

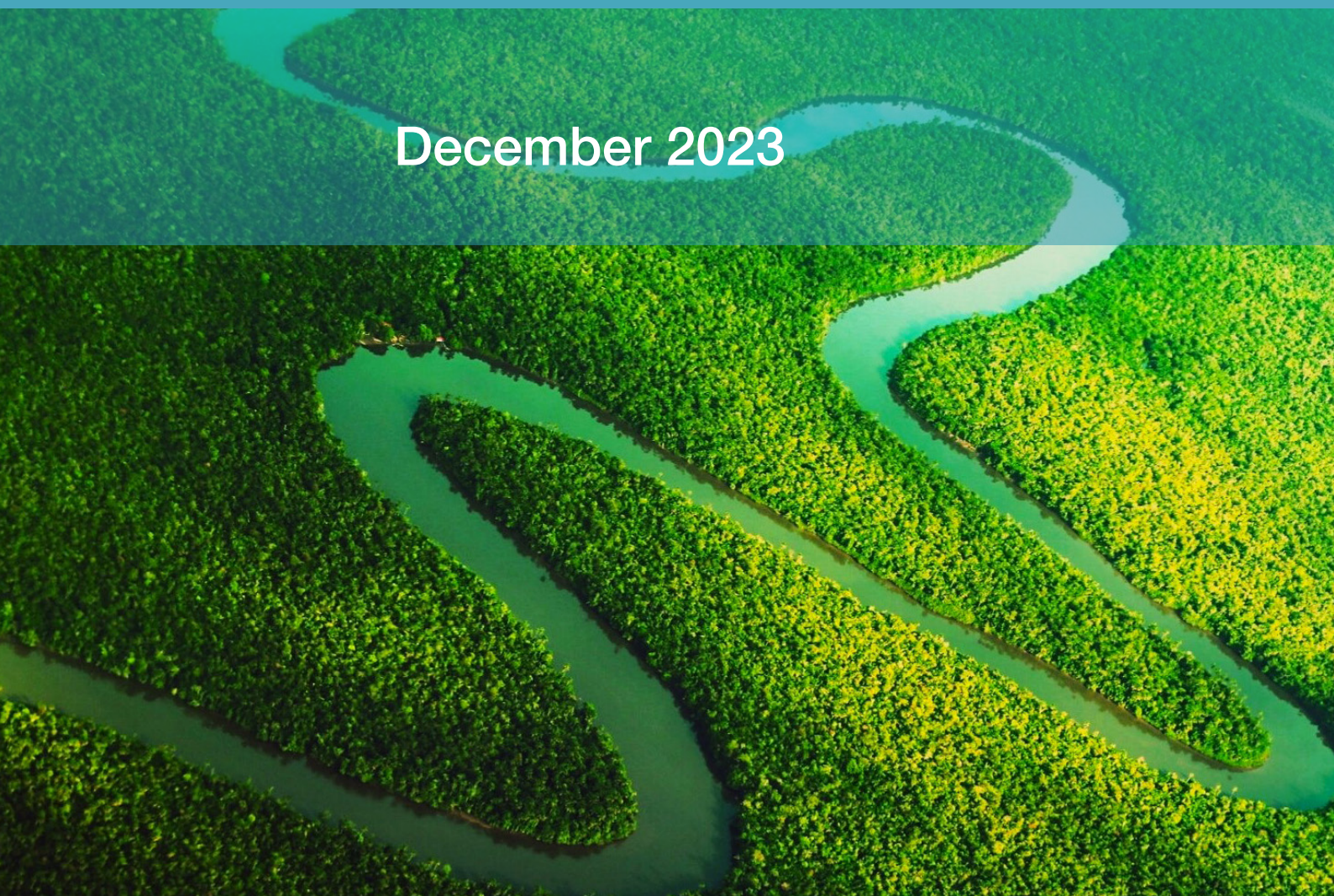


Anti-money laundering and counter-terrorist financing measures

Brazil

Mutual Evaluation Report

December 2023





The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter-terrorist financing (CTF) standard.

For more information about the FATF, please visit the website: www.fatf-gafi.org.

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

This assessment was adopted by the FATF at its October 2023 Plenary meeting.

Citing reference:

FATF/OECD - GAFILAT (2023), *Anti-money laundering and counter-terrorist financing measures – Brazil*,
Fourth Round Mutual Evaluation Report, FATF, Paris
<https://www.fatf-gafi.org/content/fatf-gafi/en/publications/Mutualevaluations/Mer-Brazil-2023.html>

©2023 FATF/OECD - GAFILAT -. All rights reserved.

No reproduction or translation of this publication may be made without prior written permission.

Applications for such permission, for all or part of this publication, should be made to

the FATF Secretariat, 2 rue André Pascal 75775 Paris Cedex 16, France

(fax: +33 1 44 30 61 37 or e-mail: contact@fatf-gafi.org).

Photo Credit - Cover: © Bruno Cecim / Ag.Pará

Table of Contents

Executive Summary	3
Key Findings.....	3
Risks and General Situation	5
Overall Level of Compliance and Effectiveness	5
Priority Actions	12
Effectiveness & Technical Compliance Ratings	15
MUTUAL EVALUATION REPORT OF BRAZIL	17
Preface.....	17
Chapter 1. ML/TF RISKS AND CONTEXT	19
ML/TF Risks and Scoping of Higher Risk Issues	20
Materiality	23
Structural Elements	24
Background and Other Contextual Factors.....	24
Chapter 2. NATIONAL AML/CFT POLICIES AND COORDINATION	37
Key Findings and Recommended Actions	37
Immediate Outcome 1 (Risk, Policy, and Coordination).....	39
Chapter 3. LEGAL SYSTEM AND OPERATIONAL ISSUES	53
Key Findings and Recommended Actions	53
Immediate Outcome 6 (Financial Intelligence ML/TF)	61
Immediate Outcome 7 (ML investigation and prosecution).....	78
Immediate Outcome 8 (Confiscation)	106
Chapter 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION	127
Key Findings and Recommended Actions	127
Immediate Outcome 9 (TF investigation and prosecution)	134
Immediate Outcome 10 (TF preventive measures and financial sanctions)	146
Immediate Outcome 11 (PF financial sanctions).....	157
Chapter 5. PREVENTIVE MEASURES	165
Key Findings and Recommended Actions	165
Immediate Outcome 4 (Preventive Measures)	167
Chapter 6. SUPERVISION	187
Key Findings and Recommended Actions	187
Immediate Outcome 3 (Supervision).....	189
Chapter 7. LEGAL PERSONS AND ARRANGEMENTS	217
Key Findings and Recommended Actions	217
Immediate Outcome 5 (Legal Persons and Arrangements)	219
Chapter 8. INTERNATIONAL COOPERATION	233
Key Findings and Recommended Actions	233
Immediate Outcome 2 (International Cooperation).....	235

TECHNICAL COMPLIANCE	249
Recommendation 1 – Assessing risks and applying a risk-based approach	249
Recommendation 2 – National cooperation and coordination	251
Recommendation 3 - Money laundering offence	253
Recommendation 4 - Confiscation and provisional measures	255
Recommendation 5 - Terrorist financing offence.....	259
Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing	264
Recommendation 7 – Targeted financial sanctions related to proliferation	273
Recommendation 8 – Non-profit organisations.....	277
Recommendation 9 – Financial institution secrecy laws	281
Recommendation 10 – Customer due diligence	282
Recommendation 11 – Record-keeping	287
Recommendation 12 – Politically exposed persons	288
Recommendation 13 – Correspondent banking.....	290
Recommendation 14 – Money or value transfer services (MVTs)	290
Recommendation 15 – New technologies	291
Recommendation 16 – Wire transfers	294
Recommendation 17 – Reliance on third parties	296
Recommendation 18 – Internal controls and foreign branches and subsidiaries	297
Recommendation 19 – Higher-risk countries	299
Recommendation 20 – Reporting of suspicious transactions	300
Recommendation 21 – Tipping-off and confidentiality	301
Recommendation 22 – DNFBPs: Customer due diligence.....	301
Recommendation 23 – DNFBPs: Other measures.....	303
Recommendation 24 – Transparency and beneficial ownership of legal persons	305
Recommendation 25 – Transparency and beneficial ownership of legal arrangements	310
Recommendation 26 – Regulation and supervision of financial institutions.....	311
Recommendation 27 – Powers of supervisors.....	314
Recommendation 28 – Regulation and supervision of DNFBPs	316
Recommendation 29 - Financial intelligence unit	317
Recommendation 30 – Responsibilities of law enforcement and investigative authorities	320
Recommendation 31 - Powers of law enforcement and investigative authorities	323
Recommendation 32 – Cash Couriers	326
Recommendation 33 – Statistics.....	330
Recommendation 34 – Guidance and feedback.....	331
Recommendation 35 – Sanctions	332
Recommendation 36 – International instruments	333
Recommendation 37 - Mutual legal assistance	334
Recommendation 38 – Mutual legal assistance: freezing and confiscation.....	336
Recommendation 39 – Extradition	337
Recommendation 40 – Other forms of international cooperation	339
Summary of Technical Compliance – Key Deficiencies	345
Glossary of Acronyms	349

Executive Summary

1. This report summarises the AML/CFT measures in place in Brazil as at the date of the on-site visit, 13-31 March 2023. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Brazil's AML/CFT system, and provides recommendations on how the system could be strengthened.

Key Findings

- a) Brazil has a strong domestic coordination mechanism to address risks from money laundering, ENCCLA. Brazil has built a legal and structural framework largely enabling competent authorities to prevent and combat ML. More recently, Brazil has also improved its framework to fight terrorist financing (TF) by passing legislation criminalising the offence and enabling implementation of targeted financial sanctions (TFS). Informed by the long-standing coordination within ENCCLA and a National Risk Assessment conducted in 2021, authorities have shared a robust understanding of national ML threats, namely, corruption, drug trafficking and organised crime, environmental crimes, and tax crimes. There is a precise understanding of the ML risks and vulnerabilities linked to most threats—including informal and illicit value transfers, misuse of cash, and front companies—however, there is a lack of depth in the understanding of financial flows linked to environmental crimes.
- b) Through ENCCLA, since 2003, Brazil has developed and refined policies to tackle many of its higher ML risks, particularly those stemming from corruption. Brazil has taken many steps to address other higher risk areas, however, these actions are taken without longer-term, comprehensive strategies, which results in occasional disjointed efforts and misalignment of objectives and priorities (such as ML from environmental crimes where interagency cooperation is growing but limited, and where some key

authorities lack sufficient resources). At times, structural issues inhibit effective coordination in combatting ML/TF, including cooperation between police and prosecution offices and resources to handle the complex criminal justice system. In addition, the tax authority (RFB) has a central role in the AML/CFT system given that it controls access to many pieces of relevant information, but legal obstacles frustrate its full ability to assist other authorities in tackling ML/TF and its own AML/CFT activities are not adequately prioritised.

- c) Brazil has successfully prosecuted high-end cases of ML, including from corruption, reflecting the capacity to conduct financial investigations and the development of supportive institutional structures. Despite important successes, there is a mismatch between the investigative input and the results seen in terms of prosecutions and convictions. Structural issues have a major impact. Among other things, ML proceedings take too long due to appeals and when convictions are obtained, sometimes a decade or more after charges, and the sanctioning regime needs major improvements. Criminal assets are generally identified and temporarily seized, and in some major cases Brazil was able to recuperate large sums of criminal money; however, there was not sufficient evidence of final confiscation and asset recovery is mainly accomplished through agreements. While there is high-level commitment to fighting ML/TF, the resources available to competent authorities are largely insufficient, particularly those of COAF and prosecutors. Lack of resources hinders the production of deeper financial intelligence to identify a larger number of complex ML schemes and frustrate efforts to trace criminal financial networks.
- d) Brazil is committed to fighting terrorism and terrorist financing and has an improving understanding of its TF risks including those stemming from far-right extremism. While it has expertise to investigate TF activity, the legal framework in place and the corresponding view of the authorities hinder successful prosecutions. The authorities are not always well coordinated to identify, prosecute, or prevent TF. The framework to implement targeted financial sanctions without delay for TF and proliferation financing is in place, although it remains largely untested at the time of the onsite visit as no designations had been made by Brazil and no funds or assets were frozen. Sanctions implementation by the private sector is improving particularly in the financial sector, thanks to the supervisory activity of the Central Bank of Brazil (BCB), and more slowly in other sectors. There is a lack of interagency coordination on issues related to the financing of proliferation and guidance is needed for the private sector. NPOs are not yet subject to risk-based measures specifically to prevent TF.
- e) As a major regional and global economy, Brazil has a large and diverse universe of financial and non-financial sectors with increasing sophistication. BCB is the key supervisor for the most material financial institutions and its long-standing risk-based activities have contributed to significantly improve the ability of financial institutions to detect and prevent ML and TF, particularly the largest ones. With few exceptions, other supervisors have not been able yet to take sufficient measures to ensure sufficient implementation of the AML/CFT framework. At the time of the

on-site visit, some activities remained unregulated, notably those of lawyers and virtual asset service providers, leaving serious vulnerabilities.

- f) The misuse of companies is a feature in many ML schemes and Brazil has been able to detect abusers in many cases by using the information available through REDESIM to map out the company structure. Brazil has also created a requirement for companies to provide beneficial ownership (BO) information to RFB, however, this database is largely unpopulated. Moreover, declaratory BO information is considered by law to be “tax secret,” which means that LEAs need to request a court order to obtain it and that COAF and other administrative authorities (including those involved in the fight against corruption) cannot access it for their analysis.
- g) Brazil generally cooperates well in ML/TF areas with its international partners. As many ML schemes include the sending of money abroad, LEAs and COAF are very proactive in seeking assistance to obtain information and restrain criminal assets. As a major financial centre, Brazil also receives requests for cooperation from abroad, and competent authorities provide high quality assistance, with some improvements needed in extradition and the speed of responses.

Risks and General Situation

2. The Federal Republic of Brazil is the most populous country in South America. Brazil is the world’s 11th economy in the world by nominal gross domestic product (GDP), and the largest in South America. The economy is characterized by large agricultural, mining, manufacturing, and service sectors. Brazil faces significant ML risks, mainly stemming from domestic threats being laundered within the country or abroad. The main techniques to perpetrate ML can be quite sophisticated and often include international transactions: informal international transfers of funds (*dólar cabo*) and illegal exchangers (*doleiros*), trade-based money laundering, the involvement of professionals to use front companies and frontmen, abuse of the regulated financial sector, real estate, and more recently virtual assets. The informal economy is significant and represents a vulnerability. Brazil has the largest banking and securities sectors in South America, and the importance of Brazil as an international economic and financial centre may expose the country to various cross-border threats. The porosity of the borders aggravates the vulnerability to cross-border crimes.

3. The risks for TF are relatively low. The authorities have identified little evidence of supporters of terrorist groups and individuals recognised by the country (Al-Qaida, ISIL, listed Taliban individuals), as well as little evidence to finance the activities of these persons. There have been suspicions of activities conducted by groups recognised by other countries as terrorist within Brazil. The risk of terrorist financing involving far-right radical groups is on the rise.

Overall Level of Compliance and Effectiveness

4. Regarding technical compliance with the FATF Standards, Brazil has mostly positive results and has improved since its last assessment in 2010. On the effectiveness of its AML/CFT system, Brazil has strong international cooperation. Risk

assessment and policy coordination are well developed and have a long history, resulting in comprehensive policies and structures to mitigate ML from corruption and to recuperate illicit assets. Challenges with coordination and cooperation between some authorities, as well as structural issues in the prosecution of ML inhibit the ability to mitigate the ML risks from other crimes. Brazil seizes illicit proceeds moved abroad and recovers assets through agreements with corporations, but final confiscation results are not entirely in line with risk, with the notable exception of corruption. Supervision of most parts of the financial sector has been enhanced since the previous MER and is showing effective results. Supervision of DNFBPs however is still incipient and some sectors (e.g., lawyers and VASPs) are still unregulated for AML/CFT leaving serious vulnerabilities. Brazil employs a multi-prong approach to ensuring transparency of beneficial ownerships and preventing the misuse of legal persons for ML/TF, but not all prongs are strong. The legal framework to fight TF was established more recently after the 2010 MER and practical implementation is embedding.

Assessment of risk, coordination, and policy setting (Chapter 2; IO.1, R.1, 2, 33 & 34)

5. Brazil has developed a deep understanding of most of its ML risks informed by the ongoing work of its National Strategy to Combat Corruption and Money Laundering (ENCCLA), an interagency body that sets national AML/CFT policies. The understanding has been further enriched by the execution of the first National Risk Assessment (NRA) in 2021 and other studies. Risk understanding of the financial flows and ML techniques from environmental crimes is still developing. Brazil has a less developed understanding of its TF risks compared to its understanding of ML risks as evidenced by its TF NRA, which is largely based on known regional and international risk indicators and feedback from authorities.

6. Through the coordination work by ENCCLA, Brazil has adopted many policies to address the higher risk areas. While the strategies to fight corruption are quite comprehensive, the policies to mitigate other risks are comparatively less thorough, and ENCCLA's recommendations are not always adequately integrated into agencies' priorities or followed-up upon by individual agencies. Brazilian authorities demonstrate some ability to co-operate and co-ordinate at the policy and operational levels, particularly in ML stemming from corruption and organised crime, however some structural barriers continue to hinder optimised cohesion between the authorities.

Financial intelligence, ML investigations, prosecutions, and confiscation (Chapter 3; IO.6, 7, 8; R.1, 3, 4, 29–32)

7. Federal and state competent authorities regularly access and use financial intelligence to support their investigations on ML and predicate offences. Specialised units and coordinating mechanisms (LABs) across the country process and analyse financial intelligence received from COAF and from other databases, and significantly support the work of the LEAs. COAF is the primary source of financial intelligence, and it produces and shares financial intelligence reports (RIFs) spontaneously or upon request with a wide range of LEAs. The dissemination of RIFs by COAF is generally aligned with the country's risk profile, but there is a need for a substantive improvement in terms of provision of financial intelligence and analysis to address environmental crimes and related ML.

8. COAF has implemented a secure system that allows LEAs to request RIFs, and automated reports can be generated within 24-48 hours, which is a positive feature. COAF also has predictive IT tool for prioritising, processing, and analysing the STRs. However, there are certain limitations to the financial intelligence being produced. Even though LEAs broadly consider the report received from as satisfactory, factors such as the insufficient number of analysts within COAF as well as the limited access to appropriate BO information, cash declarations from Customs, and additional information from reporting entities affect the number and scope of spontaneous disseminations.

9. COAF receives a large volume of STRs and CTRs from reporting institutions but only a small ratio of STRs receive human analysis. COAF provides training to LEAs and has developed strategic intelligence, including studies on illegal gold mining, tactical RIFs on topics like human trafficking and electoral crimes, and other typologies. However, LEAs would benefit from more strategic intelligence, training, and disseminations from COAF. Regarding TF matters, there is some interaction between COAF and PF, but limited interaction with the ABIN.

10. Brazil investigates and prosecutes complex ML cases, especially related to its main predicate threat of corruption. Specialised units, LABs, and courts with subject matter expertise contribute to some impressive ML cases. However, the overall system for ML enforcement needs major improvement. The sources of identification of ML could be broader, and in some areas, there remains a focus on the predicate offence. There are several investigative obstacles, both structural in nature (e.g., frequent interlocutory appeals) and specific to ML (e.g., judicial authorisations required for financial information, without timeframes for response; coordination issues).

11. Investigations do not lead to an adequate number of prosecutions and final ML convictions are limited, and sometimes taking a decade or longer to achieve. A range of sanctions for ML is not utilised and are not routinely effective. The cases pursued are only partially in line with Brazil's risks, with pursuit of ML linked to corruption a strength, but weaknesses in the pursuit of ML related to environmental crime, tax crime, and to some extent drug trafficking. Third-party ML is combatted through operations against doleiros, but other enablers, such as lawyers, are not targeted. While the lack of convictions is mitigated to a small extent by plea agreements and non-trial resolutions in the corruption area, ML statistics are not comprehensive and case examples, with some exception, confirm the excessive length of proceedings and difficulty in regularly obtaining successful outcomes.

12. Regarding asset recovery, there is a deficit of comprehensive data and statistics on confiscation outcomes and as well as a lack of recent and concluded cases. Brazil is achieving the outcome of confiscating the proceeds and instrumentalities of crime to some extent. The use of provisional measures is widespread and there is a concerted policy priority placed upon confiscation, as seen by the expansion of the legal tools in recent years. Few results are seen the confiscation of assets linked to foreign predicate offences, but Brazil diligently pursues the proceeds of crime moved abroad through requests for restraint, confiscation, and repatriation. The confiscation of falsely or non-declared currency is minimal.

13. Brazil is taking a holistic and practical approach to recovering billions of dollars in assets linked to corruption, which is one of Brazil's major risk areas and top generators of criminal proceeds. But the consistency of Brazil's confiscation achievements in other areas has not been demonstrated and appear not to fully align

with Brazil's risks, especially for environmental crime, drug trafficking and organised crime, and tax and financial fraud.

Terrorist and proliferation financing (Chapter 4; IO.9, 10, 11; R. 1, 4, 5–8, 30, 31 & 39.)

14. Major improvements are needed in the system to effectively combat the financing of terrorism. Some authorities have a narrow view of the TF offence and shortcomings in the law have had a practical effect in that certain activity which could or should have been considered TF has not been. There are investigations related to the emerging risk area of TF connected to right-wing or other ideologically motivated extremism, but legal obstacles have so far prevented the pursuit of the TF offence. The Federal Police monitor threats and take a broader view of TF beyond a few designated groups. There have been no TF cases prosecuted out of nearly 70 TF inquiries and investigations. There have been terrorism-related convictions and investigations, and persons linked to both internationally-recognised terrorist groups and groups designated by other countries have had some presence in and connections to Brazil. Potential TF cases are identified through existing counterterrorism cases and information from foreign partners. Financial intelligence is swiftly verified, but is of limited utility. In one TF case, coordination between authorities was lacking and resulted in prosecutors declining to charge TF in a relatively clear case. There is an overemphasis by LEAs on the need for a direct link to terrorism, and there is room to improve the identification of indirect TF, including through outward international cooperation and further information sharing between ABIN and LEAs. While financial investigations are conducted when the opportunity arises, Brazil is not pursuing TF entirely in line with its risk, and has not used TF as a pillar of larger counterterrorism strategies.

15. Regarding targeted financial sanctions (TFS) linked to TF, Brazil has neither proposed any individuals or entities for designation to the relevant UN committees nor undertaken designations on its own initiative. No assets have been identified or frozen according to UN sanctions regimes during the period under review, nor deprived in any criminal, administrative, or other process. Technical shortcomings persist even though Brazil introduced an improved legal framework (which also applicable to TFS linked to counter-proliferation financing). Brazil had not actioned any requests for designation from third-countries as of the date of the on-site visit.

16. Brazil—at least with respect to entities supervised by BCB—appears to be in a position now to implement UNSCRs without delay, although this was not the case earlier in the period under assessment. A close-match, false positive case set the relevant process into motion in mid-2022 and did not demonstrate the timeliness or maturity of the system. However, efforts by BCB before and after this event have improved the understanding of and compliance with TFS obligations among financial institutions, as shown by inspection results which lead to many deficiencies being remediated, plus newer examples of quickly resolved false positives. Implementation of requirements by DNFBPs is nascent and not yet subject to supervision. Brazil does not have a clear policy mechanism in place to consider the use of domestic designations, and there are legal and operational obstacles to considering the use of TFS as a preventative tool outside of the context of criminal investigations.

17. Brazil is implementing TFS related to countering the financing of proliferation. However, it lacks domestic coordination and cooperation on PF. For example, while there is a well-established export control regime, relevant authorities do not have a sufficient level of knowledge as to the financing of proliferation or evasion techniques.

The financial sector has a basic understanding of the UN sanctions, but awareness-raising, guidance, and additional thematic supervision are needed. Implementation of requirements by DNFBPs is nascent and not yet subject to supervision, and there was some conflation of various lists and little distinct awareness of PF as a topic. Due to Brazil's trade ties and financial links to Iran (and less so to DPRK), the private sector requires education as to Brazil's exposure and should be alerted to red-flags and typologies on concealment of illicit activity within non-sanctioned activity. TFS coverage does not extend to VASPs.

18. In 2022, Brazil completed a risk assessment identifying the legal types and characteristics of NPOs which may be vulnerable to TF abuse. However, although the overall risk to NPOs was considered to be low, this has not yet generated an understanding of which specific NPOs are at risk in Brazil. Targeted outreach to the sector on TF has only just begun. NPOs are regulated for transparency and good governance, but focused and proportionate CFT measures have not yet been applied to NPOs in accordance with a risk-based approach; accordingly, there is not yet supervision for CFT. The NPO sector is not fully sensitised to its potential for TF misuse, and conversely, the financial sector treats risks linked to NPOs as quite high. Any measures applied by Brazil stemming from its risk assessment, and further engagement with the sector, should be attuned to issues of financial inclusion and de-risking, in light of some obstacles already faced by NPOs.

Preventive measures (Chapter 5; IO.4; R.9–23)

19. Brazil has diverse financial and DNFBP sectors operating in a financial centre of regional and global significance. All regulated FI's and DNFBP's apply the main preventive measures and hold a reasonable understanding of their ML/TF risks as well as the required mitigating measures. The risk understanding varies among entities with larger FIs and some sectors of the DNFBPs being more proficient than others where AML/CFT regulations are still at a nascent stage.

20. The most significant FIs confirmed challenges to comply with BO and PEP requirements persist and admitted de-risking is often the selected approach. The use of mechanisms of sharing information at a group-wide level is somewhat restricted by data sharing regulations and/or some lack of understanding of applicable regulations.

21. The securities sector demonstrates some vulnerabilities consistent with the deficiencies identified at the supervisory level but nonetheless succeeded in demonstrating awareness of the most relevant AML/CFT requirements.

22. With the exception of lawyers and TCSPs that are not aware of ML/TF risks and do not enforce AML/CFT requirements, the remaining DNFBP sectors demonstrate an uneven implementation of CDD and other requirements, mostly justified by the fragmented nature of the sectors and the difficulties in harmonising approaches across mostly small to medium operators.

23. Overall, both FIs and the DNFBPs sectors practice the submission of STRs to the FIU with the financial sector illustrating the best practices and the DNFBP sector confirming the need to further develop its understanding of how and when to communicate suspicious transactions. In general, all obliged entities (with the exception of large BCB supervised FIs) confirm the need for additional guidance from supervisors and regulators.

Supervision (Chapter 6; IO.3; R.14, R.26–28, 34, 35)

24. Most relevant FIs and DNFBPs are regulated and supervised for AML/CFT purposes. As regards VASPs, the country has enacted relevant legislation and pre-empted some of the significant ML/TF risks, despite the fact that the sector was not regulated at the time of the onsite.

25. Whilst the legal profession is included in the relevant legal framework, an important gap in the sector's regulations has meant that it remains unsupervised and unable to demonstrate compliance with the AML/CFT requirements. Similarly, while some activities of company service providers are included in the relevant legislation, the country does not regulate or supervise the sector leading to uncertainty regarding the enforcement and effectiveness of the applicable requirements.

26. BCB develops an adequate and mostly effective supervision which reflects the identified ML/TF risks. Its supervisory actions are based on the available resources but also guided by an evolving and complex risk framework, as well as constant contact with supervised entities. CVM's supervision is less focused on the national ML/TF risks but challenges that could be identified are somewhat mitigated by the impact of BCB shared supervision.

27. Despite the limited use of sanctioning procedures by supervisors, the levels of compliance by financial institutions are consistent with the countries identified ML/TF risks and engagement with obliged entities is frequent, at least in the case of BCB.

28. The DNFBP sectors are generally well supervised in line with known risks, however there is a lack of understanding of the specific nature of the various sectors and the ways in which this should impact both supervision efforts and the implementation of the AML/CFT framework. Broadly, supervisors continue to develop the basic understanding and awareness of AML/CFT requirements, as well as form and guide its obliged entities to the submission of higher quality communications (STRs) to the FIU.

29. In some DNFBP sectors, namely as regards the DPMS sector, the supervisory framework is more fragmented and there is an obvious lack of proportionate and dissuasive sanctions.

Transparency and beneficial ownership (Chapter 7; IO.5; R.24, 25)

30. Brazil follows a multi-pronged approach to the collection and identification of beneficial ownership information. The main instrument, which functions as a centralized database, is the CNPJ registry of legal persons, which includes information on all companies operating in Brazil. Authorities also use other databases (such as the bank account register – CCS – and the register of notarial acts – CENSEC) to corroborate information on companies. Brazilian authorities demonstrated the ability and practice to cooperate internally and with international counterparts for the purposes of transparency and beneficial ownership.

31. The CNPJ database, in conjunction with other available sources of information, allows competent authorities, including the FIU, to access basic information automatically and, usually, to obtain beneficial ownership information in a timely manner. Brazil maintains a platform – REDESIM – which integrates the different sources of BO information and ensures the integrity of data. Initial verifications occur at registration level (either through notaries or digital certifications instruments) and

information is subsequently updated and verified whenever any changes to the information occur. RFB furthermore ensures the integrity of the registration data by monitoring the usage and status of the CNPJ and CPF numbers.

32. Legal persons registered in CNPJ must also declare beneficial ownership information to the RFB although the majority of companies operating in Brazil are exempted without taking a risk-based approach, and in practice the BO information is not systematically declared. There are significant concerns with the ability of authorities to obtain BO information on joint stock companies and foreign companies.

33. Declaratory BO information held by RFB is subject to tax secrecy, not included in the data made available by CNPJ and only accessible by other competent authorities via a court order or in the context of shared investigations with RFB, which may not always ensure timeliness.

34. Despite some recent efforts by RFB to ensure the integrity of the CNPJ database, as well as ensure the updating of its own beneficial ownership records, in practice sanctions are not sufficiently dissuasive and often not proportionate.

International cooperation (Chapter 8; IO.2; R.36–40)

35. Brazil receives numerous requests for MLA from various countries and generally responds in a constructive and timely manner. Brazil also engages in extradition upon request and is party to multiple extradition agreements. While the extradition provided is generally constructive, the procedures are not entirely clear, and there have been instances of delay. Brazil actively seeks MLA to combat ML and related offenses, and generally the requests appear to be aligned with the main threats. The country also participates in joint investigative teams with foreign counterparts, particularly neighbouring countries in the Southern Cone. Successful repatriation of assets, especially in cases of high-scale corruption, has been achieved.

36. LEAs in Brazil seek various forms of international cooperation, including asset identification and freezing. However, there is room for improvement in enhancing outgoing international cooperation, especially in high-risk areas such as environmental crimes. The MPF participates in informal networks like IBERRED, AIAMP, and RRAG, while the Federal Police exchanges information through Interpol, Ameripol, and Europol channels. COAF cooperates in a timely and constructive manner with foreign FIUs, ensuring the confidentiality of exchanged information. COAF actively seeks cooperation from its counterparts, although there is room for improvement in the number and alignment of requests with the country's risk profile. Financial supervisors and other competent authorities have signed MoUs with foreign counterparts and exchange information in the framework of their functions.

37. While Brazil has an accessible online system containing basic information about legal persons, weaknesses in the access to adequate declaratory BO information limit the country's ability to provide accurate and updated BO information to foreign counterparts.

Priority Actions

- a) Brazil should deepen its national policy and operational coordination efforts to better address and mitigate the identified ML/TF risks, and integrate CPF in these efforts. Brazil should build on existing ENCCLA actions to develop holistic, multi-year, comprehensive strategies to address the identified highest ML/TF risks, particularly to address the main vulnerabilities (access to accurate beneficial ownership information) and threats (environmental crime, organised crime, and drug trafficking). Brazil should empower existing structures or create a mechanism to ensure competent authorities are held accountable for the implementation of the national AML/CFT priorities.
- b) Brazil should reform the legal and operational framework to ensure transparency of legal persons created in Brazil and to ensure timely access to beneficial ownership information by all competent authorities. To do so:
 - i. Brazil should improve the knowledge and understanding of the concept of BO by competent authorities and regulated entities.
 - ii. Brazil should ensure that exemptions to declare BO information to RFB are risk-based and reviewed periodically.
 - iii. RFB should significantly enhance the mechanisms to ensure that basic and BO information is complete, accurate, and up-to-date, and should apply sanctions in cases of non-compliance.
 - iv. RFB should be given sufficient IT and human resources to allow for the constant monitoring and updating of the CNPJ and RFB databases.
 - v. Brazil should also ensure that competent authorities can access BO information in a timely manner for both intelligence and investigative purposes, including by re-examining the extent to which declaratory BO information should be protected by tax secrecy.
- c) Brazil should significantly increase the number of staff in COAF so that it can increase the number of STRs analysed in more depth and increase the spontaneous dissemination of RIFs, ensuring their full consistency with the risk profile of the country. COAF should also continue to improve the depth of the RIFs, to ensure they include comprehensive information on all possible targets and criminal assets, which should entail, as appropriate, requesting additional information from reporting entities.
- d) Brazil should remove the structural barriers that hinder cohesion between the authorities in the fight against ML/TF, in particular, by putting in place structures and policies to improve cooperation between LEAs and prosecutorial authorities, as well as further integrating the tax authority, RFB, into the AML/CFT system so that it can prioritise relevant parts of its mission and assist other competent authorities.
- e) To increase success in ML prosecution, Brazil should improve cooperation between police and prosecutors, as well as among prosecutors and the RFB and bodies focused on corruption (AGU, CGU), focusing on early communication, and reaching agreement on case strategies. It should ensure

adequate resourcing among prosecutorial authorities and continue development of specialised courts.

- f) Barriers to effective ML detection and investigation should be removed, and consideration should be given to broadening access to information protected by tax and bank secrecy for intelligence purposes, and ways to speed up the processing of judicial requests to lift such secrecy. To reduce the length of ML cases, which hinders the prospects of a final conviction, Brazil should examine ways to limit the misuse of interlocutory appeals.
- g) Brazil should enforce effective sanctions for ML, ensuring that a full range of penalties are used and applied in practice. In conjunction, Brazil should consider whether corporate criminal liability could be established for ML and TF.
- h) Brazil should enhance the use of ML as a tool to weaken organised criminal groups, including major drug trafficking organisations in Brazil. Brazil should improve its understanding of the financial aspects of environmental crime and craft a multi-agency enforcement strategy that prioritises ML investigations and prosecutions, in line with Brazil's risks. Relatedly, Brazil should expand asset recovery efforts to pursue the ill-gotten gains of major actors profiting from illegal mining of metals and stones and other environmental crimes, including when proceeds are transferred abroad.
- i) Brazil should improve its systematic and centralised collection of comprehensive state and federal statistics related to money laundering and confiscation and take appropriate policy actions to increase money laundering prosecutions and criminal confiscation outcomes. Asset management practices should be further reinforced, with consideration given to lessening the reliance on individual judges.
- j) Brazil should thoroughly consider terrorist financing charges in all appropriate cases, taking a broad view of the TF offence, the country's risk and context (including emerging risk areas), and a concept of terrorist financing which is not limited only to designated terrorist groups or direct financing. The authorities should take a more proactive approach to the use of targeted financial sanctions as a preventative tool, including to give effect to the requests of other countries, and enhance supervision of sanctions obligations beyond financial institutions.
- k) Brazil should bring lawyers and legal professionals, VASPs, and all persons providing services to companies and legal arrangements into its AML/CFT framework, in line with the FATF Standards. Supervision of all DNFBPs, particularly DPMS, should be significantly enhanced.
- l) In the securities sector, CVM should ensure that its AML/CFT supervisory actions are properly staffed and performed with adequate coverage and on a risk-sensitive basis, paying particular attention to entities that are not subject to Central Bank (BCB) shared supervision (fund managers and certain asset managers).
- m) BCB and CVM should increase administrative proceedings related to AML/CFT breaches, as well as the dissuasiveness of pecuniary sanctions,

taking full advantage of the new legal framework on sanctioning and going beyond the Settlement Agreements already in use by BCB, as warranted.

Effectiveness & Technical Compliance Ratings

Table 1. Effectiveness Ratings

IO.1 - Risk, policy and co-ordination	IO.2 - International co-operation	IO.3 - Supervision	IO.4 - Preventive measures	IO.5 - Legal persons and arrangements	IO.6 - Financial intelligence
Substantial	Substantial	Moderate	Moderate	Moderate	Moderate
IO.7 - ML investigation & prosecution	IO.8 - Confiscation	IO.9 - TF investigation & prosecution	IO.10 - TF preventive measures & financial sanctions	IO.11 - PF financial sanctions	
Moderate	Moderate	Moderate	Moderate	Moderate	

Note: Effectiveness ratings can be either a High- HE, Substantial- SE, Moderate- ME, or Low – LE, level of effectiveness.

Table 2. Technical Compliance Ratings

R.1 - assessing risk & applying risk-based approach	R.2 - national co-operation and co-ordination	R.3 - money laundering offence	R.4 - confiscation & provisional measures	R.5 - terrorist financing offence	R.6 - targeted financial sanctions – terrorism & terrorist financing
LC	LC	LC	LC	PC	PC
R.7 - targeted financial sanctions - proliferation	R.8 - non-profit organisations	R.9 – financial institution secrecy laws	R.10 – Customer due diligence	R.11 – Record keeping	R.12 – Politically exposed persons
LC	PC	C	LC	C	LC
R.13 – Correspondent banking	R.14 – Money or value transfer services	R.15 –New technologies	R.16 –Wire transfers	R.17 – Reliance on third parties	R.18 – Internal controls and foreign branches and subsidiaries
C	C	PC	C	LC	LC
R.19 – Higher-risk countries	R.20 – Reporting of suspicious transactions	R.21 – Tipping-off and confidentiality	R.22 - DNFBPs: Customer due diligence	R.23 – DNFBPs: Other measures	R.24 – Transparency & BO of legal persons
PC	LC	C	PC	PC	PC
R.25 - Transparency & BO of legal arrangements	R.26 – Regulation and supervision of financial institutions	R.27 – Powers of supervision	R.28 – Regulation and supervision of DNFBPs	R.29 – Financial intelligence units	R.30 – Responsibilities of law enforcement and investigative authorities
PC	LC	C	PC	C	C
R.31 – Powers of law enforcement and investigative authorities	R.32 – Cash couriers	R.33 – Statistics	R.34 – Guidance and feedback	R.35 – Sanctions	R.36 – International instruments
C	PC	LC	LC	LC	LC
R.37 – Mutual legal assistance	R.38 – Mutual legal assistance: freezing and confiscation	R.39 – Extradition	R.40 – Other forms of international co-operation		
LC	LC	LC	LC		

Note: Technical compliance ratings can be either a C – compliant, LC – largely compliant, PC – partially compliant or NC – non compliant.

MUTUAL EVALUATION REPORT OF BRAZIL

Preface

This report summarises the AML/CFT measures in place in Brazil as of the date of the on-site visit (13-31 March 2023). It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of the AML/CFT system, and recommends how the system could be strengthened.

This evaluation was based on the 2012 FATF Recommendations, and was prepared using the 2013 Methodology. The evaluation was based on information provided by the country, and information obtained by the assessment team during its on-site visit.

The evaluation was conducted by an assessment team consisting of financial, legal, and law enforcement experts, including:

- Mads Godballe, Police Service, Denmark (terrorist financing and sanctions)
- Patrick Hu, Department of the Treasury, United States (risk and supervision)
- Fanny Huboux, Judge of the Tribunal of Paris, France (legal and law enforcement)
- Daniela Linzer, Ministry of Finance, Austria (financial intelligence and beneficial ownership)
- Gonçalo Miranda, Central Bank, Portugal (supervision)
- Nestor Daniel Robledo, Central Bank, Argentina (financial)

The assessment team was supported by Francesco Positano, Marybeth Grunstra, and Inês Oliveira from the FATF Secretariat and Juan Cruz Ponce from the GAFILAT Secretariat. The report was reviewed by IMF, Aníbal Martínez Troncoso (UAF – Chile), and Francesca Picardi (Ministry of Economy and Finance – Italy). Crina Ebanks, formerly of the U.S. Treasury served as an assessor from August to February 2022.

Brazil previously underwent a FATF Mutual Evaluation in 2010, conducted according to the 2004 FATF Methodology. The 2010 evaluation has been published and is available at [Mutual Evaluation Report of Brazil](#).

That Mutual Evaluation concluded that the country was compliant with 3 Recommendations; largely compliant with 21; partially compliant with 16; and non-compliant with 7 (2 Recommendations were deemed not applicable). Brazil was rated compliant or largely compliant with 3 of the 16 Core and 4 of the Key Recommendations.

Brazil was placed under enhanced follow-up after the adoption of its 2010 Mutual Evaluation Report (MER). The FATF issued a public statement about the then-remaining deficiencies related to terrorism financing (TF) in February 2016, noting that Brazil had not criminalised TF, per the findings of its 2004 MER and 2010 MER. In October 2016, FATF issued a statement welcoming Brazil's enactment of

Law No. 13260 establishing a TF offence. As to targeted financial sanctions related to terrorist financing, the FATF issued public statements in June 2016, October 2016, February 2017, June 2017, November 2017, and June 2018, reiterating its concerns over deficiencies in the framework for implementation of UN Security Council Resolutions. Certain steps under the FATF's follow-up procedures were applied to Brazil, including a consideration of Brazil's status as a member of the FATF. In February 2019, the FATF noted the passage of a sanctions law, and in June 2019, FATF noted the passage of a relevant decree. In October 2019, the FATF issued a final public statement related to Brazil stating that the follow-up process had concluded and that no further action would be considered, but also mentioning its concerns related to a Federal Supreme Court injunction limiting the use of financial intelligence (which has since been overturned).

Chapter 1. ML/TF RISKS AND CONTEXT

38. The Federal Republic of Brazil is the most populous country in South America (215 392 803 people, as of November 2022, including more than 800 000 Indigenous population). Brazil is the fifth largest country in the world with a total area of 8 511 965 km², including the islands of Arquipelago de Fernando de Noronha, Atol das Rocas, Ilha da Trindade, Ilhas Martin Vaz, and Penedos de São Pedro e São Paulo. It has the third largest land border in the world (over 15 000 km) bordering ten of twelve countries in South America. Brazil hosts the largest part of the Amazon rainforest, often situated in remote areas. Portuguese is the official language of the country, with Spanish and English widely spoken as second languages.

39. Brazil is a federal country, administratively divided into 26 states and one federal district. The Brazilian legal system is based on the civil legal tradition and is grounded in the current Federal Constitution which has been in force since 5 October 1988. Independence of the Executive, Legislature and the Judiciary is guaranteed under the Constitution. The head of the Executive branch is the President of the Republic, who is both the head of state and the head of government. The Legislative branch is bicameral and consists of the Federal Senate and the Chamber of Deputies.

40. The Judiciary is headed by the Federal Supreme Court (STF), whose main function is to ensure compliance with the Constitution. Below STF is the Superior Court of Justice (STJ), responsible for making a uniform interpretation of federal legislation. At federal level there are common courts and special courts, namely the Labour Justice, the Electoral Justice and the Military Justice. The organization of State Justice, which includes special civil and criminal courts, is the responsibility of each of the 27 Brazilian states and the Federal District. As a rule, the processes originate in the first instance, and can be taken, through appeals, to the second instance, to the STJ (or other higher courts) and even to the STF, which gives the final word in judicial disputes in the country on constitutional issues. While federal authorities are mainly responsible for implementation of AML/CFT measures, the implementation of relevant measures across the states (by the federal authorities) and at the state level are necessary elements of an effective, national AML/CFT/CPF system.

41. Brazil is the world's 11th economy in the world by nominal gross domestic product (GDP), and the largest in South America. In Brazil's 2022 GDP is about USD 1.92 trillion,¹ with a GDP per capita of USD 9 917. The economy is characterized by large agricultural, mining, manufacturing, and service sectors. The main natural resources are bauxite, gold, iron ore, manganese, nickel, phosphates, platinum, tin, uranium, petroleum, hydropower and timber. Brazil's labour force is 108,73 million people, 71% of whom are employed in the services sector. There are four free trade zones in Brazil – Manaus in the State of Amazonas; Tabatinga bordering Colombia in the State of Amazonas; Macapá/Santana in the State of Amapá; and Guajaramirim bordering Bolivia in the State of Rondônia – the regulation in Free Trade Zones does

¹ See <https://data.worldbank.org/country/BR>. Consulted September 2023.

not impact the implementation of the FATF Standards in these areas. The currency in Brazil is the Brazilian Real (Reais) (BRL).²

ML/TF Risks and Scoping of Higher Risk Issues

Overview of ML/TF Risks

42. Brazil faces significant ML risks, mainly stemming from domestic threats being laundered within the country or abroad. The main techniques to perpetrate ML can be quite sophisticated and often include international transactions: informal international transfers of funds (*dólar cabo*) and illegal exchangers (*doleiros*), trade-based money-laundering, the involvement of professionals to use front companies and frontmen, abuse of the regulated financial sector, real estate, and more recently virtual assets. The informal economy is significant and represents a vulnerability.³ Brazil has the largest banking and securities sectors in South America, and the importance of Brazil as an international economic and financial centre may expose the country to various cross-border threats. The porosity of the borders aggravates the vulnerability to cross-border crimes.

43. The risks for TF are relatively low. The authorities have identified little evidence of supporters of terrorist groups and individuals recognised by the country (Al-Qaida, ISIL, listed Taliban individuals), as well as little evidence to finance the activities of these persons. There have been suspicions of activities conducted by groups recognised by other countries as terrorist within Brazil. The risk of terrorist financing involving far-right radical groups is on the rise.

Country's Risk Assessment & Scoping of Higher Risk Issues

44. Brazil's first National Risk Assessment was completed in May 2021, and an Executive Summary has been published.⁴ The main domestic ML threats are corruption, the presence of powerful criminal syndicates (often involved in drug trafficking), environmental crime (dispossession of land for timber and mining), and tax evasion. TF risk is considered low. The NRA was drafted by a Working Group for the National Risk Assessment (WGNRA), comprising representatives from COAF, BCB, and MJSP, and using an internal methodology. The findings appear reasonable, and the report confirms most of the well-known threats to the country as the main areas of concern and consequence to the shaping of the AML framework. The NRA conclusions on TF are less developed and somewhat more reliant on a theoretical risk framework, nevertheless the country demonstrates a confident understanding of the terrorist threat and its impact on the financial integrity. Overall, the NRA offers a comprehensive picture of the risks and vulnerabilities faced by the country in tandem with the potential for mitigation and good understanding of the resilience of domestic institutions, in particular, of the financial system.

45. In deciding the issues to prioritise for increased focus, the assessors reviewed the material provided by Brazil on their national ML/TF risks, inputs provided by international partners, and information from reliable third-party sources (e.g.,

² USD 1 = BRL 5.29, as of 29 November 2022.

³ See NRA, page 81: 46% of labour force is informal. oecd.org/ctp/tax-global/An%20Estimation%20of%20the%20Underground%20Economy%20in%20Brazil.pdf; and world.economics.com/National-Statistics/Informal-Economy/Brazil.aspx

⁴ www.gov.br/coaf/pt-br/centrais-de-conteudo/publicacoes/avaliacao-nacional-de-riscos/4-1_executive-summary-national-risk-assessment_ing.pdf

reports of other international organisations and NGOs). The assessment team focused on the following priority issues which are broadly consistent with those identified in the NRA.

46. **Corruption:** The NRA considers corruption to be the most serious threat facing the country, not only in terms of generating illicit proceeds, but in facilitating other predicate crimes. The time period under assessment in Brazil has been marked by major corruption scandals involving state-owned companies, entities with large public procurement, prominent entrepreneurs and politicians. This significant predicate activity (encompassing bribery, misappropriation, embezzlement, kickbacks, bid-rigging, and other crimes against the public administration) is not confined to the recent grand corruption cases.

47. **Organised Crime and Drug Trafficking:** Brazil's criminal environment is characterised by powerful, pervasive, and violent organised criminal groups (e.g., Primeiro Comando da Capital, known as PCC, and Comando Vermelho, known as CV), with regional and some international links and powerful penetration in some urban areas. Core income for criminal groups comes from various types of trafficking activities (drugs, human, weapons) and other activities including illegal mining and logging. According to the NRA, drug trafficking is the most common predicate offence for ML.

48. **Environmental Crime:** The assessors consider environmental crime (including the illegal extraction of natural and mineral resources) and wildlife trafficking as very important for the laundering of illicit proceeds. This is based on the large amounts of estimated illegal mining activity, as well as the impact that illegal mining and illegal logging has on local communities, deforestation, and climate change. As of 2018, Brazil was the second largest supplier of coloured gemstones, the twelfth largest producer of gold, and is responsible for USD 3 billion in exports in this sector. As to the extractive sector, it is characterised by multinational companies, as well as medium companies and "artisans" whose small operations tend to exploit legally protected land. Dealers in precious metals and stones (DPMS) are not yet fully regulated for AML/CFT at all stages of the supply chain, or have just been regulated,⁵ and the use of cash in the sector present vulnerabilities.

49. **The Tri-Border Area:** The assessment team focused on the convergence of multiple ML and TF risks in the Tri-Border Area (TBA), the physical intersection of Brazil (Foz do Iguaçu), Argentina (Puerto Iguazu), and Paraguay (Ciudad del Este). This border region is recognised throughout Brazil's NRA as an area of risk for criminal activities, including ML and TF, reported to be under constant monitoring. The TBA is a complex area with a large immigration community and a key point of continental and international trade and transport,⁶ and commerce, with ties to potential higher-risk regions for terrorism financing and the financing of proliferation of weapons of mass destruction. Several money laundering typologies also play out in the TBA,⁷ posing a wider risk to the country, including unlicensed currency exchange

⁵ NRA, page 67. The National Mining Agency has published regulations in March 2023, bringing the licensing and supervision of DPMS under its responsibility, previous held by COAF.

⁶ The bridge between Foz do Iguaçu and Ciudad del Este is crossed by more than 15 000 vehicles and 40 000 people every day according to INTERPOL, which recently coordinated an operation targeting organised criminal networks in the TBA with the assistance of authorities from all three countries. Press Release, INTERPOL, 7 Dec. 2022, available at www.interpol.int/ar/1/1/2016/Organized-crime-networks-targeted-in-INTERPOL-coordinated-operation-in-Tri-Border-area.

⁷ NRA, pages 35-36.

and money/value transfer services, cash smuggling, transfers to high-risk jurisdictions, and trade-based money laundering (TBML).⁸

50. **Illicit financial flows (tax evasion and TBML) and beneficial ownership:** The NRA shows tax evasion and illicit flows deriving from misinvoicing can represent a significant percentage of the GDP close to USD 85 billion.⁹ Despite the challenges to obtain accurate estimates, overall, the damage to Brazil from the illegal market was estimated at BRL 290 billion in 2019 (USD 56 billion).¹⁰ Brazil not only struggles with illicit financial flows from their considerable informal economy, but also with issues deriving from trade-based money laundering and misinvoicing, as well as capital flight. The NRA mentions challenges to identify the ultimate beneficial owner as transverse to the relevant predicates and ML/TF risk identified in the different sectors,¹¹ which is even more difficult for complex legal structures. In addition, tax evasion, as a highly prevalent predicate, also historically scores low as regards trial and conviction efforts.

51. **Dólar cabo and doleiros:** The assessment team focused on this *hawala*-like system and the black-market dollar-dealers known as *doleiros* in Brazil. They play an integral role in ML networks and facilitate the laundering of a variety of criminal proceeds, to include substantial amounts of money originating from criminal activity.¹² The *dólar cabo* system entails illegal wire transfers or “mirror” or book trades based on trust. Money changers known as *doleiros* typically receive funds in-country (any currency, but usually reais), and provide the equivalent amount in foreign currency abroad without intermediation by a formal financial institution.

52. **Implementation of the preventive framework:** Banking and securities are the most material financial sectors. Lawyers and legal professions and company service providers are not fully covered by AML/CFT regulatory and/or supervisory umbrella but they play a role as intermediaries and gatekeepers. The NRA identified concerns regarding the volume of operations carried out in the real estate sector and regarding the vulnerability to ML/TF threats.

53. The following areas of lower risks were considered:

54. **Insurance Sector:** The NRA considered this sector’s vulnerability to ML/TF risks as low and whereas there is a considerable number of obliged entities in this context with some high-risk products identified, the sector accounts only for 3.76% of the GDP.¹³ Its nature and limited exposure to ML/TF risks and will not rank as an assessment team priority.

55. **Gambling:** The operation of casinos has been prohibited in Brazil since 1946 and even though citizens are able to take part in gambling activities online, the assessment team does not identify this activity as of particular relevance or risk to the effectiveness of AML/CFT in the country. There is only one supervised entity with a lottery licence, the Federal Savings Bank.

⁸ NRA, pages 49-50.

⁹ NRA, page 28.

¹⁰ NRA, page 37.

¹¹ NRA, page 23, 75, 82, et seq.

¹² NRA, page 20, 27.

¹³ NRA, page 62.

Materiality

56. Brazil is the largest economy in South America, and 11th in the world with GDP around USD 1.92 trillion. Brazil has the largest banking and securities sectors in South America, with banking assets in 2020 amounting to BRL 9.2 trillion (USD 1.8 trillion) and total regulated markets amounting to USD 4.85 trillion.¹⁴ Cash is still widely used for economic transactions, although important measures have been taken to increase financial inclusion, such as Pix, a popular peer-to-peer payment system developed by BCB. The informal economy is estimated at 17% of the economy, although other estimates indicates that the size of the informal economy may be up to 33%, which represents a vulnerability.¹⁵

57. Brazil's international trading is significant, with ties in every continent. In 2021, foreign trade represented 39% of the GDP, with exports amounting to USD 313 million (USD 280 million in goods and USD 33 million in services), and imports amounting to USD 284 million (USD 280 million in goods and USD 50 million in services).¹⁶ The main partners were China, United States of America, Argentina, Germany, the Netherlands, Chile, and India.

58. The financial sector is relatively large and complex, comprising both public and private institutions. In September 2021, there were 138 banks in Brazil with over 17,310 branches across the country and accounts valued at an estimated BRL 442 billion (USD 83.9 billion). Additionally, there were 1,169 credit co-operatives and non-bank financial institutions (NBFIs) with another 8,653 branches and accounts valued at an estimated BRL 79 billion (USD 15 billion).

59. VASPs were not regulated at the time of the onsite visit, and the NRA estimated approximately forty VA brokers operating in Brazil as of 2021.¹⁷ Sources indicate that the volume of bitcoin transactions per year in Brazil is up to USD 10 billion. This is materially small compared to larger sectors in the country, but Brazil still sees the largest VA trade in Latin America.¹⁸

60. The DNFBP sector has varying levels of relevance in Brazil. DPMS are very relevant as they play a role in all the chain of production and selling of gold and other precious minerals, which is a high risk in Brazil. Notaries are public officials who have a state-mandated role in property transactions and in the establishment of some legal persons. Real estate agents are involved in most real estate transactions, and according to the NRA, financial volume trades in the real estate sector are around BRL 600 billion per year (USD 114 billion), and around 10% of GDP in 2020. The NRA also cites figures from ANM estimating that illegal production of gold involves amounts around 15-20 tons of gold per year, with an estimated amount of BRL 5.5 billion (approx. USD 1.1 billion) with illegal mining of precious stones generating between BRL 500 million (approx. USD 100 million) and BRL 2 billion (approx. USD 400

¹⁴. See NRA, page 56; and gov.br/cvm/en/database-query/economic-report/cvm_economic_report_95.pdf/view.

¹⁵ See NRA, page 81: 46% of labour force is informal. oecd.org/ctp/tax-global/An%20Estimation%20of%20the%20Underground%20Economy%20in%20Brazil.pdf; and worldeconomics.com/National-Statistics/Informal-Economy/Brazil.aspx.

¹⁶ World Trade Organisation: www.wto.org/english/thewto_e/countries_e/brazil_e.htm#statistics.

¹⁷ Brazil has enacted legislation regulating the activities of VASPs (Law 14 478, of 21st December, 2022), however, the law entered into effect after the on-site visit (July 2023). While no regulatory or supervisory system was in place at the end of the onsite visit, Decree 11563 of 13th July appointed BCB as the competent authority to that end.

¹⁸ See NRA, page 64.

million) per year. Brazil is not a company formation centre, however, there has been a push to facilitate the incorporation of legitimate business activities. ML schemes have identified the use of professionals in company formation and management (which can involve at times complicit lawyers and accountants, as well as professionals providing consultancy services), and yet these activities are not systematically regulated and supervised for AML/CFT. Casinos are forbidden.

61. In addition to the DNFBPs defined by the FATF, AML/CFT obligations have been extended to other sectors, such as art and antiquities, athletes trading, cash transporters, and high-value traders.

Structural Elements

62. In general, the structural elements required for an effective AML/CFT system are present in Brazil, particularly a high-level commitment to address AML/CFT issues; stable institutions with accountability, integrity, and transparency; and the rule of law. The judicial system operates independently, but there are issues around efficiency, as in some cases the length of judicial procedures limits the possibility to convict money launderers and there have been concerns with the preparedness of some courts to adjudicate complex ML crimes. The conviction rate for ML is relatively low and sentences are not always enforced in financial crime cases. This appears not to stem from investigative or prosecutorial failings, but from certain weakness in the structural underpinnings of the court system. Judicial qualification and oversight have improved in recent years, but there are still areas where improvements are needed.

63. The FIU was attempted to be moved twice during the review period (but ended up only moving once from MOJ to BCB), and a Supreme Court decision, for a time, limited the use of financial intelligence in 2019. The operational independence of the FIU and its ability to disseminate intelligence has been restored with a subsequent Supreme Court decision, confirming the legality and accuracy of the procedures used by COAF.

64. The January 2023 attacks on Brazilian governmental institutions perpetrated by persons affiliated with a far-right political movement represent a serious threat to democracy and stability in the country. While the investigations were ongoing at the time of the on-site visit, the assessment team considered Brazil's understanding of the risk posed by such individuals and groups to Brazil, the financial infrastructure or funding of these activities, and the measures taken to combat potential TF and/or other crimes in connection with these attacks on governmental institutions.

Background and Other Contextual Factors

65. Brazil's AML/CFT system has varying levels of maturity. The first AML/CFT Law dates to 1998, and the framework has been amended and expanded many times. ENCCLA has been the framework to deal with anti-corruption and money laundering issues since 2002, comprising many public agencies and involving private sector institutions. The financial sector supervised by BCB, CVM, SUSEP and COAF (factoring) have implemented AML/CFT legislation for many years, while implementation in some DNFBP is more recent (such as notaries and transportations and custody of values). Some sectors are not yet subject to proper regulation and supervision (notably lawyers and those providing services to trust and companies; and VASP).

66. Brazil has updated its criminal framework following the 2010 FATF/GAFILAT evaluation and during the follow-up process. Notably, it has updated the ML offence in 2012 (which included tax crime as a predicate offence), passed a TF law in 2016, and passed legislation to implement Targeted Financial Sanctions in 2019.

67. Corruption is the most important crime underpinning money laundering, and the assessment team examined whether structural elements or contextual factors pose an obstacle on measures intended to mitigate the risk of ML/TF. The Brazilian authorities are well aware of this risk, and over the years Brazil has taken a number of actions through ENCCLA to reduce the risk of corrupt officials favouring the perpetration of money laundering (see IO.1). Similarly, both the public and private sectors are aware of the risk of infiltration by criminal groups.

68. Brazil has made significant progress in financial inclusion indicators over the last few years, especially considering access and usage of financial services. BCB's administrative data indicate that the percentage of adults with relationships with the Financial System is above 96%. The use of digital means for financial transactions in Brazil has grown rapidly in the last decade. Several factors contributed to this growth, from changes to the legal and infra-legal framework favouring payment arrangement markets and institutions, to the development of technological innovations such as Pix, Brazilian instant payments system. The rapid and growing adoption of Pix, for instance, is an example of digitalization with positive impacts on financial inclusion. Around 50 million Pix users were not users of other digital money transfer scheme the year before the launch of Pix.

