held liable, because it is sufficient that it gives the improper advantage, even if it did not offer or promise. Which means, there will be no possibility of alleging coercion or solicitation of the foreign public official, on regular bases.

Text of follow-up item 16(c):

16 (c) Whether the sanctions imposed in practice for foreign bribery are effective, proportionate and dissuasive, including with regard to (i) the use of post-sentencing cooperation agreements; (ii) the sanctions imposed on companies which receive financing from the State, mainly through development banks; (iii) the use of leniency agreements under the CLL; and (iv) the application of civil sanctions and confiscation that may result from a separate civil action.

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

There is still no concluded case law on foreign bribery to demonstrate whether the sanctions imposed in practice are effective, proportionate and dissuasive.

Text of follow-up item 16(d):

16 (d) The performance of the DPF and the FPS with regard to foreign bribery allegations, including decisions not to open investigations.

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

All the decisions of not opening investigations are subjected to judicial control or control by the 5th Coordination and Review Chamber of the FPS.

Text of follow-up item 16(e):

16 (e) Whether the complexity of the administrative proceedings and the number of actors potentially involved may constitute an obstacle to the establishment of the liability of legal entities.

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

The supposed complexity of the administrative proceedings does not constitute any obstacle to the establishment of the liability of legal entities, as Brazil's experience on this matter has shown. The entire proceeding is conducted within CGU, the federal agency technically qualified for conducting punitive administrative proceedings and legally assigned for carrying out these activities. The proceedings for holding legal entities liable are centralized within the COREP (General Coordination of the Liability of Legal Entities), which coordinates all of the procedural phases even when the participation of other units is necessary. The interaction among CGU units is systematic and has proven to be effective in other administrative anti-corruption proceedings conducted by the agency, such as cases involving the liability of public servants or legal entities that bid or contract with the Public Administration.

Additionally, two pieces of normative rules should be mentioned regarding Brazilian efforts to regulate the relevant flows for the administrative liability proceedings. As already mentioned in this report, Brazil enacted on March 18th the Decree n. 8,420/15, which regulates some aspects of the CLL (ANNEX 2). The Decree contains general provisions for the establishment of the proceedings, which were then detailed by the Office of the Comptroller General (CGU), through the issuance of Ordinance n. 910 of April 2015 (ANNEX 4). According to Article 1, the administrative proceeding to investigate the liability of legal entity and the procedures to celebrate the leniency agreement referred to in the CLL, regulated by the Decree n° 8,420/15, will follow the Ordinance's provisions. The Ordinance provides for the preliminary investigation, the establishment of the proceeding and the functions of the investigative commission. A manual is being developed by the COREP so that the flows shall be better delimited within the conduction of the administrative proceedings (PAR) and negotiation of leniency agreements.

Text of follow-up item 16(f):

16 (f) The application of judicial pardons in cases of foreign bribery, and whether they are used appropriately.

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

The practice of domestic cases has shown that judicial pardons are being used on cases where

the offender: provides information about other agents involved on the illicit conduct, appropriately help to prevent other infractions related to the criminal organization, produce and help to produce evidence and also agrees to promote the reimbursement of any improper advantage or damage.

Additionally, according to the Law 12850/2013, the FPS is responsible for negotiating with the offender and the judge in charge will supervise and approve the agreement, in order for the judicial pardon to take place.

“Lava Jato” Case is a relevant example in this sense. Only those offenders who are indeed helping with the investigations and promoting reimbursement are being considered eligible for judicial pardons.

Text of follow-up item 16(g):

16 (g) Whether the FPS exercises the control provided under article 20 of the CLL to apply both administrative and civil sanctions in the case of omission of the CGU.

