



Implementing the OECD Anti-Bribery Convention in Brazil

Phase 4 report

This Phase 4 Report on Brazil by the OECD Working Group on Bribery evaluates and makes recommendations on Brazil's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2021 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions. It was adopted by the OECD Working Group on Bribery on 12 October 2023.

The report is part of the OECD Working Group on Bribery's fourth phase of monitoring, launched in 2016. Phase 4 looks at the evaluated country's particular challenges and positive achievements. It also explores issues such as detection, enforcement, corporate liability and international co-operation, as well as covering unresolved issues from prior reports.

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EXECUTIVE SUMMARY

This Phase 4 report by the OECD Working Group on Bribery (Working Group) evaluates and makes recommendations on Brazil's implementation and enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. It details Brazil's particular achievements and challenges in this regard, including with respect to enforcement of its foreign bribery laws, as well as the progress Brazil has made since its Phase 3 evaluation in 2014.

The Working Group commends Brazil for the vigour and creativity with which it has employed and further refined its legal and institutional framework for imposing corporate liability, which was first enacted in Phase 3. In addition, Brazil has successfully used leniency agreements, its primary non-trial resolution mechanism for companies to sanction foreign bribery, despite lingering questions raised after evidence obtained through the *Odebrecht* leniency agreement was provisionally declared inadmissible for use in other proceedings. The Group also commends the CGU and the FPS for the significant role they have played, since Phase 3, in combating transnational corruption involving foreign bribery, especially through their willingness and ability to cooperate closely with counterparts in Working Group and non-Working Group countries. This cooperation has, collectively, helped deter foreign bribery by contributing to resolutions imposing some of the largest global fines to date. In addition, individual Brazilian agencies have made concerted efforts to either improve their contribution to the fight against foreign bribery or to enhance guidance and transparency to empower the private sector to play its part as well.

The Working Group recognises that Brazil has sanctioned large-scale foreign bribery schemes through non-trial resolutions with legal persons, including as part of one of the most prominent multi-jurisdictional resolutions to date. Nonetheless, the Working Group is concerned that Brazil may not be able to sustain the level of foreign bribery enforcement that it achieved in recent years. The Working Group believes that Brazil could better detect and enforce its foreign bribery offence. Brazilian authorities have only investigated 28 of the 60 allegations of foreign bribery identified at the time of this report, with 49 allegations (81%) involving five companies already charged or sanctioned in relation to foreign bribery. For legal persons, the FPS and CGU have sanctioned three companies for foreign bribery through leniency agreements, and the CGU has commenced administrative enforcement proceedings against a corporate group. In contrast, no natural persons have received final convictions, even though Brazil's first-ever criminal proceeding for foreign bribery remains ongoing after nearly a decade. So far, eight of the nine defendants in that case have been acquitted because of the statute of limitations. The few other investigations that remain underway, largely concern ancillary matters related to companies already sanctioned for foreign bribery schemes. The Group strongly urges Brazil to enhance its enforcement efforts in relation to its supply-side foreign bribery offence. The Group is seriously concerned that Brazil's statute of limitations for natural persons remains inadequate to effectively sanction foreign bribery. It is also seriously concerned that Brazil's whistleblower framework does not protect those who report foreign bribery allegations, especially workers in the private sector. The Working Group urges Brazil to amend its legislation to address these concerns as a matter of priority. Furthermore, Brazil needs to vigorously address the independence issues that have emerged and might hinder police and prosecutors as they investigate or prosecute foreign bribery cases as well as possible political bias by law enforcement agents in such cases.

The report, including its recommendations, reflects the findings of experts from Colombia and the United Kingdom based on information provided by Brazil, the evaluation team's own research, and discussions held with Brazilian officials, the private sector, and civil society during an on-site visit to Brasilia and Sao Paulo in May 2023. The report was adopted by the Working Group on 12 October 2023. Brazil will submit a written report to the Working Group in two years (i.e., October 2025) on its implementation of all recommendations as well as its foreign bribery enforcement. At that time, the Working Group will expect that Brazil will have addressed the longstanding issue concerning the statute of limitations for natural persons.

INTRODUCTION

1. In October 2023, the OECD Working Group on Bribery in International Business Transactions (Working Group) completed its fourth evaluation of Brazil's implementation of the [Convention on Combating Bribery of Foreign Public Officials in International Business Transactions](#) (OECD Anti-Bribery Convention or Convention), the [2021 OECD Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions](#) (2021 OECD Anti-Bribery Recommendation or 2021 Recommendation), and related instruments.

1. Previous Evaluations of Brazil by the Working Group on Bribery

2. The Working Group, composed of the 45 Parties to the OECD Anti-Bribery Convention,¹ conducts successive phases of peer-review evaluations to monitor all Parties' implementation and enforcement of the Convention and related instruments. The evaluated country may comment on but not veto the evaluation report and recommendations. From Phase 2, each evaluation includes an on-site visit to obtain governmental and non-governmental views in the evaluated country. Evaluation reports are published on the OECD website.

3. Brazil's October 2014 Phase 3 evaluation contained 39 recommendations. In October 2016, the Working Group concluded that Brazil had fully implemented 18 recommendations, partially implemented 13, and not implemented 8. One recommendation was converted into a follow-up issue.² (See Figure 1 and Annex 2).

Box 1. Previous Working Group monitoring of Brazil

2004 [Phase 1 report](#)

2007 [Phase 2 report](#)

2010 [Phase 2 follow-up report](#)

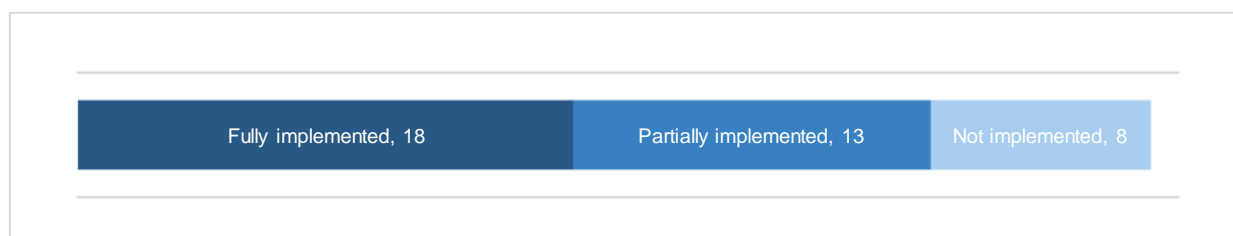
2014 [Phase 3 report](#)

2016 [Phase 3 follow-up report](#)

2019 [High-Level Mission](#)

2021–2022 Monitoring Sub-Group

Figure 1. Brazil's implementation of Phase 3 recommendations by 2016 Written Follow-up report



Source: Brazil Phase 3 Two-Year Written Follow-up report

¹ As of October 2023, the Working Group includes the 38 OECD Member countries and 7 non-Member countries.

² See **Annex 1** for a full list of the Phase 3 recommendations and their implementation status as of October 2016.

4. Between December 2016 and October 2022, the Working Group conducted supplemental *ad hoc* monitoring of Brazil. In November 2019, the Working Group sent a High-Level Mission (HLM), with representatives from Italy, Norway, the United States, and the OECD Secretariat. Between December 2019 and December 2020, Brazil periodically reported to the Working Group on issues discussed during the HLM as well as subsequent developments. In March 2021, the Working Group decided to establish a Monitoring Sub-Group (MSG), with representatives from the countries involved in the HLM, to monitor Brazil's progress on 12 issues. In December 2022, the Working Group ended the MSG and postponed the assessment of 10 issues to Phase 4.

2. Phase 4 Process and On-site Visit

5. Phase 4 evaluations focus on three cross-cutting themes: detection; enforcement of the evaluated Party's foreign bribery offence; and corporate liability. They also address progress made in implementing outstanding recommendations from previous phases, as well as any issues raised by changes to domestic legislation or the institutional framework. Phase 4 considers each Party's unique situation, resulting in a report and recommendations that address the specific challenges and achievements of each Party. This result is largely achieved by focusing first and foremost on the recommendations from Phase 3 that were not fully implemented by the end of that cycle. This means that issues that were not problematic or were resolved by the end of Phase 3 may not be reflected in the Phase 4 report. At the same time, wholly new issues that have arisen since Phase 3, including issues identified by the MSG, may appear for the first time in this Phase 4 evaluation report.

6. The evaluation team was composed of lead examiners from Colombia and the United Kingdom, plus OECD Anti-Corruption Division members.³ After receiving Brazil's responses to the Phase 4 Questionnaire and supplementary questions, the evaluation team conducted an on-site visit to Brasilia and São Paulo from 15 to 19 May 2023. The team met with representatives of Brazil's government (e.g., public agencies, law enforcement authorities, the judiciary), the private sector (e.g., business associations, companies, financial institutions, lawyers, external auditors), and civil society (e.g. non-governmental organisations, academia, the media).⁴ Besides receiving a data-protection notice in line with OECD and Brazilian requirements, the participants were informed that their views would be incorporated in this report without individual attribution.⁵ The evaluation team expresses its appreciation to all participants for their contributions to the open and constructive discussions. The evaluation team is also grateful to the Brazilian authorities, including high-ranking officials, for their co-operation and engagement throughout the process.

3. Brazil's Economy and Foreign Bribery Risks

a. Brazil's economic situation and trade profile

7. **Economic size.** Brazil is a significant economy both in global terms and in comparison with other Working Group members. According to the last available data, Brazil was the 13th largest economy in the world and the 11th largest in the Working Group in terms of gross domestic product (GDP).⁶ With a

³ **Colombia** was represented by Mery Angélica Mantilla, Delegate in charge of the Anti-Corruption Division, Superintendency of Corporations. The **United Kingdom** was represented by Mark Reeves, Senior Officer, International Corruption Unit, Investigations Command, National Crime Agency, and Duncan Tessier, Head of Economic Crime Directorate, Home Office. The **OECD** was represented by Sandrine Hannedouche-Leric, Senior Legal Analyst and Coordinator of the Phase 4 evaluation, and Brooks Hickman, Legal Analyst, both from the Anti-Corruption Division, Directorate for Financial and Enterprise Affairs. Vitor Geromel, Legal Analyst in the Anti-Corruption Division participated in this evaluation through the on-site visit.

⁴ See **Annex 3** for a description of the types of participants in the on-site visit discussions.

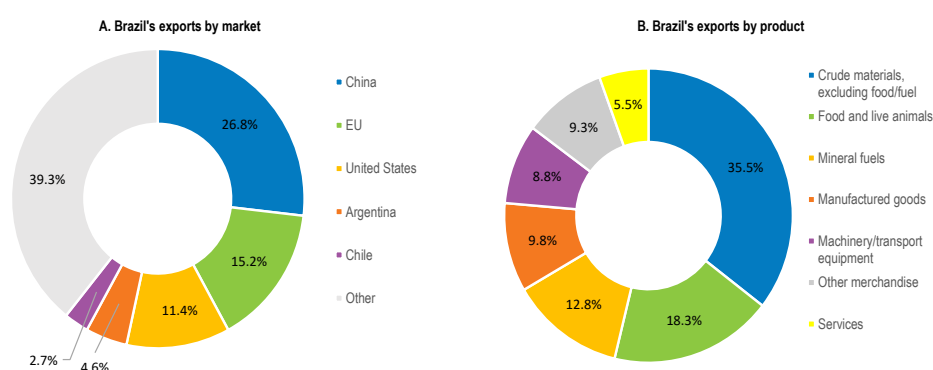
⁵ See data protection-related revisions to the Phase 4 Procedure.

⁶ UNCTADStat (last accessed 1 July 2023).

population of over 214 million, Brazil ranks as 42nd in the Working Group and 88th in the world in terms of GDP per capita.⁷ Brazil's GDP annual growth in 2022 was 2.9% (down from 4.6% in 2021). According to the last available data, the five largest sectors were wholesale and retail trade, including motor vehicles (12.9%), manufacturing (12.5%), public administration and defence (10.1%), real estate (9.7%), financial and insurance activities (7.9%).⁸ Together, these sectors accounted for 53% of Brazil's GDP.

8. **Trade.** In 2022, Brazil's total merchandise export volume was USD 334.1 million (up from USD 280.8 million in 2021). Brazil's total services exports amounted to approximately USD 39.5 million (up from USD 33.2 million in 2021).⁹ It had an overall positive merchandise trade balance, exporting USD 44.1 million more in exports than it imported. Conversely, Brazil had an overall negative services trade balance, of USD -40.0 million.¹⁰ Brazil's five largest trade partners (merchandise) in 2022 were the People's Republic of China (26.8%), the European Union (15.2%), the United States (11.4%), Argentina (4.6%), and Chile (2.7%).¹¹ In total, Brazil's top five export destinations accounted for 49.3% of Brazil's merchandise export volume. In terms of sectors, Brazil's largest share of exports were related to crude materials, excluding food and fuel (35.5%), food and live animals (18.3%), mineral fuels (12.8%), manufactured goods (9.8%), and other merchandise, excluding machinery and transport equipment (9.3%).

Figure 2. Brazil's goods and services exports by market and product



Note: The last available data for Brazil's exports by market were for 2022, while the export data by product/service were for 2021.

Source: OECD calculations using UN Comtrade and UNCTAD data

9. **Outward FDI.** In terms of foreign direct investment flows, Brazil had USD 50.4 billion in FDI inflows and USD 23.1 billion in outflows according to UNCTAD data. According to last available data, Brazil ranked 18th among Working Group members in terms of outward FDI stock. According to the US Department of State's 2021 Investment Climate Statement concerning Brazil, the top five FDI destinations in 2021 included the British Virgin Islands (23.46%), the Bahamas (20.58%), the Cayman Islands (20.06%), Luxembourg (6.54%), and the United States (6.37%).¹² This list features several notable tax havens or

⁷ UNCTADStat, Brazil Profile, <https://unctadstat.unctad.org/countryprofile/generalprofile/en-gb/076/index.html>.

⁸ OECD Stat, Quarterly National Accounts, First Quarter 2023.

⁹ UNCTADStat (last accessed 1 July 2023). Note that UN export data for 2022 was provisional.

¹⁰ OECD Main Economic Indicators, BPM6 Goods, balance.

¹¹ UN Comtrade Database. On a purely national basis (disaggregating the EU trading bloc), Brazil's five largest trading partners (merchandise) would be the People's Republic of China (26.8%), the United States (11.4%), Argentina (4.6%), the Netherlands (3.6%), and Spain (2.9%).

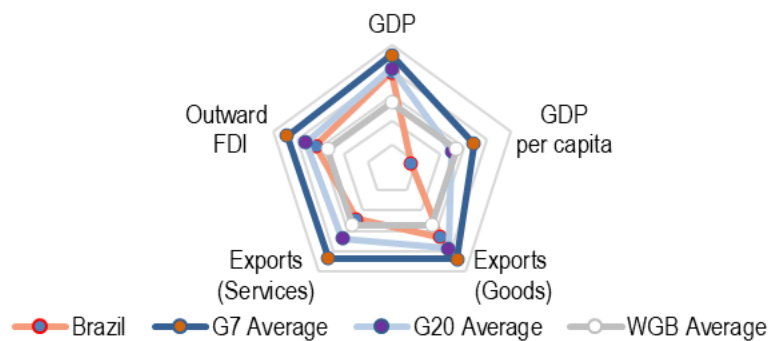
¹² US Department of State, 2023 [https://www.state.gov/reports/2021-investment-climate-statements/brazil/Investment Climate Statements: Brazil](https://www.state.gov/reports/2021-investment-climate-statements/brazil/Investment%20Climate%20Statements%20Brazil).

jurisdictions with a reputation for limited transparency concerning corporate structures and financial dealings.

b. *Brazil's foreign bribery risks*

10. The foreign bribery risk that a country faces varies over time based on its transnational economic activity, including its volume of trade and investment in high-risk destinations, high-risk sectors, as well as the size and nature of the individual transactions themselves. In country evaluations, the Working Group assesses the evaluated country's foreign bribery risks by examining proxies such as its economic size, level of exports, and foreign direct investment (FDI). As shown in Figure 3 below, Brazil in terms of GDP is one of the larger Working Group members (11th largest), falling slightly below the G20 average. Brazil's economy ranks above the Working Group average in terms of goods exports (17th largest) and outward FDI stock (19th largest), but below the G20 average. In terms of services exports, Brazil ranks below the Working Group average (26th largest) as well as the G20 average. In terms of destinations, a relatively high percentage of exports and FDI flow to jurisdictions perceived to have higher levels of corruption or lower levels of corporate transparency. In addition, certain prominent export sectors in Brazil, including fossil fuels, have traditionally been associated with higher foreign bribery risks.

Figure 3. Brazil's economic profile compared with those of other Working Group countries



Note: Brazil's ranking among Working Group members as compared with the averages for all Working Group members as well as the G7 and G20 Working Group members. The GDP and FDI data are for 2021, while the export data are for 2022.

Source: UNCTAD data.

11. State-owned enterprises (SOEs) also play a significant role in the Brazilian economy. In 2020, an OECD study found that Brazil had 203 federal SOEs, with 46 under direct control and 157 under indirect control through five state-owned corporate groups (including 52 subsidiaries of Petrobras).¹³ At the time, Brazil had three SOEs among the 500 largest enterprises in the world by annual revenue.¹⁴ The 46 SOEs directly controlled by the federal government included six listed companies that, collectively, accounted for 20.9% of market capitalisation at the end of 2019.¹⁵ At the time, the SOE was heavily concentrated in the finance and the oil and gas sectors, which constituted over half the value of all SOEs in terms of valuation.¹⁶

¹³ OECD (2020), OECD Review of the Corporate Governance of State-Owned Enterprises: Brazil, page 19, available at: <https://www.oecd.org/corporate/SOE-Review-Brazil.pdf>.

¹⁴ OECD (2020), page 19. According to the OECD study, the other Working Group members among the top ten countries with the largest state-owned or partially state-owned enterprises were France (6 entities), the Russian Federation and the United States (3 entities), and Germany, Italy, Japan, and Norway (2 entities).

¹⁵ OECD (2020), page 20.

¹⁶ OECD (2020), page 20.

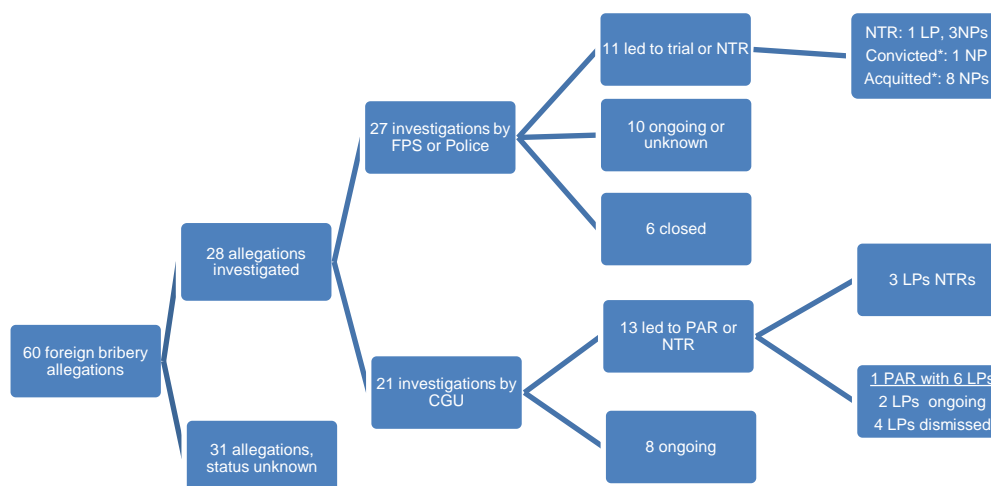
12. Finally, since Phase 3 Brazil major corruption-related cases involving the oil-and-gas industry (Petrobras) and construction industry (e.g., Odebrecht, OAS) have been investigated in Brazil. While most of these corruption schemes involved domestic corruption from Brazil's perspective, they also had sizeable transnational elements with Brazilian companies implicated in supply-side foreign bribery.

4. Foreign Bribery Enforcement

13. In Phase 3, Brazil had only 14 allegations that had arisen since the Convention entered into force for Brazil in 2000. Brazil had only opened preliminary investigations into 5 allegations, of which 2 were discontinued without further proceedings. Another 2 investigations, described in Phase 3 as the **Gas Pipeline** and **Heart Valves** cases, remained ongoing though the authorities deemed it unlikely that either case would result in an indictment. Finally, in 1 case, known as the **Aircraft Manufacturer** case, prosecutors had filed bribery and money laundering charges against nine defendants in August 2014.

14. For Phase 4, as of 1 July 2023, 60 foreign bribery allegations had arisen with potential links to Brazil, including the 2 investigations and 1 prosecution that were ongoing at the time of Phase 3. Figure 4 below shows the flow of allegations to investigations and then on to proceedings, sanctions, or acquittals. Brazil is known to have investigated 28 of the 60 allegations that had arisen when this report was adopted.

Figure 4. Brazil's foreign bribery allegations since Phase 3



Note: In the trial, nine natural persons were convicted at first instance in 2018, but eight were acquitted at the second instance in 2022 because of the statute of limitations. The 2022 decision remains subject to appeal.

Source: Data from foreign bribery allegations compiled by the OECD and Brazil Phase 4 responses.

15. The Department of Federal Police (DPF) or the Federal Prosecution Service (FPS) have investigated 27 allegations, 7 of which were not investigated by the Office of the Comptroller General (CGU)

16. Only 1 of the 27 allegations has led to trial, while 9 allegations were resolved through a leniency agreement in the **Odebrecht** case. For 1 allegation, the case, the FPS concluded a cooperation agreement with one natural person, but no public information is available concerning any further action taken against the company or others involved in the scheme. Investigations into 6 allegations were closed without proceedings or sanctions, while 10 other investigations were either ongoing or their status could not be determined by the evaluation team. In terms of defendants, 1 natural person has been convicted and 8 defendants have been acquitted in the **Aircraft Manufacturer** case, though these decisions are still

subject to appeal. In addition, 2 natural persons in that case concluded cooperation agreements but it is not clear if any sanctions were imposed through those non-trial resolutions. In a separate case, 1 legal person **Odebrecht case** was sanctioned through a non-trial resolution known as a leniency agreement.

17. For its part, the CGU has investigated 21 allegations, 1 of which was not investigated in parallel by the Police or the FPS. Of these allegations, 12 were resolved with non-trial resolutions with 3 different companies in the **Nova Participações S.A.** (formerly Engevix), **Odebrecht**, and **OAS** cases, while 1 allegation resulted in an administrative proceeding (“PAR”) being commenced against six entities. That case remains ongoing against two entities. Finally, the CGU reports that it is currently investigating 8 allegations, though all concern companies that have already concluded leniency agreements for the same or related offences.

a. Brazil's Phase 3 foreign bribery prosecution remains ongoing

18. The **Aircraft Manufacturer** case, Brazil's first and only foreign bribery case brought to criminal trial, continues to wind its way through the Brazilian court system. In August 2014, the FPS charged a former vice president of the company and ten other defendants with foreign bribery for promising USD 3.5 million in bribes in 2007 to secure a USD 92 million contract to supply aircraft to Dominican Republic's armed forces. One defendant, the intermediary in the scheme, was dismissed after concluding a cooperation agreement.

19. In December 2018, the first instance court convicted the remaining ten defendants for foreign bribery and money laundering. One defendant concluded a cooperation agreement after the conviction. Nine defendants, including the former vice president appealed their convictions. In April 2022, the second instance court set aside the money laundering convictions as explained in Section B.1.c. below. As for the foreign bribery counts, the court upheld the former vice president's conviction but acquitted the other defendants as they benefited from a shorter limitations period because their sentences did not exceed two years' imprisonment. As of this report, that decision was under appeal.

20. The company itself was not sanctioned for foreign bribery as the wrongdoing occurred before the 2013 enactment of Brazil's corporate liability for corruption offences. Instead, in 2016, the FPS and the Securities and Exchange Commission (CVM) signed a “Term of Commitment” to resolve the matter based on civil violations of the duty to maintain accurate books and records under article 177 of Law 6,404/1976 in relation to certain foreign bribery schemes. While the “Term of Commitment” expressly mentioned foreign bribery schemes that were committed in African, Middle Eastern, or South Asian countries, no public charges have been brought against natural persons in relation to those schemes although the investigation continues.

21. As for the two other matters that were still active at the time of Phase 3, the authorities closed the **Heart Valves** investigation after determining that the wrongdoing ended in 2002 before Brazil's foreign bribery offence had entered into force. It is not clear whether other charges were considered, even though the defective heart valves reportedly resulted in the deaths of up to 26 persons. The **Gas Pipeline** case is assumed to have been closed, as the company involved concluded leniency agreements with the authorities, for other offences including foreign bribery. It appears that the wrongdoing in this matter occurred before Brazil's corporate liability for corruption offences. It is not known whether any natural persons were investigated in connection with this matter.

b. Brazil experienced a spike in enforcement through the Lava Jato operation

22. A substantial portion of the 60 allegations known as of this Phase 4 report arose in the context of the *Lava Jato* operation. The *Lava Jato* operation began in 2014 as a money laundering investigation but revealed an extensive pattern of domestic corruption, foreign bribery, and money laundering offences committed by Brazilian construction companies, foreign multinational enterprises, and a host of corporate

executives and employees as well as Brazilian and foreign public officials. Ultimately, 43 of the 56 new foreign bribery allegations (76.8%) identified for this Phase 4 evaluation are linked to companies implicated in the *Lavo Jato* investigation.

23. The **Odebrecht** case was among the most prominent. In December 2016, Odebrecht, a prominent Brazilian construction company, concluded a leniency agreement with the FPS in parallel with resolution with law enforcement authorities from Switzerland and the United States. While Brazilian authorities do not publish the factual annex to its leniency agreements, Odebrecht admitted in the U.S. resolution that it had paid over USD 788 million in bribes to public officials, political parties and their officials, or political candidates from Brazil and 11 foreign countries, including Angola, Argentina, Colombia, the Dominican Republic, Ecuador, Guatemala, Mexico, Mozambique, Panama, Peru, and Venezuela. At the time, the *Odebrecht* case was recognised as part of the “largest foreign bribery case in history”.¹⁷ In July 2018, Odebrecht also concluded a leniency agreement with the CGU and the AGU for various anti-corruption violations, including foreign bribery schemes in Argentina, Dominican Republic, El Salvador, Mexico, and Mozambique. As a result of the 2016 and 2018 leniency agreements, Odebrecht agreed to pay approximately USD 2.5 billion in fines in Brazil. Reportedly, the fine for the foreign bribery portion was USD 10 million. As for the natural persons involved, Brazil reported that 77 individuals concluded cooperation agreements related to the *Odebrecht* case, but it could not specify how many, if any, of these agreements covered foreign bribery. In September 2023, shortly before this report was adopted, an STF justice held that evidence obtained through the 2016 *Odebrecht* leniency agreement could not be used in other criminal proceedings.¹⁸ Though the decision did not directly attack the leniency agreement itself, media reports indicated that the ruling raised doubts by a number of Brazilian lawyers concerning the validity of the leniency agreement.¹⁹ In response, Novonor, the company formerly known as Odebrecht, filed a request inviting the STF to affirm the leniency agreement’s validity. As at the time this report was adopted, the STF had yet to rule on this request.²⁰ In addition, the decision raised concerns among other Working Group countries.

24. At least two other major construction companies implicated in the *Lavo Jato* investigation also concluded leniency agreements concerning foreign bribery matters in the **Engevix** and **OAS** cases. In November 2019, Nova Participações S.A. (formerly Engevix) concluded a leniency agreement with the CGU and the AGU for corruption violations, including a foreign bribery scheme involving at least USD 8 million in corrupt payments to Venezuelan naval officials. Separately, OAS also concluded a leniency agreement with the CGU and AGU in November 2019 concerning foreign bribery schemes in Angola, Chile, Costa Rica, Guatemala, Peru, as well as Trinidad and Tobago. Again, the Brazilian authorities did not report whether any natural persons were sanctioned for foreign bribery in either of these cases, though at least one natural person connected with OAS concluded a cooperation agreement.

c. **The CGU has started its own enforcement proceedings in a foreign bribery matter**

25. Through engagement with the Working Group and a review of media reports, the CGU became aware that a Brazilian entity had allegedly bribed public officials in a central African country to secure contracts for a public works project in 2016. By February 2021, the CGU had instituted a formal administrative enforcement action (PAR) against six entities. After the defendants presented their preliminary defence, the CGU dismissed the charges against four entities, but proceedings continue

¹⁷ See Plea Agreement and Information, in *U.S. v. Odebrecht S.A.*, Cr. No. 16-643 (RJD). See also US Department of Justice (2016), [Odebrecht and Braskem Plead Guilty and Agree to Pay at Least \\$3.5 Billion in Global Penalties to Resolve Largest Foreign Bribery Case in History](#).

¹⁸ Judgment of 6 September 2023, RCL 43007 / DF (Toffoli).

¹⁹ Ana de Liz, [Brazilian lawyers concerned about judicial uncertainty following Supreme Court Odebrecht decision](#), GIR (20 Sept. 2023).

²⁰ Ana de Liz, [Novonor asks Brazil’s Supreme Court to keep Odebrecht leniency](#), GIR (28 Sept. 2023); Statement of Novonor S.A. filed on 26 September 2023 regarding RCL 43007.

against two entities. During the on-site discussion, the Brazilian authorities explained that the prosecutors were not involved in this matter because there was no criminal jurisdiction as no Brazilian citizens were allegedly involved. The CGU is also currently investigating eight foreign bribery allegations concerning five different companies. All of these companies were implicated in the *Lava Jato* investigation and have already concluded leniency agreements, so the CGU is investigating whether certain foreign bribery schemes were fully reported.

d. Brazil has played an active role in helping Working Group and other foreign authorities resolve their foreign bribery cases

26. The *Lava Jato* operation also revealed that several foreign multinational enterprises had bribed Brazilian public officials to obtain business advantages from Petrobras, a Brazilian SOE operating in the oil and gas sector. While Brazil's officials were on the demand side of these transnational corruption schemes, Brazilian law enforcement authorities cooperated closely with foreign counterparts investigating the supply-side foreign bribery offences committed by their companies or nationals.

27. As a result of this cooperation and the mutual trust that it fostered, Brazil has participated in at least 12 major multijurisdictional resolutions of transnational corruption cases constituting foreign bribery from at least one Working Group member country. These resolutions, involving four Working Group countries (the Netherlands, Switzerland, the United Kingdom, and the United States) and one non-Working Group country (Singapore), resulted in over USD 9 billion imposed in monetary penalties on the companies. Due to the integral role that the Brazilian authorities played in these cases, such as detecting the underlying schemes and in working with their counterparts to gather the relevant evidence, Brazil ultimately received approximately USD 5.6 billion of the total amount. In this way, Brazil has played an active role in the international fight against foreign bribery.²¹ Table 1 below highlights a sample of major multijurisdictional resolutions in which Brazil has participated since Phase 3 in which at least one other Working Group country has imposed sanctions for foreign bribery.

Table 1. Selected multijurisdictional resolutions in which other Parties sanctioned foreign bribery

Company	Other countries	Total penalties imposed by Brazil and other participating countries (including fines, forfeiture, restitution).	Date
Odebrecht / Braskem	Switzerland, US	USD 3.5 billion, distributing the principal fine to Brazil (80%), Switzerland (10%), and the United States (10%).	2016
J&F Investimentos	US	US\$2 billion, with approximately USD 1.85 billion to be paid to Brazil.	2017, 2020
SBM Offshore	Netherlands, US	USD 808 million, paid as follows: Brazil (USD 330 million), the Netherlands (USD 240 million), and the United States (USD 238 million)	2014, 2017, 2018
Rolls-Royce	UK, US	USD 800 million, paid as follows: Brazil (USD 25.6 million), the United Kingdom (USD 604.8 million), and the United States (USD 169.9 million).	2017
Glencore	UK, US	USD 739 million in relation to foreign bribery, including amounts to Brazil (USD 39.6 million) and the United Kingdom (USD 165.9 million).	2022
Keppel Offshore & Marine Ltd	Singapore, US	USD 422 million, paid as follows: Brazil (50%), Singapore (25%), and the US (25%).	2017, 2018, 2022

Note: The total penalties are the approximate announced penalty. Certain amounts may have been revised downward to reflect ability to pay. Source: FPS and CGU pages on Leniency Agreements; Press releases from UK Serious Fraud Office, US Department of Justice, and the US Securities and Exchange Commission.

Commentary

On the positive side, the Brazilian authorities have sanctioned three companies for foreign bribery using non-trial resolutions since Phase 3, including one of the largest multi-jurisdictional foreign bribery cases concluded to date This demonstrates Brazil's capacity to handle significant and

²¹ See Ministério Público Federal, [Lava Jato case](#), CGU, [Concluded Leniency Agreements](#).

complex foreign bribery cases through its leniency agreement framework. From a broader perspective, Brazilian law enforcement authorities, including the FPS, the CGU, and the AGU, have also played a significant role in combating transnational corruption involving foreign bribery from a Working Group perspective. Through their willingness and ability to cooperate closely with counterparts in Working Group and non-Working Group countries, the Brazilian law enforcement authorities have helped impose some of the largest global fines for foreign bribery schemes. In this way, Brazilian authorities have helped deter foreign bribery and recovered considerable funds for Brazil.

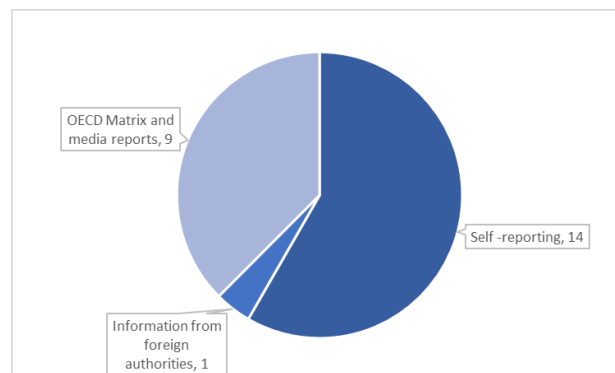
While recognising Brazil's efforts and the magnitude of the cases that have been concluded, the lead examiners still have concerns that Brazil has yet to achieve a sustainable level of foreign bribery enforcement consistent with, its economic profile, especially given the role that major Brazilian companies have had in some of the world's largest corruption cases in the past decade. They are, in particular, concerned that Brazil has apparently only investigated 28 of the 60 foreign bribery allegations identified as of this report. Furthermore, Brazil has only brought contested enforcement actions in two cases, with Brazil's first criminal court proceedings still ongoing despite commencing in 2014. It is even more concerning that eight of the original convictions in that case were set aside on appeal as being time-barred. The lead examiners encourage Brazil to use its demonstrated experience in investigating complex transnational corruption cases to enforce to enforce its foreign bribery and related offences more vigorously. In addition, following a recent judgment by an STF justice concerning evidence obtained in relation to the Odebrecht leniency agreement, the lead examiners recommend that the Working Group follow up on the potential consequences that this decision may have on Brazil's leniency agreements in foreign bribery matters, in particular the extent to which it might affect their legal certainty. They also recommend that the Working Group follow up on the potential consequences that this decision may have on Brazil's ability to provide and to obtain mutual legal assistance in foreign bribery cases.

A. DETECTION OF THE FOREIGN BRIBERY OFFENCE

Introduction

28. The Brazilian authorities report that all their concluded cases resulted from allegations detected through self-reporting. The FPS has one ongoing enforcement action, which started during Brazil Phase 3 evaluation, was detected by a referral from a foreign authority. The CGU also has one ongoing enforcement action, which it detected by reviewing foreign bribery allegations compiled by the OECD. As shown in Figure 5, no foreign bribery allegation has been uncovered by public officials, whistleblowers, auditors, tax authorities, export credits and development agencies, nor through anti-money laundering or mutual legal assistance. The different detection sources are discussed below.

Figure 5. Sources of foreign bribery allegations



Source: Case questionnaire responses.

Commentary

The lead examiners are concerned that Brazil has neglected or underused certain sources of detection. Since Phase 3, 28 allegations are known to have been formally investigated although they largely concern the same set of companies. These were detected by corporate self-reports, referrals from foreign authorities, or media reports and information compiled by the Working Group. This suggests a lack of capacity to detect and react to foreign bribery allegations arising from other sources. While Brazil should be commended for its ability to gather data on its detection sources, these data highlight that Brazil needs to be more proactive in its detection efforts and methods, including by fostering closer engagement among government agencies as discussed in relevant sections below.

A.1. Detecting and Reporting Foreign Bribery through Brazilian public officials

29. Brazil has never detected a foreign bribery case based on a public official's report even though public officials are required to report any irregularity or illegality that they discover in the course of their duties.²² Public officials who fail to report can be held criminally liable under article 319 of the Penal Code (PC) and be subject to three months to one year's imprisonment and a fine. Additionally, all bodies from the federal public administration, including SOEs, are required to report to the CGU or the FPS instances of foreign bribery identified in the exercise of their functions.²³

30. Brazil indicates that the CGU has developed several "cross-cutting, multi-institutional initiatives" to encourage public officials to detect and report foreign bribery. These initiatives are at varying stages of development with mixed results. For example, a 2018 partnership between the CGU and the competition authority (CADE) has yet to result in the detection of any foreign bribery allegations. In the 2019 edition of the National Strategy on Combating Corruption and Money Laundering (ENCCLA), the CGU proposed to develop a Normative Ordinance to improve communication procedures within the executive branch when foreign bribery is detected. As a result of this effort, the 2022 Decree ultimately specified that all bodies of the federal public administration are required to forward evidence of foreign bribery obtained in the performance of their functions to the CGU. In 2019, the CGU organised, with the Attorney General's Office (AGU) and the FPS, the "Fight Against Transnational Corruption Week" to raise awareness. In 2023, the CGU, in partnership with the National School of Public Administration (ENAP), also launched a free online course on foreign bribery to raise awareness among officials from the diplomatic service, export credit agencies, financial intelligence unit, and the competition authority. In February 2023, 385 people had completed the course.

31. Brazil's efforts, however, have not yet resulted in any detection or reporting of foreign bribery allegations by Brazilian public officials. No specific reason for this lack of reporting could be identified during the on-site visit. Panellists from the public sector indicated that they are not aware of a reporting threshold to implement their reporting obligation. When asked which reporting channel they would use to report a foreign bribery offence, most panellists referred to either the Ombudsman, the prosecutors or the "Fala.BR Platform", a comprehensive online platform developed by the CGU, for receiving and handling complaints from officials or the public while protecting the reporting person's identity.²⁴ The Platform has received up to 1.4 million reports, focussing mainly on crimes against local public administration. Its relevance to implement public officials reporting obligation in foreign bribery cases is unclear. The lack of implementation of these reporting obligations in foreign bribery cases shows a need for clarification.

Commentary

The lead examiners welcome the 2022 Decree's clarification that foreign bribery allegations detected by the Brazilian public administration must be forwarded to the CGU. They also welcome the free online course on "Foreign Bribery" launched by the CGU with ENAP in 2023. They consider, however, that it is premature to assess the impact of either measure given that no foreign bribery allegations have been detected so far. The lead examiners also consider that the lack of clarity regarding the multiple reporting channels may contribute to making it difficult for Brazilian public officials to implement their reporting obligations and to determine what comparative advantage the different channels would offer as compared to an effective whistleblower protection regime. The lead examiners therefore recommend that Brazil clarify the relationship between the reporting obligations incumbent on public officials and the possibility of reporting open to them under whistleblower protections rules, in particular regarding reporting channels, the criteria applicable for using either of these mechanisms, and the related protections. This recommendation

²² Art. 116(VI) and (XII), Law 8112/1992.

²³ Art.18 (sole para), Decree 11.129/2022.

²⁴ See CGU, [Fala.br](https://www.fala.br) reporting platform.

should be read in conjunction with the recommendation made below (under Section A9) to clearly cover crimes against foreign public administration.

A.2. Detecting and Reporting Foreign Bribery through Diplomatic Missions

32. Under 2021 Recommendation XXI member countries should establish and publicise clear policies and procedures for reporting suspicions of foreign bribery, especially for public officials who cooperate with companies operating abroad.