69. In terms of the context for TFS to counter the financing of proliferation of weapons of mass destruction, Brazil has diplomatic relations both DPRK and Iran, and Brazil maintains important trade linkages with Iran, and a minimal flow with DPRK. Brazil has significant economic relationships with Iran. Iran occupies the 23rd position in the Brazilian export ranking, representing 1.03% of Brazil's total exports. Agricultural products represent the largest part of exports, with millions of tons exported to Iran. Imports from Iran are relatively of minor importance, occupying the 70th position in Brazil's total imports. Main purchases from Iran relate to urea, a petrochemical product, which is used in fertiliser. With North Korea, in the four years prior to the pandemic, 2019 was the only year wherein total trade exchanges exceeded USD 10 million.

AML/CFT strategy

70. Brazil's AML/CFT strategy is based on two main pillars: the ENCCLA, which every year identifies actions to tackle the most urgent issues identified the year before; and the Action Plan following the 2021 NRA. ENCCLA actions have covered most areas of the FATF Recommendations, ranging from specific measures to fight corruption to enhance the transparency of legal persons, to proposals to mitigate the use of cash. The NRA priority actions focus on main issues, including: Virtual Assets (setting up a regulatory framework for VASPs); Cash (evaluating the adoption of additional restrictions and controls on the use of cash); Beneficial Owner (improving the controls and exchange of information to prevent the use of shell companies for ML and to enhance transparency of transactions); general improvements to DNFBP supervision; and other improvements to customs control, repatriation of assets and NPOs risk understanding. The implementation of ENCCLA actions is followed by the ENCCLA Secretariat, despite its lack of power to enforce the actions. The authorities do not actively follow-up on the measures of the NRA's priority actions as these

actions establish a more general framework for the authorities' highest priority ML/TF policies to be further implemented by ENCCLA's actions.

Legal & institutional framework

71. The main legal framework for AML/CFT measures is set out in Law No. 9613 (1998), which criminalises ML and provides the requirements for preventative measures in Brazil. TF is criminalised through Law No. 13260 (2016). The main authorities and frameworks in the fight against ML, TF, and PF are:

72. Policy setting authorities: the **National Strategy to Combat Corruption and Money Laundering (ENCCLA)** is the framework for the determination of policies to address emerging threats and vulnerabilities. It consists of the most important public authorities involved in AML/CFT and can include private sector representatives. The Secretariat is ensured by the Ministry of Justice and Security.

73. The **Attorney General of the Union (AGU)** is responsible for representing the federal government in court and for providing legal advice to the executive branch. The Attorney General in Brazil is responsible for, among other things, the assets recovery in non-criminal conviction basis measures.

74. The **Ministry of Justice and Security (MOJ)** is responsible for extradition and mutual legal assistance, and also for legislative developments concerning AML-CTF measures. The Ministry co-ordinates the GGI-LD, which is responsible for defining public policy and macro-objectives in AML, tracking progress, and coordinating the relevant authorities.

75. Within Ministry of Justice and Security, the **Department of Assets Recovery and International Legal Co-operation (DRCI)** acts as the central authority for international legal co-operation and extradition and transfer of sentenced persons in Brazil (with the exception of MLA with Canada and Portugal, for which MPF is the central authority). This department receives and examines requests for mutual legal assistance, including seizure and forfeiture requests. DRCI is also in charge of co-ordinating the national strategy against corruption and money laundering. The **National Secretariat of Justice (SNJ)** is responsible for the co-ordination of the national policy on justice. This includes deciding issues related to citizenship and foreigners; receiving requests for assistance pursuant to treaties or domestic legislation; and coordinating national action on AML and asset recovery. The DRCI is within the SNJ structure.

76. The **National Council of Justice (CNJ)** is a public institution with the mission to improve the Brazilian judicial system, regarding administrative and procedural control and transparency. It sets judicial policy, ensuring autonomy of the judiciary, conducts strategic planning for the judicial branch, provides services to citizens, conducts judicial disciplinary proceedings, and exercises efficiency controls. It is presided over by the president of the Supreme Federal Court.

77. The **Ministry of External Relations (MRE)** receives from the DRCI requests for assistance grounded on reciprocity, which are to be processed via diplomatic channels. The department of General Coordination for Combating Transnational Illicit assists in criminal matters.

78. The **National Department of Business Registration and Integration (DREI)** has the purpose (Articles 4 of Law 8.934/94 and 4 of Decree 1.800/96), among other, to establish and consolidate, with exclusivity, the rules and general

guidelines of the Public Registry of Commercial Companies and Related Activities; resolve doubts arising in the interpretation of laws, regulations and others.

79. The **Council for Financial Activities (COAF)** is the financial intelligence unit of Brazil, and the central authority of the system to prevent and combat money laundering, terrorist financing and the proliferation of weapons of mass destruction (PLD/FTP), especially in the receipt, analysis and dissemination of financial intelligence information. It is also a council that provides a multi-agency forum involving heads of several government agencies responsible for aspects of Brazil's AML/CFT system. The COAF Plenary meets monthly and comprises the President and representatives of: BACEN, CVM, SUSEP, the General Attorney Office of the National Treasury, ABIN, the Federal Police, the Secretariat of Federal Revenue (RFB), the MRE, the Ministry of Justice and the CGU. COAF is also responsible for regulating entities in the financial and DNFBP sectors that are not subject to regulation by other governmental institutions. COAF, created by Law No. 9613 in 1998 and restructured in 2020, is administratively linked to the Central Bank of Brazil (BCB), endowed with of technical and operational autonomy. Previously, it was part of Ministry of Finance, and briefly, the Ministry of Justice.

80. The **Federal Police of Brazil (Polícia Federal, or PF)** is a federal law enforcement agency of Brazil. The Federal Police Department is responsible for combating crimes against federal institutions, international drug trafficking, terrorism, cyber-crime, organised crime, public corruption, white-collar crime, money laundering, immigration, border control, airport security and maritime policing. It is subordinate to the Ministry of Justice and Public Security. Among the responsibilities of PF are investigating interstate and international crime, money-laundering, public corruption and white-collar crime, organised crime, preventing environmental crime, and preventing and combating terrorism.

81. The **Civil Police** is the state-level police with law enforcement duties that include investigating crimes committed in violation of Brazilian criminal law in its area of competence.

82. The **Brazilian Intelligence Agency (ABIN)** is linked to the office of the Presidency. Under its working structure, the Division (General Coordination) for Analysis of Criminal Organisations was created as part of the Counter-Intelligence Department (Strategic Intelligence Department). This division is responsible for assisting the joint work of government institutions, and is responsible for matters concerning ML. ABIN also counts with a specific unit dealing with terrorism and terrorism financing.

83. The **Federal Prosecution Service (MPF)** is responsible for conducting criminal investigations (in parallel to the PF), prosecutions at the Federal level, and overseeing the activities of the police. It is led by the General Prosecutor.

84. The **Public Prosecution Offices** in each of Brazil's States are responsible for conducting criminal prosecutions at the state level. These offices are led by the State Attorney-Generals.

85. The **Special Action Group Against Organised Crime (GAECO)** are special groups created by each state Public Prosecutor's Office to deal with complex cases involving organised crime, ML and financial crimes. As of March 2023, each State Public Prosecutor's Office has at least one GAECO implemented. The members of the GAECO groups gather twice a year in a meeting of the **National Group Against Organised Crime (GNCOC)**. GNCOC brings together the Brazilian Public Prosecutor's

Office and was created in February 2002, at the initiative of the National Council of Attorneys General of the Public Ministries of States and the Union (CNPJ), to combat organised crime that affects the entire country. GNCOC, formed by the Special Action Groups Against Organised Crime (GAECOs), works in an integrated manner with the police (civil, military, federal and federal highway), ABIN, state and federal revenues, among other agencies. The GNCOC has a working group to deal specifically with ML cases and typologies.

86. The **National Network of Technology Laboratories against Money Laundering** consists of a network of institutional coordination composed by the set of Laboratories of Technology against Money Laundering (LAB-LD) units, specialized in the analysis of large quantities of data for use in criminal investigations and other procedures, with a view to combating money laundering, corruption, organised crime, and other related crimes. These specialized units are set up in various public institutions (especially in Judiciary Police and Public Ministry), in all 26 Brazilian states and the Federal District. **REDE-LAB** coordinates the network.

87. The **Secretariat of Federal Taxes and Revenue (RFB)** is responsible for the control of customs and border control, including related efforts to combat ML, smuggling, embezzlement and drug trafficking. It is also responsible for collecting taxes. Three RFB branches have particular roles with respect to AML: the General Coordination for Research and Investigation (COPEI) (the intelligence branch); the Special Division of Financial Institutions; and the Special Division of Foreign Affairs.

88. The Working Group for the National Risk Assessment of Money Laundering the Financing of Terrorism and the Financing of Proliferation of Weapons of Mass Destruction (WGNRA), established by Presidential Decree No. 10.270, of March 6, 2020, comprised by representatives of the Council for Financial Activities Control (COAF), which coordinates the group, of the Central Bank of Brazil (BCB) and of the Ministry of Justice and Public Security (MJSP), but with the possibility to integrate different institutions, based on the its respective competence.

89. The **Central Bank of Brazil (BCB)** is the competent authority to authorize and supervise the financial institutions (FI) of the National Financial System (SFN), in accordance with Article 10, Item IX and X of Law No. 4,595/1964. It is also responsible for administering the regular operation of the foreign exchange market (Law 4595/1964). BCB monitors and supervises the SFN's entities to guarantee their compliance with the legislation and regulation on AML/CFT, in accordance with the National Monetary Council's guidelines. In 1999, after the enactment of Law 9,613/1998, BCB's Department for Combating Financial and Exchange Illicit (DECIF) was created with the purpose of implementing AML policies in the National Financial System. Since 2012, BCB's Conduct Supervision Department (DECON) has the responsibility of implementing a Risk Based Approach for AML/CFT Supervision. In 2019, BCB implemented the 'twin peaks' model of financial supervision, entrusting two deputy governors in its Board the responsibilities for supervising FIs: the Deputy Governor for Supervision (DIFIS), for prudential supervision, and the Deputy Governor for Institutional Relations, Citizenship and Conduct Supervision (DIREC), for conduct supervision, under whom DECON is allocated. The activities related to the prevention of ML/FT involve the work of other BCB departments, such as: (i) the Financial System Organization Department (DEORF) and the Department of Resolution and Sanctioning Action (DERAD), regarding the processes of licensing and resolution; (ii) the Financial System Regulation Department (DENOR) and the Prudential and Foreign Exchange Regulation Department (DEREG), regarding the

regulatory process; and (iii) the Financial System Monitoring Department (DESIG), responsible for monitoring transactions within the SFN.

90. The **Securities and Exchange Commission (CVM)** was created by Law 6385/1976. It is responsible for supervising the securities and exchange market. It is also responsible for regulating and supervising activities related to the custody, emission, distribution, liquidation, negotiation, and administration of securities and exchange markets, and ensuring compliance with AML measures.

91. The **Superintendence of Private Insurance (SUSEP)** is responsible for controlling and supervising the insurance, reinsurance, open private pension plans and capitalization markets (Decree-law 73/1966, Decree-law 261/1967, Complementary Law 109/2001, Complementary Law 126/2007). SUSEP is a special administrative agency, responsible for applying AML measures to the insurance and capitalization sector.

92. The **National Superintendence for Pension Funds (PREVIC)** is the supervisory and regulatory body which was created on 23 December 2009. PREVIC is a public entity responsible for managing private pension operators, in the closed modality. That is, it inspects and supervises pension funds in Brazil.

93. The **Federal Council of Real Estate Brokers (COFECI)** and its respective Regional Councils are governmental bodies, under the scope of Ministry of Labour, that operate with administrative, operational and financial autonomy (Law 6530/1978). They are responsible for supervising and disciplining the profession of real estate brokers. COFECI is authorised to issue orders regulating real estate companies and/or estate agents, both by individuals and corporate bodies supervise them as well as to impose sanctions.

Financial sector, DNFBPs and VASPs

94. As the largest economy in South America Brazil's 2022 GDP is about USD 1.92 trillion.¹⁹ It possesses a stable financial sector with relevant international presence and regional impact. In 2020 the banking and non-banking financial institutions amounted to an estimated USD 9.7 trillion (94% belonging to the banking sector).²⁰ The DNFBP sector is also numerous and very heterogenous with a significant impact in the mitigation of AML/CFT due to the high risks and threats experienced by the DPMS sector.

95. This assessment is guided by the relative importance of each sector in the Brazilian context. The analysis and ranking of the sectors inform the report's conclusions and is particularly relevant to the analysis in IO.3 and IO.4.

96. The **banking, foreign exchange and DPMS** sectors are ranked **higher** based on the identified ML/TF risks and their potential impact to the local and regional economies. As the largest regional economy with porous borders and a very rich topography, Brazil's main AML/CFT challenges relate to the management of threats arising from the misuse of its financial services, cross border transfers of funds, as well as the management of the exploitation of the Amazon rain forest and its natural resources.

97. Brazil has a significant financial sector which is of relevance to the country and the region. The banking sector is composed of 138 banks with 17 310 branches across

¹⁹ Available at <https://data.worldbank.org/country/BR>. Consulted September 2023.

²⁰ NRA, p. 56.

the country and estimated BRL 442 billion (USD 83.9 billion). Additionally, there were 1 169 credit co-operatives and non-banking financial institutions with another 8 653 branches and accounts valued at an estimated BRL 79 billion (USD 15 billion).²¹ Brazil has made significant progress in modernising financial institutions and payments with the introduction of Pix, a micro payment system that facilitates peer-to-peer transactions and promotes financial inclusion.

Table 1.1. Authorised Financial Institutions (as of February 2023)²²

Multiple Bank	137
Commercial Bank	19
Development Bank	4
State/Federal Savings Banks	1
Investment Bank	10
<i>Foreign-Exchange Bank Dissemination of COAF products</i>	5
Credit, Financing and Investment Society	63
Direct Credit Society	102
Peer-to-peer Loan Company	11
Securities Brokerage Firm	62
Exchange Brokerage Society	56
Securities Brokerage Dealer	103
Leasing Company	17
Building Society and Savings and Loan Association	2
Credit Company for Microentrepreneurs and Small Businesses	26
Development Agency	16
Mortgage Company	6
Payment Institution	77
Credit Cooperative	828
'Consórcio' Management Company	140
Total	1 685

98. The Foreign Exchange sector is strictly regulated and under the supervision of BCB which only allows the sector to conduct foreign transactions through licensed financial institutions. There are 179 entities authorised to operate in the exchange market covering over US\$ 1.385.7 billion.²³ Nevertheless, the role of the sector in the Brazilian economy and the context of the AML/CFT framework is significant considering the country's multiple borders and associated risks, namely, related to

²¹ As of 2021.

²² BCB, Divulgações mensais – Evolução do SFN, Quadros, www.bcb.gov.br/content/estabilidadefinanceira/evolucaoosfnmes/202302%20-%20Quadro%2001%20-%20Quantitativo%20de%20institui%C3%A7%C3%B5es%20por%20segmento.pdf. Accessed 19 April 2023.

²³ NRA, p. 57.

the transit of cash, tax evasion and the difficulties in identifying and tracking these assets.

99. 60% of the world's Amazon region is within Brazil's borders making it home to invaluable mineral and other resources. The Brazilian economy is therefore strongly influenced by the precious metals and stones industry as corroborated by the country's positioning as the 2nd largest global supplier of coloured gemstones, and 12th in the global production of gold.²⁴

100. The NRA furthermore considered the DPMS sector among the most vulnerable to ML/TF risks due to the nature of the business and Brazil's geological characteristics. This sector demonstrates a high volume of operations, estimated in US\$ 5.6 billion in exports (in 2022),²⁵ but remains under a fragmented supervisory system and demonstrates a general unawareness of the AML/CFT requirements. In addition, the recent increase in illegal mining and deforestation has led authorities to prioritise actions to improve the exploitation of natural resources and market chains linked to these resources.

101. Other FI and DNFBPs namely, **virtual assets, securities firms, payment institutions, the real estate sector, notaries, and accountants, as well as TCSPs and Lawyers** operating in the country are considered **important** in the context of this assessment.

102. Brazil estimates 40 Virtual Asset brokers operate in the country and the sector is regulated and supervised through Law No. 4401 of 2021 in force since May 2023. The virtual assets sector was considered high risk by the authorities in the 2021 NRA, but this classification is mostly justified by the nascent state of regulation and supervisory activity rather than by the confirmed presence of criminal activity. Brazil is generally aware of the risks arising from new technologies but has not addressed them in practice at the time of the onsite visit.

103. The securities and investments sector also reach a significant volume.²⁶ This sector has close connections to other segments of the economy including the Brazilian stock market and pension fund investments, and is responsible for significant investments in the country. This is a complex sector which has not been tested for AML/CFT resilience and suggests ongoing struggles with core AML/CFT requirements, namely the identification of beneficial ownership in the context of foreign-led investments.

104. The DNFBP sector is generally well regulated and covered by the AML/CFT framework with the exception of TCSPs and Lawyers. TCSPs are not regulated as a separate sector but specific activities are included in Law No. 9613 as regulated actions which must be supervised. This structural ambiguity translates into a serious unawareness of the sector's characteristics and real impact.

105. Similarly, the Brazilian Bar Association represents the legal profession but has not issued any regulations to date that allow the adequate implementation of the AML/CFT Law. Historically, lawyers have resisted the analysis and implementation of measures to address ML/TF risks within the profession and the regulation of activities included in the AML/CFT Law. The NRA assesses the ML/TF risk of lawyers

²⁴ NRA, p. 66.

²⁵ Brazil: Exports of pearls, precious stones, metals, coins, available at <https://tradingeconomics.com/brazil/exports/pearls-precious-stones-metals-coins>.

²⁶ NRA, p.60.

as medium, however, the complete unawareness and inability to determine the links of the profession with the known predicate offences confirms the importance of this sector to the assessment of AML/CFT effectiveness.

106. The real estate sector is numerous and spread out throughout the country, it amounts to 600 thousand professionals, 70 thousand real estate firms and an 9.7% share of the GDP.²⁷ Notaries and Accountants also take part in the majority of real estate transactions and the sectors are generally regulated and aware of their AML/CFT obligations. With a rising share of national GDP and an important role as intermediaries of large financial transactions, these sectors' vulnerability to ML/TF risks continues to challenge authorities, in particular, as a result of persistent typologies of money laundering linked to the real estate market and the role of professional intermediaries.

107. The **insurance, factoring and casino** sectors are ranked **lowest** as regards ML/TF risks and therefore have the **least impact** in this assessment and the priority actions. The private insurance sector accounts for 3.76% of national GDP (2020) and, together with the Closed Private Pensions Fund was classified as low risk by the NRA due to its limitations as financial products and mitigation measures in place. Similarly, while there are 560 factoring companies with a business volume close to 150 billion which serves essentially medium and small sized enterprises and therefore is not considered as having a great impact on ML/TF risks. Casinos have been illegal in Brazil since 1946 (Law No. 9215), but Brazilian citizens are allowed to use the services of online providers, although this did not prove to be materially relevant.

Preventive measures

108. The general framework for preventative measures for all obliged entities are set out in in Law No. 9613/1998. This law covers all the financial institutions activities required by the FATF Standards, and most of the DNFBP activities except some activities for trust and companies service providers. In addition to the law, individual supervisors/SRBs must issue individual sectorial regulations for their sectors, which has been done for all sectors except lawyers and legal professions. The exceptions are not risk-based. On the basis of risk understanding, Brazil has identified a number of activities outside the FATF standards as being subject to preventative measures, including arts and antiquities dealers, intermediators of athletes' and artists' rights, cash transporters, and traders in high-value goods.

Legal persons and arrangements

109. Brazil is not a known incorporation centre, but in recent years there has been a push to simplify company formation to facilitate business. Many types of legal persons can be created under the Civil Code, as well as specific legislation (Corporate Law No.6404/1976; Law No. 14193/2021 on Football Anonymous Society; Law No.5764/1971 on Cooperatives; Complementary Law 123/2006 on Individual Entrepreneur and Microentrepreneurs). There are four main types of legal persons in Brazil: Joint-Stock Companies (created under Law No.6404/1976; or Limited Partnership by Share); Limited Liability Companies; Partnerships (Simple partnerships, General Partnerships and Limited Partnerships); Not-for-profit (Associations, Foundations); companies that do not acquire legal personality (Silent partnerships, including Joint Venture Partnerships and Individual Entrepreneurs).

²⁷ NRA, p. 65.

Foreign companies can register as branches when they have an establishment in Brazil, or can create a corporation or acquire shares in a Brazilian company subject to certain rules depending on the type of business (e.g., for some activities, a resident partner or a resident director is necessary).

110. Trusts or other trust-like legal arrangements cannot be created under Brazilian law. Nothing prevents persons in Brazil from being a trustee of a foreign trust. Foreign trusts that operate as financial intermediaries must obtain a licence from CVM and comply with the requirements of CVM Instruction No. 301 (1999).

Table 1.2. List of Legal Persons in Brazil

Legal person or arrangement	Total Number of Active Persons				Trade Board	RFB (CNPJ)	Civil Registry
	2019	2020	2021	2022			
Cooperatives (CC, Art.1093-1096)	32 132	33 451	34 520	35 789	Yes	Yes	n/a
EIRELI (Law No. 12441/2011 – new creation discontinued as of 2019)	996 028	1 046 712	984 573	834 088	Yes	Yes	
Public Company	14 128	13 956	13 976	14 093	Yes	Yes	n/a
Branches of Foreign companies and Binational Companies (CC, Art.1134-1141)	518	528	550	560	No	Yes	n/a
Closed joint-stock company (CC, Art.1088-1089; Law No.6404/1976)	158 093	164 492	174 634	183 249	Yes	Yes	n/a
Open joint-stock company (CC, Art.1088-1089; Law No.6404/1976)	605	627	634	700	Yes	Yes	n/a
Public/private companies	12 375	12 077	11 653	11 040	Yes	Yes	n/a
Limited Partnership by Shares (CC, Art.1090-1092; Law No.6404/1976)	69	71	69	69	Yes	Yes	n/a
Limited Partnership (CC, Art.1045 – 1051)	48	47	48	50	Yes	Yes	n/a
General Partnership (CC, Art. 1039 – 1044; and 997 – 1038)	1 310	1,307	1,086	1 004	Yes	Yes	n/a
Limited Liability Company (CC, Art. 1134 – 1141)	3 983 287	4 238 155	4 435 440	5 063 338	Yes	Yes	n/a
Associations (CC, Art. 53 – 61)	n/a	659.881	n/a	n/a	n/a	n/a	Yes
Foundations (CC, Art. 62 – 69)	n/a	12.235	n/a	n/a	n/a	n/a	Yes
Legal persons / arrangements without legal personality							
Joint venture partnership (CC, Art.997 – 1051)	15 179	19 197	24 269	28 986	No	Yes	n/a
Individual Entrepreneur (CC, art.966)	12 370 176	14 365 547	13 220 695	13 868 546	No	Yes	n/a
Simple Partnerships (CC, Art. 997 – 1038)	n/a	n/a	n/a	n/a	No	Yes	n/a
Consortium of Companies	10 027	11 107	12 349	14 199		Yes	n/a
Simple Consortium (Compl. Law 123/2006)	4	4	6	12	No	Yes	n/a
Group of Societies	410	412	413	409	Yes	Yes	n/a
Foreign trusts	unknown	unknown	unknown	unknown	No	Yes	n/a
TOTAL	17 594 389	19 907 690	18 914 915	20 056 132			

Source: RFB

111. Brazil collects and records basic and beneficial ownership information through REDESIM which integrates the country's main company registry (CNPJ) with other official licensing and fiscal databases. The creation of legal persons mostly occurs at the local level when entities register with the Trade Boards. When validated by the local Trade Board, the company information is automatically shared with RFB for registration of the unique identifying number and inclusion in the CNPJ register. RFB is responsible for the maintenance of the CNPJ register, and of the correctness of the information submitted.

112. Some legal persons have an obligation to declare beneficial ownership information to the RFB, yet the overwhelming majority is exempt. Updated basic information (including ownership information) may be available in CNPJ for Limited Liability Companies and Partnerships. For Joint Stock Companies and Limited Partnerships by Share only some basic information (no updated shareholders) is available. Joint-venture Partnerships are silent partnerships between corporations, and transparency of these legal entities is also limited. The REDESIM system and the information contained therein is accessible to all competent authorities, with the exception of the declaratory beneficial information which can only be shared with LEAs through a court order.

Supervisory arrangements

113. The following are the supervisory arrangements in Brazil.

Table 1.3. Supervisory Arrangements

Supervisor/SRB	Entities	Legislation
BCB	Financial institutions (as defined in Resolution CMN 4,970/2021)	Law No. 4.595/1964
CVM	Securities Firms / Exchange Market	Law No. 6.385/1976, read in conjunction with Law No. 9.613/1998
SUSEP	Private Insurance	Decree-Law No. 73/1966; in Articles 38 and 74 of Complementary Law No.109/2001; in Paragraph 1 of Article 3, of Decree-Law No. 261/19677; and in Article 2, of Complementary Law No. 1268/2007.
PREVIC	Pensions	Complementary Law No. 109/2001, combined with article 2 of Law No. 12.154/23 of 2009
ANM	Precious Metals and Stones	Law No. 13.575, of 26 December 2017; Shared with COAF (as per Law 9.613/1998)
DREI	Trade Boards	Article 4 of Law No. 8.934, of 18 November 1994
ANS	Health Care Plan operators	Law No. 9.961, of 28 January 2000
IPHAN	Antiques and Works of Art	Decree No. 9.238, of 15 December 2017, and articles 26 and 27 of Decree-Law No. 25/1937
COFECI/GRECI	Real Estate Agents	Law No. 6.530, of 12 May 1978
COFECON	Service Providers in Economics and Finance	Article 7 of Law No. 1.411. of 13 August 1951, and article 5 of Decree No. 31.794, of 1952;
CFC	Accountants and accountant entities	Article 2 of the Decree-Law No. 9.295, of 27 May 1946;

Supervisor/SRB	Entities	Legislation
CNJ	Notaries and Registrars	Article 103-B, par. 4, items I, II and III; article 236, par. 1 of the 1988 Federal Constitution; article 8, item X of the National Justice Council's Rules of Procedure; and articles 37 and 38 of the Law No. 8.935, of 18 November 1994;
COAF	Jewelry, Luxury or high value goods and Factoring. All other obliged entities where no specific supervisor has been identified.	Article 14, Paragraph 1, of Law No. 9.613/1998.
MF/SEFEL	Lottery	Article 31, head and item IX, line "f", of Law No. 13.844, of 18 June 2019; and articles 106, XI, and 119, XVIII, of the Decree No. 9.745, of 8 April 2019, as worded by Decree No. 11.036, of 7 April 2022
PF	Values Transport Companies	Ordinance No. 155, de 27 September 2018

International cooperation

114. Even if domestic threats are prevalent for money laundering risks, the importance of Brazil as an international economic and financial centre may expose the country to various cross-border threats. International co-operation is particularly important because often sophisticated ML schemes involve other countries. The main partners for ML/TF are Portugal, Peru, Switzerland, France, Spain, Argentina, Paraguay, Uruguay, United States of America, and Colombia, among others.

115. The Ministry of Justice and Security is responsible for mutual legal assistance. The Federal Prosecution Authority (MPF) is responsible for direct cooperation with Portugal, Canada, and Lusophone countries when the request comes from prosecution offices in those countries. The Supreme Court can hear extradition cases. A host of arrangements are in place to facilitate other channels of cooperation, particularly by COAF, Federal Police (PF), Customs (RFB), and financial supervisors (BCB, CVM and SUSEP).

Chapter 2. NATIONAL AML/CFT POLICIES AND COORDINATION

Key Findings and Recommended Actions

Key Findings

Immediate Outcome 1

- a. Brazil has a deep understanding of most of its ML risks, especially corruption, informed by the longstanding work of ENCCLA, an interagency body that sets national AML/CFT policies. The overall risk understanding has been further enriched by the execution of the first National Risk Assessment (NRA) in 2021 as well as sectoral risk assessments conducted on financial institutions, the securities sector, and legal persons and arrangements. However, financial flows and ML techniques associated with environmental crimes and of the ML risks from foreign predicates should be enhanced given the role of Brazil as a regional economic and financial hub.
- b. Brazil has a less developed understanding of its TF risks compared to its understanding of ML risks as evidenced by its TF NRA, which is largely based on known regional and international risk indicators and feedback from authorities. While competent authorities agree that the TF risk is low, there is an uneven understanding of the concept of TF stemming from limitations in the 2016 TF Law as well as the view that terrorism is not “homegrown” in Brazil and is mainly linked to UN-designated terrorist groups and persons.
- c. Brazil’s national AML/CFT policies are determined by the ENCCLA process, which adopts ten actions annually, five of which are specific to combatting corruption and five of which cover ML and TF. The ENCCLA process is overall a positive interagency mechanism which has adopted numerous policies to tackle Brazil’s ML threats. While corruption-focused policies have been more comprehensive in nature, ENCCLA’s ML/TF policies tend to lack the same level of depth and do not involve a holistic approach to developing strategies to tackle the highest risks. The 2021 NRA set a number of priority areas, establishing a general framework within which ENCCLA should prioritise its actions.
- d. ENCCLA serves as Brazil’s primary interagency structure to develop and coordinate AML/CFT policies. In recent years it has issued many policies to promote greater transparency and improve actions against corruption and illicit enrichment. It has also focused on mitigating vulnerabilities and tackling other risks, such as ML from environmental crimes, by promoting inter-agency coordination. However, despite its central role to the country’s AML/CFT

framework, ENCCLA's recommendations are not always adequately integrated into agencies' priorities or followed-up upon at the level of individual agencies.

- e. Brazilian authorities demonstrate some ability to co-operate and co-ordinate at the policy and operational levels, particularly in ML stemming from corruption and organised crime. However, some structural barriers continue to prevent optimised cohesion between the authorities and objectives of individual agencies consider only to some extent the AML activities of other agencies, resulting in fragmented efforts (including sub-optimal coordination of RFB activities in AML). For example, despite environmental crimes being a major ML risk, some relevant institutions have suffered from severe cuts to staffing resources as well as the establishment of policies that actively harmed efforts to conduct joint operations to fight environmental crimes. Notwithstanding, there is awareness of the need to work together and overcome structural obstacles.
- f. The Brazilian legal framework allows for entities within high-risk sectors, like DPMS, to self-identify as low risk and apply simplified AML/CFT measures, which can be inconsistent with the country's ML/TF risk assessment. The authorities have taken steps to raise awareness of ML/TF risks with the private sector, which has enhanced the risk understanding, particularly among financial institutions.

Recommended Actions

Immediate Outcome 1

- a. Brazil should deepen its national coordination efforts to better address and mitigate the identified ML/TF risks and integrate CPF in these efforts. In particular, to build on the existing ENCCLA framework, Brazil should develop holistic, multi-year, comprehensive strategies to address the identified highest ML/TF risks, including environmental crimes (illegal mining, wildlife trafficking, and deforestation), organised crime, and drug trafficking. The strategies should address relevant agencies' needs and promote inter-agency cooperation at operational levels for the authorities involved in preventing and fighting ML and TF in the higher risk areas. This should include plans to ensure timely access to information protected by financial or tax secrecy for the purpose of detecting and investigating ML/TF, as well as continuing the centralisation of relevant databases and registries.
- b. Brazil should empower existing structures or create a mechanism to review progress taken on AML/CFT priorities and ensure competent authorities are held accountable for the implementation of the national AML/CFT policies, including the ENCCLA actions. Whether through ENCCLA, the Working Group on the NRA, or another authority, this mechanism should be provided with sufficient human and material resources, as well as high-level political support.
- c. Brazil should remove the structural barriers that prevent efficient cohesion between the authorities in the fight against ML/TF, in particular smoothing

cooperation between LEAs and well as ensuring that RFB can adequately prioritise its AML/CFT missions and assist other competent authorities.

- d. Brazil should deepen its ML risk understanding associated with environmental crimes, including a more robust understanding of threat actors and beneficiaries, concealment of illicit proceeds in the supply chain and ML methods within and outside the country, and links with organised groups. Brazil should also integrate the national ML risk understanding with analysis of the risks posed by ML schemes using complex legal persons and the involvement of professional gatekeepers. In addition, Brazil should further develop its knowledge and its response strategies regarding foreign predicate offences and the country's role as a regional hub, transit point, and destination for illicit proceeds.
- e. Brazil should enhance TF risk understanding, particularly with a focus on homegrown threats. This should include efforts to ensure relevant authorities like the MPF, judiciary, and COAF are taking a consistent and appropriate approach to TF risk understanding, and its ability to coordinate related priority actions. Additional measures to this end should be incorporated in Brazil's updated NRA and ENCCLA actions.
- f. Brazil should reconsider the appropriateness of the simplified measures in the DPMS sector.
- g. Brazil should increase private sector awareness, particularly for DNFBP sectors, on specific ML, and especially, TF risk exposures to their respective sectors.

116. The relevant Immediate Outcome considered and assessed in this chapter is IO.1. The Recommendations relevant for the assessment of effectiveness under this section are R.1, 2, 33 and 34, and elements of R.15.

Immediate Outcome 1 (Risk, Policy, and Coordination)

Country's understanding of its ML/TF risks

117. Overall, Brazil has a developed understanding of its national ML risks informed by the ongoing work of its National Strategy to Combat Corruption and Money Laundering (ENCCLA) and further enriched by the execution of its first National Risk Assessment (NRA) in 2021. Specifically, Brazil is deeply aware of the ML threats posed by corruption, drug trafficking, organised crime, financial crimes including tax evasion, environmental crimes, including illegal extraction and mining of natural and mineral resources. Brazil has also developed a good understanding of ML risks posed to the financial sector having carried out sectoral risk assessments.

118. There are some shortcomings in the country's assessment and documentation of ML risks stemming from legal persons as well as professional gatekeepers, including company service providers. Furthermore, the authorities lack a detailed understanding of the financial flows and ML techniques associated with environmental crimes and of the ML risks from foreign predicates given the role of Brazil as a regional economic and financial hub. Additionally, other DNFBP-specific risks have not been subject to a sufficiently detailed analysis even though Brazil

identifies these sectors as potentially facing more significant ML vulnerabilities stemming from their less mature risk awareness and incipient implementation of the risk-based approach.

119. Since 2003, ENCCLA, an interagency working group comprised of over eighty entities, has been working to address corruption and ML in Brazil. With 20 years of institutional knowledge, ENCCLA has a developed understanding of the ML risks facing the country and produces 10 key actions each year, 5 of which are specific to combatting corruption and the remaining 5 covering other ML/TF objectives.

120. Informed by ENCCLA's ongoing work, Brazil's Working Group on the NRA (WGNRA) further enriched Brazil's understanding of ML risks with the issuance of Brazil's first NRA in 2021. To develop and inform the NRA, the WGNRA, now a permanent interagency body, coordinated across several authorities to conduct sectoral risk assessments on financial institutions (2019) and the securities sector (2020); the WGNRA also sent questionnaires to dozens of other authorities to identify the threats, vulnerabilities, and capacity of the sectors to address them. The NRA ultimately identified corruption, drug trafficking, organised crime, financial crimes including tax evasion, and environmental crimes, including the illegal extraction of natural and mineral resources, as Brazil's highest ML threats. The NRA also outlines Virtual Asset Service Providers (VASP), real estate, and the precious metals and stones sectors as the most vulnerable for ML while the use of legal persons and arrangements, cash and the exchange sector remain high vulnerabilities. Additionally, Brazil has achieved better risk understanding through other tools and exercises, including COAF's collection of case studies and AML/CFT typologies, BCB's updated sectoral risk assessment of reporting entities, and a sectoral risk assessment of legal persons and arrangements (2022). At the same time, the NRA does not provide a detailed picture of the risks associated with certain ML/TF threats, including the full financial flows and ML techniques associated with environmental crimes, which has translated into a lack of comprehensive risk understanding and corresponding mitigating policies. The understanding and identification of these ML risks was confirmed by interviews and exchanges with various government agencies and private sector actors. Overall, the understanding of ML risks is consistent and shared by a wide range of authorities and private sector entities.

121. By contrast, the country's understanding of TF risks is not as mature. Since 2003, ENCCLA's work has primarily focused on corruption and ML, with a few TF-related ENCCLA actions adopted over the years. While Brazil rates its overall TF risk as low, the NRA's TF analysis is less robust when compared to the ML analysis, as it is based on more theoretical or internationally applicable TF risk indicators with less evidence provided on factual TF vulnerabilities (e.g., limitations in the TF law) and threats specific to the context of Brazil. Additionally, there is an uneven understanding of TF among competent authorities. For example, Federal Police (PF) has the widest basis of risk understanding. It conducts its own threat assessments, including for groups not formally recognised as terrorist groups in the country (i.e., beyond the UN-recognised groups or individuals linked to ISIL, Taliban, and Al-Qaida), and includes the activities of individuals and groups considered to be terrorists by neighbouring countries.²⁸ PF also understands the risk of TF related to right-wing, ideologically, politically, or racially motivated extremism. ABIN has a

²⁸ For reference, Paraguay rates its TF risk as medium-high as of its 2019 TF NRA. Argentina rates its TF risk as medium-low as of its 2022 NRA (both assessments focus on Hezbollah, border areas, and smuggling as key threats or vulnerabilities, many of which are features shared with Brazil).

firmer understanding of terrorism than it does of TF networks and its involvement in the risk assessment process was less substantive on TF than on other topics such as organised crime. Meanwhile, MPF take a narrower view of terrorism and TF stemming from serious limitations in the 2016 TF Law itself (such as an exemption if TF is connected with political motivations). Additionally, there is a perception that terrorism is not “homegrown” in Brazil and is mainly linked to terrorist acts carried out by UN-designated terrorist organisations based abroad, which may have some followers in Brazil or may manifest during large events hosted in the country (such as the Olympics). COAF generally shares this narrower perspective. BCB, as the main supervisory authority for the financial sector, has included a focus on TF in its most recent sectoral risk assessment, nevertheless, this effort is still recent and the private sector’s TF risk understanding is almost exclusively related to UN lists and lacks a more nuanced view of threats or typologies, which is, in part, a consequence of the cabined understanding of some competent authorities.

122. Despite the unevenness of TF risk understanding, the authorities generally agree with the NRA’s conclusion that the TF risk to Brazil is low, with many identifying a growing need to raise awareness within the government on TF threats and risks and voicing commitment to regularly reassessing Brazil’s overall TF risks (including as a result of emerging right-wing extremism). In particular, authorities pointed to the events of the 8 January 2023 attack on the Brazil’s Congress, Supreme Court, and Executive Branch, which are considered violations against democratic institutions rather than terrorism, as having affected the terrorism and TF calculus, as well as a few other recent and smaller instances of terrorism unrelated to formally recognised groups.

123. Regarding the TF risks arising from the Tri-Border Area (TBA) where Brazil, Argentina, and Paraguay intersect, Brazil highlights Hezbollah as an organisation deserving of special attention. However, the authorities asserted that there are no confirmed cases in Brazil of Hezbollah-related links to terrorist activities and that all related investigations did not uncover violations of terrorism or TF. Nonetheless, relevant criminal cases are investigated by the Police’s counterterrorism unit and Brazil provides international cooperation to other countries.²⁹

124. The NRA’s identified ML threats and vulnerabilities inform Brazil’s understanding of its ML risks. For example, Brazil concludes the highest ML threats are corruption, drug trafficking, organised crime, financial crimes including tax evasion, and environmental crimes, including the illegal extraction of natural and mineral resources, based on internal risk assessments, real-world typologies and case examples, supported by 20 years of work by the ENCCLA. In particular, the NRA identifies corruption as the most harmful predicate offense in the country as it is repeatedly perpetrated by many actors, individuals, and legal entities in situations ranging from a low level of sophistication to major or complex operations in the laundering of associated illicit proceeds. The NRA recognises corruption schemes have often utilised the incorporation of complex, layered legal arrangements in the country and abroad, involving professional money launderers and shell companies.

125. The NRA also highlights drug trafficking and organised crime as major national threats, often interlinked, as organisations dedicated to drug trafficking feature a large structure comprised of several parallel groups performing specific

²⁹ After the on-site visit, Brazil received and granted an UNSCR 1373 request from Argentina in June 2023. This is discussed in IO.10 and has a nexus to the TBA.

activities related to the movement, distribution, and shipping of drugs and associated laundering of funds. This is further corroborated as drug trafficking is the second most reported crime in communications to COAF.

126. The NRA also in great detail analyses the ML threat stemming from environmental crimes, and specifically, the illegal mining of precious metals, including gold; Brazil highlights that compared to other illicit activities, including the manufacturing and smuggling of drugs, the illicit exploitation and smuggling of illegally mined gold is a cross-cutting issue as it is easier to integrate into the formal economy and often linked to organised criminal networks and groups and often involve other illegal activities including corruption, capital flight, tax evasion, public land squatting, among others. The NRA cites figures from ANM estimating that illegal production of gold involves amounts around 15-20 tons of gold per year, with an estimated amount of BRL 5.5 billion with illegal mining of precious stones generating between BRL 500 million and BRL 2 billion per year.

127. The NRA also highlights the risk stemming from financial crimes, including the *dolar cabo* category, which is akin to a hawala, in which funds are moved without intermediation through the formal financial system or through an authorised and registered exchange operation.

128. While the NRA and other sectoral risk assessments recognise the use of complex legal structures and strawmen in ML schemes, Brazil's national risk understanding only takes into account to some extent how corporate structures can be misused for ML and TF. While issues relating to corporate structures were not separately covered in the NRA, Brazil conducted a sectoral risk assessment of legal persons and arrangements which outlines the various legal entities available to Brazilian persons including generalized vulnerabilities and mitigating measures for each type of entity.

129. Regarding foreign predicate offences, whilst the NRA recognises transversal vulnerabilities, the country's understanding of ML/TF risks originating from abroad is underdeveloped in relation to the regional context and known threats. This is particularly relevant in relation to organised crime and drug trafficking activities as well as cross-border trafficking of goods.

130. There is an uneven understanding among the authorities of ML risks posed by the DNFBP sectors. While Brazil has not carried out sectoral risk assessments of the DNFBP sectors, the authorities are generally aware of the risks posed by DPMS, informed by a sectoral study conducted by COAF of the illegal gold mining supply chain as well as questionnaires coordinated with relevant authorities for their respective sectors. However, the authorities tend to have less understanding on the level of ML risks involving professional gatekeepers, including lawyers, accountants, notaries, and TCSPs. Some authorities, including the MPF, CGU, and the AGU, displayed a deeper awareness of the involvement of professional gatekeepers, including lawyers, accountants, notaries, in facilitating complex ML schemes, while other authorities, including SRBs, were less aware of the ML/TF risks for their sectors.

131. While Brazil is not an international hub for company or trust formation, most authorities did not exhibit sufficient awareness of company service providers, including professionals providing advisory and company formation services within the country. However, SRBs and other private sector participants confirmed that company service providers exist in Brazil in the form of law or accounting firms, and in some instances, mixed consultancy firms. The lack of risk understanding is further

exacerbated by the absence of appropriate supervision over TCSPs, and in particular, the lack of appropriate oversight over the legal sector for AML/CFT obligations.

National policies to address identified ML/TF risks

132. Brazil does not have a separate overarching national policy or distinct national strategy to combat ML/TF. Instead, Brazil's top national AML/CFT policies are outlined through the 2021 NRA's priority actions, which establishes a general framework for the highest priority ML/TF threats, and further tackled through the annual adoption of ENCCLA's ten actions to address corruption, ML, and TF.

133. The NRA's priority actions do not address Brazil's biggest ML threats but rather focus on inherent vulnerabilities. While in and of itself this is not an issue, the NRA's priority actions also lack specificity and targeted actions. For example, nine out of the twelve priority actions are to "evaluate measures for AML/CFT improvements" or to "improve dissuasive AML/CFT measures" which are elementary, and general, policies neither providing depth nor specificity on addressing the identified vulnerabilities (see box 2.1). The authorities stated while the NRA's priority actions are more general in nature, they provide the framework to allow for more specific or strategic actions to be developed through the ENCCLA process. While this would appear to be an appropriate mechanism for developing policies to tackle ML/TF risks, aside from tackling corruption, the assessment team views the ENCCLA actions as limited in scope. The authorities may enhance existing efforts by developing comprehensive, multi-year, and focused strategies to combat the highest ML threats, including organised crime, drug trafficking, environmental crimes, including illegal gold mining, and wildlife trafficking, among others. For drug trafficking and organised crime, while there is a specialized coordinating structure (National Group Against Organised Crime – GNCOC), the group's focus is on training and capacity building of public officials, and there is no overarching policy to dismantling financial networks of organised criminal groups (see IO.7).

Box 2.1. 2021 NRA Priority Actions

1. **Virtual Assets** – Set up a regulatory framework for Virtual Assets Service Providers (VASPs) in line with the best practices provided by FATF (Recommendation 15);
2. **Cash** – Evaluate the adoption of additional restriction measures and control for the use of cash in Brazil;
3. **Beneficial owners** – Improve the controls and exchange of information to try and avoid the use of shell companies for money laundering and to allow a better identification of the ultimate beneficial owner of the transactions;
4. **DNFBP training programs** – Increase training for both public officials and the regulated sectors listed in Article 9 of Law N. 9.613/1998, giving special attention to the qualitative relevance of the reports submitted (Suspicious Transaction Reports and Cash Transaction Reports);
5. **Exchange** – Evaluate measures for AML/CTF improvements in the sector particularly regarding the most commonly used typologies;
6. **Factoring** – Evaluate measures for AML/CTF improvement in the sector particularly regarding the most commonly used typologies;
7. **Precious Metals** – Evaluate measures for the improvement of the supervision in the mining and trade of precious metals and stones activity, aiming to set up an AML/CTF regulatory framework for the sector;
8. **Customs control** – Improve dissuasive AML/CTF measures in customs control;
9. **Tax evasion** – Improve dissuasive AML/CTF measures to counter tax evasion;
10. **Assets Recovery** – Improve measures to enable more effectiveness in the repatriation of assets located abroad;
11. **Risk-Based Approach** – Promote studies to evaluate the risks connected to different types of legal entities in the country, especially Silent Partnerships or Undeclared Partnerships (Sociedade em Conta de Participação);
12. **Non-Profit Organizations** – Promote studies to evaluate the risks connected to the NPO and define measures for high-risk entities; and
13. **Statistics** – Improve the statistics systems designed to control and follow up on seized assets (confiscation).

134. While ENCCLA's actions to address *corruption* are more targeted and specific, ENCCLA's actions to combat other ML/TF risks and threats are less comprehensive and developed as ENCCLA is limited to five actions annually to cover the non-corruption related ML/TF risks. This is also in part driven by ENCCLA's limited resources as well as challenges of operating on consensus across eighty bodies. This results in difficulties to issue or develop more comprehensive actions to combat ML/TF. As an example, ENCCLA's 2023 actions contain five corruption-focused actions that are more specific and targeted in nature: to seek greater transparency for

the governance of public works, improving reporting programs for the public against corruption and to engage more citizens in reporting channels, diagnosing and developing measures to tackle the illicit enrichment of public agents, and further monitoring and evaluation of a previous ENCCLA action on the use of metadata to improve bidding procedures in the National Public Procurement Portal. However, the other five 2023 actions that aim to cover all other ML/TF risks lack specifics (see Box 2.2). Despite this, in previous years, ENCCLA has demonstrated an ability to issue more developed strategies; however, ENCCLA's structural limitation to develop five actions focused on corruption and five actions to cover all other ML/TF risks may limit the extent to which the body can formulate policies to tackle the most pressing ML/TF issues, especially emerging ML/TF threats.

Box 2.2. 2023 ENCCLA Actions

- **Corruption Action 01/2023:** Prepare a diagnosis of the challenges and propose improvements in the governance of public works, with regard to projects, execution and accountability, with a view to transparency and anti-corruption measures.
- **Corruption Action 02/2023:** Propose improvements in public reporting programs against corruption, especially with a view to increasing confidence and engaging citizens in reporting channels, including gender-related issues, as well as identifying technological initiatives on the subject.
- **DPMS Action 03/2023:** Define institutional articulation mechanisms, in the context of the precious stones and metals trading chain, in terms of supervising compliance with PLD/FTP duties established in arts. 10 and 11 of Law No. 9.613/1998.
- **Corruption Action 04/2023:** Develop a diagnosis of measures aimed at tackling the illicit enrichment of public agents.
- **Criminal – Map and Discuss Flow: Action 05/2023:** Map and discuss the flow of criminal investigation and criminal proceedings in money laundering and asset recovery crimes.
- **FATF: Action 06/2023:** Promote the articulation of ENCCLA members in the process of the 4th Round of mutual evaluation of Brazil by FATF.
- **Corruption Action 07/2023:** Monitor and evaluate the effective systematization, standardization and availability of metadata built in the course of Action 07/2021, on the National Public Procurement Portal (PNCP), and devise objective measures for the use of this metadata in favor of improving the bidding procedures in order to prevent acts of corruption.
- **FOREX Action 08/2023:** Evaluate specific risks of the foreign exchange segment and propose measures to mitigate these risks, of a preventive, repressive and legislative nature.
- **New Technology Action 09/2023:** Identify types of money laundering,

financing of terrorism and the proliferation of weapons of mass destruction that use new technologies to move resources outside the National Financial System and its PLD/FTP mechanisms.

- **Corruption/ Real Estate Action 10/2023:** Develop a diagnosis of fraud and corruption risks associated with land grabbing and propose measures to strengthen control mechanisms and transparency of property records and public databases on rural properties.

135. On policies and actions to combat corruption and associated laundered proceeds, Brazil has taken measurable steps to develop holistic and comprehensive actions and policies to tackle the corruption threat from several angles. These policies have led to significant achievements in Brazil's anti-corruption efforts, including the creation of the National Capacity Building and Training Program to Combat Corruption and Money Laundering (PNLD), which is a national training centre for government officials specifically to share expertise on efforts to combat corruption and ML, the establishment of the National Network of Technology Laboratories against ML, which sets up a network for the sharing of technical expertise and experiences in detecting ML, corruption, and other related crimes for the analysis of large scale data, and continued coordination with the CGU, which is a government agency tasked with holding public officials accountable for administrative misconduct related to public funds and expenditures.

136. With respect to combating TF, as Brazil rates the overall national TF risk as low, the authorities have not focused on developing TF-specific policies or strategies other than in relation to the NPO sector. Specifically, the authorities developed one specific national policy regarding the NPO sector as outlined in the 2021 NRA priority actions: Promote studies to evaluate the risks connected to the NPO and define measures for high-risk entities. However, there are no further TF-specific policies in the NRA's priority actions or recent ENCCLA actions. Despite this, as Brazil's main intelligence and security service, ABIN is tasked with assessing terrorism and TF-related threats to Brazil, and has developed a short, confidential policy document to address those threats. While the assessment team was able to verify this policy document exists, the team was unable to verify the frequency of ABIN's assessments of terrorism and TF-related risks, the specific contents of the strategy to combat terrorism and TF, and how well these documents address the identified TF risks. Additionally, the other government authorities appeared to be unaware of ABIN's TF policy document. Separately, the Federal Police also maintains a terrorism unit at its headquarters which investigates cases of terrorism and TF.

137. The 2021 NRA, Brazil outlined in detail the cross-cutting nature and threat of environmental crimes, and in particular, illegal mining of precious metals and stones. The authorities have issued several policies to address this threat, including ENCCLA actions during the years 2021-2023, which sought to identify regulatory and administrative gaps related to the commercial supply chain for gold, the development of AML/CFT supervisory regulation on the DPMS sector, conduct studies on gold mining, as well as to establish greater interagency coordination. However, the policies themselves remain introductory in nature seeking to establish AML/CFT regulatory frameworks for the supply chain of precious metals as outlined in the NRA's priority

action or to establish regulations to supervise compliance with AML/CFT duties as outlined under ENCCLA Action 03/2023.

138. These policies aim to establish more foundational structures to combat ML risks stemming from the environmental crimes threat. For example, this has led to a supervisory structure of the gold mining supply chain which includes three different supervisors, BCB for the Dealers in Securities and Valuables (DTVM) sector, which are financial sector companies authorised to acquire gold from miners in Brazil, ANM for the mining sector, and COAF for commercial dealers in jewels, which necessitates close coordination and cooperation between the supervisors to effectively conduct oversight. The effectiveness of this approach remains untested as confirmed in interviews with various authorities that stated this presents a difficulty in efforts to combat illegal gold mining, as the three different regulatory bodies covering three different aspects of the supply chain had little communication or supervisory coordination until very recently. Furthermore, the authorities have not issued more detailed policies or a comprehensive strategy to address this deficiency even though it has been identified by several authorities as a structural barrier to achieving greater results, resulting in limited progress against the large ML threat stemming from environmental crimes. Regardless, the three supervisors noted increased communication and coordination meetings in recent times and are committed to ensuring this cooperation continues.

139. The current national policies and strategies lack comprehensive goals to address the identified ML/TF threats. In interviews with authorities, several representatives mentioned a desire to have overarching policies developed, with specific objectives for each relevant government agency, to tackle identified ML/TF threats spanning and intersecting on equities across all relevant government agencies. For example, on combatting illegal mining and the ML/TF risks to the DPMS sector, the 2021 NRA lists one priority action to “evaluate measures for the improvement of the supervision in the mining and trade of precious metals and stones activity, aiming to set up an AML/CTF regulatory framework for the sector.” While this is an important goal, there is a missed opportunity in further developing a whole-of-government strategy to tackle the cross-cutting threat of illegal mining which could encompass policies targeted to all relevant agencies across the government. For example, an overarching strategy to combat illegal mining and the corresponding illicit proceedings could entail the following: DPMS supervisors to focus on detecting unlicensed mining and trading activities and working with LEAs to disrupt the illegal mining; DPMS supervisors verifying reporting entities’ AML/CFT efforts to detect activities related to illegal mining during supervisory examinations; tasking financial intelligence authorities and financial sector regulators to develop teams or workstreams to detect the movement of illicit proceeds stemming from illegal mining and related organised crime; and prioritising LEAs to investigate, prosecute, and obtain convictions for illegal mining and related parallel ML offenses.

Exemptions, enhanced and simplified measures

140. Most sectors are obliged to comply fully with AML/CFT obligations. There are several simplified measures in the regulatory framework available for lower risk scenarios. COAF grants simplified procedures to its supervised entities under certain criteria: upon submission of an internal assessment of low ML/TF risk and if approved by COAF management, AML/CFT obligations could be waived to entities classified in categories of lower size and volume of transactions. This includes the

DPMS, including ANM's reporting entities, which is identified by the country as a high-risk sector for ML and key actor in the supply chain of mining of precious metals and stones, which remains one of Brazil's largest ML threats. This practice aims to harmonise COAF's supervised sectors but because this decision is linked to the individual entities' risk analysis (whilst remaining at COAF's discretion) it is inconsistent with the FATF Methodology requirement that such decisions should be based on a *proven* low risk and occurring on strictly limited and justified circumstances.

Objectives and activities of competent authorities

141. While the overall objectives and activities of the competent authorities are generally aligned with the evolving national AML/CFT policies, the extent to which authorities have aligned their objectives and activities to respond to the higher national ML/TF risks are inconsistent. For example, LEAs have prioritised objectives and activities to combat corruption, organised crime, and drug trafficking threats, which are consistent with Brazil's identified highest ML risks. However, there is less consistent objective and actions alignment relating to other priority NRA action, for example, improving the controls and better identification of the ultimate beneficial owner in transactions or combatting environmental crimes.

142. Overall, for LEAs, the fight against corruption, organised crime, and drug trafficking continues to be prioritised in their daily work, which is consistent with Brazil's identified highest ML risks. There is more emphasis by PF and MPF on opening parallel financial investigations for predicate crimes, as shown by the establishment of several task forces and forensic laboratories specialized in financial investigations and ML, and in particular on corruption. Additionally, there is continued collaboration and discussion between relevant agencies at ENCCLA, including the CGU, AGU, and TCU, to discuss issues relating to corruption, organised crime, and drug trafficking.

143. On FI supervisory actions, BCB implemented a comprehensive supervisory effort to address identified deficiencies among its reporting entities, including exchanges, based on a sectoral risk assessment. This effort represents BCB's commitment to achieving AML/CFT goals which is also encapsulated by the BCB's creation of Pix, an instant payment arrangement that came into operation in March 2019, as a direct response to Brazil's goal of reducing the risks of misuse of cash (see Box 2.1). Additionally, to address the identified threats from illegal gold mining, BCB made concerted efforts in its supervisory regime to examine and assess the AML/CFT procedures implemented by the DTVM sector.

144. Regarding DNFBP supervision, there is a need for significant resources to be deployed for DNFBP supervisory efforts across the board as the existing supervisory framework remains largely insufficient considering the ML/TF risks identified. The understanding of risk factors for most DNFBP supervisory and self-regulatory authorities is still developing. Lawyers and company service providers remain unregulated or outside the scope of AML/CFT obligations (see IO.3 for more information). Additionally, the supervisory authorities, in particular the SRBs, have started several initiatives to implement specific AML/CFT focused supervisory efforts including special training on STR and CTR reporting, which is an NRA priority action however, interviews with several SRBs, suggest a common acknowledgement that further work is needed.

145. ENCCLA and the NRA identified illegal mining and environmental crimes as some of the highest ML threats yet Brazil's authorities dealing with environmental crimes and illegal mining have faced challenges in staffing, resourcing, and prioritisation. For examples, ANM has suffered from a lack of budgetary, human, and technological resources as staffing resources have been cut by 50% compared to a decade ago (see IO3). Additionally, several authorities relayed that, for some years, efforts to combat environmental crimes and illegal gold mining were hampered as policy priorities were actively established to curtail the fight against environmental crimes. Authorities stated that the executive branch de-prioritised efforts to combat environmental crimes and illegal mining which led to the cessation of ongoing joint operations in similar size and scope between IBAMA and other LEAs. This resulted in less than desirable detection of violators of illegal mining laws and regulations (see also IO.7). These policy objectives and priorities not only restricted the civil servants' work from being carried out, but they emboldened organised crime groups to take advantage of the then government's posture to increase illicit activities in environmental crimes and, most likely leading to increased laundering of illicit proceeds. At the same time, the authorities stressed that there is a renewed sense of high-level support for combatting environmental crimes and major efforts were carried out even in just the first few months of 2023.

National coordination and cooperation

146. Despite some good examples of coordination and cooperation, there are some challenges in ensuring that all agencies can work together to tackle the highest ML/TF risks. There is not yet cooperation on combating the financing of proliferation of weapons of mass destruction, but the authorities noted initial efforts have begun (see also IO.11).

147. ENCCLA is a positive example of government coordination. ENCCLA brings together more than 80 government and private sector entities to decide ten annual priority actions to combat corruption, ML, and TF. The actions are decided through consultations between the participating authorities and take the form of recommendations, directions, and good practices. While ENCCLA has made many important achievements over the years, there are some improvements that could be made to improve coordination. Decisions on the actions to be taken are not mandatory, leaving individual government agencies independent power to implement the policies or not. Additionally, as ENCCLA operates on consensus, which in itself is a positive aspect of governmental coordination, proposals that do not achieve the full support of ENCCLA members are likely to get shelved despite their level of priority.

148. As Brazil's ML/TF regime grows and matures, ENCCLA would benefit from additional resources and other structural adaptations to enhance its existing framework. For example, ENCCLA does not have a standing group or body to analyse the results of its annual actions or to study how the government is doing in accomplishing an ENCCLA action. ENCCLA's secretariat, and the government as a whole, may benefit from standing up such a group with high-level political backing with authorities to compel the interagency to carry out ENCCLA priorities, to measure the government's progress on achieving the priorities, and to take additional steps if progress is not being met.

