

## **DECREE No. 2799, OF OCTOBER 8, 1998**

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**This decree approves the Bylaws of the Council for Financial Activities Control (COAF).**

THE PRESIDENT OF THE REPUBLIC,

In the exercise of the powers conferred by article 84, items IV and VI of the Constitution,

HAS DECREED:

Article 1 The Bylaws of the Council for Financial Activities Control (COAF), created by Law No. 9613, of March 3, 1998, are hereby approved as set forth in the Annex to this Decree.

Article 2 This Decree shall come into force on the date of its publication.

Brasília, October 8, 1998, the 177<sup>th</sup> year of Independence and the 110th year of the Republic.

### **Annex to the Decree No. 2799, of October 8, 1998**

## **BYLAWS OF THE COUNCIL FOR FINANCIAL ACTIVITIES CONTROL (COAF)**

### **CHAPTER I NATURE AND PURPOSE**

Article 1 The Council for Financial Activities Control (COAF) is a collegiate decision-making body whose jurisdiction includes the whole Brazilian territory. COAF was created by Law No. 9613, of March 3, 1998, as an integral part of the Ministry of Finance, with headquarters in the Federal District. Its purpose is to discipline, apply administrative penalties, receive, examine, and identify the suspicions of illicit activities referred to in the law that created it, with no prejudice to the competence of other offices and entities.

Sole Paragraph COAF may maintain some branches, by using the infrastructure of regional units of the offices to which the Council members belong, with the purpose of providing the adequate coverage of the whole Brazilian territory.

### **CHAPTER II ORGANIZATION**

#### **Section I Plenary Meeting Composition**

Article 2 The plenary meeting shall be presided over by the Chairperson of COAF and shall be composed of one representative of each one of the following agencies or entities:

- I. Central Bank of Brazil;
- II. Securities and Exchange Commission;

- III. Superintendence of Private Insurance (SUSEP);
- IV. General-Attorney Office for the National Treasury;
- V. Federal Revenue Office;
- VI. Intelligence Division of the Military Department of the Presidency;
- VII. Federal Police Department;
- VIII. Ministry of Foreign Relations.

Sole Paragraph The Council members shall belong to the effective staff of their respective organizations, and they shall be appointed by the Minister of Finance, who will accept in the case of items VI, VII, and VIII the indication made by the respective Ministers of State.

Article 3 The Council shall have the support of an Executive Secretariat, directed by an Executive Secretary, who shall be appointed by the Minister of Finance.

## **Section II Duties of the Chairperson**

Article 4 The Chairperson of COAF shall perform his/her duties in an exclusive manner, so that he/she shall be forbidden to perform other functions, except for those established by the constitution.

Paragraph 1 The office of Chairperson shall be subject, whenever applicable, to the provisions in articles 5 and 6.

Paragraph 2 The President of the Republic shall appoint the Chairperson of the Council upon indication by the Minister of Finance.

## **Section III Term of Office for Council Members**

Article 5 The Council Members shall serve a three-year term, but they may be reappointed.

Paragraph 1 The Council Members shall lose their offices in case of:

- I. Absolute civil incapacity;
- II. Criminal conviction resulting from final sentencing decision;
- III. Administrative improbity proven by disciplinary proceedings under the provisions of Law No. 8112, of December 11, 1990, and Law No. 8429, of June 2, 1992;
- IV. Loss of effective position in their original agencies, or retirement;
- V. Infraction to the provisions of article 6.

Paragraph 2 COAF Members shall also automatically lose their offices whenever they fail to attend three consecutive or a total of ten ordinary meetings without any justification.

Paragraph 3 Should the Council Members lose their offices or resign, a substitute shall be appointed, and he/she shall serve the regular term of office as set forth in this article.

Paragraph 4 The office of Council Members shall be exercised without prejudice to their regular duties in the original agencies to which they belong.

#### **Section IV Restrictions**

Article 6 COAF's Chairperson, Council Members, and Executive Secretariat staff shall not:

- I. Participate as comptrollers, managers, representatives or employees in legal entities with activities related to article 9 and sole paragraph of Law No. 9613/1998;
- II. Issue any opinion on matters (even if hypothetical) of their specialty, which is not part of their duties, or act as consultants of any of the legal entities referred to in the previous item;
- III. Express, by any means of communication, an opinion on any proceeding awaiting trial by the Council.