33. At the time of Phase 3, officials posted abroad were instructed to report foreign bribery allegations to the Ministry of External Relations (MER) before they were transmitted to the CGU. The reporting channel remains unchanged since Phase 3. In Phase 4, Brazil indicates that the Brazilian Foreign Service issued a 2022 Circular to all embassies, consulates, and offices, emphasising officials' obligation to report potential foreign bribery or other corruption cases.²⁵ A new circular with further clarifications on the reporting obligation was also circulated in 2023. Officials posted abroad, in particular those working in the commercial sections, have been requested to regularly share information about Brazil's obligations under the Convention with Brazilian companies and individuals doing business in the respective host jurisdictions. To that end, the CGU, in partnership with the Export Promotion Agency (Apex), compiled an information package for Brazilian companies abroad which was distributed to all foreign representations, together with written materials about the Convention. Other initiatives to further raise awareness of the Convention among foreign service officials and attachés to embassies and consulates abroad are still at the early stages of reflection and development. Regarding training, in February 2023, the Brazilian Foreign Service officials were invited to participate in a non-mandatory virtual training on foreign bribery organised by the CGU and the National School of Public Administration (ENAP).²⁶ After the on-site, the Brazilian authorities provided three cables in which local missions reported back to capital about foreign bribery allegations involving a Brazilian company. That company had already been sanctioned for foreign bribery, so the specific examples do not appear to have facilitated the detection or investigation or potential bribery matters. Thus, despite the MER's demonstrated efforts to raise awareness within the foreign service, it remains the case that no overseas mission has yet detected and reported any allegations of foreign bribery that led to prosecutions or even investigations in Brazil.

Commentary

The lead examiners are concerned that the MER and CGU's efforts (in conjunction with Apex and ENAP) to raise awareness of staff in overseas missions have not led to actual detection of foreign bribery cases despite allegations about Brazilian individuals and companies reported in the press. Therefore, they recommend that Brazil analyse how Brazilian overseas missions can further contribute to the detection of foreign bribery allegations so that Brazilian law enforcement authorities can take appropriate action.

A.3. Detecting and Reporting Foreign Bribery through Tax Authorities

34. Brazil's federal tax authority is the Federal Revenue of Brazil (RFB). In Phase 3, the Working Group recommended increasing guidance and training for tax auditors on detecting foreign bribery (recommendation 13.b.) and reminding tax auditors of the duty to report foreign bribery suspicions discovered while performing their duties (recommendation 13.c.). At the Phase 3 Written Follow-up, Brazil had only partially implemented these recommendations.

²⁵ Circular no. 119119 dated 26 August 2022.

²⁶ [Circular no. 120391](#) dated 13 February 2023 (in Portuguese).

a. The RFB is increasing awareness on detecting and reporting foreign bribery suspicions

35. In Phase 3, the RFB on-site visit participants had a low level of awareness of foreign bribery. There was no specific guidance for tax examiners, and RFB did not make use of the OECD Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors (OECD Tax Handbook). In contrast, the RFB representatives during the Phase 4 on-site visit were highly aware of foreign bribery risks. In addition, since 2021, the RFB has incorporated foreign bribery issues, including the OECD Tax Handbook, into its graduate training. By February 2023, over 90 RFB officials had participated in this training. In addition, the RFB makes the OECD Tax Handbook available to all auditors along with the RFB Audit Manual and other guidance. Furthermore, the Brazilian government has taken efforts to raise awareness by developing an online course for public actors on their role in detecting and reporting foreign bribery. After the Phase 3 report, RFB amended the Audit Manual to specify that payments falling under Article 1 of the Convention are not deductible when determining the income tax and social contribution.

36. As for reporting, the RFB has devised a new reporting framework since Phase 3. RFB Ordinance 1.750/2018 specifically authorises tax authorities to communicate facts that constitute or would constitute crimes “against the foreign public administration”. Any RFB official who becomes aware of such facts must report them within ten days. During the on-site visit, the RFB explained that this revised framework seeks to improve the detection and reporting of non-tax crimes, including foreign bribery. In this regard, the RFB also hired an anti-corruption expert to prepare a comparative study on how other tax authorities detect foreign bribery. The RFB plans to develop trainings based on this study once it is completed. Together, these initiatives indicate that the RFB is making concerted efforts to enhance its detection capacity. It will remain to be seen, however, whether these efforts will produce results in practice.

37. During its HLM, the Working Group discussed a Supreme Court’s provisional injunction which had halted non-tax related enquiries held by the RFB against 133 politically exposed persons (PEP) and suspended from their duties two Federal Tax Auditors.²⁷ This decision was taken a few months after the Congress unsuccessfully attempted to approve a law amendment (amendment to Bill MPV 870/2019) forbidding tax authorities to conduct non-tax related investigations.²⁸ The WGB continued to monitor this issue through the MSG until March 2021 where it decided to postpone the assessment of this issue to its Phase 4 evaluation. At the time of drafting this report, the Supreme Court’s provisional decision that initially raised concerns had not been extended to other cases. In addition, the TCU separately issued a decision affirming that the RFB had acted lawfully in the case. No concerns were expressed in this regard during the on-site visit and this issue, which appeared tied to political circumstances that no longer apply, does not warrant further follow up by the Working Group at this time.

b. Reporting suspicions of foreign bribery and sharing information covered by tax secrecy

38. Concerning tax secrecy, the Working Group in Phase 3 decided to follow up on whether the tax authorities can effectively share tax information in foreign bribery investigations and prosecutions. (Phase 3 follow-up item 16.k). The governing framework remains unchanged since Phase 3. Under article 198 of the Tax Code (TC), tax information about a person’s economic situation, their business, or other activities cannot be shared unless a derogation applies, including any applicable criminal law provisions.

39. The circumstances when the RFB may share information with law enforcement authorities depend on the nature of the enforcement authority and the status of the investigation or proceeding. For preliminary investigations, the RFB typically cannot share tax information with any authority. For inquiries and investigative proceedings, the RFB can share tax information directly with the *Ministerio Publico da União*

²⁷ MPF [Press Release](#) (3 Aug. 2019).

²⁸ UOL, [“Após reclamações da Receita e do MPF, deputados retiram emenda da 'mordação’”](#) (23 May 2019).

(MPU) and its bodies, including the FPS, upon request.²⁹ Under Article 198(II) TC, the RFB can also share tax information with administrative authorities, including the CGU, “in the interest of the public administration” if it is proven “that the regular initiation of administrative proceedings has been instituted”. According to the RFB, this limitation prevents it from sharing information during administrative preliminary investigations. For enforcement proceedings, the FRB can share tax information with the FPS for both civil and criminal proceedings upon request. It can also provide information to the CGU in support of formal administrative liability proceedings (PAR) pursuant to article 198(II) TC. Finally, under Article 198(I) TC, the RFB can provide tax information to “judicial authorities” at any point if a court authorises the transmission “in the interest of justice”.

40. Neither the FPS nor the CGU signalled any particular difficulties obtaining information protected by tax secrecy. For its part, the CGU reports that it frequently obtains tax information about companies during administrative proceedings for the purpose of calculating the administrative fine, which is based on a percentage of the company’s turnover. Given the restrictions imposed by Article 198(II) TC, however, it would seem that tax information – potentially including information about beneficial ownership – would not be available to the CGU to facilitate the detection and commencement of any investigations into foreign bribery before administrative proceedings commenced.

Commentary

While tax authorities have not detected any foreign bribery allegations to date, the lead examiners consider that the RFB has made a concerted effort to raise its officials’ awareness about foreign bribery. The lead examiners also commend the RFB for its forward-looking efforts to enhance its detection capacity by commissioning a study to examine how foreign tax authorities detect foreign bribery. Phase 3 recommendations 13.b and 13.c can thus be deemed fully implemented. The lead examiners invite the Working Group to consider RFB’s efforts to revamp its detection strategy as a potential good practice and invite Brazil to inform the Working Group of the study’s key findings.

The lead examiners observe that Brazil’s legal framework for sharing tax information makes it difficult for the CGU, as an administrative enforcement body, to obtain tax information before an administrative proceeding has started. Given that Brazil’s anti-corruption framework has accorded the CGU a prominent role in combating foreign bribery, the lead examiners recommend that Brazil consider ensuring that the CGU can obtain tax information to support the detection and preliminary investigation of potential foreign bribery violations on the same basis as the FPS.

A.4. Preventing, Detecting and Reporting Foreign Bribery through Export Credits

41. Export credit agencies (ECAs) deal with companies that are active in international business. The [2019 Recommendation of the Council on Bribery and Officially Supported Export Credits](#) (E.C. Recommendation) recommends measures that ECAs can take to prevent, detect, and report foreign bribery. Brazil’s ECAs are the National Bank for Economic and Social Development (BNDES), the Bank of Brazil, and the Brazilian Fund and Guarantee Agency (ABGF). The BNDES is Brazil’s main ECA. It provides export credits for businesses of all sizes to support the export of certain goods and services. The Bank of Brazil manages the Export Financing Programme (PROEX), which focuses on supporting exporting SMEs. Finally, ABGF manages the Export Credit Insurance programme (ECI). These agencies all participate in the Committee for Export Finance and Guarantee (COFIG).

42. At the time of Phase 3, BNDES’s export credit support was part of a national policy to support “national champions” defined at the time as “large, existing firms that could grow bigger with new

²⁹ The MPU can make requests under Articles 8 and 24 of Complementary Law 75/1993 and according to Technical Note 179/DENOR/CGU/AGU (21 Dec. 2007).

acquisitions and internationalisation efforts.”³⁰ The Working Group was then seriously concerned that the ECAs had not taken any measures to address credible foreign bribery allegations, despite the fact that BNDES had financed large Brazilian companies operating in areas with elevated foreign bribery risks. In addition, credible corruption allegations had surfaced in operations for which Bank of Brazil had provided export credits.³¹ The Working Group thus recommended that Brazil’s ECAs establish guidelines on conducting due diligence of potential exporters before granting support, reacting to credible allegations discovered before or after support is granted, as well as reporting credible evidence to law enforcement. (Phase 3 recommendation 15.a.) As of the Written Follow-up report, this recommendation was only partially implemented.

43. After the Phase 3 report, the context has changed remarkably. Brazil ended its “national champions” policy,³² and several “national champions” were subject to enforcement actions. Brazil also adopted measures to further implement recommendation 15.a and the E.C. Recommendation.

a. Preventing, detecting, and reporting foreign bribery

44. Training: BNDES’s Integrity Division designs awareness-raising activities on topics such as bribery, anti-money laundering, ethics, and conflicts of interest. Since 2015, every year at least two topics are covered through in-person or online trainings either for all employees or top officials. ABGF has developed trainings for its employees on anti-corruption compliance procedures when providing official export credits. The Bank of Brazil trains employees on red flags and reporting channels when they join the bank and periodically thereafter, but these do not appear to be specific to export credit operations. All ECAs have dedicated webpages with information on foreign bribery and the Convention.

45. Due diligence: In 2022, BNDES replaced its former anti-corruption policy with a new integrity policy that expressly includes foreign bribery. In the same year, BNDES updated its compliance programme, which now includes guidelines for risk assessment and due diligence.³³ To receive BNDES export credit support, applicants must submit a mandatory “Statement of Commitment for Exporters”. All applicants for export credit support are subjected to know-your-customer (KYC) procedures, including reviewing prior convictions, ongoing investigations, and sanctions involving the legal person, its controllers, and members of the same economic group. In 2016, BNDES and the CGU signed a cooperation agreement enabling BNDES to check a CGU database including foreign bribery investigations, convictions, and sanctions of legal persons. The database includes information from the Working Group. After the on-site visit, the Brazilian authorities reported that BNDES and the CGU signed a new cooperation agreement in August 2023. Under this agreement, the granting of financing to large national private companies (with revenues over R\$300 million) will be subject to the evaluation of their compliance programs. The implementation proposal is still in the design phase but large companies with deficient compliance program potentially may be required to implement corrective measures within a year, or they will be denied BNDES loans. BNDES and the Bank of Brazil also consult the National Register of Ineligible and Suspended Companies from Public Procurement (CEIS) and the National Registry of Punished Companies (CNEP). ABGF consults the CEIS and CNEP but also, among others, Transparency International’s Corruption Perceptions Index, TRACE Compendium, and the foreign bribery allegations compiled by the OECD. All three ECAs consult multilateral development banks’ debarment lists as part of their due diligence procedures.

46. Brazil also reports that COFIG, in 2015, established an Anti-Corruption Working Group (ACWG). The ACWG developed a compliance manual which established a new anti-corruption framework for

³⁰ OECD (2015), [State-Owned Enterprises in the Development Process](#), p. 100.

³¹ Brazil Phase 3 report, para. 172.

³² UOL (21.03.2017), [Análise: BNDES gastou R\\$ 1,2 tri com empresas "amigas", como JBS e BRF](#), Money Times (07.07.2022), Sob Lula, [BNDES não voltaria à política dos campeões nacionais](#), Valor Economico (18.02.2022), [BNDES tem plano de fazer aporte em milhares de empresas, diz Montezano](#).

³³ BNDES [Compliance and Integrity](#) page.

PROEX and ECI and a risk matrix for due diligence procedures. The manual also covers how to conduct enhanced due diligence proceedings when facing one of the situations listed under Section VI of the Export Credits Recommendation. While ABGF and the Bank of Brazil report using this manual, it is not clear if BNDES also applies it to conduct enhanced due diligence before granting export credits to a legal person in such situations. The ECAs consult Brazilian databases including foreign bribery investigations, convictions, and sanctions of natural persons with the exception of the ABGF which consults courts databases at Federal and State level.

47. **Reporting mechanisms:** Brazil indicates that the BNDES's Ombudsperson Office receives reports of misconduct, including foreign bribery, and forwards them to its Internal Affairs Office, a unit within the Department of Compliance, for a preliminary evaluation before transmission to law enforcement authorities (CGU and FPS). Regarding reporting mechanisms within ABGF, the Ministry of Finance's website indicates that suspicions of foreign bribery related to ECI can be reported to ABGF's Ombudsperson.³⁴ The Bank of Brazil has a dedicated online channel for reporting illicit acts.³⁵ It may be used by officials and the public to report foreign bribery and other serious economic crimes which could occur in the context of PROEX operations.

b. Measures available after granting export credit support

48. Brazil also indicates that applicants are subject to standard provisions on foreign bribery in the credit agreements. Credible evidence that an awarded export credit contract involved bribery will be included in BNDES corporate register assessment and the exporter will receive a negative rating, which will result in the suspension on any new applications until the rating is reassessed. This reassessment may include a review from law enforcement authorities. In the context of the ECI Program, under certain circumstances, controls are in principle carried out after support has been approved based on a risk assessment. However, limited resources are available to implement this due diligence procedure and it is unclear what the other ECAs are doing in this area. There is thus concern that the ECAs do not conduct further screening to detect foreign bribery red flags after support has been granted.

49. Since Phase 3, BNDES granted export credits to support at least two business operations that were later known to be tainted by foreign bribery. The re-assessment and suspension system was applied to only one of the two companies after the bribery allegations became public, the other company being merely subject to enhanced due diligence measures. No other BNDES sanctioning measures were taken.

Commentary

The lead examiners commend Brazil for the measures taken by BNDES, the Bank of Brazil, and the ABGF to prevent and detect foreign bribery since Phase 3. They consider that these measures address Phase 3 recommendation 15.a. They note, however, that Brazil's ECAs have not detected or reported any foreign bribery allegations to date. They therefore recommend that Brazil: Revise ECAs' policies to enhance: (i) staff training to identify and address instances of potential foreign bribery; (ii) due diligence before granting export credits to legal persons in the situations listed in Recommendation VI of the 2019 Recommendation of the Council on Bribery and Officially Supported Export; (iii) screening to detect foreign bribery red flags after support has been granted; and (iv) ECAs' policies in order to take appropriate actions such as enhanced due diligence, denial of payment, indemnification, or refund of sums provided, if, in relation to the transaction, one of the parties is recognised as involved in foreign bribery.

³⁴ Ministry of Development, Industry, Trade and Services, [Export Credit Insurance](#).

³⁵ Bank of Brazil, [Reporting channel](#).

A.5. Preventing and Detecting Foreign Bribery through Development Aid

50. In Phase 3, the Working Group decided to follow-up on Brazil's engagement with the private sector in future development aid projects, including through BNDES or a contemplated BRICS's Multilateral Development Bank (Phase 3 follow-up issue 16.n.). According to the Brazilian authorities, there is no basis to continue following this matter. As regards the BRICS's multilateral development bank, Brazil reports that the New Development Bank (NDB), established in 2015, does not provide concessional loans or development aid. BNDES also does not provide development aid, and its role in export credits is examined above under Section A.4.

51. South-South co-operation is a key component of Brazil's foreign policy. The Ministry of Foreign Affairs has responsibility for its co-ordination. Within the Ministry, the Brazilian Cooperation Agency (ABC)³⁶ implements Brazil's co-operation. While not a Member of the OECD Development Assistance Committee, Brazil is an Adherent to the [OECD Recommendation of the Council for Development Co-operation Actors on Managing the Risk of Corruption](#) (the 2016 Recommendation). According to Brazil, however, its co-operation is provided to other developing countries as "development cooperation", under South-South modalities. Thus, the Brazilian authorities do not consider it to be "development aid" or "ODA". However, the 2016 Recommendation has a broad coverage which potentially encompasses both development aid and co-operation projects as discussed below.

52. While Brazil's development disbursements do not qualify as ODA, they fall under the scope of the 2016 Recommendation whether they are considered as "development co-operation" (in Brazil's view) or as "aid" (in the view of the OECD Development Assistance Committee, also known as DAC). The 2016 Recommendation addresses all development co-operation actors, and not just ODA providers. The 2016 Recommendation seeks to cover fiduciary and other corruption risks beyond corruption in the ODA context. In that sense, the non-financial support (i.e., trainings, technical assistance, etc.) characteristic of Brazil's development co-operation should also aim to align with the provisions of the Recommendation, especially those concerning (i) identifying, assessing and mitigating risks, (ii) setting up systems to prevent corruption risks and respond to actual instances of corruption, and (iii) about working collaboratively in specific contexts and understanding the operating environment.

53. According to the Brazilian official reports on its development cooperation,³⁷ the total disbursements in the last three years for which data are available show a steady increase from approximately EUR 517 million in 2019 to approximately EUR 1.2 billion in 2021. These amounts include financial contributions to International Financial Institutions; technical cooperation; scholarships for foreign students; joint research in Science and Technology, and assistance to refugees. In 2012, the top five South-South partners were: Argentina, Venezuela, Ecuador, Mozambique, and Lebanon. In its 2022 Development co-operation profiles, the DAC indicates that Brazilian South-South co-operation includes initiatives in agriculture, public health, food and nutritional security, social development, science and technology, education, energy, industry, trade, justice, environment, public safety and security, and employment. Brazil has developed projects in most Latin American and Caribbean countries; with the African and Asian members of the "Community of Portuguese Language Countries", as well as with other countries in Africa, Asia, and Eastern Europe.³⁸

54. Development cooperation could not be discussed during the on-site visit as no ABC representative with authority to answer questions attended the discussion. The questionnaire responses indicate that the ABC has developed and updated a series of frameworks and manuals, such as the Manual of South-South Technical Cooperation Management and the Guidelines for the Design, Coordination and Management of

³⁶ [Brazilian Cooperation Agency](#) (ABC).

³⁷ COBRADI Reports, published by the Brazilian Institute for Economic Applied Research-(IPEA) jointly with the ABC.

³⁸ <https://www.oecd-ilibrary.org/sites/18b00a44-en/index.html?itemId=/content/component/18b00a44-en>

Trilateral Cooperation Initiatives.³⁹ These do not address foreign bribery risks. In its Phase 4 responses, Brazil indicates that it does not provide grants or budget support to other countries⁴⁰ and that the Brazilian South-South technical cooperation is implemented through the exchange of knowledge and development solutions. Brazil considers that there are no contracts signed with foreign governments or private companies as implementing partners. Following the on-site visit, however, Brazil indicated that when ABC transfers its funds to a Brazilian private company or SOE to provide technical services or purchase goods and materials, these partners sign agreements where they recognize being accountable for the resources received from ABC. These partners need to provide regular and detailed financial reports, which, at the end, are forwarded for the perusal of Brazilian auditing authorities. However, after the on-site visit, Brazil clarified that the ABC no longer transfers funds to private entities or SOEs as part of the implementation of a development cooperation project.

Commentary

The lead examiners note that Phase 3 follow-up issue 16.n. is no longer relevant. They recommend that Brazil take steps to implement key aspects of the 2016 OECD Recommendation of the Council for Development Co-operation Actors on Managing the Risk of Corruption with a particular focus on enhancing the Brazilian Cooperation Agency's (ABC) potential for detecting foreign bribery, by providing the ABC officials with clear and regular guidance and training on foreign bribery red flags and on the channels for reporting suspicions to Brazil's law enforcement authorities.

A.6. Detecting Foreign Bribery through Anti-Money Laundering Measures

55. Brazil's anti-money laundering (AML) regime is governed by Law N. 9.613/1998, as amended by Law 12.683/2012. This Law establishes the money laundering offence, imposes measures to prevent the misuse of Brazil's financial system, and creates the Council of Control of Financial Activities (COAF), Brazil's financial intelligence unit (FIU). COAF remains under the aegis of the Central Bank of Brazil, despite recent attempts to move it to the Ministry of Finance.⁴¹ During the on-site visit, COAF's representatives indicated that COAF has enough financial and human resources to carry out its tasks, with a staff of about hundred people dealing with about 1.9 million STRs per year. COAF's STRs have led to the production of 13 000 financial intelligence reports (RIFs) in 2022.

a. AML reporting framework and international sharing of information

56. In terms of reporting foreign bribery to law enforcement, COAF is obliged to communicate findings of criminal activity to the competent authorities pursuant article 15 of the Money Laundering Law. Brazil indicates that since August 2021, the FPS receives financial intelligence reports (RIFs) from COAF based on information coming from foreign FIUs. Once received, the RIFs are transferred to the federal prosecutor with attribution to investigate and prosecute the case. The FPS 2nd Chamber of Review and Coordination, responsible for criminal matters, has issued guidance to federal prosecutors regarding the use of RIFs in criminal investigations and proceedings.

57. Brazil reports that at the international level, COAF can exchange information with its counterparts based on reciprocity. Nevertheless, if a foreign FIU needs to sign a MOU to cooperate, the President of

³⁹ [Development Co-operation Profiles – Other official providers not reporting to the OECD \(oecd-ilibrary.org\)](#). Brazil is a member of the [Global Partnership Initiative on Effective Triangular Co-operation](#).

⁴⁰ See OECD, [ODA definition](#).

⁴¹ See [Brazilian financial intelligence unit moves from central bank](#). [Law 13.974/2020](#) remains in force after Provisional Measure n. 1.158/2023 failed to be ratified by Congress.

COAF can do so independently. COAF has signed MOUs with 38 countries, including 16 Working Group member countries.

b. Incentives to detect and report not proportionate to complexity of foreign bribery risks

58. In Phase 3, the Working Group expressed its concerns that Brazil's anti-money laundering system did not effectively prevent and detect the laundering of proceeds of foreign bribery. The Working Group reiterated a Phase 2 recommendation⁴² to ensure that appropriate directives, including typologies, and training on identifying and reporting information related to foreign bribery be provided to those required to report suspicious transactions, their supervisory authorities, as well as the COAF (Phase 3 recommendation 10.c.). This recommendation was not implemented at the time of the Written Follow-up report.

i. Financial businesses and designated non-financial businesses and professions

59. During the on-site visit, COAF representatives emphasised that the reporting entities had a high level of awareness through multiple awareness-raising efforts. Brazil has taken steps to actively involve financial institutions in consultations to update regulations. In particular, the Brazilian Central Bank (BCB) conducted consultations with the general public and representatives of financial institutions prior to the enactment of Circular 3.978/2020, which defines the procedures and internal controls that banks and financial institutions must adopt to prevent money laundering. This Circular provides that financial institutions must implement procedures allowing the identification of operations and situations that may indicate suspicions of money laundering, including transactions with foreign politically exposed persons (PEPs). The BCB also consulted financial sector associations and COAF before enacting Circular 4.001/2020, which contains an updated list of operations and situations that may indicate money laundering.

60. Brazil indicates that since 2018, COAF has promoted periodic events with regulators of designated non-financial businesses and professions (DNFBP) aimed at disseminating knowledge and aligning coordination between the different regulated sectors. Six meetings have taken place between 2018 and 2022. Between 2019 and 2022, COAF has also participated in or promoted events directly targeting regulated professions. There is regulation in place regarding AML obligations for accountants, notaries and registrars.⁴³ During the on-site visit, Brazilian authorities explained that they are working with the Brazilian Bar Association to ensure that regulation is also issued to set forth lawyers' obligation as DNFBP.⁴⁴

ii. Risk assessment and typologies

61. Brazil's latest National Risk Assessment (NRA), published in 2021, recognises corruption as a high-risk threat for the country's AML system. During the on-site visit, COAF representatives indicated that 70% of the financial intelligence it produces is about corruption. However, the NRA focuses only on domestic corruption and does not cover foreign bribery.

62. COAF publishes online a collection of anti-money laundering and anti-terrorism (AML/CFT) typologies. The third edition of these typologies was published in 2021 together with the NRA.⁴⁵ This edition includes 87 money laundering typologies. Each provides for the economic activities used in the specific scheme, a list of financial intelligence alert signals, a case description and a graphic representation of the case. The document, however, includes only one typology presenting a typical foreign bribery scheme.⁴⁶

⁴² Brazil [Phase 2 report](#), recommendation 2.e., and Brazil [Phase 2 Written Follow-up report](#), paras. 5 and 11.

⁴³ National Council of Justice (CNJ) 88/2019.

⁴⁴ Anti-Money Laundering Law 9613/1998, art. 9(XIV).

⁴⁵ Brazil National Risk Assessment 2021, [Collection of AML/CFT Typologies Special Edition](#).

⁴⁶ Typology 2.70.

Considering that recent foreign bribery cases for Brazil revealed sophisticated money laundering schemes, this one, rather simplistic typology is not sufficient to address the complexity of the phenomenon.

c. Failed attempt to limit the use of the COAF's and other administrative agencies' reports in criminal investigations (HLM issue n. 2)

63. In 2019, the President of the Supreme Court issued a preliminary decision to limit the use of COAF's and other administrative agencies' reports in criminal investigations. He halted all investigations and proceedings based on such reports because they had been generated without prior judicial authorisation. Law enforcement bodies and officials expressed concerns in public that this interim decision, if confirmed, would undermine Brazil's ability to enforce serious economic crimes, including foreign bribery. The Working Group thus included this issue among the topics explored in the 2019 HLM to Brazil.

64. During the HLM, the President of the Supreme Court reiterated the position taken in his provisional injunction. In December 2019, however, the Supreme Court ultimately decided to uphold the constitutionality of the provisions authorising COAF to share information with law enforcement authorities without prior judicial authorisation. The Court, however, ruled that financial intelligence must go through official channels to guarantee financial privacy for the targeted individuals.

65. The MSG followed up this issue, especially after a Federal Circuit Court held that COAF's spontaneous communication of a RIF to prosecutors in a case involving the attorney of the former President's family was unlawful. According to Brazil, this decision as well as a second judgement hinged on irregularities specific to those particular cases rather than on lawfulness of using COAF materials more generally. Brazil also maintained that the 2019 Supreme Court decision permitting COAF to share information with law enforcement without prior judicial authorisation remained valid precedent. The MSG decided to assess this issue in Phase 4.

66. In its questionnaire responses, Brazil indicates that following the Supreme Court's decision in December 2019, the number of financial intelligence reports produced by COAF steadily increased to reach again levels approaching those seen prior to the Extraordinary Appeal in July 2019. The following graph provided by Brazil illustrates the effects of the decision to limit the dissemination of COAF information in between the two judicial decisions. During the on-site visit, participants further emphasised that in the past decade, financial intelligence has become a key element in the investigation of complex economic crimes and that while lawyers would still regularly challenge it, the December 2019 Supreme Court Decision provides a stable ground to the constitutionality of the sharing of information by the COAF and the Federal Revenues Agency with law enforcement authorities, without previous judicial authorisation.

Figure 6. Number of financial intelligence reports in 2019



Source: Brazil questionnaire responses.

Commentary

The lead examiners consider that the legislative framework for reporting findings of criminal activities at both the national and international level does not seem to include any impediment that would explain the lack of reporting of suspicious transactions that led to foreign bribery investigations.

They welcome the increased emphasis that the Council of Control of Financial Activities (COAF) has placed on the money laundering threat tied to corruption and its efforts to raise awareness about the phenomenon with the various anti-money laundering actors. Nonetheless, the lead examiners consider that the authorities have underestimated the seriousness and complexity of Brazil's foreign bribery risks in the 2021 National Risk Assessment and related typologies. They deem that Phase 3 recommendation 10.c. is still only partially implemented.

Given that COAF has yet to detect or report any foreign bribery allegations, the lead examiners recommend that Brazil: a) update its National Risk Assessment to specifically address the risks of money laundering predicated on foreign bribery and include scenarios relevant to foreign bribery, such as examples of how the proceeds of this crime can be laundered; and b) require relevant legal professionals to report suspected money laundering predicated on foreign bribery, without prejudice to legal privilege, and ensure that all institutions and professionals that are required to report STRs, receive appropriate directives, including typologies that reflect the size and complexity of the foreign bribery schemes committed by certain Brazilian companies.

The lead examiners are reassured to see that the Working Group's concerns regarding the use of financial intelligence in criminal investigations have been alleviated with the December 2019 Supreme Court decision and are encouraged to see the number of financial intelligence reports produced by COAF are again reaching levels approaching those seen prior to the Extraordinary Appeal in July 2019.

A.7. Detecting Foreign Bribery through Accounting and Auditing

a. Brazil's external audit requirements remain unchanged from Phase 3

67. In Phase 3, the Working Group decided to follow up on whether (i) requirements for external audits are adequate and (ii) the independence of auditors, particularly for economically significant unlisted companies (Follow-up issue 16.i.). Brazil's requirements for internal and external audits remain unchanged since Phase 3. Under Law 6.385/76 and 6.404/76, public companies are subject to external audit by auditors registered with the CVM. These registered auditors are subject to peer-review. Such entities must also publish their audited financial statements on a quarterly and annual basis. Moreover, large companies (non-public), having assets exceeding BRL 240 million (EUR 44.9 million) or gross revenue exceeding BRL 300 million (EUR 56.1 million), are also obliged to undergo an independent audit by a CVM-registered auditor. The same is true for financial institutions regulated by the Central Bank. Finally, private companies that are not incorporated as joint stock companies (Law 6.404/76) nor qualified as large private companies are not required to publish annual financial statements nor undergo an independent audit. They must, however, maintain books and records consistent with Brazilian law and Brazilian GAAP.

b. Reporting obligations

68. Regarding auditor's reporting obligations, Brazil explains that independent external audit activity is primarily governed by international auditing standards endorsed by the Federal Accounting Council (CFC). In 2017, the CFC issued Resolution 1530/2017, which established procedures for accountants and auditors to report suspicious transactions for money laundering purposes. In February 2019, the CFC also

adopted Brazilian Accounting Standard NBC TA 250 on reporting actual or suspected non-compliance with laws and regulations to external authorities. The NBC TA 250 recognises that auditors may be required by law, regulation, or ethical requirements to report actual or suspected non-compliance with laws and regulations to a competent authority.⁴⁷ In June 2021, the CFC adopted Audit Technical Communication Number 30 (CTA no. 30) to provide external auditors with guidance and procedures for responding to actual or suspected non-compliance with laws and regulations detected during an audit.

69. None of these standards or guidelines, however, creates an obligation for accountants or auditors to report foreign bribery suspicions to a competent external authority. CTA no. 30, for instance, contains guidance on obtaining evidence to assess non-compliance that is “relevant” to the audit and “not clearly inconsequential” for the audited company’s financial statements.⁴⁸ It also calls on auditors to report significant matters to those responsible for corporate governance in writing. For external reporting, the CTA no. 30 stresses, in line with international auditing standards, that auditors are bound by their professional duty of confidentiality concerning client information unless the law expressly obligates the auditor to report to the authorities.

70. Separately, the Securities and Exchange Commission (CVM) is responsible for the supervision of external auditors registered with the CVM regarding their activities in relation to entities issuing securities. CVM Resolution 23/2021 provides that certain irregularities must be communicated to the CVM in writing within 20 days.⁴⁹ Examples of such irregularities include non-compliance with laws and regulations that “may have relevant repercussions in the financial statements or operations of the audited entity” as well as deficiencies in internal controls. Auditors working for companies regulated by the Central Bank must also report to the Bank matters related to error or fraud, or instances of non-compliance that may put the entity’s continuity at risk.⁵⁰ Again, the CVM provisions do not specifically address foreign bribery, and it is not clear when foreign bribery would be considered to have “relevant repercussions”.

c. *Brazil has increased awareness-raising efforts for accountants and auditors*

71. In Phase 3, the Working Group recommended that Brazil raise awareness of foreign bribery among accountants and auditors. (Phase 3 recommendation 11.b.). At the time of the Written Follow-up report, the Working Group considered this recommendation partially implemented. In Phase 4, however, the private-sector auditors who met with the evaluation team during the on-site visit were extremely knowledgeable about foreign bribery issues. Moreover, the CGU has renewed partnerships with different accounting and auditing stakeholders, including the Federal Accounting Council, to promote awareness of foreign bribery. As part of these efforts, the CGU developed an online course on international accounting standards, and, together with the Interamerican Accounting Association (AIC), it also co-organised seminars or workshops and released a booklet on the role that accountants and auditors can play in preventing corruption and responding to non-compliance with laws and regulations. The seminars promoted by the AIC with the help of CGU had been viewed on social media at least 946 times as of end August 2023 and the booklet was distributed to all 21 countries adherent to the AIC with the commitment to make it available to accountants in those countries. The CGU separately developed an online course on foreign bribery for public officials and the private sector, including a module for accountants. While the private-sector auditors who participated in the on-site were not aware of any regulator-sponsored trainings, their companies provided training on anti-corruption issues under Brazilian law as well as the laws of other major Working Group countries, such as the U.S. Foreign Corrupt Practices Act.

⁴⁷ CFC, [NBC TA 250](#), para. 29 (in Portuguese).

⁴⁸ CFC, [CTA no. 30](#), paras. 28 *et seq.* (in Portuguese).

⁴⁹ CVM, [CVM Resolution 23/2021](#), article 25, para. (I)(d), para. (II), & article 25, sole paragraph.

⁵⁰ Central Bank of Brazil, [Resolution 3198/2004](#), article 23 (in Portuguese).

Commentary

The lead examiners acknowledge that the Brazilian authorities, in particular the CGU, have made concerted efforts to raise awareness about foreign bribery among accountants and auditors. This fully implements Phase 3 recommendation 11.b. Despite such efforts, accountants and auditors have yet to report to law enforcement any allegations resulting in a foreign bribery case. For this reason, the lead examiners recommend that Brazil consider requiring auditors to report potential allegations of foreign bribery to the competent authorities without regard to the materiality of the scheme on the company's financial statements. In the absence of concerns expressed during the on-site visit, however, the lead examiners consider that there is no ground to maintain Phase 3 follow-up 16.i.

A.8. Detection through Self-Reporting by Companies

a. Brazil's framework for self-reporting and cooperation

72. Brazil's framework for incentivising self-reporting remains largely unchanged from Phase 3. The main incentives for self-reporting under the Corporate Liability Law (CLL)⁵¹ continue to be (1) access to leniency agreements, Brazil's primary non-trial resolution for legal persons, and (2) recognition of cooperation as a mitigating factor when determining sanctions.

73. While the CLL has not been amended since Phase 3, there have been developments in the secondary legislation implementing its provisions. In July 2022, Brazil adopted a new implementing decree for the CLL, Decree 11.129/2022 (the 2022 Decree), which superseded Decree 8.420/2015. Like its predecessor, the 2022 Decree provides more detail on how the Executive branch will apply the CLL. In addition, in December 2022, the CGU and the AGU issued an Inter-ministerial Normative Ordinance 36/2022 to help provide clarity on how much the fine will be reduced when a leniency agreement is concluded.⁵² Finally, the CGU has adopted an Early Judgment procedure under Normative Ordinance 19/2022, which enables companies to receive a lower sentence if it admits the wrongdoing and cooperates with the administrative investigation and/or the proceedings.

i. CGU's approach to incentivising self-reporting and cooperation through leniency agreements

74. As in Phase 3, companies have an incentive to self-report and to cooperate to obtain a leniency agreement (see Section C.4.a below). Under article 16(1)(I) CLL a leniency agreement may only be concluded when the "legal entity is the first one to come forward and demonstrate its willingness to cooperate with the investigation". If a leniency agreement is concluded, certain penalties, including the prohibition on receiving public incentives or subsidies, cannot be imposed. In addition, the fine imposed can be reduced by up to two-thirds.⁵³ These benefits make the leniency agreement a potentially powerful incentive for self-reporting.

75. On the other hand, the CLL itself does not reward self-disclosure *per se*. Instead, it conditions access to the leniency agreement upon a demonstration of a willingness to cooperate with the investigation. Nonetheless, the AGU/CGU Inter-ministerial Ordinance 36/2022 specifies that the fine reduction based on the leniency agreement will depend on (1) the company's self-reporting initiative, (2) the company's cooperation with the investigation, and (3) other relevant conditions, such as the speed of negotiation and the terms of payment agreed upon in the negotiations. The "self-reporting initiative", which includes its "timeliness" and "originality". The "timeliness" criterion requires that the company

⁵¹ Law 12.846/2013.

⁵² AGU/CGU [Interministerial Normative Ordinance 36/2022](#).

⁵³ Article 16(2) CLL.

promptly takes measures to conduct an internal investigation in the matter and requests a leniency agreement with the CGU/ACU within nine months. The “originality” aspect will be assessed by whether the company provided “facts or information” not already known to the CGU or the AGU, even if it was already in the public domain.⁵⁴ While the Ordinance does provide greater transparency about what is expected for self-reporting, it does not specify how much of a reduction should be attributed to any particular factor.

ii. CGU’s approach for incentivising self-reporting as a mitigating factor

76. Article 7(VII) CLL provides a second potential incentive for self-reporting insofar as the fine imposed can be reduced if a company cooperates with the investigation. The CLL does not specify how much weight should be given to this factor. The 2022 Decree specifies that a company can receive a discount from 1.0% to 1.5% for cooperating with the investigation, as well as “up to” 2% for the company’s “voluntary admission” of its responsibility. A company will not receive full credit, unless it makes its admission before the PAR begins.⁵⁵ In contrast, the original 2015 Decree required companies to “spontaneous[ly] communicat[e]” the wrongful act to the CGU before the PAR began to receive any credit.⁵⁶ Furthermore, while self-reporting could qualify for credit under either mitigating factor, the company is not required to self-report before a matter is detected to receive at least some benefit under those factors.⁵⁷ The same is true with the Early Judgment procedure that the CGU developed in 2022. Companies that request an Early Judgment procedure before a PAR is commenced receive the maximum reduction possible (4.5% reduction in turnover percentage). Companies that request Early Judgment after it has commenced receive reductions starting at 3.5% and decreasing to 1.5%, depending on the stage of the proceedings. While a number of companies have requested early judgments, it is not clear yet how effective this mechanism will be for encouraging companies to self-report foreign bribery violations.

iii. The Federal Prosecution Service’s approach

77. Given the FPS’s constitutional independence from the Executive branch, the 2022 Decree does not directly apply to the FPS. During the on-site visit, however, the FPS confirmed that it would seek to align its approach with the 2022 Decree. In addition, the FPS has issued Technical Note 1/2015 instructing prosecutors to consider the mitigating factors listed in the CLL when determining the appropriate sanctions when imposing “judicial/civil liability” for legal persons through leniency agreements. During the on-site visit discussions, private-sector lawyers, compliance officers, and other practitioners agreed that the FPS could provide more transparency in how much credit it would give companies that come forward.

b. Self-reporting in practice

78. In Phase 4, the CGU identified self-reporting in the context of leniency agreements as the “most common source” for detecting foreign bribery. The FPS did not expressly opine on this point, but the case data provided to the evaluation team suggests a similar overall pattern, at least for foreign bribery.

79. In total, the Brazilian authorities report that 12 of the 28 detected foreign bribery allegations resulting in an investigation (42.9%) came from a company’s self-report. Moreover, according to the Brazilian authorities’ data, 12 of the 14 foreign bribery allegations that have been resolved to date for at least one defendant (85.7%) were detected through self-reports made by the three companies that secured leniency agreements. All three companies that self-reported were implicated in the *Lava Jato* investigation. It is not clear whether any of these companies would have self-reported if they were not already (at least potentially) under investigation for other wrongdoings.