149. Some structural barriers continue to prevent optimised cohesion between the authorities in the fight against ML/TF. For example, there are some areas of weakness

in cooperation between police and prosecutors, extending to certain systemic issues (e.g., no policy to develop joint strategies in individual cases or rules about when/how to seek certain judicial authorisations; no prosecutors specialised in CT/TF with whom the Police's CT unit can work with on a regular basis; see IO.7 and IO.9). As another example, the development and implementation of policies and the activities carried out by RFB are not adequately coordinated with other competent authorities considering tax crimes are a significant ML predicate in Brazil and that RFB controls access to important information that would help further the AML/CFT missions of other agencies. While there are positive examples of cooperation between RFB and other agencies, there are also structural and policy issues preventing RFB from being as well integrated in AML/CFT efforts as needed. This can be seen in IO.5 and IO.6 (lack of access to information held by RFB and covered by tax secrecy, such as BO declarations and cash declarations); IO.7 (various legal hurdles which prevent tax-related ML cases from being referred to LEAs in an effective manner); and IO.8 (low priority given detecting cross-border cash and making referrals of potential ML). Issues related to RFB's objectives and activities as part of the larger AML/CFT system (as opposed to its very clear role as a tax authority) are discussed further within this MER at sections on IO.6, IO.7, IO.8, and IO.5..

150. The authorities have found some ways to work around obstacles and acknowledge the need for progress in co-operation and co-ordination to develop and implement policies and activities to combat ML/TF. For example, while the extensive definition of tax secrecy can present obstacles in obtaining timely information during investigations, the authorities have demonstrated forming joint task forces with the RFB (when tax crimes are involved), which allows for rapid access to information covered by tax secrecy. This helps to mitigate against certain long wait times for a judicial authorisation and allows the LEAs to work directly with an RFB counterpart on the investigation.

151. In the fight against environmental crimes and illegal mining, Brazil has historically achieved some good coordination among government agencies, as IBAMA worked in cooperation with LEAs to carry out large scale operations. For example, the authorities provided examples of joint operations that were the norm in 2008 carried out by IBAMA, the National Forest Agency, and PF, which would last for 90 days or more in the field. While these collaborations took place many years ago, they resulted in impactful infraction notices for violations of environmental crimes and exhibited great coordination among the relevant agencies in combatting environmental crimes. While there were major challenges during the earlier years of this assessment in the fight against environmental crimes, the authorities confirm there is renewed collaboration between various agencies in seeking to coordinate and develop additional policies and actions to address the high ML threat that stems from environmental crimes.

Private sector's awareness of risks

152. The 2021 NRA has been published and publicly available. COAF disseminated the results of the NRA through its messaging system as did other government agencies for their reporting entities. Additionally, COAF and other authorities conducted awareness-raising trainings and presentations on the findings of the NRA. While the specific sectoral risk assessments and sector-specific questionnaires and findings have not been published themselves, the major findings were incorporated into the NRA which is publicly available.

153. Supervisory authorities, especially BCB, included the results of the NRA in their supervisory efforts, and which led to a high level of awareness in these sectors. In fact, many of the larger financial institutions and exchanges implement internal AML/CFT controls and procedures that go beyond the obligations set forth in Brazilian regulations citing the screening of OFAC, UK, and EU sanctions lists for transactions. The DNFBP sector is generally less aware of Brazil's national ML/TF risks, and the SRBs acknowledged that there needs to be more work done to conduct greater awareness training around the NRA and ENCCLA actions as there is uneven awareness among the DNFBP sector of the national ML/TF risks.

154. On TF risks, the NPO sector is generally unaware of the authorities' view that there exists some element of TF-exposure for NPOs. While representatives from Brazil's NPO coalition – the Brazilian Association of Fundraisers – participated in an ENCCLA process focused on NPOs and TF-risk, individual NPOs informed that they were not actively consulted on Brazil's NPO sectoral TF risk assessment and were unaware of its findings.

Overall conclusion on IO.1

Brazil has demonstrated a high understanding of most of its national ML risks, reinforced by its NRA and ENCCLA's ongoing work to combat corruption and ML/TF for over twenty years. Risk understanding of the financial flows and ML techniques from environmental crimes is still developing. Compared to ML, the TF risk understanding is less robust and tends to be uneven among different authorities, with PF and ABIN showing a stronger understanding of the TF risks. The authorities have taken actions to raise awareness of national ML/TF risks, although it is varied, with more sophisticated industries having a better awareness compared to the DNFBP sectors. Brazil has a strong interagency coordinating mechanism, which has taken significant measures to mitigate Brazil's highest ML risks, particularly by developing detailed policies and strategies to combat ML from corruption. Success in tackling other important ML/TF risks (including environmental crimes, drug trafficking and organised crime, tax crimes and the misuse of legal persons and arrangements) is more inconsistent resulting in less comprehensive policies and strategies, some misalignment in policy objectives, and/or structural coordination issues (including limited resources for relevant agencies or development of simplified measures in higher risk areas).

Given that the highest ML risks are generally well understood, the coordination framework has developed comprehensive strategies to tackle the main risk area (corruption), and authorities have taken a number of policies to address, at least in part, other high ML/TF risks, the improvements needed in policies, coordination and alignment of objectives are considered moderate shortcomings.

Brazil is rated as having a substantial level of effectiveness for IO.1.



Chapter 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Key Findings and Recommended Actions

Key Findings

Immediate Outcome 6

- a) Competent authorities at the federal and state level in Brazil regularly access and use financial intelligence and other relevant information to develop evidence and trace criminal proceeds related to ML and predicate offences. There are multiple specialized units in Police and Prosecution Offices (LAB-LD; SPPEA) across the country in charge of processing and adding value to the financial intelligence received from COAF with the aim of supporting financial investigations.
- b) COAF is the main source of financial intelligence in Brazil, although special units in Police and Prosecution Office also produce financial intelligence. COAF produces financial intelligence reports (RIFs) that are shared spontaneously or on request to a broad range of relevant LEAs across the country in a secured manner. While there is relatively a large number of RIFs produced on request, the number of spontaneous RIFs is limited when considering the risk and context of the country (around 2000 per year), which is mainly due to the limited human resources available in COAF. Also, even though COAF has disseminated RIFs related to the main threats identified by the country, the spontaneous disseminations on environmental crimes are not commensurate with the risk profile.
- c) COAF is a cross-agency authority, which is able to operate independently. It is currently hosted by the Central Bank since 2019, and was previously at Ministry of Finance, and, for a brief period, at Ministry of Justice. Even though dissemination was suspended for a few months in 2019 by a Federal Supreme Court judgment, a following judgment re-established the full operational independence of COAF.
- d) COAF's analysis is informed by access to a broad range of sources of information and database (including the database on bank accounts, called CCS), as well as a large number of STRs and CTRs from reporting institutions. In general, competent authorities are receiving and requesting relevant information to perform their duties. The RIFs generated are used to support investigations from LEAs, and there were high-impact cases where the RIFs were critical to the success of the investigation. Also, COAF and relevant competent authorities co-operate and exchange information and financial intelligence regularly, and the LEAs appear satisfied with the quality of the RIFs. LEAs can ask for RIFs through a secure IT system

developed by COAF, that produces relevant automatic reports within 24-48 hours. COAF also provides support on request in ongoing cases through 8 operational analysts who are permanently assigned to this specific task.

- e) Notwithstanding the ability to disseminate useful RIFs, the scope and depth of the RIFs is affected by several factors. COAF's preliminary analysis is done through an automated artificial intelligence software, and after the filtering process on average only 3% of the STRs are considered to be of high or medium risks and analysed individually, which is limited given the large amount of STRs/CTRs. At least in part this can be explained by variable quality of STRs and limited resources in COAF. While COAF has the legal power to request complementary information from the reporting institutions, in practice this is done to a minimal extent. COAF has limited access to adequate information on legal persons having direct access to the company register (CNPJ) but not from the BO Register held by RFB, thus preventing COAF from quickly obtaining updated information on a significant number of companies (see IO.5). Since 2018, COAF no longer has access to the Customs cash reports held by RFB, which limits the ability to identify cash couriers and related criminal activity.
- f) COAF delivers training to LEAs and has developed some strategic intelligence such as an illegal gold mining study, several tactical RIFs on topics such as human trafficking and elections, and typologies, although the LEAs may benefit further if COAF produced more strategic intelligence, training, and disseminations.
- g) Regarding TF, there is some interaction between COAF and Federal Police. However, there is limited interaction between COAF and ABIN on this matter, which limits tactical analysis on TF issues.

Immediate Outcome 7

- a) Federal and state police and prosecutors identify and investigate ML through predicate offence investigations, financial intelligence, and occasionally through referrals from other agencies. However, the authorities mainly focus on predicate offences over ML, and rarely use other means of detection such as cross-border currency declarations, incoming MLA requests, whistle-blowers, or open sources. Detection of ML is limited in connection with some predicate offences such as environmental crimes; this also applies for tax crimes and smuggling due to the inadequate integration of the tax agency (RFB) with police and prosecutorial authorities. LEAs are generally well trained and have many necessary tools to conduct financial investigations.
- b) It is a positive aspect of the Brazilian system that specialised units and joint task forces have focused on the investigation and prosecution of high-end ML. Most complex ML cases are investigated by teams specialised in combatting financial crime or which emphasise specific predicates based on local risks. Such cases are often prosecuted by state and federal GAECOs consisting of experienced prosecutors.
- c) ML cases are strongly supported by the network of 55 LAB-LD, high-tech labs which assist in financial investigation, asset tracing, and processing a vast amount of financial and other records. They analyse and corroborate

financial intelligence, develop, share, and use IT tools, and build reports which are useful to LEAs and in court proceedings.

- d) There is a significant mismatch between Brazil's investigative capacity when it comes to ML and its ability to obtain results in terms of prosecutions, convictions, and sentences. Too few ML investigations lead to prosecutions. This is linked to generally insufficient coordination between police and prosecutors – except in some major cases such as Lava Jato – as well as a lack of prosecutorial resources to handle large caseloads and numerous appeals. There are also delays in some courts to obtain a judicial order to lift bank or tax secrecy, which can set back investigations.
- e) Brazil is not achieving successful outcomes in as many ML cases as should be expected given the risk and context of the country. On average, there are approximately 74 federal convictions and 95 state convictions per year for ML. The conviction rate is also low – less than 40%. To partially mitigate this, and to obtain valuable cooperation against other defendants, Brazil uses collaboration agreements (plea bargains) efficiently, especially in larger cases. However, Brazil was unable to show many final ML convictions, and those that were obtained took several years to conclude.
- f) Major structural issues hinder the pursuit of ML, including the number of interlocutory appeals permitted throughout criminal proceedings (multiple levels of appeal are possible without awaiting final judgment). This has the effect of slowing ML investigations and extending cases, sometimes for a decade or more, after charges. There is also instability in case law and in what is required by the courts as to the various aspects of ML proceedings, which challenges prosecutors and police to meet changing expectations.
- g) Brazil is pursuing ML linked to its highest risk predicate threat of corruption very well. However, some corruption-based ML cases have been diverted outside the network of specialised courts, raising a concern about a loss of effectiveness due to less expertise in ML.
- h) While some case examples show the pursuit of other major predicates, ML linked to environmental and tax crimes are not prosecuted to a sufficient extent, in line with risk. ML linked to drug trafficking is not pursued routinely at the network level, given the threat posed by significant gangs based in Brazil and engaged in the international drug trade. Stand-alone ML is tackled mainly through notable operations targeting *doleiros* (money exchangers). However, Brazil is not pursuing other professional enablers of ML – including lawyers, accountants, notaries, and real estate agents – to a sufficient extent considering the country's risk profile (e.g., lack of regulation of material sectors, investigative barriers, and instances of criminal facilitation by such gatekeepers). Cases based on foreign predicate offences are not an area of focus of the authorities.
- i) The full range of sanctions appears not to be used for ML. While some sentences are dissuasive on paper, case examples and interviews revealed that some are not carried out in practice. Structural issues in Brazil's criminal justice system also have a negative effect on penalties, such as the unusual statute of limitations calculation which may result in a low or no

sentence after the conclusion of a lengthy process. Even defendants in high-end ML cases are not likely to serve a prison sentence unless it is at the highest end of the spectrum, or they may do so in less dissuasive open or semi-open regimes. Cases and interviews showed that some penalties remain unexecuted. Although there are many corporate agreements used to penalise acts of corruption (a main ML threat), there is no criminal liability for legal persons for ML.

Immediate Outcome 8

- a) Brazil pursues confiscation as a policy objective, as demonstrated by the expansion of its legal framework and institutional improvements in the last several years. Positive developments include, among other things, a direct mechanism to freeze which facilitates the restraint of financial assets, the introduction of extended confiscation, and the growth in recoveries linked to collaboration and leniency agreements.
- b) Brazil is successfully seizing criminal assets in the investigative phase especially with regard to its main ML threat area, corruption, but also across many categories of offences. Seized assets are sometimes sold to preserve value, which is important considering the length of criminal proceedings.
- c) Brazil is not keeping adequate statistics about confiscation at the federal or state level. This makes it nearly impossible to determine how well Brazil is performing in the final stage of confiscation, to deprive criminals of their proceeds and make crime unprofitable. Also considering qualitative data, such as a limited sample of cases with details about final confiscation (most examples were old, ongoing, or on appeal), overall criminal confiscation results are misaligned with Brazil's risks and insufficient given the amount of proceeds generated. This situation is exacerbated by lengthy criminal proceedings and few convictions. The routine nature of confiscation outside of high-profile and major cases is unconfirmed.
- d) While SENAD has been strengthened, its remit is very limited, and asset management in Brazil is too reliant on individual judges making arrangements without a coherent and structured system. This creates concerns around efficiency, as well as oversight and transparency, and contributes to Brazil's deficit on statistics and base of knowledge on which to make systemic improvements. Weaknesses on asset management and disposal, as well as the collection of relevant data and statistics, persists from the last evaluation.
- e) Brazil is successfully pursuing the confiscation of assets moved abroad. Billions of dollars have been frozen, especially in offshore and financial centres, and competent authorities have been able to repatriate assets in significant cases.
- f) The confiscation of falsely declared or smuggled cash and BNI is minimally pursued by customs authorities and is not applied as an effective, proportionate, or dissuasive sanction. This is a significant problem considering Brazil's risk and context. Although authorities are in the

process of improving border control and detection, little focus is placed on cash smuggling and few ML cases or confiscations are generated therefrom.

- g) With respect to ML and major proceeds-generating offences, there is insufficient evidence of effective criminal confiscation in general. Brazil is performing better with regard to corruption, crimes involving public funds, and, to a limited extent, environmental crimes. This is due to the use of non-criminal mechanisms to obtain the return of assets illegally subtracted from the state in those contexts. Brazil has achieved significant results through the negotiation of leniency agreements through CGU and AGU. The damages and losses recovered—which equate to criminal proceeds—amount to USD 1.35 billion between 2017 and 2022. In 25 cases. AGU, CGU, TCU and administrative bodies controlling public expenses also use a range of civil and administrative procedures to trace, seize, and recover assets.
- h) There is little evidence of concluded confiscations linked to other offences such as drug trafficking and organised crime, tax, and financial crimes. The lack of corporate criminal liability and of non-criminal alternatives (as in the corruption space) lessen the level of effectiveness. Altogether, the confiscation results are not largely in line with Brazil’s risk profile as a source and destination country for proceeds sharing many borders.

Recommended Actions

Immediate Outcome 6

- a) COAF should significantly increase the number of analysts so that it can increase the number of STRs to be analysed in more depth. After increasing resources, COAF should consider reviewing the automated filtering model so that the system can return a larger number of STRs to be analysed and the STRs focus on the evolving highest risk areas in the country. As the centre for financial intelligence, COAF should ensure that highly qualified analysts receive ongoing training.
- b) COAF should increase the spontaneous dissemination of RIFs, especially in relation to the main threats identified in the country, including environmental crimes. COAF should also increase the production and dissemination of strategic intelligence among the relevant LEAs and competent authorities, especially regarding the main threats identified in the country, and should use these products to refine and better target the automated filtering model.
- c) As a way to further assist law enforcement authorities to identify money-laundering cases (particularly more complex cases), COAF should also enhance the depth of disseminations. Brazil should enhance the possibilities for COAF to access more information, including cash declarations from RFB, and by facilitating access to all sources of adequate and current BO information in a timely manner to ensure BO is used when producing RIFs. To complement the information available and enable LEAs

with greater financial intelligence, COAF should proactively seek to obtain additional financial records and transactional information from reporting entities in more circumstances and should start to more systematically do so also from the reporting entities that did not submit the STR in the first instance.

- d) COAF should issue relevant guidance and strengthen the feedback to reporting entities so they can improve the quality of the STRs, including on STRs involving possible TF.
- e) Brazil should continue to promote the sharing and exchange of good practices and tools among the LAB-LDs. It should continue to provide training to officers from LEAs on the use of RIFs and financial investigations to further strengthen the use of the RIFs by the LEAs at the federal and state level.
- f) Irrespective of its administrative location, Brazil should ensure that COAF have the resources it needs to perform its mandate and continue to preserve full operational independence.
- g) COAF and ABIN could strengthen their cooperation on TF matters, to ensure there is proper interaction and relevant disseminations to ABIN regarding possible TF.

Immediate Outcome 7

- a) Brazil should improve cooperation between police and prosecutors, including by attempting to reach early agreement on case strategies. Prosecutors and police should communicate more frequently to ensure a synchronized approach to ML investigations.
- b) Brazil should consider broadening access to information protected by tax and bank secrecy for intelligence purposes. At a minimum, smoother and faster access to information held by RFB is needed outside of task force settings where RFB is already part of the investigation. Judges should be required to rule on requests to lift bank and tax secrecy promptly, within a certain timeframe.
- c) LEAs should improve their understanding of the financial consequences of different environmental crimes including who profits, where the proceeds flow, and how they are laundered. Relatedly, Brazil should craft a multi-agency enforcement strategy that emphasises ML investigations and prosecutions linked to this category of predicates, in line with Brazil's significant risks in this area (see also RA(a) in IO.1 and RA(e) in IO.8). Significantly more resources should be dedicated to financial investigations linked to illegal mining and logging (deforestation), with a focus on pursuing criminal actors in the supply chain and utilising information held by different agencies.
- d) Financial investigations and the prospect of ML or standalone ML charges should be prioritised as a tool to combat organised criminal groups, including major drug trafficking organisations such as PCC and CV. Brazil should pursue more ML prosecutions and obtain convictions of group leadership, financial support networks, and associated third-party money launderers, particularly gatekeepers and professionals. Brazil should

ensure that all such professionals, including lawyers, can be investigated effectively if they become involved in criminal activity, and examine whether bar rules impede this.

- e) Ensure the effectiveness of ML sanctions and enforcement of custodial sentences, including by reconsidering the appropriateness of certain prison regimes for major ML offenders, issuing sentencing guidelines for ML, and revising the statute of limitations calculation.
- f) Brazil should deepen its understanding of ML related to foreign predicate offences and take steps to better detect and proactively investigate this type of ML, in line with its status as a regional financial centre.
- g) Consider introducing corporate criminal liability for the ML offence, particularly in light of the economic impact of this crime and the use of real businesses in ML schemes.
- h) Improve coordination between MPF and RFB, especially the referral process, and remove unnecessary disclosures of information or other policies that may delay or hinder the investigation of ML linked to tax crime, in line with Brazil's risks (e.g., RFB Norm. Instr. No. 1750, art. 16).
- i) Brazil should consider several structural improvements to lessen obstacles to successful outcomes in ML cases. Consider making adjustments to:
 - i. Conclude cases more promptly and stem the misuse of the judicial system as tactic to delay – while still preserving fundamental rights guaranteed to defendants – such as by rationalising, streamlining, or limiting avenues for interlocutory appeal at various phases of a case, expediting trials, or introducing other helpful time limits.
 - ii. Increase judicial resources and continue investment in specialised courts and judges. Ensure that courts assigned to hear ML cases have the capacity and experience to deal with complex financial crimes.
 - iii. Increase prosecutorial resources where needed, particularly to handle the large numbers of ML investigations referred and multiple appeals, potentially by establishing distinct appellate units.
 - iv. Take lessons from ML cases when procedural issues have hampered adjudication and bolster the work of the CNJ to ensure impartiality, independence, and professionalism among the judiciary.
- j) Develop a comprehensive statistical system to track ML investigations, prosecutions, and convictions to enable a picture of performance at the state and federal levels. Use this data to develop policies to improve the conversion of ML investigations into successful prosecutions.
- k) Joint trainings or workshops between LEAs and prosecutors should be continued and updated, focused on elements of the ML offence, legal requirements for investigative steps, relevant case precedent on ML, and

best practices for standalone ML prosecutions. Standalone ML should be encouraged through new or expanded operational policies or manuals. The judiciary should be included in certain events to discuss expectations, local court practice, and other rules the police and prosecutors should adhere to help ensure smooth and efficient court proceedings in ML cases.

Immediate Outcome 8

- a) As a matter of priority, Brazil should seek and achieve more final confiscations in criminal cases with respect to its highest risk predicate crimes. In addition to addressing the structural issues as recommended in IO.7, which should promote greater and swifter confiscation results in completed cases, Brazil should:
 - i. Develop a comprehensive statistical system to track seizure, restraint, and final confiscation of all types of assets, to enable a measurement of performance at the federal and state level.
 - ii. Based on learnings from the statistics, determine objectives to make improvements in specific areas, and a process for follow-up.
 - iii. Ensure that all appropriate measures are considered by authorities for use in specific cases, to include extended confiscation.
 - iv. Consider expanding the situations where corresponding value can be confiscated.
 - v. With a centralised plan, improve both technical capacity and expertise to identify, trace, seize, and confiscate virtual assets, across all LEAs.
- b) Urgently study the risks related to the movement of illicit cash in and out of Brazil, focusing on key border regions with higher criminal threats. Formulate a policy to detect and seize undeclared cash, and use confiscations, to the extent possible, to initiate and develop ML and predicate investigations.
- c) Building on the 2017 activity guidance on confiscation, expand training for federal and state LEAs—including those outside of specialised units—to increase the everyday engagement of authorities in tracing, seizing, and confiscating criminal property. Training should target officials outside of the capitals and be offered periodically.
- d) Improve asset management and disposal procedures. Consider ways to reinforce SENAD's involvement in non-drug cases throughout the territory, or to take a more centralised approach that relieves individual judges from responsibility for asset management and guarantees transparency and oversight. This may include enabling access to dedicated asset managers for all judges within a court, region, or state.
- e) Continue the confiscation of the instrumentalities of environmental crime, but greatly expand asset recovery efforts to pursue the proceeds of those profiting from illegal mining and other extractive crimes, especially major actors and intermediaries in the supply chain. This effort should include a

focus on recovering assets abroad, as necessary, and leveraging the expertise of all relevant agencies, potentially in a taskforce setting (e.g., the Federal Police, Military, Ibama, AGU, RFB/Customs, and others). Consider using assets recovered for the benefit of populations considered victims of these environmental offences.

- f) Enhance cooperation between police/prosecutors and the RFB, to include easing access to information under tax secrecy, including company ownership information and cash declarations, with the aim of facilitating asset identification, tracing, and confiscation.
- g) Build on the notable recoveries obtained through collaboration (plea agreements, leniency agreements, and other civil and administrative tools by:
 - i. Ensuring the collection of amounts agreed, including consequences for non-payment;
 - ii. Deepening cooperation between AGU, CGU, TCU, and other bodies, including on the calculation of damages and losses to the Union;
 - iii. Reinforcing cooperation with prosecutorial authorities so they can pursue criminal convictions and confiscation, in appropriate cases, either first, or in parallel with other proceedings;
 - iv. Continue efforts to recover the proceeds of corruption and improbity from legal persons using a variety of mechanisms, with a focus on securing effective provisional measures.
- h) Regarding international assistance related to Brazil's non-conviction-based measures to recover assets, Brazil should continue its pursuit of traditional and, as needed, alternative solutions to obtain cooperation and recover assets.
- i) Consider ways to strengthen provisional measures and confiscation of assets and corresponding value held by legal entities, especially in higher risk areas, such as organised crime. In the absence of the ability to charge legal persons, confiscation should be prioritised.

155. The relevant Immediate Outcomes considered and assessed in this chapter are IO.6-8. The Recommendations relevant for the assessment of effectiveness under this section are R.1, R. 3, R.4 and R.29-32 and elements of R.2, 8, 9, 15, 30, 31, 34, 37, 38, 39 and 40.

Immediate Outcome 6 (Financial Intelligence ML/TF)

Use of financial intelligence and other information

156. The Brazilian investigative authorities, both at the Federal and State level, regularly access and use financial intelligence and other relevant information to develop evidence and trace criminal proceeds related to ML, TF and predicate offences. The findings are based on: statistics on financial intelligence reports (RIFs)

disseminated, examples of the use of RIFs, statistics on STRs, information on databases accessed by competent authorities, case studies, interviews with relevant competent authorities at the federal and state level, among other relevant data.

157. LEAs and competent authorities at the federal and state level access and use a number of financial intelligence products, including financial intelligence disseminated by COAF, and information available in multiple registers as well as developed through specialised task forces or units (LAB-LD). LEAs can access information protected by tax secrecy during any criminal investigation through judicial authorisation for lifting the tax secrecy (see also IO.7). In a joint investigation between LEAs and RFB, intelligence products can include information available to RFB and protected by tax secrecy. CDD and transactional information may be available as intelligence when obtained by COAF through STRs and CTRs, although COAF rarely seeks additional information from FIs/DNFBPs to further enrich its analysis.

158. The main source of financial intelligence in the country is the dissemination by COAF. COAF is the national centre in charge of receiving and analysing STRs and of disseminating the outcome of its analysis. It is a cross-agency authority, which can operate independently. It is currently hosted by the Central Bank since 2019, and was previously at Ministry of Finance, and, for a brief period, at Ministry of Justice. At the time of the onsite visit, there was a provisional measure ordered by the government to move COAF back to Ministry of Finance.³⁰

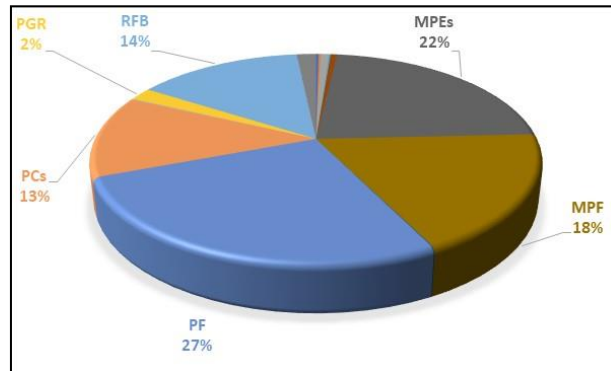
Dissemination of COAF products

159. COAF produces financial intelligence that is shared spontaneously or on request to a broad range of relevant competent authorities across the country. The main product developed by COAF is the Financial Intelligence Report (RIF). The spontaneous RIFs are sent to the relevant LEAs to initiate, conduct or complement their investigations.

160. As seen in Graph 3.1, spontaneous RIFs are mainly disseminated to the prosecutor's office at the state and federal level (40%) and to the state and federal police forces (40%). The RFB also receives a significant portion of the RIFs (14%). There were also some disseminations to the financial supervisors, mainly the BCB and CVM, as well as to other competent authorities such as the CGU and ABIN. The dissemination of spontaneous RIFs appears to be targeted to the relevant competent authorities.

³⁰ Provisional Measure 1,158/2023 that moved COAF to the Ministry of Finance went out of effect in June 2023, and COAF remains in the Central Bank.

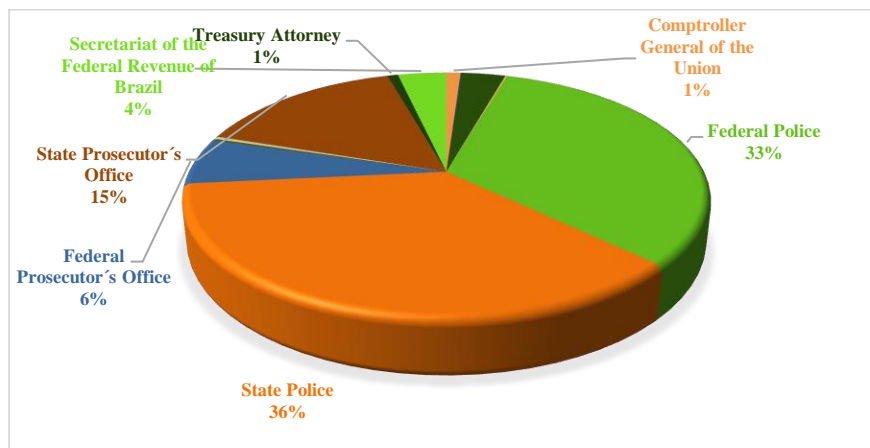
Figure 3.1. Destination of Spontaneous RIFs Sent by COAF



161. In turn, the destination of the RIFs produced by request is mainly focused on the police (36% the state police and 33% de Federal Police). It should be noted that all the relevant competent authorities can request RIFs to COAF through a secure IT platform (SEI-C). There are two types of RIFs by request. Automatic RIFs, which are automatically produced in a deadline of 24 to 48 hours and include the information available in its databases; and specific RIFs requested by LEAs which require further analysis and are responded to in a longer timeframe. All RIFs on request include information held by COAF and information it can access directly.

162. The rapid access to this information by LEAs is a positive feature and allows them to timely use the financial intelligence when needed. Nevertheless, these reports do not contain much human analysis, as for the most they are produced automatically by the COAF system (although there is some human oversight over them).

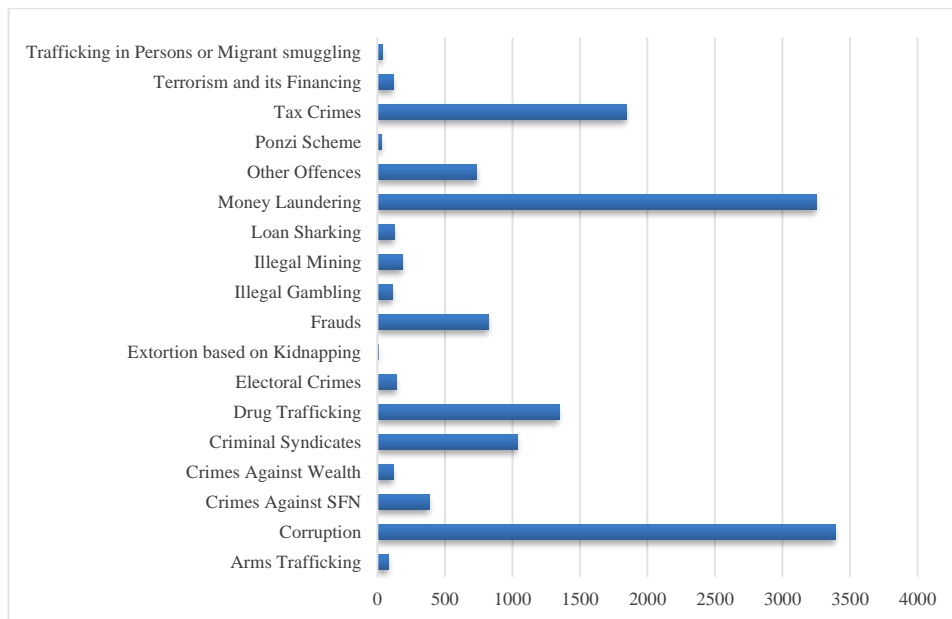
Figure 3.2. Disseminations Made on Request per Destination



Content of the disseminations

163. The disseminations made by COAF are generally consistent with the risk profile of the country, given that many of the larger ML threats are covered, although the proportion of disseminations related to environmental crimes is limited. As seen in the Graph above, 25% of spontaneous disseminations relate to corruption, 24% to ML, 13% to tax crimes, 10% to drug trafficking, 8% to criminal syndicates, 6% to fraud, 3% to crimes against the financial system, 1% illegal mining, 1% to arms trafficking, among others.

Figure 3.3. Possible Offences Underlying Spontaneous RIFs



164. Regarding the RIFs produced by request, there is some variation in the percentage of underlying predicate offences, although the requests related to environmental crimes appears to be limited again: 12% corruption, 10% drug trafficking, 10% criminal syndicates, 9% fraud, 4% crimes against wealth, 3% tax crimes, 2% crimes against the financial system, 1% illegal mining, 1% arms trafficking, and 44% other offences, among other figures.

Amount of disseminations

165. Between 2017 and 2022, COAF has produced and disseminated 13 140 RIFs spontaneously and 43 525 on request. This means an average of 2 190 spontaneous RIFs and more than 7 200 by request per year.

Table 3.1. Number of RIFs disseminated per Type and Year by year of dissemination of the RIF (Jan. 2017 – Dec. 2022)³¹

Type of Dissemination	2017	2018	2019	2020	2021	2022	Total	Average per year
Spontaneous	3.076	2.302	1.212	3.426	1.861	1.263	13.140	2.190
By request	3.336	4.921	4.877	8.143	10.441	11.807	43.525	7.254
Total	6.412	7.223	6.089	11.569	12.302	13.070	56.665	9.444

166. As shown in Table 3.1 above, during the assessed period the number of RIFs disseminated by request increased significantly while the dissemination of spontaneous RIFs nearly fell to a third if compared with 2017. These numbers suggest that the COAF regularly produces and disseminates RIFs to competent authorities, although its capacity to produce spontaneous disseminations appears to be affected to a certain extent by the steady increase in the RIFs produced on request.

167. The decrease in the number of spontaneous disseminations in 2019 is owed to a limitation placed by a provisional injunction on the use of financial intelligence in criminal investigations, which was issued by one judge of the Federal Supreme Court in June of that year. The injunction ordered a temporary suspension of all the disseminations made by COAF without previous judicial authorisation, thereby causing a drop in the number of RIFs shared with competent authorities. Additionally, this measure negatively impacted its operational independence. However, this decision was reversed in November 2019 and many disseminations suspended in 2019 were finally released in 2020, causing a significant increase in the number of that year.

168. Considering the risk and context of the country, the total amount of spontaneous disseminations is limited. As indicated in the section on *STRs received and requested by competent authorities* below, Brazil receives a very large amount of STRs from reporting entities. Even though one single RIF can contain dozens of STRs, when analysed in light of the amount of STRs received the number of spontaneous RIFs appears to be low. Please see Table 3.2 for the numbers in the analysis process from STRs received to RIFs shared.

³¹ The number of spontaneous disseminations in this table includes all RIFs COAFs has produced and disseminated based on all sources of information, notably STRs, CTRs, international requests, and other sources from other authorities or publicly available. The number of RIFs disseminated each year refers to the moment of the dissemination. Compared to Table 3.2, the number of RIFs in any given year is different because Table 3.2 only looks at the RIFs produced stemming from STRs and the number of RIFs in each year is counted from the date of the STR and not on the actual dissemination. Table 3.2 refers exclusively to spontaneous reports (not included by requests) produced by COAF.

Table 3.2. STRs Received and No. of RIFs Produced by year in which the STR was received³²

Year	STRs received	STRs Analysed by predictive models	STRs Analysed by analysts	RIFs produced	RIFs disseminated	RIFs not disseminated
2018	434.256	434.256	17.875	1 097	971	126
2019	351.154	351.154	19.509	2.071	1.950	121
2020	863.238	863.238	39.318	2.634	2.495	139
2021	1.270.064	1.270.064	63.142	1.428	1.333	95
2022	1.938.204	1.938.204	92.778	1.007	949	58
Total	4.856.916	4.856.916	232.622	8.237	7.698	539

169. When COAF considers that RIFs can be useful for more than one competent authority, this can be shared with several competent authorities simultaneously.

Use of COAF intelligence products

170. In general, the financial intelligence produced by COAF is used to support the investigations conducted by the federal and state LEAs. All the relevant competent authorities are aware of the importance of the financial intelligence and routinely use it in the framework of their functions. Either at the federal or state level, there are areas or divisions within the police forces and the prosecutor's office in charge of supporting complex or ML investigations and of analysing and adding value to the financial intelligence received from COAF (see section below).

171. Moreover, the Federal Police has developed an IT tool to assist police officers in the analysis of financial intelligence named "RIF extractor". With the RIF extractor the PF is able to automatically integrate the information of RIFs in their own databases. COAF also adapted the format of its disseminations to standardize the automatic extraction of this information. PF has a normative instruction establishing the procedure for treating the RIFs received from COAF.

172. All the LEAs in Brazil are staffed with specialized officers. From 2017 to 2022, there were 106 training activities with 6 261 officers trained in financial investigations. Also, as regards to the specific analysis of RIFs, the PF specifically established a course named "Financial Intelligence Report Analysis Course – CARIF", training 461 officers in 3 years. However, considering the size of the country and its risk and context, the number of trained officers has room for improvement.

173. COAF spontaneous and on request dissemination has been a component for the success in investigating some high-impact cases. The examples in the boxes below show that COAF has been able to provide relevant pieces of information that allowed investigators to build cases or to add value in their investigations.

³² In this table the amount of RIF shared is not consistent with the numbers in table 3.1. The difference is that Table 3.2 only looks at the RIFs produced stemming from STRs (while Table 3.1 includes all dissemination based on all sources of information) and the number of RIFs in each year is counted from the date of the STR (and not on the actual dissemination like in Table 3.1).

Box 3.1. Operation Lava Jato (corruption)

The Operation Lava Jato (Car Wash) was a major corruption case which began in March 2014 and involved the state-run oil company, as well as several major construction companies and politicians. The case was revealed when the police caught money launderers moving large sums of cash in Brasilia. The investigation revealed that the oil company executives had been taking bribes from construction companies in exchange for awarding them contracts. The bribes were then laundered through offshore accounts and used to fund political campaigns.

The financial intelligence produced and disseminated by COAF was a relevant factor for the success of the multiple investigations connected to this case. COAF played an important role in identifying suspicious transactions and tracking the flow of illicit funds. In total, COAF disseminated 845 RIFs on request related to 109 individuals and 35 companies, resulting in 361 convictions. 242 of these RIFs were disseminated spontaneously and 603 by request. Additionally, The COAF designated an analyst to participate in the inter-institutional team of the Federal Public Prosecutor's Office of the State of Curitiba, with the Lava Jato Operation Task Force in Curitiba. It contributed to the targeting of natural and legal persons and the analysis of suspicious transactions, and this support was useful in identifying red flags too.

Source: Complementary information provided by COAF and information obtained at: www.mpf.mp.br/grandes-casos/lava-jato/resultados

Box 3.2. Operation Alem-Mar (drug trafficking)

This is an ongoing investigation addressed to an international drug trafficking scheme characterized by the introduction of cocaine produced in South America through the border of Paraguay with the use of aircrafts. Later, the drug was transported to the Northeast Coast by truck and then was embarked in sailboats and cargo ships to Europe. Around 50 individuals and 35 legal persons are being investigated.

Among the techniques identified can be mentioned the following the opening of a network of bank account registered in the name of different companies (some in São Paulo) to move funds belonging to third parties (including drug dealers) controlling credits and debits, and even compensating transactions made abroad (*dolar-cabo*). The funds were delivered to the beneficiaries through cash withdraws, wire transfers or payment of personal expenses. Some of the wire transfers were used to financing the cocaine exportation operations. As well, the shareholders of some companies were identified as frontmen.

COAF supported the PF, and produced and disseminated a RIF on request which was relevant to understand the modus operandi used in the ML process. The data sent by the FIU was processed by analysis tools that allowed the creation of tab and diagrams that enabled the comprehension of transactions and financial ties

and the relationship between the several actors, either account holders, or third parties making deposits etc. Around BRL 70 million were seized (approx. USD 14.2 million), and 30 persons arrested.

Source: PF_03_alemmar.

3

Box 3.3. Operation Ouro Perdido (illegal gold mining - environmental crime)

This is an ongoing investigation involving 20 legal persons and 25 individuals. The PF found an inconsistent number of businesses destined to the trade of gold and/or fabrication of jewellery in Oiapoque, in contradiction to the local reality. Several factors were considered: (a) the inexistence of legal mining field in the region (b) small number of inhabitants in the Municipality; (c) population predominantly of low income (d) inexistence of legal exports/imports of gold between the French Guiana and Brazil (e) notorious presence of illegal mining fields in French Guiana and in the region of Oiapoque (f) the location at a border area favoured the logistics of clandestine miners that entered the territory of the French Guiana (g) vast historic of gold seizures of clandestine origin in the region, (h) commercial businesses did not have the authorization or registration with competent authorities (BCB and COAF) to trade gold or submit STRs, and (i) receipt of spontaneous RIFs on atypical transactions on branches of FIs at Oiapoque, involving persons and entities linked to the fabrication or trade of jewellery. As a consequence of the investigation, more than BRL 3.3 million (approx. 650 000 million) were seized. In particular, the COAF identified several shell companies that used alleged jewellery manufacturing and repair activities to disguise the true purpose of the company, which would be the purchase and/or sale of illegally mined gold. The analysis conducted by the COAF also identified new subjects related to the groups of sellers and buyers of illicit gold that were part of the criminal organisation and the relationship between these individuals.

Source: PF_30_OuroPerdido.

174. In order to understand to what extent the LEAs actually use the RIFs, COAF has developed surveys and also set an electronic feedback form within the SEI-C system, that allows it to identify the primary use of the RIF disseminated either spontaneously or by request. This can be considered as a good practice, as it allows to monitor the effectiveness and actual use of the RIFs by the LEAs and other competent authorities. However, these surveys also show that there is significant room for improvement in certain areas, as detailed below.

175. According to the data collected through this system, 47% of the spontaneous RIFs are used in police inquiries, 9% in criminal investigatory procedures, 3% preliminary verifications of information, 3% in fact notices, 2% for precautionary actions, among others uses. In turn, 14% of the RIFs are filed. Regarding the RIFs disseminated by request, 66% of the times these are used in a police inquiry, 11% in criminal investigatory procedure 4% in a preliminary verification of information, 2%

for supporting precautionary action, 2% for fact notice, among other uses. Most of the disseminations have been used in the framework of investigations.

COAF analysis and spontaneous dissemination

176. As explained in sections below, the LEAs in general are satisfied with the quality of the financial intelligence produced by the COAF. During the onsite visit, all the relevant competent authorities interviewed affirmed that the COAF's reports are pertinent and complete and are useful for triggering or conducting investigations. However, there are some gaps regarding the information accessed by COAF and the depth of the analysis that may limit to some extent the scope of its financial intelligence.

177. In relation to the production of financial intelligence, COAF has access to a range of databases, including STRs, CTRs registrable assets, sanctions lists, basic information on legal persons (including the chain of ownership of domestic and foreign shareholders), among others (see R.29). However, COAF has limited access to adequate information on legal persons having no access to the BO Register held by RFB, thus preventing COAF from quickly obtaining updated information on a significant number of companies (see IO.5). Since 2018, COAF no longer has access to the Customs cash reports held by RFB (see R.32), which limits the ability to identify cash couriers and related criminal activity. While COAF has the legal powers to obtain additional information from reporting entities, in practice this is done to a minimal extent, particularly from reporting entities that did not submit an STR. These factors may actually limit the scope of the RIFs produced by COAF and the access to comprehensive financial intelligence by LEAs.

178. RIFs may include an analysis of financial and commercial transactions, information on the investigated persons, basic information on the legal persons involved in the transactions, diagrams and charts, assets owed by the involved persons, movements of cash, information on the possible predicate offence, information gathered from foreign counterparts, information collected from open sources, among other relevant data. However, the format and clarity of the RIFs can be improved further, and sometimes the depth of the analysis included in the RIFs is to some extent limited.

179. For instance, based on a sample review of RIFs, not all RIFs share the same structure or format, and this may affect its proper analysis by the LEAs. Additionally, some of these RIFs do not have a clear analysis or elaboration about the hypothesis of possible ML scheme and rely too much on the identification of transactions without enough elaboration. Another important issue relates to the tracing of assets by COAF. While there were some important cases where COAF identified assets upon request, there was little evidence suggesting that the identification of assets other than those related to the relevant STR is a routine exercise. In addition, the results of the surveys conducted by Brazil indicate that there is considerable room for improvement in the training of LEAs in understanding the use and the interpretation of the RIFs and that there is also a significant need to hire specialists to analyse financial data submitted by COAF.

180. The STRs are received, classified and automatically analysed by an advanced IT tool consisting of a predictive model, which is based on artificial intelligence, data mining and automatized processes. This system immediately processes and crosses the available information and databases and assigns a score to the STRs. It should be noted that only 2% of the STRs are considered to be of medium risk and 1% of high

risk. This is a significantly low number that may reveal either an issue with the quality of the STRs or with the calibration of the risk matrix.

181. Then, the STRs are assigned for individual analysis in those cases where there is a likelihood of 30% for becoming a RIF. A RIF may contain dozens of STRs. This system automatically produces an automatic report with an initial analysis, containing all the relevant data available within the COAF.

182. Regarding the quality of the STRs received from reporting institutions, while COAF provides feedback and it appears that in general the STRs are of a reasonable quality, the fact that after the filtering process (individual analysis) only 3% are considered to be as of high or medium risk reveals that there is an issue with the quality of the reports being submitted by the reporting parties (for further information on this please refer to Core Issue 6.2).

183. Furthermore, while the predictive model is an important IT tool that allows for a rapid analysis of the STRs, only the 5% of the STRs are sent for individual analysis by analysts (although all the STRs are kept on the database and they can be used at later stage, and they continuously inform the predictive model). Considering the large amount of STRs received by COAF (4.8 million from 2018 to 2022), a larger number of STRs –for individual analysis– should be analysed in more depth.

184. COAF is staffed with highly specialized analysts, but there are only 23 analysts in charge of conducting the individual analysis of STRs (although 8 analysts are assigned to support ongoing cases upon request and at least 2 address the “automated” RIFs on request). In this regard, the operational analysis division within the COAF is significantly understaffed compared to the workload they face, given the large number of STRs received from reporting institutions. This lack of sufficient analysts limits the production of spontaneous disseminations in particular, thereby affecting the access to comprehensive financial intelligence by LEAs.

Financial intelligence used to support TF investigations

185. COAF has a team of analysts in charge of analysing TF STRs when received. When a reporting entity submits an STR related to TF, that is immediately flagged by the predictive model, and it receives urgent analysis and treatment. Reporting entities have a specific form to report STRs, and if the transaction involves a suspicion of TF, then it is marked accordingly. There are TF risk indicators given by the regulators aimed at contributing to the reporting entities’ identification of TF suspicious transactions. However, more feedback on this matter is needed, as the understanding of TF risks by reporting institutions presents room for improvement (see IO.4).

186. TF RIFs are generally disseminated by COAF to the Combating of Terrorism Coordination (DETER) which has procedures for analysing the reports. DETER may also conduct field inspections or surveillance over specific targets to produce their own intelligence reports. There is some interaction between the COAF and the PF regarding TF. However, there is limited interaction between COAF and ABIN on this matter, with very limited disseminations from COAF to ABIN. Given the relevance of the financial intelligence for detecting possible TF, it would be desirable that ABIN and COAF have a stronger cooperation and feedback. In recent years, COAF has produced 73 spontaneous disseminations on TF, the majority of which are sent to foreign FIUs and only a handful of RIFs for domestic consumption. For further information concerning the detection and investigation of TF please see IO.9.

Table 3.3. Number of TF RIFs Disseminated per Type and Year

Type of Dissemination (also includes to foreign FIUs)	2020	2021	2022	Total
Spontaneous	36	15	22	73
By request	9	14	15	38
Total	45	29	37	111

Financial intelligence produced by LEAs

187. There are 55 technology laboratories on ML (Labs-LD) at the state level, which are integrated in a network coordinated by the DRCI (Rede-Lab). These Labs-LD are staffed with specialized officers and equipped with IT systems and software developed for processing and analysing a large volume of data to support ongoing investigations. These units primarily conduct three types of analysis: analysis of financial data and transactions; analysis of RIFs and analysis of tax data.

188. The first Lab was put in place in 2007, and since then this model expanded to almost all the states in Brazil. In general, these are located within the respective prosecutor's office and/or the Judiciary Police. Among other actions, these Labs share technical information (specially on analysis and technology), develop training, and regularly meet to discuss experiences and challenges. These Labs have developed and use IT tools for analysing RIFs and other relevant data, such as banking information.

Table 3.4. Analysis Conducted by Labs-LD (2020 – July 2022)

Region	2020	2021	2022 (July)	Total
Midwest	605	800	591	1.996
Northeast	592	809	449	1.850
North	295	296	145	736
Southeast	410	446	279	1.135
South	636	1.077	933	2.646
Total	2.538	3.428	2.397	8.363

189. The analysis performed by the Labs is growing. As shown in Table 3.4, during the last two and a half years more than 8 300 reports were produced, analysing 1.641 RIFs and more than 80 million of banking accounts. This model established in Brazil presents advantages, since it enhances the use and production of financial intelligence, and contributes to the development of complex investigations.

190. At the Federal level there is also a specialized unit in charge of supporting the prosecutors and the police to analyse the financial intelligence and to conduct financial investigation, which is the Secretariat for Expertise, Research and Analysis (SPPEA). SPPEA supports federal cases in the whole country. It is staffed with about 240 officers working on three main areas: investigation, research and analysis.

191. SPPEA has developed important software and investigative tools allowing the processing and analysis of a large volume of data and financial information. It provides support to prosecutors by request, and it has been involved in complex investigations such as the Lava Jato case. This system made up of Labs and SPPEA

leads to a widespread use of the financial intelligence by all the relevant investigative authorities across the country.

3

Box 3.4. Operation “Conexão Brasília Phase 2” (corruption)

This case involved the LAB-LD of the Public Prosecutor’s Office of the Federal District and Territories – MPDFT, and is an ongoing investigation. The role of the LAB-LD was critical for the investigation, as it could establish that the case involves possible laundering of financial assets resulting from corruption, bidding fraud and actions from a criminal organization. In particular, the LAB-LD was responsible for processing, analysing and compiling a large amount of data that was obtained during the operation, especially those related to financial transactions obtained from COAF and others acquired by other means, such as breach of secrecy and special investigation techniques. The frauds occurred in contracts executed by the DF Health Department, through adherence to price registration minutes from the RJ Health Department that favoured certain companies that were part of the scheme. The public servants involved forged emergency situations to hire orthoses, prostheses and materials in million-dollar amounts and, in a quantity much higher than the hospital needed. The criminal organization was made up of politicians, public servants, and businessmen. The laundering of financial assets took place through: a) bank transfers to other companies controlled by members of the scheme, with subsequent realization of 113 cash withdrawals in fractional amounts below BRL 10 thousand (smurfing technique); b) bank transfers to a company in the engineering area for the purpose of funding work on a property belonging to one of the leaders of the criminal organization; c) bank transfers to a shell company, controlled by members of the scheme, with subsequent financial investments, transfers and withdrawals in favour of several individuals; d) bank transfers directly to individuals with subsequent withdrawals in amounts below BRL 10 thousand; e) bank transfers to a vehicle dealership for the purpose of acquiring a car registered in the name of a family member of a member of the scheme. COAF provided RIFs that identified suspicious transactions between companies investigated due to a financial relationship with a person holding a forum by virtue of their function, in addition to having identified million BRL transactions between a company that is part of the scheme and one of the leaders of the criminal organization. In the operation, 12 preventive arrest warrants and 43 search and seizure warrants were carried out in Brasilia, Rio do Janeiro and São Paulo.

Source: LAB_LD03

192. Besides the RIFs from COAF, the LEAs use other tools and databases which help competent authorities to conduct financial investigations. Many of these are already centralized or are part of an internal system developed by the respective agency or Lab-LD. Some of the most important databases regularly used are the following:

- i. CCS - Database on clients of financial institutions: LEAs use this database to retrieve information on the existence of a bank account owned by a target.

- ii. CNPJ – Legal Entities National Register: it includes basic information of legal persons.
- iii. Proof of Registration Status of Companies – RFB: it certifies the status of a company registry online. It is used to identify inapt companies that may present characteristics of a shell company.
- iv. CENSEC - Notarial Centre for Shared Electronic Services: it is a database with information on the existence of wills, powers of attorney and public scripture of any nature including Real Estate, separations, divorces and inventories drawn up in all notary offices in Brazil.
- v. SINESP-INFOSEG: it is a general register that provides data on public security, justice and inspection through the internet, using a national index, allowing access to basic data of individuals, firearms, vehicles, drivers, CPF (individual registration) and CNPJ (legal entities national register).
- vi. RAB - Brazilian Aeronautic Registry: provides data on ownership, registry number, brands and nationality of aircrafts. Every aircraft must be registered at the National Civil Aviation Agency (ANAC). RAB is regulated by the Resolution ANC nº 293/2013.
- vii. SINC - National System of Criminal Information: a database of all investigated persons, with identification data, type of crimes and number of procedures.

193. CDD and transactional information is available to LEAs as intelligence only to some extent. This information is protected by secrecy, and LEAs can get it directly only through a Court Order. COAF can share this information with LEAs, however, this is largely limited to the information submitted by reporting entities in an STR, as COAF rarely requests reporting entities for complementary information (see below).

194. To conclude, while the LEAs at the federal and state level routinely access and use the financial intelligence, there are several factors that are limiting the depth and amount of the financial intelligence produced by COAF, which is the main source of financial intelligence. Among the factors affecting the financial intelligence produced by COAF are the lack of sufficient analysts, the lack of access to adequate BO and comprehensive additional information from reporting entities, the lack of access to cash declarations, and the issues identified regarding the quality of the STRs received from reporting parties.

STRs received and requested by competent authorities

195. In general, the competent authorities are receiving and requesting reports that contain relevant information to a large extent. The assessment team based its findings on: statistics on STRs and CTRs, examples of STRs, interviews conducted in the framework of the onsite visit, among other relevant data.

196. COAF is receiving a large number of STRs from a broad range of reporting institutions, mainly from financial institutions, although there are sectors such as the lawyers, TCSPs and VASPs which are not part of the preventive system and therefore are not submitting STRs. In total, 4.8 million of STRs were received from 2018 to 2022, which is an average of 971 383 per year, although there is a sharp increase in recent years). STRs are transmitted via a secure and electronic mechanism (SISCOAF). The reporting institutions use this system to complete the STR through a form. This system ensures that STRs are incorporated directly into the COAF systems and that are automatically pre-analysed by the predictive model.

197. The STR form include indicators that should be marked by the reporting institution and an open field where they should describe and justify the suspicion ground. The entities receive a scoring based on the quality of the reports submitted to COAF (see IO.4). While this scoring indicates that the quality of the STRs from FIs and DNFBPs is overall good, some entities still tend to send automated communications to COAF based on indicators and red flags, rather than ML/TF suspicions. Moreover, mayor deficiencies were identified regarding the understanding and reporting by the DNFBPs sectors, including in relevant sectors such as the notaries.

198. Additionally, COAF receives a large number of CTRs (23.6 million during the period 2018 to 2022, in average 4.7 million per year). This information feeds the predictive model and the database of the COAF and allows it to score the STRs and enrich the analysis, respectively. CTRs are also included in the automatic reports produced by the system where there is a RIF by request. It should be noted that CTRs are very valuable for the analysis by COAF and provide a large amount of relevant information that is used to add value to the reports. COAF provided case examples of RIFs that were mainly based in CTRs. Since 2018 COAF no longer has access to currency transaction reports from RFB.

Table 3.5. STRs and CTRs Received by COAF

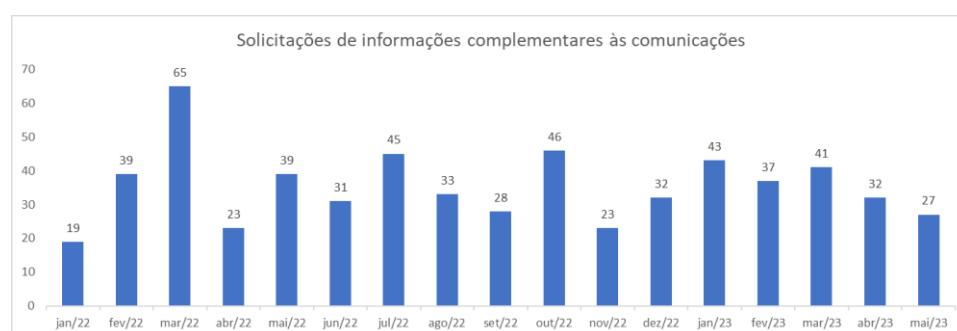
Report	2018	2019	2020	2021	2022	Total	Average per year
STRs	434.256	351.154	863.238	1.270.064	1.938.204	4.856.916	971.383
CTRs	2.788.827	3.371.232	5.498.023	6.188.228	5.761.364	23.607.674	4.721.535
Total	3.223.083	3.722.386	6.361.261	7.458.292	7.699.568	28.464.590	5.692.918
% STRs	13,47%	9,43%	13,57%	17,03%	25,17%	17,06%	
% CTRs	86,53%	90,57%	86,43%	82,97%	74,83%	82,94%	

199. In the framework of its functions, COAF has sent only a few requests for complementary information to the reporting institutions, which are obliged to comply with. These requests can ask for any information held by the reporting institution regarding the relevant client or person. In practice, COAF rarely access complementary information to support its analysis or to respond to requests from domestic LEAs, and it does so exclusively from the reporting entity that submitted the STR. According to the COAF authorities, this is owed to the fact that the system already has sufficient information received from a broad range of reporting institution, and therefore there is little need to seek for extra data from them. However, the RIFs would be enriched further if COAF requested for complementary information from other reporting institutions more frequently.

Table 3.6. Complementary Requests sent by COAF to Reporting Entities

Year	Complementary requests sent to RIs
2022	2
2021	10
2020	5
2019	2
2018	15
2017	3
Total	37

200. In addition, there may be situations where the STRs present deficiencies that limit the production of financial intelligence. In these cases, the absence, inaccuracy or lack of clarity in the narrative of the possible suspicion, in the CDD description of the persons involved, or in the description of the financial transactions, motivates the COAF to request the reporting entity to amend the information through the correction of the report. This occurs regularly, and is part of the efforts made by COAF to improve the quality of the STRs, as shown in Table 3.7. However, the monthly numbers appear relatively low in light of the sharp increase in the number of STRs and the low production of spontaneous RIFs in recent years.

Table 3.7. Correction of STRs Requested by COAF to Reporting Entities (Jan. 2022 – Apr. 2023)

201. All the reports and information are received and sent through electronic systems developed by COAF for that purpose, which facilitates its production and exchange. All this information can be requested and timely accessed by the relevant competent authorities.

202. Based on the above, it can be concluded that competent authorities are generally receiving and requesting relevant information to perform their duties, although there are some limitations to the analysis of STRs affecting financial intelligence (see above in 3.21).

Operational needs supported by FIU analysis and dissemination

203. COAF is staffed with 87 officers: 27 in the presidency, directorate and administrative division; 17 in the supervision division; 8 in the IT division; and 35 in the financial intelligence division (operational and strategic analysis, with 23 analysts analysing STRs). COAF conducts operational and strategic analysis, and these functions rely heavily on technology.

204. Competent authorities in general, and LEAs in particular, confirmed they are satisfied with the quality and usefulness of the RIFs disseminated by COAF, although as explained there are some factors that may be negatively impacting the scope of the financial intelligence produced by COAF.

205. COAF has established a specific IT system (SEI-C system) where LEAs can request for RIFs, and automated RIFs by request are developed and disseminated timely. This is a valuable mechanism, since the competent authority can access financial intelligence from COAF when needed, and these reports contain relevant information extracted from all the databases and information held by COAF. This system is also relevant for providing feedback on the use of the RIFs and the status of the actions taken or the status of the procedures, as these aspects should be informed by the users of the RIFs.

206. Another tool for COAF to respond to operational needs from LEAs is the assignation of analysts to investigative teams in charge of complex cases. Through this collaboration, COAF can share information and support the LEAs in the financial analysis of transactions and operations.

207. COAF also developed some strategic intelligence which was disseminated to relevant stakeholders. In particular, COAF developed an illegal gold mining study, several tactical RIFs on topics such as human trafficking and elections, and typologies. In particular, the study on illegal gold mining was developed with the objective of analysing the gold production chain, identifying possible vulnerabilities, red flags, typologies and regions of greater risk. This strategic analysis was based on several sources of information, including the information from on the National Mining Agency (ANM) portal and the national Foreign Trade portal. These strategic products have proven to be useful and relevant. However, the amount of strategic intelligence produced by COAF is still limited, and LEAs may benefit further if COAF would be able to produce and disseminate more strategic intelligence.

208. COAF delivers trainings for LEAs aiming at building and strengthening financial investigations capabilities, especially on how to interpret, analyse and work with the financial intelligence information submitted in the RIFs. From 2017 to 2022, COAF participated in training activities for LEAs where 6.369 officers were trained in this matter. However, the training in this field should be increased to properly support the needs from LEAs.