### **CHAPTER III JURISDICTION AND DUTIES**

#### **Section I Plenary Meeting**

Article 7 COAF's plenary meeting shall:

- I. Monitor the compliance with current legislation and with the Council's Bylaws and Internal Rules and Regulations;
- II. Discipline the matter under its jurisdiction as provided by Law No. 9613/1998;
- III. Receive, examine, and identify the suspicions of illicit activities, under the provisions of article 1 of Law No. 9613/ 1998;
- IV. Deliberate upon infractions and apply the administrative penalties referred to in article 12 of Law No. 9613/1998, to the legal entities defined in article 9 of that Law, which are not subject to any specific surveillance or regulatory agency;
- V. Issue the instructions for the legal entities referred to in the previous item;
- VI. Elaborate the list of suspicious transactions and activities, according to the provisions of Paragraph 1 of article 11 of Law No. 9613/1998;
- VII. Coordinate and propose mechanisms of cooperation and exchange of information, which allow for fast and efficacious measures to prevent and repress the concealment or disguise of assets, rights, and valuables;
- VIII. Require information or documents from legal entities, which are not subject to any specific surveillance or regulatory agency, or through a competent agency, as the case may be;

IX. Report to the competent authorities, whenever it verifies the existence or grounded indication of crimes or of any other illicit activity;

X. Express an opinion on proposals of international agreements, in matters of its jurisdiction, consulting other agencies or public entities involved with the matter, as the case may be.

## **Section II Executive Secretariat**

Article 8 The Executive Secretariat shall:

I. Receive identification information and information on cash transfers considered suspicious under articles 10 and 11 of Law No. 9613/1998, provided by the institutions mentioned in article 9 of that same Law, directly or through other surveillance or regulatory agencies;

II. Centralize the requests addressed to COAF branches;

III. Receive reports, including anonymous ones, referring to suspicious activities;

IV. Catalog, classify, identify, compare, and file information, reports, and data received and requested;

V. Request information kept in data basis of public and private agencies and entities;

VI. Analyze the reports, data, and information received and requested; elaborate and file dossiers containing the inquiries made;

VII. Request investigations from federal agencies and entities whenever there is any indication of suspicious activities in the received or requested information, or suspicions arising from the analysis performed;

VIII. Perform secretary functions during the Council sessions on a permanent basis;

IX. Prepare, for the decision of the Minister of Finance, the appeals against decisions by the competent authorities referred to in the previous article;

X. Do other duties that might be assigned by the plenary meeting or the Chairperson.

## **Section III Chairperson**

Article 9 COAF's Chairperson shall:

I. Preside over the Council's Plenary meeting with voting rights including the casting vote;

II. Issue regulatory acts that might be necessary to improve the Council's performance;

III. Convene meetings and organize the corresponding agenda;

IV. Sign the official acts of COAF, as well as the plenary meetings' decisions;

V. Order the summons of those people concerned;

VI. Orient, coordinate, and supervise the administrative activities of the Council and Executive Secretariat;

VII. Officially report to the competent authorities whenever the investigations show strong indications of irregularities;

VIII. Nominate an expert to help fulfill the Council's duties, whenever the matter demands specific technical knowledge;

IX. Invite representatives of public or private agencies or entities to participate in the meetings, without voting rights.

#### **Section IV Council Members**

Article 10 The Council Members shall:

I. Vote on the proceedings and matters submitted to the plenary meeting; II. Publish and register the decisions on the proceedings in which they act as reporters;

III. Submit to the plenary meeting the request for information and documents that concern the proceedings respecting the applicable legal confidentiality and determine the necessary actions for the fulfillment of their duties;

IV. Do other tasks that might be assigned to them in accordance with the Council's Internal Rules and Regulations;

V. Perform other assignments as determined by the plenary meeting or the Chairperson.

#### **CHAPTER IV EXCHANGE OF INFORMATION**

Article 11 The Central Bank of Brazil, the Securities and Exchange Commission, the Superintendence of Private Insurance, the Federal Police Department, the Intelligence Division of the Military Department of the Presidency, and other public agencies and entities which are in charge of surveillance and regulation of the persons subject to the obligations referred to in articles 10 and 11 of Law No. 9613/1998, shall provide the necessary information and collaboration for COAF and its Executive Secretariat to accomplish their mission.

Paragraph 1 The exchange of confidential information between COAF and the entities referred to above, made with judicial authorization, implies the transfer of responsibility for the preservation of confidentiality.

Paragraph 2 The requests for information referred to above shall be addressed through specific forms, signed by the competent administrative authority, or electronically through data bases that can only be accessed by a duly accredited civil servant.

Paragraph 3 The requests for information from the entities that compose COAF and from COAF to these entities shall be responded on a priority basis.