⁵⁴ AGU/CGU [Interministerial Ordinance 36/2022](#), Articles 2 & 3.

⁵⁵ Decree 11.129/2022, Article 23, sole paragraph.

⁵⁶ Compare Decree 11.129/2022, Article 23(IV), with Decree 8.420/2015, Article 18(IV).

⁵⁷ CGU, [Suggested Schedule of Aggravating and Mitigating Factors](#) (2022).

80. In terms of the sanctions imposed, none of the three companies that concluded a leniency agreement concerning foreign bribery have received credit for “spontaneous communication” of the wrongdoing. They did, however, receive cooperation credit, ranging from 66.7% to 100% of the maximum credit available. In addition, two of the companies received some credit for their compliance programmes, albeit only around 33% of the maximum credit available for this factor. The companies, however, received reductions ranging from 56.6% to 63.3% for resolving the matters through leniency agreements. No information was provided to explain how the CGU decided the amount of reduction to award each company. Thus, it is impossible to know whether self-reporting played any role in the reduction. As discussed above, the Brazilian executive branch has developed supplementary legislation to provide general guidance on self-reporting, but it is too early to tell how these new provisions will be applied in future leniency agreements in foreign bribery cases.

81. During the on-site visit, civil society participants reported that, in their perception, companies only self-reported after the authorities had commenced a criminal investigation or enforcement action against the natural persons involved. In their view, the decline in criminal law enforcement in recent years has contributed to a drop in self-reports. According to private-sector legal practitioners, the benefits of self-reporting anti-corruption violations were not as clear as in other enforcement areas, such as competition law. In part, this was because the authorities did not clearly articulate by how much a fine would be reduced if companies self-reported and cooperated. Furthermore, private practitioners observed that the 2022 Decree’s mitigating factor merely called for a “voluntary admission” of responsibility, instead of requiring “spontaneous communication” as under the 2015 Decree. For this reason, they opined that companies might hold off on reporting.

Commentary

The lead examiners observe that Brazil’s framework provides some incentive for self-reporting through the availability of leniency agreements and through mitigating factors set forth in the CLL. It is, however, not clear how strong the incentives for self-reporting actually are. On one hand, three companies have self-reported foreign bribery allegations to the authorities. On the other hand, it appears that these companies may have already been implicated in other wrongdoing before they self-reported the foreign bribery aspects. While recognising the CGU’s efforts to promote transparency, the lead examiners note a lack of clarity on how much credit companies could expect to receive if they self-report foreign bribery cases, in contrast to the clear rules applicable in competition law. They also observe that the leniency agreement published to date do not provide sufficient detail to understand what factors influenced the calculation of the fines.

For this reason, the lead examiners recommend that (i) the FPS provide more guidance, in line with what the CGU has already issued, on how it will apply the aggravating and mitigating factors set forth in the CLL; and (ii) both the FPS and CGU clarify the extent to which a company may expect to receive a reduction in fines when it self-reports foreign bribery misconduct before the authorities become aware of it.

A.9. Detection through Whistleblowing and Whistleblower Protections

82. In Phase 3, the Working Group found that whistleblowing was extremely unlikely both given the lack of legal protections and given the public’s distrust of law enforcement authorities. The Working Group recommended that Brazil enact “appropriate measures” to protect private-sector whistleblowers who report suspected foreign bribery from discriminatory or disciplinary action (Phase 3 recommendation 14.c.). Brazil had not implemented this recommendation by the Phase 3 Written Follow-up report.

a. Brazil's whistleblower protection framework

83. In Phase 4, Brazil has expanded its whistleblower framework through new legislation and decrees. In addition, Brazilian authorities are also currently assessing the status of the existing whistleblower legislation. The existing framework, however, does not cover all aspects of the 2021 Recommendation and would appear to have only limited relevance for private-sector whistleblowers. In particular, the core anti-retaliation provisions do not expressly apply to reports about foreign bribery.

84. As in Phase 3, Law 8.112/1990 (as amended by Law 12.527/2011) protects public officials against criminal, civil, or administrative liability for reporting crimes or irregularities to their superiors or, if the superior is involved, to the competent authorities. This protection, however, does not cover the broad range of anti-retaliation or other protective measures envisioned under the 2021 Recommendation. For instance, Law 12.527/2011 does not expressly provide for confidential reporting, protection from disciplinary or other retaliatory acts within or outside the workplace, or remedies for damages caused by retaliation. It also does not provide for interim relief for those who suffer retaliation or clearly shift the burden of proof on whether retaliation occurred.

85. Though not discussed expressly in Phase 3, there are also labour law protections through a specialised Labour Court system established by the 1988 Constitution. A specialised Federal Labour Prosecution Service (*Ministério Público do Trabalho*, MPT) enforces these labour laws. After the on-site visit, the Brazilian authorities explained that, while Brazil's labour laws do not recognise the status of "whistleblower", workers subjected to adverse or discriminatory treatment for reporting an offence could potentially obtain a remedy from the Labour Court.

86. Since Phase 3, Brazil has primarily expanded whistleblower protections by adopting and amending Law 13.608/2018. Originally, the law merely concerned telephone reporting hotlines for federal, state, and local authorities. It also authorised Brazilian authorities to offer rewards for information concerning "crimes or administrative offences". As amended in 2019, the law now provides anti-retaliation protections for "any person" who reports "information on crimes against the public administration, unlawful administrative procedures or any actions or omissions harmful to the public interest".⁵⁸ The focus on national public administration is reinforced by other normative acts, including Decree 10.153/2019, which provides safeguards for the identity of those who report crimes or irregularities against the "federal public administration". Unlike the CLL, none of the laws or decrees expressly contemplates offences against the "foreign public administration".

b. Assessing the whistleblowing framework against the 2021 Recommendation

87. While it is uncertain that the main normative acts, including the anti-retaliation provisions of Law 13.608/2018, would apply to whistleblowing concerning foreign bribery, the analysis below assesses Brazil's existing legislation against the 2021 Recommendation.

88. On the positive side, Brazil's current framework provides for varied and accessible reporting channels, including by telephone or through an ombudsman units created within the public administration, including public companies. Anonymous reporting is possible. For reports through the ombudsman system, the law establishes the right to confidential reporting. In such cases, the whistleblower's identity can be revealed in the "public interest" or in the "interest for the investigation of the facts", but only with the whistleblower's consent. In terms of protections, whistleblowers who submit qualifying reports are exempted from civil and criminal liability, provided they did not knowingly submit false information or evidence. Under Article 339 PC, an individual will only be liable for the crime of false denunciation if the person making the accusation knew that the accused person was innocent of the alleged offence. In terms of civil liability, the Brazilian authorities reported that "good faith" of the whistleblower is presumed. Under

⁵⁸ Law 13.608/2018 (amended by Law 13.964/2019).

a 2010 STJ decision, the reporting person would only be liable for a false report if bad faith or serious fault is proven.

89. Law 13.608/2018 contains a broad prohibition against retaliation, protecting qualified whistleblowers “against actions or omissions practiced in retaliation”, including arbitrary dismissal, unjustified demotions or modifications of employment responsibilities, the imposition of sanctions, lost remuneration, the withdrawal of benefits, as well as refusals to provide positive professional references.⁵⁹ In terms of remedies, whistleblowers who have suffered “material damage” from retaliation can recover damages twice the amount of the loss, as well as moral damages for pain and suffering. It also envisions the possibility that Brazilian authorities could create rewards for whistleblowing, though no such programmes were reported to be in place for foreign bribery. The amended laws specified that whistleblowers may be eligible for a reward of up to 5% if the report results in “the recovery of proceeds from a crime against the public administration”. This particular provision, however, does not have an implementing decree and is thus not yet in force. Even if it enters into force, the incentive might not be very powerful given how long Brazil’s criminal court proceedings last in practice.

90. On the other hand, Law 13.608/2018 does not clearly implement or address other aspects of the 2021 Recommendation. First, as explained above in Section A.9.a, the law appears to focus on detecting wrongdoing within the Brazilian public administration rather than within the private sector. For example, the law only requires government agencies, including public companies to set up ombudsman units to receive and process reports. Second, the legislation conditions the anti-retaliation protections on whether the relevant public administration ombudsman forwards it for “verification” after determining it to have sufficient elements for investigation. Under the 2021 Recommendation XXII, all whistleblowers who report on “reasonable grounds” should be protected, no matter how the competent authority handles the report. Third, though the law has a broad anti-retaliation provision, it is not clear that it extends to retaliatory actions outside workplace or in the private sector, for instance, as it provides that those who retaliate may be dismissed “for the good of the public service”. Fourth, the law does not address the burden of proof for establishing whether an allegedly adverse action was retaliation, nor does it provide for any interim relief pending the resolution of legal proceedings. Finally, the law does not contain any measures preventing or invalidating any contractual provisions intended to waive whistleblower protections or rights.

91. After the on-site visit, the Brazilian authorities reported that other legislation may address some of the shortcomings in the primary whistleblower protection laws by, for example, encouraging private sector companies to adopt reporting hotlines, providing for interim relief through the Administrative Procedure Law, or voiding abusive contractual provisions through labour law protections. It was not possible, however, to assess how these ancillary provisions would work in practice.

c. Reporting channels

92. Brazil has instituted various reporting channels, including in-person reporting, telephone hotlines, and an online portal known as Fala.BR. This portal is a national computerised system for receiving complaints implemented by the CGU. In 2019, the platform was adapted to identify reports of foreign bribery made by citizens and redirect them to the CGU. The platform allows for anonymous reports. When anonymous reports are received, authorities must first investigate and obtain confirmation of the information by other means before opening an enforcement procedure. As stated above, Law 13.608/2018 provides the whistleblowers covered by its provisions with the right to preserve the confidentiality of their identity. In practice, the CGU has received at least 20 whistleblower reports since 2019 concerning potential violations of article 5 CLL, including domestic bribery. The authorities report that all the allegations with sufficient materiality were forwarded to the FPS. At least one leniency agreement was concluded in relation to a domestic bribery case that came to light from a whistleblower report.

⁵⁹ Law 13.608/2018, article 4-C.

93. The FPS also has a reporting channel available through the Citizen Service Room (SAC).⁶⁰ Citizens have access to a form available online and to an application for computers and smartphones called “MPF Serviços”. The FPS does not accept anonymous reports, as it finds that anonymous reporting generates an exorbitant number of low-quality reports that are ultimately dismissed. The level of confidentiality accorded to each report is left to the discretion of the individual prosecutors.

d. Competent authorities, resources, awareness raising and training

94. Under Decree 10.890/2021, the CGU is the competent authority to receive and investigate allegations of retaliation against whistleblowers in the public administration, including SOEs and state-controlled entities. Within the CGU, the Federal Ombudsperson’s Office (OGU) is competent to adopt, *ex officio*, measures to protect whistleblowers against retaliation. It can also suspend retaliatory administrative acts or issue administrative acts to protect whistleblowers.⁶¹ However, the competence attributed to the CGU for these purposes under the law only relates to retaliatory acts and omissions committed within the public administration. The CGU is also competent to file and adjudicate proceedings for administrative proceedings resulting from such investigations. Within the CGU, the Federal Inspector General’s Office (CRG) carries out these duties.

95. The CGU has an ongoing training programme available nationwide for ombudsperson units, including online courses, online and face-to-face training, workshops, seminars, and a post-graduate course. This programme covers the processing of complaints and the protection of whistleblowers. Brazil reports that it has issued 130,000 training certificates under this programme in the past three years.⁶²

e. Relevance of Brazil’s labour law protections

96. Though Brazil’s labour law does not explicitly provide whistleblower protections, the Brazilian authorities explained after the on-site visit that a worker who suffers at least some forms of adverse treatment could seek a remedy either through a private lawsuit or by alerting the MPT, which would then have a duty to investigate the matter. If the MPT determines that the allegation has merit, it can propose a resolution to the employer. This proposal, if accepted, could result in a fine being imposed on the employer. If the employer rejects the proposal, the MPT can file a lawsuit to stop the discriminatory conduct and seek compensation for the harm. At least for cases involving retaliatory dismissal, the Brazilian authorities explained that the worker would be entitled to be reinstated with full reimbursement of salary plus interest or, alternatively, to double damages plus interest. Based on information provided after the on-site visit, the MPT is currently investigating 386 instances of alleged retaliation against workers who either reported misconduct or initiated lawsuits against their companies. The data, however, were not sufficiently detailed to ascertain whether any reports concerned foreign or domestic bribery.

97. In proceedings before the Labour Court, the worker (and, if applicable, the MPT) has the burden of establishing the facts constituting their rights. The Labour Court, however, can shift the burden of proof, when it is difficult for a party to prove a particular fact. A 2022 Superior Labour Court decision, for example, reportedly required a company to prove that the dismissal of a whistleblower (in a sexual harassment context) was not retaliatory.

98. From the information provided after the on-site visit, the MPT appears to be a competent authority for investigating at least certain complaints of retaliation in the private sector, especially in the context of discriminatory dismissals. Nonetheless, Brazil’s labour law framework does not clearly protect whistleblowers who may report foreign bribery allegations to the competent authorities from all forms of retaliation, especially those that might occur outside the workplace context. Indeed, there was strong

⁶⁰ The SAC was established by Ordinance PGR/MPF 412/2013.

⁶¹ Decree 10.890/2021, article 10.

⁶² The CGU’s online training can be accessed online, <https://ead.cgu.gov.br/course/index.php?categoryid=9>.

consensus from the private sector and civil society participants in the on-site visit that Brazil lacked real whistleblower protections in the private sector.

Commentary

The Brazilian authorities have made concerted efforts since Phase 3 to increase whistleblower protections and to improve whistleblower channels, in particular through the CGU's online portal Fala.Br. While Brazil's primary whistleblower legislation (Law 13.608/2018) contains aspects addressing many elements of the 2021 Recommendation, the lead examiners consider that it primarily focusses on protecting the Brazilian public sector, limiting its relevance for whistleblowing in the private sector. It is also not clear that reports concerning violations against foreign public administration, including foreign bribery, would qualify for protection from retaliation. For these reasons, Phase 3 recommendation 14.c remains unimplemented. The lead examiners recommend that Brazil adopt legislation to ensure that whistleblowing concerning foreign bribery is expressly protected and that the elements of the 2021 Recommendation XXII are met whether or not the whistleblower is in the public or private sector.

A.10. Other Sources of Foreign Bribery Allegations including Investigative Journalism

99. In Brazil, the one allegation now under administrative proceedings by the CGU was detected by Brazil's review of the OECD's compilation of foreign bribery allegations. This suggests that Brazilian authorities have not prioritised detection through the media directly.

100. During Phase 3 on-site visit, federal prosecutors stated that "opening an investigation on the basis of media allegations would be "frowned upon" by Brazilian courts and that there was a serious risk of having such an investigation quashed in court. In Phase 4, Brazil now claims that all of its enforcement authorities can launch investigations based on media reports. Brazil further indicates that the CGU has established procedures to monitor and record allegations identified in national and international media. For this purpose, the CGU developed a media monitoring guide to standardise media monitoring practices. During the on-site visit, the CGU indicated that it specifically monitors media covering certain high-risk sectors, including timber and oil exports.

101. For its part, the DPF and FPS have a more decentralised approach, with individual officials monitoring media publications and reporting relevant information that might lead to an investigation. Within the DPF, the "Division of Social Communication" monitors domestic and international media in general, and the Intelligence Unit monitors threats to Brazil, including foreign bribery. The DPF reports that it can open investigations based on media reports, citing the example of a preliminary investigation that was launched against a former President. The General Internal Affairs (Corregedoria-Geral), at the national level, and the Regional Internal Affairs (Corregedorias Regionais), at the regional level, are responsible for verifying this information and deciding to open investigations. During the on-site visit, however, the FPS and DPF confirmed that they have not started any foreign bribery cases based on media reports, although they have done so for other offences. The DPF and the FPS specified that before opening an investigation, they would have to verify the facts.

102. Regarding the freedom of the press, Brazil ranks 92 in the 2022 Reporter Without Borders index.⁶³ This low ranking is a longstanding issue, including under former governments. The index emphasises structural violence against journalists, highly concentrated media ownership, and the effects of disinformation which still pose major challenges for press freedom. However, other factors including the former administration's attacks against the media exacerbated the problem.⁶⁴ Despite this challenging

⁶³ <https://rsf.org/en/index>.

⁶⁴ Reporter Without Borders, Index, Brazil, <https://rsf.org/en/country/brazil>.

environment, Brazilian media – especially investigative journalists – have reported major corruption scandals in recent years. Nonetheless, journalists indicated during the on-site visit that, while there is freedom of the press in Brazil (and even more so at national than at regional level), the repeated attacks against the media in recent years have had a chilling effect on the profession. In their view, these attacks, combined with general uncertainty about Brazil's commitment to fighting corruption following the dismantlement of the *Lava Jato* task forces, has contributed to an increased level of self-censorship in the profession. This trend could hinder the reporting of foreign bribery and other corruption allegations.

Commentary

The lead examiners recommend that Brazil ensure that law enforcement authorities, especially the Federal Police and the Federal Prosecution Service, routinely and systematically assess foreign bribery allegations that are reported in domestic and foreign media including but not exclusively focussing on the information referred to Brazil by the Working Group. Despite hearing increasing concerns, the lead examiners note that the Working Group has been able to rely on free media reports to date and recommend that the Working Group follow-up on whether laws relating to freedom of the press are fully applied in practice to enable allegations of foreign bribery to be reported without fear of reprisals.

B. ENFORCEMENT OF THE FOREIGN BRIBERY OFFENCE

B.1. The Foreign Bribery Offence and Defences

103. Brazil's foreign bribery offence remains unchanged since Phase 2. Under article 337-B of the Penal Code (PC), Brazil's foreign bribery offence applies to bribes paid for a foreign official to undertake, omit, or delay "any official act". There has also been no change to the definition of 'foreign public official' under article 337-D PC. In Phase 2, the Working Group considered that Brazil's foreign bribery offence largely complied with the Convention but decided to monitor certain aspects as case law developed.⁶⁵

a. *Coverage of all elements of the definition of foreign public official*

104. Since Phase 2, the Working Group has expressed concern that the definition of "foreign public official" may be applied in a narrower manner than permissible under the Convention. In particular, the Working Group was concerned that the Brazilian definition may not apply to officials exercising a public function for a public agency.⁶⁶ In Phase 3, Brazil contended that, in a domestic context, the notion of public official has been interpreted broadly. However, in the absence of any concluded foreign bribery cases at the time, the Working Group decided to follow-up on the definition of "foreign public official" (Follow-up issue 16.a.i.). In Phase 4, Brazil still could not identify any relevant legislative or case law developments but reiterated that definition would be broadly construed. During the on-site visit, judges and prosecutors concurred that they would expect courts to interpret the term broadly based on the broad interpretation of "public official" in domestic cases.

b. *Coverage of all bribes offered, promised or paid in return for acts which provide an advantage in the conduct of international business*

105. Brazil's foreign bribery offence applies to bribes paid in exchange for "any official act relating to an international business transaction". In Phase 2, the Working Group queried whether the explicit link between the foreign public official's act and an international business transaction (as opposed to obtaining or retaining a benefit in the conduct of international business) would prevent certain acts of omissions from being covered by the offence (e.g. granting advantageous tax treatment or waiving customs duties). For this reason, the Working Group decided to continue following up on whether Brazil's foreign bribery offence covered bribery in return for any act providing an "advantage in the conduct of international business" (Follow-up issue 16.a.ii.) In Phase 4, Brazil still could not identify any relevant legislative or case law developments in the matter but reiterated the foreign bribery offence would cover all bribery seeking any advantage in the conduct of international business. Judges, prosecutors, and academics met during the

⁶⁵ Phase 2 follow-up issues 7e and 7f.

⁶⁶ As required by Article 1.4(a) of the OECD Anti-Bribery Convention and Commentary 13 on the Convention.

on-site visit similarly observed that a broad interpretation based on the Convention would appear reasonable.

Commentary

Based on the consistent views expressed by government officials and legal practitioners over three evaluation phases, the lead examiners recommend that the Working Group stop following up on the definitional issues in Phase 3 Follow-up issue 16.a.

c. Offences related to foreign bribery: additional or alternative offences

i. Money laundering offence

106. Brazil's money laundering offence has not changed since Phase 3. At the time, the Working Group recommended that Brazil maintain statistics on money laundering investigations, prosecutions and sanctions to assess its effectiveness in practice for fighting foreign bribery (recommendation 10.b.). For the Written Follow-up report, the Working Group considered this recommendation partially implemented because Brazil was developing a system to collect statistics as part of its national anti-corruption strategy.

107. In Phase 4, however, it appears that this effort did not address the Working Group's recommendation. While the National Council of Justice (CNJ) launched a judicial statistics "dashboard" with information on new, pending, and dismissed money laundering cases, the dashboard does not contain detailed information about money laundering investigations, prosecutions, or sanctions by predicate offence. It merely shows how many proceedings involving a certain offence entered the system per year and how many were judged. The CNJ is also developing another platform to provide procedural information on ongoing proceedings, but this initiative would also not appear to implement the Phase 3 recommendation.

108. Regarding the enforcement of the money laundering offence in practice, Brazil reports that the CNJ statistical dashboard shows that between 2020 and 2022, Brazilian courts judged 190 cases of money laundering predicated on crimes against a foreign public administration.⁶⁷ This data, however, seems questionable, given that the data indicates that these proceedings occurred in state courts even though federal courts have jurisdiction over money laundering predicated on offences against a foreign public administration, including foreign bribery.

109. As mentioned above, Brazil has only one known foreign bribery case that has gone to trial. In the **Aircraft Manufacturer** case, the first instance judge convicted the defendants of foreign bribery and money laundering predicated on foreign bribery. However, the Court of Appeals set aside the money laundering convictions because it considered that the conduct – the creation of a fake service contract to hide the bribes paid to the foreign public official – was absorbed by the foreign bribery offence. Sham contracts are often used to transfer bribe payments in foreign bribery cases. The fact that they might be considered as absorbed by the foreign bribery offence raises serious concerns regarding the autonomy of Brazil's money laundering offence. Under the FATF standards, Brazil should allow for the concurrent prosecution of and sanctioning for both money laundering and the predicate offence.⁶⁸

110. During the on-site visit, the evaluation team explored with prosecutors and judges whether this is a standard approach by Brazilian courts. Federal prosecutors and judges indicated that the absorption theory is old and disfavoured but that some judges and courts still apply it. Judges referred to a Supreme Court decision that expressly refused to absorb the money laundering offence into the predicate offence.⁶⁹

⁶⁷ CNJ, [Judiciary statistics](#).

⁶⁸ See also [Germany Phase 3 report](#), para. 148.

⁶⁹ HC 138092, Judgment (2018).

Federal prosecutors, similarly, affirmed that the two offences are autonomous and that they would always charge individuals either one of the offence or both offences when relevant based on the facts of the case.

ii. False accounting offence

111. In prior phases, Brazil reported that it does not have a standalone false accounting offence. False accounting offences are instead relying on a range of provisions. In Phase 3, the Working Group recommended that Brazil prohibit the full range of conduct described in Article 8(1) of the Convention for both natural and legal persons, raise awareness about the false accounting offence among accounting professionals and law enforcement; and ensure that the offence is vigorously investigated and prosecuted, where appropriate (recommendation 11.a.). At the time of the Written Follow-up report, the Working Group considered this recommendation partially implemented. While Brazil still did not have corporate liability for false accounting, it appeared from the information provided, that the Brazilian authorities were nonetheless capable of sanctioning companies for this conduct in the context of foreign bribery cases and that Brazil had applied additional penalties against companies in two cases where the company committed foreign bribery through false accounting.

112. In Phase 4, there still appears to be no false accounting offence for natural persons covering the full range of conduct prohibited by Article 8 of the Convention. While articles 298-299 PC cover the forgery of a “private document” or the creation of a “private document” with false content, it is not clear that these provisions necessarily to all accounting records or to all foreign bribery cases. Article 337-A PC and the offences under the Tax Crimes Law and Bankruptcy Law only apply to false accounting that has tax consequences or affect bankruptcy proceedings. The Brazilian authorities do not report any of these provisions being applied in relation to a foreign bribery scheme.

113. As for legal persons, Brazil confirms that there is no express false accounting offence. During the on-site visit, the CGU authorities maintained, that false accounting used to conceal the payment of the bribes could be considered as a violation of article 5(V) CLL, which prohibits “hinder[ing] investigations or inspections” carried out by public agencies or officials. The CGU participants during the on-site visit maintained that this theory had been applied in domestic corruption cases. However, Article 8 of the Convention requires that member countries prohibit a range of conduct in addition to foreign bribery, not merely when it is used to facilitate foreign bribery. If article 5(V) CLL is limited to situations when foreign bribery is proven, rather than as an alternative or related offence, this might fall short of implementing Article 8 of the Convention. After the on-site visit, Brazilian authorities reported that companies subject to Law 6,404/1976, article 177, must keep permanent records in accordance with generally accepted accounting principles. The scope of this duty and the penalties that violations incur remain unclear. This provision has been used, however, impose civil and administrative sanctions on the company in the **Aircraft Manufacturer** case. In that case the company concluded a Term of Commitment in 2016 with the Securities and Exchange Commission (CVM) and the FPS for improper books and records in connection with foreign bribery schemes in four separate countries, including the Dominican Republic.

iii. The Organised Crime Law

114. Prosecutors have used the Organised Crime Law 12.850/2013 (OCL) to sanction domestic bribery.⁷⁰ Under article 1 OCL, a criminal organisation is an association of four or more people “structurally organised and characterised by the division of tasks, even if informally” with the aim of committing certain criminal offences, including those of a “transnational nature”, to obtain an advantage. Article 2 OCL criminalises conduct promoting or supporting a criminal organisation as well as hindering the investigation of its criminal activities. The sanctions range from three to eight years’ imprisonment and a fine, without

⁷⁰ See FPS, [Lava Jato](#) case.

prejudice to the penalties for the other offenses committed. Prosecutors during the on-site visit confirm that the OCL could theoretically be used in foreign bribery cases.

Commentary

Money laundering: The lead examiners note that Phase 3 recommendation 10.b. remains unimplemented and recommend that Brazil ensure that it maintain statistics on investigations, prosecutions and sanctions for money laundering, including where foreign bribery is the predicate offence. They further recommend that the Working Group follow-up on whether its money laundering offence can be autonomously enforced together with the foreign bribery offence.

False accounting: The lead examiners partially reiterate Phase 3 recommendation 11.a. that Brazil ensure that the full range of conduct described in Article 8(1) of the Convention is prohibited for natural persons and legal persons. The lead examiners recommend that the Working Group follow up on whether article 5(V) CLL or, potentially, Law 6.404/1976 can indeed be applied as an alternative or a related offence, distinct from the foreign bribery offence under article 5(I) CLL.

Organised Crime Law: The lead examiners recommend that the Working Group follow up as case law develops on whether the OCL is used in foreign bribery cases as a related alternative offence.

B.2. Sanctions and Confiscation against Natural Persons for Foreign Bribery

a. Criminal sanctions available for natural persons

115. The sanctions against natural persons for foreign bribery are the same as in Phase 3. The ordinary offence is punishable with a term of imprisonment ranging from 1 to 8 years and a maximum fine of BRL 2 376 000 (approximately EUR 430 000). The sanctions for the aggravated offence, which requires that the bribe (or promise) induce the official to act or omit to act in breach of a duty, are enhanced by one-third. As shown in Table 2 below, the range of imprisonment sanctions for foreign bribery is lower than the range for domestic bribery, which is contrary to the standard set in Article 3(1) of the Convention.

Table 2. Sanctions against natural persons for domestic and foreign bribery

Offence	Imprisonment range	Maximum Fine
Domestic bribery	2 to 12 years	BRL 2 376 000 (EUR 430 000)
Foreign bribery	1 to 8 years	Same as ordinary domestic bribery
Aggravated domestic bribery	2.5 to 16 years	BRL 3 168 000 (EUR 574 000)
Aggravated foreign bribery	1.3 to 10.75 years	Same as aggravated domestic bribery

Source: Articles 333 and 337-B of the Penal Code

116. This sanctions differential has consequences for enforcement. First, it affects the statute of limitations, resulting in a limitation period four years shorter than for domestic bribery. In addition, as the statute of limitations is also recalculated based on the actual sentence imposed, foreign bribery defendants will be more likely to be acquitted due to statute of limitations if courts impose sentences towards the low end of the sentencing range. Second, one of Brazil's non-trial resolution systems, the "conditional suspension of proceedings" (see Section B.6.b below), is applicable the ordinary foreign bribery offence because it has a one-year minimum term of imprisonment. Finally, as foreseen under articles 43-44 PC, imprisonment sentences of less than four years are typically converted to alternative sanctions (e.g. community service, loss of values or assets, or temporary restriction of rights). Sentences of less than two years' imprisonment may also be suspended under article 77 PC. Again, foreign bribery

defendants may be more likely to receive alternative sanctions or suspended terms of imprisonment if courts impose sentences towards the low end of the sentencing range.

b. Sanctions imposed in practice on natural persons for foreign bribery

117. In Phase 3, the Working Group could not assess sanctions against natural persons in practice as Brazil had no foreign bribery convictions. Despite the lack of data, the Working Group understood that sentences in white-collar cases tended to fall towards the mandatory minimum. The Working Group was also concerned that defendants could obtain reduced penalties through post-sentencing cooperation agreements, which under the OCL, can reduce the penalty by half, alter the type of confinement, or even support a request for a pardon.⁷¹ The Working Group decided to follow up on whether the sanctions imposed in practice are effective, proportionate and dissuasive, including sanctions from post-sentencing cooperation agreements (Follow-up issue 16.c).

118. In Phase 4, there is still very limited data on sentences imposed in foreign bribery matters. As of the time of this report, the *Aircraft Manufacturer* case remains the only foreign bribery case that has been brought to trial. While the judgment remains under appeal, the approach in sentencing is consistent with the Working Group's understanding in Phase 3, that Brazilian courts tend to impose sentences towards the bottom of the sentencing range in white-collar cases. In December 2018, the main executive was sanctioned to 2.5 years' imprisonment plus a BRL 76 500 fine (EUR 14 000). The eight other defendants received 2 years' imprisonment plus fines of BRL 51 000 (EUR 9 300). The court relied on various factors to augment the base penalties, including the defendants' professional experience, their high-level positions in the company, and the high values involved in the bribery scheme, which involved a contract worth USD 92 million. The extra six months imposed on the main executive reflected his leading role in the scheme. Nonetheless, the terms of imprisonment fell in the bottom third or bottom quartile of the sentencing range. In April 2022, a Federal Circuit Court, upheld the main defendant's foreign bribery conviction but decided to suspend the term of imprisonment. The court acquitted the other executives because the limitations period applicable to them based on their two-year prison terms had elapsed.⁷²

119. In addition, the FPS has concluded cooperation agreements with at least three natural persons in connection with foreign bribery cases. As these agreements are under seal, the Brazilian authorities could not provide details on what sanctions, if any, were imposed.

Commentary

The lead examiners recommend that Brazil increase the minimum and maximum sanctions for foreign bribery for natural persons to ensure that effective, proportionate, and dissuasive sanctions are available in the law. They also recommend that Brazil provide appropriate guidance and training to judges to ensure that sentences in foreign bribery cases are effective, proportionate, and dissuasive in practice, especially in light of their impact on Brazil's statute of limitations.

c. Prohibition on the execution of sentences before the judgment is final

120. In November 2019, the Supreme Court held that Brazil's Constitution prohibited the execution of a sentence of imprisonment until it is confirmed by a final unappealable judgment.⁷³ This decision, which reinstated the understanding that prevailed before the Supreme Court issued a 2016 decision that allowed prison sentences to commence after they were confirmed by the appellate court. The 2019 reversal raised

⁷¹ Law N. 12.850/2013 (also known as the Organised Crime Law, or OCL), Art. 4(5).

⁷² As described in Section 4.a. above, the court vacated the money laundering convictions.

⁷³ Supreme Court, ADCs 43, 44, and 54, judgment of 7 November 2019, interpreting art. 5(LVII) of the Constitution, which provides "no one shall be considered guilty before the issuing of a final and unappealable penal sentence".

considerable concern within Brazil's law enforcement community, civil society, and the press as potentially creating *de facto* impunity in corruption cases given the length of time it takes in Brazil to obtain a final criminal judgment after exhausting all appeals.⁷⁴ For this reason, the Working Group included it in the HLM discussions (HLM Issue n.6). The Working Group continued the monitoring of this issue through the MSG until October 2020, when it decided to postpone its further assessment to Brazil Phase 4 evaluation.

121. In Phase 4, the National Council of Judges opined that this Supreme Court decision would “not preclude in any way” Brazil's foreign bribery enforcement. Given that criminal proceedings can take years, even decades, to obtain a final unappealable judgment, the reinstatement of the pre-2016 constitutional interpretation could undermine the dissuasive nature of any penalties imposed. In addition, as Brazil's limitations period applies both for securing the conviction and for executing the sentence, the new interpretation could result in more cases becoming time-barred before sanctions are effectively imposed (see Section B.4.e. below). During the on-site visit, prosecutors and judges reported that the new interpretation increased the number of appeals. One legal practitioner reported seeing reduced interest during compliance trainings after this ruling and the others concurred. The perception was that individuals are now less likely to face sanctions. At the same time, the practitioners recognised that it will be difficult to address this issue as a constitutional amendment would be needed, if the Supreme Court does not reconsider its jurisprudence.

122. Following this Supreme Court judgment, several bills, and proposals to amend the Constitution were filed in Congress but they have not progressed. For comparison, other Working Group countries have sought to balance the competing concerns by allowing custodial sentences to go into effect during appeal, unless a court grants a stay pending appeal, for instance, if the defendant's appeal is likely to succeed. In other countries, the default is that the appeal suspends the sentence, but a judge can order provisional incarceration when circumstances warrant.⁷⁵

Commentary

The lead examiners fully support the need to ensure that no defendant is deprived of liberty without due process of law. At the same time, they regret that the Supreme Court's revised interpretation could exacerbate the challenges Brazil's criminal justice system already faces by incentivising every defendant to appeal, even in cases where the defendant's appeal is unlikely to succeed. Combined with Brazil's statute of limitations rules, this creates a risk that Brazil's criminal justice system could provide *de facto* impunity for foreign bribery. They recommend that Brazil consider ways to ensure that any appeals challenging defendants' convictions or the sentences imposed in foreign bribery cases will be resolved expeditiously to ensure that the criminal justice system can provide deterrence in foreign bribery cases.

d. Confiscation of the bribe and the proceeds of foreign bribery

i. Confiscation of the bribe and the proceeds of bribery

123. As in Phase 3, confiscation is not a sanction *per se* but rather an effect of a criminal conviction. Under article 91(II)(a) PC, Brazil can confiscate the bribe as an instrument of the crime, provided that its “alienation, use, possession, or detention constitutes an unlawful act”. Under article 91(II)(b) PC, the proceeds of crime may also be confiscated. If the proceeds are not found or are located abroad, the court can order the forfeiture of an equivalent value. This possibility does not exist for the bribe.

⁷⁴ National Association of Prosecutors (ANRP), [Press release](#) (7 November 2019). UOL (17 October 2019), “[STF judges imprisonment in 2nd instance under the shadow of PEC on the same topic](#)”.

⁷⁵ See, e.g. United States [Federal Rules of Criminal Procedure](#), Rule 38(b) (allowing court release defendant pending appeal); United Kingdom [Criminal Appeal Act 1968](#), Section 29 (allowing court to grant bail during appeal). France Criminal Procedure Code, Article 709-1-1 (allowing the prosecutor to request provisional incarceration), .

124. In addition, Brazilian law enforcement authorities also can seize and freeze assets during investigations and prosecutions. The Criminal Code of Procedure (CCP) establishes interim security measures through which investigators and prosecutors can request the freezing of assets to secure confiscation. These measures include seizure of real estate assets and freezing of bank accounts.

125. In Phase 3, the Working Group found that the regime for confiscating the foreign bribery proceeds was largely satisfactory, but it recommended that Brazil adopt measures to “allow for the confiscation of a bribe or its monetary equivalent in cases of foreign bribery” (recommendation 4.a.i.). This recommendation was not implemented by the Written Follow-up report. In Phase 4, Brazil has not reported any developments to address this recommendation. In addition, the Brazilian authorities confirmed confiscation of proceeds was not sought in the *Aircraft Manufacturer* case that has resulted in a conviction pending appeal. Following the on-site visit, Brazilian authorities confirmed that prosecutors can request confiscation during proceeding and, if there is a conviction, confiscation would be mandatory.

ii. Extended confiscation available in foreign bribery cases

126. Since Phase 3, Brazil amended the Penal Code in 2019 to expand Brazil’s capacity to confiscate the proceeds of a crime. Specifically, article 91-A PC authorises “extended confiscation” for offences whose maximum term of imprisonment exceeds six years. Thus, it applies to foreign bribery.⁷⁶ Under this provision, any assets held by convicted persons that are not compatible with their lawful income will be deemed to be the product or benefit of crime and subject to confiscation. A defendant’s assets are defined as all assets in their ownership and direct or indirect control and benefit on the date of the offence, including those transferred to third parties without due consideration after the criminal conduct commenced. Unlike the ordinary confiscation provisions, the “extended confiscation” provisions may only be applied if the prosecutor “expressly” requests for them to be applied “when the complaint is made”.

iii. The calculation of proceeds and confiscation in practice

127. In Phase 3, Brazil could not collect or provide data on confiscation at either the federal or state level. The Working Group recommended that Brazil ensure that it maintains statistics regarding the confiscation of the proceeds of foreign bribery and other corruption or serious economic crimes (recommendation 4.c.) Brazil had not implemented this recommendation by the time of the Written Follow-up report. In Phase 4, Brazil again could not provide comprehensive statistics on its confiscation efforts. It did, however, relay an example where a Brazilian investigation into a judicial corruption scheme commenced in 2003 and resulted in a final conviction in 2012. This conviction enabled the Police to successfully recover USD 19.4 million from Swiss bank account, with assistance from the Swiss authorities.

128. In prior phases, the Working Group did not assess how foreign bribery proceeds would be calculated for confiscation purposes. Within the Police, there is an Asset Recovery Service within the anti-money laundering unit, which specialises on confiscation matters for all criminal activities, including foreign bribery. The Police have also prepared guidelines and organised workshops or other trainings to help police officers quantify, identify, and confiscate the bribe and the proceeds of bribery. For its part, the FPS reported during the on-site visit that it had a manual containing guidance on seizure of assets.

Commentary

The lead examiners commend Brazil for expanding the legal basis for confiscating the proceeds of foreign bribery and, to ensure that it works in practice, reiterate recommendation 4.c. that Brazil 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 as well as other serious economic crimes. Finally, although the lead examiners regret that Brazil did not address recommendation

⁷⁶ Article 91-A PC.

4.a.i concerning the confiscation of bribes that have not been transferred, they propose dropping it to enable Brazil to focus on higher-priority recommendations.

B.3. Investigative and Prosecutorial Framework

a. **Investigative and prosecutorial authorities in charge of the foreign bribery enforcement**

129. As noted in the Phase 3 report, the FPS is the prosecution authority with responsibility for foreign bribery offences. Regarding legal persons, the Office of the Comptroller General (CGU) has exclusive jurisdiction over the administrative liability proceedings under the CLL for wrongful acts against a foreign administration, including foreign bribery.⁷⁷ The FPS, however, can also initiate judicial/civil liability proceedings, against a legal person under the CLL. The Department of Federal Police (DPF) holds responsibility for investigating foreign bribery offences.⁷⁸

130. Lack of guidance and training: In Phase 3, the Working Group recommended that Brazil intensify efforts to provide guidance and training to the DPF, the FPS, and the CGU on the foreign bribery offence, the CLL, the basis and method of calculation of the proceeds, and, as necessary, the new investigative techniques available under the OCL (recommendation 5.b.). By the Written Follow-up report, this recommendation was partially implemented.

131. Lack of resources, skills and specialisation: In Phase 3, the Working Group recommended that Brazil ensure that the DPF, the FPS, and the CGU have sufficient resources and skills to fight foreign bribery; and consider creating a national corruption-fighting unit within the FPS and specialised units within the DPF (recommendation 5.c.). By the Written Follow-up, this recommendation was partially implemented.