209. It can be concluded that the FIU analysis and disseminations in general have supported the operational needs of competent authorities, although the number and scope of the disseminations of both operational and strategic intelligence could be expanded as well as the provision of training.

Co-operation and exchange of information/financial intelligence

210. In the framework of complex ML cases, there is a good practice of establishing task forces composed of various LEAs where financial intelligence is exchanged in the context of the ongoing investigations. As an administrative FIU, COAF is supportive to LEAs work. COAF regularly exchanges information and cooperates with the relevant competent authorities, and it has access to a wide range of databases from other agencies.

211. RIFs are disseminated through a secure electronic channel, accessed by all the relevant competent authorities. This channel is encrypted, and the access is only for authorised officers. The information is protected and cannot be accessed by

unauthorised parties. The RIFs have security measures that reduce the risk of unauthorised disclosures. The identity of reporting entities is protected too.

212. COAF has signed agreements with 48 competent authorities for the purpose of cooperating and exchanging information.

213. The authorities are aware on the importance of protecting the confidentiality of the financial intelligence. One relevant feature of the Brazilian system is the Electronic Exchange System of COAF (*Sistema Eletronico de Intercâmbio do Coaf* – SEI-C), which is a secure and encrypted electronic platform developed to conduct the disseminations to the competent authorities. In order to access SEI-C, the competent authorities should use a digital certification and all downloads are submitted to a two-step verification system. This electronic channel ensures the information is securely exchanged and strengthens the protection of the confidentiality of the information.

214. Lastly, COAF and the relevant competent authorities are part of ENCCLA, where they exchange some strategic information with other competent authorities on AML/CTF matters. In particular, ENCCLA serves as a platform for discussing and adopting AML/CTF policies with federal and state level competent authorities.

215. On this basis, it can be concluded that the COAF and relevant competent authorities co-operate and exchange information and financial intelligence. The confidentiality of the information is protected to a large extent too.

Overall conclusion on IO.6

The investigative authorities, both at the federal and state level, regularly access and use financial intelligence to develop evidence and trace criminal proceeds related to ML, TF and predicate offences. There are multiple LABs on ML at the state-level, who use and enrich financial intelligence. At the Federal level, SPPEA supports the prosecutors and the police to analyse the financial intelligence and to conduct financial investigation. This leads to a wide use of the financial intelligence by all the relevant investigative authorities across the country. COAF plays a key role in producing financial intelligence. RIFs are shared spontaneously or by request to a broad range of competent authorities through a secure IT platform. In general, LEAs informed they were satisfied with the quality and usefulness of the RIFs, and consider that the analysis of COAF supports their operational needs (although they also noted some improvements to the system were needed). There were some high-impact cases where a large number of RIFs were used, including to initiate investigation.

However, there are some factors that affect the scope and depth of the financial intelligence produced by COAF. For instance, COAF is significantly understaffed when compared with its workload, and that affects its capacity to produce and disseminate an adequate number of spontaneous RIFs as well as strategic analysis. Additionally, there are gaps regarding the access to relevant information that limit the scope of its RIFs. This is mainly owed to the lack of access to BO, and to some issues regarding the quality of the STRs and the infrequent access to additional information from reporting entities. As well, COAF receives a large number of STRs from reporting institutions, which are analysed by an advanced predictive model, but only the 5% of the STRs are sent for individual analysis by analysts, which is a

limited outcome considering the risk and context of the country, and after human analysis only a very low number results in a RIF. Therefore, major improvements are needed to have effectiveness in this area.

Brazil is rated as having a moderate level of effectiveness for IO.6.

3

Immediate Outcome 7 (ML investigation and prosecution)

216. In assessing IO7, the assessors based their conclusions on information and statistics, case examples, interviews with the LEAs (federal and state), prosecutors (federal and state), and other relevant bodies such as CNJ, AGU, TCU, and the Rede-Lab. The NRA defines the ML risk as medium, with very high threats related to corruption, drug trafficking, OC (PCC), financial crimes, and tax evasion. High threats include OC (CV), illegal extraction of natural and mineral resources, piracy and smuggling, and embezzlement. Overall, the component parts of the system related to IO7 (investigation, prosecution, conviction, and sanctions) are only to some extent functioning coherently to mitigate the level of ML risk faced by Brazil.

ML identification and investigation

217. Authorities at both the federal and state levels investigate and prosecute ML. The Federal Police (PF) and Federal Prosecutors (MPF) handle complex cases of federal, interstate, and international concern, and the state police (CP) and state prosecutors (MPE) handle both high-end and simple ML cases related to predicates that occur within their jurisdiction. Prosecutors can open ML investigations directly, known as PICs, and they do appear to do so frequently and then seek operational support from police. PICs are governed by MPF rules and can be initiated upon complaints, criminal notes, open sources, or referrals from other agencies and AML supervisors, but rarely from RFB. If an investigation were opened into the same subject by MPF and PF, through a PIC and an IPL, it is not evident how or if authorities would deconflict.

218. Within the PF, there are approximately 13 000 officers spread throughout Brasília, 27 Regional Superintendencies (RS) in the state capitals and Federal District, and 96 Federal Police Stations decentralised throughout the territory. On a practical level, ML cases are investigated in the field by the RS and local offices of the PF, often through subject-matter specific stations like DELECOR (corruption and financial crimes), DELEFAZ (smuggling, embezzlement, tax evasion), or DRE (anti-drug trafficking). It is common for regional experts in financial investigation to be deployed to join a local PF operation, physically or virtually. Task forces are occasionally used in major ML cases to leverage the expertise of different agencies. Within the state police, the CP are organised according to local needs. They also have specialised units, such as DECCOR for investigating state and municipal corruption offences, and even some units solely dedicated to combatting ML. However, the bodies introduced and expanded through the policy vision of ENCCLA have significantly improved the investigation of ML of Brazil in recent years: the LABs and the GAECOs. Any police officer has the authority to identify and investigate ML. But as a matter of practice, ML cases of medium or high complexity are investigated through specialised LEA units and brought to specialised, experienced prosecutors, including **GAECOs**³³ at the

³³ Established in 2013, but recently implemented nationwide in 2020.

federal and state level, which focus on organised crime (OC), corruption, and related ML, or the GISEs in six federal regions, focused on sensitive investigations into OC, drug trafficking, and ML.³⁴ In large ML investigations, upon request, LEAs are supported by a network of 55 sophisticated, multidisciplinary, and high-tech **LAB-LD**³⁵ (LD stands for *lavagem de dinheiro*), as well as the SPPEA at the federal level. These technical assistance (non-investigative) bodies provide financial analysis and asset tracing, and they are essential to assist police and prosecutors in their financial investigations. They process vast amounts of financial and other records and generate clear and detailed reports, using SIMBA and SISBAJUD.³⁶

219. The police have access to a sufficient range of databases and analytical tools, including in the event the case is not pursued by a special unit with financial investigation expertise or supported by a LAB or other body. These include CCS (financial institution client registry); CNPJ (legal person registry); SNCR (registry of rural properties); SREI (registry of real estate linked to a CPF or CNPJ number); CENSEC (notarised document registry, including powers of attorney); SINESP-INFOSEG (individual information including CPF, vehicles, firearms, etc.); SINC (criminal history); RAB (aircraft); Offshore Leaks (consolidated from ICIJ); EJD (campaign contributions and electoral database); STI (migratory database); PF Spontaneous RIFs (all referrals since 2017 from COAF); and SNIPER (a holistic property and assets search tool). The level of direct versus indirect access to such databases depends on the custodian and the consumer LEA, and whether an agreement exists between them, but access is generally increasing and becoming unified to incorporate state-level data. LEAs are making increasing use of financial intelligence, with more requests sent to COAF in existing investigations each year, and some proactive RIFs being used to initiate new ML investigations (see IO.6). Although Brazil has improved its process to allow LEAs access to bank records, especially through SIMBA and SISBAJUD, there are still some delays in the system which occasionally limit ML identification and investigation. There was variance observed in the timeliness of access to financial records, with some courts responding promptly and even granting standing orders in a case—as opposed to granting orders as to each person or entity—while some authorities mentioned that the process could take a few months. Statistics show that 47% of the orders are granted within 30 days, 42% are granted within 90 days, and 10.5% are granted after 90 days. Additionally, as discussed in IO.6, if COAF utilised its power to obtain additional information from

³⁴ A Group for Special Sensitive Investigations (GISE) comprises a team of PF officers who are highly experienced financial investigations. While most GISE stemmed from a specific threat that needed repression in a certain locality, usually drug trafficking, some have been stood-up since the NRA as a mitigation measure. For example, a ML-focused GISE was established in the state of Santa Catarina, likened to the “Dubai” of Brazil, due to its port, foreign trade, tourism, and real estate investments.

³⁵ Conceived in 2006 and expanded gradually since the establishment of Rede-Lab in 2014. Except for Acre and Amapá, all the states and the Federal District have at least two LAB-LD units within both state and federal-level authorities. They conduct analysis of bank and tax secrecy data, RIF analysis, telematic and telephone analysis, securities analysis, bid analysis, blockchain analysis, among other things. Interviews revealed that they also tend to suggest the next investigative steps under a follow-the-money approach. Additionally, the LABs develop in-house IT tools to better utilise RIFs, such as the RIF Analysis, Visual RIF, and RIF Extractor, as well as proprietary financial analysis tools (more than a dozen), and share them amongst their network.

³⁶ SIMBA allows the production of financial records in a digital, standardised, and secure form between LEAs and FIs, and this format facilitates analysis and big data processing. SISBAJUD links the judiciary to FIs and allows the direct, electronic transmission of requests for basic client information, account balances, and court orders for the freezing/seizure of financial assets. It is linked to the CCS system, the central bank account registry reaching most, but not all, payment accounts and institutions and excluding virtual assets.

reporting institutions, LEAs could use this information on an intelligence basis and better tailor their requests to judges to lift bank secrecy.

220. The level of training among rank-and-file officers to identify ML and conduct financial investigations appears widespread. The National Training and Capacity Building Program to Combat Corruption and ML (PNLD) has trained at least 12 588 public agents between 2018 and 2022 targeting specific states, cities, authorities (e.g., TCU, LABs). Training is offered to PF and some state police, such as the five-day Financial Intelligence Report Analysis Course (CARIF), which trained 461 people between 2020-2022, and the Financial Investigation and Analysis Course (CIAF), which reached 1 875 federal officers since 2017 (around 14% of the force). The latter covers financial investigation and analysis of information and evidence (i.e., tax and banking data, seized material), the use of technology, and link analysis between and among persons and legal entities. Relevant online courses are offered to PF, and Rede-Lab, the national LAB coordinating body, has provided some in-house and external training for state ML investigators. Finally, the PF incentivises the investigation of ML and tracks its performance through the ML repression index. This index is tailored to each region and incorporates various risk metrics and investigative data points to create a measure of “success”.

221. Statistics show, at least at the federal level, that the number of ML investigations is reasonable, with some room for improvement given the continental size of the country and ML risks. At the federal level, the focus on ML investigations is gradually increasing and peaked in 2020-2021. The number of ML investigations per year represents a growing proportion of the number of all criminal investigations, which is decreasing to around 60 000 per year, down from 120 000 (considered by authorities to be a positive trend as to the overall number of criminal investigations).

Table 3.8. ML Investigations

	2017	2018	2019	2020	2021	2022	Total	Average per Year
Federal (PF)	650	764	831	1.012	1.088	873	5.218	869
Federal PIC (MPF)	116	111	81	43	90		441	88
States (all)			3.321	3.004	4.386		10.711	3.570
State PIC			130	159	105		394	131
Grand Total							16.764	

222. As to structure of ML investigations, operations and evidence-gathering are carried out by the police, while prosecutors monitor the investigation, including by extending deadlines as needed. The police issue the “indictment,” which is the mechanism to refer a person for prosecution once the police inquiry has found sufficient evidence of the occurrence and authorship of a crime. Prosecutors file the “complaint,” the formal charging document accusing a person of specified offences that initiates the criminal proceeding in court. Brazil has a mandatory, non-discretionary, approach to criminal investigation, but prosecutors may decline charges due to lack of evidence or request that police carry out additional investigative steps.

223. ML investigations frequently entail the use of special investigative techniques, especially breaches of telematic secrecy (including wiretaps and warrants for the

content of communications, such as emails and messages). Extraction and analysis of data storage devices such as hard drives is handled by SPPEA or LABs, and, as mentioned, some state prosecutor's offices have staff to assist in processing financial data. Collaborators—or cooperating defendants and witnesses—are used successfully. Other techniques, such as the use of undercover agents and controlled deliveries, did not feature prominently in cases.

224. In Brazil, ML is mainly identified through the investigation of predicate offences or sometimes from financial intelligence from COAF (RIFs, both spontaneous and upon request). It is occasionally identified through the work of administrative bodies (such as CGU). ML is less often identified through whistle-blowers, cash seizures, or incoming MLA requests. Neither cross-border cash declarations held by RFB nor administrative tax cases pursued by RFB are typical source of ML investigations. RFB sent 259 representations concerning potential ML to the MPF from 2017-2022 (or around 51 per year), which is low given the size and risk profile of Brazil, where tax crimes are a high threat predicate.

Box 3.5. Example of ML Investigation Initiated by Financial Intelligence

Based on a RIF from COAF, PF began an investigation into ML stemming from illegal remittance and an illegal bank operation conducted by a criminal association. More than 61 billion BRL / 12.4 billion USD was transacted by the suspects including 18 billion BRL / 3.67 billion USD in foreign exchange for the purpose of acquiring virtual assets through arbitrage operations. The VA were purchased by natural and legal persons in Brazil, some of which were associated with drug trafficking, smuggling, Ponzi schemes and other predicate conduct. The VA were purchased to be re-converted into foreign currency abroad to pay for various commitments. The self- and third-party ML was conducted using virtual assets to change currency, make funds available abroad, and conceal their illicit origin in some circumstances, and they were also used by the Ponzi schemers as a purported investment vehicle. A failure of AML and CDD enabled the movement of large amounts of funds out of the country. Twenty natural persons and thirty legal persons are under investigation by a joint task force involving PF and RFB and there have been two arrests and 15 million BRL / 3.05 million USD seized in real estate, vehicles, VA, cash, and bank accounts. Authorities have engaged in international cooperation with foreign FIUs and informal intelligence cooperation and have used special techniques, e.g., lifting of telematic secrecy. The investigation is ongoing.

Source: Op. Colossus / PF 22.

225. Despite these good foundations, there is a significant mismatch between Brazil's investigative capacity when it comes to ML and its ability to obtain results in terms of prosecutions, convictions, and sentences, as discussed below. There are several reasons for this, stemming both from specific investigatory issues related to ML and systemic problems in the Brazilian criminal justice system. The investigative issues are assessed in this section, and other phases of the process are dealt with in the sections that follow.

226. First, coordination between police and prosecutors could be enhanced, especially to strengthen the conversion of ML investigations into prosecutions and more efficiently use investigative resources. Although there are some examples of close coordination between police and prosecutors, such as the Lava Jato case, coordination at the early stages on case strategy is not occurring routinely and is not an operational or policy objective. For instance, there are occasions when the police pursue overt measures such as searches, seizures, arrests, or lift of secrecy without prior coordination with the prosecutor. Police may approach the judge independently, and even though the prosecutor is summoned to a hearing, the judges often grant the authorisations despite the prosecutor's position. There is a general lack of common understanding between police and prosecutors, particularly as to the proof needed for certain investigative steps and whether such steps are pursued prematurely. Such issues have become fertile ground for appeal and may endanger successful ML case outcomes.

227. Secondly, prosecutors, who in principle oversee the investigation of ML, lack resources. There are too many ML investigations referred to them, and there is no policy to prioritise or triage the cases. The length of cases, ongoing appeals from older cases, plus the mandatory prosecution principle stymie efforts to effectively prioritise matters. For example, there are 1,000 federal prosecutors for all crimes and the number of police inquiries (IPLs) for ML referred to them from PF exceeded 24,000 over three years. Every 90 days, an investigation needs renewal by prosecutors, and a case load of 250 matters at once is not uncommon, meaning that labour-intensive ML investigations may not proceed with due haste. State LEAs face a similar situation, as 4,386 IPLs were referred to prosecutors in 2021.

228. Third, to lift bank secrecy and tax secrecy, a judge's order is needed. Although some judges react promptly, delays of months are common, which slows the pace of investigations as seen through case examples and interviews. According to police commissioners and prosecutors (at the federal and state level), there is a great variation in the timeliness of judicial authorisation, from one week to a few months.³⁷ Authorities also reported that there have been leaks of ex parte applications filed with courts in sensitive matters, but this is infrequent and considered exceptional.

229. Fourth, there is insufficient communication and feedback from the judiciary related to various procedural and investigative steps. Several authorities interviewed cited instability in case law and changing expectations as an investigative challenge. Prosecutors mentioned that they must consistently adapt to new requirements and that some have been imposed, reversed, and re-imposed by courts, leading to an inability to train personnel and to rely on a consistent approach. A 2019 injunction from the Federal Supreme Court paused all (around 100) investigations reliant on financial intelligence from COAF. This decision questioned the ability of prosecutors and law enforcement to obtain financial intelligence without a judge's order on the theory that it was private and should be subject to bank secrecy. This initial injunction had a detrimental impact on the progress of ongoing cases and the referral of new ML cases from COAF for four months. A later decision of the full Federal Supreme Court reversed the injunction and confirmed that COAF dissemination can be used in

³⁷ This issue was a priority recommended action in the 2010 MER: "Measures should also be taken to harmonise the approach of the judiciary with a view to ensuring that judicial orders for access to financial information are granted in appropriate cases. In light of the massive workload faced by judges in some parts of the country, and the resulting delays in obtaining judicial orders, Brazil should take measures to increase judicial resources in these areas."

investigations. In the end, this gave the use of financial intelligence a stronger legal basis.

230. Fifth, the system of interlocutory appeals in Brazil means that nearly every investigative step may be the subject of challenge well before final judgment. In ML and other white-collar cases, well-financed defendants commonly use appeals to frustrate or slow investigations and, later on, trials. All prosecutors, judges, and some police confirmed this as a major issue. There were examples of cases where there are four chances to reverse a routine judicial decision within one month. Lower courts (1st or 2nd degree) routinely handle multiple appeals in the investigative stage, and this is less of a problem when these courts are specialised in OC and/or ML and have access to the whole record. When appeals are taken to higher courts or non-specialised courts, with judges less familiar with complex financial crime, the courts may not have the training (or time) to handle the questions raised by frequent appeals. Interviews revealed examples of courts of appeal doubting the basis for certain investigative actions or misunderstanding a financial investigation which had been expanded from COAF reports. This issue is deemed acute in ML investigations due to the volume and complexity of evidence demonstrating the flow of funds, which is often the justification for an investigative action or procedural step. There is also a sub-issue related to the appeals: the assigned prosecutors are not necessarily the same at each level, which leads to a lack of a continuity and familiarity with the case, especially a case dependent on reams of financial evidence. The incentive to advance the case may dissipate after several prosecutors cycle in and out. The abuse of interlocutory appeals was mentioned frequently by a variety of authorities, including judicial authorities, and it has been flagged in other international reports, such as the OECD's Phase 3 Report on implementing the anti-bribery convention in Brazil. For ML, it has a pronounced impact in the eventual success of cases and the capacity of the state to litigate "white collar" cases.

231. Sixth, there is insufficient integration of RFB in the AML system. This has an impact on the ability of the tax authority to coordinate and cooperate effectively with LEAs and prosecutors, as well as an impact on the ability of authorities to obtain information held by RFB. The detection of ML by or with the RFB in relation to tax offences is weak. The system is not designed to facilitate the pursuit of ML linked to tax crimes, even in large scale cases of fraud and evasion, although coordination does occur in the context of joint task forces established in some high-end ML cases (see more on tax-related ML issues in section below).

232. Overall, there remains a focus on predicate offences, but ML is being identified through more sources and authorities are capable of sophisticated financial investigations involving large-scale ML. Regarding how well ML is investigated, there are large number of investigations put into the pipeline, after which several obstacles come into play.

Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies

233. ML investigations lead to some prosecutions, but Brazil is not converting investigations into prosecutions in as many ML cases as would be expected based on the inputs of approximately 957 federal ML investigations per year and more than 3,700 state ML investigations per year (on average). There is a drop-off from investigations to prosecutions, which diminishes the consistency of ML enforcement

activity with national AML/CFT policies, and there is a further drop-off from prosecutions to convictions (see relevant section).

Table 3.9. ML Prosecutions

	2017	2018	2019	2020	2021	2022	Total	Average per Year
Federal	353	425	459	319	256	-	1.812	362
State	526	667	897	653	-	-	2.743	686
Grand Total							4.555	

234. Brazil's 2021 NRA identifies the ML threat to be high, the vulnerability of the country to be medium, and the overall ML risk to be medium. Brazil is pursuing ML linked to its highest risk predicate threat of corruption very well. This clearly demonstrated through statistics and stand-out case examples such as Lava Jato. While some case examples show the pursuit of ML associated with organised crime and drug trafficking to some extent, ML linked to environmental crimes and tax are not prosecuted to a sufficient extent, in line with risk.

235. In terms of the consistency of ML cases with Brazil's risk profile, some statistics provided by Brazil are a useful proxy in the absence of data linking ML prosecutions to major predicates. For example, the offences that were the subjects of cases supported by the LAB-LD network (see Table 3.11) bolsters the overarching conclusion above. Other quantitative information, such as "new cases at all judicial levels" was less helpful because it did not count cases, but every court intervention within these cases, which, LEAs noted, would encompass any request or application for judicial intervention, including seizures, preventive arrests, lifting of secrecy, etc. Nonetheless, these figures covering 2019-2021 were helpful to show the level of activity in ML cases linked to: corruption (7,952 interventions); foreign official corruption (1,024); and ML cases linked to all other offences plus standalone ML (98,314). These figures measure investigative steps, not prosecutions, but they indicate a concerted effort to pursue ML based on corruption. Furthermore, as compared to PF investigations conducted over the last several years (see Table 3.12), the trend for predicate crimes investigated has remained relatively stable, and the proportion of ML investigations among these different types of crime has increased (note this Table does not represent ML *tied to these predicates*, as a breakdown of ML cases by specific predicate categories was not available).

Table 3.10. PF Investigations per Offence

Offence	2018	2019	2020	2021	2022
Corruption	1.689	1.760	1.605	1.449	1.015
Drug Trafficking	5.728	4.479	3.523	3.463	4.289
Smuggling	6.755	7.078	7.336	7.127	7.832
Financial Crimes	1.103	1.556	1.372	1.258	1.295
ML	757	825	993	1.072	873
ML % of Total	4.47%	4.96%	5.55%	7.18%	8.06%

Table 3.11. Offences Subject to LAB-LD Financial Investigation and Analysis Reports

Main Offence (higher-risk NRA crimes in bold)	Number of Reports
Money Laundering	1 431
Corruption	859
Criminal Organisation	808
Organised Crime Syndicates	162
Drug Trafficking	565
Tax Crimes	122
Environmental Crimes	19
Fraud	589
Cybercrime	23
Crimes against Property	363
Crimes against Life	125
Illegal Gambling	42
Ponzi Schemes	6
Arms Trafficking	22
Crimes against the Popular Economy	30
Crimes against the National Financial System	6
Other	772
Total	5 994

Corruption

236. Because of ENCCLA’s longstanding focus on ML and corruption for the past twenty years, national AML policy in Brazil has become so interlinked with the important predicate of corruption that it has nearly become synonymous with it. Besides the more typical methods to identify ML stemming from corruption—through predicate investigations and financial intelligence—Brazil has established numerous bodies dealing with public and private corruption and these bodies have pathways to generate significant criminal ML cases, make use of criminal investigative files, and work side-by-side with traditional LEAs.

237. Such bodies include AGU, the Union’s legal representative that is responsible for, among other things, bringing cases to recover illegal assets and damages to the Union in Brazilian and international courts. AGU uses four types of civil actions to combat corruption which are “quasi-criminal” in nature and may lead to referrals to prosecutors of persons who are ultimately charged with ML. These actions are, (1), improbity actions (when a public official is reported for an act like taking a bribe or illicit enrichment, AGU will target both the person and the company which has paid the bribe to recover the assets and, e.g., fine the company or ban it from public contracts). Improbity actions, especially the larger ones, are frequently worked in parallel to criminal proceedings for ML, and may bring AGU into the criminal case as a victim. Next, (2), there are actions under the Corporate Liability Law or Anti-Corruption Law where legal persons can be sued civilly for acts that harm the foreign or national administration. These actions often result in pre-trial resolutions called corporate leniency agreements (see more on this within IO.8). Importantly, these agreements require complete cooperation from the company to disclose its (and its employee’s) misconduct and the involvement of public officials, and AGU frequently refers these natural persons who facilitated corruption or laundered its proceeds to PF for criminal investigation. Additionally, (3), there are public civil actions filed by AGU for damages to the federal government stemming from, among other things,

corruption and environmental degradation. Finally, (4), AGU files common civil lawsuits for reimbursement. In sum, these actions predominantly derive from or use evidence obtained during criminal investigations.

238. In addition to AGU, ML linked to corruption may arise from administrative matters handled by CGU. CGU holds public officials liable for administrative misconduct related to public funds and expenditures, and receives complaints about fraud, waste, and abuse in government, while protecting whistle-blowers from disclosure and/or retaliation. CGU's auditors may uncover the initial traces of predicate crimes and ML transactions, which it then refers to PF and MPF. CGU's investigations may also be initiated by financial intelligence or its sophisticated system for comparing official asset declarations with known income, and these administrative matters often give rise to a criminal investigation. A common CGU typology is as follows: a public agent in Brasília was flagged for the purchase of an expensive condominium, and CGU analysed his legal sources of income which were not enough to afford a luxury asset. CGU filed an administrative action against the official for illicit enrichment, which resulted in his dismissal from his post, and referred the case to MPF, who pressed criminal charges for ML. However, while illicit enrichment is part of the improbity action, it is not a criminal offence in Brazil, so another predicate offence must be alleged by MPF. Sometimes, MPF may be unable or unwilling to do so after the administrative proceeding, which is conducted in the open. It was not entirely clear how or how well CGU and MPF interact, as regular meetings appeared not to be occurring, and it was not always obvious how cases were detected or who would lead the case.

239. CGU is adept at pinpointing public agents who conceal an interest in companies seeking to do business with the government. For instance, it frequently identifies situations where a domestic or foreign company bids for a government contract, and a public official receives bribes or kickbacks for favouring the company in the procurement process by means of a concealed interest (e.g., through a shell company controlled by a nominee). CGU identified some challenges in uncovering beneficial ownership, especially when it requests AGU to lift bank secrecy and BO information held by the FIs found to be outdated or inaccurate. CGU, during an administrative proceeding, may not have ease of access to, information protected by tax or bank secrecy, so cooperation with other agencies is key.

240. The TCU may also prompt ML cases linked to corruption by referral to PF and MPF. TCU is the national audit court comprised of nine members that decide on the legality and regularity of tax, budgetary, and spending decisions by the executive branch. It has audited, for example, state-owned companies and companies executing major government concessions. As part of its mission to ensure that federal funds are used properly, TCU may uncover potential criminal activity, such as when it examined logistics contracts related to the country's largest port in Santos, São Paulo. Using its tools and intelligence, TCU identified irregularities, shared information with MPF, and this later became a major law enforcement operation. State level audit courts do not play the same beneficial role.³⁸ Assessors discussed with TCU certain issues and

³⁸ There have been some criminal cases linked to corruption among the state-level audit courts, and many of the audit court judges (80%) hold elected office or positions within the government administration, both of which may suggest a need for enhanced qualification and independence. These courts are supposed to refer criminal matters including ML, to prosecutors.

transparency measures that would lessen opportunities for corruption and related ML.³⁹

241. These three bodies are both a fruitful source of cases and a complement to criminal investigations. They are an important part of Brazil's comprehensive approach to combatting corruption and related ML, especially in the sphere of foreign bribery and ML related to corruption. However, there are some areas for improvement. The multiplicity of agencies involved in Brazil's enforcement efforts can mean that opportunities to investigate and prosecute ML may fall through the cracks. There are challenges of coordination that arise from a system with so many actors, and there are inherent challenges when administrative and criminal enforcement bodies operate in the same space. While examples were shown of immediate consultation or referral to police and prosecutors of infractions that obviously rose to the level of criminal ML, this is largely ad hoc and there are no standard operating procedure. Furthermore, there is a concern around coordination between MPF and other agencies in the negotiation of individual collaboration agreements alongside corporate leniency agreements.

242. Non-trial resolutions for corruption and related ML activity are beneficial, as there is no criminal liability for legal persons in Brazil. While such agreements can be viewed as "a cost of doing business," as not deterring repeated misconduct, or as overly favourable to wrongdoers. But in Brazil, they have significant upside and demonstrate effectiveness. This is because agreements resolve matters swiftly and conclusively, achieve significant results, and target a major source of criminal proceeds (transnational corruption), especially when compared to the alternative of a slower and less certain resolution in Brazil's criminal justice system. Through these agreements, the agencies discussed above, in conjunction with federal LEAs, serve to combat ML in a less traditional sense, but this works well in the context of Brazil.

243. Brazil's investigation and prosecution of laundering of the proceeds of corruption is one of the strengths of the country's AML regime. But because the target environment for both domestic corruption and foreign bribery is rich, there is room for even further alignment with risk. For example, both state and federal courts face issues in processing the amount of corruption cases, as the CNJ reported 120,000 outstanding corruption and improbity cases initiated more than three years prior. A backlog in judging corruption-related cases impacts related ML charges, contributes to prosecutor caseloads, and can lessen the feasibility of bringing new cases to court. As another example, on-site interviews with LEAs and financial institutions flagged that electoral crimes or illegal campaign contributions present a risk for ML, but electoral laws change frequently. Changing rules every two years about political donations to parties or candidates can make it harder for law enforcement to detect, investigate, and prosecute ML linked to such offences, especially in cases involving straw persons or the concealment of business interests when making contributions. This is one area of corruption where efforts could be more focused and aligned with risk, especially because unregistered donations (*caixa 2*) can also be used to conceal bribes, as was seen in Operation Lava Jato.

³⁹ For example, the Brazilian Supreme Court invalidated RP-9 in December 2022, which had allowed for a so-called "secret budget" used by lawmakers to earmark funds outside of the normal budgetary process and the purview of TCU. Between 2019 and 2021, the equivalent of around 9 billion USD was allocated through these amendments, creating opportunities for diversion, overpriced contracts, and favours from politicians to constituents.

244. Because Brazil's system of ML statistics is not comprehensive, the assessors base the conclusion that ML related to corruption is mostly aligned with risk on numerous case examples and the in-depth knowledge displayed by LEAs and prosecutors met during the onsite visit. Typologies involving gatekeepers and professionals, shell companies, misuse of legitimate businesses, laundering through real estate, and the use of intermediaries were well-known, and officials acknowledged that proceeds are often transferred outside of Brazil for investment abroad. Dozens of case examples were provided by Brazil and discussed in detail on-site. The assessment team highlights the following high-end examples of ML prosecutions linked to corruption.

Box 3.6. Examples of ML Cases Linked to Corruption

(I) An investigation (PIC) was opened in 2013 by the PPO in São Paulo (MPSP) because of a complaint made by a protected witness. Local tax inspectors were engaged in a sophisticated scheme of corruption and ML involving the diversion of funds from the collection of the tax on services which is paid by builders when they are granted their final certificate of occupancy in the final phase of real estate development. The inspectors were soliciting major construction companies for payments in exchange for lesser tax liability – large amounts owed were “forgiven” on some of the largest projects in São Paulo. Some of the construction companies reached collaboration agreements and provided evidence necessary to understand the scheme, and some of the inspectors had their ML and racketeering liability extinguished on account of collaboration. Wiretaps and environmental audio recordings were used to listen to meetings between the corrupt inspectors and companies. The laundering of the proceeds of embezzlement was done through: real estate and financial investments acquired in the names of front people and shell companies, foreign exchange and *dolar cabo* transactions to tax havens outside of Brazil, and the use of *doleiros* and accountants (self- and third-party laundering). A RIF from COAF was requested and used, as was MLA with the U.S. Charges were filed and the first seven convictions were handed down in 2014 for ML and predicates, with the longest sentenced imposed totalling 22 years in prison. One of the inspectors is subject to a final, non-appealable conviction (very recent). The group's ill-gotten gains are the equivalent of approximately 14 million USD. Assets seized include real estate, jet skis, boats, cash, watches, and jewellery. Source: Op. Necator / MPSP.

(II) An investigation was opened in 2015 by the PPO in Amapá based on a RIF from COAF about suspicious transactions involving a member of the state legislature. PF ended up taking over the investigation in 2016 after documents seized in the first phase of the investigation revealed the transnational corruption suggesting competence of a federal court. In 2020, MLA was sought from and provided by the UK (searches and seizures in London), and Switzerland (interview of a suspect). The facts of the case revolve around the sale of a valuable mining project by a UK company to an Anglo-Swiss mining company for 136 million USD in 2013. The project included an iron exploration/mining concession and a concession of the railway servicing it and a private port terminal. The purchasing company paid \$5 million in bribes to two congressmen in Amapá in exchange for a legislative act of consent to change control of the railway concession (required by state law). The

bribes were paid through offshore companies in HK in Switzerland (owned by the brother of the owner of the mining company), to a company in Rio, justified by fake consulting contracts. The Rio company then paid the congressmen into their own accounts and companies registered to frontpeople, covered by a contract for judicial services. The bribe proceeds were laundered through the purchases of machinery for a family company of one of the congressmen, check purchases, and cash withdrawals. A dual Brazilian/Swiss national was used by the purchasing company to negotiate and arrange the illegal payments. The investigation is ongoing, as a 2nd phase was launched in 2020. Source: Ops. Caminho do Ferro & Sem Fronteiras / PF 02.

(III) An investigation was opened in 2015 within the Lavo Jato framework into the payment of cash bribes to a senior party leader and member of congress. Between 2006 and 2014, the congressman received directly or indirectly 99 monthly payments totalling 5.86 million USD through a scheme operationalised by a doleiro and professional money launderer who controlled a network of other associates involved in the scheme. The sums were derived from public funds from the supply directorate of the state-owned oil and gas entity, Petrobras, and made in deposits below the reporting threshold. A self-laundering conviction against the congressman was finally upheld in October 2019, but the PML was not charged, and the two sons of the congressman were convicted of passive corruption but acquitted of ML (the statute of limitations was exceeded as to one of them). A sentence of six years for ML (13 total) was imposed on the defendant, as well as a probation on occupying public office or serving as a director of an AML reporting entity.

Source: AP 996 STF.

245. Two examples in Box 3.6 were selected in part because they reached a full conclusion, but the assessment team saw many ML case examples where investigations were opened well before Brazil's last MER in 2010 and had only recently been resolved (e.g., the case against one corrupt official involving contracts for the acquisition of ambulances and medical equipment began in 2006 and resulted in a final ML conviction in 2018). This was not an anomalous timeline, and most cases take a very long time to conclude.

Drug Trafficking and Organised Crime⁴⁰

246. To provide a sense of the scale of the issue, drug trafficking, in the years spanning 2019-2021, required 2,724,694 interventions, or approaches to the court for warrants, seizure orders, and orders to lift secrecy. This eclipses investigative activity related to any other predicate (the next closest being corruption at 117,869 interventions). Moreover, there are estimates that cocaine trafficked through Brazil represents 4% of Brazil's GDP, with approximately 25 billion USD worth of these proceeds coming through the border regions yearly. Brazil does not produce cocaine, so gangs engaged in the trade necessarily have links with Colombia, Peru, Paraguay,

⁴⁰ These topics are treated together because the major OCGs are predominantly engaged in drug trafficking, and drug trafficking at a macro level is carried out by a few significant national and regional groups. While other ad hoc groups are formed to commit offences, the main predicate activity of the most material OCGs is the distribution of narcotics.

or Bolivia. The two most dominant gangs began in prisons and still operate from and recruit from prisons inside and outside of Brazil.

247. Based on interviews and case examples, Brazil is not pursuing ML linked to drug trafficking totally in line with risk, especially as the risk grows due to the profitability of cocaine trafficking to Europe and as drug trafficking organisations diversify into new lines of criminal business and intermingle drug proceeds with other proceeds, including outside of urban areas and into different states than those more typically affected by the crimes (including into the Amazon states). Overall, competent authorities remain focused on the predicate offence, rather than on the money laundering network supporting the trafficking organisation. This finding is based on interviews and case examples. There was a lack of understanding among some authorities that drug trafficking at the retail and lower-wholesale levels remains a cash-intensive business whose proceeds should be traced from the source. Some authorities admitted that more could be done to follow the money linked to drug trafficking. While GAECOs boost the prosecution of ML linked to organised crime and drug trafficking in major cases, the pursuit of ML is generally done in state capitals by very experienced prosecutors. Many prosecutors in smaller (but still significant) cases are not pursuing ML related to drug trafficking and other OC predicates.

Box 3.7. Example of ML Case Linked to Drug Trafficking Conducted in a Task Force Setting

PF launched an investigation in 2018 based on the purchase of a luxury vehicle by a relative of luxury car dealer. The purchase in cash was suspicious, and intelligence revealed that the owner of the dealership was a target in another PF operation into drug trafficking. The investigation uncovered an OCG laundering the proceeds of drug trafficking, including more than 3 tons of cocaine imported to Brazil from Paraguay. Proceeds were laundered through: farms acquired in Mato Grosso registered to frontmen who ran them; a hotel purchased through a company registered to a frontman with twenty rooms and watercraft which was not operated commercially but for the benefit of the criminal organisation's members; the dealership and garage for luxury vehicles, with all cars and the business registered to frontmen and different companies; another smaller car dealership used to commingle and move funds through bank accounts; fake (shell) construction companies registered by each member of the criminal organisation and used to declare revenue to tax authorities and "employ" members; a barbershop (another real operation that was used to commingle funds); and 26 million USD in real estate in Paraguay held by frontmen. The organisation used complicit professionals such as a law firm (used to carry out an audit) and an accounting firm (issued false tax receipts, using the names of front-persons repeated periodically). ML transactions were conducted by a *doleiro* located in Paraguay and operators in Curitiba/ Parana, São Paulo, and Rio de Janeiro. This investigation is conducted with the support of a GISE, a task force including RFB, and with LEAs in Paraguay. There have been 8 arrests, seizures of farms, real estate, and vessels, and special investigative techniques used, including controlled actions. The assigned judge was sceptical of the operation and denied applications for preventative measures including seizure and arrest, causing MPF to appeal and delayed the investigation by one year. The prosecution is ongoing.

Source: PF 17.

248. The age and basic fact patterns of some of the case examples provided did not showcase Brazil's pursuit of ML in large-scale organised crime cases. There was also a lack of statistics or money laundering cases specifically involving PCC or CV, significant criminal gangs which are engaged in a variety of drug trafficking and other violent conduct. There was not a complete absence of cases, but many were older and out of scope, not final, or ongoing, and few focused primarily on dismantling the financial structures of the major OCGs. Some good results were seen in weakening the PCC: the home state of this gang reported more than 4,000 arrests of individuals tied to the PCC. Yet it was not shown what proportion of these arrests were for ML as opposed to predicate crimes, and the focus of authorities is mainly on violent conduct or predicate offences, as cases often stem from large and dangerous police operations within the urban areas controlled by these groups.

249. LEAs stated that ML activity for major OCGs is done in Brazil and abroad (e.g., in nearby countries where some core leadership is located), but the coordination of these groups is still managed from Brazil. The first phase of ML is also still occurring in, and therefore prosecutable, in Brazil, even if *dolar cabo* obscures the financial

flows or some later phases of ML are carried out elsewhere. Brazil's extraterritorial jurisdiction should also reach Brazilians who launder funds abroad or whose crimes have an effect in Brazil. LEAs tend to focus on arrests and asset seizures to target these groups, which they view as an efficient tool to deprive the OCGs of operating capital such as funds used to purchase guns and weapons, to "capture" politicians, and to acquire real businesses like gas stations. The LEAs' focus on confiscation and imprisonment of thousands of gang members appears to substitute for the pursuit of ML. This may also reflect the reality that the prospect of imprisonment for a more complex offence such as ML is quite low. Finally, OCGs sometimes benefit from the services of professional gatekeepers, including lawyers, to facilitate criminal schemes and ML, and this is not tackled in line with risk, as demonstrated by a dearth of case examples.

250. Brazil has made institutional adjustments to focus on organised crime, such as establishing GAECOs and specialised courts, and it has a long history of pursuing high-level improvements that would benefit cases in this area (including through ENCCLA, per IO.1). However, there was not sufficient evidence to prove that the networks laundering huge amount of proceeds generated by the major OCGs were being weakened or that the ML was a major pillar in the fight against certain types of organised crime. This is not in line with the scale of the problem facing Brazil in this regard.

Environmental Crimes

251. ML linked to environmental crimes such as illegal logging, gold mining, and cattle raising (on illegally deforested and/or occupied land) is not pursued in line with Brazil's significant risks in this area. These predicate crimes have recently been re-recognised by Brazil not only for the large amount of proceeds they generate, but for their harmful impact on indigenous peoples, damage to the environment, and detrimental link to climate change. However, for most of the period under review, ML linked to environmental crimes was not only deprioritised, but not viewed as a significant source of proceeds and not studied in a way that identified the variety of actors involved in illegal natural resource exploitation in Brazil or the financial flows stemming from it (see also IO.1).

252. On-site interviews revealed a trend of decreased resources among institutions dedicated to detecting and combatting these crimes. The resources allocated in terms of personnel, equipment, and technology were cut by half in some circumstances, and for some years, appointed officials (as opposed to regular staff) did not prioritise the stated missions of the agencies they oversaw. IBAMA, the environmental protection agency, is an important line of defence to detect infractions and potential environmental crimes which could be referred to the MPF or a state PPO. It has been severely under-resourced. Nonetheless, the legal framework generally remained intact in recent years despite the lack of priority given to environmental crime and related ML. Some enforcement activity has continued based on institutional knowledge and expertise, which has resulted in a few successful cases (see Box 3.8 below) and more PF investigations into environmental crime. This activity should be greatly expanded through a new national policy priority that places a sharp focus on the financial aspects and laundering of the proceeds of these predicate crimes. Institutions including IBAMA, FUNAI, PF, MPF, ABIN, ANM, relevant state agencies, and the military, have not been synched up on the financial components of

environmental crime, and few joint operations and examples of cooperation was demonstrated to the assessors prior to 2023.⁴¹

253. The political will and adequate resources were not present during most of the period under assessment, but there are also important systemic or structural reasons for the lack of pursuit of ML linked to environmental crime. First, according to several interviews, there is “always” ML activity linked to deforestation and illegal extraction. Criminals intermingle the illegal products with the legally cut or mined products in a way which obscures their origin and the resulting proceeds from their sale. This integration makes it challenging to prove the underlying predicate offence because the transactions have the appearance of legality. For example, LEAs and prosecutors from Amazonas State explained that at first glance, it is difficult to decipher timber from different trees let alone regions, so proving the predicate to a sufficient extent must often be done through evidence of improbable trade routes and falsified invoices. As for gold and other minerals, it is difficult to identify illegally mined product, so several agencies are working on a project to map chemical tags unique to each locality of mineral and gold extraction and increase the chemical testing for mercury, a tell-tale sign of illegal mining.⁴²

254. Further, even if investigators are able to pinpoint the source of illegal gold, the interspersed brokers and other professionals frustrates the ability to charge actors along the supply chain with ML because prosecutors must show they were aware that the resources were illegally sourced from a restricted area or mined without a licence.⁴³ Additionally, regulations in place from 2013 through the on-site visit presume **good faith** on the part of the purchaser, which hinders the prosecution of ML against buyers, refiners, and dealers further down the supply chain. While timber transportation requires an invoice (and all but two states use electronic systems), the transportation of gold and other metals currently does not require a domestic transportation slip, and this is needed to connect the extractor to the various downstream acquirers in the system.⁴⁴ Moreover, electronic tax receipts for trade in precious metals are not required, which hampers ML investigations. Finally, interviews and cases showed that the financial links often break close to the exploited territory. For example, foreign buyers fly in private planes to the Amazon and physically take the illegal product back with them via aircraft. Unregulated air strips built, abandoned, and rebuilt elsewhere by criminal groups contribute to the struggle to identify and subsequently trace the illegal activity *and its profits* (and serve as a useful tool for the organised criminal groups using environmental crimes as a revenue stream). In total, the difficulty proving the predicate, complexity of the supply chain, and poor regulations are all problems just beginning to be addressed by Brazilian

⁴¹ For instance, the use of financial embargoes against natural and legal persons who own land which is producing illegally mined or cut resources is a good practice, but there is a bottleneck in analysing these infractions and enforcing the embargoes (which, e.g., cut off bank financing to the landowners), and this inhibits additional investigations into potential ML.

⁴² Mercury poisons the surrounding land, water, and populations. One case example was provided where a food company in Sao Paulo is being investigated for smuggling and ML linked to its purchase and diversion of mercury for use in illegal mining.

⁴³ The Brazilian Constitution distinguishes between artisan mining and professional mining, and while some smaller operators considered artisans were technically mining illegally on smaller scales, many of the newer illegal operations are professional operations with heavy equipment and sophistication. Accordingly, they have bigger financial footprints. They sell to brokers, who sell onward to DTVMs.

⁴⁴ The assessment team also explored issues related to local corruption and whether public officials were facilitating illegal commerce in metals and stones. Because licences to sell to AVM may be issued by federal, state, and municipal officials, and are issued liberally, facilitating bribes are thought to occur more in the inspection stage.

authorities, primarily through better interagency coordination and forensic developments, but more transparency and financial investigations are needed.

255. Recent improvements could foster more money laundering prosecutions in the future. For instance, in 2023, a special PF unit was created to investigate environmental crimes. There are several special projects on deforestation and illegal gold mining, including studies to establish a baseline for the amount of gold extracted, as this is currently tracked solely on declarations, plus a mapping exercise for gold (similar to what was done for timber). A new task force headed by the President's chief of staff is taking shape and, for the first time, ANM is coordinating with IBAMA to understand the precious metals and stones supply chain, its vulnerabilities, and bad actors. In summary, the recognition of environmental crime as a significant ML predicate was lacking in the years covered by this assessment, and has now improved, but a policy to pursue *related financial investigations and associated ML* is urgently needed to choke off the proceeds and stem the environmental destruction from illegal extractive activity. The government should develop and improve cooperation and intelligence and information-sharing among relevant agencies to pursue ML from environmental crime in line with Brazil's risk profile.

Box 3.8. Examples of ML Linked to Environmental Crimes

(I) An ML case in the State of Pará in the Amazon region was initiated against the owner of a timber company. It was the result of a seizure conducted at a port in Amazona by IBAMA. A suspicion arose when the timber company located in Pará, a north-eastern state close to the Atlantic Ocean, used a port in Amazonas, further inland, to export timber. The illegal timber was discovered because unlike the legal timber, it lacked proper documentation and was being smuggled to China. The owner of the company was prosecuted for self-laundering. The case is ongoing. Source: MPF.

(II) A standalone ML case is currently being investigated by a DELECOR unit in the State of Amapá in the Amazon region. The investigation started in 2015 when PF identified around 25 businesses involved in gold trading and jewellery fabrication in the city of Oiapoque. This was incompatible with local conditions in that there are (a) no legal gold mines nearby; (b) less than 30,000 inhabitants in the low-income city; (c) no legal exports of gold between Brazil and French Guiana and in the region of the Oiapoque river; (d) a history of seizures of illegal gold and notorious illegal mining in the Oiapoque region. COAF reported on atypical transactions from local bank branches involving subjects linked to gold trading and jewellery fabrication. Illegally mined gold from French Guiana and Oiapoque was sold (mainly by miners themselves) to these businesses, which were often not licensed to purchase gold and carried out a façade activity like jewellery making or repair. The local businesses would melt the metal and sell it to dealers in other states. They usually acted as intermediary buyers and were not the final recipients. The PF focused on two primary groups: the sellers in Oiapoque and the buyers in São Paulo, Goiás, and Pará. The investigation did not focus on the conduct of the clandestine miners themselves (PF cited the military of both countries as responsible for this). ML was carried out using front companies and shell companies, with non-existent addresses. Some of the companies also used false tax

invoices and receipts to cover the illicit origin of the gold. An FI – a DTVM licensed by BCB to acquire legally mined gold – used its commercial partner in Oiapoque to acquire gold illegally mined in French Guiana and disguise its source with fraudulent invoices. An estimated 145 million BRL / 28.7 million USD was laundered this way between 2012 and 2017. Assets seized in Brazil include bank accounts, cash, gold ore, and jewellery. International cooperation was used to determine the inexistence of gold ore exports from French Guiana, identify parties licenced to mine in the territory, and to detect diversion of gold to France. Bank and tax secrecy have been lifted, 17 arrest warrants issued, and telephone intercepts used. The case is ongoing.

Source: Op. Ouro Perdido / PF 30.

Tax Crimes

256. Brazil has consistently faced tax evasion and capital flight, as recognised in FATF’s 2010 MER. In the 2021 NRA, Brazil points to the complexity of the tax system at the municipal, state, and federal levels as a vulnerability abused by criminals to perpetrate tax evasion and related ML. The NRA explains that 49% of small businesses, 33% of medium-size businesses, and 18% of large businesses, engage in evasion, and that in 2018 alone, tax crimes caused a loss of revenue of 390 billion BRL (77 billion USD).

257. Based on written material, interviews, case studies, and statistics, there is limited evidence that Brazilian authorities pursue ML related to tax crimes in line with risk. The RFB is not closely integrated with other LEAs, nor did the MPF view it as a source of potential cases. Although it does take part in task forces with other agencies in specific cases, and it does provide contributions in the form of IPEIs,⁴⁵ it is primarily focused on revenue collection. As the agency with the specialised knowledge to detect tax evasion and other tax schemes, RFB is a key stakeholder in identifying and investigating these predicate offences. Yet, for various legal reasons that follow, it is not able to perform this particular function to a sufficient extent or enable others to follow-up on ML activity, leading to the rare and inefficient detection of ML linked to tax crimes. RFB may refer a suspicion of tax crime and ML only when the first phase of tax investigation is completed and RFB confirms a liability. In addition, due to a 2018 internal rule, RFB makes a public disclosure when it makes certain criminal referrals to MPF. The impact is that MPF cannot conduct its investigation covertly, as the taxpayer is made aware immediately and by name on a public website.⁴⁶ The referral may also come too late to be of use to prosecutors. Moreover, the punishment for tax crime can be extinguished if the taxes owed are paid. Technically this does not extinguish the possibility to pursue ML, but practically, makes it very unlikely that ML will be charged. Finally, under a Supreme Court precedent, there is no laundering activity that can be recognised as committed for a certain period after the deadline

⁴⁵ RFB has a conduit for interaction with criminal investigators and MPF called COPEI (General Coordination of Research and Investigation), units of which are located in major metropolitan areas. They carry out research and investigation into taxpayers called IPEI (which were used extensively in Lava Jato).

⁴⁶ RFB Ordinance 1750, art. 16 (2018) sets out the process for a “tax referral for criminal purposes.” If RFB uncovers evidence of any tax crime, publication of this information on a website, with reference to the specific taxpayer, is required. Publication is not required when a non-tax crime is referred to MPF (e.g., false invoicing), but the situation is complicated if ML is referred based on a tax crime. An ML investigation could be hindered by this disclosure, which is not based upon law, but a normative instruction.

for payment has lapsed without payment, meaning that ML activity prior to this point is essentially immunised.

258. The prosecution of crimes against the tax order, which also include smuggling and duty evasion, are increasing year-over-year, but are still under 5 500 per year with a low conviction rate (27%) between 2015-2019. There are very few ML prosecutions affiliated with this, and as shown in Table 3.13, only 122 reports from LABs have focused on tax as a predicate, even though tax crimes represent the category of crime with the second-highest level of suspicious amounts reported to COAF through STRs. Additionally, requests to lift tax secrecy in any investigation must be granted by a judge, and RFB takes an extremely wide view of what information is covered by tax secrecy, regardless of whether it in fact relates to corporate or individual tax filings. Obtaining intelligence and evidence is somewhat easier if RFB is part of the investigative team in a task force, but the delays and difficulty to access information harms the pursuit of ML linked to tax crime.

259. The handful of case studies supplied by RFB were unclear with respect to the details of the underlying scheme, the laundering methods, whether ML was investigated or pursued against any defendants, as well as the outcomes of the cases. One case exemplified a common typology whereby a tax evasion scheme was carried out using two layers of intermediaries, including *noteiras* (i.e., front companies that solely exist to issue false tax receipts, fraudulent invoices, and generate various tax credits). This case was concluded without an ML prosecution of the companies involved (an infraction was levied concerning 2 billion BRL / 396 million USD). Another case included criminal charges, but not for ML. There, MPF charged two money exchangers for the operation of an underground bank which conducted 1,178 illegal foreign exchange transactions representing 484 million BRL (nearly 100 million USD), in taxes evaded. This case involved conduct from 2014/2015, and two executives from a bank were prosecuted for their role in falsifying import declarations and sending money abroad; however, when the complaint was filed years later in 2020, ML was not among the charges. A few examples provided by Brazil touched on the possibility of TBML conduct in relation to tax crimes, but the lack of corporate criminal liability for tax crimes and related ML appears to have an impact here, as many of the cases examined lacked satisfactory resolutions. Brazil often uses tax charges in investigations primarily concerning other predicate offences, but the cases did not display a focus on tax crimes themselves as an ML predicate. This is not aligned with Brazil's risks, especially pertaining to offshore tax schemes and proceeds moved abroad.

Box 3.9. Example of Tax Crime Investigation – State Level

This investigation began in 2019 when a company complained that its CNPJ (tax identification number) was misappropriated by two individuals who offered the company money to acquiesce in its continued misuse. The two were part of larger criminal organisation that was importing products to the State of Paraíba, through shell companies, without paying tax. Prominent businesses were selling the products, who received them without the necessary documentation. The suppliers also participated in the scheme, and the criminal organisation operated in different cells, including a counterfeiting cell. A total of 25 search warrants were executed

and 14 preventive arrests were made during a takedown involving 250 LEAs in Paraíba, Rio Grande do Norte, and Mato Grosso do Sul. Tax evasion and other offences are being investigated, but it is unclear whether ML will be charged. The investigation involving approximately 881 million BRL / 174 million USD is ongoing.

Source: Op. Terceiro Mandamento LAB-LD 10.

Overall Consistency of ML Investigations and Prosecutions with AML/CFT Policies

260. As alluded to in the section *ML identification and investigation*, there is some disconnect in practice between police and the prosecutors which hinders the chances that an ML investigation will be converted into a prosecution. There are also prosecutorial workload issues once a court proceeding is initiated. PF stated that it is studying the process and trying to improve its investigative practices to make the prosecutors and the judiciary more accepting of the evidence produced by police, and prosecutors point to laws requiring their involvement at an early stage. Additionally, the lack of predictability in case law and inconsistency of judicial expectations has an effect on the cases taken forward and may result in a request for additional investigation or reinvestigation from prosecutors to police, which is completed with varying levels of thoroughness and slows down the decision to charge ML. Investigative steps requiring the lifting of secrecy, for example, may be delayed or denied without reasons stated, and the police are not clued in when the defect is identified such that it could be corrected in future investigations. These issues do have a negative effect on the types of ML activity being investigated and prosecuted considering Brazil's *overall* money laundering risk profile which involves complex schemes, widespread organised criminal groups, legal persons/frontmen, and significant international linkages.

Types of ML cases pursued

261. In light of the issues identified with investigations and prosecutions, the next section examines the types of ML cases undertaken and concluded in Brazil. Despite a commitment and a high degree of knowledge and competence among authorities, the results do not demonstrate that charges brought by federal and state prosecutors are resulting in convictions for different types of ML activity. Brazil pursues some standalone ML cases and is vigorously combatting one class of third-party money launderer to a large extent—*doleiros*. But not enough is done regarding gatekeepers and professionals in some higher-risk sectors such as real estate agents, lawyers, notaries, or accountants, little is done to combat ML based on foreign predicates. Thus, Brazil's efforts to pursue different types of ML show limited success, and highlight that the component parts of the system related to prosecution and conviction are not functioning with adequate coherence.

262. Across the board, prosecutors identified as a major problem the lack of convictions in Brazil for ML. LEAs and other institutions with an oversight role—such as the National Counsel of Justice (CNJ) and the National Counsel of Public Ministries (CNMP)—also acknowledged this reality. The lack of convictions has a severe impact on Brazil's level of effectiveness in terms of demonstrating the characteristics of an effective system wherein "offenders are successfully

prosecuted,” but it also creates a disincentive to investigate complex ML in the first place, as it is well-known that there is a breakdown in the latter steps of the process (note that convictions are addressed here, while sanctions are covered in section *Effectiveness, proportionality, and dissuasiveness of sanctions* below).

263. Brazil is not obtaining a sufficient amount of ML convictions considering the inputs for several reasons, some of which are unique to ML and some of which are structural issues within the criminal justice system that particularly impact ML enforcement. **First**, prosecutors identified that interlocutory appeals—at almost every stage of the proceeding and prior to final judgments—have the effect of stretching cases out for years, especially in ML and other white-collar matters. There are four levels of appeals, and the courts have vacillated on whether a defendant convicted in the first and second instance courts should be jailed, even if further appeals are limited only to procedural (not factual) questions. It is not uncommon for an ML case to last a decade or more, as shown by numerous case examples, which stretches the resources of the state and disincentivises the pursuit of complex cases against well-funded defendants. To mitigate this (and for other tactical reasons), Brazil utilises plea bargaining. Although this practice does result in a lesser penalty, it can yield valuable cooperation and testimony against higher-level targets as well as the recovery of assets.⁴⁷ Importantly, plea bargaining concludes the case sooner and with a level of finality that is rare in the Brazilian system, and the practice is therefore viewed positively by the assessors in the context of Brazil.

264. **Second**, while there are some specialised courts and judges, some ML matters linked to corruption are now handled by electoral courts when they relate to campaigns and candidates for office. This has the effect of taking cases away from judges with experience in overseeing complex financial crime cases and moving them into a court lacking deeper expertise in ML. While specialised courts dealing with ML and corruption are a plus in the context of Brazil, the diversion of significant cases from them is not. **Third**, while specialised courts to address OC and ML have been in place since 2003 at the federal and state levels, the representatives of the judiciary acknowledged a need for additional training of judges throughout the country to enhance capacity to handle ML cases. ML cases are not currently widespread throughout Brazil and there are some geographical gaps, as cases are concentrated mainly in São Paulo, Paraná (which includes the TBA), Rio de Janeiro, and Rio Grande do Sur (Uruguay border).

265. Statistics on prosecutions and convictions do not tell the whole story. While Brazil has made improvements in the collection of ML statistics since its last MER, it was not able to provide reliable, comprehensive statistics within IO.7. It is possible that not every ML conviction is included in the figures below, as some authorities noted that the first listed predicate might be recorded, as opposed to all offences of conviction including ML. Nonetheless, case examples that were initially provided by Brazil, then supplemented, and then provided specifically to demonstrate ML convictions, did not lessen the concerns about the frequency of ML prosecutions, the

⁴⁷ Collaboration agreements are governed by the Organised Crime Law No. 12,850 (2013). Article 4 on plea agreements provides that the judge may forgive or reduce the penalty imposed on an accused person who collaborates effectively and voluntarily with the investigation and the criminal proceeding, as long as the information he or she provides leads to one or more of the following results: identification of co-authors of crime, committed offences, or other participants in the criminal organisation; the revelation of a hierarchical structure and distribution of tasks within the organisation; prevention of future offences related to the organisation’s activities; the complete or partial recovery of proceeds of the criminal organisation; or location of a living victim.

ratio which result in convictions, and the length of time it takes to achieve a non-appealable judgment in routine cases. On average, there are approximately 74 federal ML convictions per year, and 95 at the state level per year. Combining federal and state courts, the conviction rate is well under 35%.