Paragraph 4 The information requested from COAF shall be sent to the requesting party through specific forms or reports, and this shall imply the transfer of responsibility for the preservation of applicable legal confidentiality.

Paragraph 5 The entities referred to above shall establish mechanisms to make their data systems compatible for the exchange of electronic information which are not protected by legal confidentiality.

Article 12 COAF may share information with pertinent authorities of other countries and international organizations based on reciprocity or agreements.

Article 13 Whenever COAF receives requests for information concerning the crimes defined in article 1 of Law No. 9613/1998, from competent authorities or entities abroad, it shall respond or forward the requests, as the case may be, to the competent agencies, so that the necessary measures are taken for a response.

## **CHAPTER V ADMINISTRATIVE PROCEEDINGS**

Article 14 The administrative infractions defined in Law No. 9613/1998, shall be investigated, and punished by means of administrative proceedings with the right to contest and ample defense.

Sole Paragraph The Central Bank of Brazil, the Securities and Exchange Commission, the Superintendence of Private Insurance, and other agencies or entities responsible for the application of administrative penalties defined in article 12 of Law No. 9613/1998 shall comply with the established procedures, and, whenever applicable, with the provisions in these Bylaws.

Article 15 COAF and the entities that monitor and regulate the persons referred to in article 9 of Law No. 9613/1998 shall be entitled to perform preliminary investigations on a reserved basis.

Sole Paragraph In preliminary investigations, the competent authority, pursuant to the internal regulations of his/her respective agency or entity, may request explanations from individuals or legal entities directly related to the object of investigation.

Article 16 When the preliminary investigations are concluded, the responsible authority shall propose the initiation of administrative proceedings or determine its dismissal, but submitting in this case the decision to his/her superior for review.

Article 17 The competent authority shall initiate the administrative proceedings through an official act specifying the facts to be investigated. This shall take place within no more than 10 (ten) business days after being informed of the infraction, receiving the reports referred to in item II of article 11 of Law No. 9613/ 1998, or being informed of the conclusions of preliminary investigations.

Article 18 The defendants shall be summoned to present their defense within 15 (fifteen) days. They shall present evidence in their interest, but they may present new documents at any time before the case investigation is concluded.

Paragraph 1 The summons shall disclose the full terms of the notification that initiated the administrative proceedings.

Paragraph 2 The defendants' summons shall be made by mail, with proof of delivery, or, if summons by mail is not possible, by public notice published only once in the Official Federal Gazette (Diário Oficial da União, D.O.U.). The time limits shall be counted either from the summons' receipt or from its publication, respectively.

Paragraph 3 The defendants may follow the administrative proceedings personally or through a legal representative, if they are legal entities, or through a lawyer legally qualified. They shall be allowed to have ample access to the proceedings, which shall remain in the premises of the agency or entity in charge of the case, and to obtain copies of the documents included in the proceedings.

Article 19 The defendants who do not present a defense after being summoned within the stipulated time referred to in the previous article shall be deemed non-compliant and they shall be considered guilty of the issues in question and subject to the other time limits, regardless whether another summons is made.

Sole Paragraph The non-compliant defendants may intervene in any phase of the proceedings, but with no rights to the repetition of any act already performed.

Article 20 After the deadline established for the presentation of defense, the authority responsible for the proceedings may order investigations and the collection of relevant evidence. He/she may also request from the defendants new information, explanations, or documents, to be presented within the time established by the requesting authority, by keeping legal confidentiality whenever necessary.

Article 21 The decision shall be disclosed within no more than 60 (sixty) days after the case investigation is finished.

Article 22 The agencies and entities responsible for the application of administrative penalties referred to in Law No. 9613/1998 shall supervise the compliance with their decisions.

Paragraph 1 Should there be a partial or total failure to comply with the decision, the fact must be reported to the competent authority that shall decide on the measures to be taken for its judicial execution.

Paragraph 2 Whenever decided by COAF, the judicial representation shall be made by a General Attorney.

Article 23 One may appeal against COAF's decisions to the Minister of Finance within 15 (fifteen) days after being informed of the decision.

## **CHAPTER VI FINAL AND TRANSITORY PROVISIONS**

Article 24. The expenses of installation and functioning of COAF and the Executive Secretariat shall be imputed to the budget of the Ministry of Finance.

Article 25. The General Attorney Office shall appoint a General Attorney to act at COAF.

Article 26. The Internal Rules and Regulations of COAF shall be approved by means of an act of the Minister of Finance.