132. Brazil's efforts to implement recommendations 5.b. and c. are discussed below for each law enforcement authority (sub-sections i. to iii. below).

i. *Federal Police: Coordination and specialisation*

133. The DPF is composed of federal police commissioners (*delegados de polícia*), federal agents, and federal forensics experts. The police commissioners are the head of the investigative proceedings, known as "police inquiries".

134. In terms of guidance and training (recommendation 5.b.), Brazilian authorities merely indicate that the Federal Police has a regular schedule of workshops and trainings on corruption and money laundering matters.

135. In terms of resources, skills, and specialisation (recommendation 5.c.), the Brazilian authorities report that as of January 2023, 54 police commissioners have been appointed. The Department of Investigations of Organized Crime (DICOR), a central body located in Brasilia, coordinates the DPF's action on anti-corruption, including foreign bribery, through the General Coordination of Repression to Corruption and Financial Crimes (CGRC). DICOR includes an Asset Recovery Service, which focuses on recovery of proceeds from criminal offences, including foreign bribery. The CGRC has 44 officials dedicated investigating corruption, financial and money laundering crimes. At local level, the DPF has established Corruption and Financial Crime Repression Stations (DELECORS),⁷⁹ which are specialised police units with around 515 officials dedicated to investigating both domestic and foreign bribery

⁷⁷ Law 10.683/2003, articles 17 & 18; CLL, articles 8 & 9.

⁷⁸ Constitution of Brazil, article 144(1); Law 10.683/2003.

⁷⁹ DELECORS were created to replace DELEFINs in 2016 by Ordinance n. 6.335-DG of 12/5/2016.

allegations. Since the Written Follow-up report, the DPF staff has increased by over 3 000 officials. During the on-site visit, the DPF participants confirmed a steady increase in their human resources.

ii. Federal Prosecution Service and extinction of the Prosecutors' task forces model

136. The FPS is an independent and autonomous prosecution authority with the attribution to prosecute natural persons for foreign bribery and related criminal offences. The FPS also indicates that it can conclude leniency agreements with legal persons under the CLL.⁸⁰ The FPS is headed by the Prosecutor General of the Republic (PGR).⁸¹ Brazil emphasises that under the Constitution, federal prosecutors have functional independence within an administrative hierarchy. The PGR is responsible for allocating resources and controlling the FPS's budget. Phase 2 and 3 reports indicate that the PGR was at the time considering setting up a national corruption fighting unit. In its questionnaire responses, Brazil reports that the proposal did not advance in the institution's Superior Council.

137. The 5th Chamber of Coordination and Review (5th CCR) coordinates the FPS anti-corruption work, including foreign bribery.⁸² This appears to be some substantive (non-administrative) control of prosecutors by more senior prosecutors. The 5th CCR also organises working groups, workshops and seminars gathering federal prosecutors in charge of anti-corruption cases in several states and at different levels. Besides developing and publishing guidelines or technical notes, it also provides assistance to prosecutors through its thematic groups. The 5th CCR's guidelines do not specifically cover foreign bribery but might be relevant to foreign bribery related matters.

138. Besides, in some units of the FPS around the country, there are partially or fully dedicated federal prosecutors working on files involving corruption and related offences. These prosecutors are organised in units called Anti-Corruption Units (*Núcleos Contra a Corrupção* or *NCCs*) each of which is composed of one unique prosecutor, also known as "natural prosecutor", with territorial competence over corruption cases. The Special Action Groups to Combat Organised Crime (*GAECOs*) do not have any primary territorial competence and only act in support, and at the request of, the *NCCs* prosecutors (and other prosecutors with possible competence on corruption cases) when the cases originally investigated by a unit present a high degree of complexity or involve criminal organisations. In this context, both the *NCCs* and the *GAECOs* can investigate and prosecute foreign bribery.

139. The main change since Phase 3 is the extinction of the task-force model and its replacement by the *GAECOs*. At the time of the Written Follow-up Report, the FPS conducted investigations in complex cases through task forces. These task forces consisted of teams of federal prosecutors and support staff that collectively provided support to the prosecutors with territorial competence over the case, known as "natural prosecutors". The establishment of a task force required the authorisation of the PGR who would also assign its members, thus again exercising an administrative power with substantive implications. The most high-profile task forces were the "*Lava Jato*" task forces⁸³ which had been involved in the investigation of several transnational bribery cases, including foreign bribery cases.

140. In October 2020, the Working Group decided to include threats to the continuance of the *Lava Jato* task forces as a topic for the monitoring subgroup that it created following the HLM. The Working Group was concerned that ending the task forces could potentially result in a loss of specialisation that could impact several pending foreign bribery cases for other Working Group members. From September 2020 to March 2021, the PGR gradually ended all the task forces in the country, transferring the matters to the recently established *GAECOs*. The PGR justified this shift on the grounds that task forces were, by

⁸⁰ FPS, [Nota Técnica n. 01/2017](#).

⁸¹ Constitution of Brazil, articles 127-130.

⁸² FPS, 5th Camera of Coordination and Revision, [Presentation](#).

⁸³ The *Lava Jato* task forces consisted of teams of federal prosecutors and supporting staff in Brasilia, Curitiba, São Paulo, and Rio de Janeiro, following rules of territorial jurisdiction and functional prerogative for the public officials involved. See more at FPS, [Lava Jato case](#).

definition, temporary and that they siphoned resources from other FPS units.⁸⁴ In October 2021, the Working Group decided to postpone its assessment of the shift to the GAECO structures to the Phase 4 evaluation.

141. In terms of training, no specific information was provided regarding training of the GAECOs. More generally, Brazil indicates that in September 2019, the FPS together with the CGU and the Attorney General's Office (AGU) organised an event titled "Fight Against Corruption and Foreign Bribery Week", with the participation of enforcement agents from Latin America and the Caribbean.

142. In terms of resources, Brazil questionnaire responses do not provide updated information. Brazil merely states that in 2022 the FPS launched a public admission examination to fill 13 vacant federal prosecutor positions. Brazil did not provide the number of prosecutors assigned to task forces in comparison with prosecutors assigned to the GAECOs but publicly available data show that the *Lava Jato* task force in Curitiba (where most of the sensitive corruption files were gathered) was composed of 15 federal prosecutors dedicated to the operation, while the corresponding GAECO counts with 7 federal prosecutors dedicated to organised crime cases in general.⁸⁵ One civil society organisation expressed concerns about the loss of resources dedicated to fight financial crimes.

143. In terms of skills, a consequence of the extinction of the task forces model and its replacement by the GAECOs could be a loss of specialisation. In its questionnaire responses, Brazil indicates that the GAECOs are intended to assist case prosecutors "in the fight against organised crime at the national level, for carrying out criminal investigations in conjunction with the judicial police or through its own procedures." GAECOs were created in all Brazilian States. As their name indicates, the GAECOs have attribution over all offences committed in the context of organised crime. During the on-site visit, FPS representatives clarified that "organised crime" in Brazil's legislation encompasses serious economic crimes including foreign bribery insofar as they involve a criminal organisation of at least 4 persons whose purpose is to pay a bribe.

144. In terms of specialisation, while the task forces were focused on a specific cases or operation, Federal prosecutors assigned to the GAECOs conduct multiple cases involving a multitude of offences. During the on-site visit, lawyers recognised the GAECOs more permanent and institutionalised nature. The prosecutors emphasised the attention paid to ensuring continuity between the task forces and the GAECOs and reported no difficulty in their experience of this new model. Civil society participants, however, expressed concerns about their lack of specialisation, which sharply contrasts with the former task forces. Academics observed that they enjoy more limited freedom of action and independence, an issue which is further discussed below under section B.4.c.

iii. Office of the Comptroller General (CGU)

145. The Office of the Comptroller General (CGU) is the ministry that is main administrative enforcer of the CLL within the Executive Branch. It has exclusive authority to conduct administrative liability proceedings against legal persons for foreign bribery (article 9 CLL).

146. In terms of guidance, Brazil indicates that the CGU has published various manuals on CLL enforcement, covering the scope of the CLL offences, the conduct of investigations and administrative proceedings, the calculation of fines, and the assessment of corporate compliance. The CGU also issued regulations to clarify the basis and method of calculating the proceeds of bribery.⁸⁶ Finally, in 2023, the CGU launched an electronic calculator to improve transparency on how CLL fines are calculated.

⁸⁴ Ministério Público Federal, "[PGR extends Curitiba task force until January 2021](#)" (9 Sept. 2020).

⁸⁵ Ministério Público Federal, [GAECO Teams](#) and "[Curitiba](#)" section for [Lava Jato webpage](#).

⁸⁶ Normative Ordinance 2, 2018; Decree 11129/2022, article 26.

147. In terms of training, the CGU has promoted several training and awareness raising initiatives including “The Fight Against Corruption and Foreign Bribery Week,” organised together with the FPS and the AGU in September 2019. It hosted the second meeting of the Latin America & Caribbean Anti-Corruption Law Enforcement Network (“LAC LEN”), which provided a two-day training on “Combating Foreign Bribery and Corruption.” This training was attended by over 200 persons from different law enforcement agencies and public entities. In 2021, the CGU promoted a live online course on Administrative Liability Proceedings, which 3 129 certified participants, mostly public officials, attended. In 2021 and 2022, 48 CGU officials concluded a postgraduate course on “Combating Corruption and Money Laundering”. It included a range of foreign bribery related topics (e.g. international anti-bribery conventions, international cooperation but also compliance measures) presented by experienced Brazilian law enforcement officials. Finally, in 2022, CGU officials attended a course organised by the Homeland Security Investigations (HSI) at the U.S. Embassy in Brasilia, in partnership with the US DOJ’s Foreign Corrupt Practices Act Unit which also covered a range of foreign bribery related topics. It was attended by officials from the CGU, FPS, DPF, DRCI, TCU, COAF and state prosecutors.

148. In terms of skills and specialisation, since Phase 3, the CGU has restructured its foreign bribery enforcement capacities. In January 2023, the CGU created a Secretariat for Private Integrity (SIPRI) to enhance its efforts to promote integrity in the private sector. The SIPRI is composed of three directorates: the Directorate of Liability of Legal Entities (DIREP), the Directorate for Leniency Agreements (DAL), and the Directorate of Promotion and Private Integrity Assessment (DPI). Brazil indicates that one of the units within DIREP is the General Coordination for Investigation and Monitoring of Transnational Bribery (CGIST), “which is responsible for monitoring the involvement of Brazilian companies in foreign bribery and conducting investigations on the matter.” Another newly established unit is the “Coordination of Economic and Accounting Analysis”, created to assist CGU officials in the calculation of sanctions and proceeds of bribery. Finally, another relevant unit is the General Coordination for Leniency Agreements and Transnational Bribery under the DAL.⁸⁷

149. In terms of resources, Brazil indicates that in 2022, the CGU appointed 375 new officials. Of these, 30 were assigned to SIPRI bringing it up to 102 officials, the majority of whom are career federal auditors, with various backgrounds (including legal and accounting). In the DAL, 18 officials are dedicated to the non-trial resolution through leniency agreements of cases involving illicit acts committed by companies (domestic or foreign). Within the DIREP which comprises 53 officials, 17 officials are assigned to the CGIST. Brazil indicates that the 16 officials in the other investigative unit within DIREP (General Coordination for Investigation and Assumed Processes – CGIPAV) as well as the 17 officials in the General Coordination for the Liability of Legal Entities can also be mobilised to assist their colleagues in resolving foreign bribery matters. During the on-site visit, CGU participants expressed their satisfaction with the increased level of resources allocated to fighting corruption within the three newly created specialised units. They also emphasised the large range of expertise contained in the three units, with lawyers, accountants, engineers, specialists in financial markets, banking, information technology, and artificial intelligence. They can also bring in experts assigned to other units to support their work as needed. They also mentioned a recent training in anti-money laundering which helped them in conducting their investigations and the efficiency gains made thanks to the use of artificial intelligence and data mining. Finally, CGU participants explained that their operational budget is distinct from their salary and training budget.

Commentary

The lead examiners acknowledge Brazil’s efforts to implement recommendations 5.b and 5.c regarding guidance, training, specialisation, skills and resources of its law enforcement authorities

⁸⁷ CGU, [Private Integrity Secretariat](#) webpage.

and generally deem these recommendations partially implemented. They recommend that the Working Group make updated and more targeted recommendations to Brazil.

Regarding the DPF, the lead examiners welcome the increase in resources for the police, the creation of the central Department of Investigations of Organized Crime (DICOR) and the local Corruption and Financial Crime Repression Stations (DELECORs) aimed at fostering specialisation.

Regarding the FPS, they also welcome the 5th Chamber of Coordination and Review's efforts to ensure consistency of the FPS's anti-corruption activity, especially during the transition from the use of task forces to the Special Action Groups to Combat Organized Crime (GAECOs). While they recognise the mixed views heard during the on-site visit, they believe it is important to assess what impact, if any, the discontinuation of the task forces might have on the specialisation of the prosecutors for foreign bribery, as fewer prosecutors will need to oversee investigations and prosecutions over a wider range of cases involving different offences. As discussed in Section B.5 below, the end of the task force model may have lessened Brazil's ability to enforce its foreign bribery offence as well as its effectiveness in providing mutual legal assistance in foreign bribery cases.

The lead examiners recommend that Brazil: Ensure that sufficient resources, specialisation and skills are available within the DPF, both at central (DICOR) and local (DELECOR) levels, the FPS Anti-Corruption Units and GAECOs across the country to enable Brazil to actively enforce its foreign bribery offence by: (i) continuing its efforts to provide guidance and regular training on foreign bribery to the relevant DPF, FPS Anti-Corruption Units and GAECOs; and (ii) developing indicators and collecting data to monitor the resources for, and effectiveness of, the new organisational model in the enforcement of foreign bribery and related offences.

Regarding the CGU, the lead examiners commend the CGU for developing a wide range of guidance concerning the foreign bribery offence in the CLL, the CGU's investigative and administrative enforcement procedures, as well as the calculation of the proceeds of bribery, fines, and compliance programme credit. They also commend the CGU's training and awareness-raising efforts for Brazilian officials and the private sector as well as law enforcement authorities from other Latin American countries. The lead examiners welcome Brazil's successful efforts to reorganise the CGU to enhance its structures for investigating and resolving corruption cases involving private companies as well as to increase resources by hiring new officials with wide range of skills and experiences.

iv. Other federal agencies

150. The Office of the Attorney General (AGU) has the constitutional mandate to represent all federal branches of government in court. The AGU provides legal consultancy to the Executive branch.⁸⁸ The AGU plays a secondary role in the enforcement of the CLL. It prepares legal opinions on the final report issued by the CGU committee in charge of conducting the administrative proceeding for leniency agreements before the final decision by the CGU Minister. As the legal representative of the Union, the Minister of AGU signs leniency agreements together with the Minister of the CGU.⁸⁹ This enables the CGU to impose civil sanctions together with administrative sanctions. Finally, the AGU is responsible for filing any requests requiring judicial authorisation in the context of investigations and proceedings conducted by the CGU committee in charge of the administrative proceeding. In its questionnaire responses, Brazil indicates that

⁸⁸ Constitution of Brazil, Art. 131.

⁸⁹ CGU/AGU Inter-ministerial Instruction 04/2019.

the AGU has published a Normative Ordinance requiring the proactive filing of civil actions to end corruption and recover assets.⁹⁰

151. Brazil's tax authority, the Federal Revenue of Brazil (FRB), also plays a limited role in the enforcement of the foreign bribery offence. Besides its role in the detection of foreign bribery cases and actions to enforce the non-deductibility of bribes and proceeds of bribes, the FRB sometimes provides expert support to the FPS and CGU in investigations and enforcement actions.

b. *Coordination and cooperation between agencies in investigations and proceedings*

152. In Phase 3, the Working Group had concerns about the coordination between the FPS and the DPF, on the one hand, and the FPS and CGU, on the other. The Working Group recommended that Brazil ensure that (i) the FPS and DPF cooperate as necessary in foreign bribery investigations, and (ii) the CGU and the FPS conclude an MOU to set out a framework for cooperation when enforcing the CLL (recommendation 5.a.). This recommendation was deemed partially implemented at the time of the Written Follow-up. Cooperation between the CGU and the DPF did not give rise to a specific recommendation but given its importance to hold legal persons accountable, it is also briefly discussed below.

i. Cooperation between the DPF and the FPS

153. In Phase 4, none of the participants to the on-site visit raised the cooperation between the DPF and the FPS as an issue. On the contrary both the FPS and the DPF reported on their respective good level of cooperation. DPF participants mentioned that they were not aware of a foreign bribery case where they would not have worked with the FPS and referred to their good level of cooperation as a partnership generally leading to collegial decisions.

ii. Cooperation between the FPS and the CGU without need for an MOU

154. During Brazil Phase 3 Written Follow-up, while no MOU had been signed to enhance cooperation between the CGU and the FPS, Brazil referred to the close collaboration between the FPS and the CGU. In contrast, the lead examiners noted at the time that information on a lack of cooperation had repeatedly been reported in the Media.

155. During the on-site visit, a high-level CGU representative emphasised the solid cooperation between the CGU and the FPS which has grown significantly since Phase 3. In its questionnaire responses, Brazil confirms that no MOU has been signed to enhance cooperation between the CGU and the FPS as this has not proven necessary: general coordination and cooperation in the context of investigations and proceedings have not raised major technical issues since Phase 3. Brazil emphasises that the CGU, FPS, and DPF have conducted several joint operations (referred to as "special operations") and the results of information and data collection in these operations have been shared among agencies as evidence to support their respective investigative proceedings.⁹¹ The CGU reports a continuous sharing by the FPS of evidence produced in civil or criminal proceedings for use in administrative proceedings conducted by the CGU. Brazil adds that a sizeable portion of the ongoing investigations and administrative proceedings are a direct result of information and evidence sharing. In foreign bribery cases, the CGU indeed appears to rely extensively in its administrative proceedings on evidence produced in the context of criminal investigations, even if during the on-site visit, panellists from both the CGU and the FPS emphasised that evidence sharing has worked both ways. The CGU also reports that it always shares information with the FPS after concluding its formal administrative proceedings. During the on-site visit, the private-sector lawyers explained that previously there was a lack of coordination between FPS and

⁹⁰ Normative Ordinance PGU/AGU n. 12, of June 1, 2022.

⁹¹ See CGU "[Special Operations](#)" page.

CGU in enforcing the CLL, especially in terms of concluding leniency agreements, but that the situation has improved dramatically.

iii. Cooperation between the CGU and the DPF

156. At the time of its Written Follow-up, Brazil indicated 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. Brazil further indicated that the CGU often takes part in DPF operations to carry out investigative techniques (such as search and seizure) pursuant to orders issued by the judiciary.

157. During the Phase 4 on-site visit participants from the CGU referred to regular sharing of information between the authorities. As an example, Brazil cites the CGU's decision to grant the DPF access to a system named MACROS through the Technical Cooperation Agreement. The CGU developed this system to aggregate various governmental or other public databases. It can be used to perform queries and issue customized reports. The CGU and DPF also carry out joint operations illustrating a high degree of cooperation between the two enforcement authorities. After the on-site visit Brazil indicated that almost 75% of the cases handled by the CGU were initiated by the CGU as a result of a police operation. It is not clear, however, whether foreign bribery cases follow the same pattern.

Commentary

From the on-site discussions, the lead examiners understand that the Brazilian authorities place increased importance on cooperating in their cases. In this regard, the lead examiners welcome the good level of cooperation between the CGU and the DPF fostered by the Technical Cooperation Agreement, including the CGU's decision granting the DPF access to the MACROS database. Based on the discussions during the on-site visit they deem that Phase 3 recommendation 5.a that the FPS and the CGU sign an MOU to better cooperate is no longer relevant. Nonetheless, it was not clear whether the FPS and CGU would share information about foreign bribery cases early in the investigative stages and the lead examiners recommend that Brazil ensure that the CGU, the DPF, and the FPS develop a coordination mechanism to promptly share information about potential foreign bribery matters so that both natural and legal persons in foreign bribery cases are investigated effectively using the different investigative powers available to each authority.

B.4. Conducting Foreign Bribery Investigations and Prosecution

a. Foreign bribery investigations conducted by the FPS and DPF

i. Rules for opening and closing investigations

158. Framework: As in Phase 3, Brazil has a mandatory prosecution system. Accordingly, the DPF has the authority to investigate alleged crimes, including foreign bribery, *ex officio* or upon request of the FPS (CCP Article 5). If it opened the case, the DPF would need to inform the prosecutors once an investigation began. In addition, the FPS can open its own investigation if it amasses enough evidence. The prosecutors can also instruct the police to continue the investigation.

159. According to Brazil, DPF decisions to not open an investigation are subject to review by federal prosecutors as well as judicial oversight. Once an investigation is opened, the police or the prosecutors will conduct their inquiry under the supervision of superior prosecutors. When suspects have been apprehended or detained, investigations are limited to a maximum of 30-day limits on investigations. Based on the Phase 3 on-site visit discussions, these limitations do not appear to impose any meaningful obstacle

for investigations of complex white-collar crime, as judges can authorise extensions when necessary.⁹² Once the investigation is completed, the authorities will prepare a report, which the FPS will use to decide whether to file charges, conduct further investigations, or close the case.

160. Once an investigation is started, it can only be closed by the prosecutors. Under old article 28 CCP,⁹³ the FPS would need to submit the decision to a judge who would consider whether the decision was well-founded under articles 395-397 CCP. If the judge considers the decision ill-founded, the matter will be forwarded to the Prosecutor-General for review. The Prosecutor-General can file charges, designate another FPS body to review the file, or confirm that the case should be closed. This decision is final.

161. Criminal investigations in practice: In Phase 3, given Brazil's limited enforcement, the thresholds for opening or closing investigations was identified as a potential issue of concern and the Working Group decided to follow-up on how the DPF and FPS react to foreign bribery allegations, including decisions not to open investigations (Follow-up issue 16.d.). In Phase 4, Brazil did not provide any detail about any specific DPF or FPS decisions to open or close an investigation. It also did not provide any details about any court decisions ordering the reopening of an investigation.

Commentary

The lead examiners recommend that the Working Group continue following up on “the performance of the DPF and the FPS with regard to foreign bribery allegations, including decisions not to open investigations.”

ii. Investigative techniques

162. In Phase 3, the Working Group found that Brazil had a number of investigative techniques available under the Code of Criminal Procedure (CCP) and Law 9.296/1996 on telecommunications intercepts. In addition, the OCL had introduced new investigative techniques applicable in foreign bribery matters. The legislative framework remains unchanged in Phase 4. In Phase 3, the Working Group recommended that Brazil should encourage law enforcement authorities to make full use of the investigative measures available in foreign bribery investigations, including special investigative techniques and access to financial information (recommendation 5.d.). At the time of the Written Follow-up report, this recommendation was deemed fully implemented by the Working Group although Brazil had only addressed the portion concerning the CGU.

163. During Phase 4, the evaluation team tried to reassess whether the FPS and the DPF makes full use of the investigative measures available in foreign bribery investigations. (The CGU's use of investigative techniques is discussed in section B.4.b. below.) Brazil, however, did not provide detail on the use of investigative techniques in the DPF's or FPS's foreign bribery investigations since Phase 3.

164. During the on-site visit, the DPF and the FPS representatives only shared general considerations on their use of investigative techniques. They explained that there are different forms of authorisation that they need to obtain from the judge and that the standards of evidence needed to support such requests varies depending on the offence. In the large cases, they indicated that the requests to the judge are made jointly by the FPS and the DPF. The FPS participants indicated that, with the judge's authorisation, they can use a large range of investigative techniques, including wiretapping. In practice, however, they have experienced challenges getting judicial authorisation. During the on-site visit, the evaluation team was unable to obtain information regarding investigative techniques used in practice in ongoing or even in resolved cases. Despite the evaluation team's request, Brazil did not provide data to help assess Brazil's implementation of this Phase 3 recommendation.

⁹² Phase 2, para. 106; see also CCP Article 10.

⁹³ Although Law 13.964/2019 introduced a new Article 28 CPP, which would eliminate the judge's direct role in the process, the Supreme Court suspended the amendment's entry in force.

Commentary

Without a breakdown on the use of these techniques in Brazil's ongoing or concluded cases, the lead examiners are not able to assess if investigative techniques are used proactively in practice. The general comments from the FPS participants during the on-site visit about the high rate of denial that they face from judges in response to their requests to use some of these techniques in specific cases do not alleviate the concerns expressed by the Working Group in this regard in Phase 3. As the lead examiners were unable to assess whether the full range of investigative techniques was being used by the DPF and the FPS in foreign bribery cases, they recommend that Brazil collect and provide details to the Working Group about the use of investigative techniques, including special investigative techniques and access to financial information, in ongoing and concluded foreign bribery cases since Phase 3.

b. Foreign bribery investigations and proceedings conducted by CGU

165. In Phase 3, the review of the administrative enforcement of the CLL was hampered by the fact that Brazil had not yet issued the implementing decree at the time of the on-site visit, which occurred shortly after the law had entered into force. For this reason, there was much uncertainty about how the CGU would conduct its investigations.

i. Procedures and time limits for investigations

166. Procedures: In Phase 4, the CGU has reorganised its divisions (as discussed under section B.3.a.). The General Coordination for Investigation and Monitoring of Transnational Bribery (CGIST) is now responsible for conducting preliminary investigations. The CGIPAV may also conduct such investigations.

167. As in Phase 3, if an allegation is received, the CGU will assess the credibility of the information and whether it contains sufficient detail to start an investigation or proceeding. Depending on the level of detail provided, the CGU may open a formal preliminary investigation to determine whether a formal administrative proceeding (PAR) should be opened. If the allegation comes with sufficient supporting evidence, for example, a referral from the DFP with evidence obtained from a prior investigation, the CGU can immediately open a PAR. Conversely, if the allegation does not contain sufficient information to justify further investigation or proceeding, the CGU can archive the matter.⁹⁴

168. Under the 2022 Decree once a formal preliminary investigation is opened, it can be conducted by a committee of at least two civil servants who will gather evidence to determine if a violation occurred. If the investigators consider that they have established a violation, they will send a report, together with any supporting evidence, for the CGU Minister to give approval to establish a PAR. Once a PAR is opened, another committee, again of at least two civil servants, will decide whether liability should be imposed. This committee will then make a report of its findings, after giving the company the opportunity to present its case and to submit evidence. If a violation is established, the committee's final report will propose the type and level of sanctions that should be applied. The report will be forwarded to the CGU's internal legal counsel, who is part of the AGU for review of its legality before it is presented to the CGU Minister for approval. The CGU Minister can only reject the commission's proposal based on evidence produced during the PAR. Once the CGU Minister has made a decision on the report, the company and the committee can request reconsideration within ten days.

169. The committee's report can be used by other enforcement agencies. For instance, the AGU can review the report to determine whether to seek civil remedies under article 19 CLL. Furthermore, once the PAR is concluded, the committee's report will be forwarded to the FPS under article 15 CLL. The FPS will

⁹⁴ CGU Handbook on Liability for Private Entities, section 12.1.2.

use the report to determine whether to pursue any criminal conduct. In addition, the FPS could also elect to pursue civil/judicial liability for legal persons. Finally, under article 20 CLL, the FPS could even seek to impose administrative sanctions on a company through the judicial proceeding if the administrative authority committed an “omission” in holding the company accountable under the CLL. The Working Group identified this issue for follow-up (Phase 3 Follow-up 16.g). During the Phase 4 on-site visit, however, it was confirmed that the FPS has not been sought to assert such authority to date.

170. Time limits: Several internal, administrative deadlines are specified under the 2022 Decree. The CGU has 180 days to complete the preliminary investigation, but this can be extended.⁹⁵ Under Article 10 CLL, once the PAR is commenced, the committee has 180 days in total to complete its work. This 180-day deadline can be extended by a reasoned decision. Concerned by these short limits, the Working Group had recommended in Phase 3 that Brazil “clarify its ability to extend the timeframe for administrative proceedings against legal persons” (recommendation 8.ii.). In the Written Follow-up report, Brazil explained that it could extend the 180-day deadline as needed and reported that courts had held that in other types of administrative proceedings (e.g., disciplinary actions), the failure to abide by such deadlines did not invalidate the result. Still, the Working Group deemed this recommendation unimplemented. During the Phase 4 on-site visit, however, both CGU representatives and the private-sector lawyers confirmed that extensions were routinely granted, though the grounds needed to obtain an extension remained unclear.

ii. *Investigative techniques available to the CGU*

171. In Phase 3, the Working Group found that the CGU committee responsible for investigating the CLL violation could request the CGU to solicit judicial measures to support the investigation. It was not clear, however, which investigative measures the CGU could request as there was no clear legal basis in the CLL specifying which techniques were authorised.

172. Under the 2022 Decree, the committee can “take all the steps allowed by law” during the preliminary investigation to investigate the facts. The 2022 Decree expressly authorises the committee to (i) request experts from other public agencies or other organisations to assist with the analysis, (ii) request bank information concerning public funds, (iii) seek tax information concerning the investigated legal entity, (iv) request the CGU to seek judicial measures, including search and seizure, necessary for the investigation, and (v) request documents from all natural or legal persons. During the formal PAR, the committee would also have the same powers. According to the CGU, their investigators can obtain the types of evidence that would be available in criminal proceedings with judicial authorisation. Only certain special investigation techniques, such as wiretapping and infiltration, are restricted.

173. In practice, the AGU would assist the CGU in obtaining judicial authorisation for specific investigative techniques. During the on-site visit, the CGU and AGU representatives did not provide specific examples when they sought or obtained judicial authorisation to carry out investigative techniques. In contrast to the FPS and the DPF’s experience, the CGU and AGU reported that they had no difficulties obtaining approvals. In fact, they claimed that they had a 100% success rate. The CGU and AGU representatives attributed the reported ease of obtaining authorisation to the fact that they were operating under an administrative (non-criminal) standard of proof. In addition, the CGU reported that it can use evidence obtained through criminal proceedings, including information that would otherwise be covered by telephone, bank, or tax secrecy. However, the exact modalities of obtaining this information, particularly when the CGU initiates its proceedings before another law enforcement body has begun its own investigation could not be clarified at the on-site visit despite the evaluation team’s repeated requests.

⁹⁵ Decree 11.129/2022, Article 3(4).

Commentary

The lead examiners welcome the further clarifications brought regarding the procedures and time limits for administrative investigations and proceedings in practice, which addresses the concerns that gave rise to Phase 3 recommendation 8.ii. They also welcome the provision in the 2022 Decree which authorises the CGU to take a large range of steps during their preliminary investigations and thus enhances the investigative techniques available to the CGU at the time of the Phase 3 Written Follow-up. They recommend that the Working Group follow up on the CGU's use of investigative techniques in foreign bribery cases, particularly when the CGU initiates proceedings before the DPF or FPS has begun their own investigations. While there have been no developments since Phase 3 that required the FPS to assert its authority under article 20 CLL to seek both administrative and civil sanctions when the CGU fails to act, the lead examiners consider that this issue does not need to be followed up at this time. It can be re-examined in subsequent monitoring phases if the circumstances change (Phase 3 Follow-up item 16.g.)

c. ***Independence and Article 5 of the Anti-Bribery Convention***

174. The legal and institutional frameworks regarding the independence of the bodies responsible for enforcing the foreign bribery offence have remained generally unchanged. A major exception is the entry into force of the Law on Abuse of Authority.

175. Since Phase 3, however, issues of concern regarding Brazil's compliance with Article 5 have emerged. Over the years, these issues have led the Working Group to subject Brazil to additional measures as explained in the introduction to this report, including the HLM and the MSG.⁹⁶ This section will examine the Article 5 issues that the Working Group decided should be further assessed during Phase 4.

i. Federal Prosecution Service

- General normative safeguards

176. The independence of the FPS is guaranteed under the Constitution through its financial and administrative autonomy, and through individual prosecutors who enjoy life tenure and a range of other constitutionally guaranteed employment conditions.⁹⁷ Federal prosecutors have functional independence; the hierarchy that exists is merely administrative. The Prosecutor General of the Republic (PGR) is the head of the FPS but has no formal control over federal prosecutors' substantive work. The PGR office is responsible for allocating resources and controlling the FPS' budget.

177. The National Council of the Public Prosecution Service (CNMP) is responsible for supervising the administrative and financial performance of the FPS and to monitor compliance with disciplinary rules. The CNMP is composed of the Head of the PGR and thirteen other members, nominated by the President of the Republic and approved by the Senate for a two-year term, with the possibility of reappointment. The CNMP is recognised by academics as having successfully reinforced the FPS independence (even it might have been less successful in its mission to increase accountability).⁹⁸ It does not have the power to interfere in investigations or other procedures related to the prosecutors' core activities. While the Phase 3 report noted that prosecutors' independence from political pressures was unanimously emphasised by all participants as one of the strong features of the Brazilian judicial system, more nuanced views were shared by participants during the Phase 4 on-site visit as further discussed below.

⁹⁶ See [Phase 4 procedures](#) on the continued failure to adequately implement the Convention.

⁹⁷ Article 127 of the Constitution.

⁹⁸ Fábio Kerche, Vanessa Elias de Oliveira, Cláudio Gonçalves Couto, *The Brazilian Councils of Justice and Public Prosecutor's Office as Instruments of Accountability*, 54 Brazilian Journal of Public Administration 1334 (2020).

- Draft amendment to the Constitution aiming at broadening the CNMP's powers

178. In October 2021, the Working Group MSG started to monitor a draft amendment to the Constitution which proposed to give the CNMP powers beyond the administrative and disciplinary supervision of prosecutors. Civil society and media reported that if approved, this draft amendment would raise serious concerns regarding prosecutorial independence.⁹⁹ In December 2021, Congress rejected this draft amendment. The Working Group decided to further monitor this issue in Phase 4. In its questionnaire responses, Brazil indicates that this draft amendment has not been re-introduced in Congress and that no similar legislative proposals are considered. The Working Group can stop monitoring this issue.

- Approval of the Law on Abuse of Authority on prosecutorial and judicial independence

179. In August 2019, Brazil's Congress adopted the Law on Abuse of Authority (LAA) criminalising abuses by judges and prosecutors.¹⁰⁰ Two months before, in June 2019, the Working Group had issued a public statement expressing concerns with the Bill which, it deemed, introduced an overly broad definition of the offence of abuse of authority by judges and prosecutors, characterised by subjective elements.¹⁰¹ together with other concerning developments, prompted the Working Group to send a high-level mission to Brazil (HLM) in November 2019. Following the HLM, the Working Group MSG continued to monitor this issue until March 2021, when it decided to postpone its further assessment to Phase 4.

180. In its questionnaire responses, Brazil indicates that the National Council of Justice (CNJ) does not have data on whether judges and prosecutors have been investigated, prosecuted, and/or sanctioned under the LAA. Since the approval of the Law, no indication has emerged in the media of a possible use against judges or prosecutors of the now broad definition of the offence. In June 2020, the FPS issued guidelines for enforcing the LAA. These guidelines reinforce the prosecutors' legal guarantees of independence and also attempt to clarify some controversial aspects of the law, including the obligation to send allegations of LAA violations by federal prosecutors to the Office of the PGR for investigation, thus ensuring the independence of such investigations according to Brazil authorities.¹⁰²

181. During the on-site visit, some defense lawyers expressed the view that the entry into force of the LAA is a positive development, and one prosecutor formerly part of the *Lava Jato* task force emphasised that he never suffered any retaliation. However, individual prosecutors, police officials, defense lawyers, civil society and academics raised concerns about the chilling effect that this law is having over prosecutors even if no one was aware of any case, so far, in which it had been applied to a prosecutor. Prosecutors, during the on-site visit, shared the perception that, especially after the adoption of the LAA, they now need to be "extra careful" on their investigations. Individual prosecutors and defense lawyers reported that they considered that certain prosecutors had been subject to instances of politicisation and retaliation, albeit not specifically through application of the LAA. The Brazilian authorities, after the on-site visit, stressed that the LAA should be assessed in a context of concerns of politicisation as found in certain STF decisions, which held that violations of defendants' due process rights or other irregularities had occurred.

- Instances of politicisation and lack of neutrality

182. In several country monitoring reports, the Working Group has expressed concerns over the fact that factors forbidden by Article 5 of the Convention may have, in certain circumstances, influenced the investigation, prosecution and resolution of foreign bribery cases. Instances of alleged political influence

⁹⁹ Draft amendment to the Constitution n.5/2021.

¹⁰⁰ Law 13 869/2019.

¹⁰¹ OECD (01.07.2019), [Abuse of authority provisions adopted by the Senate raise concerns over Brazil's capacity to ensure independence of prosecutors and judges in fighting corruption.](#)

¹⁰² Ministério Público Federal, 2ª Câmara de Coordenação e Revisão, [Orientação n. 39.](#)

create a perception of lack of independence and foster distrust against public institutions and potentially anti-corruption institutional and legal frameworks.

183. In Brazil, judges and prosecutors are not allowed to engage in political activities.¹⁰³ Additionally, the Code of Criminal Procedures lists factors that would infer a lack of neutrality and may render judges and prosecutors either “suspect” or prevent them from working on a criminal case. These factors include acting with political bias.¹⁰⁴ A judicial decision recognising that a judge and/or prosecutor is suspect or prevented from exercising his functions applies retroactively and may result in the annulment of the related entire criminal proceeding. Despite these legal guarantees, since Phase 3, civil society and media have reported at least two instances of politicisation and lack of impartiality of prosecutors and judges in Brazil.

184. In 2019, the media obtained access to private messages exchanged between federal prosecutors and a federal judge involved in a *Lava Jato* task force in charge of investigating and prosecuting several offences, including foreign bribery.¹⁰⁵ These messages showed that federal prosecutors and a federal judge had acted with political bias in cases involving several national political figures. Concluding that the judge had breached his duty of impartiality, the Supreme Court has annulled several convictions or other decisions rendered against specific individuals. The politicisation and lack of neutrality revealed by these messages also led to the discontinuation of the task forces model. Brazil emphasises that this is also in this context that the LAA was approved by the national Congress with a view to protect defendants rights to a fair trial.

185. Additionally, between 2019 and 2022, Transparency International Brazil (TI-BR) shared several reports with the Working Group in which it emphasised the increased politicisation of the Office of the PGR over the past years.¹⁰⁶ According to TI-BR, the mandate of the current PGR has been marked, in particular, by “undue political interference in high profile investigations”.¹⁰⁷ While these incidents were not related to foreign bribery cases, TI-BR maintains that they “have the potential to reduce the institutional capacity of the Public Prosecutor’s Office and its autonomy to investigate grand corruption schemes involving prominent politicians and businessmen, and to reverse the engagement of Brazilian authorities and institutions in fighting corruption.” TI-BR’s allegations are supported by several media articles.¹⁰⁸ Journalists also acknowledged this situation during the on-site visit. With a newly elected government having taken office in January 2023 and the mandate of the then PGR ending in September 2023, on-site visit participants indicated that they were awaiting signs of change which were premature to discuss at this point in time. In their view, the selection of the next PGR will be an important marker of Brazil’s future direction. Brazil however stresses that the FPS is the only institution that is not linked to the Executive Branch and is therefore independent in the exercise of its functions.

- Recent administrative or disciplinary actions against federal prosecutors involved in high-profile investigations

186. In other country reports, the Working Group has deemed that the exercise of disciplinary powers to pressure tactics against judges in sensitive cases or retaliate judges and prosecutors constitute a breach

¹⁰³ Constitution of the Federative Republic of Brazil, articles 95 (sole para.), (III) & 128(II)(e), respectively.

¹⁰⁴ CCP articles 252 to 256.

¹⁰⁵ [Intercept Brasil](#) (09.06.2019), Folha de Sao Paulo (21.06.2019), «[Leia a íntegra da troca de mensagens entre Moro e Deltan ante tensão com o STF](#)».

¹⁰⁶ These reports, except the 2022 one, were circulated to the Working Group at the request of TI-BR and are publicly available here: [2019](#), [2020](#), and [2021](#).

¹⁰⁷ TI BR (2021), [Brazil: Setbacks in the anti-corruption legal and institutional frameworks](#), , p. 17.