Table 3.12. ML Convictions

	2017	2018	2019	2020	2021	2022	Total	Conviction Rate
Federal Cases Concluded	150	187	263	141	148	144	1 033	
Federal Convictions	28	90	93	78	78	77	444	43% (Federal)
State Cases Concluded	289	395	536	164	221	314	1 919	
State Convictions	64	52	74	102	112	171	575	30% (State)
Grand Total Convictions							1 019	34.5% (combined average)

266. As mentioned, specialised units often achieve better results, and the figures below represent data from 14 states with GAECOs. The extent to which these convictions are already included in the figures above is unclear; it is likely that they have been counted, but the assessors highlight the contribution of the GAECOs separately in Table 3.13. The assessors do not expect a certain threshold conviction rate and respect the independence of the judiciary. Still, the Brazilian outcomes are not on par with other FATF jurisdictions and do not indicate that LEAs and prosecutors are routinely able to overcome the practical and structural issues discussed throughout IO.7 regarding investigations and prosecutions.

Table 3.13. ML Convictions Among Certain State-Level GAECOs

Number of ML Charges	Number of Persons Accused	Convictions	Acquittals	Final Judgments (in 2021 and 2022)
305	1 486	137	29	45

267. As mentioned in the scoping note, the assessment team considered whether weaknesses within structural elements had any impact on effectiveness, and whether, for instance, factors mentioned in the FATF Methodology—such as the stability of institutions, strength of rule of law, or the efficiency and independence of the judicial system—might affect implementation of the AML/CFT framework. There are considerable and well-known inefficiencies in the judicial system. Additionally, recent, high-profile cases have shown challenges with impartiality of some elements of the judiciary. Nevertheless, these issues were limited, and it appears that the Brazilian judicial system is sufficiently independent to conduct fair ML trials. Brazil has taken steps to address corruption and increase transparency within institutions, including the judiciary, and this work continues.

Third-party and professional ML

268. *Doleiros*, or illegal currency exchangers, are a key node in the big picture of money laundering activity in Brazil. Case examples confirmed that authorities are intensely focused on this activity and pursue this type of ML (always third-party) to a large extent. The case below represents a successful example how Brazil is using its plea bargain to obtain consequential results.

Box 3.10. Third-party ML

The investigation involved a network of illegal money changers, including one known as the *dolerio dos doleiros*. They used approximately 3000 offshore bank accounts in 52 countries to launder the equivalent of 1.6 billion USD derived from a massive corruption scandal in Rio de Janeiro. Corruption began 2007 and diverted millions from the public budget through overcharged contracts and kickbacks to the governor and senior officials. Plea bargains were entered into by certain PMLs, who described the laundering process, including cash operations, the use of front companies and real companies, and payments between jurisdictions. The PMLs utilised encrypted means of communication, a compliance system to segregate clients according to their criminal activity, human resources management, and facilities security system, and cash deliveries. The investigation was carried out by PF, MPF, and RFB. Financial intelligence and international cooperation were employed. 62 people were arrested for offences including corruption and ML. The agreement signed by key PML Dario Messer provides for the return of nearly 200 million USD and 13 years to be served in prison (out of 18 for which he was eligible). He is not yet imprisoned.

Source: Operation Cambio e Desligo.

269. In addition, the assessment team reviewed ten major operations in which authorities dismantled ML networks run by *doleiros* when it visited LEAs in Foz de Iguacu. Paraná State is one hub for such activity on account of the fluidity of legitimate and illegitimate commerce between Brazil and Paraguay and the currency exchange arbitrage constantly occurring in the TBA. These operations took place between 2014 and 2020, resulted in 156 temporary arrests, 24 preventive arrests, and the execution of 273 search and seizure warrants. To broadly characterise the cases, they were sophisticated in their typologies (e.g., using numerous shell companies per case, around 50-100, as well as false invoicing mechanisms and TBML), served a multiplicity of criminal clientele (e.g., narcotics and cigarette traffickers, smugglers, fraudsters and groups engaged in organised corruption), occasionally relied on real businesses as part of the laundering scheme (e.g., gas stations), and employed unlicensed activity that should have been registered with BCB (e.g., foreign exchange or transportation of currency). These cases generally involved the laundering of significant amounts (e.g., hundreds of millions of dollars in Op. Freeway, 1.28 billion USD in Op. Myopia). Broadly speaking, these ML operations are conducted by Brazilian nationals who are working illegally in Paraguay and who take advantage of the commercial and currency needs of Brazilian smugglers interested in sending money to Paraguay and complicit businesses in Paraguay interested in sending money to Brazil. The fee charged by these laundering networks is usually 2-5%, or the

spread between the exchange rates of Reals, Guaraní, and U.S. dollars. While these operations have a positive disruptive effect, they also suffer from some of the inefficiencies in court processes experienced in many ML cases in Brazil. Taking Operation Freeway as an example, the investigation began in 2016 and was propelled when the server used by the suspects was seized and analysed. Eight individuals were arrested, and charges laid include ML, criminal organisation, currency evasion, fraudulent management of an institution, and parallel accounting, but there have been no convictions.

270. While Brazil excels in pursuing ML activity linked to *doleiros*, there is little evidence that gatekeepers are prosecuted and convicted with regularity for ML, such as notaries, lawyers, and real estate agents.

271. The legal profession, as a whole, plays a key Constitutional role in the Brazilian democracy. Nonetheless, there were numerous red flags showing that certain lawyers are involved in ML schemes, confirmed by several examples in corruption cases and some in organised crime cases. There were credible reports of integrity issues in the legal sector, and the lack of regulation of the profession was flagged consistently as a risk. Police explained that a small segment of lawyers enable ML by forming companies, issuing invoices, engaging in the purchase and sale of real estate, and even taking part in the underlying criminal conduct. Private sector institutions largely confirmed this view and consider lawyers to be high-risk clients.

272. Despite the clear awareness that some lawyers deserve increased attention, prosecutors and police acknowledged that investigating and prosecuting attorneys is difficult and infrequent.⁴⁸ Prosecutors and LEAs also noted a hesitancy among the judiciary to allow investigations into lawyers. If such investigations are opened, the wide protections available to lawyers in Brazil may impede the investigation of ML and other criminal conduct. Although many countries have special rules and requirements for the search of a law office as a precautionary measure to protect the attorney client privilege, Brazilian investigators face an unusual requirement in that a representative of the bar association must be pre-notified and present during the search of a law office and the representative has a duty to prevent the exposure of documents privileged documents on the spot. In 2022, another law further extended this protection, requiring a bar association representative to be present during the subsequent analysis and physical examination of documents or devices obtained from a lawyer via a court-authorized search.

273. In addition, there seems to be a conservative stance taken by the OAB when the investigation pinpoints the potential involvement of a lawyer in ML or a predicate crime. OAB has never revoked a license to practice law. The Bar Association was unavailable during the on-site visit, and no clarifications could be obtained from OAB on issues of sectoral awareness of ML, prevention of ML, training and policies, or sanctions taken against complicit lawyers.

274. As to other professions, there is no established practice of looking back in ongoing ML investigations to the parties that executed contracts for the purchase and sale of property or power of attorney delegations, for instance, to see if the professional was wilfully blind or knowing handling criminal proceeds. Another

⁴⁸ In one case discussed with the LAB-LD in São Paulo, the ex-spouse of a public official filed a complaint that the official had received bribes and mentioned a lawyer's involvement. The attorney used his services to facilitate the predicate offence and ML, and was charged with both. Prosecutors met the conditions to overcome professional privilege, but the lawyer was acquitted of ML six years after the investigation began.

reason these cases are not often initiated may be the lack of reporting from the relevant sectors (notary, real estate, legal professionals), which in turn hinders COAF's ability to generate financial intelligence and leads for law enforcement. This is not to say there have not been any examples of successful cases, but they are few, especially considering the indications within cases of professional gatekeepers enabling ML activity (such as in Operation Descartes, where a law firm controlled the shell companies and provided them with fake tax receipts, but the relevant professionals are not among the investigated suspects).

275. On the positive side, Operation Asia Express recently concluded with a conviction for ML, confirmed on appeal, after an investigation which commenced in 2017 against a brokerage now liquidated by BCB. The accountant who owned that firm provided a menu of services to criminal clients. Another, relatively smaller, ongoing ML case concerns the role of an accountant who managed a criminal organisation, used his employees as front persons in companies simulating merchandise operations and tax credits, and laundered the proceeds through real estate concealed in the name of a less well-off family member (Op. Hydra). Such cases indicate that complicit accountants are grabbing the attention of authorities and that some cases are being successfully prosecuted.

Standalone ML and Foreign Predicate ML

276. Self-laundering is routinely subject to prosecution and there were several quality case examples. However, standalone ML is not routinely pursued by Brazil, and, relatedly, there are very few ML cases premised on the laundering of foreign criminal conduct. As for standalone ML, there were relatively few cases demonstrating that predicate offences do not also need to be proven in the same proceeding to obtain a guilty verdict for money laundering. One example related to an illegal gambling ring that concealed its illicit business through jukeboxes, but no ML conviction has been obtained yet. However, given the inefficiencies in the criminal justice system, there is a rationale for charging predicate offences in addition to ML, wherever possible, to ensure multiple opportunities for conviction.

277. No particular concern is caused by the relative lack of standalone ML cases in the context of Brazil, except as related to foreign predicates. Although Brazil is mainly a source-country in terms of generating criminal proceeds, the NRA acknowledges the transversal vulnerabilities of Brazil, especially its long and difficult to monitor borders, the magnet effect of Brazil's financial system within Latin America, and the significant flow of people, goods and services that constantly circulate between Brazil and its neighbours. The possibility that Brazil may be a nucleus for the laundering of proceeds generated outside of Brazil is not mentioned in the NRA, and interviews with the authorities implied that this risk area may be underappreciated and therefore, not reflected in enforcement strategies and real cases. The sole case example provided from MPF in Rio do Norte involved drug trafficking and extortion carried out in Italy, was opened in response to an MLA request, and remains in the investigative phase. Such few cases do not comport with Brazil's size or regional financial prominence, even though international ML in Brazil usually starts with crimes committed in-country and flows outward, not inward.

Effectiveness, proportionality, and dissuasiveness of sanctions

278. There is very limited information showing that sanctions applied for ML are effective, proportionate, or dissuasive, in the context of few statistics and limited overall case examples. Sentences imposed for ML do not reflect an adequate range of penalties (especially on the higher end), they are most likely to be carried out in semi-open or open regimes, and some sentences are never enforced at all. This conclusion reinforces how the components of the system are not (generally) working together to provide deterrence to criminals who would engage in money laundering. While Brazil can use plea agreements to obtain some sentences, this only partly mitigates the points discussed below.

Table 3.14. Persons Imprisoned as at 2018-2020: ML Penalties Compared to Main NRA Offences

Offence of Conviction	Number of Persons Imprisoned	Average Sentence per Person (months / years)
Tax Crimes	5 996	32.6 / 2.7
Crimes against the National Financial System	954	41.9 / 3.5
Corruption	5 196	44.9 / 3.74
Terrorism	4	90.7 / 7.6
Drug Trafficking	453 442	68.4 / 5.7
Criminal Organisations	14 401	78.4 / 6.5
Money Laundering	1.455	77 / 6.4

279. The only quantitative data supplied is a snapshot of the three-year period above, which only indicates the penalties given to the persons imprisoned at the time. The Table data could not indicate the type of regime, recalling that open or semi-open are the most typical for ML according to the limited sample of cases available. The ML offence is punishable by three to ten years in prison, a penalty which can be increased when the crime is considered as a pattern or is committed by a criminal organisation. This range is appropriate on paper. But few conclusions can be drawn from the figures above, other than that for the individuals who were incarcerated for ML between 2018 and 2020, they were sentenced in the middle of the available range (6.4 years). A total of 1,455 people were in prison for ML during this span, although this is not new sentences, but all persons serving during this period (meaning that the convictions may stem from prior years). Brazil also caveats that, in some cases, sentences are aggregated, and the ML sentence cannot be segregated.

280. A handful of cases with averaged sentences were provided by Brazil, and an examination of the relatively few cases where there were non-appealable ML convictions revealed a mixed picture. For instance, in one case with a final conviction in 2022 (ML linked to a Ponzi scheme), the penalties for eight persons found guilty of ML ranged from three to eight years imprisonment, but half of the defendants, including the ones with the longest sentences, these were in open or semi-open regimes. One lengthy sentence for more than 22 years stemmed from an ML case confirmed by a final judgment in 2020, but the exact offences of conviction could not be discerned. Only impressions could be drawn from the case examples and few stand-alone ML convictions were available that could demonstrate the use of a full range for ML. From the samples, the courts seem to hand down rather firm sentences

for ML, although the higher end of penalties in a closed regime is rarely pronounced. Furthermore, there are factors concerning the likelihood of an effective penalty being applied in practice which must be considered alongside the judgments issued on paper.

3

281. Interviews revealed that many non-violent offenders are less likely to serve time in prison, and this not due to a principle of pursuing rehabilitation, but a reality of judicial practice. Even when a long sentence is issued, the judgment may not be carried out. CNJ, state, and federal prosecutors all identified problems in following through with penalties and that the judiciary was more inclined towards confiscation. There is a concern that even in high-end ML cases, the full range of penalties is not used. Authorities mentioned that if sentence handed down is not on the higher end of the spectrum, it is likely to be in an open or semi-open regime, which is not especially dissuasive because it allows the convict to be released to their home and check-in, or to report to jail only occasionally.

282. Moreover, even if the remaining grounds for appeal are procedural, as opposed to factual, a finding of guilty by two levels of courts will still not be sufficient to enforce a prison sentence. This increases the risk of flight, illness, or death, especially in the context of Brazil, where cases regularly last many years, e.g., decade or more in complex ML matters. In addition, the lengthy criminal proceedings result in a lack of both certainty and swiftness of sanctions, which decrease the dissuasiveness of any penalty ultimately imposed. In one example, Brazil reached a collaboration agreement with an individual located in another country. As a citizen, this person wished to serve his sentence in Brazil, not abroad, and arrangements were made under an international convention to transfer him. However, when the agreement was forwarded to the relevant court, it did not enforce it and released the defendant immediately upon his petition, such that no effective penalty was applied. The example does not mean that generally Brazil is not able to ensure prison sentences, but there are risks for sentences not to be served.

283. One factor that may also have an impact is the statute of limitations. The statute of limitations is not only a function of a certain number of years after the commission of the crime, but, unusually, in Brazil, the limitations period is recalculated based upon the actual sentence imposed. Because judges are inclined to award a low sentence, and this would result in a shorter limitations period, it is common for cases to be barred by this “adjustment” which results in an acquittal. Because of the slowness of the system and the multilevel appeals available to defendants, the statute of limitations may, at the end of a lengthy case, result in an acquittal and lack of effective penalty (the sentence would not be served if the charges were retrospectively time-barred). In at least one corruption and ML case involving a Brazilian multinational company, this unusual statute of limitations calculation resulted in acquittals for most of the executives. While ML is an offence that is considered continuously occurring until the concealment is ceased, the same recalculation would apply to ML as it would to any other crime (per article 109 of the Criminal Code).

284. Finally, while the personal circumstances of defendants should be considered in each case, the statistics and case examples do not enable the conclusion that the full range of penalties are used in Brazil and or that the sentences are proportional for ML offenders. Brazil did not articulate a rehabilitation-oriented approach to sentencing. There is a large prison population (over 835 000 as of 2021). Instead, there is a

dichotomy whereby violent and drug offenders are sanctioned heavily, but ML defendants appear not to be penalised using the full range available.

285. Legal persons are not subject to criminal liability for ML (see R.3, TC Annex). Legal entities have faced some steep non-criminal penalties, but these consequences are detailed elsewhere (e.g., IO.8) as they are not the result of convictions.

Use of alternative measures

286. Brazil applies other criminal justice measures in cases where an ML investigation has been pursued, but where it was not possible, for justifiable reasons, to secure an ML conviction, to a limited extent. The main mechanism is the non-prosecution agreement (NPA), which is applied in several cases whereby the liability for ML was extinguished on account of cooperation. The use of NPAs in certain ML cases is beneficial due to the unpredictability of criminal proceedings, the low prospects of ML conviction, and the lack of effective sanctions. As highlighted in section *Types of ML cases pursued*, the discussion of collaboration (plea) agreements under the Organised Crime Law, the finality assured by an NPA is positive, especially when some aspect of the ML case makes a conviction less likely, or appeals more likely. The same is true for the use of collaboration agreements as an alternative mechanism: multiple case examples showed that such agreements can helpfully conclude a case and militate against inefficiencies in Brazil's criminal justice system. See Table 3.28 within IO.8, showing that approximately 200 such agreements have been used across all offences (not just ML) over 6 years. Agreements are also used strategically to build cases using the cooperation of lower-level criminals against higher value targets. This often entails reaching an agreement with a money launderer in exchange for evidence against a public official.

287. There is debate among Brazilian scholars and practitioners as to whether Brazil is constitutionally prohibited from imposing criminal liability on legal persons for ML (see R.3 in the TC Annex). However, there are strong policy reasons to seek to be able prosecute legal persons for ML. Brazil should attempt to expand its enforcement toolkit for ML by enabling corporate criminal liability for ML and TF—crimes which could be, in the words of the Constitution—“acts that contravene the economic and financial order and the popular economy.” However, the administrative and civil penalties demonstrated through case examples, at least in the corruption context, are helpful to combat the underlying predicate activity that poses the greatest threat in Brazil (see on corruption).

288. Brazil has more than twenty offences considered as crimes against the national financial system. On occasion, when ML has been investigated but the precise origin of the proceeds is unclear, prosecutors will charge one of these alternative offences. This is not considered by the assessors to detract from the pursuit of ML. Such crimes include fraudulent management of a financial institution; operation of an unlicensed financial institution, including distribution of securities or exchange services; assigning oneself or a third party a false identity to perform foreign exchange operations; or unauthorised foreign exchange transactions to evade currency controls (e.g., capital flight) (all criminalised within Law No. 7492 arts. 4, 16, 21-22 (1986)). A newer offence specifically criminalises fraud committed through virtual assets (Law No. 14478 (2022)). To highlight an example of the usefulness of such alternative offences, in *Op. Orion*, initially opened in 2014, the “operation of an unauthorised financial institution” charges yielded a conviction, while related the ML proceedings opened in 2017 are still pending. ML linked to this 40 million USD

pyramid scheme is still being unravelled, but illegal remittances through *dolar cabo* have been the basis for quick, definitive convictions and confiscations. However, for the crimes in this category of “offences against the financial system”, as well as the receipt of criminal proceeds offence, the penalties are lighter than they are for ML.

3

Overall conclusion on IO.7

Brazil investigates and prosecutes complex ML cases, especially related to its main predicate threat of corruption. Specialised units, LABs, and courts with subject matter expertise contribute to some impressive ML cases. However, the overall system for ML enforcement needs major improvement. The sources of identification of ML could be broader, and in some areas, there remains a focus on the predicate offence and less emphasis on associated ML. There are several investigative obstacles, both structural in nature (e.g., frequent interlocutory appeals) and specific to ML (e.g., judicial authorisation required for financial information, without timeframes for response; coordination issues). Investigations do not lead to an adequate number of prosecutions and final ML convictions are rare and not timely. A range of sanctions for ML is not utilised, and are not routinely effective in practice. The cases pursued are only partially in line with Brazil’s risks, with some deficiencies in the pursuit of ML related to environmental crime, tax crime, and drug trafficking. Third-party ML is combatted through targeting of *doleiros*, but other enablers, such as lawyers, are not targeted. While the lack of convictions is mitigated to a small extent by plea agreements and administrative resolutions in the corruption area, the statistics across IO.7 are not comprehensive, if available at all, and case examples, with some exception, confirm the excessive length of proceedings and difficulty in regularly obtaining successful outcomes.

Brazil is rated as having a moderate level of effectiveness for IO.7.

Immediate Outcome 8 (Confiscation)

Confiscation of proceeds, instrumentalities, and property of equivalent value as a policy objective

289. Brazil places a strong priority on asset recovery. It pursues confiscation of criminal proceeds, instrumentalities, and property of equivalent value as a policy objective to a large extent. This prioritisation is demonstrated by a concerted effort to develop new legislation and the consistent expansion of Brazil’s asset recovery toolkit since its last MER in 2010.

290. Brazil has robust legal measures and mechanisms to enable confiscation, such as:

- i. Provisional measures (in the Criminal Code, Law No. 9613, and Anti-Drug Law, which have trended towards a wider net of assets which can be seized, frozen, or restrained);
- ii. Conviction-based confiscation (Criminal Code art. 91);

- iii. Confiscation established as a free-standing sentence for criminal conviction (Criminal Code art. 43, whereby “restriction of rights” through asset confiscation can be given in lieu of a custodial sentence of less than four years imprisonment);
- iv. Equivalent value confiscation (introduced in 2012 in Criminal Code art. 91 for situations where proceeds are not found or are located abroad);
- v. Confiscation of any type of assets associated with ML (introduced in 2012 by Law No. 9613, the confiscation of any assets, rights, and valuables, *related directly or indirectly* to money laundering);
- vi. Confiscation authorised through collaboration agreements (introduced in 2013 by the Organised Crime Law, one of the conditions that must be met to enter into a collaboration agreement includes, inter alia, that the person’s cooperation results in the full or partial recovery the product or profit stemming from the activities of a criminal organisation); and
- vii. Extended Confiscation for serious offences punishable by a maximum of more than six years (introduced in 2019 in the Criminal Code, Art. 91-A, which expands the concept of proceeds of crime to include “assets corresponding to the difference between the value of the assets of the convicted person” and his or her “lawful income” to include all assets owned or controlled by the defendant as of the date of the offence or later, and assets transferred to non-bona fide third parties, with a reversed burden of proof on the defendant to show lawful origin).

291. With the measures above in the criminal context, Brazil is well-positioned to recover assets. The country has also developed a suite of additional measures including limited forms of non-conviction-based confiscation (NCBC) and various civil actions, discussed in the sections below, which further underscore the depth of Brazil’s policy commitment to depriving offenders of their ill-gotten gains, even in the absence of a criminal proceeding or conviction. This multi-pronged approach is given considerable weight by the assessment team, which considers that flexibility for competent authorities to pursue recovery through the most efficient means possible is a key aspect of Brazil’s AML/CFT system. This is especially important in the context of Brazil’s lengthy and inefficient criminal proceedings, the instability of case precedents, and the low conviction rate for ML (see analysis within IO.7).

292. Additionally, Brazil has made certain policy adjustments that reinforce the processes and procedures surrounding confiscation, including some improvements in asset management and disposal of assets, as follows:

- i. Asset management (gradually improved by various legislative amendments and the establishment and empowerment of the Directorate of Asset Management within SENAD in 2019 and 2022, to manage, auction, liquidate, and dispose of assets seized and confiscated, available in all judicial cases);
- ii. Use of confiscated assets (via legislative amendments, in 2018 and 2019, to deposit most confiscated assets into the National Fund for Public Safety (except drug-related confiscations));

- iii. SIMBA (developed by ENCCLA through MPF, this requires the production of financial records from all FIs in a standardised, digital, and encrypted manner when bank secrecy is lifted at the request of LEAs; SIMBA enables processing and analysis of financial data, including the extraction of information for use in other software and IT tools helpful in complex financial investigations);
- iv. SISBAJUD (a joint development of the judiciary and BCB to enable the swift and efficient seizure of assets held in financial institutions whereby judges can submit court orders for restraint or seizure directly to FIs as well as detailed requests for financial records; the response is provided in uniform SIMBA-format); and
- v. SREI (developed in 2015 and improved in 2019 by the CNJ, the mechanism by which real estate is identified and restrained through the consolidated, electronic property register, drawing on local registers that assign parcels 15-digit codes).

293. Several policy documents serve to create a culture of following the money and encouraging and equipping LEAs and prosecutors to pursue asset recovery in all appropriate cases. Aside from the training on financial investigations described within the section *ML identification and investigation* for both federal and state agencies, competent authorities rely on guidance aimed at improving the confiscation of criminal assets. The MPF produces various activity guidelines. The prosecutors associated with the 2nd criminal chamber—a criminal court specialised in ML—recently published a 93-page document entitled “Prosecution of Assets: Crypto assets” (2023).⁴⁹ The MPF associated with the 2nd criminal chamber and the 5th chamber of coordination and review—the latter is a court specialised in corruption—also produced the definitive “how-to” activity guidance on confiscation in 2017.⁵⁰

294. Finally, the pursuit of confiscation as a policy objective is solidified through orders given to competent authorities. For example, Circular Memorandum No. 13/2013 from the Director of PF/DICOR instructs all regional superintendents, chiefs of police stations, and chiefs of specialised units of the PF to make every effort to investigate ML whenever predicate investigations give rise to the possibility of proceeds, and, most relevant here, to “decapitalise” crime through the diligent pursuit of confiscation in line with PF guidelines on combatting organised criminal groups.

Confiscation of proceeds from foreign and domestic predicates, and proceeds located abroad

295. Brazilian LEAs demonstrated capacity to identify and trace assets with a view to confiscation. As mentioned in IO.7, specialised units and staff, LAB structures, and tools such as the CCS (the central repository of bank accounts) and various state and

⁴⁹ This detailed paper walks prosecutors through different types of VA, the blockchain, technical aspects of bitcoin, acquisition, transfer, and storage of VA, the VA scene in Brazil, the steps of finding and investigating VA, seizing and confiscating VA, liquidating VA, as well as DeFi and NFTs. It provides model applications, requests, and pleadings to be used in cases involving VA.

⁵⁰ This paper entitled “Prosecution of Equity and Asset Administration” is nearly 300 pages and covers the economic impact of crime and confiscation; financial investigation with a view to confiscation; means used by criminals to conceal assets; provisional measures available in Brazil and how to obtain them; confiscation; loss of assets in civil proceedings; international cooperation; administration and disposal of different types of assets (e.g., from jewels, to pensions to nuclear material); and the final destination, use, or repurposing of confiscated assets. National Council of Justice (CNJ) Resolution No. 356 (2020) also defines procedures and responsibilities for the management of assets seized in criminal proceedings.

federal asset and ownership registries are utilised in financial investigations. However, there is room for improvement in terms of identifying and tracing assets linked to suspects. Although Brazilian LEAs are well-versed in looking for *testafaros* and interposed persons who may be empowered to nominally hold assets (e.g., through POAs processed by notaries or informal and undocumented arrangements), beneficial ownership, in terms of both equity and control, is not a widely understood concept. The timeliness of access to true beneficial ownership information of some types of legal entities is weak (see IO.5). Additionally, because COAF does not regularly access to additional information from reporting entities to enrich its reports, and because FIs would only be expected to hold some ownership information, LEA use of financial records to trace transactions and asset transfers takes on more importance. On this, as explained in IO.7, there are delays in the consideration and approval of judicial authorisations to lift bank and tax secrecy. In the context of IO.8, this can mean less efficiency in following the money and identifying assets indirectly owned by suspects.

296. Brazil is largely successful in seizing criminal assets in the investigative phase, especially with regard to its main ML threat area, corruption, but also across many categories of offences. The level of effectiveness regarding final confiscation results and the realisation of assets is much less clear, as very limited auction data for “hard assets” has been provided, which neither includes cash or financial assets nor accounts for cases where judges oversee the management and disposal of confiscated assets without the involvement of SENAD, the asset management agency. This makes it nearly impossible to determine how well Brazil is performing in the final stage of the confiscation to deprive criminals of their proceeds and make crime unprofitable. Concerning confiscation of property of proceeds moved to other countries, Brazil appears to be recouping a significant amount of assets. The assessment team based its conclusions on some statistics, case examples, and interviews with competent authorities. Overall, there was a lack of comprehensive statistics maintained about confiscation, which is reflective of a system that is too reliant on the practices of individual courts and judges and lacks nationwide oversight or coordination.

Provisional Measures

297. Precautionary measures, as they are termed in Brazil, are especially important due to the lengthiness of criminal proceedings. LEAs and prosecutors interviewed by assessors recognised the need to restrain or seize different types of assets early and often, and case examples showed aptitude in this area. Prosecutors (and courts, when requested, or on their own initiative) take a pragmatic approach to the interlocutory sale of assets pending the conclusion of criminal cases. This option to liquidate assets which may deteriorate or lose value was commonly mentioned and used in practice is viewed positively by the assessors. As seen below, PF seizes approximately BRL 2.9 billion, or USD 575 million, per year, on average, including USD 46 million in ML investigations. State-level seizure data was less precise and encompassed a mixture of timeframes and offences. However, a conservative extrapolation from a few of the more active states which provided statistics indicates that assets worth around 10-30 million USD are seized every one to three years, in some states.

Table 3.15. Seized Assets in All Federal Police Investigations

	2017	2018	2019	2020	2021	Total	Average per Year
No. of Seizure Proceedings	25 630	23 918	20 262	18 165	18 740	106 445	21 289
Value of Assets Seized (BRL) *	2 700 000 000	990 000 000	1 600 000 000	7 000 000 000	2 700 000 000	14 990 000 000	2 998 000 000
USD	517 498 200	189 749 340	306 665 600	1 341 662 000	517 498 200	2 873 073 340	574 614 668

Table 3.16. Seized Assets in Federal Police ML Investigations

	2017	2018	2019	2020	2021	Total	Average per Year
No. of Seizure Proceedings	235	226	267	401	503	1.632	326
Value of Assets Seized (BRL)	30 000 000	25 000 000	875 000 000	66 000 00	213 000 000	1 209 000 000	241 000 000
USD	5 749 980	4 791 650	167 707 750	12 649 956	40 824 858	231 724 194	46 344 839

298. As highlighted in IO.7, GAECOs play an important role in combatting organised crime, corruption, and related money laundering, and this holds true for confiscation as well. The following Table represents data from fourteen state-level GAECOs, although the timeframe is not specified, and it covers both seizure and confiscation. The assessors did have a concern that outside of specialised units, asset recovery may not be pursued across the board. Authorities interviewed on-site also indicated a weakness in asset tracing: while prosecuting ML cases may require more specialisation, all LEAs and prosecutors should be able to identify, trace, and pursue criminal assets, and not all authorities commonly do.

Table 3.17. Seizure and Confiscation: State Level GAECOs

Value of Assets Seized and Confiscated (combined)	Number of Assets Seized and Confiscated (combined)	Number of Vehicles Seized and Confiscated (combined)
BRL 33.441.211.430	2 846	793
USD 6.371.554.014		

Final Confiscations

299. On the other hand, final criminal confiscation data is nearly unavailable. (Results stemming from leniency and collaboration agreements⁵¹ are discussed in section on corporate agreements below. There are several significant case examples, a few of which are detailed below. Still, the overall picture on final confiscation

⁵¹ Collaboration agreements are usually reached in the investigative phase. Plea bargains in Brazil cannot be considered proof of guilt and a guilty plea cannot be basis for a conviction. Although they can also be negotiated after a conviction and sentencing, this does not occur in practice. Meanwhile, leniency agreements are typically used for legal persons who cannot be prosecuted. Neither are considered traditional criminal confiscations in this section, but are heavily weighted in the analysis that follows.

outcomes, reached after traditional criminal confiscation, is unclear and affected by lengthy proceedings and few convictions. Additionally, the regularity of confiscation in small/medium impact cases could not be confirmed. The following data is from SENAD, the asset management agency which may be tapped to realise confiscated assets in state or federal cases. SENAD is not routinely used except in drug trafficking cases (of which there are an average of 4 296 per year). These statistics also do not include confiscated assets that did not require liquidation through an auction, such as cash and funds in bank accounts. Because many final confiscations are not captured here, it is not evident that Brazil is systematically achieving the broader purpose of IO.8, the *permanent* deprivation of criminal property to make crime unprofitable and reduce predicate offences and ML.

Table 3.18. Auctions of Certain Confiscated Assets

Year	Anticipated	Concluded	
2019	BRL 198.500 / USD 38.045	BRL 4.162.605 / USD 797.830	
2020	16.445.562 / 3.152.055	23.539.665 / 4.511.753	
2021	134.178.665 / 25.717.488	55.516.409 / 10.640.608	
2022	37.338.601 / 7.156.540	65.066.317 / 12.471.001	
		Total Concluded	BRL 148.284.996 / USD 28.421.192
		Average per Year	BRL 37.071.249 / USD 7.105.298

Note: Anticipated means auctioned due to a provisional order, not a final confiscation order. Concluded means realised.

300. There is qualitative evidence, namely case examples, which imply but do not confirm that Brazil may be confiscating some amount more than 7 million USD confiscated per year, but this is considered in light of the fact that Brazil's last MER, thirteen years ago, recommended that Brazil finalise its work to collect statistics on seizures and confiscations at the federal and state levels. Particularly through the implementation of SISBAJUD, it was expected that more and better figures would be available on confiscation. The ML Repression Index is a new tool used by PF to measure efforts, results, and risks related to ML cases. It is built on statistical input, including ten micro indexes. This data-driven and seemingly useful system could be expanded to include confiscation in the future, as one possible avenue to enhance Brazil's quantitative data on confiscation.

Box 3.11. Confiscation Case Examples

(I) An investigation was opened in 2015 into a group of businessmen and their companies with suspected ties to Lebanese Hezbollah. These entities purchased eleven farms in the State of Mato Grosso with no known income or explanation. Hezbollah is not considered a terrorist organisation by Brazil, but this case is being handled by DETER, PF's CT/CFT unit. The rural properties were purchased with money obtained from the Middle East and internalised through *dolar cabo*. Although they are purported to be working farms, they produce no agricultural output. Although no definitive links to terrorism have been located, the investigation has been concluded and has been submitted to MPF for prosecution, which requested a further review of electronic evidence from the suspect's devices. The offences investigated include ML based on tax evasion and crimes against the national financial system (e.g., capital flight). The farmland is valuable and worth a combined USD 70 million. The properties are restrained and awaiting confiscation. Source: Op. Tamareira.

(II) A major corruption and ML investigation was opened in 2020 and is being carried out by the MPSC (Santa Catarina) and supported by the LAB-LD and GAECO. It targets public bidding processes which were frustrated by legal entities secretly controlled by members of a criminal organisation who provided sub-par and incomplete services and shared their illicit profits with public officials. Government contracts tainted included school transport, trucks, and heavy machinery. Former and current mayors, public works secretaries, deputies, and businessmen all face charges. This investigation has involved 9 phases in different municipalities with corresponding criminal complaints. Some convictions have been obtained in the first instance court with initial confiscations (not yet confirmed). The net of seizures is wide and includes 34 properties and 216 different types of vehicles, as well as rents from commercial (3) and rural (1) properties. The total value of assets seized or restrained to date is 519 million BRL (102 million USD) in relation to 47 individuals and 33 entities. Source: Op. Et Pater Filium / LAB-LD23.

(III) In Operation Orion, discussed in IO7, the perpetrators carried out a Ponzi scheme under the business name Telexfree, which purportedly sold VoIP services and defrauded investors around the world. In this case, there have been two convictions in the court of 1st instance (related to the segment of the investigation opened in 2014), and the rest of the proceedings are still pending. Charges laid include fraudulent operation of a financial institution, ML, and illegal remittance. More than 723 million BRL are sought for confiscation, including cash, 32 pieces of real estate, and 2 vehicles, including assets located abroad. Source: Op. Orion / PF 29.

(IV) A drug trafficking and ML investigation was initiated in 2005 with a seizure of 20,000 USD concealed in a vehicle. A local *doleiro* was identified through the seizure, and a much larger drug ML network was uncovered called Grupo Roger with links to the Juarez Cartel. For instance, 9 million USD entered Brazil through accounts in the name of Fonteway CSA held at First Curacao Bank. The initial convictions were obtained in 2007, and in 2020, they were finally upheld on appeal. The assistant manager served as a collaborator and decoded the corporate

computer system which was seized by PF. Companies and bank accounts Luxembourg, Uruguay, and Switzerland were used by the network. Although the case was successful, it took 15 years to complete, and the confiscation of funds contained in 110 accounts held by 13 companies associated with Grupo Roger are still being concluded and there is no conclusive data concerning amounts recovered.

Source: Op. Green Gold.

301. As to the effectiveness of confiscations achieved in domestic cases and cases linked to foreign predicates with assets laundered and located in Brazil, the assessors lacked information to make a positive assessment. This is in part due to the structural weaknesses in the Brazilian criminal justice system. While an impressive array of seizures were presented, the multitude of appeals, the uncertainty of convictions, changeover in LEA personnel due to the length of cases, and the ad hoc asset management decisions made by judges in specific cases are harming final confiscation outcomes. This is likely mitigated to some extent by negotiating individual plea agreements, but statistics were not provided by Brazil to this effect (but see section on corporate agreements).

Proceeds Moved Abroad

302. Brazil is pursuing assets moved abroad to a large extent. Brazil's capacity to seize and ultimately repatriate assets from abroad, especially from key international financial centres, is particularly strong. This finding is supported by statistics and several case examples, as well as the recognition by competent authorities that the pursuit of offshore assets is critical if Brazil seeks to recover proceeds of onshore criminality.

Table 3.19. Amounts Seized/Restrained Abroad Pursuant to Brazilian Requests (Provisional)

Year	Amount (USD)
2016	29.225.916
2017	85.215.970
2018	187.639.145
2019	113.734.738
2020	47.899.542
2021	14.185.697
2022	319.665
Total	1.18 billion
Average per Year	118 million

Table 3.20. Amounts Seized/Restrained Per Country Pursuant to Brazilian Requests: 2011-2021

Jurisdiction	Amount (USD)
Switzerland	906.956.495
UK	77.704.152
USA	74.657.100
Monaco	50.428.890
Guernsey	23.752.553
Luxembourg	20.117.656
Singapore	16.000.000
Andorra	5.699.880
Bahamas	2.825.280
Liechtenstein	2.269.610
Others	3.378.924
Total	1.18 billion
Average per Year	118 million

303. As seen in Tables 3.19 and 3.20 above, Brazil is actively engaged with international partners to restrain and seize assets pursuant to MLA requests (and, on occasion, domestic cases initiated based on evidence from Brazil). The recipient countries reflect the risk situation described by Brazil in its first NRA; namely, the proceeds of corruption and other important predicate offences are often laundered and invested outside of the country, through offshore companies registered in financial or company formation centres. To freeze more than 1.8 billion USD in a decade is a significant achievement, but it is also complemented, as seen below, by success in confiscation and repatriation of assets to Brazil which completes the lifecycle of international cooperation. The range of asset types is also broader than financial accounts and luxury properties and extends to more exotic assets, such as rare snakes trafficked from the Amazon and emeralds so precious that they are literally invaluable. Brazil also uses the AGU to pursue some assets abroad through direct civil litigation by hiring private law firms, including in situations where Brazil's use of civil, administrative, and non-conviction-based proceedings might limit the assistance that be provided by foreign countries. There is a written policy on the coordination between MPF and AGU that should occur in such matters (Joint Ordinance PGR/AGU No. 1 (2022)). The assessors view the approach of Brazilian authorities to recovery of foreign assets abroad—by any means or tools necessary—to be strength of the Brazilian framework, especially in the context of Brazil wherein traditional, conviction-based confiscation has proven more challenging. By means of an example, authorities successfully recovered 16 million USD from the United States between 2021-2023 in the Arcanjo case. Here, the direct recovery efforts began when the U.S.A. declined to assist in restraining the property and operations of a major hotel in Orlando, Florida. The MLA request was denied in the early 2000s due to legal impediments, but the judge in Brazil—working with MPF and AGU—retained a law firm in the U.S. to pursue the assets linked to Arcanjo, who had been convicted of serious ML offences. A Florida state court approved the authority of the Brazilian administrator to restrain and manage the asset as a going concern, through the law firm, and eventually, Arcanjo's shares in the hotel (as well as another apartment and

bank accounts) were liquidated via public auction and returned to the Brazilian Treasury.

Table 3.21. Amounts Confiscated Abroad and Repatriated to Brazil

Year	Amount (USD)
2012	1.081.771
2013	6.840.930
2014	400.000
2015	145.218.000
2016	54.015.733
2017	32.056.887
2018	32.103.763
2019	713.988
2020	8.676.404
2021	-
Total	287.707.476
Average per Year	28.770.747

Table 3.22. Major Domestic Cases with Assets Confiscated Abroad

Case / Operation Name	Amounts Recovered (USD)	Years
Lava Jato	166.709.295	2015, 2016, 2018, 2019
SBM/Petrobras	54.000.000	2016
Anaconda	19.368.000	2015
Banco Santos	33.900.000	2010, 2014, 2015, 2017
Nicolau dos Santos Neto	4.840.000	2013
Banestado	2.316.257	2009, 2012, 2018
Veículos Roubados Bolívia	2.000.000	2013
Lucy – Animais Silvestres	350.000	2015
Mensalão	15.733	2016
Material Paleontológico	929	2013
Total	\$ 283.5 million	

Confiscation of falsely or undeclared cross-border transaction of currency/BNI

304. The confiscation of falsely declared or not declared movements of cash and bearer negotiable instruments is pursued to a minimal extent and is not applied as an effective, proportionate, or dissuasive sanction by customs authorities. It is, generally-speaking, not used to identify potential ML or TF, and cash smuggling as a freestanding offence is not detected and prosecuted to any significant extent. This conclusion is based on some statistics, interviews with RFB and PF, and the assessment team's visit to the border control office at the Friendship Bridge in Foz de

Iguaçu, which sees more than 15 000 vehicles and 40,000 travellers cross everyday between Brazil and Paraguay on foot and in transport.⁵²

305. The TBA is recognised throughout Brazil's NRA as an area prone to criminal activity. The TBA is a complex region with many immigrants, travellers, and commuters; it is a key point of continental and international trade, transport, and commerce, with ties to potential higher-risk regions for terrorism financing and the financing of proliferation of WMD. Predicate crimes including weapons and drug trafficking, human trafficking, smuggling, piracy, counterfeiting, duty evasion (including cigarette smuggling), and tax evasion, are carried out in the TBA. Several ML typologies are also encountered there, posing a wider risk to the country, including unlicensed currency exchange and money/value transfer services, cash smuggling, transfers to high-risk jurisdictions, and TBML. Unlicensed exchange houses are present in the TBA, as well as import/export businesses and retail shops in the electronics and automotive fields that are complicit or exploited in TBML schemes.

306. For all the reasons above, the detection and confiscation of cross-border cash is important, but three issues should be clarified to scale and contextualise the problem: (1) the TBA is just one border region that has become well-known internationally and accounts for around 50% of cash known enter the country, but there are other and potentially even more porous/dangerous border areas in Brazil (two worth noting are the cities of Mato Grosso do Sul along the border with Bolivia and Paraguay, especially in relation to PCC and CV-related criminal activity, and Manaus, the port gateway to Amazonas State); (2) the interviews with LEAs and customs authorities in the TBA are taken to exemplify the approach taken in general in a high-risk and cash-intensive corridor in Brazil; and (3) there are major technical compliance deficiencies that hamper effectiveness in this area (see R.32 in the TC Annex). In Foz, which, again, represents around half the cross-border transportation of cash, 22 people were caught for smuggling out of a total of 397 people caught throughout Brazil's other points of entry/egress in 2022.

307. As demonstrated by the statistics below, Brazil is not prioritising the detection and seizure of cash at its borders. RFB is both the tax authority and the customs authority exercising responsibility for enforcement at the border, although the PF and other state and federal agencies have presence at certain borders. Much of the work and information collected by RFB is protected by tax secrecy, even when not strictly related to tax collection. Cash declarations have not been available to COAF since 2018 when they lost access to the RFB database. This hinders the identification of ML linked to such cash and efforts to follow cash into or out of the country, as well as LEA's ability to use declarations in their investigations without seeking to lift tax secrecy (currency declarations are covered by tax secrecy and breaching this requires a court order). There was some confusion among the authorities over which agencies should be able to access cash declarations and for which investigative or strategic purposes; in practice, the information is not accessed regularly.

308. As recalled in R.32, Brazil runs two entirely electronic declaration systems: one for travellers who must declare the 10 000 or more in USD or its equivalent in reals or foreign currencies transported in-bound or out-bound, and a commercial declaration system for companies licensed to transport cash or precious metals

⁵² Press Release, INTERPOL, 7 Dec. 2022, available at www.interpol.int/ar/1/1/2016/Organized-crime-networks-targeted-in-INTERPOL-coordinated-operation-in-Tri-Border-area.

internationally. The traveller-centric system is called e-DBV, and the second system for companies which are licensed by BCB and overseen by PF is called e-DMOV. Essentially, in-bound cash is not a concern for the authorities and, if anything, there is a greater focus on the potential fiscal implications of currency leaving Brazil. In short, and with the caveat that COVID-19 did impact international travel and trade during the period under review, Brazil confiscates around USD 1.46 million coming into the country and about USD 309 558 leaving the country, on average, per year. The word “confiscation” is used even though the initial step is a seizure, as authorities indicated that it is extremely rare for individuals to contest a seizure of cash in excess of what has been declared (or not declared at all) at the border. As seen in Table 3.25, there were no confiscations in connection with the commercial declaration system.

Table 3.23. Cash Confiscations at the Border (Spontaneous)

Spontaneous Traveler Declarations at the Border (e-DBV)						
	Inbound			Outbound		
	Declarations	Values Declared	Values Confiscated (Exceeding the amount declared)	Declarations	Values Declared	Values Confiscated (Exceeding the amount declared)
2018	5,137	BRL 406,971,318 USD 78,259,771	-	7,532	BRL 274,404,082 USD 52,767,356	BRL 2,969,844 USD 571,095
2019	5,590	BRL 427,945,422 USD 82,293,049	BRL 52,318 USD 10,061	6,760	BRL 299,638,200 USD 57,619,827	-
2020	3,160	BRL 335,977,340 USD 64,607,771	-	1,561	BRL 67,314,927 USD 12,944,526	-
2021	4,728	BRL 818,801,713 USD 157,453,932	BRL 18,500 USD 3,558	1,680	BRL 81,870,762 USD 15,743,584	-
2022	5,860	BRL 765,903,554 USD 147,281,722	BRL 17,083 USD 3,285	2,653	BRL 131,012,807 USD 25,193,501	BRL 20,643 USD 3,970
	Average Confiscated per Year			Average Confiscated per Year		
			USD 3,381			USD 115,013

Table 3.24. Cash Confiscations at the Border (Not Declared or Falsely Declared)

Travelers Who Did Not Declare or Declared Falsely (e-DBV)						
	Inbound			Outbound		
	Declarations	Values Declared	Values Confiscated (non-declared or amounts exceeding the declaration)	Declarations	Values Declared	Values Confiscated (non-declared or amounts exceeding the declaration)
2018	467	BRL 36,240,797 USD 6,969,033	BRL 9,771,993 USD 1,879,135	218	BRL 8,085,844 USD 1,554,892	BRL 727,772 USD 139,949
2019	566	BRL 50,638,387 USD 9,737,661	BRL 5,542,286 USD 1,065,771	188	BRL 6,798,593 USD 1,307,356	BRL 689,678 USD 132,624
2020	277	BRL 32,420,182 USD 6,234,336	BRL 2,630,152 USD 505,773	34	BRL 821,588 USD 157,990	BRL 285,642 USD 54,928
2021	481	BRL 78,575,759 USD 15,109,961	BRL 9,896,225 USD 1,903,024	43	BRL 3,303,547 USD 635,265	BRL 532,105 USD 102,323
2022	397	BRL 58,554,997 USD 11,260,009	BRL 10,027,311 USD 1,928,232	68	BRL 5,072,698 USD 975,470	BRL 2,823,240 USD 542,903
	Average Confiscated per Year			Average Confiscated per Year		
			USD 1,456,387			USD 194,545

Table 3.25. Commercial Cash and Gold Transportation

Commercial Declarations from Companies Licenced by BCB (e-DMOV)									
	Inbound			Outbound			Total		
	Amt.	Cash	Gold (kg)	Amt.	Cash	Gold (kg)	Amt..	Cash	Gold (kg)
2019	939	BRL 27,577,111,529 USD 5,303,023,393	225	23	BRL 327,040,477 USD 62,889,230	156	962	BRL 27,904,152,007 USD 5,365,912,623	381
2020	182	BRL 6,346,357,429 USD 1,220,391,841	50	49	BRL 813,232,553 USD 156,382,993	5,539	231	BRL 7,159,589,983 USD 1,376,774,835	55.589
2021	277	BRL 7,938,226,923 USD 1,526,505,161	-	44	BRL 207,808,675 USD 39,961,193	6,186	321	BRL 8,146,035,599 USD 1,566,466,354	6.186
2022	528	BRL 20,728,520,495 USD 3,986,053,034	-	85	BRL 188,404,482 USD 36,229,805	5,706	613	BRL 20,916,924,977 USD 4,022,282,839	5.706

309. There are several reasons for weak effectiveness in this area. First, there is a lack of prioritisation of detecting cash, the movement of which is generally legal, as opposed to other contraband that may be smuggled such as drugs, weapons, or cigarettes. This is in tension with the informality of the economy in border regions and the persistence of ML typologies involving the use of cash, despite steps taken by Brazil to decrease this risk (e.g., customer identification for bank payments involving 2,000 BRL and non-acceptance of tax payments exceeding 10,000 BRL in cash). Second, border authorities met on-site asserted that it was not considered suspicious to declare cash transported in virtually any quantity, even day after day or for months at a time. Not did the authorities generally detect or control persons who repeatedly transport amounts just under the 10 000 threshold in a way that signals an intent to avoid the reporting requirement. Smurfing was acknowledged by the authorities as a threat, but it is not a basis for enforcement and, in fact, the authorities do not attempt to catch this activity in the first place. Third, there is an ongoing debate within the RFB as to whether a *non-declaration* of currency is a criminal offence within the scope of Art. 299 of the Criminal Code (but there appears to be consensus that making of a *false statement* on a mandatory currency declaration is a crime). Thus, non-declaration is treated as an administrative offence no matter the gravity, which limits its dissuasive effect as a sanction and its utility as generator of ML investigations. If there are suspicious elements such as attempts at concealment, the most that RFB can do is the seize the cash and refer the incident to the police, which entails no further investigation in the moment and allows the person to leave the area and change tactics next time. RFB was unable to provide any statistics related to referrals (“criminal representations”) made to the Police at the border.

310. Fourth, Brazil is still in the process of implementing its Intelligent Wall program, a multifaceted, \$4 million dollar project leveraging technology including drones, cameras equipped with recognition, artificial intelligence, and integration of numerous databases (including the declaration systems) with state and municipal camera systems to control the border in real-time. The premise of the Wall is to improve risk analysis to generate alerts. It will eventually be introduced at all land borders so that red-flags involving license plates, pedestrians, or vehicle passengers

can be actioned immediately by customs inspectors. In the future, this system will allow authorities to ramp up smart detection of cash and other smuggling offences.

311. But today, cars, motorcycles, and luggage are stopped and searched based on locally-driven profiling, random detection, or sporadic interdiction operations. The current practice is not making a major dent in illicit cash movements, nor leading to the discovery of ML/TF, as authorities cannot inquire about the origin or destination of cash unless it is outgoing. Joint operations are often conducted (i.e., RFB, PF, and military police) and they do capture smuggling, but cash is never the primary target and its interception is incidental. Generally, RFB has better capacity to detect false declarations than non-declarations.⁵³ Although RFB stated that some cash-related incidents are referred to PF as intelligence, there were few concrete examples of referrals becoming ML or predicate investigations or prosecutions.

312. Fifth, there is only limited cooperation with foreign counterparts. Cooperation between RFB and French and Russian customs was highlighted, but cooperation on currency-related issues with more salient neighbours (such as Argentina, Paraguay, Bolivia, Uruguay) was not. At airports, for example, RFB inputs and receives alerts about certain passengers and matches this data with ticket reservations and, travel records, baggage registration, behavioural signs, and then checks for declarations, but the results of such systems appear to be minimal (they are included in the tables above).

Consistency of confiscation results with ML/TF risks and national AML/CFT policies and priorities

313. Brazil's confiscation results partly reflect its ML and TF risks and national AML/CFT policies and priorities. There have been no TF prosecutions or convictions, as discussed in Chapter 4. The lack of confiscations with respect to this offence is partly in line with Brazil's relatively lower risk of TF, as compared with its high threat of ML and medium level of residual ML risk. With respect to ML and major proceeds-generating offences, as in IO.7, Brazil is performing better with regard to corruption, but less well on confiscation linked to other offences such as drug trafficking and organised crime, tax and financial crimes, and environmental crimes. As discussed in section on *Confiscation of proceeds*, the effectiveness of final confiscation outcomes was not demonstrated through quantitative data, and even the qualitative data provided was mainly in the form of ongoing and not concluded cases.

314. However, a strong point in Brazil's system is the use of leniency and collaboration agreements to recover assets linked to corruption. In the absence of corporate criminal liability and related confiscation, Brazil has achieved sizable results through the negotiation of leniency agreements, mainly in corruption matters, as agreed by CGU and AGU. The damages and losses recovered—which equate to criminal proceeds and do not include fines—amount to USD 1.35 billion between 2017 and 2022, in 25 cases. Other alternatives to conviction-based confiscation are used to some extent.

⁵³ Two cash smuggling typologies were discussed on-site: authorities underscored recent efforts to identify “scouts,” or persons (or vehicles) repeatedly used by OCGs to go out ahead of a crowd and check whether there is an interdiction operation set up (this person would call off his associates behind if there was an operation). Additionally, OCGs use cash mules on motorcycles to move money in bursts, knowing that if they all cross the border at the same time, a few may be caught, but the majority will escape.

315. Overall, there is only some alignment between confiscation results and the risks faced by Brazil, with the exception of the good results in the realm of corruption. This is due in part to the structural weaknesses in the criminal justice system which slow prosecutions and inhibit convictions, an inability to adequately measure confiscations in the country, and the age or the pending status of most case examples. Stemming from the issues covered in IO7, there are cascading effects which result in fewer confiscations in Brazil's key risk areas than should be expected in a continental-sized country.

316. Similar statistical deficits to those faced in the section *Confiscation of proceeds* also impacted the analysis here. The following figures do not portray all confiscations, only those where SENAD acted to liquidate certain types of confiscated assets at auction. They also do not include funds in bank accounts, and are subject to three major caveats: (1) most judges still oversee the management and disposal of assets in their own cases, at their own discretion; (2) SENAD has only recently begun tagging assets under management to specific categories of predicate offences; and (3) the statistics related to drug trafficking are the most likely to be comprehensive across the country, as the Asset Management Directorate has a wider reach in this area by virtue of its position within SENAD, the anti-drug agency. In the context of Brazil, drug-related confiscations are still considered to be low considering the significant threat posed by PCC, CV, and other groups based in Brazil that engage in lucrative international drug trafficking. Although PCC has a horizontal structure and is difficult to combat using the kingpin-targeting model, localised LEA operations would still be expected to result in the confiscation of cash and drug proceeds in a cumulative way, especially in light of the nearly 4,300 drug investigations taking place on an annual basis. And yet larger-scale operations remain in the seizure-phase, including in investigations which are by now several years old. Even in the context of a country where cases take a long time to come to fruition, the older cases in the pipeline should have yielded more significant results than can be shown by Brazil today.

Table 3.26. Auctions of Certain Confiscated Assets: Main NRA Threats

	Year	Drug Trafficking	Corruption	Environmental Crimes	Other	Money Laundering
	2019	BRL 4.249.205	-	-	BRL 111.900	-
	2020	30.752.275	-	-	4.897.402	BRL 4.335.550
	2021	61.557.263	-	-	31.099.895	97.037.916
	2022	91.357.144	BRL 78.300	BRL 87.845	8.154.064	27.304.407
	2023	28.644.756	-	180.240	2.649.270	753.220
Total		BRL 216.560.643 USD 41.261.299	78.300 15.007	268.085 54,508	46.912.531 8.938.245	129.431.093 24.660.506
Average per Year		BRL 43.312.129 USD 8.252.260	BRL 78.300 USD 15.007	BRL 134.043 USD 25.539	BRL 9.382.506 USD 1,787,649	BRL 32.357.773 USD 6.165.126

317. Regarding environmental crimes, as discussed in IO.7 (section on Corruption), there was no policy priority to pursue the substantial profits from these important predicate offences (such as illegal extraction, illegal logging, cattle-raising on illicitly cleared or occupied land, and wildlife trafficking). To the detriment of confiscation, there is only a nascent understanding of the various actors who reap the benefits of large-scale environmental offences, how the proceeds are laundered, and where they are ultimately invested. Furthermore, there is little evidence that financial

investigations are pursued, although they are sorely needed. However, this does not discount the successes that have been achieved by the authorities, including cases showing the confiscation and destruction in the field of instrumentalities by Ibama and its partners. Immediate destruction, as compared to confiscation and liquidation or repurposing the assets for official use, is often the preferred outcome in environmental crime cases because competent authorities are not able to determine the safety of equipment used (or abandoned) by criminal groups, such as heavy machinery, unregistered planes and vehicles that have not been maintained, and potentially contaminated facilities. Additionally, AGU has filed civil claims against persons involved in illegal mining worth USD 91 million to recover damages to Brazil's national lands. Between 2019 and 2022, 157 such lawsuits were filed. The Amazon Task Force, a joint team from the AGU and the Office of the Attorney General for Federal Agencies, has filed 245 public civil lawsuits seeking BRL 4 billion related to environmental damages in a total area of 373,44 hectares in the Amazon (these are all pending).

318. The transportation of gold as a financial asset across borders is declared and monitored through the e-DMOV system administered by RFB/Customs, and gold invoices are now electronic, meaning that RFB should be regularly checking that the invoice matches the quantity of gold transported. RFB confirmed, however, that it cannot check the origin of the gold, so it will not be able to determine if the metals were illegally mined for exportation as a commodity or store of value. Despite controlling cross-border movement, RFB does not have the capacity or attribution to validate the origin or the ultimate destination. Accordingly, there is an opportunity to establish cooperation with agencies such as ANM and Ibama, who would have better insight into the source of the gold. Additionally, PF, BCB, and RFB do not share information about the companies licenced by BCB to transport metals, and these silos allow firms with a history of violations to continue operating without any special scrutiny or enhanced inspections at the border. Eleven of the 34 licenced firms have been sanctioned by PF in recent years which on one hand shows the effectiveness of supervision, and on the other indicates potential issues in licensing and/or serious reputational issues among the firms carrying out this activity.

319. With respect to corruption, there is the potential for more positive outcomes in the traditional setting of conviction-based confiscation. As shown by the following figures tracking provisional seizures, there is a broad basis for successful results in corruption cases. The assessment team notes that these are not confiscations, but reasoning from the below, the possibility for confiscation is better for corruption than any other type of crime.

Table 3.27. Seized Assets in Federal Police Investigations: Main NRA Threats

Year	Corruption	Drug Trafficking	Tax Evasion and Crimes against Nat. Fin. System	Financial Crimes
2016	3.542.000.000	250.000.000	205.000.000	106.000.000
2017	3.706.000.000	665.100.000	370.000.000	87.000.000
2018	1.807.000.000	451.500.000	1.908.000.000	87.000.000
2019	2.131.000.000	653.900.000	4.800.000.000	95.000.000
2020	4.412.000.000	1.161.000.000	789.000.000	72.000.000
Total	BRL 15.598.000.000 USD 2.989.606.268	3.181.500.000 609.758.379	8.072.000.000 1.547.127.952	447.000.000 85.674.702
Average per Year	BRL 3.119.600.000 USD 597.921.254	636.300.000 121.957.076	1.614.400.000 309.808.922	89.400.000 17.134.940

320. Ultimately, some of these seized assets related to corruption are thought to have been recovered through corporate leniency and criminal collaboration agreements, as detailed below.

Table 3.28. Amounts Recovered from Leniency and Collaboration Agreements 2017-2022

Source	Total Values Agreed	Total Values Paid
25 Corporate Leniency Agreements * (Corruption related)	BRL 14.921.210.907 / USD 2.84 billion	BRL 7.083.536.843 / USD 1.35 billion
159 Collaboration Agreements 48 Leniency Agreements (All federal prosecutions)**	BRL 25.371.525.886 / USD 4.86 billion	BRL 3.660.079.218 / USD 701.5 million

Note: Agreements are generally paid in instalments, hence the difference between amounts agreed and paid.

* This only **includes losses and damages** to the Union which encompass criminal proceeds and the notion of restitution to the victim (i.e., the Brazilian treasury). These numbers **do not include separate fines** also agreed and paid under the leniency agreements, which are punitive in nature.