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

The Federal Prosecution Service, in the Technical Note n. 1/2015 (ANNEX 1), issued the following guideline regarding the investigation of foreign bribery (paragraph II.2.d):

“d) Monitoring administrative omission: the Anti-Corruption Law – guideline

Whenever the Federal Prosecution Service learns about a fact regarding an act against the national or foreign public administration (Art. 5), the prosecutor must check if the public authorities are adopting, in a timely and appropriate manner, administrative liability measures. Law n. 12,846/2013 provides in its Art. 20 that, in the case of omission by the proper authority, the prosecutor must include the sanctions set forth in art. 6 in the judicial liability proceedings.”

In practice, the described situation of omission by administrative authorities hasn't occurred so far.

Text of follow-up item 16(h):

16 (h) How jurisdiction is exercised over natural and legal persons when the offence takes place in part or wholly abroad.

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

With regard to the exercise of jurisdiction over legal persons regarding the foreign bribery offence, in terms of the CLL the administrative liability proceeding will be conducted by the CGU, even if the acts are practiced in part or wholly abroad:

“Article 9. The Office of the Comptroller General (CGU) is responsible for the investigation, the proceeding of and the decision on the wrongful acts provided for in this Law committed against the foreign public administration, subject to the provision set forth in Article 4 of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, enacted by Decree N. 3,678, of November 30, 2000.”

Additionally, Article 28 of the CLL states that:

“Article 28. This Law applies to wrongful acts committed by Brazilian legal entities against foreign public administration, even if such acts were committed overseas.”

Text of follow-up item 16(i):

16 (i) Whether requirements on companies to submit to external audits are adequate; and whether the independence of auditors is sufficiently ensured, particularly for companies which are economically significant but are not listed.

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

The financial demonstrations by unlisted companies are mandatorily audited by external independent auditors registered in the Securities and Exchange Commission (CVM), according to Law n. 6,404/76. The auditors must act with independence in line with the provisions contained in ICVM 308/99 and NBC PA 290 (ISA 290). Additionally, Law n. 11,638/07 provides in Article 3 that:

Article 3. The provisions of Law no. 6.404, of 15 December 1976, regarding bookkeeping, preparation of financial statements and obligation of independent

auditing by an auditor registered at the Securities and Exchange Commission of Brazil are applicable to large-scale companies even if they are not constituted as joint stock companies.

Sole paragraph. For the exclusive purposes of this Law, a corporation or a group of corporations under common control which have, in the last accounting period, total assets higher than R\$ 240.000.000,00 (two hundred and forty million Reais) or annual gross revenue higher than R\$ 300.000.000,00 (three hundred million Reais) will be considered a large-scale company.

The CVM is legally assigned to supervise the preparation of financial demonstrations and the work conducted by the external auditors, including the supervision over those large companies.

Text of follow-up item 16(j):

16 (j) The enforcement of the non-tax deductibility of foreign bribes, particularly whether Brazilian courts promptly inform the tax authorities of convictions related to foreign bribery, and whether tax authorities examine the tax returns of taxpayers convicted of foreign bribery.

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

There are still no final convictions for foreign bribery in Brazil. However, we should highlight that the legislative and normative framework allows for the re-examination of tax returns of taxpayers convicted of foreign bribery, as long as within the period of statutory limitation.

Additionally, we deem important to highlight that in Brazil deductibility of bribes has never been allowed. Therefore, any attempts by taxpayers to deduct bribes in their tax return will be done in a concealed and disguised way – otherwise a taxpayer would knowingly admit to committing a crime. Tax auditors are fully trained to identify all kinds of non-deductible expenses, most of which are certainly disguised, including eventual bribes.

Text of follow-up item 16(k):

16 (k) Whether tax information can effectively be shared in the course of foreign bribery investigations and prosecutions.

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

As stated during the phase 3 evaluation process, tax information can be shared, and a number of domestic cases have shown that this is effectively done. As stated in section related to recommendation 13 (c), tax auditors have the duty to proactively report evidences of irregularities to the competent authorities. Also, tax authorities can share information through requisitions by judicial authorities (Article 198(I) of the Tax Code) or through requisition by other administrative authorities if there is an ongoing investigation of an administrative infraction and with a duly established administrative process (Article 198(II) of the Tax Code). In case of criminal investigations or proceedings conducted by the police, the information may be granted by court decision. However, for investigations conducted by the FPS, no court authorization is required, and the RFB must directly provide the information required (Article 8(2) of Complementary law 75/93).