¹⁰⁸ [Reuters](#) (05.09.2019), [L’Express](#) (28.10.2021) ; [UOL](#) (26.01.2022); [G1](#) (26.01.2022); [UOL](#) (30.07.2022).

of Article 5 of the Convention.¹⁰⁹ The Working Group has considered on such occasions that the protection of judges and prosecutors from external pressure and influence is essential to ensuring that political and economic factors do not affect foreign bribery cases. In its written submission to the Phase 4 evaluation team, TI-BR indicated two instances, where administrative bodies sanctioned federal prosecutors despite technical reports concluding that they had committed no violations of their duties.

187. In August 2022, the Federal Court of Accounts (TCU) convicted three federal prosecutors involved in high-profile anti-corruption enforcement actions of misuse of public funds.¹¹⁰ The TCU sanctioned these officials to return BRL 2.8 million (approximately EUR 514 000) to compensate alleged damage to the Treasury due to the payment of air tickets and *per diems*. Both a technical investigatory commission and the Court of Accounts Prosecution Service concluded that no irregularity had occurred. Despite those reports, the TCU's full court sanctioned all three prosecutors. On appeal, the TCU acquitted one prosecutor but maintained the conviction against the other two (now former) prosecutors. In December 2022, a federal judge granted an injunction to annul this TCU decision. A final decision is still pending.

188. In December 2022, the CNMP sanctioned two federal prosecutors accused of revealing confidential information through a press release. The press release informed the public and media of an operation that resulted in charges laid against two Senators. Shortly thereafter, these Senators filed a disciplinary complaint with the CNMP. Once again, even though the technical disciplinary commission concluded that the prosecutors did not violate any disciplinary rule, the plenary court of the CNMP imposed sanctions.¹¹¹ Subsequently, the Supreme Court suspended the imposition of the sanction until the CNMP can hear the prosecutors' appeal.¹¹²

189. These cases prompted protests from prosecutors' associations and civil society in Brazil. The National Association of Federal Prosecutors published a public statement indicating that the effects of the CNMP's decision "are a deterrent to the independent and fearless exercise of the constitutional mission of the Public Prosecutor's Office". The public statement adds that "every public prosecutor will feel, as a result of this decision, susceptible to be punished for simply performing his or her duty in good faith and with transparency."¹¹³ TI-BR in its report submitted to the Phase 4 evaluation team emphasised that the TCU and CNMP decisions sanctioning federal prosecutors despite the contrary findings of the technical reports created "serious legal insecurity for public officials acting in cases of corruption by powerful individuals."¹¹⁴

190. During the on-site visit, prosecutors confirmed that they believed that disciplinary actions were indeed taken against prosecutors without cause as a form of retaliation. Civil society participants expressed serious concerns regarding the FPS's lack of independence, indicating that they have seen setbacks in the prosecutors' independence in recent years with increasing instances of interferences. A lawyer indicated that the combination of the serious risk of retaliation, the retroactive calculation of the statute of limitations and the dismantlement of the task forces resulted in increased difficulties in investigating and sanctioning individuals for corruption including foreign bribery. It would, according to lawyers be easier to investigate and sanction companies.

191. In September 2023, shortly before this report was adopted, a STF justice ordered that the AGU and other authorities commence an inquiry into whether public agents, including the *Lava Jato* prosecutors, should be held civilly or criminally liable for their alleged misconduct related to the acts performed in

¹⁰⁹ Argentina Phase 3 (paras. 119-126), Türkiye Phase 3 (paras. 87-92); Czech Republic Phase 3 (paras. 97-99); France Phase 3 (paras. 92-96); Slovenia Phase 3 (paras. 9, 73-78); South Africa Phase 3 (paras. 80-101); and the Russian Federation Phase 2 (paras. 127-135).

¹¹⁰ TCU [press release](#) (9 August 2022).

¹¹¹ CNMP (20 December 2022), "[CNMP aplica pena de suspensão, por 30 dias, e censura a membros do MPF](#)".

¹¹² STF, MEDIDA CAUTELAR NA AÇÃO ORIGINÁRIA 2.739 DISTRITO FEDERAL, judgment from 14 March 2023.

¹¹³ ANPR (21 December 2022), "[Membros do Ministério Público brasileiro elaboram nota em apoio a colegas punidos pelo CNMP](#)".

¹¹⁴ Transparency International Brazil (2022). Annual review – Brazil 2022, p. 9. (Written submission).

connection with the *Odebrecht* leniency agreement without observing MLA procedures. The National Association of Federal Prosecutors has challenged the lawfulness of that decision, but the case remains pending. Nonetheless, the AGU announced that it would create a task force to comply with this decision. This case is further discussed under Section B.5 below.

ii. *Department of Federal Police*

- General normative safeguards

192. The DPF is administratively subordinate to the Ministry of Justice but retains considerable autonomy to investigate crimes falling within its remit. Brazil emphasises that Law 12 830/2013 has provisions to prevent undue political interference in investigations conducted by “police commissioners” (*delegados de polícia*) who are heading the investigative proceedings. This law contains provisions, for instance, preventing a police commissioner from being arbitrarily removed from a criminal investigation or unjustifiably removed from their position as a retaliation or to place undue pressure upon them. Brazil also stresses that Federal Police officials are hired through a public examination and have tenured positions. However, several reports of undue interference in the DPF raise doubts about the effectiveness of such guarantees in practice.

- Alleged political interference in DPF investigations

193. In June 2020, the Working Group invited Brazil to report on allegations made by a former Minister of Justice that the then President of the Republic had interfered in the Federal Police investigations to obtain confidential information on investigations initiated against his sons, friends, and political allies. Following these allegations, the Supreme Court authorised the Prosecutor General of the Republic to launch an investigation against the then President.¹¹⁵ In September 2022, the Prosecutor General and the Federal Police concluded their investigation indicating that they had found no evidence of criminal conduct by the investigated individuals, including the former President and asked the Supreme Court to terminate the investigation. Brazil indicates that a final decision from the Supreme Court is still pending.

194. In parallel, throughout 2021, media articles¹¹⁶ and civil society organisations have continued to report other instances of undue interference by the former President in the Federal Police and other investigative agencies such as the Federal Revenue Service.¹¹⁷ The MSG has monitored this issue until December 2022, when the Working Group decided that it should be re-assessed in Phase 4.

195. During the on-site visit, Federal Police participants indicated that they have never experienced political pressure and that if such instance arose, they could directly seek relief from a judge. Civil society and journalist participants, however, raised concerns over the allegedly repeated instances of interference under the former government. They considered that even if individual DPF members did not experience such political influence, the notorious cases where this happened would have a chilling effect, particularly against the background of other reported instances of political interference in law enforcement agencies.

Commentary

The lead examiners note that, despite the widely recognised clear guarantees of independence that the prosecutors enjoy in Brazil under the Constitution, independence issues have emerged in recent years, some of which have been discussed in the Working Group Monitoring Sub-Group and might hinder efforts by police and prosecutors to investigate or prosecute foreign bribery cases. The lead examiners are seriously concerned by the perception of lack of independence and autonomy of the prosecutors that has emerged since Phase 3 and by the chilling effect that resulted

¹¹⁵ STF’s Inquiry n. 4831.

¹¹⁶ [Métropoles](#) (13.11.2021), [Piauí Magazine](#) (17.11.2021), [Folha de Sao Paulo](#) (20.05.2022).

¹¹⁷ See also: Transparency International Brazil (2022). Annual review – Brazil 2022, pp. 16-17. (Written submission).

from the combination of the broadened Law on Abuse of Authority and recent disciplinary or even civil or criminal enforcement actions against prosecutors involved in high-profile anti-corruption enforcement efforts. They also note with concern that, as confirmed by the Supreme Court, political bias influenced law enforcement decisions in a prominent domestic corruption case as well as perceptions, based on various reports, of politicisation of the Office of the Prosecutor General of the Republic and of undue interference by the former President into the Federal Police and other investigative agencies. These instances represent a risk that improper considerations prohibited by Article 5 of the Convention may arise in foreign bribery cases.

The lead examiners recommend that Brazil take all necessary steps, as a matter of priority, to ensure that the factors prohibited by Article 5 of the Convention may, in no circumstances, influence the investigation, prosecution and resolution of foreign bribery cases or jeopardise in any other way the independence of prosecutors including through: (i) putting safeguards in place to protect the Office of the Prosecutor General from politicisation or the perception of politicisation; and (ii) reinforcing guarantees against possible political bias by law enforcement agents as well as against the possible arbitrary use of disciplinary or other accountability measures as a means of retaliation against prosecutors involved in sensitive anti-corruption and related enforcement actions. The lead examiners also recommend that the Working Group follow up on whether sufficient measures are in place to prevent political interference in the Federal Police and other investigative agencies.

iii. *Office of the Comptroller General*

- General normative safeguards

196. As a ministry, the CGU is part of the Executive branch, and its Minister is appointed by the President of the Republic. The CGU has its own budget which it can execute autonomously. CGU officials are selected through specific public competition and are among the best-remunerated in the Federal Executive branch. While the CGU does not enjoy guarantees of independence comparable to those of the FPS, Brazil reports that several legal and procedural mechanisms are in place to ensure that the CGU can investigate, prosecute, and sanction foreign bribery cases in an impartial and objective manner. These guarantees include the fact that (i) civil servants with tenure carry out investigations; (ii) investigations are randomly assigned; (iii) consideration of factors prohibited by Article 5 of the Convention is expressly prohibited;¹¹⁸ (iv) a standardised assessment methodology is used to establish liability, (v) the termination of a case must be justified in accordance with applicable law; (vi) control bodies such as the FPS have full access to ongoing and terminated cases; (vii) resolved and closed cases are publicly accessible; and (viii) conflict of interest rules, if breached, may result in dismissal or other disciplinary sanctions for the civil officials conducting investigations and proceedings.¹¹⁹

197. Regarding the concern that credible factual allegations of foreign bribery should be seriously investigated and assessed by the competent authorities, the CGU emphasized in its Phase 4 responses that an Ordinance is regulating the registration of allegations (forwarded from various channels open to any person) in an electronic system (SUPER) for the sake of an initial objective analysis. Any discontinuance must also be legally grounded and justified in the system. In addition, it must also be approved by a higher authority. The CGU emphasizes that this normative guideline, applied to all cases, results in ensuring objectivity, impartiality, and standardization of investigation and liability proceedings within the administrative sphere.

¹¹⁸ Instruction Normative n° 13, of August 8, 2019, Article 31.

¹¹⁹ Law 12,813/2013, Article 12 and Administrative Improbability Law 8,429/1992.

- Safeguards for independence when the CGU Minister decides to sanction a legal person

198. The Phase 3 report raised concerns regarding the fact that the CGU, which is responsible for the investigation, proceedings and decision on the liability of legal persons for foreign bribery, does not enjoy guarantees of independence comparable to those of the prosecutors. The Brazilian authorities contended at the time that the fact that the CGU is part of the Executive branch and its Minister is appointed by the President does not affect the Office's independence. They further observed that the officials responsible for conducting investigations and PAR are tenured officials, which thus ensures independence and impartiality of the decisions made by the CGU (art. 10 CLL). Given that the Committee does not have the final say, the Working Group found it concerning that the final decision lies with the Minister, a political appointee, who is not bound by the opinion of the legal office on the Committee's report (art. 12 CLL).

199. This concern was alleviated to an extent by the fact that if the Minister decides on a course of action contrary to the recommendation in the final PAR commission report, it must be substantiated based on evidence collected through the proceedings.¹²⁰ Furthermore, the CGU is subject to external controls and, in particular, to the oversight of the FPS if it omits in its duty to enforce the CLL; and iii) the Minister's decisions are subject to judicial review on matters of law and abuse of discretion.

200. Regarding the general concern that the final decision lies with the Minister and thus could potentially be tainted by political consideration, CGU participants in the on-site visit indicated that it is difficult to think that the Minister could make a different decision than the one recommended by the PAR committee. They emphasized that in the name of "active transparency", the committee's report is public and that the Minister can be sued and held personally responsible if he or she does not follow the recommendation in the report through willful misconduct or gross negligence.¹²¹ Other panelists at the on-site visit, including from civil society, did not think that the fact that the CGU Minister would make the final decision was an issue owing to the broader safeguards described above.

Commentary

The lead examiners are reassured that the CGU division responsible for investigating and resolving foreign bribery cases is carrying out its tasks in an impartial and professional manner. Regarding the Phase 3 concern that the final decision on the liability of a legal person lies with the CGU Minister and thus could potentially be tainted by political factors, the lead examiners consider, based on clarifications obtained at the on-site visit, that this risk is alleviated by the safeguards in place, including the fact that the Minister can only disregard the PAR committee's proposal based on the evidentiary record from the PAR and that the Minister can be held personally liable for rejecting the committee's proposal without justification.

d. Establishing Jurisdiction

201. In former phases, jurisdiction over natural persons (art. 6 and 7 PC) was deemed generally in line with Article 4 of the Convention. However, the Working Group decided to follow up on how jurisdiction is exercised over natural and legal persons when the offence takes place, at least in part, abroad, given the range of conditions for exercising nationality jurisdiction under article 7 PC (Follow-up 16.h). Besides a dual criminality requirement, the offender must also "enter[] the national territory" before jurisdiction can be asserted. In Phase 3, the establishment of jurisdiction appeared to have raised difficulties in the few foreign bribery cases that Brazil was then investigating. Prosecutors admitted that they preferred establishing territorial jurisdiction, given the challenges of establishing nationality jurisdiction.

¹²⁰ Art.13 (sole para.), Decree 11 129/2022.

¹²¹ Article 28 of Decree-Law 4,657/1942 and Articles 2 and 12 of Decree 9,830/2018, as well as Article 319 PC.

i. Jurisdiction over natural persons

202. In its Phase 4 responses, Brazil did not cite any decisions clarifying when jurisdiction can be exercised over natural persons when foreign bribery is committed, at least in part, abroad. During the on-site visit, judges concurred that there was no conclusive jurisprudence on this issue. Conversely, after the on-site Brazil reported that, in at least two cases, Brazil lacked criminal jurisdiction because the offending occurred abroad. The concern thus remains whether Brazil can exercise jurisdiction over natural person for foreign bribery committed abroad, at least in part, consistent with Article 4 of the Convention.

Commentary

The lead examiners propose ending the follow-up 16.h, which started in 2007, and recommend that Brazil review its legislation to clarify its jurisdiction over natural persons when foreign bribery is committed, at least in part, abroad.

ii. Jurisdiction over legal persons

203. The Corporate Liability Law (CLL) prohibits wrongful acts against foreign public administration, including foreign bribery. As described in Section C below, it applies to Brazilian companies as well as to foreign companies that have established an office or other form of representation in Brazil. The CLL is silent on its territorial application. For nationality jurisdiction, article 28 CLL expressly provides that it applies to Brazilian companies for acts against a foreign public administration “even if committed abroad”.

204. Territorial jurisdiction: As a new Phase 4 development, the 2022 Decree provides further detail on the territory jurisdiction over legal persons for corruption offences. It specifies that the CLL will apply to harmful acts performed “in whole or in part in the national territory” as well as to acts that “produce or may produce effects” in Brazil. (article 1.II. CLL). This is a welcome clarification that the entire act need not take place within Brazil in order for Brazil to have territorial jurisdiction. On the other hand, Article 1 CLL may overly limit jurisdiction over foreign companies that either do not conduct business in Brazil or that fail to officially register a temporary office in Brazil. Thus, it is possible that a foreign bribery scheme on behalf of a foreign company takes place in part in Brazil (e.g., an agent of a foreign company offers a bribe to a foreign public official at a conference in Rio) without Brazil having jurisdiction over the foreign company.

205. Nationality jurisdiction: In Phase 3, the Working Group reiterated its concern that Brazil would only assert nationality jurisdiction over companies that were established under Brazilian law and had their main headquarters in Brazil. The Working Group recommended that Brazil address this potential loophole (Phase 3 recommendation 7). At the time of its Written Follow-up, the Working Group considered this recommendation fully implemented because the FPS had issued a Technical Note specifying that article 28 CLL should be interpreted to cover companies incorporated in Brazil and companies having their main management and control bodies in Brazil, even if some functions were based abroad.¹²²

206. In Phase 4, the 2022 Decree merely reaffirms article 28 CLL without incorporating the clarification from the 2015 FPS technical note. Discussions with judges during the on-site visit have shown that the nationality loophole may not be fully fixed. First, it is not clear that the FPS Technical Note would apply to the CGU, AGU, or any other authority. Second, such an interpretation has yet to be held up in court as a valid interpretation of the Civil Code’s requirements. Pending such clarification, judges indicated that they were still not convinced that the law would apply unless both conditions were met. During the finalisation of this report, the CGU provided a technical note that the CGU prepared in the context of the administrative proceedings. According to the technical note, the CGU could bring proceedings against a group of companies, including at least one entity based in another country, that operated as a single economic group. The proceedings, however, remain ongoing, so there is no final decision confirming this analysis.

¹²² Technical Note No. 01/2015.

In addition, the technical note does not analyse article 28 CLL, so it is not clear how a Brazilian court would assess the question if the final PAR decision is challenged.

Commentary

The lead examiners welcome the further clarifications provided in the 2022 Decree concerning the CLL’s jurisdictional reach, both within and beyond Brazilian territory. Given that the 2022 Decree did not incorporate the clarifications concerning Brazil’s nationality jurisdiction, which were reported in the Phase 3 Written Follow-up report, the lead examiners reiterate Phase 3 recommendation 7 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 companies not incorporated in Brazil if their main seat is in Brazil and companies with their main management and control situated in Brazil even if part of this function is located abroad. Regarding territorial jurisdiction, the lead examiners recommend that the Working Group follow up as case law develops whether Brazil has jurisdiction over foreign companies that either do not conduct business in Brazil or that fail to officially register a temporary office in Brazil.

e. Adequacy of Statute of limitations

i. Limitation period for natural persons

- Situation as of Phase 3

207. In Phase 3, Brazil had last reformed its statute of limitations in 2010. The Working Group discovered that Brazil recalculates the limitation period for natural persons based on the sentence received rather than the statutory maximum. Upon sentencing, the limitation period is thus recalculated based on this new limitation period and retrospectively applied to the period between the wrongdoing and the indictment, the indictment and the conviction, and the conviction and commencement of sentence.

208. As applied to foreign bribery, the limitation period under article 109 PC would be 12 years from the offending for ordinary foreign bribery offences and 16 years for aggravated foreign bribery before a sentence is imposed. Upon sentencing, however, the limitation would be retroactively recalculated to reflect the limitation period for the actual sentence imposed. For instance, if a defendant were sentenced to 1 year, the limitations period would be reset to 4 years. If the prosecution took more than 4 years between the offence and the indictment, between the indictment and conviction, or between the conviction and the commencement of the sentence, the defendant would be acquitted on statute of limitations grounds.

209. The Working Group recommended that Brazil “urgently take steps” to ensure that the statute of limitations for natural persons for foreign bribery is adequate, including in cases where defendant receives a final sentence “at the lower end of the scale” (Phase 3 recommendation 8.i.). At the time of Brazil Written Follow-up, Brazil could only report that some bills had been submitted to Congress to reform the statute of limitations to reduce “impunity in Brazil”. As none of these bills had passed, the Working Group deemed this recommendation not implemented.

- Further assessment in Phase 4

210. During the Phase 4 on-site visit, this issue was discussed with a large range of panellists also based on the 2021 Recommendation IX.ii. In the questionnaire responses, Brazil stresses that the law mitigates the risk that cases would be time-barred because a conviction always interrupts the statute of limitations (article 117(IV) PC). The Supreme Court has also confirmed that any decision reaffirming the conviction will similarly interrupt the statute of limitations, even if it modifies the sentence.¹²³ Nonetheless,

¹²³ HC 176473, Rapporteur: Alexandre de Moraes, Full Court (27 April 2020).

in the questionnaire responses, the FPS indicates that the statute of limitations allows the investigation to be conducted within an adequate timeframe but that the delay in obtaining a final conviction leads to the expiration of the limitation period in “numerous proceedings in Brazil”.

211. This appears to have occurred in Brazil’s only foreign bribery cases to date that has resulted in trial proceedings. In the ***Aircraft Manufacturer*** case, 11 natural persons were indicted in 2014 concerning a foreign bribery scheme dating back to 2008-2010. While 10 defendants were convicted of foreign bribery in 2018 after the initial trial, a 2022 appellate court decision acquitted 8 defendants due to the lapse of the statute of limitations based on their sentence. While the theoretical maximum limitation period was 12 to 16 years, the actual limitation period applied to these 8 defendants was only 4 years because they were sentenced to a two-years term of imprisonment.¹²⁴ Specifically, 2 of the 8 defendants were acquitted because their amended indictment was filed over 4 years after the offence was committed. The other 6 defendants were acquitted because their sentence was pronounced over 4 years after their indictment. One defendant’s conviction, however, was sustained because he had received a prison term of 2 years and 6 months, triggering an 8-year limitations period. The case remains subject to appeal.

212. A “permissive approach to appeals” was pointed out as one of the reasons for lengthy proceedings by a Brazilian analyst in a recent article citing a domestic prominent political scandal which has been ongoing for 18 years.¹²⁵ The lengthy proceedings resulting from the multiple appeals system (up to 7 levels of appeal are available) and the associated risks of acquittals due to the expiration of the statute of limitations were confirmed during the on-site visit by participants from the various legal professions. The system favours the wealthiest defendants who can afford the services of the more specialised defence lawyers to appeal multiple times based on both procedural and substantive grounds.

213. For their part, the Judges indicated that Brazil has come a long way with its statute of limitations system, and that the backlog of appeals has been reduced over time. Still, one judge described its retroactive recalculation of the limitations period as “very strange” and “a fruit that only grows here in Brazil”. Another judge observed that the main issue lies in the criminal system with its potential to be abused rather than the statute of limitations *per se*. Another judge mentioned the combination between the slow proceedings (even if he recognised some recent progress in this regard) and the generally low penalties as the main issue of concern.

214. Whereas prosecutors initially denied that the statute of limitations is a problem, blaming lengthy judicial proceedings in general, they later admitted, in particular based in the outcome of the above foreign bribery case that went to trial, that it raises serious concerns in terms of risks of impunity notably in complex foreign bribery cases. While recognising that the statute of limitations is meant to ensure timely proceedings, defense lawyers observed that the retroactive calculation of the statute of limitations and the resulting acquittals are inadequate and that either the criminal appellate system or the statute of limitations needs to be adapted. When asked why in their view the last attempt to reform the statute of limitations (with the above mentioned 2015 Bills) was abandoned, they invoked a “lack of political will”. Civil society representatives observed that while the retroactive calculation of the limitation period provides useful guarantees for “small offenders”, an increase of the limitation period for serious economic crimes such as foreign bribery would appear justified based on the outcome of the ***Aircraft Manufacturer*** case.

Commentary

As confirmed by the high number of acquittals in a recent prominent foreign bribery case as well as by participants across various panels during the Phase 4 on-site visit, concerns expressed by the Working Group in Phase 3 remain valid and the lead examiners are seriously concerned that recommendation 8 is still unimplemented, nine years after Brazil was asked to urgently take steps

¹²⁴ Federal Regional Court (First Specialized Criminal Chamber), decision of 27 April 2022.

¹²⁵ Sara Martins Gomes Lopes, “[Non-criminal liability and obstacles in recovering proceeds of corruption in Brazil](#)” (25 Oct 2022), World Bank StAR initiative.

to address this well identified issue. The lead examiners invite the Working Group to expand its recommendation 8.i. regarding natural persons and recommend that Brazil urgently address, by legislative and/or any other fully effective institutional measures, the unwanted consequences of the retroactive re-calculation of its statute of limitations period for natural persons for foreign bribery based on the actual sentence imposed.

ii. Limitation period for legal persons

215. For legal persons, the statute of limitations is set in article 25 CLL, which provides that its offence will be time-barred after five years “counted from the date of knowledge of the offence or, in the case of a permanent or continued infringement, from the day on which it has ceased.” This means that the sanction must be imposed within five-years unless the limitation period is interrupted or suspended.

216. In Phase 3, the Working Group was concerned that a five-year period would be too short, especially for civil liability given the length of judicial proceedings. In addition, for administrative proceeding, it was not clear how the statute of limitations period would be affected by the 180-day deadlines contained in article 10(3) CLL for concluding any formal administrative proceeding to establish a legal person’s liability for the offence. This administrative deadline is discussed in Section B.4.b above. However, the Working Group in Phase 3 found that the retroactive recalculation of the limitation period for natural persons under the Penal Code does not apply to the limitations period for legal persons.

217. Commencement: The CLL is ambiguous, as the limitation period for continuing offences could be understood to commence when the offence “has ceased” even if the authorities do not have knowledge of the offence. The CGU representatives maintained that the “awareness” criterion applied to both instantaneous and continuing offences, but no administrative or judicial decision was cited in support to their interpretation. In their view, the provision concerning continuing offences simply clarified that the limitations period would not start until both conditions were met *i.e.*, that the authorities had “knowledge” of the offence and that it “had ceased”. Private-sector lawyers, however, acknowledged that the language could be construed as implying that the five-year period might commence immediately after the continuing offence ceased, even if the authorities had no knowledge of it. After the on-site visit, the Brazilian authorities cited a CGU legal opinion that the purpose of the provision was to ensure that the limitations period was longer in the case of continuous offences. They also cited a PAR decision holding that the company could be sanctioned for an offence committed over a six-year period, even though it was still ongoing at the time it was discovered. Whatever the intention, the statutory text, as written, creates uncertainty whether the limitations period would have commenced if that six-year scheme had ended before it was detected.

218. Knowledge: The CLL is silent about what constitutes “knowledge” of the offence and who must have such knowledge before the limitations period begins. Recognising that there is no settled jurisprudence on this matter, the CGU considers, as a conservative measure, that knowledge would arise when any public official becomes aware of the offence in the course of official duties.¹²⁶

219. Suspensions or interruptions: Under article 16(9) CLL, the conclusion of a leniency agreement interrupts the limitations period. In its questionnaire responses, Brazil reported that the limitations period will be interrupted by the commencement of a PAR proceeding to impose liability for the wrongdoing. In addition, the 2022 Decree also provides that an agreement to negotiate a leniency agreement will also interrupt and suspend the limitation period for up to 360 days (article 39(3)). Finally, Brazil also observes that the limitation period only covers the finding of liability in the PAR. Thus, if a company requests

¹²⁶ CGU Handbook on Liability for Private Entities, Section 21.2.

reconsideration, the only form of appeal authorised by the CLL, the time for the appeal cannot be used to deem the enforcement action time barred.

220. Application in practice: During the on-site visit, both CGU representatives and private-sector lawyers confirmed that neither the 5-year limitations period nor the 180-day administrative deadline has created any significant issues in practice. In fact, private-sector lawyers believed that certain administrative proceedings have taken too long to complete. According to data provided by Brazil, only 2 of 108 administrative proceedings initiated by the CGU under the CLL were discontinued due to statute of limitations issues. While Brazil did not provide information concerning how many cases were not started because of statute of limitations reasons, the existing rules appear so far to be adequate in practice.

Commentary

Given the clarifications during the on-site visit, the lead examiners are satisfied that the Phase 3 concerns regarding the adequacy of the limitation period for legal persons in administrative proceedings have been sufficiently alleviated. Phase 3 recommendation 8(ii) can be deemed implemented. The Working Group can follow up on whether the limitations period commences upon discovery for both instantaneous and continuous foreign bribery violations.

B.5 International Cooperation

a. Mutual legal assistance in criminal matters

i. Brazil's legal framework for MLA in criminal matters

221. Brazil's framework MLA in criminal matters is largely unchanged since Phase 3. Brazil's domestic rules governing international legal cooperation are codified in the Code of Civil Procedure.¹²⁷ Brazil has a flexible approach for MLA, which can be provided based on multilateral treaties, bilateral treaties, or reciprocity. MLA requests based on multilateral treaties tend to be made under UNCAC or the UN Convention against Transnational Organized Crime (UNTOC or Palermo Convention). The OECD Anti-Bribery Convention, however, is also considered a multilateral treaty basis for MLA. Brazil has maintained bilateral or multilateral treaties with 15 Working Group member countries.¹²⁸

222. Brazil does not require dual criminality to provide MLA unless a specific treaty requires it. Brazil can also provide a wide range of assistance, including direct assistance, transfer of investigations or proceedings, and the recognition of foreign judgments for the execution of sentences. The forms of direct assistance authorised in the law include servicing procedural acts, taking depositions, conducting searches and seizures, providing documents, conduct expert inspections of persons, objects or places, and identifying and locating persons, as well as identifying, freezing and securing the forfeiture of assets. The legislation also authorises Brazilian authorities to form joint investigation teams (JITs) to investigate any crime covered by an international treaty to which Brazil is a party. Brazil can also engage in informal cooperation and transmit information to partners spontaneously without prior request.

ii. Brazil's institutional arrangements and practices in criminal matters

223. Brazil's main central authority for MLA is the Department of Assets Recovery and International Cooperation (DRCI) within the Ministry of Justice (MOJ). DRCI uses information management systems to

¹²⁷ Law 13.105/2015, articles 26 (Chapter II of Book II).

¹²⁸ Brazil has bilateral or multilateral MLATs with the following Working Group member countries: Argentina, Belgium, Canada, Colombia, France, Korea, Italy, Mexico, Peru, Portugal, Spain, Switzerland, Türkiye, the United Kingdom, and the United States. It also had MLATs with the following non-Working Group countries: the People's Republic of China, Cuba, Honduras, Nigeria, Panama, Paraguay, Ukraine, and Uruguay.

track requests. DRCI has prepared electronic templates for foreign authorities to complete and submit by email. National authorities can also make requests through an electronic portal. DRCI will also accept non-electronic requests. In addition, the Secretariat for International Cooperation (SCI) within the Prosecutor General of the Republic (PGR), is Brazil's central authority for MLA under its bilateral treaty with Canada, and for criminal law MLA requests between the members of the Community of Portuguese Speaking Countries (Decree 8833/2016).¹²⁹

224. Finally, Brazil's main law enforcement authorities for combating foreign bribery and transnational corruption have developed or enhanced their own internal coordination teams and processes. For the FPS, the Secretariat for International Cooperation (SCI), attached to the Office of the Prosecutor General, provides assistance for MLA. Like the DRCI, it helps domestic and foreign authorities navigate the requirements and deadlines set forth in the applicable laws. In January 2023, the DPF enhanced its ability to provide MLA by creating a unit for International Legal Cooperation (DCI).

iii. MLA in practice for criminal matters

225. The FPS only provided MLA data to the evaluation team after the on-site visit. For outgoing MLA requests, the FPS reported that it made 27 MLA requests between 2016 and 2020 related to transnational corruption catalogued as being connected with the scope of the Convention. These requests were sent to six Working Group countries, but 21 of the 27 requests were sent to only two of the Working Group countries. In terms of status, 22 of the 27 requests were finalised and 5 remained ongoing. The finalised requests took 2.5 years on average, while the pending requests had been outstanding for nearly 3 years.

226. For incoming MLA requests, the FPS reported that between 2016 and 2021 it received 26 requests that were catalogued as being connected with the scope of the Convention. These requests came from 12 different jurisdictions or authorities, including 10 Working Group member countries, 1 non-Working Group member country, and 1 international organisation. Four Working Group members were responsible for 20 of the 22 requests. In terms of status, the FPS reported that it had finalised 22 of the 26 requests, while 3 were in progress, and the status of 1 was unknown. On average it took 1.88 years to complete Brazil's incoming MLA requests.

b. Mutual legal assistance in non-criminal matters

i. Brazil's legal framework and institutional arrangements for MLA in non-criminal matters

227. In Phase 3, the Working Group decided to follow-up on Brazil's ability to seek and provide prompt and effective MLA in foreign bribery cases against legal persons (Follow-up 16.1.). In part, this was because of the limited number of incoming or outgoing MLA requests involving legal persons. It was also not clear on what legal basis such requests could be made in the context of administrative and civil proceedings.

228. Since Phase 3, the AGU issued an opinion (AGU Legal Opinion 320/2021) confirming that CGU can directly engage bilaterally in relation to administrative liability proceedings under UNCAC, OECD Anti-Bribery Convention, and the Palermo Convention. The CGU has bolstered its ability to exchange information by concluding agreements with authorities in Colombia, Chile, and France as well as the Inter-American Development Bank and the World Bank and is negotiating similar agreements with other jurisdictions. Even without formal agreements, the CGU has also developed strong ties with the US DOJ and US SEC by working in parallel on various transnational corruption cases, primarily arising from the *Lava Jato* operation. These ties have resulted in spontaneous sharing of certain types of information in cases of mutual interest. The CGU actively follows the status of its requests either directly with the foreign authorities or with the assistance of DRCI. Finally, the CGU has also developed a new internal process

¹²⁹ Decree 8.861/2016.

under the Special Advisory Office for International Affairs (AINT) to help coordinate on MLA matters. It prepares and transmits formal MLA requests to the DRCI and/or diplomatic channels.

ii. MLA in practice for non-criminal matters

229. For outgoing MLA requests, the CGU reports that it sent 26 MLA requests concerning transnational corruption, only 5 of which concerned proceedings involving supply-side foreign bribery from Brazil's perspective. In terms of recipients, only 1 MLA requests went to a Working Group-member country. The others went to non-Working Group member countries in Latin America and in Europe. The non-Working Group country that denied the request reported that it could only provide MLA in relation to criminal proceedings under its legal framework. Notably, both the CGU and the AGU reported difficulties obtaining MLA from other countries because they are not investigating or conducting proceedings within the criminal law context given Brazil's choice to adopt non-criminal corporate liability for corruption offences. This issue appears to have mostly affected efforts to freeze or seize assets located in other jurisdictions. In response, the Brazilian authorities are seeking to conclude more bilateral arrangements with foreign counterparts. In addition, the DRCI reported after the on-site visit that, when negotiating treaties, it now seeks to include provisions to secure cooperation with non-criminal proceedings related to a criminal act.

230. As for the 19 outgoing MLA requests concerning transnational corruption schemes involving Brazilian officials on the demand side, 18 requests went to Working Group member countries. Again, certain requests were denied in part because the CGU is not a criminal law enforcement authority. Although these denials were from Working Group member countries, they concerned demand-side offences not falling within the scope of the Convention. Thus, no conclusions can be drawn on how these countries would treat a future MLA request falling within the scope of the Convention.

Table 3. Brazil's outgoing MLA requests for foreign bribery, by completion status

	Total	Status %	FPS	Status %	CGU	Status %
Total requests	32		27		5	
Finalised	26	81.3%	22	81.5%	4	80.0%
<i>Fulfilled</i>	14	53.8%	13	59.1%	1	25.0%
<i>Partially fulfilled</i>	1	3.8%	1	4.5%	0	0.0%
<i>Withdrawn</i>	2	7.7%	0	0.0%	2	50.0%
<i>Denied</i>	9	34.6%	8	36.4%	1	25.0%
In Progress	6	18.8%	5	18.5%	1	20.0%

Source: Information provided by Brazilian authorities in Phase 4.

231. For incoming MLA requests, the CGU reports that it has received 6 MLA requests concerning foreign bribery. Of these, 5 requests came from 3 Parties to the Convention, while one came from a non-Party from Latin America. In terms of status, the CGU granted 3 requests at least in part and was able to provide information, for 2 requests, the CGU responded that it had no information to provide, and 1 request (to a Party) was denied. The CGU denied in whole or in part two requests made by different Working Group countries on the basis that it was precluded from doing so because of "secrecy" obligations under Brazilian law or the terms the leniency agreement it concluded with the relevant company. On the other hand, the CGU apparently could share information with a third Working Group country about another company despite having concluded a leniency agreement. During the on-site the Brazilian MLA authorities explained that after they have concluded a leniency agreement, they cannot share information with a foreign authority unless that authority agrees not to use the information to prosecute the company or any other person who has cooperated with the investigation in Brazil. Collectively, these examples suggest that Brazilian authorities strive to find a way to provide as much information as possible within the limits imposed by their legal obligations.

iii. Statistics

232. Both the DRCI and the FPS can track active and passive requests. DRCI provides annual and monthly reports of its international cooperation efforts on its public website. DRCI could not, however, generate statistics either on the length of time needed to execute MLA requests concerning foreign bribery or on the measures that were requested in those cases.

c. Other forms of cooperation and engagement

233. The FPS reports that it is seeking to enhance its international cooperation by improving its ties with other enforcers. It specifically identified the Ibero-American Association of Public Prosecutors (AIAMP), which was set up in 2017 to promote ties between prosecutors in Latin America as well as Spain and Portugal. The FPS is also seeking to enhanced ties with EUROJUST in part to better access data available from EU institutions. They are also involved in the Contra Corruption Network for Latin America.

234. For its part, the CGU reports that it uses regional and international networks, including the Working Group LEO, LAC-LEN, and GLEN, as well as GlobE. It has also developed strong ties with certain other Working Group authorities. The DPF reports that it has shared information that it developed in Brazil with other parties to the Convention. The resulting cooperation led to coordinated searches in December 2022 in a matter concerning international money laundering related to embezzlement in an African country.

235. Although Brazil's MLA framework provides for a great deal of flexibility in seeking and providing assistance, on-site visit panellists explained that "informal" cooperation is sometimes perceived in Brazilian public discourse as improper. In September 2023, well after the on-site visit, a justice of the STF issued a ruling invalidating all the evidence obtained through the 2016 leniency agreement that the FPS concluded with Odebrecht. In reaching this conclusion, the decision relied on several factors, including an assessment that the prosecutors or other public agents did not follow the official channels for MLA when obtaining evidence or concluding the terms of the leniency agreement. At the conclusion, the judgment called for the relevant authorities to investigate and hold responsible the agents involved. Given the timing, the full ramifications of this decision on mutual legal assistance and prosecutorial independence could not be explored with government officials or non-governmental stakeholders. Following the decision, the AGU announced that it would create a task force to investigate.¹³⁰ When finalising this report, Brazilian prosecutors informed the evaluation team that the FPS had appealed the decision insofar as it concerns MLA because they maintain that MLA procedures were respected.

d. Working Group perspectives on Brazil's mutual legal assistance

236. At the beginning of the Phase 4 evaluation process, Parties to the Convention were invited to provide information relating to their international co-operation experience in relation to foreign bribery with Brazil in recent years. Ultimately, 13 Working Group countries responded, with 10 having records of cooperation with Brazil during the relevant period. The feedback provided was generally positive, with the countries commending Brazilian authorities' proactive assistance in terms of making spontaneous communications, securing useful evidence, and even closely coordinating to resolve significant multijurisdictional cases.

237. A few countries, however, reported that it can take time to secure assistance or to find the appropriate contact point. One Working Group country, for instance, contended that it became more difficult to secure MLA after the *Lava Jato* task force was disbanded. At the same time the Brazilian authorities have reported that they have recently made institutional changes to develop or enhance

¹³⁰ AGU, "[AGU will create task force to investigate deviations in Operation Lava Jato](#)", (6 Sept. 2023) [in Portuguese]

centralised MLA units within the FPS, the Police, and the CGU. Potentially, this support function could facilitate MLA contacts in the future.

238. Finally, Brazil's lengthy judicial proceedings and its statute of limitations provision reportedly also created problems in the MLA context. Concerning Brazil's incoming MLA requests, one Working Group country reported that delay in obtaining court approval to execute the request in Brazil created issues for its investigation. Concerning Brazil's outgoing MLA requests, another Working Group country reported that it had repeatedly undertaken considerable efforts to assist Brazil in support of pending proceedings, only to have those efforts come to naught when the proceedings in Brazil became time barred.

Commentary

The lead examiners observe that Brazilian authorities have significantly increased their volume of incoming and outgoing MLA from Phase 3. While most of the foreign bribery-related requests during the relevant time period are from the FPS, the CGU is also playing a more active role. In addition, all the relevant authorities, including the CGU, the FPS, and the DPF, have fostered informal ties and contacts by engaging with foreign counterparts as well as participating in regional or other law enforcement networks. Developing and maintaining such informal ties and cooperation is recognised as a crucial, and internationally accepted, good practice for successfully navigating formal MLA requirements. They encourage all Brazilian authorities responsible for enforcing foreign bribery to continue to use informal contacts, as appropriate, to seek and provide MLA in foreign bribery cases in line with international practice.