** Source: 5th Coordination and Review Chamber of the MPF

321. Significant weight is placed on the achievements in the table above. Although not all leniency and collaboration agreements derive from corruption cases, many do. Therefore, without further granularity in the statistics, the credit given to these agreements is best allocated in the sphere of corruption, Brazil's most prevalent predicate threat. Furthermore, additional amounts were recovered by Brazil pursuant to these agreements in the form of fines. However, these fines were always a fraction of the damages and losses, which are carefully calculated in these agreements. The losses and damages relate directly to the relevant misconduct, usually, acts of corruption committed by corporations in concert with public officials. Unlike fines which are aimed at punishment, these damages are intended to compensate the government for losses, overpayment for services, inflated contracts, and other pecuniary harms – broadly put, the cost of the corruption to the state. Because these compensation amounts are massive and can be differentiated and counted separately, the assessors consider these amounts as akin to *proceeds*, whereas any additional amounts recovered as fines as are noted for their dissuasive effect, but not as property subject to confiscation.

322. Other resolutions may be reached with individual defendants in the same cases which generate leniency agreements (public officials and business-people), including affiliated criminal prosecutions and civil lawsuits to recoup the gains of “improbability.” In terms of non-criminal mechanisms used to recover assets, the assessors viewed favourably non-conviction-based confiscation under Laws 7,347 (the public civil action law of 1985 to protect collective rights and obtain reimbursement), 8,429 (the improbity law of 1992, to compensate for acts against the public administration), and 12,846 (the anti-corruption act or “corporate liability law” of 2013). These laws can be used in cases of death, flight, absence, or other circumstances in which a criminal proceeding is not practicable.

323. Leniency agreements under the corporate liability law have been reached in several very large cases of corporate bribery, and they have enabled multi-jurisdictional resolutions with Brazil’s international partners (7 of 25 were joint agreements, and 13 resolutions were conducted parallel to actions taken in other countries). Since companies cannot be prosecuted, these agreements allow investigators to obtain the full cooperation of the entity, including the disclosure of all illegal activity. They also serve other policy goals by, for instance, installing a compliance monitor, requiring the company to improve anti-bribery controls, and allowing the employment and economic activity of the company to continue in Brazil. The compensation component (e.g., reimbursement of amounts paid as bribes) cannot be negotiated and are set by the relevant competent authority.

324. In addition, between 2019 and 2022, the AGU has obtained 46 seizure orders in lawsuits against acts of administrative dishonesty under the improbity law. This has resulted in the seizure of BRL 1.77 billion, or nearly USD 353 million, associated with the misuse of public funds. Seizures are usually maintained until final decision, and successful outcomes in these cases are more likely than in criminal prosecutions (for context, the ML conviction rate is below 35%). As another example, in response to the destructive acts of January 8, 2023, that caused serious damage to federal buildings and infrastructure, civil public actions are being used to restrain the assets of the organisers and perpetrators to secure compensation for the government and Brazilian people for damage caused.

325. As a prime example of Brazil’s multi-pronged approach to asset recovery linked to large-scale corruption, the following outcomes have been recorded, as of August 2021, in the many investigations comprising Operation Lava Jato.

Table 3.29. Lava Jato in Numbers

Key Statistics – As of August 2021 (1 st Instance, Curitiba)	
Complaints Presented	130
Criminal Actions	179
Convictions	174 (1 st and 2 nd instances)
Leniency Agreements	17
Temporary Prison	163
Preventive Prison	132
Seizure (items)	1,450
Administrative Misconduct	35
Criminal Collaboration Agreements	140
Denounced (Criminal Charges)	553
International Cooperation	723
Values Returned to Treasury	BRL 4.3 billion / USD 824.2 million
Fines from Collaboration Agreements	BRL 2.1 billion / USD 402.5 million
Fines from Leniency Agreements	BRL 12.7 billion / USD 2.43 billion
Voluntary Restitution by Defendants	BRL 111.5 million / USD 22.14 million
Key Statistics – As of February 2021 (Superior Instance)	
Collaboration Agreements	183
Denounced (Criminal Charges)	126
Total Expected Recovery (fines + forfeitures from collaboration agreements)	BRL 1.5 billion / USD 287.5 million
Total Fines Paid	BRL 800 million / USD 153.33 million
Amounts Returned to Treasury	BRL 607 million / USD 116.34 million

326. Seizures from this massive corruption dragnet are in place in Luxembourg, Monaco, Switzerland, Antigua & Barbuda, Singapore, Russia, Panama, Portugal, Isle of Man, Liechtenstein, Paraguay, and the United Kingdom (2014-2021). Final repatriations, mainly from Switzerland and the Bahamas to date, include 105 million BRL, 1.22 million EUR, and 110 million USD.

Overall conclusion on IO.8

In summary, Brazil showed it achieving the outcome of confiscating the proceeds and instrumentalities of crime to some extent. There is a deficit of comprehensive data and statistics on confiscation and few recent and concluded case examples. The use of provisional measures is widespread and there is a policy focus on confiscation, as seen by the expansion of legal and practical tools in recent years. Few results are seen in relation to the proceeds of crimes committed abroad, but Brazil diligently pursues the proceeds of crime moved abroad through requests for restraint, confiscation, and repatriation. The confiscation of falsely or non-declared currency is minimal. Brazil is taking a holistic and practical approach to recovering billions of dollars in assets linked to corruption, which is commendable. But the consistency of Brazil's confiscation achievements in other areas has not been demonstrated to a sufficient extent and appear not to fully align with risk, especially in the areas of environmental crime, drug trafficking and organised crime, and tax and financial fraud.

Brazil is rated as having a moderate level of effectiveness for IO.8.



Chapter 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

Key Findings and Recommended Actions

Key Findings

Immediate Outcome 9

- a) Since enactment of the TF Law in 2016, Brazil has had no TF prosecutions or convictions. Although Brazil's TF risk is considered low, overall, this is only partly consistent with the country's TF risk profile. There have been several cases (including possible TF activity signalled by other countries and linked to persons present in Brazil) where indications of TF were investigated and either not confirmed or rejected due to issues in the criminalisation of TF and the narrow view of the scope of the TF offence among some competent authorities.
- b) The lack of TF cases is mainly explained by a narrow understanding of the TF offence, particularly among the prosecutors. Moreover, in practice, Brazil recognises as terrorist groups and individuals only those who have been designated by the UN Security Council. Therefore, it is not evident that TF is considered a possibility outside of the context of Al-Qaida and ISIL and persons inspired by or allegiant to these groups. Lone actors, persons who finance standalone acts, and persons unrelated to UN-designated groups are out of focus. This is not consistent with FATF Standards on TF and not in line with an emerging area of TF risk for Brazil linked to right wing and ideologically, racially, or religiously motivated extremism.
- c) Brazilian authorities often look for a direct link to terrorist acts, even though this is not a legal requirement for TF. There is also less awareness of the concept of indirect support for terrorists or terrorist entities. Usually, investigations are not further pursued if funds or the suspects leave Brazil.
- d) Brazilian authorities always investigate TF when conducting counterterrorism investigations and likewise initiate TF investigations when receiving information from foreign partners. Although PF engage in preventative intelligence work (deep web, open source), there is room for a more intelligence-driven, proactive approach to identifying transactions that may constitute TF. TF investigations are not generally prompted based on intelligence information or other proactive techniques, aiming to identify potential financial networks and flows towards terrorist organisations. While financial intelligence from COAF is routinely checked by PF, it is not a major source of investigations, stemming in part from the private sector's basic understanding of TF threats and actors and a

- tendency for list-based reporting as compared to other indicators of potential TF activity.
- e) Based on cases examined, PF identifies TF methods and the role of financiers, even if TF charges are not ultimately pursued. When a case arises, PF demonstrates a good capacity to conduct financial investigations and takes a broader view of TF, including by looking at groups beyond those formally designated, scanning cases of radicalisation and spreading of propaganda to see if they materialise into TF, and conducting early operations under the 2016 TF Law related to the 2016 Olympic Games in Rio de Janeiro. However, in the only TF case put forward for prosecution, the police and prosecutors did not cooperate effectively, with the consequence that no TF charges were pursued.
 - f) Alternative measures to TF convictions (such as entry bans) have been utilised with mixed results, given the limited opportunities presented by Brazil's relatively lower TF risk profile. Offences linked to non-designated groups are pursued as non-TF crimes, when necessary. Disruption of financial support networks is not a key area of focus for the authorities and the monitoring of known persons of interest linked to possible TF is not always sufficiently close.
 - g) There is no CTF or CT strategy, per se, but PF and ABIN have some objectives and activities relating to combatting TF. The investigation of TF is referenced in national police and intelligence policies and plans in a minimal way. Nevertheless, Brazilian authorities have not shown examples of how investigations of TF have informed the existing strategies, or how combatting terrorism can be accomplished or supported by the pursuit of TF.

Immediate Outcome 10

- a) Brazil established a legal framework in 2019 for the implementation of targeted financial sanctions without delay. For listings under UNSCR 1267 and its successor resolutions, FIs and DNFBPs have been gradually building out sanctions compliance systems, with the most material sectors (FIs, non-bank FIs, foreign exchange brokers, and securities brokerage and distribution companies for gold and securities) accounting for the most significant part of Brazil's high and medium risk entities, now demonstrating sufficient awareness and systems to screen against sanctions lists and freeze assets without delay. BCB supervision has helped improve the timeliness of implementation among FIs, and there is evidence of improvement in FIs' sanctions implementation more recently compared to the earlier years (2019-2021). DNFBPs demonstrated less nuanced understanding of their TF TFS obligations and although implementation without delay is less certain, basic levels of implementation are present. Neither FIs nor DNFBPs displayed much specific awareness of or ability to detect sanctions evasion.
- b) Brazil's legal framework allows for national designations for TF TFS. Although there are potential individuals and entities to consider for designation in CT or TF investigations, Brazil has not used TFS as a preventive tool at the domestic level, in part due to the need for the

existence of a criminal investigation or proceeding to generate a sanctions target, and in part due to the lack of an overarching policy process to propose persons or entities for listing.

- c) Brazil's framework also allows it to give effect to designations upon request from third-countries pursuant to UNSCR 1373. Assets must be pre-existing in Brazil as a condition to granting a request. MOJ conducts the reasonable grounds analysis and while an MLA request is not required, it is unclear whether reasonable grounds would be found outside of the context of a foreign criminal proceeding or on the exclusive basis of intelligence information.
- d) No terrorists, terrorist organisations, or financiers have been deprived of assets in any type of process in Brazil in recent years related to TF activities. No assets have been identified or frozen pursuant to TFS or other processes during the review period.⁵⁴ This is mainly consistent with Brazil's relatively lower TF risk profile considering the lack of connections between Brazil and UN-sanctioned persons and entities, and because Brazil has used provisional measures with a view to confiscation in cases investigated by the CFT authorities and in the absence of a clear indication of TF. Although the TFS Law requires it, no consolidated internal list is currently maintained by MOJ, which diminishes awareness among legal persons and entities, who are not subject to specific sanctions for sanctions violations, in contrast to reporting entities.
- e) In 2022, Brazil identified the subset of organisations falling within the FATF definition of NPO and completed a risk assessment of the sector identifying the legal types and features of NPOs which may be relatively more vulnerable to TF abuse by virtue of their activities and characteristics. However, this has not yet generated an understanding of which specific NPOs are at risk in Brazil and how, precisely, terrorist actors might exploit them. Targeted outreach on TF has only just begun. NPOs are "mapped" every two years and regulated for transparency and good governance—especially when they deal with public funds or receive preferential tax status. But focused and proportionate CFT measures have not yet been applied to NPOs in accordance with a risk-based approach and there is no supervision at this stage for compliance with TF-related measures.
- f) There is little recognition within the NPO sector that there is any level of threat or vulnerability related to TF. This shows the need for education and awareness-raising. On the other hand, there is an overweighting of the risk posed by NPOs among the private sector, showing the need for development by the authorities of red flags and best practices so that legitimate NPO activity such as fundraising and basic financial operations are accessible.

⁵⁴ In a first since the 2019 TFS Law came into effect, assets were frozen after the on-site visit pursuant to a third-country UNSCR 1373 request. See details in IO.10.

Immediate Outcome 11

- a) Brazil has in place a legal framework to implement TFS for PF without delay, with minor deficiencies (see R.7). No funds or other assets of, or related to, designated persons or entities have been identified or frozen pursuant to PF TFS. The larger FIs in Brazil demonstrated a better understanding of obligations relating to TFS, but less awareness of PF TFS as distinct from terrorism-related sanctions regimes. DNFBPs, such as accountants and DPMS, exhibited less understanding of and compliance with obligations.
- b) The private sector relies to a large extent on commercial databases and sanctions screening tools. It has received no specific guidance from the competent authorities on PF, or on how sanctions may be evaded, considering that there is some exposure in the form of legal trade and financial linkages with sanctioned jurisdictions. Among the private sector, except for the major FIs, conflation of various lists is common (e.g., UN TF, UN PF, PEP lists, and lists from other countries or bodies). In this setting and without guidance, persons acting on behalf of designated persons or indirect control by a designated person are less likely to be detected.
- c) BCB began to monitor the PF TFS compliance by FIs after the enactment of the 2019 TFS Law and has made key findings in the course of its supervisory activities. Based on BCB inspections in 2021, even the systemically important FIs were in large part non-compliant or partially compliant with TFS-related requirements, with specific problems related to implementation without delay, alert generation, and response time. Findings related to the non-SIFIs were more fundamental.
- d) BCB undertook remediation which helped the largest banks improve compliance, as demonstrated by the results of follow-up inspections conducted in 2022. Still, as referenced in IO.10, there is some room for improvement. Although entities outside of the largest banks were also subject to TFS-related supervision since 2021 (through a dedicated module in the remote supervision programme), and many of BCB's findings have been amended due to improvements among the non-SIFIs, implementation is improving gradually in the financial sector.
- e) As to DNFBPs, there is a lack of supervision of compliance with TFS obligations, and it is not assured that DNFBPs are implementing requirements across the sectors. Attempts to reach the DNFBP sector have not yet been fully successful.
- f) VASPs are not subject to any requirements to implement PF TFS and are not supervised for compliance.
- g) There is a lack of domestic coordination and cooperation among authorities for the purpose of combatting PF, and no venue or forum for ongoing information exchanges on PF. The financial sanctions aspect of countering proliferation has not yet joined up with the well-established export control regime in Brazil.

Recommended Actions

Immediate Outcome 9

- a) As a matter of priority, Brazil should remedy the technical deficiencies in Recommendation 5, including by considering expanding the possible motivations for terrorism (and TF), and removing the exemption. Brazil should train some prosecutors to specialise in TF with the aim of building expertise in applying the law. Brazil should also establish consistent working relationships between prosecutors and the specialised counterterrorism unit at PF, and to do so, Brazil should consider establishing a counterterrorism unit within MPF.
- b) To enhance the chances of charging and successfully prosecuting TF, Brazil should improve operational cooperation between police and prosecutors, focusing on communication about specific case strategies at the outset of and throughout TF investigations.
- c) Joint trainings or workshops for LEAs and prosecutors should be conducted promoting a broader view of the TF offence in line with the FATF Standards, focusing additionally on the concepts of indirect support and the non-necessity to prove a link to a specific terrorist act or a designated group. PF and MPF should create a forum to regularly exchange views and best practices on incorporating TF into terrorism investigations and the elements and evidence needed to prove TF. Guidance or a manual on TF investigation and prosecution should be jointly issued, and outreach to the judiciary should be undertaken to further familiarise courts with TF.
- d) Brazil should routinely use its TF offence in all terrorism-related and appropriate cases, in line with its risk, including by investigating individuals or entities with possible links to TF who do not belong to designated terrorist groups. Brazil should prosecute TF related to its emerging risk of right-wing extremism or ideologically motivated terrorism, as well as cases related to UN-recognised groups and their networks, foreign terrorist fighters and their supporters, and radicalised individuals who raise funds.
- e) To enhance integration of TF into counter-terrorism activities, Brazil should consider developing a national CTF strategy (or CT strategy which concretely integrates TF) to add more cohesion to the approach of all relevant authorities including PF, ABIN, MPF, and COAF. To increase effectiveness in TF investigation and prosecution, Brazil should assess why TF charges were not pursued in the past and take necessary corrective measures.
- f) In addition to pursuing incoming TF leads from foreign partners, Brazil should develop other means of identifying TF activity. This may include but not be limited to closer coordination with ABIN through regular meetings, proactively scanning for and investigating leads from all-sources, using special investigative techniques, monitoring known individuals, and engaging in outgoing international cooperation to improve the tracking of

persons with connections to Brazil and to follow funds that flow out of the country that may be directly or indirectly supporting terrorism/terrorists.

- g) To increase TF detection from financial intelligence, PF, COAF, and ABIN should conduct outreach activities to reporting entities. This should entail sharing TF typologies, red flags, and case examples – both general and specific to Brazil – to generate more threat-based STRs from the private sector.
- h) Brazil should map all alternative measures available under its legal framework when it is not practicable to secure a TF conviction. This should include the possibility to use TFS, as well as the entry ban and any other mechanisms for disruption. An analysis of when and how to use alternative measures should be developed in consultation with PF, MPF, and other relevant authorities, such as ABIN, RFB/Customs (in view of cash), and MRE (in view of immigration-related measures).

Immediate Outcome 10

- a) As a matter of priority, Brazil should remedy the technical deficiencies in Recommendation 6.
- b) Brazil should focus its supervisory efforts on enhancing compliance with TFS obligations and further educating the private sector on the importance of implementation without delay. For BCB, this means a continuation of efforts to improve the systems of FIs, but all other supervisors need to start in earnest to raise awareness of obligations and supervise implementation, especially among the DNFBP sectors.
- c) Brazil should take a more proactive approach to TFS. This could be demonstrated by the establishment of a standing committee or working group – including MOJ, PF, ABIN, MPF, COAF, and MRE – to consider potential TF TFS designations to put forward to the relevant UN committees and on the country’s own motion. Brazil should use sanctions to preventatively, to cut off listed persons’ potential to access the Brazilian financial system. The benefits of using designations against individuals and entities should be evaluated using information from a variety of sources, including intelligence and international cooperation.
- d) In every terrorism financing-related investigation, consideration should routinely be given to if and when to employ TFS as part of the approach to preventing terrorists from raising, using, and moving funds, even if substantial assets are not detected in Brazil.
- e) MOJ, along with COAF and other relevant authorities, should establish a detailed internal process for the consideration of third-country requests pursuant to UNSCR 1373. This should include an assessment of the kind and quantum of evidence that may constitute reasonable grounds in line with the criteria for designation and eliminate any requirement for assets of a potential designee to be pre-existing in Brazil. Consideration should also be given to the balance between open, confidential, or classified material – including intelligence information and criminal evidence – and what can be used during the court process to obtain the necessary orders.

As it gains experience with handling requests, Brazil should adjust the internal process as needed.

- f) To improve awareness of financial sanctions among non-reporting entities, a consolidated list should be published by MOJ.
- g) Brazil should finalise the identification of specific NPOs that are at risk of TF abuse based on the different risk indicators and factors identified in the SRA and generate concrete output that could inform NPOs and competent authorities about the risk.
- h) Brazilian authorities, namely COAF, should coordinate, conduct, and sustain outreach to the NPO sector on their vulnerability and the potential for exploitation for TF, using examples and red flags. A workstream on the development of best practices for TF prevention and risk mitigation for NPOs should be commenced once a higher level of risk-awareness is achieved.
- i) Outreach should also be conducted to the financial sector and its associations to correct any misconceptions of the TF risk posed by Brazilian NPOs. This should include a communication of findings of the 2022 SRA and any additional assessments conducted and could address topics of financial inclusion, de-risking, and the importance of conducting transactions within the formal financial system.
- j) Aside from measures that already exist to ensure the transparency, integrity, and governance of NPOs in Brazil, authorities should consider whether any additional CTF measures should be adopted to address, proportionately, the risks identified. Targeted risk-based supervision or monitoring of NPOs should begin, potentially led by COAF.

Immediate Outcome 11

- a) Domestic cooperation and coordination mechanisms should be established to combat PF, whether by bringing it within the scope of ENCCLA or another appropriate forum.
- b) The Federal Police and COAF should establish stronger connections to and partnerships with the Ministry of Science and Technology, especially the experts in export control and dual-use and other sensitive goods. They all should engage in more frequent exchanges with ABIN on topics related to PF. This information sharing should enhance capacity to prevent sanctions evasion and identify and investigate potential breaches of TFS.
- c) COAF as the FIU and as a supervisor, as well as BCB, should urgently provide general guidance on PF and how sanctions are evaded by DPRK and Iran, including by flagging known techniques. Among other things, this should focus on how licit trade may be used to cover illicit activity related to PF. When this guidance has been established, the authorities should develop and issue more targeted and sector-specific guidance—including specifically for VASPs and DPMS—and conduct outreach to relevant sectors and companies (including those involved in trade transactions).
- d) Brazil should continue learning and development events to establish a better foundation of knowledge about CPF and the details of the relevant

sanctions regimes among the competent authorities and the private sector. This should be expanded to include relevant financial and non-financial sector industry associations.

- e) DNFBP supervisors should develop risk-based models for ensuring and monitoring compliance of the DNFBPs with TFS obligations including those related to PF. BCB should continue supervision to ensure more even implementation of TFS-related requirements across the financial sector, and other financial supervisors should put a focus on TFS compliance.

327. The relevant Immediate Outcomes considered and assessed in this chapter are IO.9-11. The Recommendations relevant for the assessment of effectiveness under this section are R.1, 4, 5–8, 30, 31 and 39, and elements of R.2, 14, 15, 16, 32, 37, 38 and 40.

Immediate Outcome 9 (TF investigation and prosecution)

Prosecution/conviction of types of TF activity consistent with the country's risk-profile

328. Brazil has had no TF prosecutions or convictions since the enactment of its standalone TF offence in 2016. Since then, at least 25 people have been charged with terrorism-related offences stemming from two operations, with none charged with TF. Brazil has launched a combined 69 TF investigations and preliminary investigations between 2016 and 2021, and 48 counterterrorism investigations. No TF charges have resulted. The Federal Police did forward one TF case for charges to the Federal Prosecutor's Office (MPF), but MPF declined to prosecute in that instance (see Section 4.2.2 below).

329. The NRA recognises the threat activities that could be exploited for TF to be smuggling, TBTF, donations from individuals and entities, extortion of local diaspora/businesses, human trafficking, piracy, drug trafficking, self-funding, cigarette smuggling, precious stone smuggling, migrant smuggling, and credit card fraud. The actors most likely to profit from these activities are Al-Qaida and its affiliates, ISIS and its affiliates, lone actors, non-Islamic violent extremist groups, FTFs, other organisations not formally considered to be terrorist in Brazil, and expatriate populations. Brazil assesses its TF threat to be low, its vulnerability to TF to be medium, and its residual risk to be low. Brazil's TF risk understanding is discussed fully in IO.1.

330. The absence of prosecutions and convictions is not entirely consistent with Brazil's risk profile. Even though the TF risk in Brazil is relatively lower than its ML risk, the risk is *not* non-existent and is not negligible. There is less robust risk understanding of TF than ML (see IO.1 KF (a)), and the risk may be underestimated among authorities not directly involved in investigating TF, both in regard to threats in Brazil (as discussed in the paragraphs below) and as to specific modes of TF.

331. Brazil is the largest country in Latin America and has the greatest proportion of wealth in the region. It has the 11th largest GDP in the world and a far-reaching informal value transfer system, material financial sector, and is rich in natural resources in a territory that is vast. While *risk of terrorism* has not materialised in the form of large-scale attacks, there have been individuals linked to internationally-recognised terrorist groups with presence or connectivity in Brazil and *the risk of TF*

is not minimal considering the continental size, porous borders, and complexity of the country. There is potential for TF activity in, through, or from Brazil. Several investigations into terrorism or TF took place, although they did not lead to TF prosecution or conviction at least in part because of problems with the investigations, specifically a lack of case coordination between relevant authorities. Additionally, there is a rather restrictive view of TF (e.g., insufficient awareness around indirect financing and the need for proving a direct link), which is exacerbated by deficiencies within the criminal offence itself affecting the legal categorisation of certain criminal conduct. While Brazil detects possible TF from cooperation with foreign partners, it has not demonstrated taking a proactive, intelligence-driven, and preventative approach to TF.

332. An emerging risk for Brazil is far-right or ethnically, racially, or ideologically-motivated extremism. The two main agencies (PF and ABIN) confirmed that online radicalisation and fundraising concerning the right-wing extremism threat is still relatively low, but steadily increasing. Brazil's ability to identify and investigate potential TF linked to this threat is unclear. Recently, an individual with neo-Nazi beliefs, who committed an attack on a school and was part of an online peer network of extremists, was investigated by PF for crimes of terrorism and racism. The authorities found no traces of financing (the weapon belonged to a relative of the suspect), but PF has thus far been able to qualify and investigate this as terrorism due to the neo-Nazi motivation. In another case, a court in January 2023 was asked to accept terrorism charges against three individuals who planted a bomb near a fuel truck at the airport in Brasília, one of whom cited a motivation to "cause chaos" and "prevent the transition of power." The bomb failed to detonate remotely. Another co-conspirator, who was a former government employee and part of a camp of anti-democratic activists during late 2022-early 2023, had been previously detained by authorities in 2021. The PF viewed this case as an act of terrorism (an airport bombing would be considered a *per se* act of terrorism), and a TF investigation was commenced. However, this framing was rejected by prosecutors and judges in January 2023 because the conduct had a "political motivation" and thus fell into the exemption in the TF law discussed in Recommendation 5.⁵⁵

333. Also related to the far-right or ideological extremism threat, and as referenced in the scoping of higher risk issues for this evaluation, the assessors inquired whether any of the events in Brasília on 8 January 2023 would be treated as domestic terrorism or if TF would be investigated. Brazilian LEAs have not identified and are not investigating the events of that day through the CT/CTF framework, although they tried to in the case of the attempted bombing above. They are still, however, investigating the financing behind the crimes committed (including the logistics and transportation), with a view to seek compensation for damage to government property. Because 8 January involved political protest of an expressive nature, the authorities explained that these acts and their financing were not considered related to terrorism. Nonetheless, the NRA and LEAs acknowledge the emerging risk related to right-wing and other types of violent extremism, and the authorities should remain vigilant to investigate TF even in the setting of potential domestic terrorism. It

⁵⁵ After the on-site, a conviction was obtained against two individuals, with a nine and five year sentence, but the offences of conviction were violent crimes in the Criminal Code and not qualified as terrorism. The financial investigation is ongoing, but it is unclear how this activity could give rise to TF charges. Moreover, although the civil police investigating the case brought PF into the investigation upon initial indications of terrorism and TF, it is possible that cases at a local level, outside the capital, should also be brought to the attention of PF by other LEAs.

remains a problem that neither the attempted bombing perpetrated in December 2022 nor its financing, which should be considered a per se act of terrorism, cannot be pursued as such. LEAs demonstrated openness to investigating and charging TF against those who may sponsor extremist acts, including the financing of attacks through networks or self-funders, in line with the risk identified by Brazil in the NRA's mention of "non-Islamic violent extremist groups." But it is too early to determine whether any such cases will be successfully qualified as terrorism or TF.

4

334. There have been other opportunities to investigate TF activity or material support, and Brazil has done so to varying extents. This includes a number of situations, e.g.: (i) an alleged supporter of Al-Qaida and al Shabaab travelled to Brazil to traffic weapons to a conflict zone (the criminal proceeding is underway, but it predates the 2016 passage of the TF offence); (ii) a purported terrorist established residence and a business in Brazil, which resulted in a multi-jurisdictional disruptive action to which Brazil contributed; (iii) FTFs (aside from the Karina case, mentioned below) departed Brazil to join the Islamic State (an investigation was opened, several steps were taken, but the individuals' whereabouts are unknown, and the case was requested to be closed); (iv) Brazil extradited to Paraguay, on charges of financial crime, a target who was also suspected of terrorism-related activities and was later convicted in Paraguay on charges of providing false documents;⁵⁶ (v) Brazil frequently answers TF-related requests from Argentina pertaining to the ongoing investigation of the 1994 AMIA bombing in Buenos Aires, and from Paraguay, including recently, in sensitive cases involving a Brazilian national charged with ML in a third-country; (vi) Brazil has tracked some radicalisation of persons who have come under the influence of Al-Qaida and ISIL. This indicates that Brazil is exposed to some TF risk and it indeed has some connectivity to major global terrorist organisations. It also shows that Brazil has been a responsive partner through international cooperation and has followed investigative leads, even before the TF offence was codified. However, considering the facts of some of these situations, Brazil did not always monitor, investigate or disrupt, and some enforcement actions took place upon the persons leaving Brazil.

335. As a secondary matter, even though it is not formally designated as a terrorist group, Brazil highlights Hezbollah as an organisation deserving of special attention.⁵⁷ Brazil investigates activities by individuals linked to Hezbollah through its counterterrorism apparatus and assesses this threat within the counterterrorism intelligence framework, which speaks to perception of the risk by Brazilian authorities. Brazil has brought criminal cases against members of this group, and these have been for non-terrorism financial crimes, such as ML, tax evasion, and illegal remittance (with confiscation). Brazilian authorities acknowledge that funds flow out from Brazil to Lebanon and elsewhere in the Middle East; that certain persons conducting these transactions have suspicious associations with persons and companies linked to Hezbollah; and that it is difficult to parse the legal from illegal remittances, but the authorities also state that they have uncovered no *direct* funding

⁵⁶ This person is designated by third countries for TF. Brazilian authorities stated that they monitored this person closely and have provided assistance in related investigations.

⁵⁷ The Brazilian NRA states: "Furthermore, as for TF, the area, owing to its Islamic population, is potentially related to alleged logistics support and transfers of funds to individuals linked to Islamic groups. After extensive analysis was done in the area, no confluence of international organizations and criminal groups operating in Brazil was identified. Criminal organizations and groups characterized as terrorists might occasionally share financial operators, and law enforcement agencies are aware of this possibility, as criminal activities in the Tri-Border Area are routinely investigated and repressed, usually in cooperation with agencies from Argentina, Paraguay, and other countries."

for particular acts of terrorism or terrorist groups or individuals (e.g., to the “armed wing”).⁵⁸ Brazilian authorities, namely, the Federal Police, are aware that any individual can commit TF, regardless of designation status of any given organisation to which an individual is associated, but there is a limited appreciation of potential instances of indirect TF, particularly when funds go abroad or the nucleus or homebase of the group is foreign.

336. Today, the legal framework does not allow the TF offence to be prosecuted in line with the FATF Standards, as shown by the cases and issues discussed above. The legal hurdles also produce some conceptual issues in the identification and initiation of TF cases. There are no specialised CT or TF prosecutors with deep familiarity of this area of the law, and prosecutors and judges seem hesitant to test the bounds of the law in its current form. Some authorities spoke of possible amendments to expand the potential “motivations” for terrorism in a way that would better capture all types of terrorist actors, including non-designated terrorists and those who, in part, may have a political motivation.

337. Generally, there was little evidence that the LEAs pursue investigations into TF in the absence of a link to a terrorist act. The authorities’ focus on a direct link between the funds and terrorism overlooks the possibility of *indirect* financial support for terrorism, and, as a result, chances for prosecution. In sum, the absence of TF prosecutions in the seven years since the enactment of the standalone offence is not fully in line with Brazil’s TF risk profile due to indications of potential TF activity not matched by successful prosecutions and a rather limited view of TF and the full appreciation of the risks identified in the NRA. With 69 investigations and preliminary inquiries into TF, it is notable that no case has yet proceeded to prosecution, even if only a smaller percentage of these TF investigations and inquiries were factually or legally promising. This raises some concern that certain types of TF activity are not as clearly in focus for prosecution as they could be.

TF identification and investigation

338. Brazil succeeds only partially in identifying and investigating potential TF cases. The Brazilian authorities aside from PF have a less developed understanding of their TF risk, and there is a tendency to be reactive rather than proactive in identifying TF.

339. The Federal Police’s counterterrorism unit (DETER) is responsible for investigating terrorist financing. TF investigations, including preliminary inquiries, are mainly initiated in three ways: (1) they are linked to a broader/existing terrorism investigation; (2) they are undertaken in response to intelligence shared by foreign partners; or (3) they derive from information disseminated by COAF.

Identification

340. Brazil relies heavily on foreign intelligence partners when initiating their investigations, and while PF will follow-through on leads passed to it, there was no

⁵⁸ After the onsite visit, on 23 June 2023, Brazil granted a request to give effect to the designation of four individuals by a third-country. The individuals are alleged to be Hezbollah operatives and to have contributed to carrying out a sever act of terrorism in the region. This represents a milestone as the first freezing measure performed under article 18 of Brazil’s TFS Law pursuant to UNSCR 1373 (see Section 4.3.1). Four individuals now financially sanctioned in Brazil are subject to foreign arrest warrants. All four individuals have ties to the Tri-Border Area and some have ties to Brazil, such a residency, citizenship, or commercial links.

proof that Brazil is proactively scanning the horizon for TF, as opposed to terrorism, threats. While Brazil has demonstrated responsiveness to foreign intelligence and will initiate a preliminary investigation or answer incoming requests, there has been little showing of proactive detection of possible TF activity by the Federal Police, particularly in situations where funds flow out of Brazil. As recently as December 2021, third-countries have designated persons and legal entities physically present in Brazil, including a support network linked with an organisation which Brazil does recognise as terrorist and which has reportedly conducted financial transactions and currency counterfeiting from Brazil. A related domestic investigation has been opened in Brazil, but no results have been seen. The authorities are often spurred to open an investigation by external action, which raises a question about whether detection is as proactive as is needed in the realm of TF. For example, authorities from two agencies met by the assessment team in the Tri-Border Area had some general knowledge of individuals who might pose a risk, and asserted that monitoring was in place, but also expressed the view that the risks posed by such individuals were historical in nature. There is a more passive approach to the identification of TF, even though detection often requires an understanding of international networks and relationships, active and latent. The detection work would also benefit from the use special investigative techniques to affirmatively find TF in order to disrupt it before the crime comes to fruition.

341. ABIN performs strategic and tactical operations related to combatting terrorism, but there were no examples of ABIN referring potential instances of TF to the Police, in practice. Additionally, ABIN has received only one spontaneous dissemination from COAF between 2020 and 2022 and it has made 48 requests to COAF in the period from 2017-2022. This signifies a weak link between financial intelligence related to TF and ABIN's intelligence work to combat terrorism. This inhibits PF's ability to preventively identify and investigate TF, rather than to happen upon it when investigating other crimes.

342. Detecting and investigating TF activity is influenced by Brazil's narrow understanding of the scope of the TF offence. Brazil only recognises UN-designated terrorist organisations, and it would not recognise funding to other groups or affiliated individuals as TF unless there is a link to a terrorist act. Based on interviews and the case examples presented, the authorities look for a direct link between the funding and a terrorist act, and have not demonstrated the pursuit of cases of TF with indirect links between the funds or material support and terrorism activity.

343. Brazil's understanding of the scope of TF is also limited by the technical deficiencies in the TF Law, which does not fully align with the FATF Standards. For example, technical deficiencies limit the ability to investigate TF where the TF activity relates to political movements and other similar actions seen to challenge, protest, or criticise the government and/or defend freedoms. Additionally, the law has defined crimes of terrorism in a way that requires very specific reasons and purposes, as well as requirements to prove certain terroristic intent. As shown below, deficiencies in the TF offence necessarily have some impact in that prosecutors and judges view the offence more narrowly (LEAs have a more encompassing view, but this does not overcome the charging decisions made by prosecutors, which may disincentivise TF investigations). Limitations in the definition of the crime can prevent the opening of investigations *or* the subsequent decision to charge. Since a case has not been prosecuted, it is impossible to assess what other practical effect the language of the TF offence may have in court.

344. The technical deficiencies seem to have a negative impact in identifying TF, as shown by the one case which was officially put forward for TF prosecutions by the police. In addition, since prosecutors can open investigations in Brazil, and do so frequently, MPF also plays a direct role in identifying potential TF offences. The prosecutorial concept of the TF offence was exemplified in its written decision declining to prosecute in Operation Karina. Here, MPF noted that there was little evidence adduced by police of the FTF's motivation for traveling to Syria. To charge her with integrating or assisting the Islamic State under article 3 of the anti-terrorism law, MPF noted that one of the motivations set out in the law needed to be shown (e.g., xenophobia or discrimination based on race or religion). MPF noted that there was no proof of this motivation element. The evidence showed that one individual was a known terrorist recruiter, the other was a recent religious convert, and there was no obvious reason for the latter to travel to Syria. MPF stated that for the suspects to be charged with TF, the "purpose of [TF] being directed to the practice of the crimes [of terrorism] provided for in Law 13,260/2016" would be necessary.

345. This reasoning shows that technical deficiencies constrain the use of the TF offence in practice. The problem with this approach is two-fold: the crime financed (going to Syria to join ISIL) was not identified, and could not be prosecuted due to the absence of a certain motivation under the law. Furthermore, there was an implicit assumption that the TF charge was dependent on some other crime of terrorism being proven (almost like the way ML requires a predicate). Therefore, the requirement to show the "reason" for the commission of a crime of terrorism under Brazilian law diminished the chances of a potential TF prosecution, and the authorities, in practice, too closely linked TF to the commission of another terroristic offence.

346. One way of improving the identification of possible TF cases would be to reach out systematically to the private sector and inform them of typologies on how terrorist financing might occur in Brazil, including with respect to specific groups engaged in criminal activity, types of non-religiously motivated terrorism, and online radicalisation. This could also decrease the large number of false positive STRs received by COAF and complement the generation of TF intelligence by the private sector, which currently is mainly driven by matches with sanctions lists promulgated by the UN, OFAC, and the EU (as a result of Brazil's encompassing view of various sanctions regimes and the widespread use of commercial screening services which incorporate foreign lists). Through these outreach activities, Brazil could possibly generate deeper and more threat-based financial intelligence and add nuance to its current understanding of the risk of terrorist financing.

347. On the positive side, PF is meeting multiple times per week with law enforcement attachés and other relevant representatives of foreign countries. PF conducts information sharing related to CT and CTF with these liaison officers in Brazil and other nearby capitals, as well as through its network of officers posted abroad (18 attachés and 23 liaison officers) and through its role as INTERPOL national bureau. This international cooperation is productive and noteworthy, although more outgoing (as opposed to incoming) requests could be sent. Additionally, within DETER, a process has been developed specifically to address RIFs from COAF related to TF, which includes database searches, requests to other agencies, operational surveillance, and social media mining and other cyber research. Every RIF is exploited and either an investigation is opened, or the resulting report create by PF is filed away as intelligence for later consultation.

Investigation

348. There are several recent investigations of potential financing of terrorism. These investigations are described in Table 4.1, below. They do not include all 69 investigations and preliminary investigations categorised by Brazil as TF, but only those initiated after the TF Law was enacted and where there was a more developed financial investigation.

Table 4.1. Financial Investigations Conducted in Terrorism Cases

Operation	Federal Police		MPF		Outcome
	Financial Investigation of TF	Suspected Affiliated Terrorist Group	Charges	Remarks	
Trastejo (2021)	Yes – potential self-financing	Islamic State	AT Law, art. 5		Acquittal
Karina (2019)	Yes	Islamic State	AT Law, arts. 3, 6	Accusation from PF, declination by MPF	At request of MPF, closed by the court
A.J. (2018)	Yes	Al-Qaida	Unknown		Will be closed; spun off into ML investigation
IPL 2020.0108817 (2020)	Yes	Islamic State	AT Law, art. 3	Returned to PF for investigation	
IPL 2022.0067130 (2022)	Yes	Unknown		Investigation ongoing	

349. In all five investigations, PF demonstrated capacity to investigate the financial components of the case. Its investigations aimed to identify possible terrorist financing and the role of any potential financier. The cases included the use of international cooperation, analysis of RIFs from COAF, special investigative techniques, as well as obtaining and analysing financial records through the lifting of banking secrecy with a court order. In one case, PF also gathered information from the MVTs sector.

350. The Table also shows that the accusations brought forward by PF to the prosecutors are primarily related to articles 3 and 5 of the anti-terrorism law for the offence of promoting, constituting, integrating, or providing assistance to a terrorist organisation (art. 3) or to conducting preparatory acts of terrorism with the unequivocal purpose of consummating such an offence (art. 5). PF has forwarded for charges one investigation to MPF under article 6 of the Law, the TF offence.

351. In Operation Karina—set out in more detail in the box below—the TF investigation involved a Dutch citizen, from Indonesia, who financed the trip of a Brazilian resident who sought to join the Islamic State. MPF, in an exercise of prosecutorial discretion, opted not to press charges as urged by the police. The MPF's response stated that necessary information about the purported financier was lacking, and that the situation was complicated and not sufficiently connected to terrorism. MPF also cited the likely ineffectiveness of criminal prosecution against a foreign citizen or persons abroad.

352. The one case brought forward to prosecution during the assessment period shows some important shortcomings in the understanding of TF offence and

cooperation between PF and MPF. The investigative report provided specific indications of terrorist financing, such as the clear financial trail behind the purchase of the plane ticket, but TF was not charged in the end. Ultimately, LEAs passed information to relevant foreign partners and considered their options for disruption and confiscation, but they did not consider the imposition of TFS, citing the absence of local assets of the FTF or recruiter. Furthermore, it is unclear how the transactions of the FTF's family members in Brazil were investigated after receipt of a RIF from COAF.

353. Additionally, the disagreement between PF and MPF in this TF case has not generated lessons learned or changes in approach on either side. As also highlighted within IO.7 (see section 3.3.1), coordination between police and prosecutors is not uniformly positive, and this case is an example of weaker cooperation. PF remain uncertain as to the reason why this TF was not pursued. They were aware of potential humanitarian reasons related to the FTF ending up in a camp in Syria with a small child, and the reason of the financier being located abroad, but these are more logistical than legal. Neither agency conducted a review of the process of this TF investigation, wherein police and prosecutors seem to have worked in a compartmentalised way. Under article 12 of the TF Law, MPF is expected to play a role in the early stages of investigations, and any TF investigation should be conducted by PF and supervised by MPF. This case did not demonstrate such a level of cooperation, strategy-building, or two-way feedback. Moreover, after the case concluded, the nature of the disagreements between the authorities on how to pursue TF were not discussed or resolved, creating the possibility that future investigations may follow suit. While limited cooperation cannot be generalised from one case, this was the one during the assessment period with the most potential to yield a TF prosecution or conviction, yet no tangible outcome was reached after significant resources were expended by both authorities.⁵⁹

⁵⁹ In another case, highlighted in IO.8, prosecutors sent the file back to PF for additional evaluation and reassessment. Although this is not strictly speaking a TF case, it is being investigated by the PF's counterterrorism division. Seven individuals have been charged, but with respect to a further 17 individuals, the case has been referred back to PF by MPF.

Box 4.1. Operation Karina

The Federal Police investigated the recruiting of a young Brazilian woman who joined the Islamic State in Syria in April 2016 to become a foreign terrorist fighter. PF found evidence showing that the Brazilian woman received money to finance her plane ticket to Syria through an MVTS, from a Dutch woman in Jakarta, Indonesia. The Dutch woman was therefore identified as the financier. The amount of money the FTF received equalled the price of the flight and the ticket was bought immediately after she received the money.

During the investigation, PF requested and obtained from a judge the breach of banking, telephone and telematic secrecy to discover who financed the travel and how the transactions took place. PF also used a RIF from COAF on financial transactions made by the Brazilian FTF's family members, involving transfers of funds to persons involved with terrorism and its financing abroad.

An arrest warrant and a search and seizure warrant were granted, but they have not been executed because the Brazilian FTF has not returned to Brazil. PF proposed charges against two persons for TF offences, but the case was closed because the prosecutors found the evidence insufficient and due to logistical and humanitarian concerns.

354. Based on an assessment of all available cases, as well as interviews with the authorities, there is a sufficient level of expertise and capacity within PF to identify a potential terrorist financier. Nevertheless, the investigation of TF is generally post-hoc, and PF has not demonstrated the proactive investigation of fundraising or movement of funds which might be (or become) related to terrorists or terrorist organisations. The traces of TF pursued are primarily those in existing terrorism cases relating to the direct use of funds. The indirect financing of terrorism is unlikely to be investigated to the fullest extent, especially once the funds or suspects leave Brazil. The authorities expressed difficulties in linking financial transactions or persons to terrorism, and challenges in converting classified information into evidence. The authorities did not demonstrate adeptness in corroborating intelligence or confirming it through other investigative means so as not to reveal confidential sources or methods. Unlike in ML, collaborators appear not to be used.

355. Finally, based on the reaction of MPF in the Karina case (and in other cases where the initial inquiry was returned for further investigative work), cooperation between police and prosecutors needs further improvement, and there is a need for better understanding of the legal requirements and a broader view of the TF offence. PF has a specialised CT unit (DETER), but MPF does not have similar specialisation on terrorism or TF issues. As TF and other terrorisms cases are assigned to prosecutors ad hoc, based on the location of the offence, there are no long-standing relationships between PF and MPF to call upon and minimal expertise built up on the prosecutorial side, in comparison to the investigative side.

TF investigation integrated with and supportive of national strategies

356. While strategies mentioning terrorist financing exist within Brazil, they are not specific in a way that solidly integrates TF into the country's counter-terrorism strategy.

357. There is no national counterterrorism (or CTF) document or strategy, per se. The 2017 National Intelligence Strategy mentions the topic and the general responsibilities of each relevant agency. The Strategy summarises the counterterrorism obligations of the Federal Police and ABIN as well as the functions of SISBIN, the Brazilian intelligence system comprised of 42 government stakeholders. This National Intelligence Strategy was approved by Presidential Decree No. 14,503 and is publicly available.⁶⁰

358. There is also a National Intelligence Policy which highlights terrorist financing as a threat and priority. This contrasts with the National Intelligence Strategy discussed above, which only mentions terrorism in a general sense. The National Intelligence Policy is set forth by Decree No. 8,793 (2016) and is publicly available.⁶¹ In two sections, it emphasises the need to collect intelligence related to terrorism and its financing and classifies both as serious challenges to be dealt with and addressed through effective international cooperation. The Policy pre-dates the strategy, meaning that TF was not also incorporated into the later-developed Strategy. TF did not, therefore, rise to the level of priority to be highlighted as one component of the country's approach contained in the Strategy. Both documents are becoming outdated.

359. Moving from more general documents to policies with more specificity, the Federal Police adopted a Strategic Plan to Counter Terrorism in 2022, stemming from the documents above. A new plan is created every few years and informs the overarching police strategy for the country. This document is confidential, but contains several objectives and lines of effort related to the prevention and detection of terrorism and activities which facilitate its logistics or financing, as well as the identification of persons who support or finance terrorism.

360. In carrying out the Plan above, PF continually monitors and assesses the terrorist risk in Brazil with a focus on vulnerabilities, threats, and targets. The assessment team viewed a sample of these threat assessment products, including one dated March 2023 on a TF topic related to an undesignated group. Other similar documents fed into the NRA process. ABIN is beginning to participate more in ENCCLA work related to countering terrorism, whereas its prior participation mainly concerned organised crime. Criminal activity may also generate revenue for terrorists and terrorist groups, so ABIN's practical experiences and dual expertise should be brought to bear, especially in relation to the Tri-Border Area where any potential intersection between crime and TF is likeliest to occur.

361. Though the Federal Police mentioned that prior cases and terrorism investigations have supported and informed the above national strategies, there is a lack of focus on TF as an independent and equally important component of such a strategy. Brazil's counterterrorism operations have primarily been associated with big events such as the Olympics and the World Cup. While the events provided an opportunity for Brazil to enhance its international cooperation, they also had the

⁶⁰ www.gov.br/abin/pt-br/centrais-de-conteudo/publicacoes/ENINT.pdf.

⁶¹ www.planalto.gov.br/ccivil_03/ato2015-2018/2016/decreto/d8793.htm

effect of emphasising a perception of TF risk amongst competent authorities as something mainly foreign, occasional, or having direct ties to terrorist attacks, as opposed to an ongoing phenomenon to be identified prospectively. TF investigations appear not to feed into national strategy-making, or to be a major limb of policy.

362. As discussed in IO.1, TF has become a focus of the authorities more gradually over time, as compared to ML, which has a longer history of interagency coordination and policy-setting. While there is recognition of the importance of combatting terrorism and its severe consequences, TF, as distinct from terrorism, is mainly viewed in a reactive light. Consequently, there was not a demonstration of how the investigation of TF informed, for example, the National Intelligence Policy; instead, the Policy deals with TF in a superficial manner. Neither was there an understanding of how LEAs could broaden the understanding of TF in Brazil by integrating TF investigations within national strategies.

Effectiveness, proportionality, and dissuasiveness of sanctions

363. To date, there have been no convictions for TF and so it is not possible to assess the effectiveness of criminal penalties for TF. As described in R.5, the sanctions available appear proportional and dissuasive. TF is subject to Brazil's Heinous Crimes legislation, which makes it an offence that is ineligible for amnesty, clemency, pardon, or bail. Unlike ML, prison sentences for TF would start in a closed prison regime (not an open or semi-open regime).

Alternative measures used where TF conviction is not possible (e.g., disruption)

364. Brazil has not applied alternative measures in the precise situation where TF conviction was not possible or practicable, but it has taken some alternative actions where the conduct at issue was related to terrorism more broadly or where there were obstacles in the categorisation of the crime as TF. Brazil has applied its anti-democratic acts law and its Criminal Code for certain violent and "terrorism adjacent" crimes, but it has not used its terrorism offences, in part due to legal constraints and the perspective of the authorities about the TF offence. When the case is not characterised as terrorism, there is no corollary to the financing of terrorism for those "alternative" offences.

365. On the disruption side, Brazil provided case examples where alternative measures were applied due to crimes related to terrorism or, tangentially, TF. The outcomes of these alternative measures are mixed. Some cases ended in disruption; some did not disrupt and were not resolved in a satisfactory way; and some raised questions of the adequacy of interagency cooperation. Some situations have prompted competent authorities to open domestic investigations. Brazil is only partially successful in employing other criminal justice or regulatory measures in cases that may be related to but do not directly involve TF. The use of alternative measures is therefore not given substantial weight in this assessment.

366. Denying entry to or deporting certain persons from Brazil (under MOJ Ordinance 770 (2019)) is viewed by the authorities as a disruptive measure for activities of a potentially terrorist nature. However, not all case examples displayed a sufficient degree of interagency coordination or strictness of enforcement, which reduces the effectiveness of this measure. In one case, PF requested an entry ban for an individual (an Iraqi national listed by a third country as an FTF) based on foreign information indicating that this person would be arriving in São Paulo and was linked

to terrorism. Upon landing in Brazil, a different unit of PF interviewed the individual, who presented familial reasons to enter the country and a “certificate of clear criminal record” issued by the Iraqi Police. It is unclear if Brazilian authorities sought additional information from the third country (or another country) to follow-up on this individual, as the initial alert prompting the detainment was automated. The person was eventually permitted entry into Brazil, despite the request from PF to ban them. In another case, a relative of individuals linked to Al-Qaida leadership entered Brazil after one previous attempt to enter using a different passport failed (the second attempt was successful). This person stayed in Brazil for about a year, and then departed. In both cases, the Brazilian authorities state that the persons were monitored closely.

367. There are at least four other case examples where Brazil has denied entry to foreigners, including one where Brazil used this power for a person associated with a group not considered to be a terrorist organisation by Brazil. In one matter, Brazil worked with international partners to ban an individual linked to Al-Qaida from re-entering Brazil, but only after he lived in Brazil and operated businesses, including in a higher-risk sector (gemstones).

368. The cases described above are not squarely TF. However, they are mentioned because they exemplify the mixed picture of responses to cases broadly involving terrorism or potential TF.

369. As highlighted in Box 3.10 in IO.8, eleven farms covering more than 14 000 hectares have been restrained in Operation Tamareira. The case was initiated as a TF investigation because PF identified linkages between the suspects and a group which several countries consider a terrorist organisation. The case is ongoing, but there have been indictments charging ML, smuggling, tax evasion, and illicit capital flight. The alternative measures (ML prosecution and asset restraints) were applied because a TF conviction was not practicable due to insufficient evidence showing that the funds were linked to TF activity; however, this investigation suffers from the shortcomings identified above related to the narrow scope of the TF offence and the authorities’ focus on establishing a direct link to terrorism.

370. Based on interviews on-site, Brazil’s intelligence capacity at ABIN is focused on terrorism, but not as acutely on TF, which may hinder the authorities in applying preventive measures and acting before a transaction is complete or the scheme has reached a critical point. Although ABIN is not an LEA and does not conduct investigations, PF should receive additional strategic intelligence from ABIN on the financial aspects of terrorism more frequently. To disrupt TF activity and apply alternative measures where TF charges may not be ripe or practical, authorities need to be aware of them at early stages and interfere when circumstances allow.

Overall conclusion on IO.9

The absence of TF prosecutions and convictions is not fully in line with the risk and context of a large economy and financial centre with apparent exposure to some TF activity (as shown by several promising investigations, travel, transactions, FTFs, etc.). However, this is considered in the context of a jurisdiction with a lower TF risk profile, overall. The identification of TF cases depends on existing counterterrorism investigations and foreign partners and is usually reactive. The TF investigations in isolation are conducted efficiently and always seek to identify a potential terrorist financier. Nevertheless, there are some significant limitations such as: insufficient operational coordination, overfocus on direct link between funds and terrorism; a cabined view of risk; and technical compliance deficiencies which have an impact on investigations and prosecutions. TF is part of Brazil's intelligence policy, but there is no evidence that TF is used to support larger counterterrorism strategies or investigations.

In one instance where the Police recommended TF charges, the prosecutors returned the case due to insufficient evidence gathered by the Police, indicating a lack of coherence in the process from identification to investigation and prosecution. While cautious not to generalise from one case example, there was no effective oversight by MPF during the preliminary investigation, an unsatisfactory outcome, and there were no lessons drawn from the experience. Generally, the financial investigations conducted by PF are the strongest link in the chain, and PF does indeed take a wider view of what may be terrorism, but prosecutors and the judiciary use the exemption and stringent requirements in the TF Law not to categorise cases as terrorism if they have any hint of political motivation. A TF case unrelated to one on of the formally designated groups is not likely to be pursued, and even the ones linked to these groups have not yielded results in terms of TF convictions. The weaker link is the identification of TF, as the PF has limited quality financial intelligence to benefit from and input from ABIN related to TF specifically. PF does cooperate internationally and investigates leads from foreign counterparts, but could send more proactive requests. Overall, major improvements are needed.

Brazil is rated as having a moderate level of effectiveness for IO.9.

Immediate Outcome 10 (TF preventive measures and financial sanctions)

Implementation of targeted financial sanctions for TF without delay

371. In its 2010 MER, Brazil was rated NC on FATF Special Recommendation III. In 2011, Brazil blocked assets indirectly controlled by an UN-listed entity pursuant to the Libya sanctions regime (UNSCRs 1970 and 1973), but neither the Brazilian decrees internalising those resolutions nor the court's freezing measure were implemented without delay. Brazil passed a TFS law in 2015, however it relied upon ordinary criminal and MLA procedures to implement UN sanctions regimes. Ultimately, Brazil enacted a new targeted financial sanctions (TFS) Law in 2019 (Law No. 13810), repealing the 2015 legislation, and issued an implementing regulation in

June of the same year (Decree No. 9825). These instruments are still relatively new and untested in practice.

372. The 2019 Law provides for immediate enforceability of TFS. MOJ is the authority responsible for administering and enforcing sanctions. While Law No. 13810 represents a major improvement over the situation in Brazil prior years, there are still technical shortcomings (see R.6), several of which impact the effective implementation of TF TFS in Brazil (discussed as relevant throughout the analysis below). Furthermore, there are processes and policy decisions in Brazil which limit the overall utility of sanctions as a preventive tool to deprive terrorists of funds.

373. Brazil can now technically fulfil most UN obligations and penalise sanctions violations by reporting entities (FIs and DNFBPs). All Brazilians, resident or not, are subject to a general prohibition and freezing obligation, but it is unclear how this would be enforced. There are no specific sanctions in place for all natural and legal persons. Brazil would rely on the criminal TF offence, which is not adequate because TFS violations should be penalised as strict liability. The general population also does not have a clear obligation to freeze without delay and without prior notice, particularly in comparison to the more explicit obligation on reporting entities. MOJ is legally required to publish a combined list (of designated persons stemming from the UN, domestic, and third-country processes, as they arise), but no such list exists, which hinders public awareness of all restrictions in one place and implementation.

Implementation of UNSCR 1267 and successor resolutions

374. TFS in connection with UNSCR 1267 and its successor resolutions are immediately enforceable in Brazil. In practice, FIs and DNFBPs have been gradually building out sanctions compliance systems. Since the new law came into effect in March 2019 until the conclusion of the on-site visit, there have been no funds or assets identified or frozen in Brazil pursuant to any UN regime.⁶² A false positive case detected by a Brazilian FI demonstrated how freezing would work, but there was a delay in practice. There have been other false positives that have not resulted in freezing actions, and which were subsequently reported in STRs.

Box 4.2. Sanctions Homonym Case

A Brazilian financial institution located in its database the name of an account holder that corresponded to the name of an individual linked to Al-Qaida who is listed on the UNSC Consolidated List. The original listing date was 25 January 2012 pursuant to UNSCR 1989, and the listing was reviewed and amended in 2021. In this case, the individual opened a simple bank account on 5 April 2022. The individual received a salary deposit on 2 May, and on 3 May, the bank detected the match in an afterhours check. The following characteristics matched the name of the designated individual: name (exact), nationality, and year of birth. The designee had dual citizenship, while the client of the FI only listed one.

⁶² There were assets identified and frozen in 2011, but this is out of scope of this Report and prior to the 2019 TFS law.

The FI froze the account on 4 May 2022. It informed COAF about the match on 4 May 2022, at 10h35, and MOJ's Department of Assets Recovery and International Legal Cooperation (DRCI) later that day, at 16h38. DRCI's International Relations Division, in accordance with legal requirements, prepared and transmitted a circular letter to the PF, the Ministry of Foreign Affairs (on the same day, at 23h07), and the MPF (at 23h39). COAF, also on 4 May 2022, informed competent authorities about the situation through a RIF disseminated at 19h00 to PF's Counterterrorism Division, PF's Division of Repression against Money Laundering, the Prosecution Service in the state of São Paulo, and the Office of the Prosecutor General's International Cooperation Office. COAF spontaneously disseminated a report to the country of origin of the listed person. PF subsequently conducted an investigation, found that it was a homonym and not a true match to the person on the UN list, and sent a letter with the findings to the FI in October 2022, at which time the account was unfrozen.

375. FIs and DNFBPs are bound to independently check the UN sanctions lists for updates, verify the existence of assets related to designees in their databases, and freeze them immediately or within a few hours and without prior notice. In practice, major banks use sanctions screening tools and now check for matches three times a day, although this frequency is only a recent development, after four of the five systemically important FIs failed the first survey of "implementation without delay" conducted by BCB post-enactment of the 2019 TFS law (some further remediation has since taken place).

376. MOJ electronically communicates any changes to the UN list to regulatory and supervisory bodies and requires a confirmation of receipt. Supervisors are then required to circulate updates to their reporting entities. For instance, BCB does so through an electronic system accessible to all entities under its supervision called BC Correio (the same mail system by which entities would report back to BCB any assets frozen). COAF communicates UN sanctions decisions to the entities under its supervision through its financial activities control system to raise awareness. Some of these communications are made the same day, but often, there is a two-day lag between date of receipt and date of the notification. The communication is not legally significant, as the obligation to freeze is directly enforceable under Brazilian law.

377. The case mentioned in Box 4.2 shows a snap-shot of the state of TFS implementation among the financial sector in mid-2022, suggesting that in a real case, even the largest and most sophisticated FIs in Brazil may not have had adequate systems for detecting matches and freezing without delay. The case raises concerns about the robustness of detection systems in place amongst reporting entities, as well as the aspect of implementation "without delay," including for legacy listings, not just new additions to the UN consolidated list. The homonym case was also problematic because it involved one of the strategically significant FIs, which, generally appear to implement TFS better than other reporting entities in Brazil. Brazilian authorities acknowledge that the account in the case above should have never been opened without further diligence because of the exactness of multiple match criteria between the client and the actual designated person.