Text of follow-up item 16(l):

16 (l) Brazil's ability to promptly and effectively respond to foreign bribery-related MLA requests, including those related to legal persons, and those related to Brazil's declaration on Article 9(3).

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

In regard to the **two** passive cases previously informed, one was closed because it was dully fulfilled in March (Foreign bribery under Brazil's perspective), and the other (Foreign bribery under an European country's perspective) was depending on the presence of the requesting country authorities in Brazil for its fulfillment, and it took time for setting up the logistics. In relation to this case, there are still some diligences pending.

Besides the cases above mentioned, between January 2015 and July 2016, other **five** new foreign bribery-related MLA requests were received in Brazil based on the OECD Convention. The first of them is already totally fulfilled and the results were transmitted to requesting State (Foreign bribery under another European country's perspective). The second request was returned because the requesting State declined (Foreign bribery under third European country perspective).

The other MLA requests are still in the execution phase: two of them were received from European country 1 (Foreign bribery under requesting country's perspective) and European country 2(Foreign bribery under requesting country's perspective) in July of 2016; and the last one was received from other country (Foreign bribery under requesting country's perspective)

in April of 2016 and it was already partially fulfilled.

Text of follow-up item 16(m):

16 (m) Brazil's extradition practices to ensure that the consideration of Article 5 factors does not impede Brazil's ability to provide extradition in foreign bribery cases.

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Extradition requests cannot be denied on the basis of political or economic grounds and, as stated in Article 5 of the Convention, the consideration of an extradition request in Brazil "shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved".

The issuance of Decree n. 8,668, of February 11th 2016, and the further publication of Ordinance n. 521, of April 22nd 2016, which alters the Internal Statute of the National Secretariat of Justice and Citizenship (SNJ), have transferred the function of central authority for the processing of MLA requests related to extradition, transfer of convicted persons and execution of sentences to the Department of Asset Recovery and International Cooperation (DRCI).

DRCI has a system of management of data and production of statistics that is since April 2016 fed with the proceedings related to extradition. This system allows not only the management of numbers, but also the quality of the data of requests processed. For illustrative purposes, we inform that from April to July 2016, three active cases of extradition were processed based on the crime of corruption, addressed to two European countries, and one passive case involving corruption was received from a South American country. No case has been denied on the basis of political or economic grounds.

Text of follow-up item 16(n):

16 (n) Whether Brazil engages the private sector in future development aid projects including through BNDES or a future BRICS's Multilateral Development Bank.

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Phase 3 evaluation report notes that Brazil does not promote development projects involving private sector companies. Brazil's cooperation initiatives with other countries are developed through exchange of technical knowledge and capacity building, amongst other actions, and no direct cash transfers to the countries are involved.

The BNDES does not participate in Brazilian initiatives of development cooperation, and its activities are regular export credit operations of goods and services of Brazilian companies. As regards the BRICS's multilateral development bank, the agreement establishing the New Development Bank (NDB) does not provide for the modality of concessional loans or development aid projects. Moreover, in its initial phase of operation, the NDB will prioritize loans between governments.

Therefore, the recommendation to "engage the private sector in future development aid projects [...] through BNDES or a future BRICS's Multilateral Development Bank", presented in Phase 3 evaluation report, is currently not applicable to the Brazilian context.

It is noteworthy, however, that a productive dialogue with the private sector has been promoted within the BRICS. As a result of a Brazilian initiative, the I BRIC Business Forum was held in 2010 and in the following years. In 2013, the BRICS Business Council was established during the BRICS Heads of State Summit in Durban. The BRICS Business Council aims at ensuring regular dialogue between the business communities and the Governments of the BRICS countries, including through presenting recommendations to enhance the trade and investment environment.