At the same time, the lead examiners note that Brazil's statistics on MLA would appear to corroborate the difficulties that the CGU and AGU have reported facing in obtaining MLA for non-criminal proceedings involving legal persons. The lead examiners also find it striking that the issues associated with lengthy court proceedings and statute of limitations has also affected Brazil's ability to successfully provide MLA. Additionally, though Brazil's MLA system appears solid and functional, the lead examiners regret that the MLA data was not always readily available in a comparable format across the relevant authorities. Given that several Working Group member countries raised issues about delays and difficulty contacting the correct authorities, the lead examiners recommend that Brazil ensures that the DCRI as well as the CGU and the FPS maintain more consistent and accessible data on MLA successes and challenges to facilitate Working Group oversight in future monitoring.

e. Extradition

i. Overview of legal framework for extradition

239. In Phase 3, the Working Group decided to follow up to ensure that the prohibited Article 5 considerations do not impede Brazil's ability to provide extradition in foreign bribery cases. (Follow-up Item 16.m).

240. In its Phase 4 questionnaire responses, Brazil reported no changes to its framework for extradition related to foreign bribery. This is not fully accurate as Law 13.445/2017 now governs Brazil's extradition framework, with slightly different criteria for granting or denying extradition requests (e.g., extradition is now prohibited for offences punishable by two years or less). The law, however, retains the three-step process for reviewing extradition requests examined in Phase 3. First, the DCRI provides the administrative analysis for the Executive Branch. Second, the courts will review the legality of the extradition request. At the final step, if extradition would be lawful, the President has the competence to decide whether to

extradite. In practice, this authority is delegated to the National Secretariat of Justice, which would consult with DRCI, before making the decision.¹³¹

ii. Extradition in practice and safeguards against Article 5 considerations

241. In Phase 4, neither Brazil nor other Working Group members identified any specific issues concerning extradition in relation to foreign bribery. In the survey of Brazil's MLA and extradition experience, a few Working Group member countries observed that either they or Brazil had denied requests to extradite their respective citizens. None of these matters related to foreign bribery, and there was no indication that these decisions were based on the considerations prohibited by Article 5 of the Convention. After the on-site visit, Brazil reported that if extradition is denied after the defendant is convicted, it is possible to transfer the enforcement of the sentence to Brazil. If the extradition request is denied before a final conviction, the foreign authority can transfer the proceedings as well as all documents or other evidence related to the matter to Brazil for prosecution. Both options require the prior agreement of the requesting state.

242. According to media reports, in October 2021, the head of the Brazilian National Secretariat of Justice in the former administration allegedly attempted to interfere with a request that the DRCI approved to seek the extradition of a Brazilian blogger, who was a political sympathiser with the then President, back to Brazil to face criminal charges. After the extradition request was sent, the Secretary sought to obtain information from DRCI about all pending extradition requests. The AGU issued an opinion that the Secretary would be entitled to receive this information. When the then Director of DRCI refused, she was removed from office in November 2021. Despite this incident, Brazil never rescinded the extradition request. As of May 2023, the request reportedly remains pending as the other country presently considers that the crimes charged do not fall within the terms of the bilateral extradition treaty.¹³²

243. In addition, during the on-site visit, the evaluation team learned from civil society that there was a proposal to reorganise Brazil's main central authority or modify its functions. According to FPS representatives, there had been some discussions about reforming the MLA system, but they reported that the FPS had consulted with relevant authorities before any proposal was finalised. While the exact nature of the proposal was not clear, the CGU representatives, as central contact point of the evaluation, informed the evaluation team that the proposal would not have ended the DRCI's role as the main central authority.

Commentary

The lead examiners observe that no specific issues have arisen in connection with Brazil's extradition framework in relation to foreign bribery. However, in light of the alleged attempt by a political appointee in a former administration to monitor the DRCI's extradition work as well as the apparent contemplation of potential reforms to Brazil's institutional framework for MLA, the lead examiners recommend that the Working Group continue to follow up on Brazil's extradition practices to ensure that Article 5 factors are not considered in the context of incoming or outgoing extradition matters related to any offence within the scope of Article 1 of the Convention.

¹³¹ Cominetti & Dias Neves, [International Legal Cooperation and Extradition in Brazil: An Overview in Accordance with the New Migration Statute](#), 5 Macau Journal of Brazilian Studies 25 (April 2022).

¹³² See, e.g., [Carta Capital](#) (8 Dec. 2021); [Correio Braziliense](#) (10 Nov 2021); [BBC Brasil](#) (25 May 2023).

B.6. Concluding a Foreign Bribery Case for both natural and legal persons

a. Trial resolution

i. Judicial organisation, awareness, training and specialisation

244. In Brazil, federal judges and courts have jurisdiction over foreign bribery cases. The Federal Justice is divided into six Federal Circuit Courts covering six regions. Regarding specialisation, in general, foreign bribery cases are submitted to federal judges with general jurisdiction over criminal cases. This includes a multitude of offences such as international drug trafficking, tax crimes, social security frauds, corruption of Brazilian federal officials, and crimes against the patrimony of federal organs and SOEs. Some Federal Circuit Courts have courts specialised in criminal organisations, money laundering, or financial crimes which have jurisdiction over high-profile corruption cases. Most high-profile cases with large media coverage, including cases involving foreign bribery instances, were adjudicated in specialised federal courts – in most cases, specialised in money laundering. There are no courts or judges specialised in corruption offences specifically.

245. Each Federal Circuit Court has its own training programmes and facilities for federal judges. Brazil provided no information on the Federal Circuit Courts' training and/or awareness raising activities on foreign bribery. The National Council of Justice (CNJ) also promotes trainings and awareness raising activities to judges, at both state and federal level. In its questionnaire responses, Brazil reports that the CNJ does not offer a specific training on foreign bribery to judges but that it conducts a research project on "Money laundering, corruption, and asset recovery: procedural characteristics, operation of the institutional arrangement and alternatives for improvement". Additionally, the National School for the Training and Development of Magistrates offers a general post-graduation programme on Anti-Corruption Law. Brazil has provided no indication as to whether foreign bribery or topics related to the enforcement of similar transnational offences are included in any of these programs.

ii. Trial resolutions in practice

246. In Phase 3, several panellists already reported that the length of the proceedings and high number of appeals generated delays which increased drastically the likelihood for prosecutions to become time barred. The Working Group expressed concerns regarding the impact that such widespread delays were having on Brazil's ability to implement the Convention. At the Phase 4 on-site visit, participants across panels shared their experience or general perception, already expressed in Phase 3, that crimes, and in particular white-collar crimes, are not effectively punished.

247. The only foreign bribery case submitted to trial to date is an example of the damaging effects of lengthy criminal proceedings in Brazil. In the **Aircraft Manufacturer** case, the FPS presented charges in August 2014 and the sentence convicting all nine defendants was issued in January 2019. Since the April 2022 decision, the FPS and some of the defendants filed three motions within the Federal Circuit Court seeking the internal review of the appeal decision. The most recent motion was filed in January 2023 and it is still pending. It is only after all appeal proceedings are concluded that an appeal can be filed in the Superior Court of Justice and the Supreme Court. (This is further discussed above under section B.4.e on Statute of limitations.)

Commentary

The lead examiners note neither courts nor judges have specialisation in foreign bribery. While they are reassured to see that the only foreign bribery case that went to trial to date was adjudicated in a federal court specialised in white collar crime, they are concerned that in less prominent cases, judges from non-specialised Federal Circuit Courts could also adjudicate a foreign bribery case.

They recommend that Brazil intensify its training efforts to ensure a high level of awareness of the technicalities of the foreign bribery offence and the Convention among the range of non-specialised judges likely to handle foreign bribery cases at every court level.

Regarding the lengthy criminal proceedings in Brazil, the lead examiners are seriously concerned by the damaging effects it may have on the possibility for Brazil to successfully enforce its foreign bribery offence and dissuade foreign bribery, in particular in a system where imprisonment sentences can only be executed after a final unappealable decision. This topic and the lead examiners related recommendations are discussed under section B.4.e. about Brazil's statute of limitations.

b. Non-trial resolutions for natural persons

248. The 2021 Recommendation XVII and XVIII introduced provisions on the use of non-trial resolutions (NTRs) in foreign bribery cases aiming to ensure that NTRs follow the principles of due process, transparency, and accountability.

249. The Phase 3 report briefly discussed the NTRs systems available at the time to natural persons involved in foreign bribery cases. In Phase 4, three NTR systems are mainly available: (i) cooperation agreements; (ii) criminal non-prosecution agreements (NPAs); and (iii) conditional suspension of proceedings. In the sub-sections below, each of these NTR systems is assessed against the 2021 Recommendation XVIII, in terms of features and requirements, criteria for their use and advantages that alleged offenders may obtain.

i. Type of NTR systems available in Brazil legislative framework and information publicly available

250. Cooperation agreements are regulated in article 4 OCL. To benefit from a cooperation agreement, a natural person must help the authorities achieve certain results by cooperating “effectively and voluntarily with the investigation and with the criminal proceedings”. The results most relevant for foreign bribery include: (i) the identification of the participants in the criminal organisation and the criminal offenses they committed; (ii) the disclosure of information about the organisation's hierarchical structure and the roles of its members; (iii) the prevention of criminal offenses by the criminal organisation; and (iv) the total or partial recovery of the proceeds of crimes committed by the criminal organisation.

251. Both the FPS and the DPF can negotiate and conclude cooperation agreements in foreign bribery cases. However, when concluded by the DPF, the FPS must be consulted in advance for approval.¹³³ The applicable legislation and FPS guidelines on cooperation agreements are publicly available online. In one foreign bribery allegation, which does not appear to have been further investigated against other natural or legal person, the FPS concluded a cooperation agreement with one natural person. In another case (the **Aircraft Manufacturer** case), which resulted in criminal prosecution of natural persons, 2 natural persons have concluded cooperation agreements. It is not clear, however, what cooperation was provided and what sanctions, if any, the individuals received.

252. During the on-site visit, there was some uncertainty about whether cooperation agreements could be used in all or only in certain foreign bribery contexts. One prosecutor opined that cooperation agreements only available when the offence is committed by an organised group with four or more persons (Law 12 850/2013, article 1(1)). Another prosecutor, however, contended that cooperation agreements would always be an available tool in foreign bribery investigations and proceedings. This position finds some support under OCL, which extends the law's application beyond organised crime to “criminal offenses provided for in international treaties or conventions”, provided that the offence has a transnational

¹³³ Supreme Court, ADI 5508, judgment from 20 June 2018.

character.¹³⁴ That said, the plea agreement provision itself clearly contemplates the existence of a criminal organization with a hierarchy. After the on-site visit, the Brazilian authorities referred to a 2022 STJ decision allowing the use of cooperation agreements for any crime committed by several people, even if the crime of participation in a criminal organisation is not pursued.¹³⁵ This case would suggest that the cooperation agreement tool will be available in the vast majority of foreign bribery cases.

253. Non-prosecution agreements (NPAs) were introduced in Brazil CCP in 2019 and are regulated in article 28-A CCP.¹³⁶ Though Brazil did not provide information on this NTR system in its questionnaire responses, the applicable legislation and FPS guidelines on NPAs are publicly available online. NPAs are available to natural persons who have formally confessed an offence committed without violence or duress and punishable with less than four years' imprisonment, thus including foreign bribery. NPAs are notably not available for recidivists, career and habitual offenders, natural persons that had concluded another NPA or conditional suspension of proceedings less than five years before, and those involved in gender-related offences. Only public prosecutors can offer NPAs before charges are filed. While NPAs are available for natural persons who have committed foreign bribery, they do not appear to have been used in a foreign bribery case.

254. Conditional suspension of proceedings is regulated under article 89 of Law 9 099/1999. As for NPAs, Brazil did not provide information on this NTR system in its questionnaire responses, but the applicable legislation is publicly available online. By law, this NTR is available to natural persons who: (i) have committed an offence punishable with a minimum imprisonment sentence of one year or less; (ii) are not being prosecuted or have not been convicted of another crime; (iii) are not recidivists of intentional offences; and (iv) their culpability, background, social conduct, and personality, as well as the reasons and circumstances of the offence authorise the granting of the benefit. Only public prosecutors can offer the suspension at the time the charges are filed. The term of the suspension may range from two to four years. Given the requirement that conditional suspensions are only available for offences whose minimum statutory imprisonment sanction is one year or less, this NTR can be used for the ordinary but not the aggravated foreign bribery offence. No information, however, was provided on whether it has even been applied in a foreign bribery case.

ii. Transparent, effective, proportionate and dissuasive sanctions

255. Under the Anti-Bribery Recommendation, countries should non-trial resolutions in foreign bribery cases result in transparent, as well as effective, proportionate and dissuasive sanctions.

256. Cooperation agreements: A natural person who concludes a cooperation agreement may receive benefits such as a reduction of 2/3 in the imprisonment sanctions or its conversion to an alternative sanction. If the agreement is concluded after sentencing, the imprisonment sanction may be reduced by half.¹³⁷ Article 4 of Law 12 850/2013 also includes judicial pardon and immunity from prosecution as possible benefits to natural persons through cooperation agreements. In all cases, the attribution of all benefits is subject to factors such as the personality of the natural person, the nature, circumstances, seriousness and social repercussions of the offence and the effectiveness of the cooperation. Furthermore, the FPS's guidelines mention the possibility of imposing restriction of rights and also compliance obligations to the legal person in which the cooperating natural person is an employee or controller.¹³⁸ Finally, the guidelines also recommend that the FPS impose to the cooperating natural person the forfeiture of the proceeds of the offence as soon as the agreement is approved.¹³⁹ In the absence of information

¹³⁴ Law 12 850/2013, article 1(2)(I).

¹³⁵ STF Judgment no. 582678 (21 June 2022).

¹³⁶ Law n° 13.964/2019.

¹³⁷ Art. 4(§5) Law 12 850/2013.

¹³⁸ FPS, 2nd-5th Chambers for Coordination and Revision, "[Common Orientation](#)", n.01/2018, 32.1.

¹³⁹ FPS, 2nd-5th Chambers for Coordination and Revision, "[Common Orientation](#)", n.01/2018, 31.

about the content of the above-mentioned three cooperation agreements reported by Brazil in a foreign bribery case, it is impossible to assess the level of sanctions imposed in practice.

257. Immunity from prosecution is available in the cases where the natural person: (i) discloses an offence that was not previously known from the authorities, meaning that the competent authorities had not yet launched formal investigative proceedings; (ii) is not the leader of the criminal organisation; and (iii) is the first to provide effective cooperation.¹⁴⁰ The FPS's guidelines on cooperation agreements add other requirements for granting immunity from prosecution. They include: (i) the relevance of the potential disclosure or of the evidence to be produced for the investigation or the proceeding; (ii) the quality of the evidence presented by the cooperating natural person; (iii) the possibility of effectively prosecuting the accused without granting immunity; and (iv) full compensation for the damage.

258. At the time of Phase 3, Brazil had just enacted Law 12 850/2013. The Working Group decided to follow up the application of judicial pardons in cases of foreign bribery, and whether they are used appropriately (Follow-up issue 16.f.). There are no public reports that these benefits were granted to natural persons involved in foreign bribery cases. Law 12 850/2013 establishes that the judicial pardon will be considered by the judge upon request from the prosecutors or the police in the cases where the natural person provided relevant cooperation.¹⁴¹ The law, however, does not define the criteria of a "relevant cooperation".

259. In its questionnaire responses, Brazil emphasises that the FPS has concluded 159 cooperation agreements related to transnational corruption (although on the passive side) and resulting in the payment of a total amount of BRL 671 671 560 (approximately USD 217 000 000). However, Brazil did not provide any other relevant information such as: the offences covered, the factors considered before offering the agreement, the sanctions and possibly the confiscations imposed, nor the values of the bribes and benefits obtained through the tainted business operations. It is also not clear whether the referred amount of money corresponds to fines only or fines and confiscation. Therefore, the evaluation team is unable to assess whether the sanctions imposed against natural persons through cooperation agreements are in practice effective, proportionate, and dissuasive.

260. NPAs: An NPA may impose certain conditions on a natural person, such as: (i) to forfeit money or property; (ii) pay a fine; (iii) provide community service; (iv) compensate the damage; and/or (v) fulfil any other reasonable condition established by the public prosecutor (article 28-A CCP). The FPS guidelines recommend that federal prosecutors offer NPAs with conditions adequately punishing and preventing the re-occurrence of the offence.¹⁴² However, there are no guidelines on how to determine such adequate conditions in a given case. Brazil did not report on any foreign bribery case concluded with an NPA.

261. Conditional suspension: Natural persons who benefit from conditional suspension of proceedings may be subject to certain conditions such as the obligation to compensate the damage and minor restriction of rights (i.e., periodical appearance in court). The judge may specify other conditions if they are appropriate to the offence and the personal situation of the natural person. Brazil did not report on foreign bribery cases concluded with conditional suspension of proceedings. However, the statutory conditions may not be effective, proportionate, and dissuasive to address most instances of foreign bribery.

iii. Appropriate oversight

262. Under the 2021 Recommendation XVIII.viii, countries should "ensure that non-trial resolutions are subject to appropriate oversight, such as by a judicial, independent public, or other relevant competent authority, including law enforcement authorities".

¹⁴⁰ Art. 4(§4) and (§4-A) Law 12 850/2013.

¹⁴¹ Supreme Court, PET 7.265, [judgment from 14 November 2017](#).

¹⁴² MPF, [Revisão, Orientação Conjunta N.03/2018](#).

263. Cooperation agreements will only enter into force after the approval of a judicial authority (judges and courts). The cooperation agreements negotiated with the FPS are submitted to a judicial authority for approval and to the 5th CCR for internal review. The cooperation agreements negotiated with the DPF must be first submitted to the FPS and then to a judicial authority. The judicial authority cannot participate in the negotiations phase. Once an agreement is reached, the judicial authority will assess: (i) the regularity and legality of the negotiation process; (ii) the adequacy of the agreed benefits; (iii) the conformity of the resulting cooperation with the legal requirements; and (iv) whether the natural person voluntarily concluded the agreement, especially in the cases where the natural person was under arrest during the negotiation phase. The judge may refuse the cooperation agreement proposal that does not meet the legal requirements, returning it to the parties for the necessary adjustments.¹⁴³

264. NPAs must be concluded in writing and submitted to a judicial authority for approval. The judicial authority will schedule a hearing with the parties to verify the NPA's legality and whether it was voluntarily agreed. The judicial authority may also refuse to approve the NPA if it considers the sanctions inadequate, insufficient, or abusive. In this case the NPA will return to the public prosecutor for adjusts. If the public prosecutor refuses to conclude an NPA, the investigated natural person may request an internal review to be carried out by a superior prosecutorial body. The approved NPA will be monitored by the case prosecutor. Once the conditions are met, the prosecutor will request that the judge pronounce the extinction of the natural person's criminal liability.

265. Conditional suspensions must be approved by a judicial authority. The suspension will be revoked if, during its term, the natural person is prosecuted for another crime or fails to compensate the damage without a justifiable reason. The suspension may be revoked if the natural person is prosecuted, during its term, for a misdemeanour, or fails to comply with any other imposed conditions. Once the conditions are met and the term of suspension has expired, the judicial authority will pronounce the extinction of the natural person's criminal liability.

iv. Transparency: Making public elements of non-trial resolutions

266. Transparency of NTR systems available to natural persons in Brazil does not meet the 2021 Recommendation XVIII.iv criteria. The FPS has an online platform with information on cooperation agreements. This platform, however, only indicates the number of agreements concluded to date, the total value of sanctions imposed, the operation they originate from, and the date of their internal approval. Law 12 850/2013 was amended in 2019 to expressly impose secrecy on cooperation agreements from the negotiation phase to the charges against the cooperating natural persons. The essential elements of concluded NPAs and conditional suspension of proceedings do not appear to be either publicly available.

Commentary

NTR systems and information available: The lead examiners note that cooperation agreements are only available in foreign bribery cases when multiple participants are involved in the commission of the offence. In other cases, prosecutor can rely only on NPAs and conditional suspension of proceedings, the latter being only available for the non-aggravated forms of foreign bribery and providing a range of statutory conditions which may not be effective, proportionate, and dissuasive to address most instances of foreign bribery.

They recommend that Brazil consider broadening the range of non-trial resolution (NTR) systems available to its prosecutors (besides NPAs) for natural persons, to enable, when relevant, the non-trial resolution of aggravated forms of foreign bribery offences. They also recommend that Brazil promote transparency concerning the NTR systems available to natural persons by (i) developing clear and transparent criteria regarding their use (2021 Recommendation XVIII.ii.), including "relevant cooperation" in cooperation agreements, in particular as it applies to judicial pardon and

¹⁴³ Law 12 850/2013, Art. 4(§7) & (§8).

immunity from prosecution; and (ii) providing publicly accessible information on the advantages an alleged offender may obtain by entering into an NTR.

Cases and Sanctions: *In the absence of complete enforcement data where Brazil resolved a foreign bribery case with a natural person with an NTR, the evaluation team is unable to assess whether the sanctions imposed against natural persons through cooperation agreements, NPAs or conditional suspension of proceedings are in practice effective, proportionate, and dissuasive. The lead examiners recommend that Brazil compile at the federal level relevant information from the monitoring of the use of NTRs, including the sanctions and conditions agreed in these resolutions with natural persons.*

Oversight: *The lead examiners are satisfied that overall, the level of oversight provided in Brazil over the NTR systems available to resolve foreign bribery cases with natural persons are in line with the requirements under the 2021 Recommendation XVIII.viii.*

Transparency: *The lead examiners note that, in terms of transparency, the NTR systems available to natural persons in Brazil do not meet the criteria in the 2021 Anti-Bribery Recommendation XVIII.iv to make public specific elements of non-trial resolutions. They recommend that Brazil make public, where appropriate and consistent with data protection rules and privacy rights, as much information as possible about its NTRs with natural and legal persons, including the main facts of the case as well as the nature and basis of the sanctions imposed, in order to clarify precisely how much of the sanctions imposed are attributed to foreign bribery in line with Anti-Bribery Recommendation XVIII.iv.*

c. Non-trial resolutions for legal persons

267. As discussed in the Introduction, the availability of the leniency agreement, Brazil's main non-trial resolution for legal persons, has played a crucial role in Brazil's foreign bribery enforcement to date. In fact, leniency agreements have so far been the only means by which the Brazilian authorities have sanctioned companies for foreign bribery. In addition, the existence of this non-trial resolution for companies provided Brazilian authorities with the legal basis for participating in many of the largest multijurisdictional resolutions of foreign bribery to date. In addition, the CGU has recently developed a second non-trial resolution mechanism, the Early Judgment procedure. This section will review the two non-trial resolutions for legal persons based on the 2021 Recommendation XVIII.

i. Leniency agreements

268. **Background and framework:** The 2013 CLL not only created corporate liability for offences against Brazilian and foreign public administration, including foreign bribery, it also created the non-trial resolution mechanism known as a leniency agreement. In addition to the CLL, Brazil has promulgated a new implementing decree 11.122/2022 (2022 Decree). Like its predecessor, the 2022 Decree is only binding for the Executive branch, including the CGU and the AGU. As the FPS is constitutionally independent from the Executive branch, the 2022 Decree is not binding on it. The FPS nonetheless considers the 2022 Decree as persuasive authority when concluding its own leniency agreements. Finally, the CGU and the AGU issued a joint Inter-ministerial Normative Ordinance 36/2022 (2022 Joint Ordinance) to explain the factors they will consider when calculating fine reduction available through the leniency agreement. As the CLL only entered into force in January 2014 and the CLL's first implementing decree 8.420/2015 (2015 Decree) was only promulgated in March 2015, the Phase 4 evaluation presents the Working Group with the first real opportunity to assess Brazil's leniency agreement mechanism in practice.

269. **Usage to date:** In Phase 3, the Working Group wanted to follow-up on the use of leniency agreements in practice (Follow-up issue 16.c.). In Phase 4, the CGU reports that, for all offences, it has received 78 requests for a leniency agreement as of July 2023, and has concluded 25, collectively imposing

BRL 18.30 billion in sanctions. The CGU also is still negotiating over 21 requests for a leniency agreement and has denied 36 requests that did not meet the statutory requirements. The CGU and AGU have concluded three leniency agreements to resolve companies' administrative liability for foreign bribery with OAS, Odebrecht, and Nova Participações (formerly Engevix).

270. According to publicly available information, for all offences, the FPS has concluded 49 leniency agreements as of July 2022, imposing BRL 24.7 billion in sanctions. While it is known that the FPS has concluded leniency agreement with Odebrecht to resolve the company' civil liabilities related to foreign bribery, other leniency agreements concerning foreign bribery may be under seal.

271. Purpose and criteria: Applicable in relation to proceedings in connection with companies' administrative liability as well as civil liability, the leniency agreement mechanism is designed to encourage companies to identify those involved in the offence and to rapidly provide information and documents to prove the wrongdoing under investigation. Under article 16(1)(I)-(III) CLL, a company must fulfil three mandatory criteria to qualify for a leniency agreement, namely it must: (1) be "the first one to come forward and demonstrate its willingness to cooperate with the investigation", (2) completely cease its involvement in the misconduct under investigation, and (3) admit its participation in the wrongdoing and agree to cooperate permanently and fully in all investigations and administrative proceedings. There are several other requirements, including the need to provide restitution, forfeit any unlawful gains, and to adopt or enhance compliance programme according to the standards in the 2022 Decree.

272. Benefits available: In exchange for cooperation and acceptance of responsibility, companies can receive a reduction of up to two-thirds of the fine that would have otherwise been imposed. An additional benefit is that the company can structure the payments to be made beyond the 30-day term that would be imposed after a court judgment.¹⁴⁴ The company will also be exempted from publishing the judgment as well as the prohibition on receiving incentives, subsidies, grants, donations, or loans" from public agencies, entities and financial institutions as well as from government-controlled entities. As a further benefit, multiple entities from the "same economic group" can conclude a joint leniency agreement.

273. Under the 2022 Decree, the fine reduction accorded because of the leniency agreement shall be determined in light of the following criteria: (1) timeliness of the report, (2) the novelty of the reported acts, (3) the effectiveness of the cooperation, and (4) the commitment to assume the conditions necessary to fulfil the agreement. CGU/AGU Normative Ordinance 36/2022 provides further clarifications on these criteria. To receive full credit, the company must (1) timely investigate the offence with an internal investigation to collect documents to share with the authorities, (2) report within 9 months of learning of the misconduct, and (3) provide "novel" information that is not known to the authorities, even if it may already be in the public domain.

274. During the on-site discussion, legal practitioners and private sector representatives strongly agreed that the CGU had provided more information about how sanctions would be mitigated in practice for companies that choose to cooperate. Nonetheless, they expressed the need for more clarity on exactly how self-reporting and other factors would influence the calculation of the reduction resulting from the leniency agreement. In addition, they were emphatic that the FPS needs to provide more information about the credit that companies will get by reporting and participating in the leniency agreement process.

275. Effective, proportionate, dissuasive sanctions: To date, Brazil has only sanctioned three companies for foreign bribery. All three resolutions also addressed other (domestic) CLL violations. The following table shows the sanctions imposed based on CGU resolutions.

¹⁴⁴ Decree 11.129/2022, Article 29(5). In practice, the known leniency agreements resolving foreign bribery allegations have all had terms of repayment exceeding 20 years. During the on-site visit, it was explained that this was done to avoid bankrupting the company. While it could arguably reduce the deterrence value of the sanctions, the extended term prolongs the period during which a company can be punished as a recidivist if future violations arise.

Table 4. Sanctions imposed by CGU in leniency agreements with a foreign bribery element

Resolution	Date	Total amount	Total CLL Fine	Total Forfeiture	Total Restitution	Non-Financial sanctions
Odebrecht	July 2018	BRL 2 700 EUR 493.5	BRL 442 EUR 80.2 (EUR 9 for FB)	BRL 1 300 EUR 235.9	BRL 900 EUR 163.3	Not specified
Nova Participações (formerly Engevix)	Nov. 2019	BRL 516.3 EUR 93	BRL 53.4 EUR 9.7	BRL 105 EUR 19.1	BRL 3115 EUR 57.2	Compliance enhancement
OAS	Nov. 2019	BRL 1 920 EUR 348.3	BRL 320 EUR 58.1	BRL 800.3 EUR 145.2	BRL 720.1 EUR 130.7	Compliance enhancement

Note: Fines, forfeiture, and restitution in millions.

Source: Brazil Phase 4 questionnaire responses and CGU press releases.

276. Given the limited information available, it is not possible yet to assess whether the sanctions imposed through leniency agreements are effective, proportionate, and dissuasive for foreign bribery. First, the amounts provided conflate all the sanctions imposed for foreign bribery as well as other administrative offences. Second, it is not clear to what extent the fines shown were reduced from the amount that was originally calculated pursuant to Article 19(2) CLL or the reasons why the level of reduction was justified. Finally, it should be observed that the terms for executing the leniency agreements, including the payment of the financial sanctions, range from 22 to 27 years. During the on-site visit, the CGU representatives explained that the long payment terms were necessary to ensure proportionality for companies that would not have the ability to pay the fines immediately. On the other hand, civil society representatives expressed concern that the long terms might give rise to more uncertainty if the agreements were challenged or modified in the course of execution. After the on-site visit, the sanctions imposed through a leniency agreement were reduced from R\$10.3 to R\$3.5 billion (USD 2.1 billion to USD 702.9 million) based on the alleged miscalculation of the original fine.¹⁴⁵ The Brazilian authorities maintain that leniency agreements could still be challenged even if the payments had been made immediately. The decision to reduce the sanction is now being contested.¹⁴⁶

277. **Coordinating enforcement:** When the leniency agreement was first introduced, the fact that multiple authorities could enforce Brazil's anti-corruption legislation created a great deal of confusion. Companies did not always know to which authority they should approach to secure a leniency agreement. In addition, the lack of coordination between authorities prompted the Working Group to explore whether enforcement actions by the TCU, which is focused on recovering damages to Brazilian public assets, might affect leniency agreements addressing foreign bribery concluded by other authorities (HLM issue no. 4). The Working Group also wanted to ensure that the Police were involved in the negotiation phase (HLM new issue no. 3).

278. During the on-site visit, private-sector participants reported that in the past, for example, companies might not be able to secure a leniency agreement from different authorities due to institutional mistrust, even when the individual line prosecutors from the FPS and enforcers from the AGU and the CGU were in agreement. This confusion, together with various court proceedings seeking to challenge leniency agreements, had created uncertainty about the process. Recognising this problem, in August 2020, the CGU, the AGU, the DPF, and the TCU concluded a Technical Cooperation Agreement (TCA) to explain how they would work together on leniency agreements within the existing legal framework. This improved coordination addresses the HLM issues that the MSG continued to monitor until it decided (in 2021 and 2022 respectively) to postpone their assessment to the Phase 4 evaluation. Additionally, in 2023,

¹⁴⁵ Gabriel Bosa, [MPF reduces the fine and repayment term of the leniency agreement with J&F](#), CNN Brasil (9 Aug 2023).

¹⁴⁶ Petros, [Press release concerning the Leniency Agreement for J&F](#) (24 Aug. 2023).

the CGU reorganised its internal structure to create a Secretariat for Private Integrity (SIPRI), which contains a unit specifically responsible for leniency agreements (DAL). While the FPS did not join the TCA, reportedly based on its understanding of its independent constitutional status, the Brazilian authorities have increasingly concluded concurrent resolutions with the same company to resolve matters finally and holistically. For example, the AGU, the CGU, and the FPS concluded resolutions with Technip (2019) and Samsung Heavy Industries (2021) together with one or more US authorities in transnational corruption cases.

279. **Transparency and oversight:** Both the CGU and the FPS maintain user-friendly webpages with information about their concluded leniency agreements.¹⁴⁷ The CGU has also created a webpage for the public to understand the process for obtaining a leniency agreement and also reports on the number of leniency agreement negotiations that are underway.¹⁴⁸ Despite Recommendation XVIII.iv and XVIII.v, neither authority, however, appears to make public the facts of the cases, and they do not consistently explain how the sanctions were imposed after considering the aggravating and mitigating factors together with the reduction accorded as a result of the leniency agreement. Combined with the fact that Brazil's corporate fine system generates one total number for all the offences sanctioned, legal practitioners, private-sector representatives, and civil society representatives all confirmed that this lack of transparency makes it difficult for the public to understand how foreign bribery is sanctioned. That said, the CGU has begun providing a high-level summary of the basic scheme resulted in sanctions being imposed (for domestic corruption offences) through its most recent leniency agreements.

280. Though the CLL does not expressly provide for judicial involvement in the leniency agreement process, various court challenges have been raised to the conclusion of individual leniency agreements or to entire classes of leniency agreements. To date, no leniency agreement has been set aside pursuant to this litigation. In certain instances, however, courts may have suspended application of the leniency agreement with respect to new adherents or ruled that certain evidence obtained through one leniency agreement with Odebrecht was not admissible in proceedings against other defendants.

281. The evaluation team explored the rationale behind a 2021 STF decision to exclude evidence obtained through the investigation leading up to the first *Odebrecht* leniency agreement. According to law enforcement representatives, however, it appears that the ruling was highly fact specific, including the partiality of a former judge and the fact that the Brazilian authorities could not verify the chain of custody over certain evidence obtained through international cooperation. They reported that the chain of custody issue could be solved in future resolutions by simply asking the company to provide the material again directly to the Brazilian authorities as part of its cooperation under the leniency agreement. In September 2023, a STF justice issued another decision holding that all the evidence obtained through this *Odebrecht* leniency agreement was irreparably tainted and thus could not be relied upon in any judicial proceeding. While these decisions have major implications for the prosecutions against the individuals allegedly involved in the schemes, the highly fact-specific nature of the reasoning suggests that the issues associated with using the evidence obtained through this particular leniency agreement would likely not affect future leniency agreements or the ability to use evidence obtained through them. For example, Brazil explained that evidence provided by Odebrecht under a separate leniency agreement was not excluded.

Commentary

The lead examiners recognise that Brazil has made great strides in using leniency agreements to resolve foreign bribery and other transnational corruption cases. They also observe that the legal frameworks and policies are largely clear, though as explained in Section A.8 above, the CGU and especially the FPS should do more to help clarify the precise benefits that companies can receive if they elect to self-report and conclude a leniency agreement. The lead examiners welcome the

¹⁴⁷ CGU, [Concluded Leniency Agreements](#) webpage; FPS [Concluded Leniency Agreements](#) webpage.

¹⁴⁸ See CGU "[How to conclude a Leniency Agreement](#)" webpage.

efforts that the CGU and the FPS have made to provide transparency about concluded agreements through user-friendly online portals. Nonetheless, the lead examiners observe that the authorities do not appear to publicise the main facts of the foreign bribery allegations and only recently started providing even high-level information about how the fines for foreign bribery were calculated.

They recommend that the Brazilian authorities publish the main facts of the case to clarify precisely how much of the sanctions imposed are attributed to foreign bribery. In addition, given that leniency agreements are designed in large part to secure evidence for use in trials, the Working Group should continue to follow up to ensure that there is no structural problem in using evidence obtained through leniency agreements, especially when they are concluded in consultation with other authorities.

ii. *Early Judgment*

282. Framework and usage to date: The Early Judgment procedure is a new non-trial resolution mechanism for legal persons that the CGU developed in July 2022 for use in its administrative enforcement actions. It is governed by CGU Ordinance 19/2022. In the first year that it has been in force, the CGU has received 32 requests for Early Judgment, 13 of which have been finally adjudicated. So far, none of the requests for Early Judgment have related to proceedings involving foreign bribery allegations.

283. Purpose and criteria: The Early Judgment procedure is intended to resolve administrative enforcement actions more efficiently. The procedure allows companies to avoid trial by (1) admitting the facts and (2) accepting liability. The company must provide supporting evidence to secure an Early Judgment. Under the new Early Judgment procedure, the legal entity must admit liability before sanctions are imposed through a PAR. This can be done in the investigate stage or during the PAR. The request must contain a commitment to compensate for the damage caused, to forfeit the advantage gained (when it can be estimated), to pay the fine required under Article 6(I) CLL, to agree to provide additional information related to the proceedings, and to waive the right to present any further defence in the PAR as well as any right of appeal against the judgment accepting the request.

284. Benefits available: The Early Judgment procedure results in a final administrative decision finding liability. Unlike the leniency agreement, no sanctions are expressly excluded. Nonetheless, companies can receive mitigated sanctions. The CGU will consider mitigating the monetary sanctions based on (1) the stage of the proceeding at which the company makes the request, (2) the extent of the company's cooperation in clarifying the misconduct, and (3) remediation to prevent future misconduct. The amount of the benefit decreases as the administrative proceeding continues.¹⁴⁹ If the company requests Early Judgment before the formal administrative procedure is started, it can receive the full reductions available under the 2022 Decree for cooperation (1.5%), making a voluntary admission of wrongdoing (2%), and voluntarily providing compensation of damage (1%). These benefits are reduced as the administrative enforcement proceeding progresses. For example, if an Early Judgment request is made after the final argument in the administrative proceeding, the company would only receive 0.5% reduction for accepting wrongdoing and no (0%) reduction for cooperation.¹⁵⁰ In terms of non-monetary sanctions, the CGU report proposing to resolve a matter through Early Judgment will suggest excluding the need for publication of the report imposing liability. It also may, "where appropriate", suggest the mitigation of any sanctions preventing bidding and contracting with the government.¹⁵¹ After the on-site visit, the Brazilian authorities provided an example where one company reduced the debarment period from two years to just over six months (a 72.5% reduction).

¹⁴⁹ The mitigating factors are contained in CGU Ordinance 19/2022 and CGU Ordinance 54/2023.

¹⁵⁰ CGU Ordinance 19/2022, Article 5(1).

¹⁵¹ CGU Ordinance 19/2022, Article 5(V).

285. Oversight and Transparency: Extracts of the cases in which the Early Judgment procedure is applied are published in the Federal Gazette. These extracts contain the name/identification number of the legal person, the identification number of the final report, the legal opinion, the judgment, the decision granting the request for an Early Judgment, and the amount of the fine imposed through the proceeding.

Commentary

The lead examiners welcome the CGU's adoption of the Early Judgement as another form of non-trial resolution for legal persons, which in practice appears equivalent to an administrative version of a guilty plea. The Working Group should follow up to see whether the Early Judgment non-trial resolution is applied in foreign bribery cases.

C. RESPONSIBILITY OF LEGAL PERSONS

C.1. Scope of Corporate Liability for Foreign Bribery and Related Offences

a. *Non-criminal liability*

286. Brazil has adopted non-criminal liability for legal persons for foreign bribery. Crucially, liability under the CLL is “strict”, admitting in principle no defence based on the intent or mental state of the natural persons involved. In addition, there is no corporate compliance defence under the CLL, though compliance efforts can be a mitigating factor as discussed in Section C.2 below.

287. Under the CLL, there are two forms of liability with different sanctions. First, companies can be held liable administratively with certain sanctions. The primary enforcement agency for administrative liability is the CGU under the authority of the Minister of State of the CGU. The FPS has secondary responsibility to enforce the administrative liability. Second, companies can be held civilly liable for the same misconduct, with sanctions including confiscation and disqualification from receiving public benefits. In the foreign bribery context, both the AGU and FPS have enforced the civil liability provisions.

288. In Phase 3, the Working Group had issued a recommendation to Brazil on the test for attributing liability to legal persons that would apply if draft bill to adopt criminal liability, which was then pending in the parliament, was enacted (recommendation 2.c). In Phase 4, that bill remains pending without any immediate prospects of advancement. Brazil’s non-criminal framework for imposing liability has proven effective, especially for domestic corruption offences. In addition, Brazil has concluded three leniency agreements applying the regime against companies for foreign bribery and other corruption offences. While the fact that the liability is non-criminal has affected Brazil’s efforts to secure mutual legal assistance from other countries (see Section B.5 above), there is no compelling need at present to follow-up on efforts to adopt alternative corporate liability models. Recommendation 2.c. can be deemed obsolete.

b. *Offences covered*

289. The CLL does not create corporate liability for all offences. Instead, article 1 CLL provides that the purpose is to prohibit companies from committing “acts against national or foreign public administrations”. Article 5 CLL specifies a range of unlawful acts performed by a covered legal entity “to the detriment of national or foreign public assets, of public administration principles, or to Brazil’s international commitments. For foreign bribery, article 5(I) CLL makes it an offence for a company to “promise, offer or give, directly or indirectly, an undue advantage to a [foreign] public official or to a third party related to [the official].”