378. After this false positive case, BCB took an important lesson and redoubled its remediation efforts already underway in the financial sector. Understanding of and

compliance with sanctions obligations is now stronger today among the segments supervised by BCB than it was when this homonym occurred. In fact, this case provided the impetus for a thematic inspection of the five SIFIs, which generated further improvements (e.g., three-times-a-day screening and stronger controls) and better supervisory findings related to TFS. In parallel, since 2021 BCB has included a TFS module in its transversal remote supervision compliance programme. Against this background, subsequent false positives detected by FIs across different sectors in early 2023 were identified and dispelled within 24 hours, including among a state-owned bank, a SIFI, and two foreign exchange focused institutions which identified potential matches among counterparties.

379. Although awareness and TFS compliance was low among the non-SIFIs, at first, supervision since 2021 has improved the situation. By June 2022, nearly 160 remote inspections conducted by BCB included a TFS component. A significant portion of these 445 findings related to having no or inadequate sanctions screening (e.g., not checking the UNSC lists) or having no or inadequate freezing procedures.⁶³ BCB detected 153 findings related to TFS among banking FIs (*excluding* SIFIs), 74% of which were amended due to remediation. It also detected 292 findings related to TFS among non-bank FIs, 74% of which were amended. Amended findings signify that deficiencies have been addressed in full or in part but not necessarily that every deficiency has been remediated. Outside of the SIFIs, the TFS deficiencies were most commonly found among banks and banking conglomerates; for NBFIs, the TFS deficiencies were most commonly found among exchange brokers, DTVM (the main dealers in the securities market and trade in gold), and payment institutions.

380. Implementation among DNFBPs tends to be lower due to insufficient supervisory actions (see IO.3 and IO.4).

381. The authorities concerned (COAF and MOJ) acted swiftly once the alert in the homonym case was generated and then ordered the unfreezing of the account when the match was finally disproven. But one additional aspect of this “test case” is important. From the time the account was blocked, it took six months for the Federal Police to conclude that the individual whose assets were frozen was not in fact the person listed by the UN and linked to Al-Qaida, which is quite long given the facts of the case.⁶⁴ Although the funds remained frozen during the entirety of the investigation, preventing any risk of access or dissipation, the time that elapsed between when the police were informed and when funds were released does not indicate that PF reacted with sufficient urgency to ensure that the individual was *not* the one linked to Al-Qaida. The facts concerned a natural person who was physically present in Brazil as of March 2022 and who had obtained a CPF number to work at a company in Brazil. There were no complex structures involved or indirect ownership issues. Meanwhile the listed terrorist was wanted for arrest in another country, with a public warrant, indicated that there was accessible information available about the real terrorist’s identity. Brazilian authorities stated that checking for fraudulent documents and international cooperation took time. Nonetheless, the match could have been dispelled more swiftly because unfreezing is a critical component of overall implementation of TFS. From an operational perspective, it was also imperative to

⁶³ The findings included not having sanctions screening procedures or compliance monitoring, inadequate sanctions procedures or monitoring, no procedures to detect the existence or emergence of customer assets affected by sanctions, no procedures or inadequate procedures to freeze assets, no ability or inadequate procedures for the entity to communicate with BCB/COAF/MOJ including through BC Correio.

⁶⁴ It should be noted that the impacted individual did not initiate a court challenge related to the freezing measure.

determine whether an Al-Qaida member and fugitive was living in Brazil, even though at no point during the investigation were assets unfrozen.

382. As to UNSCRs 1267/1989 and its successors and UNSCR 1988, Brazil has never made or co-sponsored a proposal for the designation of a person or entity to any UN sanctions committee. There is no interagency body or individual institution actively examining potential candidates for designation as one of its objectives. While Brazil states that MOJ can do so, no examples of a time when such action was considered were provided, and there is no clear policy process in place to contemplate such a designation. Brazil essentially uses a criminal justice mechanism for identifying targets for designation to the UN committees. A Brazilian proposal to a UN committee would emanate from the judiciary, as a court would be conducting the prerequisite criminal investigation or proceeding into any person who might potentially meet the UNSCR designation criteria. The TFS Law itself relies on the TF Law's special provisional measures, indicating that a criminal case and connection between the potential-designee and Brazil is a requirement for the designation. Aside from this criminal justice mechanism, Brazil states that there is a second mechanism that would allow MOJ to prompt a designation based on "police, financial or intelligence information." This would entail MOJ approaching the AGU to seek provisional measures from the court with respect to specific assets, and then considering whether MOJ and MRE should impose a full national designation. This purported mechanism derives from the TFS Decree; however, the Decree contradicts the process set out in the relevant article of the TFS Law in this respect. There is doubt about the legal basis for the second mechanism because (1) the TFS Law has legal superiority over the Decree, which contains the only reference to this second mechanism; (2) the Law does not empower MOJ in accordance with the second mechanism, and in fact it states a judge can summon the government, but not the other way around; and (3) the Law refers back to the provisional measures in the TF Law, which clearly contemplate an ongoing investigation or criminal proceeding in Brazil (i.e., referring back to the first mechanism) (see also TC Annex, R.6).

Implementation of UNSCR 1373

383. Regarding **domestic designations**, Brazil does not use TFS available under the criteria set out in UNSCR 1373 at the national level. It does not currently maintain a domestic list of persons or entities subject to asset freezes.⁶⁵ As with potential proposals to the UN, discussed above, Brazil would use a domestic investigation linked to TF in order to designate a person. It is unlikely proposals would arise in any other way except for an ongoing TF investigation in Brazil, linked to a person with significant connections to Brazil. There were no criminal proceedings pending at the time of the on-site wherein authorities were contemplating sanctions proposals. For domestic designations, the TFS Law does not require assets to have been identified or located in Brazil (as opposed to third-country requests), but authorities confirmed that they did not see utility in making sanctions proposals to prevent a person from accessing Brazil's financial system if there were not already assets pre-existing in the country or if existing assets were de minimis. A few authorities expressed an interest in using TFS as a preventative tool in the future to ensure terrorists do not have even

⁶⁵ Regardless of the fact that there have been no domestic designations and therefore no names to include, there is no combined list of UN, domestic, and third-country sanctions. Because such a list has not been issued, implementation beyond FIs and DNFBPs is hampered. The general population can see UN listings in the Gazette, but a public consolidated list, as required by TFS Law, article 26, would serve to publicise all designations and help prevent non-reporting entities from dealing with providing services to them.

the potential to access to resources, and to draw out additional intelligence gathering opportunities (financial and otherwise). However, there is no institution or interagency process in place to generate sanctions proposals with a national view.

384. Regarding **third-country requests** pursuant to UNSCR 1373, Brazil has the power to give effect to the freezing actions of another country. The assessors consider this an important development given the lack of domestic designations discussed above. During the period under review, Brazil engaged in preliminary discussions with a foreign country on a potential case. After preliminary discussions and information exchanges, the Brazilian authorities determined that there could not be reasonable grounds to proceed solely on the basis of the non-confidential, open-source information provided by the foreign country. The third-country did not share additional information, which ended the discussions related to this potential request. This situation was instructive in that it demonstrated that MOJ/DCRI is the entity that will conduct the reasonable grounds review and how MOJ might analyse a future request. The situation did not advance enough to clarify whether intelligence information alone could provide Brazilian authorities with the basis to act on a third-country request, or whether Brazil could act on a request completely unconnected to a foreign criminal proceeding. Ultimately there was a positive outcome in this case: the subject was arrested in (another) third country with information and assistance from Brazil. During the review period, the kind and quantum of evidence necessary for the determination of reasonable grounds was untested on how a request would work in practice.⁶⁶

385. MOJ indicated that they are the ultimate decisionmaker should a request arrive from a foreign partner. MOJ must by law verify without delay the request's compliance and reasonable grounds, and then forward this promptly to AGU for "promotion" with a judge. The judge would conduct only minimal review of the case and exercise limited discretion. Once such an application reaches the judge, he or she has 24 hours to issue a decision. What is clear on the face of the TFS Law is that once MOJ makes its determination that the request is actionable, AGU will approach the court *if* there are elements demonstrating the existence of assets related to the person in Brazil. If assets are not found in Brazil, it is evident that the authorities would not proceed further (for instance, to issue a generic order prohibiting persons from making funds, assets, economic resources or financial and other related services available to the designated person). This negates the preventive purpose of sanctions to cut off prospective access to the financial system, if assets do not already exist in

⁶⁶ On 23 June 2023, Brazil granted a request to give effect to the designation of four individuals by a third-country. This represents the first freezing measure performed under article 18 of Brazil's TFS Law pursuant to UNSCR 1373. Although it cannot contribute to this assessment of effectiveness as it occurred after the on-site visit, a few details are mentioned for clarity and completeness. The process from the time of the receipt of the request to the judicial order took eight hours. The judge questioned whether the petition from the AGU should be treated as a criminal or civil matter, but decided to enforce the freezing decisions the foreign country based on international obligations, regardless of their nature, and without requiring an MLA request. The court did highlight that the relevant persons are charged for crimes of terrorism abroad, and that the foreign blocking measure did not originate in a court process, but in an administrative process within a foreign FIU. The judge confirmed MOJ's determination that reasonable grounds to proceed with the measure were met, and that there were pre-identified financial assets in Brazil to be frozen. The judge decided that "all assets" of the four individuals should be unavailable (i.e., blocked) and that they may challenge the action under article 15 of the TFS Law. One of the four sanctioned individuals who had been living between Brazil and Paraguay reportedly left the Tri-Border Area shortly after an arrest warrant was issued for him abroad. Two of the other four individuals were naturalised Brazilian citizens, one living in Foz do Iguacu. The judicial order has resulted in frozen assets in Brazil (thousands of dollars in bank accounts frozen quickly, plus a house and a vehicle frozen two days later).

the country, which is a regional financial centre and major economy in the hemisphere. The process to identify assets concealed or indirectly owned by a designee could, but would not necessarily, take some time.

Targeted approach, outreach, and oversight of at-risk non-profit organisations

386. Brazil has recently taken its first steps to establish a targeted approach, outreach, and oversight of at-risk non-profit organisations (NPOs, or CSOs, as they are known in Brazil). The ambition to commence this work came after the Brazil's NRA in 2021 which addressed, in a short and general way, the risk of terrorist financing via NPOs. The NRA identified a deficit in Brazil's regulatory framework and effective supervision and indicated the need for an overriding and risk-proportional workstream. Moreover, the risk assessment considered the NPO sector to be a critical area which led to Action Item 5, developed through ENCCLA (see analysis of R.8 in the TC Annex for details). At the outset, it should be underscored that Brazil has many measures in place related to registration, reporting requirements, and certification(s) of NPOs and that the sector is highly regulated, particularly as to CSOs that deal with the government or public funds or have preferential tax status. These measures relate to transparency and management and promote good governance and accountability. They are chiefly but not exclusively aimed to prevent theft, fraud, and – importantly in the context of Brazil – corruption. However, there are no measures or actions currently in place which are intended to address identified TF risks.

387. Brazil has identified a large sub-set of NPOs (704,374 organisations, or 86.34% of the NPO population) falling within the FATF's definition and has very recently conducted a sectoral risk assessment concluding that the overall level of TF risk to NPOs is low. The December 2022 SRA set out risk events and risk mitigators for different types of NPOs, and considered characteristics such as the legal nature, activities, certifications, or geography of organisations that result in greater or lesser risk for TF abuse. The SRA avoided a broad-brush approach, and was oriented towards informing the private sector, especially reporting entities, how they might assess the risk of any given NPO. While it succeeds in discussing relevant features of NPOs and showing statistically the number of NPOs sharing a given characteristic (location, legal type, etc.), the SRA does not identify the specific NPOs that may be relatively more vulnerable to terrorist financing abuse, or how the different characteristics in practice should inform the identification of NPOs at risk of TF abuse. COAF emphasised that the SRA is based on the 2020 CSO Map and the 2010 Census, and that based on the new CSO Map (which is redone every two years, see more in R.8), COAF will update its SRA to include new risk events and risk mitigators.⁶⁷ The SRA has not yet informed a review of measures by the government or the introduction of new measures, and it was too early to tell whether its findings had filtered into risk calculus of the private sector or the NPO sector itself.

388. As a result of the above process, there is an emerging understanding of NPO risk among one competent authority, namely, COAF. But there is a disbelief in TF risk within the NPO sector itself, and, conversely, an overweighing of the risk related to NPOs by the private sector, although this perception was not obviously grounded in TF risk.

⁶⁷ The SRA used only quantitative data sources. The SRA does note that 8.4 million USD in the period of 2017-2022 was transferred abroad from NPOs to or from high risk jurisdictions. The SRA did not similarly consider cross-border cash transactions that cannot be registered with same accuracy as those in the formal financial system.

389. ABIN has in more qualitative and general terms, as mentioned in the NRA, considered that NPOs could be misused for TF purposes. ABIN noted that it is particularly relevant to monitor commercial entities incorporated by expatriate communities and non-profit entities linked to religious, educational, and charitable institutions, but neither it nor PF were consulted for the SRA. Notably, the Federal Police have conducted at least two investigations with ties to NPOs. The first, which pre-dated the 2016 TF Law, involved a suspect who participated in a religious studies association, published a video glorifying ISIL, and travelled to the Middle East to join the cause. Although support for an organisation in this form (i.e., being an FTF) was not criminalised at the time, and there was no clear link explained between the NPO and, e.g., fundraising for his travel, the case did feature an individual who sought to provide his services to a designated terrorist organisation and this person had a close link to a local NPO. The case ended with a plea bargain for non-TF offences. In the second case, PF investigated remittances by a Brazilian woman to persons suspected of terrorism abroad. The suspect sent funds to persons who promoted humanitarian aid campaigns through social media which turned out to be fronts for terrorist affiliates. The Brazilian woman was found not to have intended to finance terrorism (she intended to donate to what she believed was a real charity). The investigation was closed without charges. These matters are mentioned because their fact patterns show that TF risk related to NPOs is not inconceivable and not something Brazil would be immune from, even if no NPOs founded in Brazil were misused in these specific instances.

390. During the on-site visit, COAF frankly described its early experience conducting outreach and plans, going forward, to focus more on NPO issues related to TF. For instance, COAF has reached out to the Bar Association on this topic, and it was reportedly a good exchange. Previously, the Brazilian Association of Fundraisers, took part in a coalition dialogue with the government through ENCCLA as ENCCLA developed Action Item 5. However, outreach by the government in prior years was—with respect to CTF—minimal. Representatives of the sector characterised the risk of TF impacting the NPO sector as non-existent. This suggests a strong need for additional government outreach, education, and engagement. For context, this means that for the 155 Brazilian NPOs, which according to the SRA, have sent funds abroad to high risk or very high-risk jurisdictions, Brazilian authorities have not provided any information or guidance tailored to this part of the sector on the risk of TF abuse. This money transfer information about NPOs is used to help COAF prioritise STR, but a more comprehensive RBA is still in the development phase.

391. The representatives and umbrella organisations of the NPO sector in Brazil did not see a major risk posed by their activities and worried that additional oversight (related to CTF) would harm or overburden them, especially small or single-person NPOs working in poorer or remote areas which lack administrative formalities as compared to the large and international NPOs. Even if the government does not impose additional measures for CFT, or only does so in some higher-risk areas, there is still ample room for education of the entire sector concerning the potential risks of TF linked to NPOs—especially through a sharing of typologies and red flag indicators.

392. Awareness-raising will also be needed among the private sector to ensure that measures do not disrupt or discourage legitimate NPO activity, notably to the financial sector which provides critical services to NPOs. While the NPOs met had some misconceptions related to the difference between perceived negative effects related to CTF-specific measures versus the consequences of routine CDD or wire transfer recordkeeping processes, it will be important for Brazilian authorities, as they

embark upon deeper engagement related to NPOs and issue guidance, to convey to the private sector that not all NPOs are or should be treated as high risk. For example, one supervisor in its sectorial regulations put NPOs on par with PEPs in terms of a blanket supposition of higher risk. Special sensitivity should be paid to financial inclusion and derisking, as the NPO sector already reported some difficulties with access to accounts and to credit cards. The third sector plays an important role in Brazilian society, especially efforts to fight poverty and protect the environment and the rights of indigenous people. Similarly, the large, integrated Syrian and Lebanese diaspora communities in Brazil are served by religious and other types of NPOs (only some of which may pose an elevated risk due to their characteristics and activities). While measures are needed to prevent the TF abuse of NPOs, these measures should be narrowly tailored to the higher-risk situations and be focused and proportionate to actual areas of risk in Brazil's SRA.

Targeted risk-based supervision or monitoring of NPOs

393. There is no authority in Brazil to monitor the compliance of NPOs in relation to CTF. No authority in Brazil is currently mandated to apply administrative sanctions for violations by NPOs relating to any measures that may be imposed to specifically protect against TF, such as fines, de-certification, delicensing or de-registration (notwithstanding the possibility of criminal investigation for TF). More general regulation of the NPO-sector was established as a response to an ENCCCLA action in 2016 which aimed at monitoring the implementation of a new regulatory framework. This was not CTF-focused, but improved integrity and transparency of NPOs more broadly, resulting in information which could be used by LEAs if needed in a TF investigation. Brazil's CSO Map and other existing initiatives can benefit and may be part of an overarching approach to sustained outreach concerning TF issues and oversight of at-risk NPOs. But at present, there are no measures applied by Brazil which specifically seek to guard against the risk of NPOs' exposure to TF, and a risk-based approach is in its very early stages of development.

Deprivation of TF assets and instrumentalities

394. Brazil has not demonstrated the deprivation of assets or instrumentalities related to TF activities through civil, criminal, or administrative processes during the period under review.

Consistency of measures with overall TF risk profile

395. Brazil can implement core UN-issued sanctions, with some caveats, but it does not make proactive use of a system of TFS to as tool to identify, prevent, and block terrorists, terrorist organisations or terrorist financiers from raising, moving, and using funds. Brazil explains that this is justified by a low TF risk. Still, ABIN has identified individuals who express sympathy for Al-Qaida and ISIL. Moreover, there have been at least 25 terrorism-related investigations and around 70 TF investigations carried out by PF in recent years. As recounted in IO.9, there have been individuals with at least some financial connections to both Brazil and to terrorist groups. In conjunction with IO.9, which highlights that Brazil's TF risk may be underestimated by some authorities, even though it is acknowledged as significantly lower than its ML risk and that Brazil has yet to deploy its enforcement tools against TF activity in full alignment with its TF risk, a similar conclusion is reached here.

Namely, that Brazil is not fully using preventive tools to harden its financial system in a way that is entirely in line with its TF risk profile.

396. Further, based on the homonym case and the resolution of the potential third-country request discussed above, there are doubts as to whether the TFS framework was fully embedded in practice up to and including 2022. However, supervisory efforts were underway to shore-up the financial sector's implementation of TFS before the homonym case (see more on this within IO.11, Section 4.4, below), and these efforts were further intensified after it. Although there was a failure to detect a very close match for nearly a month in the false positive case (which did not entail a risk of dissipation since assets were frozen), subsequent false positives in the financial sector have been detected and resolved more quickly, within a day. While remediation of TFS-related deficiencies in the financial sector have been occurring at different paces (with SIFIs being more proactive), BCB has taken transversal supervisory action on TFS since 2021. There are, however, concerns related to DNFBPs in terms of their ability to freeze without delay, especially in light of the materiality of some DNFBP sectors in Brazil and the lack of focus, thus far, on detection of potential evasion including through interposed persons. Lawyers and VASPs are uncovered.

397. With regard to the NPO sector, Brazil is developing its understanding of the TF risk related to Brazilian NPOs, including via its December 2022 SRA. The 2021 NRA mentioned that "Brazil still shows a normative, regulatory and supervisory deficit, particularly in relation to NPOs, which should be the subject of a priority work, commensurate with the risks identified." Moreover, the NRA iterates some TF concerns that are relevant for both Brazil's work pertaining to the NPO sector and the implementation of targeted financial sanctions.

398. ABIN has, as part of a questionnaire for the NRA exercise, assessed that donations from legal entities could pose a high risk of TF. The NRA, in turn, states that "donations from legal entities refer to transfers of funds from sympathisers to the terrorist cause from legal entities established in Brazil, including non-profit organisations, non-governmental organisations (NGOs), or charities. The source of the funds can be either funds obtained from the company's revenues, in the case of donations from legal entities, or funds raised on behalf of a charitable cause." Thus, until a risk-based approach is implemented by Brazil which applies focused and proportionate measures to NPOs identified as being more vulnerable, it cannot be concluded that efforts are in line with risk. This should not be read to require a suite of new laws or red-tape which could discourage or disrupt legitimate NPO activity, but Brazil should continue its efforts to establish sustained outreach, raise-awareness within and about the NPO community, and put in place a CTF supervisory framework calibrated to the risk and context of Brazil.

Overall conclusion on IO.10

Brazil now implements TF TFS effectively and without delay in its most material sector, the financial sector. BCB has increased supervision of TFS obligations since 2021, significantly improving FIs' awareness of and compliance with sanctions obligations. With respect to DNFBPs, implementation without delay is less certain and there are gaps in supervision. Brazil has not yet deprived terrorists, terrorist organisations, or terrorist financiers of assets through criminal, civil, or administrative measures. No designation proposals have been made to a UN committee or at the national level, and no assets have been frozen pursuant to TF TFS, but this is mainly consistent with Brazil's relatively lower TF risk profile considering the lack of evident connections between Brazil and UN-sanctioned persons and entities.⁶⁸ Brazil has used provisional measures based on non-TF criminal offences in cases investigated by CFT authorities but lacking a clear indication of TF. Brazil is unlikely to utilise domestic designations, which is not entirely in line with risk, as it does not have a clear policy mechanism in place to make designation proposals domestically or to the UN and designations are legally linked to criminal investigations or proceedings. The approach to TFS is on the whole reactive, not proactive. There is a concern raised by the fact that there is no specific penalty or sanction available for non-reporting entities, meaning that TFS are not clearly enforceable outside of FIs and DNFBPs. Moreover, the general population does not have as clear of an obligation to freeze without delay and without prior notice when compared to the precise obligation placed upon reporting entities, and no list of all designees is published to raise awareness among non-reporting entities, as required by the TFS Law.

Brazil has recently assessed the TF risk of its NPO sector. While it has yet to review the adequacy of measures related to NPOs facing a relatively higher risk of misuse for TF, there are non-CFT measures in place which mitigate the low risk of TF. There is a need for sustained outreach on TF, along with the (potential) application of focused and proportionate measures in line with a risk-based approach, and relevant oversight or monitoring. The NPO sector did not acknowledge TF risk, demonstrating a need for addition engagement including with the donor community in line with identified risks.

Overall, the steps taken are only partially consistent with Brazil's risk profile as a major economy and regional financial centre, with certain vulnerabilities in the Tri-Border Area, a sizable number of investigations related to terrorism and potential TF, and an emerging risk related to right-wing/ideologically motivated extremism.

Brazil is rated as having a moderate level of effectiveness for IO.10.

⁶⁸ Assets were frozen by Brazil pursuant to a UNSCR 1373 third-country request after the on-site.

Immediate Outcome 11 (PF financial sanctions)***Implementation of targeted financial sanctions related to proliferation financing without delay***

399. To provide necessary context, Brazil has diplomatic relations both DPRK and Iran, and Brazil maintains important trade linkages with Iran, and a minimal trade flow with DPRK. Brazil's trade transactions with North Korea in 2019 exceeded USD 10 million, while in recent years trade has reduced. Iran is one of Brazil's main trading partners in the Middle East. Iran is Brazil's largest buyer of agricultural products. It imports millions of tons of corn from Brazil. Brazilian companies are engaged in the purchase of urea from Iran, a petrochemical product, which is used in fertiliser. Certain trade activities with Iran are subject to import/export controls by the Ministry of Science and Technology.

Implementation without delay

400. Brazil is capable to implement TFS without delay to comply with TFS for PF. Decree No. 19841 (1945) first codified the direct enforceability of UNSC decisions. Brazil uses the same law to implement PF TFS as it does to implement TFS related to terrorist financing (Law No. 13810). This 2019 TFS law explicitly revoked Law No. 13170 (2015), which required a court order to implement resolutions of the Security Council. The scope of article 1 of the TFS law broadly refers to any sanctions imposed by the resolutions of the UN, including asset freezes, of persons involved in terrorism, its financing, or "acts related to it." Under the Law's implementing Decree No. 9825, "related acts" are defined to include "financing of proliferation of weapons of mass destruction" (art. 1(II)).

401. Since 2019, UNSC-issued sanctions are directly enforceable in Brazil with immediate effect pursuant to Law No. 13810, article 6. The law includes freezing obligations (see Section 4.3.1 within IO10). Entities are bound to independently check the UN sanctions lists for updates, verify the existence of assets related to designees in their databases, and freeze them immediately or within a few hours. All Brazilians, resident or not, subject to a general prohibition and freezing obligation. For FIs and DNFBPs, this should be done without delay and without prior notice. Although Brazil still publishes decrees for each UN Security Council Resolution related to PF TFS, the decrees have no legal effect and are translated into Portuguese and gazetted solely for awareness-raising. Brazil can now technically fulfil most of the relevant UN obligations and penalise sanctions violations by reporting entities. For individuals and legal persons, there is no specific sanction available to enforce the freezing obligation or the prohibition on making funds or other assets available.

402. As discussed in IO.10, obliged entities are responsible to check the UN lists for any updates, additions, delistings, etc. In practice, major banks use sanctions screening tools and now check for matches three times a day, although this frequency is only a recent development, after four of the five systemically important FIs (SIFIs) failed the first survey of "implementation without delay" conducted by BCB post-enactment of the 2019 TFS law (further remediation has since have taken place). Aside from this, MOJ electronically communicates any changes to the UN list to regulatory and supervisory bodies and requires a confirmation of receipt. Supervisors are then required to circulate updates to their reporting entities. For instance, BCB does so through an electronic system accessible to all entities under its supervision called BC Correio (the same mail system by which entities would report back to BCB

any assets frozen). COAF communicates UN sanctions decisions to the entities under its supervision through its financial activities control system. Some of these are same day, but often, there is about a two-day lag between date of receipt and date of disclosure.

403. There are no assets frozen in Brazil pursuant to PF TFS. There have been no cases reported linked to PF sanctions promulgated by the UNSC.

404. STRs have been reported relating to transactions and services which may involve persons or entities listed by the UN for PF. This includes 30 STRs in 2020-2021 which turned out to be false positives.

Identification of assets and funds held by designated persons/entities and prohibitions

405. Brazil has not identified any assets or funds held by designated persons or entities.

406. The 2021 NRA devotes some space to PF assessing the PF landscape, addressing it mainly as a function of compliance with international obligations and FATF Recommendation 7. Brazil self-assesses that it has few vulnerabilities when it comes to PF TFS and acknowledges a lack of clarity related to “prior contracts, agreements and obligations” and how these issues would be dealt in an asset freeze scenario. Based on interviews and case examples, while Brazilian agencies have experience and are active in combatting proliferation—they have conducted seizures, for example, to block the shipment of dual-use and sensitive items and they carry out export controls—there is a general lack of familiarity with the aspect of financial support for these activities and PF as a topic. COAF noted that the Brazilian authorities also have a very limited understanding of sanctions evasion.

407. The Ministry of Science and Technology is aware of CPF as an objective, especially in relation to UN obligations, but it undertakes no specific activities aimed at identifying funds, assets, or persons that may be involved in PF activity or engaged in sanctions busting. ABIN and the Federal Police are also not directly involved in CPF efforts, and ENCCLA has not focused on this area (see IO.1). The financial side of countering proliferation has not yet been joined up with the well-established export control regime. COAF endeavours to do so in the future and cited the NRA exercise as a first step in this process. Most sectors, with the exception of the most sophisticated FIs, have no meaningful insight on the topic of PF. Furthermore, in light of the lack of AML/CFT coverage of VASPs during the period under review, this sector should be one of the first targeted by Brazil for engagement in the future. COAF recently hosted an initial CPF workshop which generated positive feedback, and it recognises the short-term need to familiarise reporting entities with how to detect suspicions and report STRs linked to PF. The authorities plan to invite international think-tanks and experts in the field to Brazil to develop knowledge about sanctions evasion risks, trends, and techniques.

408. Brazilian competent authorities have not taken the opportunity to raise awareness among businesses regarding their relevant UN sanctions obligations. Brazil did not demonstrate specific efforts made to educate businesses—such as FIs, DNFBPs, or pertinent chemical, agricultural, or shipping companies—on the lines between legal and illegal financial activity, how licit transactions may be used to cover illicit transactions, or the typologies of financial sanctions evasion, such as the use of front companies or concealment via financing arrangements. However, some companies carrying out trade between Brazil and Iran or DPRK are subject to

increased scrutiny. Brazil explained that understanding payments and identifying persons involved in the business (importer, exporter, or intermediary) are a key part of the process of authorisation of the exportation of sensitive goods, including the evaluation of the pertinent contracts, the entity that is receiving the products, and the economic capacity of the agency or company abroad that is willing to receive the products, to ensure the business is legal. This was shown through, among other things, Interministerial Commission for Export Control of Sensitive Goods (CIBES) Resolutions from 2020 and 2021. However, it is not evident that the legality question also covers a PF TFS sanctions screening aspect.

409. Brazil has reported no criminal investigations related to entities or individuals suspected of involvement in PF.

410. The Federal Police, ABIN, COAF, and other relevant ministries are not coordinating on PF effectively. No regular or occasional exchanges of intelligence or other forms of information-sharing for investigations pertaining to PF TFS were demonstrated. More than two dozen STRs have been reported relating to transactions and services which may involve persons or entities listed by the UN for PF in two recent years. These were false positives. While these reports show capacity for detection of name matches, there is room for improvement to generate more and higher quality financial intelligence from the private sector related to PF, given the country context. ENCCLA, the national policy driver for AML/CFT, has not yet undertaken work or action items related to combatting PF.

411. Based on the findings above, funds or other assets of designated persons and entities can be identified by Brazil when company structures and trade networks are transparent. However, given the lack of knowledge about the specificities of PF and lack of coordination between authorities and sharing of PF intelligence, Brazil seems less capable to identify assets when they are entangled in complex networks of legal persons/arrangements or when intermediaries are acting on the behalf of sanctioned persons or entities. This is also compounded by the weaknesses described in IO.4 and IO.5 related to beneficial ownership.

FIs, DNFBPs and VASPs' understanding of and compliance with obligations

412. Brazilian FIs and DNFBPs have not identified any assets or funds held by designated persons or entities, and the few reported suspicions were determined to be false positives. VASPs are not yet regulated or supervised for AML/CFT in Brazil, which presents a sizable vulnerability considering the existence of international cases concerning the use and theft of virtual assets to finance proliferation activities.

Financial institutions

413. Larger FIs including those that are part of international groups, had a better understanding of and compliance with PF TFS obligations. In general, though, many FIs interviewed on-site had a superficial understanding of the topic, checked the lists for updates as a routine matter, and treated all lists (UN, OFAC, EU, UK, and commercial PEP lists) essentially the same way. The screening of names without understanding the nature of the list limits the private sector's ability to identify PF activity.

414. One bank reported a case where they froze an account of a designated person due to a trade embargo and they reported the incident to COAF, BCB, and MOJ. The Federal Police investigated and determined it was a false positive. Another bank

mentioned a proactive investigation where they learned about a terrorist in the media who had ties to Brazil. Based on this, the bank discovered that the designated person's wife was a shareholder of a company that had been a client of the bank. Following this finding, the bank examined the company's transactions with other companies and clients, expanding the analysis and handing it over to the institution's special investigations unit. The bank found some yellow flags and reported this COAF. Although this example relates to TF, not PF, it was a positive indication of proactivity and ability to uncover beneficial ownership. Entities that may be ultimately controlled by designated persons are a key method of sanctions evasion, and it seems that the most sophisticated FIs understand the issue on top of the detection/screening systems in place.

415. Several FIs indicated that pursuant to their supervisory interactions with BCB, they were now checking for sanctions hits three times a day, as opposed to the once daily checking they had been conducting prior to 2022. Bigger FIs said they were more focused on TFS compliance and aware of the harsh penalties if they failed to block an account or transaction in a timely manner. Some referenced that their number of false positives were decreasing as a result of more sensitive technology to quickly identify and disregard alerts. One FI specifically referenced the UNSC committee guidelines as a resource used to inform their internal systems. When questioned, banks confirmed that they not only looked at existing client databases for UN listed persons, but also transaction counterparties and new customers (during onboarding). One institution flagged a particular wire transfer's reference line as proof that it checked these payment details closely. Many mentioned sanctions compliance activities were fenced off from other AML controls within their institutions and handled by smaller teams and that they used more than one vendor for sanctions compliance purposes.

416. Likewise, the payment service companies demonstrated a strong understanding of their obligations in relation to TFS. One entity described how they only allow for domestic transfers, but monitor transactions in border areas, such as the TBA, more closely. One foreign exchange company mentioned receiving some sanctions evasion related typologies from BCB.

417. In the insurance sector, the picture was mixed. One entity reported checking its systems once a month for UN designees, while another reported checking everyday through its commercial provider. There was minimal understanding of the requirement not to make resources available to a designated person (an entity mentioned that it would report a pay-out to a beneficiary designee but did not specify that it would block or stop payment). Another clarified that it only looked into sanctions concerns for large clients or transactions.

418. For the most part, the FIs interviewed did not demonstrate an understanding of sanctions evasion techniques (as distinct from sanctions list screening for coincidences) and had not received relevant training or information from the Brazilian authorities on this topic.

DNFBPs

419. The DNFBPs including DPMS, real estate, and accountants were in general less aware of their obligations in terms of TFS. There was no information on implementation by lawyers.

420. With some variations, interviewed DPMS did not show a coherent awareness of separate UN obligations (e.g., mixing up UN lists with PEP lists). The frequency of consulting UN lists was occasionally unclear, but it was clear from on-site interviews that some reporting entities would complete business transactions and then run, post-hoc, through the system, which is deemed ineffective. The interviewed entities rely primarily on commercial databases, as with all other sectors.

421. Accountants showed some understanding of TFS generally, although not specifically on PF. While some relied on commercial providers, some accountants were checking the UN Consolidated List manually.

Competent authorities ensuring and monitoring compliance

422. Compliance with TFS for PF is a burgeoning area of coverage for both the supervisors and the regulated entities, since the TFS law was enacted in 2019. Brazil, namely, BCB, has established a baseline for examining compliance with TFS and has taken actions to remediate deficiency findings. While TFS-related requirements are part of BCB's remote supervision programme (ICR), the on-site visit showed that larger institutions were more proactive in the respective correction (see IO10, section 4.3.1). In general, the supervisors had the impression that most regulated entities lack resources to focus on TFS and therefore place a great reliance on commercial sanctions screening tools.

423. In addition to the TFS law and Decree No. 9825, BCB has issued subsidiary documents related to implementation of TFS. These include Resolution No. 44 (2021), Normative Instruction No. 262 (2022), and Circular Letter No. 4001 (2020). The first two documents essentially require all supervised entities to have procedures to (1) monitor asset freeze orders resulting from UNSC designations; (2) keep track of assets referred to in orders and freeze them; and (3) inform four government agencies about any freezes (COAF, MOJ, relevant supervisor, and AGU). Critically, Circular No. 4001 instructs FIs to include scenarios related to PF TFS into their scenarios related to persons suspected of involvement in TF for the purpose of transaction monitoring. This is the basis for STR reporting linked to the UN sanctions, even though it lumps in transactions related to UN PF TFS designees with more general TF-related obligations.

424. For their part, COAF, PREVIC, SUSEP, and CVM all have instructions or circulars stemming from the TFS law and decree. For instance, COAF has issued Resolution No. 31 (2019), requiring its sectors to have processes, procedures, internal controls, and training to implement the TFS law. The following major supervisors have no sectoral regulations or guidance on TFS: COFECI (real estate brokers); CFC (accountants and accounting firms); CNJ (notaries and registrars); DREI (national commerce registries); and Policia Federal (transportation companies), and neither do some other supervisors of less material sectors.

425. BCB has started to monitor the compliance of FIs after the enactment of the 2019 law and have in their inspections made some important findings. It should be noted that supervision is combined for now – TF and PF TFS – and no thematic inspections have been conducted related solely to PF TFS. BCB provided the 2021 and 2022 inspection results from the five SIFIs related to their compliance with Law No. 13810 and the freezing of assets (or unavailability of assets, in the Brazilian terminology). The inspections covered seven different topics.

426. Focusing on the entities under inspection, one SIFI was in 2021 found partially compliant on five of seven topics related to Law No. 13810 and the freezing of assets, meaning that major improvements were needed. On the remaining two topics, the bank was found compliant. BCB's 2022 inspection showed that the same bank had demonstrated improvement and was considered by BCB to be compliant on all seven topics.

427. Focusing on the topics of the inspections, BCB expressed concerns with the topic of timeliness (implementation of TFS without delay). Specifically, BCB clarified that this relates to how the bank integrates newly listed or delisted persons and entities into their systems, and how quickly the process from alert, to analysis, to reporting (or freezing) operates. In 2021, one bank was found non-compliant on this topic, and three banks were found partially compliant, meaning that Brazil's most significant entities in its the most material part of its financial sector were failing, as of two years after the enactment of the TFS law. However, in 2021, the remaining bank was found to have an outstanding practice, and by the time of BCB's follow-up inspections in 2022, all five systemically important banks were found compliant on the same topics.

428. BCB also examined the banks' internal audits and adequacy of controls for TFS. All five were found to be partially compliant on this topic in 2021, whereas improvements were seen in 2022 such that the SIFIs were found to be compliant on these parameters.

429. Overall, by June 2022, nearly 160 remote inspections conducted by BCB included a TFS component related to TF and PF. A significant portion of these findings related to having no or inadequate sanctions screening (e.g., not checking the UNSC lists) or having no or inadequate freezing procedures. BCB detected 153 findings related to TFS among banking FIs (excluding SIFIs), 74% of which were amended due to remediation. It also detected 292 findings related to TFS among non-bank FIs, 74% of which were amended. Outside of the SIFIs, the TFS deficiencies were most commonly found among banks and banking conglomerates, and for NBFIs, the TFS deficiencies were most commonly found among exchange brokers, DTVM (the main dealers in the securities market and trade in gold), and payment institutions.

430. After the 2021 results, BCB's 2022 SRA ranked the late implementation of TFS as an area of high risk and prioritised actions to remediate these issues. Thereafter, BCB's monitoring efforts have brought about significant improvements in implementation of TFS. However, it remains a concern that the legal framework for carrying out the inspections was in place at the latest in early 2020, and that the five SIFIs were to a large extent only partially compliant with the obligations set forth in Law No. 13810 through 2021.

431. After the passage of the TFS law, it was expected that firms would have questions about the new obligations and take time to develop their processes and procedures. BCB confirmed that it fielded many inquiries, but since 2021, TFS is incorporated as one of many verification items for examination. Additional findings in this area are expected as a result of ongoing and future examinations across the financial sector. However, too much supervisory reliance is placed on large FIs doing the right thing, setting up commercial screening systems, and having business consultants teach them about red flags and sanctions evasion. The supervisors should guide their sectors, and in future inspection cycles, monitoring should also become stricter. Given that its ICR/IDR inspection modules incorporate TFS compliance, BCB should continue to ensure that any future negative findings are addressed or

sanctioned appropriately. When interviewed on-site, BCB seemed uncertain as to how precisely it would sanction a breach in practice, should a violation occur warranting more dissuasive action than remediation, although it cited Law No. 9613 as the basis for any action.

432. COAF is attempting to monitor compliance with TFS among some DNFBPs vis-à-vis thematic Conformity Electronic Assessments (or AVEC, per Portuguese acronym). The AVECs were put in place in 2020 and 2021 with the goal of measuring the level of compliance with COAF Resolution No. 31 (2019), which elaborates on Law No. 13810.

433. COAF has insufficiently ensured and monitored the compliance of DNFBPs in relation to TFS, and the nascent understanding of TFS in some regulated sectors is also a factor complicating this task. COAF's approach of sending out questionnaires to assess compliance and inform a more risk-based approach simply has not delivered useful results on which to build a supervisory practice. Roughly 65% of the entities did not respond to the questionnaire (7,512 out of 11,518), and notably, many of the AVECs remained unanswered because they never reached the persons responsible for the DNFBPs, due in part to the entities not updating their registration and ownership details with COAF in accordance with a different 2020 regulation and due to a general lack of some DNFBPs' awareness about TFS. According to COAF "[t]he outcome of the AVECs has revealed that the effectiveness of the automated tool among the regulated sectors in this kind of supervision activity, comprising thousands of supervised persons, is still insufficient, and it seems necessary to put in additional effort on COAF's part to enhance the use of this kind of instrument." Against this backdrop, COAF is now working on enhancing the functionality of the system, including through the wholesale re-registration of entities supervised by COAF to the electronic reporting system (SISCOAF). It also published a guidance note in July 2022 on entities' duty to implement a policy, procedures, and internal controls on AML/CFT/CPF and allocated resources for future trainings.

434. As of the end of the on-site visit, no other supervisors reported relevant monitoring of their sectors for compliance with targeted financial sanctions, and VASPs were unregulated for AML/CFT purposes.

Overall conclusion on IO.11

There is a mixed picture of understanding of and compliance with PF TFS obligations among the private sector, and monitoring of FIs and DNFBPs is still developing since the enactment of the 2019 TFS law. It is better among larger FIs supervised and a work-in-progress for other entities supervised by BCB as findings are detected and amended at a good pace. Brazil's implementation of TFS related to proliferation financing happens without delay at least among the most material parts of the financial sector. However, this has not always been the case, as inspections by BCB showed in 2021 that four out of five of the largest banks experienced problems relating to timeliness and alert generation. BCB has demonstrated major improvements among these banks in 2022, as all five systemically important banks now are deemed to be compliant with their obligations. Moreover, since 2021 TFS-related requirements are incorporated in BCB's remote supervision plan, thereby allowing the identification and remediation of supervisory findings in non-SIFIs and non-banking institutions.

Neither BCB nor COAF (or any other supervisor) have issued any guidance on sanctions evasion to their sectors. Deeper awareness of red-flags and typologies is also needed among the competent authorities, with COAF showing the most advanced knowledge.

Improvements are needed in the way COAF approaches its supervisory activities for TFS. COAF has so far not managed to monitor its sectors, which have a very limited understanding of the topic of PF TFS.

Mechanisms for coordination and cooperation related to combatting proliferation are not yet in place for countering proliferation finance. This is considered against the backdrop of trade ties between Brazil and sanctioned jurisdictions, which create some financial exposure.

Brazil is rated as having a moderate level of effectiveness for IO.11.

Chapter 5. PREVENTIVE MEASURES

Key Findings and Recommended Actions

Key Findings

- a) There is an uneven implementation of AML/CFT measures by the private sector explained by the maturity and intensity of the supervisory activities. VASPs, lawyers and TCSPs are not obliged entities for AML/CFT.
- b) There is a general need to develop the private sector's awareness and knowledge of the legal framework and the different elements (origin and type of funds, residence, business links) which may inform ML/TF risk and client profiles.

Financial Institutions

- c) Most financial institutions have a strong understanding of ML/TF risks and put in place internal risk assessments and measures to mitigate these risks, commensurate with their context, and in line with the SRA and NRA.
- d) The securities sector did not contribute to the NRA and has a limited level of understanding of their ML/TF risks and AML/CFT obligations (including the implementation of internal controls). Securities companies implement mitigating measures to some extent but are mostly focused on the market conditions rather than on the prevention of ML/TF risks.
- e) The level of implementation of SDD and EDD measures is reasonable in financial institutions however most implement SDD by default other than in instances where high-risks are identified. Most financial institutions identify PEPs, BO, high-risk jurisdictions, new technologies, including VASPs, as typologies that require special monitoring.
- f) The number of STRs and cash transactions reporting is high for FIs. However, most obliged entities have a culture of automated communications to COAF based on pre-established typologies. The filing of STRs is mostly rule-based and does not illustrate the real ML/TF suspicion. FI's mostly report based on known typologies and rarely as a result of individual investigations. In addition to automated practices of reporting, or reporting based on typologies, some entities opt for business refusal without further analysis in cases of suspicious activity linked to attempted transactions missing CDD or BO information.
- g) FIs have generally established mechanisms to address TFS within their CDD and EDD processes. Most institutions perform daily consultations of the UN lists, and other sanctions.

DNFBPs

- a) DNFBPs generally understand the main ML/TF risks for Brazil as outlined in the NRA. However, understanding of the ML/TF risks within respective sectors can be limited and is particularly weak in the accountancy and real estate sectors.
- b) Compliance with CDD, record-keeping and tipping-off requirements in the DNFBP sectors is uneven due to a lack of understanding AML/CFT obligations in some sectors as well as differences in compliance capacity for different sized firms.
- c) The majority of STRs reported by the DNFBP sectors, refer to cash transactions reporting or automated reporting linked to typologies. The sectors show major deficiencies in understanding and adequately reporting suspicious transactions.

Recommended Actions

- a) Brazil should bring VASPs, TCSPs and the legal professions under effective AML/CFT regulation.
- b) Supervisors should promote assessment of ML/TF risks faced by each institution and should ensure the implementation of a risk-based approach particularly for the securities sector and all DNFBPs.
- c) Supervisors should work with all obliged entities to ensure improvements to CDD and threat assessment processes, especially on PEPs and BO to:
 - i. develop best practices and tools to collect relevant CDD information.
 - ii. enhance the identification, collection, processing and storing of BO information.
 - iii. identify PEPs, their family members and associates as well as taking risk-based mitigating measures. This could include developing specialised tools used by medium and small enterprises.
- d) Competent authorities should improve STR reporting practices by:
 - i. Working with obliged entities to reduce the number of automatic reports, or reports based solely on automated alerts, favouring detailed and investigative STRs by FIs/DNFBPs.
 - ii. Providing guidance and feedback to FIs/DNFBPs to promptly process alerts, especially when the monitoring and analysis relates to TF.

- iii. The development of STR formats that better fit the COAF's management system of incoming STRs.
- e) Competent authorities should work with FIs to improve their understanding of the applicable AML/CFT legal framework including group wide best practices.
- f) All supervisors, particularly for DNFBPs, should conduct more training and outreach on the ML/TF risks and obligations.

435. The relevant Immediate Outcome considered and assessed in this chapter is IO.4⁶⁹. The Recommendations relevant for the assessment of effectiveness under this section are R.9-23, and elements of R.1, 6, 15 and 29.

Immediate Outcome 4 (Preventive Measures)

436. The role of the specific sectors in facilitating corruption, tax and environmental crimes, and organised crime was decisive in the team's analysis of sector specific deficiencies and need for improvement. Further to the analysis of Brazil's risk and context detailed in Chapter 1, the analysis of preventive measures is particularly relevant for banks, foreign exchange brokers, MVTS, and DPMS sectors and these sectors have been most heavily weighed.

437. Given the economic significance and the vulnerabilities identified, the securities sector, real estate, notaries, accountants, lawyers/TCSPs and VASPs are moderately weighed while the insurance, private pension funds and factoring sectors are categorized as low risk. For the purpose of this assessment, the AT concluded that the role and impact of the sectors had to be weighed not only in relation to their size and volume of business but also to their relation to the main identified predicate offences.

438. Assessors' findings are based on: statistics and case studies provided by the supervisors and the financial intelligence unit; interviews with the private sector and material shared by the obliged entities, including internal control manuals and procedures, examples of trainings, STR submissions and other practices. This chapter does not assess VASPs, TCSPs or the legal profession since at the time of the onsite visit were not under AML/CFT regulation.

Understanding of ML/TF risks and AML/CFT obligations

Financial Institutions

439. The financial sector demonstrated a good awareness of ML/TF risks and AML/CFT obligations. Smaller institutions showed less developed preventive practices which are nevertheless consistent with ML/TF risks. The level of risk understanding assessed is closely linked with the supervisory activities and the FIs' participation in market associations.

⁶⁹ When assessing effectiveness under Immediate Outcome 4, assessors should take into consideration the risk, context and materiality of the country being assessed. Assessors should clearly explain these factors in Chapter One of the mutual evaluation report under the heading of Financial Institutions, DNFBPs and VASPs, as required in the instructions under that heading in the Methodology.

440. Larger financial institutions showed great proactiveness in developing their own risk assessments - which closely mirror the NRA - and strategies to implement AML/CFT obligations. Risks identified are mostly linked to corruption and its relation to PEPs, drug trafficking and organised crime, tax, environmental and new technology related crimes. Most FIs supervised by BCB are represented in ENCCLA through their respective associations, which ensures the consideration of the banking sector's views in ENCCLA's priority actions. Some FIs were consulted and contributed to the NRA via a questionnaire.

441. The outcomes of BCB inspections reveal a reasonable development of internal ML/TF risk assessments. Findings detected were broadly addressed in a timely manner and considered to be minor albeit a few outstanding issues remain, as illustrated in Table 5-1 below. For the evaluation of the timely addressing of the findings (see IO 3. 6.2.4 Remedial actions and effective, proportionate, and dissuasive sanctions, including Tables 6-13, 6-14 and 6-15).

Table 5.1. BCB Findings: Internal Risk

		Total	Amended	Open
Banking	Strategically Important FIs	1	-	1
	Banks and banks conglomerates	144	90	54
	State Owned Banks	37	25	12
	Universal and FX Banks	6	4	2
	Exchange brokers	89	35	54
	Non banking FIs	77	29	48
Securities	Securities brokerage and securities distribution	76	37	39

Source: BCB document (detailed findings)

442. The MVTs, pension and insurance sectors showed a reasonable understanding of their regional risks and good consciousness about the implementation of a broad range of preventive measures. Some smaller MVTs were able to articulate differences in risks based on regional circumstances or type of clients.

443. The foreign exchange sector entities demonstrated a solid awareness of their risk and context – geographical, client or product based - through group wide policies and reporting lines. The larger entities illustrated significant experience in managing local risks, as well as the ability to monitor them from a global perspective. For example, one entity demonstrated how they analyse local transaction trends in line with global trends and emerging risks. This allows them to adjust the preventive measures adopted locally and adequately respond to emerging threats. Similarly, whilst with less technology reliant tools, the smaller entities demonstrated a sufficient level of alert to operational ML/TF risks, with one of the interviewed

entities demonstrating a strong understanding of their client base and business relation objectives, as well as broad awareness of relevant criminal typologies.

444. The securities sector has a more limited understanding of ML/TF risks and generally appears to incorporate this risk into its broader operations and risk management systems. Obligated entities carry out risk assessments and receive guidance from COAF on specific typologies, although the understanding does not deeply consider the specificity of the sector and is mainly focused on STR obligations.

445. While VASPs were not regulated in Brazil at the time of the on-site visit some of their particularities were considered in the NRA (see IO 1), and obliged entities demonstrated awareness of this emerging sector, and its activities, with some starting to implement mitigating measures.

446. Factoring companies are under COAF supervision and represent are one of the low-risk sectors, mostly as a result of the country's context and materiality.

447. Supervisors are generally confident of the ML/TF risk awareness of the sectors and are positive about the level of compliance and ongoing improvements by the financial system. Notwithstanding efforts to continue improving effectiveness of AML/CFT systems should continue, as described in IO.3.

DNFBPs

448. DNFBPs generally understand the main ML/TF risks for Brazil as outlined in the NRA. However, there is uneven, and at times limited, understanding of the ML/TF risks within the respective sectors. There is further fragmentation among DNFBP sectors in understanding AML/CFT obligations, in particular with a weaker understanding by accountants and real estate agents.

449. The DPMS entities are aware of their potential for ML/TF abuse in particular as regards the precious metals and stone supply chain identified in the NRA. BCB supervisory action – as exemplified in Box 5.1 - has greatly assisted the sector's awareness of the issue and identified areas in need of improvement.

Box 5.1. DPMS sector supervisory findings

Supervision of securities distribution companies (DTVMs) that operate with gold from mining regions – 2022

An obliged entity headquartered in São Paulo started its activity in March 2007. It has, in addition to its headquarters, 24 Gold Purchasing Agencies, which are located in regions close to the gold mines. DTVM only carries out operations of purchase and sale of gold, considered financial asset, acquiring the gold in the mining regions and reselling it in the secondary market. The institutions are not authorised to operate in the FX market.

In the period from April 2021 to March 2022, this entity performed operations with 10,255 customers, 10,203 of them classified as low risk, 39 classified as medium risk, and 13 as high risk, all of them being PEPs.

Based on the inspection carried out in 2022, Decon concluded that the adopted AML/CFT controls were precarious, requiring adaptation to the provisions of BCB

Circular 3978/2020, and improvements mainly in relation to CDD and procedures related to the “monitoring, selection, analysis and communication of suspicious transactions”.

The inherent risk of ML/TF was considered to be medium high, with the main risk factors being operations in the primary and secondary gold markets and having gold purchase agencies located in regions close to mining sites.

Source: BCB supervisory data

5

450. The DPMS entities also exhibited good knowledge of AML/CFT obligations although some entities were not able to fully articulate their responsibilities in terms of some preventative areas such as PEPs and TFS.

451. Notaries have a good understanding of the industry’s AML/CFT obligations and existing red flags. This sector understands the inherent ML threats to their gatekeeping role and identify corruption, real estate transactions, and tax planning and tax evasion as the largest ML threats. Additionally, notaries also identify complex transactions dealing with corporate transactions and business involving the management of assets through a power of attorney as other red flags and acknowledged the risk-based supervision of CNJ as being a highly effective means of increasing awareness of AML/CFT obligations. In line with their overall knowledge of the issues, notaries generally self-assess the sector as low risk.

452. Accountants possess an uneven understanding of both ML/TF risks within the sector as well as AML/CFT obligations. In interviews, accountants generally agreed on the national ML/TF risks facing Brazil. However, some accountants held the view that as most accounting clients are known customers or referrals from individuals in their network, there is less ML/TF risk within the sector; there was less appreciation for the possibility of accountants knowingly providing services to launder illicit proceeds. In general, most accountants viewed PEPs as the highest risk for their sector as well as business dealing with company service formation and complex legal arrangements. With regards to AML/CFT obligations, there seemed to be confusion surrounding STR reporting obligations. One accountant cited that a prospective customer requested assistance to transfer his business and its proceeds despite not being able to explain the source of the funds. Whilst the accountant understood the need and refused the business relation, it also concluded that there was no need to file an STR to COAF because no services were provided (without further questioning of the matter).

453. Real Estate Agents (REAs) have less understanding of the ML/TF risks as well as AML/CFT obligations. Despite real estate sector being identified in the NRA as one of the most significant areas of ML risk, REAs did not demonstrate an understanding of how their sector or their business could be misused by criminals. When questioned on the identification of real estate transactions being a common method of laundering illicit proceeds in Brazil, some REAs expressed disbelief.

Application of risk mitigating measures

Financial Institutions

454. The financial sector applies risk mitigating measures to a large extent although these often appear to include an excessive focus on de-risking activities.

455. FIs generally demonstrated the ability to adjust and shape their internal control mechanism according to risk although, some of the smaller entities, also appeared to be unaware of relevant typologies and the ways in which specific challenges should be addressed, namely in relation to the identification of PEPs, beneficial owners, and reporting obligations. For example, some of the entities interviewed did not consider complex corporate structures as red flags, stated they don't identify PEPs beyond those available in the public lists (so excluding associates and family members unless self-reported), admitted to practicing de-risking as a normal mitigating measure, and claimed the lack of obligation to report attempted transactions or business relations that did not materialise for lack of CDD information.

456. Banks and payment institutions apply acceptable measures to mitigate risks with BCB inspections over the past years (including the new supervision methodology) confirming that preventive measures are commensurate with the risks. FIs generally have AML/CFT controls in place that are reasonably risk sensitive as confirmed during the onsite visit.

457. Control mechanisms implemented by securities firms supervised by CVM are not as strong as others in the financial sector although the joint BCB supervision is helpful to ensure a greater awareness of risks and adequate preventive measures (where such dual supervision effectively takes place). Sectoral obliged entities interviewed reported that CVM is mostly focused on preventive financial crimes in general than on ML/TF risks specifically which has supported the implementation of more general preventative measures – aimed at preventing illicit activity - than the AML/CFT frameworks promoted and implemented by entities supervised only by BCB.

458. The foreign exchange sector demonstrated a strong awareness of its ML/TF risks by both larger and local entities. The sector is able to mitigate identified risks through strict control procedures and review which are strengthened by limitations on volume of transfers and group-wide compliance structures.

DNFBPs

459. Generally, DNFBPs utilise a range of risk mitigating measures. For the DPMS sector, the larger entities have robust compliance programs in place and implement risk mitigating measures in line with their institutions' risk profile, including adequate measures for transactions involving cash above BRL 100 000.

460. For example, one DPMS entity conducts enhanced screening for references to certain regions in Brazil with corresponding elevated number of PEPs, high level of cash circulation, and proximity to organised criminal groups. Another DPMS entity identifies customers who change their shopping behaviour, for example purchasing jewellery above the usual amounts.

461. The REA sector, while not possessing a deep understanding of the sector's ML/TF risks, implements some risk mitigating measures including real time searches for adverse media of prospective clients and general reputational checks on unknown

clients. Additionally, the REAs will take heightened measures if a client approaches a transaction using cash as all cash transactions are not common. However, given the uneven understanding of the ML/TF risks and lack of robust supervisory efforts for the DPMS and REA sectors, gaps in the implementation of adequate preventative measures are expected.

462. Notaries and accountants have varying levels of mitigation measures in place. Notaries often have robust screenings for PEPs and will conduct additional screening measures for transactions related to foreign jurisdictions. Additionally, notaries will pay special attention if there is an inability to identify the beneficial owner for certain legal entities. Accountants are especially attuned to the involvement of PEPs in any transactions. Additionally, accountants will execute additional risk mitigation measures when dealing with foreigners and funds originating from abroad.

463. Given the potential ML risks involving professional gatekeepers, and in particular lawyers, accountants, notaries, and TCSPs, combined with a lack of sufficient supervisory oversight, it is difficult to determine whether reporting entities' mitigating measures are truly commensurate with risks.

Application of CDD and record-keeping requirements

Financial Institutions

464. FIs broadly apply CDD and record-keeping requirements although larger institutions continue to demonstrate stronger systems than smaller and non-banking sectors. Foreign exchange brokers, non-banks FIs, MVTs, securities brokers and distributors have less developed controls, however, they put in place CDD measures in line with the nature and scale of the business. Nevertheless, BCB supervision reveals that CDD deficiencies are still among the most prevalent supervisory findings (see Table 5-2).

Table 5.2. BCB Findings (from Inspections carried out between 2014 and 2020)

Verification Item	SIFIs			Banking FI			Non-Banking FI			Total		
	Findi ng	Amend ed	%Amend ed	Findi ng	Amend ed	%Amend ed	Findi ng	Amend ed	%Amend ed	Findi ng	Amend ed	%Amend ed
Inspections carried out (2014 to 2020)	42			259			540			841		
Internal Audit	3	2	66,67%	166	160	96,30%	610	542	88,85%	779	704	90,37%
Complaint Channel(**)	0	0		9	9	100,00%	3	3	100,00%	12	12	100,00%
Know your Costumer	24	21	87,50%	416	404	97,12%	1690	1486	87,93%	2130	1911	89,72%
AML/CFT Controls(***)	2	2	100,00%	3	3	100,00%	43	39	90,70%	48	44	91,6%
Organizational Structure	5	5	100,00%	88	87	98,86%	550	506	92,00%	648	598	93%
Institutional Policy	2	2	100,00%	246	245	99,59%	1152	1092	94,79%	1400	1339	95,64%
Procedures and Tools	67	62	92,54%	563	547	97,16%	1932	1762	91,20%	2562	2371	92,54%
Training	2	2	100,00%	156	156	100,00%	537	500	93,11%	695	658	94,68%
Others(****)	0	0		10	10	100,00%	10	10	100,00%	20	20	100,00%
Total	105	96	91,43%	1657	1621	97,83%	6527	5940	91,01%	8289	7657	92,38%

*Only Findings registered in the APS-Siscom are presented in the table

**Introduced briefly as a verification item in 2018

***Refers to the relationship with banking correspondents (Resolutions CMN 3,954 and 4, 935).

465. Although, most financial institutions are aware of their risks and take appropriate measures to mitigate, some of the largest entities were not fully aware of how to comply with certain CDD measures, such as verifying client identification (Brazil is strengthening the national identification document system), access and verification of individual or company's income (sources of funds and of wealth), and the identification of beneficial ownership. Measures to obtain information on the customer's source of funds and source of wealth, for example, are very focused on income declarations but not necessarily involve a wider analysis. With larger FI's there is some confusion regarding the reasoning behind the collection of specific information, for example, proof of wealth or revenue appears to be mostly used to determine the type of business relation to shape the institutions' commercial objectives, rather than as a tool to determine ML/TF risks.