290. In Phase 3, the Working Group had expressed concern whether undue advantages given to foreign public officials would count as bribery under the CLL, even if the advantage were given to have the official perform an act outside the official duties. (Phase 3 recommendation 2.b.iii). During the Phase 4 on-site

visit, the evaluation team explored whether the foreign bribery offence for legal persons had the same material scope as the foreign bribery offence for natural persons in the penal code. While recognising there is limited foreign bribery jurisprudence, the prevailing consensus was that the two offences would likely be interpreted as being coterminous. The only difference being that, as corporate liability is a non-criminal offence of strict liability, it would be easier for the enforcement authorities to prove the liability of the legal person. For this reason, the Phase 3 concern appears largely alleviated given that this issue was not previously considered to raise concerns for the foreign bribery offence for natural persons.

291. The CLL contains certain other offences that might be relevant to Brazil's implementation of the Convention. For instance, article 5(II) captures a form of aiding and abetting by making it an offence to “demonstrably finance, defray, sponsor or in any way subsidise the performance” of a CLL violation. Brazil reports that this offence does not necessarily requires providing financial support, as it could be used, for example, to sanction a company that was merely used as a conduit for the bribe. At the same time, it is not clear that this offence would cover the full range of complicity as set forth in Article 1(2) to the Convention, which is defined to include “complicity in, including incitement, aiding and abetting, or authorisation of an act of bribery of a foreign public official shall be a criminal offence.”¹⁵² It is not clear, for example, that the “authorisation” of the offence by an intermediary without any direct financing, sponsorship, or subsidy would qualify as a violation of article 5(II) CLL. Furthermore, article 5(III) CLL makes it an offence to “demonstrably make use of a third party, either an individual or a legal entity, to conceal or dissimulate the entities’ actual interests or the identify of those who benefited from the performed acts”.

292. The CLL, however, does not expressly cover the related Convention offences of money laundering (Article 7 of the Convention) or false accounting (Article 8). Brazil maintains that article 5(V) CLL, which makes it an offence “to hinder investigations or inspections carried out by public agencies [...] or officials, or to interference with their work”, arguably could be construed to cover false accounting.

c. Entities covered

293. Article 1 CLL provides that it applies to Brazilian “companies and general partnerships, either incorporated or not, regardless of their business organisation or corporate model”, as well as to “foundations” and “associations”. In addition, it applies to all “foreign companies” that have established a “main office” or “a branch or representative office” in Brazil, in fact or in law, even if “on a temporary basis”.

294. In Phase 3, the Working Group recommended that Brazil ensure that it in fact applied to all entities, including state-owned enterprises as well as companies that received financing from BNDES (recommendations 2.b.i and 2.b.ii). While the limited foreign bribery resolutions to date do not definitively resolve the question, government officials as well as legal practitioners and private-sector representatives during the Phase 4 on-site visit, all stressed that the terms of the CLL were broadly drafted and saw no issues with the coverage of the law in this respect – just like their counterparts in Phase 3. Furthermore, Brazil reported that article 94 of Law 13.303/2016 on SOEs, expressly contemplates that the CLL will apply to SOEs, with the exception of certain penalties, such as compulsory dissolution and the prohibition on receiving public advantages. As for the BNDES-financed entities, the CLL does not differentiate between companies based on their financing arrangements. Thus, recommendations 2.b.i and 2.b.ii can be deemed fully implemented.

d. Standard of liability

295. Objective requirements: Article 2 CLL provides that the covered entities shall be “strictly liable” for “any of the wrongful acts established in the Law performed in their interest or for their benefit, exclusive or not”. In Phase 3, the Working Group expressed concern that it was not clear how this requirement would

¹⁵² In contrast, natural persons can be liable for complicity for contributing “in any way” to the crime (article 29 PC).

apply when controlled, affiliated, or subsidiary companies committed the offence. During the Phase 4 on-site visit the enforcement authorities reiterated that the “interest” or “benefit” to the company is an objective test, though no case law was provided confirming this interpretation.

296. **Natural person involved:** The CLL does not condition liability on any act or omission on the part of senior management or other official representative of the company. Keeping with the “strict liability” model, article 2 CLL provides that the offence will be constituted when “acts established in the [CLL are] performed in [the covered entity’s] interest or for their benefit”. Furthermore, article 3 CLL appears to assume that the acts of any person can trigger liability for the entity concerned because it expressly provides that the liability of the legal entity under the CLL does not preclude the liability of their “directors”, “officers”, or “*any other individual* who is the offender, co-offender or participant of the wrongful act”. (Emphasis added). Finally, the sanctions available under the 2022 Decree also seem to indicate that liability is intended to arise for the act of any employee or person, as the involvement or awareness of management is merely an aggravating factor for sentencing.

e. Liability for intermediaries, including related persons

i. Liability for using intermediaries

297. While article 5(III) CLL expressly makes it an offence to “demonstrably make use of a third party [...] to conceal or dissimulate the entities’ actual interest or the identity of those who benefited from the performed acts”, in Phase 3 the Working Group expressed concern whether the “interest” or “benefit” criteria for attributing liability to a legal person might make it difficult to hold a company liable for the acts of, for example, a foreign subsidiary as Brazil maintained at the time. As a result, it issued recommendation 2.b.iv to ensure that liability can be imposed when a “legal person bribes on behalf of a related legal person”.

298. In its questionnaire responses, Brazil provided examples where entities were held liable for domestic CLL violations by using intermediaries, including legal persons, to pay bribes. Brazil recognises that it is difficult to find direct evidence that companies are acting as intermediaries for other companies. In administrative proceedings, the committees draw inferences from facts to support findings of liability. CGU provides guidance and training to its officials on the use of circumstantial evidence and presumptions when direct evidence of the wrongdoing may not be available. In addition, Brazil provides examples, as discussed immediately below, where it imposed joint liability on Brazilian and foreign entities in the same group of companies for domestic CLL violations. Given this jurisprudence, in the context of domestic CLL violations, recommendation 2.b.iv can be converted to a follow-up issue.

ii. Joint liability for controlled/affiliate companies and consortium members

299. Brazil’s corporate liability framework is notably broad, because article 4(2) CLL imposes joint liability for CLL violations on “parent, controlled, and affiliated companies” as well as on “consortium members, within the scope of their respective consortium agreement”. In this sense, Brazil’s corporate liability framework goes beyond the requirements of the Convention because a company can be held liable for the acts of related entities even if they do not deliberately use the related entity as an intermediary to engage in foreign bribery. The extent of the liability, however, is limited to the fines and compensation for damages. In practice, CGU has held an entire economic group, including foreign and Brazilian entities, jointly liable for a transnational corruption violation against the Brazilian public administration. The **Stericycle** and **Keppel** cases also involved companies held liable for acts committed by another legal person in their joint venture or economic group. As a final observation, there is not yet any judicial or administrative interpretation on how this joint liability provision would operate in conjunction with Brazil’s rules on jurisdiction, if for instance a foreign consortium partner with a Brazilian entity committed bribery within the scope of the consortium agreement.

f. **Autonomous liability of legal persons**

300. In Phase 3, the Working Group found that Brazil established that administrative and civil proceedings against a legal person did not need to wait for criminal proceedings against the natural person. This was consistent with the Working Group standard that the liability of the legal person should not be contingent on the prosecution or the conviction of a natural person. In Phase 4, nothing has been found to change this conclusion. Notably, at least three companies have all been sanctioned for foreign bribery even without any criminal-law enforcement proceedings having been brought against the natural persons.

Commentary

The lead examiners find that Brazil overall has a robust system for corporate liability for foreign bribery and that the impressive increase in corporate enforcement, at least in the domestic corruption context, indicates that the system is on balance working. At the same time, they consider that the CLL or other relevant legislation does not cover the full range of acts or offences called for by the Convention. They recommend that Brazil ensure that legal persons can be held liable for the full range of acts of complicity set forth in Article 1(2) of the Convention. They also recommend that Brazil amend its law to expressly make legal persons liable for the laundering of the bribe and the proceeds of bribery where foreign bribery is the predicate offence. As a reminder, they previously recommended that Brazil amend its law to create an offence that expressly covers the full range of conduct described in Article 8 of the Convention, as explained under Section B.1.c above. Finally, the lead examiners also recommend that Phase 3 recommendations 2.b.i and 2.b.ii be deemed implemented, recommendations 2.b.iii and 2.b.iv be converted to follow-up issues, and that recommendation 2.c. be deemed obsolete.

C.2. **Sanctions Available for Legal Persons for Foreign Bribery**

301. When enacting the CLL, Brazil deliberately established a mix of administrative and civil sanctions for legal persons that engage in CLL violations against the Brazilian or foreign public administration. As a result, for the full panoply of sanctions envisioned under the CLL to apply, the law would on its face appear to require parallel enforcement proceedings against the same company for the same set of facts. Specifically, article 6 CLL provides that companies can be sanctioned in administrative proceedings with (1) a fine and (2) extraordinary publication of the decision. Conversely, article 19 CLL authorises the possibility to sanction a company in civil proceedings with (1) loss of direct or indirect proceeds from the offence, (2) partial suspension or interdiction of activities, (3) dissolution, and (4) prohibition from receiving public incentives and subsidies.

Table 5. Administrative and Civil Sanctions for Legal Persons under CLL

Sanctions	Administrative liability (article 6 CLL)	Civil liability (article 19 CLL)
Monetary	<ul style="list-style-type: none"> - Fine up to 20% turnover or, if unknown, up to BRL 60 million - Minimum fine no lower than profit obtained - Maximum fine capped at 3x profit obtained or sought 	- Forfeiture of direct or indirect proceeds
Non-Monetary	- Obligation to publish sanction	<ul style="list-style-type: none"> - Suspension or prohibition of certain activity - Dissolution of entity - Prohibition on receiving public advantages

a. Administrative sanctions for legal persons

i. Administrative Fine

302. According to article 6 CLL, the fine for any CLL violation, including foreign bribery, ranges from 0.1% to 20% of the entities gross revenue earned (excluding taxes) during the fiscal year before the administrative proceeding is commenced. Under the 2022 Decree (article 20(2)), the fine will be calculated using the combined “gross revenue of all legal entities belonging in fact or in law to the same economic group that have committed the illicit acts”. Once the gross revenue is ascertained, the sanctioning authority will consider the aggravating and mitigating factors to determine what percentage of the gross revenue will be used to set the preliminary fine. Alternatively, if it is not possible to ascertain the gross revenue, then the fine range is BRL 6.000 to BRL 60.000.000 (approx. EUR 1.000 to EUR 10.100.000).

303. Calculating the preliminary fine: Article 7 CLL specifies factors that must be considered when determining the sanctions within the applicable range. These are (1) the seriousness of the offence, (2) the advantage obtained or sought from the offence, (3) whether the violation was completed or merely attempted, (4) the harm caused or risked, (5) the negative effects of the offence, (6) the economic situation of the offender, (7) the offender’s cooperation with the investigation, (8) the existence of compliance programmes or internal controls as well as the enforcement of codes of conduct, and (9) the value of the contracts obtained from the public administration harmed.

304. The 2022 Decree specifies the percentages for each aggravating and mitigating factor that should be taken into account under the CLL. The aggravating factors are counted first. As shown in the Table below, if all the aggravating factors applied at the maximum rate, the total would be 20%. The mitigating factors would then be applied, with a maximum reduction of -10%.

Table 6. Aggravating and Mitigating Factors for Legal Persons under Decree 11.129/2022

Aggravating factors	Percentage adjustment (max)t	Mitigating factors	Percentage adjustment (max)
Repeated or concurrent wrongful acts/types	4%	Violation not completed (attempt)	-0.5%
Management’s tolerance or awareness	3%	spontaneous disgorgement of illicit gain and/or "non-existence or lack of proof of damage resulting from harmful act"	-1%
Interruption of public service	4%	Cooperation with investigation	-1.5%
Economic solvency/liquidity considerations	1%	Voluntary admission	-2%
Recidivism within 5 years from publication of judgment of prior CLL violation (not need to be same CLL violation)	3%	Compliance programme before wrongful act	-5%
Severity of wrongdoing based on loss/harm to public body (range: 1%, if over BRL 500K, up to 5%, if over BRL 250M)	5%	[Blank]	[Blank]
Total aggravation upward adjustment (reduced to 20% max by statute)	20%	Total mitigation downward adjustment	-10%

305. The CGU has developed non-binding guidance for its staff to reference when determining which adjustments should be made in light of these aggravating and mitigating factors. This guidance has been released to the public.¹⁵³ In addition, there is also a fine calculator, which provides public transparency about the process if not how the different factors were applied in specific enforcement actions.¹⁵⁴ Furthermore, the CGU created a unit for Coordination of Economic and Accounting Analysis within SIPRI that helps to calculate the proceeds of bribery and the sanctions to be imposed under the CLL.

¹⁵³ CGU Private Entities Liability Board, [Suggested Schedule of Aggravating and Mitigating Circumstances](#),

¹⁵⁴ Link to the calculator: <https://epad.cgu.gov.br/Publico/calculadora/calcPAR.html>.

306. While the degree of precision is on one hand commendable, the guidance suggests that the maximum fine will typically only be imposed with a confluence of aggravating factors. For instance, the 20% maximum fine basis in practice can only be imposed on recidivists. For first-time offenders, maximum fine basis is 17%. This will be further reduced to 14%, if, for instance, the foreign bribery scheme was perpetrated by a lower-level employee. If there was no significant disruption to a public service as a result of the bribery scheme, the maximum percentage basis would fall to 10%. This is before considering the mitigating factors. Once the sentencing authority has summed up the aggravating and mitigating factors, the preliminary fine can be calculated as a percentage of the gross revenue. The sentencing authority, however, must then check that the preliminary fine does not fall below the minimum amount, or exceed the maximum amount, set by the CLL and the 2022 Decree.

307. Minimum fine: According to article 25 of the 2022 Decree, the minimum fine is equal to the highest of the following values: (i) the advantage obtained, (ii) 0.01% of turnover, or (iii) BRL 6.000, whichever is higher. The Decree further specifies that the advantage also includes both the amount of the net revenue (after detecting valid expenses) of any contracts obtained or executed through the offence, the amount of costs avoided by the offence (e.g. tax or regulatory expenses), and the additional amount of profit that was generated from the government act or omission that would not have occurred without the offence.

308. Maximum fine: According to article 26 of the 2022 Decree, the maximum fine is equal to the lowest of the following values: (i) three times the intended or earned advantage, whichever is greater, (ii) 20% of gross revenue (excluding sales tax), or (3) BRL 60 million, if the gross revenue cannot be calculated. If the maximum limit is lower than the minimum, then the minimum value will prevail. This ensures that the fine will never be lower than the advantage obtained, in accordance with article 6 CLL. The Brazilian authorities capped the maximum fine at three-times the advantage in order to ensure proportionality with the offence. This proportionality consideration, however, cannot be used to increase the fine beyond 20%, even for large-scale bribery schemes. In practice, the fine for at least one company sanctioned for foreign bribery through a leniency agreement had the fine revised downward because of this condition.

309. Setting the statutory fine: If the preliminary fine falls within the acceptable minimum and maximum fines, then it will be retained. If the preliminary fine falls outside the acceptable minimum and maximum fines, then it will be adjusted upward or downward accordingly.

310. Reductions: This statutory fine will be imposed on the company unless there is a further reduction required under law. For example, a company can receive up to two-thirds reduction (even below the statutory minimum) if it concludes a leniency agreement under article 16 CLL. In another scenario, if the fine is imposed on a successor entity, it may be capped at the amount of the “transferred assets” unless the corporate restructuring was fictitious or done with fraudulent intent. Article 4(1) CLL. In Phase 3, the Working Group recommended that Brazil review its legislation to remove this “transferred assets” limitation on sanctions (recommendation 3.e.ii). This recommendation has not been implemented, but this limitation, according to the CGU Handbook, only applies when the liable company merges into another company or combines with another entity to form a completely new company. If this understanding is correct, then the Working Group’s concerns would be reduced as the amount of assets available for the sanction should be at least the same as before the reorganisation. For this reason, the “transferred assets” limit issue can be converted to a follow-up item to see if it affects the sanctions imposed in practice.

311. Sanctions in practice: Given the lack of transparency about both the main facts of the foreign bribery schemes that have been sanctioned so far through leniency agreements as well as the limited information provided about how the fines were set specifically regarding the foreign bribery conduct, it is currently not possible for the evaluation team to assess whether the sanctions that have been imposed are effective, proportionate and dissuasive. During the on-site visit, legal practitioners, civil society representatives, and private-sector participants explained that they found it difficult to understand what conduct was sanctioned or how the sanctions imposed for foreign bribery were calculated, including the reduction granted based on the leniency agreement. When finalising this report, the CGU informed the

evaluation team that it has started making more information public about the sanctions, as well as relevant facts of the misconduct, through its leniency agreements while balancing the need to maintain confidentiality about pending cases. The level of detail that will be provided for future leniency agreements, and whether it is consistent with the 2021 Recommendation, could not be assessed at this late stage.

312. In addition, as discussed above in Section B.6.c, the civil society participants considered that the long payment terms of certain leniency agreements created legal uncertainty as companies could use the time to challenge the leniency agreement or revise the payment terms, though the Brazilian authorities maintained that leniency agreements could be challenged even after their terms have been fulfilled.

ii. Extraordinary Publication

313. There do not appear to be further legal changes to this sanction. The 2022 Decree authorises the CGU Minister to set rules on how companies can execute the sanction if it is ordered in administrative proceedings. Brazil did not have any examples of this sanction being used in relation to foreign bribery, given that all the relevant cases were resolved through a leniency agreement, thus excluding the application of this sanction.

b. Civil sanctions for legal persons

314. Under article 19 CLL, there are four civil sanctions that can be imposed for a CLL violation, including for foreign bribery. These are (i) the forfeiture of direct or indirect proceeds, (ii) the partial suspension of activities, (iii) the compulsory dissolution of the company, and (iv) the prohibition on receipt of public incentives or subsidies. This section focuses on forfeiture as the other provisions have not yet been applied in foreign bribery resolutions.

i. Forfeiture of the bribe and illicit proceeds

315. In Phase 3, the Working Group recommended that Brazil adopt legislation as necessary to allow the confiscation of the bribe and to ensure that confiscation is always available including when concluding leniency agreements. (recommendation 4.a).

316. Bribe: In Phase 3, the Working Group observed that the CLL did not authorise the confiscation of the bribe. In the Written Follow-up, Brazil argued that article 20(2) of the 2015 Decree required that the bribe be added to the amount of the illicit proceeds subject to confiscation. In Phase 4, the 2022 Decree does not require confiscation of the bribe amount, though it specifies that the bribe amount cannot be deducted when calculating the advantage sought or obtained. While there is no express legal authority for ordering the forfeiture of the bribe amount, Brazil maintains that the bribe amount is still considered to be a proxy for the minimum amount of the illicit proceeds.

317. Proceeds of bribery: The 2022 Decree provides different methodologies that can be used to assess the value of the advantage that was obtained or sought through the offence. For contracts obtained or executed through the CLL violation, the illicit proceeds will be the total revenue minus the valid costs effectively attributed to performance. When the advantage consists in the avoidance of lawful expenses or costs (e.g. tax or regulatory sums due), then the amount is the difference of what would have been due but for the CLL violation. Finally, any additional profits attributed to the CLL violation will also be considered as illicit gains. According to the Brazilian authorities, the exact methodology used in each case will depend on the nature of the CLL violation or violations that are sanctioned.

318. Likelihood of confiscation: In Phase 3, the Working Group was concerned that confiscation might not be sought when the CGU concludes an (administrative) leniency agreement. In practice, the CGU and AGU have jointly concluded leniency agreements, enabling the simultaneous imposition of (administrative) fines and (civil) confiscation. Thus, the three concluded leniency agreements resolving at least one foreign

bribery claim included both fines and confiscation. A bigger concern might be whether civil remedies, including confiscation, will be sought when enforcement proceedings are first conducted administratively. For instance, though the CGU reports that it has convicted over 80 companies for CLL violations through administrative proceedings, the AGU reportedly has only filed two civil enforcement action seeking forfeiture. The Brazilian authorities report that they use administrative compensation orders as a functional equivalent to civil confiscation. It is not clear that such orders would be available in foreign bribery cases, and compensation for damages may result in a sum that is lower than the profits illegally obtained.

319. Limitation on confiscation: In Phase 3, the Working Group recommended that Brazil ensure that confiscation of the bribe and the proceeds of bribery is available even in the cases of joint liability as well as successor liability (recommendation 3.e and 4.a.ii.). In Phase 4, there have been no relevant changes to this situation. Thus recommendation 3.e. remains unimplemented.

320. Capacity to ascertain illicit proceeds: In Phase 3, the Working Group was concerned that the CGU, in particular, did not have enough specialisation or training to accurately calculate the proceeds of bribery. (recommendation 4.b.). In Phase 4, Brazil reports that the CGU created the Coordination of Economic and Accounting Analysis section within the CGU. Its staff, who have training in economics and finance, assist with the calculation the proceeds of bribery and the sanctions that should be imposed whether through leniency agreements or administrative proceedings. This recommendation is thus now fully implemented.

ii. Lack of confiscation for certain entities

321. Under Annex I(B)(5) to the 2021 Recommendation, Member countries should ensure that companies cannot avoid liability or sanctions through corporate reorganisations. In Phase 3, article 4(1) CLL already provided for successor liability when a legal person amends its articles of incorporation, or undergoes another corporate change, merger, acquisition, or spin-off. In Phase 4, Brazil reports that it has imposed liability on successor entities for CLL violations in practice. In 2019, the CGU, for example, concluded a leniency agreement with Nova Participações, concerning foreign bribery allegations that occurred in its predecessor entity, Engevix. The CLL still, however, overly limits the scope of liability because after a merger or incorporation, the successor entity is only liable for fines and compensation for damages. In Phase 3, the Working Group considered the exclusion of confiscation a major loophole (recommendation 4a. ii.).

322. In Phase 4, Brazil maintains that imposing (civil) confiscation on successor entities would violate the spirit of Constitutional article 5(XLV), which prohibits persons from being held liable for the criminal acts of another with the exception that “the obligation to repair the damage and the forfeiture of assets may, in accordance with the law, be extended to the successors and enforced against them, up to the limit of the transferred assets”. Even if this constitutional prohibition applied to the CLL’s administrative and civil liability regime, there is no explanation why a company could be liable for damage caused by an offence but exempt from any obligation to forfeit the illicit proceeds of that same offence.

323. Finally, in Phase 3, the Working Group expressed the same concern about the lack of confiscation when imposing joint and several liability under article 4(2) CLL for the acts of related entities within the corporate group as well as for consortium partners. The situation remains unchanged in Phase 4, even if such addressing this issue would have alleviated the Working Group’s concerns about whether companies can be held liable for bribery committed by using intermediaries, including related persons (see section C.1.e., above).

324. Brazilian authorities maintain that the lack of confiscation is not an issue because, under the CLL, the fine can never be lower than the amount of the profits that could have been confiscated. This, however, would allow the vagaries of corporate dealings to render the “sanction” for foreign bribery merely the loss of the advantage obtained, without any punitive element.

c. Compliance obligations and corporate monitors

325. Among the required terms of any leniency agreement is a commitment to adopt, implement, or improve a corporate “integrity programme”. While this obligation first appeared in the original 2015 implementing decree, the new 2022 Decree adds certain refinements.

326. First, article 45(IV) of the new Decree specifies that the leniency agreement should include the “term and conditions of monitoring”. Second, article 51 provides that a company that concludes a leniency agreement may be exempted from the monitoring process depending on the severity of the misconduct, the company’s subsequent remediation efforts, and the public interest.

327. During the negotiation, the company’s compliance efforts will be assessed against the criteria in Chapter V of the 2022 Decree. This evaluation will assess the existence, implementation, and effectiveness of the compliance programme or other integrity measures and identify gaps to address. Specifically, the evaluation would assess: (1) “tone from the top”, (2) codes of conduct and similar policies for employees and third parties, (3) training, (4) adequacy of risk management policies, (6) accuracy of accounting records, (7) internal controls for accurate financial statements, (8) procedures for preventing fraud or other misconduct in interactions with public authorities, (9) independence and authority of the compliance bodies, (10) whistleblowing channels, and (11) disciplinary measures when violations occur. The CGU has developed a public guide to explain how compliance programmes are assessed.¹⁵⁵

328. If a monitoring proves necessary, the company will develop an improvement plan to address any shortcomings identified. Once the CGU monitoring team approves the plan, the specific commitments that the company has made to improve are recorded in the Register of Punished Companies (CNEP).

329. So far, the CGU has conducted monitoring in connection with its enforcement resolutions. The monitoring is typically carried out by two federal auditors who have the power to examine the company’s improvement plan and its periodic reports to verify the compliance commitments. They can also make on-site visits, interview employees, verify and test the different systems for internal controls and reporting. Furthermore, the company must provide all requested documentation related to the compliance programme. If the company proves that it has implemented its compliance commitments, including any deadlines or requests set during the monitoring, then the CGU will end the monitoring period and prepare a Final Monitoring Report. Conversely, the monitoring can be extended for a reasonable period, if more time is needed. At the end of the formal monitoring, the company is subject to *ad hoc* monitoring. During this phase, the CGU can demand all documents related to the compliance programme (e.g., risk analysis studies) and summon company representatives to clarify aspects of their compliance enhancement efforts. As an innovation since Phase 3, the CGU can appoint an external monitor under the 2022 Decree when warranted, for example, when a foreign monitor is appointed pursuant to multi-jurisdictional coordinated resolutions.

330. In practice, leniency agreements concluded by Brazilian authorities in foreign bribery cases have always required a monitoring, whether this was supervised by the CGU itself in the cases it resolved or an external monitor appointed by the FPS. The monitoring term generally lasts between 18 and 36 months. For example, the leniency agreement with OAS specified that the company would make reports to the CGU on its compliance efforts for 3 years. It also required the company to obtain ISO 37.001 certification within 2 years. In August 2023, the CGU launched a webpage to enable the public to follow the monitoring process under its agreements as well as the compliance obligations at issue.¹⁵⁶

331. No information was provided on how the FPS oversees monitorships.

¹⁵⁵ See CGU (2018), [Practical Manual for Evaluating Integrity Programmes in PAR](#).

¹⁵⁶ CGU, [Monitoring webpage for leniency agreements](#).

d. Statistics on sanctions or confiscation imposed on legal persons

332. In Phase 3, Brazil reported that it kept no statistics on confiscation. In Phase 4, Brazil reports that the AGU maintains data on forfeiture obtained through civil proceedings. However, it has not filed any civil actions seeking forfeiture connected with foreign bribery. In addition, Brazil launched a “Judicial Statistics Panel” in February 2022, which contains information about cases across the country. This does not appear to fully address the situation since the CGU/AGU have collectively imposed forfeiture through their joint leniency agreements. It is also not clear whether the FPS is collecting data on the forfeiture it imposes through leniency agreements.

Commentary

The lead examiners observe that Brazil has enacted a complex system of sanctions that would appear to require close coordination among multiple authorities to ensure that all relevant sanctions are available in foreign bribery cases. As a preliminary point, the lead examiners recognise that the CGU has made considerable efforts to provide general guidance about how it will apply the various aggravating and mitigating factors. That said, they consider that it is not possible to ascertain at this time whether Brazil’s administrative fine provisions are effective, proportionate and dissuasive in foreign bribery cases because Brazil has not made public the facts of the foreign bribery cases that have been sanctioned (so far exclusively) through leniency agreements and because it is not possible to disaggregate what portion of the total fine is attributable to the foreign bribery scheme. The lead examiners recommend that Brazil ensure that all resolutions with legal persons concerning foreign bribery provide enough information to the public so that it is possible to ascertain the amount of the bribes, the proceeds of bribery, and the sanctions imposed in relation to the foreign bribery scheme.

In addition, even though Brazil has imposed extremely large fines in resolutions concerning large-scale domestic corruption as well as foreign bribery, the lead examiners note that the 2022 Decree’s decision to cap the fines at three times the advantage sought or obtained has in practice reduced the fine that otherwise would have applied based on turnover. For this reason, they recommend that the maximum fine be set at three times the advantage sought or obtained up to the statutory 20% cap, whichever is higher.

The lead examiners further note that Brazil has not removed the “transferred assets” limitation on the sanctions applicable to successor entities and that confiscation is still not applicable. For this reason they recommend that the Working Group reiterate Phase 3 recommendations 3.e.i and 4.a.ii that Brazil (i) review the range of sanctions available for successor companies and in case of joint liability 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. Phase recommendation 3.e.ii concerning the limitation of the liability of the successor companies to the “transferred assets” could be converted to a follow-up as practice develops. With the creation of the Coordination of Economic and Accounting Analysis section within the CGU, Phase 3 recommendation 4.b. that the CGU develop sufficient specialisation or training to accurately calculate the proceeds of bribery is now fully implemented.

C.3. Engagement with the Private Sector

a. Compliance incentives

333. The 2021 Recommendation XXIII.D encourages member countries to consider “internal controls, ethics and compliance programmes or measures for the purpose of preventing and detecting foreign bribery in their decisions to grant public advantages”. It also encourages law enforcement authorities to

consider whether to implement “measures to incentivise companies to develop effective internal controls, ethics, and compliance programmes [...], including as a potential mitigating factor.” In addition, the 2021 Recommendation XXIV covers debarment from public procurement and other public advantages. Brazil now has a number of incentives for promoting corporate compliance.

i. Incentives in the law enforcement context

334. Debarment is not a sanction for foreign bribery under Brazilian law. The 2022 Decree provides that companies with an effective compliance programme can now receive up to a 5% reduction in the fine’s basis (previously, the maximum was 4%). The CGU has developed a *Practical Manual for Evaluating Integrity Programs in PAR*, which it uses to assess compliance programs with the aim to ensure that credit is only given to compliance programmes that are effectively implemented. The CGU reports that on average, companies receive around 1.5%-2% reduction. In some recent (domestic) corruption cases, the companies received between 0% and 2.79%. The companies which received no credit only had formal (paper) compliance programmes. Another law enforcement incentive arises from the 2022 Decree provisions concerning compliance obligations which are incorporated into leniency agreements, including monitorships as relevant.

ii. Incentives outside the law enforcement context

335. In Phase 3, internal controls, ethics, and compliance programmes were not considered by procuring authorities in their decisions to grant public procurement contracts. BNDES required entrepreneurs requesting export credit to commit to implement internal control systems, but only when signing the Statement of Commitment for Exporters and thus after the decision to grant financing has been taken. The Working Group, therefore, recommended that Brazil: “Encourage public contracting authorities to consider, as appropriate, internal controls, ethics and compliance programs in their decisions to grant public procurement contracts.” (recommendation 15.c). In addition, the Working Group had recommended that Brazil re-consider making debarment a sanction for foreign bribery (recommendation 3.b). At the time of the Written Follow-up report, Brazil was envisaging some measures to encourage Brazilian authorities to consider the adoption of compliance programmes in their procurement decisions. The Working Group deemed this recommendation only partially implemented.

336. In Phase 4, Brazil has enacted debarment as a corporate compliance incentive in the context of its 2021 Public Procurement Law (PPL). First, the PPL specifies that corporate compliance efforts can be considered as a tie-breaker in the contracting progress. Second, the PPL requires successful bidders in large-scale public procurement tenders to implement, within six months of the conclusion of the contract, an integrity programme. Third, the implementation or enhancement of a compliance programme may also be considered a mitigating factor when determining the penalties to be imposed for PPL violations. Finally, the PPL allows bidders and contractors who have been debarred to have their debarment lifted after the three-year minimum term if they meet certain conditions. Among these conditions, the company must comply with the compliance requirements specified in the punitive act. Under the PPL, the sanctioning authority would assess whether the company has met the conditions specified in Ordinance 1.214/2020 (as amended by Ordinance 54/2023) to be rehabilitated. For CGU cases, SIPRI would make this determination. Under the PPL, a company can be rehabilitated after three years if it implements an adequate compliance programme that satisfies the conditions set forth in article 163 of the PPL as well as CGU Ordinance 1.214/2020. Brazilian authorities are currently developing and implementing decree with the aim of aligning it with the compliance approach contained in 2022 Decree on implementing the CLL’s compliance provisions.

337. While the PPL represents an innovative effort to harness the government’s purchasing power to promote corporate compliance, the PPL as enacted only applies to bidders and contractors dealing with the Brazilian public administration. In addition, the SOE Law 13.303/2016 requires Brazilian SOEs to

consider compliance programmes when contracting with other companies.¹⁵⁷ While these measures do not have direct applicability to foreign bribery *per se*, they could have an indirect effect by promoting compliance norms in Brazil, in particular in business sectors where companies may contract with domestic and foreign authorities. .

Commentary

The lead examiners welcome the CGU’s efforts to incentivise companies to develop and implement effective compliance programs for which they have developed a publicly available Practical Manual for Evaluating Integrity Programs in PAR, which it uses to assess compliance programs and which is available to companies. The lead examiners consider that this approach, given the level of details and transparency it provides for companies, could be identified as good practice.

The lead examiners also consider that Brazil’s newly revised public procurement framework has created a significant incentive to promote corporate compliance, at least for companies involved with large-scale public procurement. Though the PPL does not directly address foreign bribery, the compliance programmes incentives will still have an indirect, beneficial effect on the Brazil compliance environment. For this reason, the lead examiners consider that Phase 3 recommendations 3.b and 15.c can be deemed implemented.

b. Engagement with private-sector on compliance measures and foreign bribery risk

338. The 2021 Recommendation IV.ii encourages countries to examine steps for raising private-sector awareness of foreign bribery and related compliance measures, in particular among enterprises operating abroad. These efforts could be through targeted, profession and sector-specific initiatives, collective action or other public-private initiatives. In addition, under 2021 Recommendation XII, countries should raise awareness of bribe solicitation risks among relevant public officials and the private sector.

339. Brazil reported several initiatives that the CGU and other authorities have undertaken to engage with the private sector for the promotion of anti-corruption compliance programmes. These include CGU guidelines and handbooks on developing corporate compliance programs other measures to prevent and detect bribery and corruption. Notably, the CGU incorporated developments in international good practice, including the 2021 Recommendation, in its publication “Integrity Program – Guidelines for Legal Entities”. Regarding SOEs, Brazil indicates that the CGU developed a “Guidebook of Compliance for State-Owned Companies”. All these documents are available online. Furthermore, the CGU and other authorities promoted and participated in events addressing compliance, ethics, and integrity.

340. The CGU also participates certain collective action initiatives, such as the Alliance for Integrity and the United Nations Global Compact. Moreover, the CGU has participated in the “Business Pro-Ethics” programme. The “Business Pro-ethics” programme originated from a partnership between CGU and a business association, Ethos. By providing public recognition, it encourages companies of all sizes to voluntarily adopt compliance programmes or measures. To be receive recognition, a business its compliance programme must be evaluated by a multi-stakeholder committee composed of representatives from the public sector, private sector, and civil society. Every two years, the Business Pro-Ethics Programme publishes a list of approved and recognised ethical companies.¹⁵⁸ In the 2020-2021 cycle, the CGU issued awards to 67 companies based on an analysis of their anti-corruption measures.¹⁵⁹ Brazil also promotes regional programmes such as “Integrity Seal Paraguay”, a tri-party initiative involving Brazil,

¹⁵⁷ Art.32(V) Law 13.303/2016: “In the tenders and contracts dealt with in this Law, the following guidelines will be observed: [...] V - observance of the integrity policy in transactions with interested parties.”

¹⁵⁸ OECD (2022), Toolkit for raising awareness and preventing corruption in SMEs, OECD Business and Finance Policy Papers, OECD Publishing, Paris, <https://doi.org/10.1787/19e99855-en>.

¹⁵⁹ CGU webpage, [Pro Etica overview](#).

Germany, and Paraguay, which enables Brazilian authorities to share technical knowledge and expertise on compliance issues with their Paraguayan counterparts.

341. While it is not possible to assess the impact of these efforts specifically, on-site visit participants from the private sector as well as civil society groups supporting SMEs identified the CGU's awareness-raising efforts as one of several factors – including high-level prosecutions in corruption cases – promoting awareness about corporate compliance and compliance challenges.

342. Concerning risks related to foreign bribery and to solicitation in particular, the CGU has worked with Brazil's Export Promotion Agency (Apex) to develop guidance material about the OECD Anti-Bribery Convention and the obligations of Brazilian companies and individuals doing business abroad. These materials are distributed to Brazil's embassies or other representations abroad for use by foreign service officers and the private sector.

Commentary

The lead examiners consider that Brazilian authorities, in particular the CGU, have undertaken extensive efforts to engage with the private sector to promote more awareness about compliance programmes and corruption risks. In particular, they welcome Brazil's efforts to partner with private-sector or non-profit entities to engage with companies in various formats on corruption risks and compliance issues. While these efforts contribute to fostering a clean business environment in Brazil, the lead examiners recommend that the Working Group follow up on the CGU's efforts to raise awareness of foreign bribery risks and, in particular, solicitation risks when promoting anti-corruption compliance efforts.

D. OTHER ISSUES

D.1. Tax Measures for Combating Bribery

343. At the time of Phase 3, Brazil reported that in 2009, the Federal Revenue Service (RFB) issued Interpretative Declaratory Act 32 (ADI 32) to clarify “the non-deductibility of payments intended for the commission of illicit acts, in particular those prescribed in Article 1 of the Convention”. The Working Group, however, recommended that Brazil ensure that the denial of tax deductibility is “not contingent on the opening of an investigation by law enforcement authorities or on court proceedings” (recommendation 13.a). This recommendation was deemed not implemented at the Written Follow-up report. The Phase 3 report also could not ascertain whether the FPS would consistently inform the RFB when a taxpayer is convicted of bribery or whether the RFB would routinely re-examine convicted defendants’ tax returns.

344. In Phase 4, Brazil explains that bribes remain non-deductible for tax purposes under ADI 32. Brazil further clarifies that bribes included, even in a disguised way, as expenses when calculating the basis for income tax or social contributions will give rise to an administrative tax infraction. This will lead to an investigation within the RFB’s exclusive competence, making the denial of tax deductibility of bribes autonomous from any criminal investigation or judicial proceedings regarding the underlying offence.

345. Brazil also indicates that when a taxpayer is convicted of bribery, the tax authorities should re-examine the tax returns for the relevant years to determine whether the bribes had been deducted. This would simplify enforcement of the non-deductibility provision, since the fact that the deducted expense was a bribe would already be established. As in Phase 3, the tax authorities can re-examine tax returns within five years after it was submitted, or six years where there is a criminal investigation.

346. Courts, however, are not required to inform tax authorities of convictions. The CGU reports that it cannot share information about companies that concluded leniency agreements with other authorities unless those authorities commit that they will not use the information against the company. As the RFB cannot ignore tax irregularities, the CGU can only share limited information derived from leniency agreements with the tax authorities. The Brazilian authorities did not explain whether the CGU would share information about companies that were sanctioned through administrative proceedings. Should the RFB receive information that a taxpayer was convicted of foreign bribery, they can re-examine the tax returns, apparently placing the burden of the proof on the taxpayer to establish the deduction’s relevance. Brazil, however, did not provide any supporting decision in this regard.

Commentary

The lead examiners welcome the clarifications that bribes are non-deductible in calculating the tax base on Income and Social Contribution on Net Income Tax and that the denial of tax deductibility of bribes is autonomous from the criminal investigation or judicial proceedings of the respective underlying offence. They also welcome the clarification that unlawful tax deductions can be challenged either autonomously or after a taxpayer is convicted of (domestic or foreign) bribery. This addresses the concern underlying Phase 3 recommendation 13.a.

While they appreciate that the tax authorities should re-examine the tax returns for the relevant years to determine whether the bribes had been deducted, they are concerned by the fact that courts are not required to inform tax authorities of convictions related to foreign bribery and that the CGU also lacks any obligation to share information with the tax authorities. They recommend that Brazil take steps to ensure that tax authorities are informed of individuals and companies sanctioned for foreign bribery whether through criminal or non-criminal proceedings so that the tax authorities can re-examine the tax returns for the relevant years to determine whether the bribes had been deducted.

CONCLUSION: POSITIVE ACHIEVEMENTS, RECOMMENDATIONS, AND FOLLOW-UP ISSUES

347. The Working Group welcomes Brazil's efforts since Phase 3 to implement the Convention and related instruments. Based on the findings in this report, the Working Group concludes by commending Brazil on good practices and positive achievements (part 1), making recommendations to Brazil for further improvement (part 2), and identifying issues for follow-up (part 3).

348. As explained in the Introduction, Brazil entered Phase 4 with 43 issues that the Working Group had identified for review, including outstanding Phase 3 recommendations, Phase 3 follow-up items, and items identified by the Working Group's Monitoring Sub-Group. Regarding the outstanding Phase 3 recommendations, Brazil has now **fully implemented** recommendations 2.b.i and 2.b.ii. on corporate liability; 3.b on debarment; 4.b on confiscation; 11.b on awareness raising; 13.a., 13.b, and 13.c on tax measures; 15.a on export credits; and 15.c on public procurement. Brazil has **partially implemented** recommendations 5.b and 5.c on investigations; 8 (statute of limitations for natural and legal persons); 10.c. on money laundering and 11.a. on false accounting. In turn, recommendations 3.e.i and 4.a.ii on sanctions; 4.c on confiscation; 7 on jurisdiction; 10.b on money laundering; and 14.c. on whistleblowing are **not implemented**. Additionally, the Working Group has decided to **convert into follow-up issues** recommendations 2.b.iii, 2.b.iv and 3.e.ii on legal persons. The Working Group has further decided to **withdraw recommendations** 2.c on legal persons; 4.a.i. on confiscation; 5.a on investigation and prosecution.

349. Brazil will submit a written report to the Working Group in two years (i.e., in October 2025) on its implementation of all recommendations as well as detailed information on its foreign bribery enforcement. At that time, the Working Group will expect that Brazil will have addressed as a matter of priority recommendation 9, which seeks to address longstanding concerns about the statute of limitations for natural persons.

Positive Achievements and Good Practices

350. This report has identified several areas where Brazil has made progress in its implementation of the Convention and related instruments. Specifically, the Working Group considers that some areas developed by Brazil could constitute good practices or positive achievements.¹⁶⁰

351. Regarding good practices, Brazilian authorities have placed particular attention on raising awareness about foreign bribery as well as on related topics concerning corporate liability and corporate compliance. In particular, the CGU, in coordination with other agencies either in Brazil or even from other

¹⁶⁰ See Phase 4 Monitoring Guide, which states that Phase 4 evaluations should also reflect good practices and positive achievements which have proved effective in combating foreign bribery and enhancing enforcement.

parties to the Convention, has made considerable effort to provide training or guidance for both government officials and the private sector about Brazil's foreign bribery laws and obligations under the Convention. The CGU has also developed guidance for companies concerning compliance programmes and publicised its method for assessing their effectiveness. In the long run, these efforts could help reduce foreign bribery by fostering a cleaner business environment in Brazil. As for detection, Brazil's tax authority, the RFB, has made a concerted effort to improve its ability to detect foreign bribery by learning from experiences of its foreign counterparts. While the effort is still underway, the RFB's decision to think strategically about how it can better detect foreign bribery is a positive example for other government agencies in Brazil and across the Working Group.

352. Regarding positive achievements, the FPS and the CGU have concluded major enforcement actions against large Brazilian companies involved in transnational corruption, including foreign bribery. In so doing, Brazil has signalled its willingness to enforce its foreign bribery laws even against prominent Brazilian companies. Importantly, it also demonstrated Brazil's commitment to providing mutual legal assistance and to otherwise coordinate with other Working Group members as they resolved their own foreign bribery cases involving Brazilian officials on the demand side. Brazilian authorities have also made a concerted effort to take lessons learned from nearly a decade of enforcement experience to update and enhance the implementing legislation for Brazil's corporate liability framework. Most notably, the new implementing decree has strong incentives for promoting corporate compliance by providing credit for compliance as a mitigating factor in the enforcement context as well as by clearly setting out Brazil's expectations for designing and implementing corporate compliance programmes.

Recommendations of the Working Group

Recommendation regarding detection of foreign bribery

1. Regarding **detection of foreign bribery**, the Working Group recommends that Brazil:
 - a. Clarify the relationship between the reporting obligations incumbent on public officials and the possibility of reporting open to them under whistleblower protections rules, in particular regarding reporting channels, the criteria applicable for using either of these mechanisms, and the related protections; [2021 Recommendation VIII; XII.i-ii; XXI.iv-vi and XXII]
 - b. Analyse how Brazilian overseas missions can further contribute to the detection of foreign bribery allegations so that Brazilian law enforcement authorities can take appropriate action; [2021 Recommendation VIII and XXI.iv-vi]
 - c. Consider ensuring that the CGU can obtain tax information to support the detection and preliminary investigation of potential foreign bribery violations on the same basis as the FPS; [2021 Recommendation VIII, XI. and XXI.iv.]
 - d. Revise Export Credit Agencies' policies to enhance: (i) staff training to identify and address instances of potential foreign bribery; (ii) due diligence before granting export credits to legal persons in the situations listed in Recommendation VI of the 2019 Recommendation of the Council on Bribery and Officially Supported Export; (iii) screening to detect foreign bribery red flags after support has been granted; and (iv) ECAs' policies in order to take appropriate actions such as enhanced due diligence, denial of payment, indemnification, or refund of sums provided, if, in relation to the transaction, one of the parties is recognised as involved in foreign bribery; [2021 Recommendation IV.ix; VIII and XXI.iv.-vi; XXIII D.i; XXV, and E.C. Recommendation VI]
 - e. Take steps to implement key aspects of the 2016 OECD Recommendation of the Council for Development Co-operation Actors on Managing the Risk of Corruption with a particular focus on enhancing the Brazilian Cooperation Agency's (ABC) potential for detecting foreign bribery, by providing the ABC officials with clear and regular guidance and training on foreign bribery red flags

and on the channels for reporting suspicions to Brazil's law enforcement authorities; [2021 Recommendation IV.ix; VIII; XXI.iv-vi; XXIV.v and ODA Recommendation 3,5 and 6]

- f. Consider requiring auditors to report potential allegations of foreign bribery to the competent authorities without regard to the materiality of the scheme on the company's financial statements; [2021 Recommendation XXIII.B.iv]
- g. Ensure that, in order to encourage self-reporting: (i) the FPS provide more guidance, in line with what the CGU has already issued, on how it will apply the aggravating and mitigating factors set forth in the CLL; and (ii) both the FPS and CGU clarify the extent to which a company may expect to receive a reduction in fines when it self-reports foreign bribery misconduct before the authorities become aware of it; [2021 Recommendations X.iii, XV.ii. XXVIII.ii]
- h. Adopt legislation to ensure that whistleblowing concerning foreign bribery is expressly protected and that the elements of the 2021 Recommendation XXII are met whether or not the whistleblower is in the public or private sector. [2021 Recommendation VIII and XXII]

2. Regarding **anti-money laundering** measures to enhance detection of foreign bribery, the Working Group recommends that Brazil:

Update its National Risk *Assessment* to specifically address the risks of money laundering predicated on foreign bribery and include scenarios relevant to foreign bribery, such as examples of how the proceeds of this crime can be laundered; and

- a. Require relevant legal professionals to report suspected money laundering predicated on foreign bribery, without prejudice to legal privilege, and ensure that all institutions and professionals that are required to report STRs receive appropriate directives, including typologies that reflect the size and complexity of the foreign bribery schemes committed by certain Brazilian companies. [Convention Article 7 and 2021 Recommendation IV.ii and VIII]

3. Regarding detection through **the media**, the Working Group recommends that Brazil ensure that law enforcement authorities, especially the Federal Police and the Federal Prosecution Service, routinely and systematically assess foreign bribery allegations that are reported in domestic and foreign media including but not exclusively focussing on the information referred to Brazil by the Working Group. [2021 Recommendation VIII and XXI.iv]

Recommendation regarding enforcement of the foreign bribery offence and related offences

4. Regarding the **money laundering offence**, the Working Group recommends that Brazil maintain statistics on investigations, prosecutions and sanctions for money laundering, including where foreign bribery is the predicate offence. [Convention Art. 7 and Anti-Bribery Recommendation VIII]

5. Regarding the **accounting offence**, the Working Group recommends that Brazil ensure that the full range of conduct described in Article 8(1) of the Convention is prohibited for natural and legal persons. [Convention Article 8; 2021 Recommendation XXIII; Phase 3 recommendation 11.a]

6. Regarding **sanctions and confiscation**, the Working Group recommends that Brazil:

- a. Increase the minimum and maximum sanctions for foreign bribery for natural persons to ensure that effective, proportionate, and dissuasive sanctions are available in the law; [Convention Article 3; 2021 Recommendation XV.i]
- b. Provide appropriate guidance and training to judges to ensure that sentences in foreign bribery cases are effective, proportionate, and dissuasive in practice, especially in light of their impact on Brazil's statute of limitations; [Convention Article 3; and 2021 Recommendation XV.i]

- c. Consider ways to ensure that any appeals challenging defendants' convictions or the sentences imposed in foreign bribery cases will be resolved expeditiously to ensure that the criminal justice system can provide deterrence in foreign bribery cases; [Convention Article 3; and 2021 Recommendation XV.i]; and
 - d. 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 serious economic crimes. [Convention Article 3, 2021 Recommendation XV.i. and iii; XVI, and Phase 4 recommendation 4.c]
7. Regarding the **investigation and prosecution** of foreign bribery, the Working Group recommends that Brazil:
- a. Ensure that sufficient resources, specialisation and skills are available within the DPF, both at central (DICOR) and local (DELECOR) levels, the FPS Anti-Corruption Units and GAECOs across the country to enable Brazil to actively enforce its foreign bribery offence by (i) continuing its efforts to provide guidance and regular training on foreign bribery to the relevant DPF and FPS Anti-Corruption Units and GAECOs; and (ii) developing indicators and collecting data to monitor the resources for, and effectiveness of, the new organisational model in the enforcement of foreign bribery and related offences; [Convention Article 5 and commentary 27, 2021 Recommendation VI.ii and iii; VII; and VIII]
 - b. Ensure that the CGU, the DPF, and the FPS develop a coordination mechanism to promptly share information about potential foreign bribery matters so that both natural and legal persons in foreign bribery cases are investigated effectively using the different investigative powers available to each authority; [Convention Article 5 and commentary 27, 2021 Recommendation XI]
 - c. Collect and provide details to the Working Group about the use of investigative techniques, including special investigative techniques and access to financial information, in ongoing and concluded foreign bribery cases since Phase 3. [Convention Article 5 and commentary 27; 2021 Recommendation X.i.-iii.; XI; and Phase 3 recommendation 5.d]
 - d. Take all necessary steps, as a matter of priority, to ensure that the factors prohibited by Article 5 of the Convention may, in no circumstances, influence the investigation, prosecution and resolution of foreign bribery cases or jeopardise in any other way the independence of prosecutors including through: (i) putting safeguards in place to protect the Office of the Prosecutor General from politicisation or the perception of politicisation; and (ii) reinforcing guarantees against possible political bias by law enforcement agents as well as against the possible arbitrary use of disciplinary or other accountability measures as a means of retaliation against prosecutors involved in sensitive anti-corruption and related enforcement actions. [Convention Article 5 and commentary 27; 2021 Recommendation, Annex I, D]
8. Regarding Brazil's **jurisdiction** over foreign bribery cases, the Working Group recommends that Brazil: (i) review its legislation to clarify its jurisdiction over natural persons when foreign bribery is committed, at least in part, abroad; and (ii) 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 companies not incorporated in Brazil if their main seat is in Brazil and companies with their main management and control situated in Brazil even if part of this function is located abroad. [Convention Article 4, 2021 Recommendation Annex I.b.4. and Phase 3 recommendation 7]
9. Regarding Brazil's **statute of limitations** over foreign bribery and related offences, the Working Group recommends that Brazil urgently address, by legislative and/or any other fully effective institutional measures, the unwanted consequences of the retroactive re-calculation of its statute of limitations period for natural persons for foreign bribery based on the actual sentence imposed. [Convention Article 6, 2021 Recommendation IX.ii and Phase 3 recommendation 8]

10. Regarding **international cooperation**, the Working Group recommends that (i) Brazil ensure that the DRCI as well as the CGU and the FPS maintain more consistent and accessible data on MLA successes and challenges to facilitate Working Group oversight in future monitoring; and (ii) all Brazilian authorities responsible for enforcing foreign bribery to continue to use informal contacts, as appropriate, to seek and provide MLA in foreign bribery cases in line with international practice. [Convention Article 9]

11. Regarding the resolution of foreign bribery matters **through trial or non-trial resolutions**, the Working Group recommends that Brazil:

- a. Intensify its training efforts to ensure a high level of awareness of the technicalities of the foreign bribery offence and the Convention among the range of non-specialised judges likely to handle foreign bribery cases at every court level. [Convention Art. 5; 2021 Recommendation XV.i]
- b. Consider broadening the range of non-trial resolution (NTR) systems available to its prosecutors (besides NPAs) for natural persons, to enable, when relevant, the non-trial resolution of aggravated forms of foreign bribery offences; [Convention Art. 5; 2021 Recommendation XVIII]
- c. Promote transparency concerning the NTR systems available to natural persons by (i) developing clear and transparent criteria regarding their use, including “relevant cooperation” in cooperation agreements, in particular as it applies to judicial pardon and immunity from prosecution; and (ii) providing publicly accessible information on the advantages an alleged offender may obtain by entering into an NTR; [Convention Art. 5; 2021 Recommendation XVIII]
- d. Compile at the federal level relevant information from the monitoring of the use of NTRs, including the sanctions and conditions agreed in these resolutions with natural persons [Convention Art. 5; 2021 Recommendation XVIII];
- e. Make public, where appropriate and consistent with data protection rules and privacy rights, as much information as possible about its NTRs with natural and legal persons, including the main facts of the case as well as the nature and basis of the sanctions imposed, in order to clarify precisely how much of the sanctions imposed are attributed to foreign bribery. [Convention Art. 5; 2021 Recommendation XV.iii. and XVIII.iv and v]; and
- f. Ensure that all resolutions with legal persons concerning foreign bribery provide enough information to the public so that it is possible to ascertain the amount of the bribes, the proceeds of bribery, and the sanctions imposed in relation to the foreign bribery scheme. [Convention Art. 5; 2021 Recommendation XV.iii. and XVIII.iv and v].

Recommendations regarding the liability of, and engagement with, legal persons

12. Regarding **corporate liability and sanctions for legal persons**, the Working Group recommends that Brazil:

- a. Ensure that legal persons can be held liable for the full range of acts of complicity set forth in Article 1(2) of the Convention; [Convention Article 1 and 2]
- b. Amend its law to expressly make legal persons liable for the laundering of the bribe and the proceeds of bribery where foreign bribery is the predicate offence; [Convention Article 2 and 7 and 2021 Recommendation Annex I.B]
- c. Ensure that the maximum possible fine be set at three times the advantage sought or obtained up to the statutory 20% cap, whichever is higher; [Convention Article 3.2.] and
- d. Review the range of sanctions available for successor companies and in case of joint liability 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. [Convention Art. 2; 2021 Recommendation Annex I.B.5) and Phase 3 recommendations

3.e.i]

Recommendations regarding other measures affecting implementation of the Convention

13. Regarding tax measures to combat foreign bribery, the Working Group recommends that Brazil take steps to ensure that tax authorities are informed of individuals and companies sanctioned for foreign bribery whether through criminal or non-criminal proceedings so that the tax authorities re-examine the tax returns for the relevant years to determine whether the bribes had been deducted. [2021 Recommendation IV.v]

Follow-up by the Working Group

14. The Working Group will follow up on the issues below as case law, practice and legislation develops:

- a. The potential consequences that the September 2023 judgment by an STF justice, concerning evidence obtained in relation to the *Odebrecht* leniency agreement, may have on Brazil's leniency agreements in foreign bribery matters, in particular the extent to which it might affect their legal certainty;
- b. The potential consequences that this September 2023 judgment may have on Brazil's ability to provide and to obtain mutual legal assistance in foreign bribery cases;
- c. Whether laws relating to freedom of the press are fully applied in practice to enable allegations of foreign bribery to be reported without fear of reprisals;
- d. Whether Brazil's money laundering offence can be autonomously enforced together with the foreign bribery offence;
- e. Whether article 5(V) CLL or, potentially, Law 6.404/1976, can indeed applied as an alternative or a related offence, distinct from the foreign bribery offence under article 5(I) CLL;
- f. Whether the Organised Crime Law is used in foreign bribery cases as a related alternative offence;
- g. The performance of the DPF and FPS with regard to foreign bribery allegations, including decisions not to open investigations;
- h. The CGU's use of investigative techniques in foreign bribery cases, particularly when the CGU initiates proceedings before the DPF or FPS has begun their own investigations;
- i. Whether Brazil has jurisdiction over foreign companies that either do not conduct business in Brazil or that fail to officially register a temporary office in Brazil;
- j. Whether the limitations period for legal persons commences upon discovery for both instantaneous and continuous foreign bribery violations;
- k. Whether Article 5 factors are not considered in the context of incoming or outgoing extradition matters related to any offence within the scope of Article 1 of the Convention;
- l. Whether sufficient measures are in place to prevent political interference in the Federal Police and other investigative agencies;
- m. Whether there is any structural problem in obtaining and using evidence obtained through leniency agreements, especially when they are concluded in consultation with other authorities;
- n. Whether the Early Judgment non-trial resolution is applied in foreign bribery cases;
- o. Whether the foreign bribery offences for natural and legal persons have the same material scope, in particular covering "undue advantages" seeking to induce foreign public officials to perform

activities within or beyond their duties;

- p. 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);
- q. Whether the successor companies can receive effective, proportionate and dissuasive sanctions despite the “transferred assets” limitation.
- r. The CGU’s efforts to raise awareness of foreign bribery risks and, in particular, solicitation risks when promoting anti-corruption compliance efforts.

ANNEX 1: Phase 3 Recommendations to Brazil (2014) and the Working Group's Assessment of their Implementation (2017)

Phase 3 Recommendations (2014)		Written Follow-Up (2017)
Recommendations for ensuring effective investigation, prosecution and sanctioning of foreign bribery		
1	Regarding the <u>foreign bribery offence</u> , 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]	Fully implemented
2	Regarding the <u>liability of legal persons</u> , 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];	Fully implemented
	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];	Partially implemented
	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].	Not implemented
3	With respect to <u>sanctions</u> , 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];	Fully implemented and converted into a follow-up issue
	b) Re-consider including debarment as a possible administrative or civil sanction; [Convention Article 3; 2009 Recommendation III (ii) and V];	Not implemented
	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];	Fully implemented
	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	Fully implemented

	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];	
	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].	Not implemented
4	Regarding <u>confiscation</u> , 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];	Not implemented
	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];	Partially implemented
	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].	Not implemented
5	Regarding the <u>investigation and prosecution of foreign bribery</u> , 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];	Partially implemented
	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];	Partially implemented
	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];	Partially implemented
	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	Fully implemented

	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];	
	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];	Fully implemented
	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].	Fully implemented
6	Regarding <u>cooperation agreements and leniency agreements</u> , 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 32 Recommendation Annex I.D].	Fully implemented
7	Regarding <u>jurisdiction</u> , 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].	Fully implemented
8	Regarding the <u>statute of limitations</u> , 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].	Partially implemented
9	With respect to <u>mutual legal assistance</u> , 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].	Fully implemented
Recommendations for ensuring effective prevention, detection and reporting of foreign bribery		
10	Regarding <u>money laundering</u> , 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];	Fully implemented
	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)];	Partially implemented
	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	Not implemented

	identification and reporting of information that could be linked to foreign bribery. [Convention, Article 7; 2009 Recommendation III.i].	
11	Regarding <u>accounting and auditing</u> , 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];	Partially implemented
	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];	Partially implemented
	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].	Fully implemented
12	Regarding <u>corporate compliance, internal controls and ethics</u> , 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]	Fully implemented
13	In respect of <u>tax measures to combat bribery of foreign public officials</u> , 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];	Not implemented
	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];	Partially implemented
	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];	Partially implemented
	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].	Fully implemented
14	With respect to <u>awareness-raising and reporting of foreign bribery</u> , 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];	Fully implemented
	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];	Fully implemented

	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].	Not implemented
15	Regarding <u>public advantages</u> , 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];	Partially implemented
	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];	Fully implemented
	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].	Partially implemented
Follow-up by the Working Group		
16	The Working Group will follow up on the issues below as case law and practice develop:	
	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.	
	b) Brazil's offence of <i>concessão</i> 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. *	
	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.	
	d) The performance of the DPF and the FPS with regard to foreign bribery allegations, including decisions not to open investigations.	
	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.	
	f) The application of judicial pardons in cases of foreign bribery, and whether they are used appropriately.	
	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.	
	h) How jurisdiction is exercised over natural and legal persons when the offence takes place in part or wholly abroad.	
	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.	
	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.	
	k) Whether tax information can effectively be shared in the course of foreign bribery investigations and prosecutions.	

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

* At the time of the Phase 3 Two-year Written Follow-up Report in February 2017, the Working Group decided to cease monitoring follow-up issues 16(b), 16(l) and 16(m) given the developments reported by Brazil.

ANNEX 2: Legislative Extracts

The following texts are unofficial (Google) translations from materials available on the Brazilian government's official website (www.planalto.gov.br).

Law 2.848/1940 (Penal Code)

Domestic and Foreign Bribery Offences

Corruption Active

Art. 333. Offer or to promise undue advantage to a public official, to determine him to practice, to omit or delay an act of office:

Sanction – imprisonment, from 2 (two) to 12 (twelve) years, and fine. (Text given by Law No. 10,763, of 12.11.2003)

Sole paragraph - The penalty is increased by one-third if, by reason of the advantage or promise, the official delays or omits an act of office, or practices it in breach of functional duty.

Active corruption in international business transactions

Art. 337-B. Promising, offering or giving, directly or indirectly, undue advantage to foreign civil servant, or the third person, to order him to practise, omit or delay an act of office related to an international business transaction:

Sanction – imprisonment, from 1 (one) to 8 (eight) years, and fine.

Single paragraph. The penalty is increased by 1/3 (one third) if, by reason of the advantage or promise, the foreign civil servant delays or omits the act of office, or the practices in breach of functional duty.

Foreign civil servant

Art. 337-D. It is considered a foreign civil servant, for the criminal effects, whoever, even if temporarily or without remuneration, holds office, employment or civil service in state entities or in diplomatic representations of foreign country.

Single paragraph. It is equivalent to a foreign civil servant who holds office, employment or function in companies controlled, directly or indirectly, by the Power Public from a foreign country or in international public organizations.

Confiscation

Art. 91 - The effects of the conviction are:

I - make certain the obligation to compensate the damage caused by the crime;

II - the loss in favor of the Union, except for the right of the injured party or of a third party in good faith:

(a) the instruments of crime, provided that they consist of things the manufacture of which, alienation, use, possession or detention constitutes an unlawful act;

(b) the proceeds of crime or any property or value constituting profit earned by the agent with the practice of the criminal act.

§ 1 The loss of goods or values equivalent to the product may be decreed, or profit from crime when these are not found or when locate abroad.

§ 2 In the case of Paragraph 1, the protective measures provided for in the procedural legislation may cover goods or equivalent values of the investigated or charged for subsequent decree of loss.

Art. 91a. Hypothesis of conviction for offences for which the law imposes the maximum penalty more than 6 (six) years of imprisonment, the loss may be decreed, as proceeds or profits from crime, of the property

corresponding to the difference between the value of the property of the condemned and that which is compatible with its lawful income.

§ 1 Effect of the loss provided for in the caput of this Article, shall be understood as property of the condemned all asset

I - of his ownership, or in respect of which he has the dominion and benefit direct or indirect, on the date of the criminal offence or received later; and

II- transferred to third parties free of charge or for consideration derisory from the beginning of criminal activity.

§ 2 Anyone convicted may demonstrate the inexistence of the incompatibility or the lawful origin of the patrimony.

§ 3 The loss provided for in this article shall be expressly requested by the Ministry Public, at the time of offering the complaint, with indication of the Difference ascertained. (Included by Law No. 13,964, of 2019)

§ 4 In a condemnatory sentence, the judge must declare the amount of the difference ascertained and specify the property for which confiscation is ordered.

§ 5 The instruments used for the commission of crimes by organizations criminals and militias should be declared lost in favor of the Union or the State, depending on the Justice where the criminal action is being processed, even if they do not endanger people's safety, morals or public order, nor pose a serious risk of being used for the committing new crimes. (Included by Law No. 13,964, of 2019)

Statute of limitations

Art. 108 - The extinction of the punishability of crime that is presumed, constitutive element or aggravating circumstance of another does not extend to this one. With Related crimes, the extinction of the punishability of one of them does not prevent, as for the others, the aggravation of the penalty resulting from the connection.

Limitation period before the judgment becomes final

Art. 109. The limitation period, before the final judgment becomes final, except as provided in the § 1 of article 110 of this Code, is regulated for the maximum of the custodial sentence imposed for the crime, checking:

I - in twenty years, if the maximum of the penalty is more than twelve;

II - in sixteen years, if the maximum of the penalty is more than eight years and does not exceed twelve;

III - in twelve years, if the maximum of the penalty is more than four years and does not exceed eight;

IV - in eight years, if the maximum of the penalty is more than two years and does not exceed four;

V - in four years, if the maximum of the penalty is equal to one year or, being higher, does not exceed two;

VI - in 3 (three) years, if the maximum penalty is less than 1 (one) year.

Limitation of restrictive penalties

Sole Paragraph - The same time limits shall apply to penalties restricting the law provided for custodial detention.

Limitation period after final judgment of conviction has become final

Art. 110 - The limitation period after the judgment has become final condemnation is regulated by the penalty applied and occurs within the time limits set out in the article previous, which are increased by one-third, if the convict is a repeat offender.

§ 1 The prescription, after the sentence of conviction with *res judicata* for the prosecution or after his appeal has been dismissed, it is governed by the penalty applied, and may not, under any circumstances, have as its initial term date prior to the complaint or complaint.

§ 2 (Repealed by Law No 12,234, 2010).

Initial expiry of the limitation period before the final judgment becomes final

Art. 111 - The statute of limitations, before the judgment becomes final, starts to run:

I - the day on which the crime was consumed;

II - in the case of an attempt, the day on which the criminal activity ceased;

III - in the case of permanent crimes, of the day on which the stay ceased;

IV - in the case of bigamy and of falsification or alteration of settlement of the register; civil, from the date on which the fact became known.

V - in the case of crimes against sexual dignity or involving violence against the child and adolescent, provided for in this Code or in legislation special, the date on which the victim turns eighteen (18) years old, unless if by that time criminal proceedings have already been proposed.

Initial expiry of the limitation period after the unappealable conviction

Art. 112 - In the case of art. 110 of this Code, the prescription begins to run:

I - the day on which the sentence of conviction becomes final, for the indictment, or the revoking conditional suspension of sentence or conditional release;

II - the day on which the execution is interrupted, except when the time of the interruption must be included in the penalty.

Law 12.846/2013 (Clean Companies Law)

Art. 1 This Law provides for the objective administrative and civil liability of legal entities for the practice of acts against the public administration, national or foreign.

Single paragraph. The provisions of this Law apply to business companies and simple companies, personified or not, regardless of the form of organization or corporate model adopted, as well as to any foundations, associations of entities or persons, or foreign companies, which have their headquarters, branch or representation in the Brazilian territory, constituted in fact or in law, even temporarily.

Art. 2 Legal entities shall be held objectively liable, in the administrative and civil spheres, for the harmful acts provided for in this Law committed in their interest or benefit, exclusive or not.

Art. 4 The liability of the legal entity remains in the event of contractual change, transformation, incorporation, merger or corporate spin-off.

§ 1 - In the event of merger and incorporation, the liability of the successor shall be restricted to the obligation to pay a fine and full compensation for the damage caused, up to the limit of the transferred assets, and the other sanctions provided for in this Law arising from acts and facts occurring before the date of the merger or incorporation, except in the case of simulation or evident intention of fraud, shall not apply to it. duly substantiated.

§ 2 - The controlling companies, subsidiaries, affiliates or, within the scope of the respective contract, the consortium members shall be jointly and severally liable for the practice of the acts provided for in this Law, such liability being restricted to the obligation to pay a fine and full reparation for the damage caused.

Art. 5 Constitute acts harmful to the public administration, national or foreign, for the purposes of this Law, all those practiced by the legal entities mentioned in the sole paragraph of article 1, which attack the national or foreign public patrimony, against principles of public administration or against the international commitments assumed by Brazil, as follows:

I - promise, offer or give, directly or indirectly, undue advantage to a public agent, or to a third person related to him;

II - demonstrably, finance, cost, sponsor or in any way subsidize the practice of the unlawful acts provided for in this Law;

III - demonstrably, to use an interposed individual or legal entity to hide or disguise its real interests or the identity of the beneficiaries of the acts committed;

IV - with regard to bids and contracts: [...]

V - hinder the investigation or supervision of public bodies, entities or agents, or intervene in their performance, including within the scope of regulatory agencies and supervisory bodies of the national financial system.

§ 1 - Foreign public administration is considered to be state bodies and entities or diplomatic representations of a foreign country, of any level or sphere of government, as well as legal entities controlled, directly or indirectly, by the public power of a foreign country.

§ 2 - For the purposes of this Law, international public organizations shall be treated in the same way as foreign public administration.

§ 3 - For the purposes of this Law, a foreign public agent is considered to be anyone who, even if temporarily or without remuneration, exercises office, employment or public function in organs, state entities or in diplomatic representations of a foreign country, as well as in legal entities controlled, directly or indirectly, by the public power of a foreign country or in international public organizations.

Art. 6 In the administrative sphere, the following sanctions shall be applied to legal entities considered responsible for the harmful acts provided for in this Law:

I - fine, in the amount of 0.1% (one tenth percent) to 20% (twenty percent) of the gross turnover of the last fiscal year prior to the initiation of the administrative proceeding, excluding taxes, which will never be lower than the advantage earned, when it is possible to estimate it; and

II - extraordinary publication of the condemnatory decision.

§ 1 - The sanctions shall be applied on a reasoned basis, individually or cumulatively, according to the peculiarities of the specific case and the gravity and nature of the infractions.

§ 2 - The application of the sanctions provided for in this article shall be preceded by the legal manifestation prepared by the Public Advocacy or by the legal assistance body, or equivalent, of the public entity.

§ 3 - The application of the penalties provided for in this article does not exclude, in any case, the obligation of full reparation of the damage caused.

§ 4 In the event of item I of the caput, if it is not possible to use the criterion of the amount of gross billing of the legal entity, the fine will be from R \$ 6,000.00 (six thousand reais) to R \$ 60,000,000.00 (sixty million reais).

§ 5 - The extraordinary publication of the condemnatory decision shall take place in the form of an extract of the sentence, at the expense of the legal entity, in means of communication of great circulation in the area of the practice of the infraction and of the action of the legal entity or, in its absence, in a publication of national circulation, as well as by means of the posting of a public notice, for a minimum period of 30 (thirty) days, in the establishment itself or in the place of exercise of the activity, in a visible way to the public, and on the electronic site of the World Wide Web.

Art. 7 The following shall be taken into account in the application of sanctions:

I - the gravity of the infringement;

II - the advantage obtained or intended by the infringer;

III - the consummation or not of the infraction;

IV - the degree of injury or danger of injury;

V - the negative effect produced by the infringement;

VI - the economic situation of the offender;

VII - the cooperation of the legal entity for the investigation of infractions;

VIII - the existence of internal mechanisms and procedures for integrity, auditing and encouragement to report irregularities and the effective application of codes of ethics and conduct within the scope of the legal entity;

IX - the value of the contracts maintained by the legal entity with the injured public body or entity; and

X - (VETOED).

Single paragraph. The parameters of evaluation of mechanisms and procedures provided for in item VIII of the caput shall be established in a regulation of the federal Executive Branch.

Art. 19. Due to the practice of acts provided for in article 5 of this Law, the Union, the States, the Federal District and the Municipalities, through their respective Public Advocacy or judicial representation bodies, or equivalent, and the Public Prosecutor's Office, may file an action with a view to the application of the following sanctions to the offending legal entities:

I - forfeiture of assets, rights or values that represent an advantage or benefit directly or indirectly obtained from the infringement, with the exception of the right of the injured party or of a third party in good faith;

II - suspension or partial prohibition of its activities;

III - compulsory dissolution of the legal entity;

IV - prohibition of receiving incentives, subsidies, grants, donations or loans from public bodies or entities and from public financial institutions or those controlled by the government, for a minimum term of 1 (one) and a maximum of 5 (five) years.

§ 1 - The compulsory dissolution of the legal entity shall be determined when it is proven:

I - have been the legal personality used in a habitual way to facilitate or promote the practice of unlawful acts; or

II - have been constituted to hide or disguise illicit interests or the identity of the beneficiaries of the acts committed.

§ 2 (VETOED).

§ 3 - Sanctions may be applied separately or cumulatively.

§ 4 - The Public Prosecutor's Office or the Public Advocacy or judicial representation body, or equivalent, of the public entity may request the unavailability of assets, rights or values necessary to guarantee the payment of the fine or full reparation of the damage caused, as provided for in article 7, except for the right of the third party in good faith.

Art. 20. In actions filed by the Public Prosecutor's Office, the sanctions provided for in article 6 may be applied, without prejudice to those provided for in this Chapter, provided that the omission of the competent authorities to promote administrative accountability is found.

Law 13.608/2018 (whistleblower rewards and protections)

Art. 1 Land transport companies operating under concession of the Union, the States, the Federal District or the Municipalities are obliged to display in their vehicles, in an easy-to-read and viewable format:

I - the expression "Dial-Denunciation", related to one of the existing modalities, with the respective toll-free telephone number;

II - expressions of encouragement to the collaboration of the population and guarantee of anonymity, in the form of the regulation of this Law.

Art. 2 The States are authorized to establish a service for receiving complaints by telephone, preferably free of charge, which may also be maintained by a private non-profit entity, through an agreement.

Art. 3 The informant who identifies himself will have ensured, by the body that receives the complaint, the confidentiality of his data.

Art. 4 The Union, the States, the Federal District and the Municipalities, within the scope of their competences, may establish forms of reward for the provision of information that is useful for the revention, repression or investigation of crimes or administrative offenses.

Single paragraph. Among the rewards to be established, the payment of amounts in kind may be instituted.

Art. 4a. The Union, the States, the Federal District and the Municipalities and their agencies and foundations, public companies and mixed-capital companies will maintain ombudsman or correction unit, to ensure that every person has the right to report information about crimes against the public administration, administrative offenses or any actions or omissions harmful to the public interest.

Paragraph unique. If the report is considered reasonable by the ombudsman or correctional unit and referred for investigation, the informant will be guaranteed full protection against retaliation and exemption from civil or criminal liability in relation to the report, unless the informant has knowingly submitted false information or evidence.

Art. 4b. informant will have the right to the preservation of his identity, which only will be disclosed in case of relevant public interest or interest concrete for the investigation of the facts.

Paragraph unique. The revelation of identity will only be effected through prior communication to the informant and with his formal agreement.

Art. 4-C. In addition to the protection measures provided for in Law No. 9,807, of July 13 In 1999, the informant will be guaranteed protection against actions or omissions practiced in retaliation for the exercise of the right to report, such as arbitrary dismissal, unjustified change of duties or tasks, imposition of sanctions, of remuneratory or material losses of any kind, withdrawal of benefits, direct or indirect, or Negative of providing positive professional references.

§ 1 The practice of retaliatory actions or omissions to the informant will constitute a fault shall subject the staff member to dismissal for the sake of the service public.

§ 2 O informant will be reimbursed twice for any material damage caused by actions or omissions committed in retaliation, without prejudice to moral damage.

§ 3 When the information made available results in product recovery of crime against the public administration, may be fixed reward in favor of the informant in up to 5% (five percent) of the amount recovered.

ANNEX 3: List of Participants in the On-Site Visit

Government Representatives

Public Sector

- Attorney General's Office
- Bank of Brazil
- Brazilian Cooperation Agency
- Brazilian Fund and Guarantee Management Agency
- Central Bank of Brazil
- Council for Financial Activities Control
- Department of International Cooperation and Asset Recovery
- Ministry of Development, Industry, Trade and Services
- Ministry of External Relations
- Ministry of Finance
- Ministry of Justice
- National Bank for Social and Economic Development
- Secretariat of the Federal Revenue of Brazil
- Securities and Exchange Commission

Judiciary

- National Council of Justice (CNJ)

Enforcement authorities

- Federal Police Department
- Federal Prosecution Service
- Office of the Comptroller General
- Public Prosecutor's Office (Rio de Janeiro; São Paulo)

Non-governmental stakeholders

Private-sector companies & associations

- Andrade Gutierrez
- Avibrás Indústria Aeroespacial
- BRF
- Confederation of Agriculture and Livestock of Brazil

- CSN
- Eletrobrás
- LATAM
- National Confederation of Industries
- Novonor and OEC
- Pacto Global Brasil
- Petrobrás

Law Firms

- Azevedo Sette Advogados
- Badaró Advogados
- Demarest
- Feldens Advogados
- Freitas Leite e Avvad Advogados
- Huck Otranto Camargo
- Lefosse Advogados
- Madruga BTW
- Maeda Ayres & Sarubbi
- Mattos Filho
- Pinheiro Neto Advogados
- WMT

Legal academic institutions

- Fundação Getúlio Vargas
- Instituto de Direito Administrativo Sancionador
- Universidade de São Paulo

Accounting and auditing

- Federal Council of Accounting
- IBRACON
- KPMG
- PWC

Civil society and media

- Brazilian Association of Investigative Journalism
- CNN
- Folha de São Paulo
- Instituto Ethos
- Revista Piauí
- Transparência Brasil
- Transparency International

ANNEX 4: List of Abbreviations and Acronyms

ABC	Brazilian Cooperation Agency	FPS	Federal Prosecutor's Service
ABGF	Brazilian Fund and Guarantee Management Agency	GDP	Gross Domestic Product
ADI	Interpretative Declaratory Act 32	GPA	WTO Agreement on Government Procurement
BNDES	National Bank of Economic and Social Development	IBEN	Brazilian Institute of Business Ethics
BRL	Brazilian Real (currency)	IBGC	Brazilian Institute of Corporate Governance
CCP	Code of Criminal Procedure	IBRACON	Brazilian Institute of Independent Auditors
CDD	Customer Due Diligence	IFRS	International Financial Report Standards
CFC	Federal Accounting Council	ISA	International Standards on Auditing
CLL	Corporate Liability Law	LP	Legal person
COAF	Conselho de Controle de Atividades Financeiras (Council of Control of Financial Activities, Brazilian Financial Intelligence Unit)	MDIC	Ministry of Development, Industry and Commerce
COFIG	Committee for Export Finance and Guarantee	MER	Mutual Evaluation Report by the FATF
CPC	Brazilian Accounting Pronouncements Committee	MERCOSUR	Common Market of the South
CPLP	Community of Portuguese Language Countries	MLA	Mutual legal assistance
CVM	Securities and Exchange Commission	NBC TA	New Brazilian auditing standards
CGU	Controladoria-Geral da União (Office of the Comptroller General)	NGO	Non-governmental organisation
DEST	Ministry of Planning, Budget and Management	NP	Natural person
DNFBPs	Designated non-financial businesses and professions	OAS	Organisation of American States
DOJ	US Department of Justice	OECD	Organisation for Economic Cooperation and Development
DPF	Federal Police Department	ODA	Official development assistance
DRCI	Department of Assets Recovery and International Co-operation (within the Ministry of Justice)	PC	Penal Code
ECA	Export Credit Agencies	PEPs	Politically exposed persons
ECG	OECD Working Party on Export Credit and Credit Guarantees	PNLD	Programa Nacional de Capacitação e Treinamento para o Combate à Lavagem de Dinheiro (National Programme of Capacity Building & Training for the Combating of Money Laundering)
ENCCLA	Estratégia Nacional de Combate à Corrupção e a Lavagem de Dinheiro (National Strategy to Fight Corruption and Money Laundering)	RFB	Federal Revenue Secretariat
EU	European Union	SBCE	Brazilian Export Credit Insurance Agency
EUR	Euro	SEBRAE	Brazilian Support Service for SMEs
FATF	Financial Action Task Force	SEC	US Securities and Exchange Commission
FCPA	Foreign Corrupt Practices Act	SME	Small and medium sized enterprises
FDI	Foreign direct investment	STR	Suspicious transaction report
FIESP	Federation of Industries of Sao Paulo State	SOE	State owned enterprise
		TIEA	Tax Information Exchange Agreement
		US	United States
		USD	United States Dollar