466. Broadly, BCB supervisory findings do not reveal significant issues as regards record-keeping practices (see table 5-3) which appear to be in line with an overall reasonable understanding of FIs obligations. For the evaluation of the timely addressing of the findings (see IO 3. 6.2.4 Remedial actions and effective, proportionate, and dissuasive sanctions, including Tables 6-13, 6-14 and 6-15).

Table 5.3. BCB Findings: Record Keeping

		Total	Amended	Open
Banking	Strategically Important FIs	13	10	3
	Banks and banks conglomerates	285	187	98
	State Owned Banks	45	21	24
	Universal and FX Banks	5	3	2
	Exchange brokers	196	100	96
	Non banking FIs	319	149	170
Securities	Securities brokerage and securities distribution	138	54	84

Source: BCB document (detailed findings)

467. While the understanding of BO requirements is better in larger FIs than in smaller ones, the gathering of BO information continues to need improvement. Some obliged entities expressed difficulties in accessing accurate beneficial ownership information other than that which is declared by the client. In addition, FIs are very focused on identifying the BO through ownership and less aware of the need to verify control. Some FIs put in place mitigating mechanisms and best practices to address these challenges, namely requesting additional notarised documents, onsite visits to legal entities and access to the available databases for verification and cross-check.

468. When faced with complex corporate structures or known ML/TF typologies most FIs declare opting for a de-risking strategy rather than risk mitigation. Some FIs, indeed larger ones, do not regularly file STRs when faced with incomplete client identification, regardless of the identified red flags.

469. As regards the securities' sector, information available to the assessors was not useful to determine the level of CDD measures implemented and if its implementation is adequately supervised. The outcomes of the interviews confirmed this perception and assessors consider that the preventive measures (including CDD), monitoring and analysis are more focused on the prevention of predicate offenses (specifically financial crimes, e. g. insider trading, market manipulation, etc.) than ML/TF which suggests obliged entities may be less attuned to emerging ML/TF risks, unless they pose an obvious commercial risk. Insurance and factoring entities seem to apply CDD obligations in line with their low exposure to ML/TF risks, although there is little evidence available.

DNFBPs

470. Compliance with CDD and record-keeping requirements in the DNFBP sectors is uneven due to a lack of understanding AML/CFT obligations in some sectors as well as differences in compliance capacity for different sized firms. For example, some sectors do not appear to be aware of the need to carry out additional analysis when appropriate CDD information is not obtainable. In general, regulatory authorities acknowledge a greater need for more AML/CFT awareness and training to their sector and have enacted several new and updated regulations focused on AML/CFT compliance in the DNFBP sectors.

471. Larger DPMS entities incorporate robust CDD and record-keeping requirements. These larger entities demonstrated a broad understanding of even

complex requirements including, for example, the obligation to identify the beneficial owner beyond ownership criteria. Additionally, some DPMS entities provided case examples of refusing business because of failures related to CDD and BO requirements without offering further analysis or reflection of the need to report.

472. REA entities vary in their understanding of CDD and record-keeping requirements. In general, REAs understand the AML/CFT obligations as stipulated in regulations. However, there is less clarity on whether REAs understand that STRs must be filed where CDD and BO information is unobtainable. Additionally, REAs have cited digital transactions as being difficult for the sector as it poses a challenge to obtaining CDD and complying with other record-keeping and verification requirements.

473. Notaries are aware of the AML/CFT obligations and generally emphasise an approach to CDD requirements that is taught by the College of Notaries in Brazil, including the need to check for beneficial ownership for transactions involving legal entities. Notaries also pay special attention to transactions where a final beneficiary is not possible to identify, however as with the remaining of DNFBP's it is unclear if notaries understand the need for further analysis in these situations, or the filing of an STRs for missing CDD and BO information.

474. A similar conclusion was reached regarding accountants which, while aware of AML/CFT requirements, appear less informed on the specific reporting obligations. Accountants generally understand their sector and place an emphasis on the screening of PEPs through robust screening tools. Additionally, if there are difficulties with obtaining CDD information during onboarding processes, accountants will refuse the business.

Application of EDD measures

475. Most financial institutions have a reasonable understanding of when and where enhanced due diligence measures should be applied but could benefit from additional guidance on complex high-risk scenarios. Most financial institutions mitigate known high-risk scenarios adequately, especially in relation to political exposed persons, new technologies, high-risk jurisdictions, correspondent banking, wire transfers, and targeted financial sanctions. These measures appear to be in line with a specificity of the business and the risk of the FIs but sometimes lack in sophistication.

Politically Exposed Persons

476. FIs are generally aware of PEP related risks and have sources to contrast customer's statements with available country PEP lists. The Brazilian Transparency Portal provides public access to a national PEP list managed and updated monthly by the Brazilian authorities which included all persons that carry or carried out (in the last five years) public or other relevant functions.⁷⁰

477. For the identification of foreign PEPs, obliged entities mostly rely on software tools but acknowledge that this system is limited and that they are greatly reliant on self-reporting. In particular, medium and smaller FIs have difficulties in securing reliable and affordable systems. Notwithstanding, most FIs use commercial software

⁷⁰ Portal da Transparencia, PEPs. Accessed 26 April 2023. Available at: <https://portaldatransparencia.gov.br/download-de-dados/pep>

and own developments to automatically screen customer PEP status, both at onboarding (as well on digital onboarding) and on an ongoing basis. This is clear for large and medium banks, co-operative FIs, insurance companies, MTVS and its agents. For smaller FIs, for instance medium size regional banks, exchange brokers, and some non-banking FIs, private suppliers of PEP lists are expensive and some of those interviewed mentioned their reliance on self-reporting and open searches for PEP identification.

478. The Brazilian public PEPs list includes public officials that hold prominent positions in national and state governments in the executive, legislative and judicial branches. However, Brazil as a federal and decentralized country has more than 5 500 municipalities with their respective prominent figures that are not included in the list of PEPs covered by current regulations.

479. The overall level of awareness of Brazilian authorities and FIs regarding the ML/TF risks and links to corruption posed by PEPs is high and well depicted in the NRA. Consequently, much of the FIs interviewed apply strict procedures to mitigate the risk of business relationships with PEPs (listed and foreign) and other prominent political figures, as well as members of municipal executives and legislative bodies. FIs typically manage a risk categorization and risk-based approach over PEPs which include ongoing monitoring and review of PEP status as needed.

480. FIs generally consider all PEPs as high risk. While the application of EDD measures is generally adequate given the risk and context, the FIs do not adequately assess the client risks and specificities and therefore are not aware of instances where they may be able to apply simplified measures or required to bring forth particularly enhanced procedures. FIs also have processes in place to obtain senior management approval prior to onboarding or continuing a relationship with a PEP. The approval could vary the seniority level required based on the customer PEP categorization.

481. DNFBPs in general are aware of EDD requirements for PEPs, although the examples provided of actions taken exhibited limited understanding on what enhanced measures would call minus notaries. As regards larger DPMS, entities have adequate measures in place to screen for PEPs in real time and appear to have sophisticated measures in place to detect entities and other individuals that may have links to PEPs. REAs and notaries are generally aware of applying EDD measures for the screening of PEPs. Notaries have, for example, various databases to help identify known associates or legal entities of PEPs. Accountants generally are aware of EDD measures related to PEPs but seem to rely solely on screening software to identify the involvement of PEPs in transactions.

Correspondent banking

482. BCB focused part of its supervisory activity on correspondent banking and consequently verifies the FIs correspondent banking procedures with higher-risk areas, counterparts and designated higher risk jurisdictions. The majority of FIs have demonstrated the ability to mitigate risks and implement adequate safeguard procedures to know their clients as well as their counterparts. Senior management approval is required prior to the establishment of a business relationship and an in-depth process - including fit and proper and reputational analysis - is applied for initial and ongoing due diligence of the respondent bank. FIs with business activities in correspondent banking business put in place monitoring alerts to detect unusual transaction patters and potentially suspicious activity. Most banks, apply enhanced measures to mitigate risks and exposed cases of termination of business relationship

in case of difficulties to maintain a proper understanding on the purpose and nature of the corresponding relation.

New technologies

483. FIs and supervisors are generally sensitive to the potential risks of new products and technologies. Supervisors implement sandbox initiatives or similar to assess and provisionally review new products and tools. At the FI level, the adoption of new technologies and product is similarly considered high risk and often requires the approval of senior management and follow-up reviews.

484. At the time of the on-site, virtual assets and VASPs were not covered by regulation or supervisory actions (see R.15), however authorities identified VASPs as a significant ML/TF risk element as a result of their characteristics, potential impact and lack of sectoral AML/CFT coverage. FIs demonstrated a fairly good awareness of the risk involved by VA and VASP. Some examples of mitigating measures were provided, including the implementation of closed-circuit systems that allow the FI to control the VA wallet of customers or simple investment products that do not imply payments or wire transfers. Despite some efforts most banks do not apply the existing risk assessment in their relations with VASPs and still apply de-risking policies. Virtual assets de-risking is currently justified by FIs as an expression of risk-aversion mainly due to its early stages of regulation and supervision.

Wire transfer rules

485. The BCB platform, Sistema Câmbio, guarantees the sending of a complete information message and the record keeping of all international transactions prior to the use of systems such as SWIFT. FIs with significant international presence are aware of the obligation of payment service providers to ensure that transfers of funds are accompanied by certain information about the payer and the payee in domestic transactions. Interviews showed that message information is readily available when required by authorities. The knowledge includes the MTVS sector, which performed operations on its global platforms, although meeting the requirements of the Sistema Câmbio. The BCB's supervisory experience does not reveal any relevant deficiencies in this area.

High risk jurisdictions

486. FIs including the smaller one as FX brokers or MTVS agents apply EDD measures on the jurisdictions listed as high-risk by the FATF and declare being aware of the need to frequently update due diligence measures to reflect changes in the listings. There is no evidence to suggest that FIs or other obliged entities distinguish between the different countries mentioned in the FATF lists. Larger FIs apply a risk-based monitoring activities to a wider range of jurisdictions particularly with tax evasion prevention purposes. DNFBPs and company service providers showed less knowledge of the existence of high-risk jurisdictions' lists and their impact on compliance efforts.

Targeted financial sanctions

487. With respect of TFS, FIs supervised by BCB and SUSEP have established mechanisms to maintain adequate monitoring during CDD and EDD processes, as well on an ongoing basis during the business relationship. FIs have a good awareness of

TFS obligations although this perception is not always risk-based and appears to be more linked to regulatory compliance than individual risk perceptions. Most FIs check the UN lists, as well other complementary list of financial sanctions, at least daily (generally three times a day) and manage their regular update. This assessment is consistent with BCB supervisory data, which demonstrates improvements in the area considering the TFS legislation and obligations in Brazil are fairly recent. BCB review of activities – for 2021-2022 – on TF and TFS process screening is detailed on Table 5-4.

Table 5.4.BCB Findings: TFS

		Total	Amended	Open
Banking	SIFIs	2	2	0
	Banks and banks conglomerates	64	43	21
	State Owned Banks	1	1	0
	Universal and FX Banks	1	1	0
	Exchange brokers	54	22	32
	Non banking Fis	69	29	40
Securities	Securities brokerage and securities distribution	42	15	27

Source: BCB document (detailed findings)

488. The procedures implemented by securities market institutions are general and mainly focused on financial crimes. In the view of some institutions, transactions are not easy to monitor on the ML/FT basis, for example as regards the stock exchange market.

489. DNFBPs are broadly not aware of the need to apply measures for TFS related to TF. The DPMS sector relayed to the assessment team that it generally does not screen against relevant UN sanctions lists, and that COAF does not provide feedback requiring this. REAs also were generally unaware of the UN TFS obligations related to TF other than what is stipulated in COFECI's internal regulations incorporating AML/CFT obligations.

490. Notaries are broadly aware of UN TFS obligations, but there was no supervisory finding to confirm that the sector consistently screens against UN sanctions lists. Accountants are also aware of the general obligation to abide by UN sanctions, but there were no specific measures referenced in meeting these obligations.

Reporting obligations and tipping-off

491. FIs interviewed onsite were aware of their STR reporting obligations. Generally, the number of STRs submitted by FIs is high and has been increasing in Brazil during the last years (see Table 5-5). The quantity of STRs peaked at 7 682 548 in 2022, with statistics showing a significant increase during the 2019-2020 period.

Table 5.5. FI STRs by year (including Cash Transactions Reports)

BCB	Banks	77.777	118.502	248.975	437.352	704.309	147.423	1.734.338
	Credit co-operative	35.062	45.290	50.789	55.157	56.050	9.976	252.324
	FX Broker	139.615	1.584	2.644	8.704	4.259	803	157.609
	Payment institutions			4.167	12.071	22.658	4.640	43.547
		1	10					
	Consortio	2.543	2.767	2.309	5.148	13.887	757	27.411
	Co-operative bank	1.948	2.247	2.885	4.316	3.061	463	14.920
	Credit & Investment companies	2.408	1.586	1.046	1.253	2.603	646	9.542
	Securities broker	1.049	1.102	900	598	470	84	4.203
	Securities distributors	964	437	236	156	144	17	1.954
	Savings and credit institutions	193	185	219	419	181	10	1.207
	Leasing companies	45	80	8	163	368	6	670
	Development agency	15	47	44	74	76	6	262
	Credit companies			4	13	3	2	22
	Mortgage company			1	12	4		17
COAF	Factoring	7.843	7.013	2.608	2.184	2.158	338	22.144
CVM	Mercado de Valores Mobiliários	28.112	17.240	35.804	54.346	45.435	7.174	188.111
PREVIC	Previdência Complementar	13.054	15.189	16.352	11.196	7.995	1.411	65.197
SUSEP	Mercado Segurador	60.858	85.093	85.549	61.616	387.571	63.359	744.046

492. The large figures include cash transaction reports (CTRs), which represent between 74% and 90% of the figures (see IO.6 for breakdown). Besides, for all types of FIs and DNFBPs there is a tendency to have a loose interpretation of the reporting obligations and to submit automatic reports based on pre-established typologies.

493. FIs reported 7.692.752 suspicious transactions since COAF was created in 1999. During 2022 FIs submitted a total of 1.394.511 STRs. In 2022 banks submitted 704.309 STRs submitted to COAF, followed by insurance companies (387.571), and co-cooperative FIs (59.111). Whilst high numbers of reporting are acknowledged, supervisors agreed many of these STRs are better characterised as originating in a rule-based rather than risk-based reporting systems. Nevertheless, some exceptions of improved STR practices and good use of financial intelligence are emerging as illustrated by the case study in Box 5.2

494. Some private sector institutions shared examples of how BCB feedback and guidance on red flags inform their reporting systems and help generate valuable financial intelligence, as well as mitigating actions.

Box 5.2. Human Trafficking STR**Case – Onboarding – Human Trafficking – Bangladesh****Red Flags**

- Individual Micro Entrepreneur (MEI) opened apparently on behalf of third parties;
- Proposals for opening accounts in retail branches at high-risk neighbourhoods, and at short period between them;
- Newcomers immigrants from Bangladesh to Brazil, without proof of wealth, acting as legal representative; located
- Companies located at the same address;
- Similarity between customers documents presented to open the account, same accountant and same business activity (clothing) and with share capital of R\$ 60,000.00

Actions taken

- 36 declined accounts with the same *modus operandi*;
- STRs sent to COAF;
- Relationship closure of previously opened accounts with the same characteristics;
- Companies identifies at the same address, blocked for future account opening or acquisition of products.

495. As regards the timeliness of STRs, interviews onsite confirmed that a rise in numbers of reporting, as a result of an improvement of the understanding of the need to report. While the framework allows for 45 days to perform the analysis, there was evidence from supervisors (see Table 5-6) that most FIs perform timely analysis and submit the suspicious reports promptly when the suspicion is identified. TF STRs are typically prioritised and filed within 24 hours of the transaction, although additional guidance or a specific regulation on timeframe's would be helpful. Supervisors oversee the compliance of the monitoring and analysis timeframe (45 days) and the obligation to promptly report.

Table 5.6. BCB findings: Communications Timeliness Index⁷¹

Year	Entities sample size	Timeliness >=97%	Timeliness between 97% and 95%	Timeliness between 95% and 85%	Timeliness < 85%	STR Timeliness Ratio (%)
2018	668	321	82	142	123	88.6
2019	657	447	60	57	93	91.48
2020	652	537	20	42	53	94.75
2021	642	560	21	29	32	95.98
2022	629	536	13	24	56	95.86

496. Whilst some supervisors noted an increase in the quality of STRs, mainly those submitted by larger FIs (see Table 5-7), most of the private sector called for greater feedback and guidance by COAF to inform their reporting procedures and the extent to which the content shared is helpful to criminal investigations.

Table 5.7. Rating average of STRs for Banking and Non-banking FI⁷²

Grade	Excellent		Very Good		Good		Regular		Insufficient	
	Bank	Non-Bank	Bank	Non-Bank	Bank	Non-Bank	Bank	Non-Bank	Bank	Non-Bank
2018	23,33%	2,32%	3,89%	2,57%	47,78%	22,36%	7,22%	6,60%	17,78%	66,15%
2019	28,36%	18,01%	5,97%	8,06%	38,81%	25,83%	12,69%	14,69%	14,18%	33,98%
2020	40,00%	18,87%	6,51%	14,91%	42,33%	31,53%	7,44%	8,18%	3,72%	26,52%
2021	55,81%	50,67%	4,65%	10,00%	32,56%	32,00%	4,65%	3,00%	2,33%	4,33%

497. The high number of reports raised some doubts regarding the quality of the STRs and for the ability to process them by the FIU (see IO 6). However, supervisory actions that check the adequacy of STR policies and procedures, along with a sample of suspicions and alerts analysed by the obliged entities, did not evidence the existence of serious deficiencies. Most parts of the STR template have loose text, and a more structured format could help to better fit the system available to COAF to receive STRs.

498. Most of the major banks have improved the efficiency of their monitoring and analysis time in the context of a high growth submitting STRs tendency. However, implementation of risk-based approach to deal with the alerts – especially TF alerts – should be considered.

⁷¹ Timeliness of communications: number of FIs that submitted their STRs within the timeline prescribed BCB's regulations.

⁷² Grading of 6 (Excellent) to 1 (Insufficient). Rating expressed in % for the total amount of STRs analysed. Sample verified by Siscoaf and submitted by COAF. The Financial Activities Control System (Siscoaf) is an electronic portal with restricted access for relationships with reporting entities listed in article 9 of Law No. 9,613, of March 3, 1998. Siscoaf allows obligated persons to send mandatory communications of financial transactions and the sending of communications of proposals, transactions or operations that may be communicated, consultation of the list of politically exposed persons, as well as the registration of reporting entities regulated or supervised by COAF.

499. As mentioned above, both FIs and DNFBPs mentioned lack of feedback and guidance from the COAF on the utility of their STRs. Where feedback is received, it generally relates to the timeliness and completeness of the report (i.e., whether all fields are filled out) rather than its quality or value. During the on-site, FIs mentioned that feedback is reasonable frequent from supervisory bodies (BCB or SUSEP). In this context, a number of FIs consider press releases on criminal cases as feedback on their reports and usefulness of their activities.

500. Entities are broadly aware of their obligation to avoid tipping-off customers when they make a STR and take several practical measures to prevent it. However specific actions, and their effectiveness, vary depending on the organisation or structure of the FI, including staff training, contractual confidentiality with employees or with outsourcing companies, ethical conduct rules. BCB reported one tipping-off case and the subsequent measures implemented to amend the deficiency, including additional staff training.

Box 5.3. BCB action to mitigate tipping-off

In the first half of 2020 BCB's Conduct Supervision Department became aware that a significant financial institution - when responding to demands registered by its customers within BCB's RDR system - had informed the customers that their transactions had generated ML alerts. In one case, the Institution informed about its decision to submit an STR.

BCB prepared a supervisory letter (Letter no 1724) and also highlighted the case at an executive meeting with the FI's senior managers, held on the 1st half of 2020.

To amend the deficiency, the FI trained its employees involved in providing answers to customers, warning about the prohibition of tipping-off STRs submission and other information related the AML/CFT process. The FI also institutionalized a training program on the subject for new Ombudsman employees.

Source: BCB supervisory actions

501. STR reporting numbers are particularly low for DNFBP sectors except for notaries. There is general acknowledgement from the private sector that better awareness and training is needed on STR reporting obligations. For example, there is a lack of clear understanding by reporting entities that an attempted transaction or business suspicious in nature should be communicated to COAF. For accountants, there is a general agreed view that as long as the reporting entity refuses the suspicious business, there is no need for further analysis of the case or to file an STR.

502. Given the size and the risk and context of accountant, DPMS, and real estate sectors, there is a significantly low number of STR filings: out of more than 40 000 DPMS (including ANM and COAF reporting entities), only 1 550 STRs were filed in 2022; out of more than more than 520 000 accountants, only 676 STRs were filed in 2022; out of more than 520 000 real estate agents, only 1 620 STRs were filed in 2022. Given that the STR filings are low, the supervisory authorities acknowledge that there

will be more outreach conducted to reporting entities to ensure greater awareness of STR filing obligations.

503. There is a large discrepancy in the number of STRs filed by notaries – out of almost 21,000 notaries, in 2022, more than 1.2 million STRs were filed. The vast majority of STRs are automatic, threshold or value-based filings rather than actual suspicious STRs. The notaries acknowledged that more work needs to be done to file better quality STRs.

Internal controls and legal/regulatory requirements impending implementation

Financial Institutions

504. Banks, foreign exchange brokers, non-banking FIs, and securities brokers and distributors supervised by BCB broadly implement adequate controls. Supervisory findings do not reveal any major concerns in this area, as outlined in Table 5-8 and Box 5.4. Most of the findings identified during the inspections were not serious and properly addressed by FIs of the banking and non-banking sectors. Generally, all FIs ensure their AML/CFT policies are reviewed and approved by senior management, are disseminated internally and available for consultation by all staff. As a result of some findings in the non-banking sector, BCB increase its oversight through securities brokers and distributors.

Table 5.8. BCB Findings: Internal Controls

Finding description	SIFI	Bank FI	Non-Bank FI	Total
Inspections carried out (2014-2020)	42	259	540	841
Deficiencies in AML/CFT Governance	-	3	-	3
Amended deficiencies	-	3	-	3

Box 5.4. Evolution of AML/CFT internal controls post BCB supervisory actions**SIFI 2**

The AML/CFT area was transferred to the Corporate Security Department (DSC), with the aim of increasing synergy with the fraud prevention activity;

Great evolution of the AML/FT organizational structure: less than 100 employees until 2018. By the end of 2021: around 300 people in the AML/CFT area

SIFI 4

Significant evolution in the AML/CFT structure:

- 2015: 1 superintendence with 169 employees;

- 2021: 3 superintendencies, with more than 300 qualified employees;

Creation of a specific “analytics” department, responsible for the use of new methodologies and technologies in AML/FT processes. Itaú’s Analytics team dedicated to AML/CFT is the largest in the segment, with 32 people

SIFI 5

Implementation of a supervision process by the AML/CFT area of the conglomerate’s leading institution, covering all other conglomerate’s companies.

Its AML/CFT organizational structure has remained relatively stable: from 63 employees in 2018, to 71 in 2021.

Source: BCB supervisory actions

505. FIs showed they have proper policies and procedures in place, typically follow the ‘three lines of defence’ model. Internal control procedures are applied to all FIs operating in Brazil and to any branches and affiliates abroad. Foreign entities operating in the country must also ensure compliance with existing regulations and practices.

506. Most of the FIs’ management structures guarantee an independent unit which conducts regular internal audits. Similarly, MVTS and foreign exchange brokers periodically carry auditing programs over their agents’ network.

507. FIs are aware of the obligation to apply group-wide AML/CFT policies. However, the information that they effectively share at group level is limited to general risk assessments and trends, auditing reports, significant findings and outcomes of the risk assessment processes. Most of financial institutions recognize there are still some challenges to sharing information at the group level, at the national and international levels.

508. Brazil has taken some steps to remove obstacles for cooperative IFIs (Complementary Law N° 196/2022) and Circular BCB N° 3978/2020 has provisions to share information although most entities do not currently implement these practices.

509. As regards the securities sector, in 2022 BSM found failures linked to AML/CFT controls as a result of its audits to the sector. The most significant challenges are found related to PEPs and the integrity of data collected for AML/CFT.

Overall, the supervisor concluded there is a general improvement in the development of internal controls and AML/CFT practices and that subsequent measures should focus on ensuring the better implementation of the risk-based approach, registration (CDD) and monitoring procedures.

DNFBPs

510. Large DNFBPs, including the DPMS and REA sectors, appear to have adopted AML/CFT programs with dedicated compliance officers or departments. These large institutions can provide AML/CFT trainings to staff. Other DNFBPs, particularly those smaller in size, have more limited compliance departments or programmes in place.

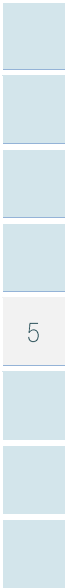
511. The assessment concludes that DNFBPs have only rudimentary internal controls. Apart from factoring companies (under COAF regulation), and a few jewellery and precious metals traders at some extent, most DNFBPs do not have procedures to properly implement their internal audit departments.

Overall conclusion on IO.4

Larger FIs are aware of ML/TF risks and understand their main AML/CFT obligations, including the implementation of the risk-based approach. Some of the most significant FIs confirmed persistent challenges with the implementation of BO requirements in the context of complex structures and with PEP requirements, suggesting that higher risk scenarios are often met with de-risking responses. The use of mechanisms for sharing information at a group-wide level is somewhat restricted by data sharing regulations and/or some lack of understanding of applicable regulations. Smaller FIs, the securities sector, accountants, notaries and real estate agents apply internal controls and procedures in line with the requirements but appear to follow a rule-based rather than a risk-based approach. Noteworthy deficiencies are found as regards the adequate application of CDD requirements and STR reporting obligations. DNFBPs generally understand the main ML/TF risks for Brazil as outlined in the NRA but there is uneven, and at times limited understanding of the ML/TF risks within the respective sectors. Deficiencies persist in the application of the risk-based approach.

Brazil implements AML/CFT preventive measures in a manner commensurate with its identified ML/TF risks, particularly with regard to the highest material sectors supervised by BCB, however, major deficiencies remain concerning the implementation of the risk-based approach by some parts of the securities sector and by DNFBPs, and lack of coverage for some important sectors.

Brazil is rated as having a Moderate level of effectiveness for IO.4.



Chapter 6. SUPERVISION

Key Findings and Recommended Actions

Key Findings

- a) BCB has licensing and control measures which prevent criminals from owning or controlling financial institutions. Illegal foreign exchangers – a high-risk area for Brazil – have been detected through BCB and police cooperation.
- b) BCB carries out a comprehensive ML/TF risk-based supervision of its obliged entities consisting of a combination of off-site and onsite techniques and a permanent AML/CFT supervision mechanism with the 5 Strategically Important Financial Institutions (SIFIs). All financial institutions operating in high-risk segments (including foreign exchange and gold) are supervised by the BCB in line with a risk-based approach. BCB interacts well with its obliged entities offering constant feedback to those institutions in stricter inspection cycles. Nevertheless, additional guidance on emerging high-risk scenarios and country specific ML/TF risks by all financial supervisors would be welcomed.
- c) CVM's scarce supervisory resources are not always used in a risk-based fashion and are more often focused on prudential issues and procedural implementation of requirements than on mitigating ML/TF risks. This is particularly evident in those entities not subject to BCB's supervision or to the self-regulatory body (BSM) standardised audit programs.
- d) BCB and CVM do not apply proportionate and dissuasive sanctions sufficiently in line with ML/TF risks or the nature of the shortcomings identified (in the case of BCB), despite BCB's adoption of measures to increase the effectiveness of its sanctioning approach (including through Settlement Agreements) and the individual deterrence that stems from its strong supervisory and follow-up actions.
- e) The implementation of the risk-based approach to the DNFBP's sector is broadly incipient and despite some sectors' advances, most are still found lacking, especially as regards ongoing monitoring of ML/TF risks and threats as relevant to the different contexts.
- f) The DPMS sector supervision and licensing is made up of three supervisors spanning the supply chain, which led to disjointed supervisory efforts. There is an uneven understanding amongst the DPMS supervisors of sectoral risks inconsistent with the size, variety, and characteristics of the sectors. The risk-based approach is implemented to a limited extent

because of lack of resources dedicated to supervision across the different sectors.

- g) Across most DNFBP sectors, obliged entities have gained increased awareness of AML/CFT obligations. However, most DNFBP sectors lack guidance and feedback from competent authorities, and the number of communications to COAF is still low. Authorities recently adopted regulatory and legislative changes to the DNFBP sectors which makes it difficult to assess the impact of supervisory actions on reporting entities.
- h) There are some services outside AML/CFT supervision. Despite the awareness raised by BCB on the high risks posed by customers that are VA brokers, there was no regulation and supervision in force in relation to VASPs at the time of the onsite. Lawyers are not regulated for AML/CFT and the assessment team was unable to identify or assess any relevant measures implemented by the Brazilian bar association (OAB). Company service providers (most often in the form of accountants or lawyers) are not supervised for AML/CFT purposes. While the CFC supervises accountants generally, it does not supervise the provision of services to companies outside of the traditional accountancy tasks.

Recommended Actions

- a) All supervisors should enhance their efforts to raise and increase awareness of ML/TF risks, including understanding of sector risks specific and implement – adequately resourced - risk-based supervision. An increase of resources is suggested for CVM, ANM and COAF, but advisable to all supervisors.

Financial Institutions

- b) For the purpose of fit and proper assessments (and their revision), Brazil should allow licensing authorities to assess the possibility of performing regular and, where possible, integrated consultations to COAF and other criminal agencies (whilst preventing tipping-off) to ensure that criminals do not control or hold a management position or a controlling interest in FIs;
- c) BCB should pursue the refinement of its well-established supervisory model and implement supervisory cycles with pre-established lengths for all subsectors in line with the risk, including subsectors that are within CVM shared supervisory remit, to ensure full proactive coverage of all sectors.
- d) CVM should ensure that its supervisory action, either direct or through BSM, is performed on a risk-sensitive basis and has proper coverage (mainly the entities that are not subject to BCB's shared supervision). BCB

and CVM should enhance exchange of information on the preparation and execution of supervisory plans.

- e) BCB and CVM should increase the use of administrative proceedings related to AML/CFT breaches, as well as the dissuasiveness of pecuniary sanctions, taking full advantage of the new legal framework on sanctioning (including but not limited to Settlement Agreements already in use by BCB).
- f) BCB should rank supervisory findings of both banking and non-banking financial institutions according to their seriousness and underlying risk to ensure that appropriate remedial and sanctioning action is taken. This should allow a differentiation between those cases where measures can be adopted on an increasing scale and those where the severity of the finding justifies the immediate opening of a sanctioning proceeding.
- g) Financial supervisors should issue further structured guidance on the high-risk scenarios that trigger the adoption of EDD measures and promote awareness of the adverse effects of de-risking, mainly of the NPO sector.

DNFBPs

- h) DPMS supervision should be integrated, and the three supervisory authorities should take concrete steps to increase coordination and take further action to address the currently identified deficiencies, including measures that ensure appropriate and consistent AML/CFT supervision priorities across the supply chain.
- i) ANM should enhance efforts to identify the misuse of mining licenses and unlicensed or unregistered mining activities.
- j) DNFBP supervisors should ensure effective and dissuasive sanctions are administered for violations of AML/CFT obligations.

General

- k) Brazil should implement a supervisory or monitoring system in relation to the activities carried out by VASPs, lawyers, other independent legal professionals, and TCSPs that are subject to the FATF Recommendations.

512. The relevant Immediate Outcome considered and assessed in this chapter is IO.3.⁷³ The Recommendations relevant for the assessment of effectiveness under this section are R.14, 15, 26-28, 34, 35 and elements of R.1 and 40.

Immediate Outcome 3 (Supervision)

513. Further to the analysis of Brazil's risk and context detailed in Chapter 1 and the analysis of IO.4, the assessment of the supervisory framework is particularly

⁷³ When assessing effectiveness under Immediate Outcome 3, assessors should take into consideration the risk, context and materiality of the country being assessed. Assessors should clearly explain these factors in Chapter One of the mutual evaluation report under the heading of Financial Institutions, DNFBPs and VASPs, as required in the instructions under that heading in the Methodology.

relevant for banks, foreign exchange brokers, MVTS, and DPMS sectors and these sectors have been most heavily weighed. Given the economic significance and the vulnerabilities identified, the securities sector, real estate, notaries, accountants, lawyers/TCSPs and VASPs are moderately weighed while the insurance, private pension funds and factoring sectors are categorized as low risk.

514. BCB's licencing and supervisory remit covers the most significant part of Brazil's high and medium risk financial subsectors, including the most significant intermediaries operating in the securities market, like Securities Brokerage Companies (CTVM) and Securities Distribution Companies (DVTM), that are also subject to the supervision of CVM. According to data provided by BCB, the banking segment has approximately 90.8% of the market share, based on the value of assets (data as of March 2023). BCB's supervisory universe is relatively stable with a total of 1 685 entities in 2022. Regarding the foreign exchange market, one of the high-risk segments pointed out by the NRA, the ten largest financial institutions in this segment have 81.2% of the market.

515. CVM supervisory remit covers 7 247 entities in 2022 that operate in the securities sector, including the exclusive supervision of entities operating in such market that are not subject to BCB's supervision, like fund managers and "pure asset managers" that do not classify as financial institutions.⁷⁴ Despite the awareness raised by BCB on the high-risks of customers that are VA brokers and the recent legislative initiatives, there was no regulation and supervision in force in relation to VASPs at the time of the onsite visit.

516. The assessment team considered supervisory statistics, interviews with the supervisors and private sector entities, as well as case studies provided by competent authorities. For the assessment of materiality within the financial sector, the assessment team considered the following relevant to demonstrate the prevalence of BCB's wide supervisory remit: (i) a significant part of the financial services subject to the exclusive supervision of CVM are related to the provision of information and advisory services without the ability of executing the transactions themselves (for instance, 1143 securities advisors); (ii) according to data provided by CVM, resources that entail the participation of portfolio managers that are not FIs fall below 2% of the net worth of all investment funds; (iii) the portfolio managers for non-resident investors must be financial institutions also supervised by BCB; (iv) concerning electronic platforms of participative investment (crowdfunding), in 2022 this segment has raised about USD 0,024 billion, based on data provided by CVM.

Licensing, registration and controls preventing criminals and associates from entering the market

517. BCB has put in place a robust framework to prevent criminals and their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function in financial institutions. BCB performs checks to ensure the reputation of prospective directors and qualifying shareholders, both in the licensing stage and where modifications or renewals take place. These checks include the fulfilment of questionnaires by the applicants, regular consultation of national supervisors and foreign counterpart authorities, as well as independent

⁷⁴ Certain financial institution authorised by BCB may also require its registration before CVM to provide services in the securities sector that fit within its legal type. This explains the duplication of data between both. In 2022, 882 entities were subject to dual supervision with BCB, according to data provided by CVM.

searches on different public databases to assess negative references and the existence of criminal convictions or investigations. For example, applicants for holding a controlling interest or managerial office for the first time at all financial institutions are subject to enhanced scrutiny that entails, among other searches, consultation of Infoseg network (database that contains basic information on individuals with criminal proceedings and security concerns) and databases made available by the different courts and prosecution services. Such enhanced scrutiny is also performed in renewals of mandates and changes in control where reasons for concern are internally identified or in consultation to CVM.

518. While statistics provided in this context do not disaggregate the reasoning for rejections, BCB provided evidence that:

- a) there were applications rejected, partly rejected, or withdrawn by the applicant due to matters related to AML/CFT, origin of funds or reputational flaws (since 2018 more than 60 applications were dismissed without decision or rejected on these grounds);
- b) as long as there are solid grounds, rejections do not require *de facto* convictions;
- c) cooperation with the Department in charge of AML/CFT supervision (Decon) is fluid and frequent including on issues related to licensing and fit and proper assessments.

519. Identically, SUSEP requires that directors and qualifying shareholders fulfil questionnaires to assess their reputation, in addition to consultations and searches to public databases in a manner proportionate to the identified risks of the sector.

520. In those situations where it cannot rely on BCB's assessment, CVM provided information on the initial analysis of the suitability of new firm's prospective AML/CFT policies in light of Resolution 50/2021, but not on the practical fit and proper verifications. Indeed, CVM confirmed that issues stemming from licensing and fit and proper assessments in recent years did not relate to ML/TF-related concerns. Nevertheless, where there is no dual supervision the applicable regulations foresee the collection of information on reputational issues and eventual criminal proceedings and administrative offences (see, for instance, CVM Resolutions 21/2021, 60/21 and 88/22). Given the fragmented nature of Brazil's judicial, prosecutorial and investigatory system (at federal and state level), there is a certain operational risk that consultation of different databases may not cover all convictions and ongoing criminal investigations/ proceedings that may be relevant for fit and proper assessments. Additionally, supervisors cannot be informed of ongoing criminal proceedings subject to judicial secrecy that may affect the suitability of applicants.

521. In addition to consulting existing databases, BCB also seeks information from police, judicial authorities and COAF on an *ad hoc* basis. However, it does not do it as standing practice because it is legally required to share this information with the applicant and doing so may constitute tipping-off in the case of ongoing investigations.

522. Furthermore, as the main licensing supervisor, BCB can trigger suitability reassessments whenever it becomes aware of relevant supervening facts, whose knowledge usually stems from ongoing supervision, adverse media, requests from other authorities and suitability assessments made by supervised firms under the

applicable regulations. The recent cooperation agreement established between BCB and CNJ may also contribute to the earlier detection of negative references, whenever they are not subject to judicial secrecy, and is expected to allow a unified search of court proceedings.

523. In the context of the continuous monitoring of suitability, BCB provided statistics on the refusals of reappointments for renewing mandates as managing officials (no cases related to controllers or shareholders). Since 2018, 213 refusals took place, even though not all relate to issues pertinent to the current evaluation and most of them relate to credit unions. In the case of banks, 14 refusals took place after 2018. Nevertheless, BCB provided examples of refusals in the banking sector based on the absence of unblemished reputation (including by virtue of the association with ongoing investigations) and also a case where it forced modifications in the controlling structure of a bank operating in the remittance sector that allegedly had executives related to a recent high-profile investigation. Indeed, in the remittance sector BCB privileged the use of other tools with equivalent effect, like the disqualification (or prohibition to operate) and the extra-judicial resolution in the context of sanctioning proceedings.

DNFBPs

524. Most DNFBP sectors are subject to licensing and registration procedures, including fit and proper checks to prevent and detect criminals from operating in the market. In general, DNFBP licensing authorities take a reactive approach to detecting unregistered or unauthorised activities, with the exception of COAF, which supervises one aspect of the precious metals and stones supply chain.

525. The DPMS sector and Brazil's precious metals supply chain is supervised by three government entities: the ANM, which authorises mining activities producers of precious metals or stones, the BCB, which supervises financial sector companies known as Dealers in Securities and Valuables (DTVMs) that are authorised to buy gold from miners in Brazil, and COAF, which supervises trade of jewellery, gemstones and precious metals. ANM is also responsible for efforts – albeit nascent – to improve licensing procedures, including ANM Resolution 129 (in effect March 2023), requiring registration of all mining permits (PLG) holders in a central database maintained by ANM and accessible by COAF, maintaining information on customers and transactions, and reporting to COAF for suspicious transactions under AML/CFT purposes, among other.

526. ANM licenses mining rights and collects mining royalties. During the initial application and registration process of a prospective mining applicant, ANM conducts fit and proper checks but does not check for adverse media on the applicant during this registration phase. Upon successful completion of an application, ANM grants a license (artisanal mining permit or PLG) to the owner of the mining right who is obliged pay mining royalties to ANM. As of the onsite visit, there were over 35 000 active PLG holders for all mineral substances, and 2 199 active PLG titles for gold mining and 482 active industrial mining titles.

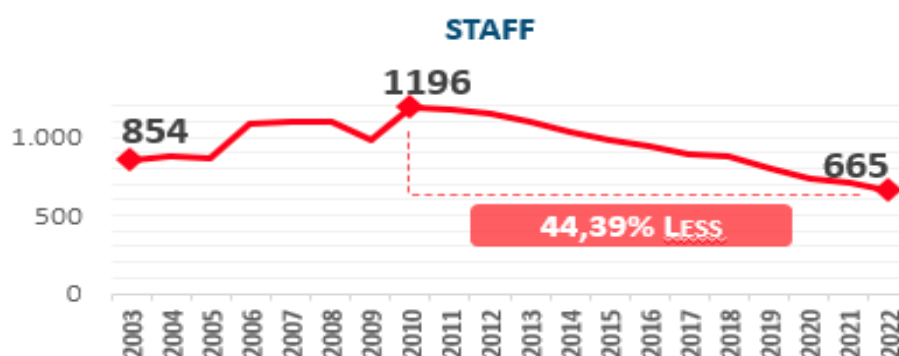
527. Given the vast amount of active PLG holders and the large geographical jurisdiction ANM must cover, ANM carries out limited monitoring of licensed miners through satellite imagery observation that detects the abuse of legitimate mining licenses. For example, ANM can verify, through satellite imagery, whether a licensed mine is active or inactive, which may indicate that the mining license is being used for illegal mining activities under the auspices of a legitimate license. ANM is also able to

investigate licensed owners of mining rights if LEAs provide referrals or prosecutions are initiated.

528. ANM does not take adverse media into account in the ongoing monitoring of active licensed mines, as confirmed by awareness of adverse news on licensed mines being connected to individuals convicted abroad of predicate crimes. Instead, ANM must receive a formal complaint about a licensee before ANM can investigate, which is not always an effective practice.

529. ANM conveyed that it is unable to prioritise the identification of unlicensed mining operations because of limited resources and defers this work to other agencies that conduct more investigations in the field including the FP and IBAMA. As ANM is unable to track the entire DPMS supply chain from beginning to end, ANM focuses on its responsibility which is the front end of the supply chain to cover the producers of the precious metals and documentation of their first purchasers. While this appears appropriate given the segmented approach to Brazil's supervisory oversight over the jewellery, gemstones and precious metals supply chain, the assessment team remains concerned over the lack of budgetary, human, and technological resources at ANM – the department currently holds 50% less staffing resources as compared to a decade ago (see Figure 6-1).

Figure 6.1. ANM Resourcing Trends (20 years)



530. BCB supervises the DTVM sector, which are the main dealers in the securities market in the acquisition of gold. DTVMs are generally the first touchpoint where extracted gold enters the market either as a commodity or financial asset. The granting of DTVM licenses is based on an assessment of the compliance of AML/CFT procedures and controls with the rules issued by BCB. As of the onsite, there are 36 brokers operating in Brazil, of which only 8 DTVMs have operated with gold in the last 2 years, while currently only 6 are operating in this market.

531. COAF supervises several other sectors, including other commercial dealers of precious stones and metals, financial institutions engaging in factoring, sellers of luxury or high value goods, and the promotion or commercialization agencies of the transfer rights for athletes or artists. In total, COAF supervises over 19 000 reporting entities, 5 266 of which participate in the trade of precious stones and metals. Any

entity engaged in these activities are required to register with COAF. Additionally, COAF takes proactive measures to search the database of the RFB which holds information on the incorporation of Brazilian legal entities, including the type of business activities the legal entity declares it is engaging in. To ensure a comprehensive approach to supervision, COAF will identify business entities that are in the RFB database but unregistered with COAF and conduct inspections with the aim of promoting proper registration.

Other Sectors (Notaries, Accountants, Real Estate Agents, TCSPs, and Lawyers)

532. Other DNFBP sectors also undergo fit and proper checks during licensing and registration procedures.

533. Notaries, of which there are 20 874 registered as of 2021, are public servants in the Brazilian system and undergo educational training and civil examinations as professional requirements. Notaries are supervised by the CNJ, a government entity at the federal level, which oversees local and state controllers in their appointment of notaries and conduct AML/CFT supervision. As an organ of the Brazilian judicial system, the CNJ is informed of any LEA investigations or prosecutions in which a notary is involved. However, the CNJ did not provide specific statistics or case examples of the detection of breaches of licensing or registration requirements.

534. Accountants are regulated and supervised by the CFC, an SRB responsible for ensuring the quality of the accounting services provided as well as the professional ethics of accountants and accounting firms. To achieve these objectives, the CFC conducts professional qualification exams, as well as inspections of accounting companies and accountants. The CFC supervises over 520,000 licensed accountants, around 300,000 of which engage in accounting activity covered by AML/CFT legislation. While the CFC relayed that it is difficult to proactively detect licensing and registration breaches due to the large universe of reporting entities, it confirmed its ability to investigate referrals from LEAs and carrying out targeted examinations of reporting entities resulting in a small number of revocations of licenses throughout the years.

535. Real Estate Agents (REAs) are supervised by an SRB system: COFECI-CRECI which oversees a universe of 538,440 licensed REAs as of 2022. COFECI (Federal Council of Real Estate Agents) is the federal SRB operating nationwide charged with creating national protocols and procedures, with rules and resolutions to be followed by the CRECIs (Regional Councils of Real Estate Agents), which are the State-level supervisory body. For each REA license application, COFECI/CRECI conducts checks on the applicant with the Electoral Court and relevant state level Court of Justice before an application is granted. COFECI/CRECI relayed having previously taken measures to revoke licenses stemming from criminal investigations and prosecutions involving REAs; however, no statistics on these case studies or specific procedures were submitted to the assessment team.

536. Lawyers are overseen by the OAB. While the assessment team understands that lawyers also undergo fit and proper checks prior to admission to the federal bar, Brazil provided no information to determine the effectiveness of the OAB's licensing, registration and control protocols.

537. TCSPs are not subject to a licensing regime. Various private sector actors and government authorities confirmed there are company service providers, most often in the form of accountants or lawyers, as captured under the FATF methodology.

There is no supervisory authority overseeing company service providers, and while the CFC supervises accountants generally, it does not supervise activities outside of traditional auditing and accounting. Additionally, the assessment team was able to find evidence of company service providers, for example in the form of consultancy firms, but was unable to confirm with the Brazilian authorities the existence, scope, professional background and size of these types of firms.

Supervisors' understanding and identification of ML/TF risks

538. BCB has a very well established and effective risk assessment model, based on the NRA, SRA and information stemming from supervisory activity and engagement with private sector forums. BCB demonstrated a thorough understanding of the risks identified in the NRA and both SRAs performed to date (including on TF)⁷⁵. Moreover, BCB demonstrated its continuous awareness to identify emerging risks, like those related to new technologies.

539. According to the results obtained in the first SRA, 46% of the risks identified are classified as "very high" or "high". Highest risk events identified in the first SRA are considered to have a particular presence in the market and are related to the following *modi operandi*:

- i. Fractioning credit transactions of funds of illicit origin in checking account/savings using different institutions.
- ii. Fractioning credit transactions from resources of illicit origin into a prepaid payment account at the same institution.
- iii. Withdrawals in cash of significant volumes of prepaid payment account resources, intended for criminal activities.
- iv. Import payment based on non-existent, fraudulent high value commercial transactions or with reuse of illicit transaction documents.
- v. Payment of import freight based on non-existent, fraudulent high value commercial operations or with reuse of lawful operations documents.
- vi. Sale of significant volume of foreign currency in kind in exchange for the receipt of funds in national currency of illicit origin.
- vii. Accrediting "façade" establishments to receive funds of illicit origin using prepaid and post-paid payment instruments.

540. BCB has also developed an internal comprehensive risk matrix comprising general and specific ML/TF risk indicators to inform its own actions. Data made available on the risk assigned to the different segments and the diverse indicators of the matrix, as well as supervisory coverage and planning, show that this matrix is well adjusted and in line with the major risks identified in each segment. Among the indicators used, there are indicators related to the risk profile of customers that consider, for example, concentration of customers whose line of business is of higher risk, location of customers in areas of greater risk of ML/FT, foreign customers or age group. There are also indicators focused on the institutions' operations, such as the concentration of operations using correspondents with suspicious history, high amounts of transactions in cash, operations with signs of fractioning to circumvent controls, etc. The presence of diverse specific indicators related to foreign-exchange

⁷⁵ It is worth noting the SRA analysis is the main source of information to the NRA acknowledgement of vulnerabilities.

operations is also highlighted, given the high risk of such transactions. Finally, there are indicators that consider the profile of the supervised entity, such as quantity, customer base growth, and market share variation. To enable the system to calculate the weighted average of indicators, all indicators are previously transformed (by machine learning technology) to the same scale, considering scores from 1 (best) to 4 (worst). The AML/CFT risk matrix is revisited annually, at which time all available information is updated along with the supervision cycles. Whilst different segments of supervised entities are allocated to supervisory cycles of variable length (depending on the respective risk), all financial institutions supervised by BCB, regardless of the supervisory cycle to which they belong, are constantly monitored in relation to the AML/CFT indicators contained in the matrix. For instance, if there is a relevant risk alert or outlier related to lower risk entities, additional supervisory actions may be scheduled (the so-called “reactive model”).

541. The NRA identifies the subsectors supervised by SUSEP and PREVIC (re)insurance, capitalization and complementary pension funds or entities as low risk. Notwithstanding, SUSEP demonstrated a satisfactory understanding of the ML/TF risks of the respective supervised sector, through the explanation of the NRA and the description of the SRA performed to date. Moreover, sectorial monitoring performed by SUSEP (for instance, related to capitalization companies) demonstrates a continuous awareness of possible areas of concern, in line with the low risks identified (see Table 6-1 below).

Table 6.1. Results of the SUSEP Sectorial Risk Assessment

Sectors	Risks Factors	Sector Vulnerability
Capitalization	29	Average
Brokers	9	Low
Open Complementary Pension	24	Low
Insurance, Reinsurance and Retrocession	50	Average

542. CVM did not formally participate as a member of the working group in charge of the NRA but was consulted in this context. The parameters analysed in CVM’s SRA did not allow a proper understanding of the main risks of all supervised subsectors, since the analysed “risk events”: (i) seem to disregard areas not covered by B3/BSM self-regulatory activity; (ii) do not place enough focus on inherent risk factors. In this context, only the lack of identification of the true ultimate beneficiary in operations carried out within the market infrastructure managed by B3 was assessed as having a residual medium risk (all the other events were rated by CVM as having a lower or nonsignificant risk). While the NRA does not identify higher risks in the securities sector, the medium rated vulnerability assigned therein may suggest that CVM’s SRA partially underestimates the assessed risks.

543. Engagement between CVM and the BSM (self-regulatory body for the stock market) seems more focused on the implementation of CVM Resolution 50/2021 and less on the preceding understanding of risks that should inform supervisory and self-regulatory activity. In line with this finding, some of the simplified BO measures foreseen in CVM Resolution 50/2021 (article 13) are not based on an assessment of

the risks verified in Brazilian financial sector, but more on the abstract incorporation of international best practices and other considerations not related to ML/TF risks.

544. Lastly, Joint Letter no. 2/2023/CVM/SMI/SIN/SSE of 13 March 2023 denotes a very recent and high-level knowledge of the NRA that would only affect supervisory action to a marginal extent until further action is concluded.

DNFBPs

545. The risk understanding amongst DNFBP supervisors is varied but broadly evolving in a positive way. In general, DNFBP supervisors displayed a high level of understanding of Brazil's national ML/TF risks. However, given the large population of reporting entities, and the nascent nature of some of the SRBs' AML/CFT oversight mechanisms, the risk understanding is less developed. This includes difficulties in identifying specific ML/TF risks between types of institutions and among individual institutions.

DPMS Sector

546. ANM expressed good awareness of Brazil's national ML/TF risks but had less awareness of the evolving ML/TF threats specific to its reporting entities. This limited awareness is chiefly due to resourcing constraints however, ANM relayed that until very recently, there was less focus on strengthening internal education on AML/CFT because efforts targeted the proper registration, maintenance, and enforcement licensed mining activities. However, ANM is gradually developing more expertise in this area and is actively seeking cooperation with the other supervisory authorities to strengthen AML/CFT oversight over precious metals and stones supply chain.

547. ANM works with ENCCLA on strategic actions to address the identified ML/TF risks and strengthen its AML/CFT oversight. Within its reporting entities, ANM understands that PLG licenses are riskier than industrial mining licenses as there are more developed controls of the industrial mining industry. However, ANM does not have a further understanding of its reporting entities' individual ML/TF risks and is currently developing a risk matrix to better identify the high, medium, and low ML/TF risk reporting entities under its supervision.

548. As regards the DTVM sector, BCB holds a better understanding of the country's ML/TF risks and is generally aware of the risks faced by the sector in relation to the mining of precious metals and stones. In instances where evolving threats or concerns are discovered, BCB coordinates with other supervisory authorities to take action. For example, BCB identified that some owners of DTVM companies were also the owner of mining rights themselves presumably to take advantage of the first purchase requirement of gold to DTVMs. While this is not illegal, BCB is taking steps to regulate this more rigorously through provisional measures as there are potential ML/TF risks with allowing an ANM-licensed miner to operate a DTVM for the purposes of moving produced precious metals and stones.

549. COAF has a high degree of knowledge on the ML/TF risks affecting the DPMS sector as a whole. As the competent authority with the obligation to supervise sectors without a designated AML/CFT authority, COAF took the lead in ENCCLA and the NRA as regards this sector and the precious metals and stones supply chain. COAF has developed a supervision risk matrix tool that assesses the degree of risk to each reporting entity resulting in a categorisation of around 200 high-risk DPMS entities out of a population of around 5 266. Additionally, COAF displayed further

understanding of evolving ML/TF risks within the precious metals and stones supply chain as it referenced a relatively new type of DPMS - commercial companies of commerce and exportation of gold - identified in the context of supervisory outreach to the sector.

Other Sectors

550. The CNJ had less awareness of the ML/TF risks to the notary sector. CNJ's perception is that as public officials, notaries are subject to strict educational and licensing measures accountable to the judicial branch and therefore less susceptible to ML/TF risks compared to other sectors. However, the notaries themselves presented a better understanding of specific ML/TF risks than the supervisor noting specific areas of concern including high value real estate transactions, business relations with PEPs, complex transactions, and transactions involving power-of-attorney (see IO.4).

551. The CFC generally understands the ML/TF risks to the accounting sector recognising that it must do more to focus on ML/TF risks, in particular, as professional gatekeepers have a high vulnerability for ML/TF. Additionally, the CFC relayed that its current internal regulation is in its third iteration and has made good improvements regarding AML/CFT obligations. At the same time, the CFC stated additional work is needed to incorporate better risk management and compliance governance controls within the accounting regulations, and that the CFC will work to strengthen the AML/CFT obligations in the next generation of regulations. These efforts will enhance the CFC's understanding of the evolving ML/TF risks posed to the sector.

552. COFECI acknowledges its ML/TF risks and understands that real estate is frequently utilised to launder illicit proceeds. Its work over 20 years focused on convincing the sector to adopt AML/CFT measures and then to raise awareness on complying with AML/CFT legislation. COFECI also identified higher risks in rural areas as there are more informal methods of real estate transfer that can be utilised by criminal actors. COFECI believes its sector is, at present, generally aware of ML/TF risks as most agents learn about these obligations entering the profession, but there is more work to be done in the form of awareness raising activities and supervisory examinations.

Risk-based supervision of compliance with AML/CFT requirements

553. BCB adopted a risk-based supervisory model under which supervisory actions have different levels of intrusion depending on the risks of supervised firms: (i) Conduct Continuous Monitoring (ACC) is the supervisory tool applied for financial institutions with high risk and impact; (ii) Remote Compliance Inspection (ICR) intends to update the Risks and Controls assessment (RCA) in a more standardised and less intrusive way, thereby allowing comparisons between firms; (iii) Remote Direct Inspection (IDR) allows a deeper and more focused analysis than ICR and is used in potentially more severe situations, which demand a more accurate and documentary work; (iv) thematic inspections/ horizontal reviews, that are integrated, whenever possible, in the above mentioned types of supervisory actions.

554. A statistical summary view of BCB supervisory actions and respective coverage is provided in Table 6-2 and in Table 6-3 with an overview of the coverage of such action by segment, risk, assets and number of financial institutions.

555. Consistently with a risk-based approach and despite its mostly remote nature, under ACC and IDR the supervisor defines samples of customers and transactions to assess AML/CFT requirements (with the possibility of accessing firms' IT systems), while within the ICR it requests surgical documentary evidence of the declared controls and the samples are provided by the supervised firm based on the criteria defined by the supervisor.

556. Depending on the risk of the different supervised segments, BCB establishes the length of the diverse supervisory cycles and the type of supervisory actions to deploy, as depicted in the table below on allocation of supervisory actions (Table 6-4) referring to the planning of 2023. While BCB's supervisory action was able to cover the higher-risk entities in each subsector (for example, DTVMs directly buying gold from mining companies), some subsectors are subject to ad hoc supervisory cycles without a pre-established length. Nevertheless, in such cases, the above-described matrix and reactive model allowed the identification of extraordinary events that triggered ICR supervisory actions to lower risk entities. For instance, since 2021 BCB carried out 9 ICR analyses to DTVM/ CVTM companies without transactions in the FX and/or Gold markets. BCB also performed extraordinary inspections following referrals from BCB's monitoring Department (Desig) (mainly on atypical issues detected in the foreign exchange market), but not from external stakeholders, such as COAF.

Table 6.2. BCB Supervisory Actions

Type of inspection	Sector	2018	2019	2020	2021	2022	Total (2018-2022)
ACC	SIFI	5	5	5	5	5	25
	State owned bank	7	8	8	8	8	39
	Universal Bank/FX Bank	10	8	9	12	10	49
	Payment Arrangement Settlor	0	0	5	5	5	15
	Acquirer (payment card intermediaries)	0	0	1	1	1	3
	Total	22	21	28	31	29	131
ICR	Banks	26	1	2	17	14	60
	Private-label credit card issuers	0	0	0	1	0	1
	Acquirer (payment card intermediaries)	0	1	0	0	0	1
	Development Agencies	0	12	4	0	0	16
	Leasing Companies	1	0	0	0	0	1
	Savings and Loan Associations	0	0	1	0	0	1
	Mortgage Companies	0	0	4	0	0	4
	Banking Conglomerates	19	1	4	13	8	45
	Non-Banking Conglomerates	0	8	5	6	3	22
	Consortium	14	60	25	0	0	99
	Credit Unions	0	11	2	0	0	13
	Exchange Brokers	13	0	2	19	11	45
	Securities Brokers	6	1	3	6	3	19
	Securities Dealers	7	0	3	12	6	28
	Payment Institutions	0	0	10	8	8	26
	Direct credit company	0	0	4	9	1	14
	Micro-entrepreneur and small business credit societies	0	1	27	0	0	28
	Peer-to-Peer Loan Company	0	0	2	2	0	4
	Credit, financing and investment companies	0	30	3	2	0	35
	Total	86	126	101	95	54	462
IDR	Banks	2	5	1	4	0	12
	Universal Bank/FX Bank	0	2	0	1	0	3
	Exchange Brokers	1	5	5	7	3	21
	Securities Brokers	1	1	0	0	0	2
	Securities Dealers	1	1	2	1	1	6
	Banking Conglomerates	0	0	0	0	0	0
	Total	5	14	8	13	4	44
Inspections Overall Total		113	161	137	139	87	637

Table 6.3. BCB's coverage of supervisory actions

Segment	Supervision model	Risk	Cycle	Qty of FIs	% Number of FIs	Coverage of the FI's Universe by number of FIs	Total Assets (R\$1.000)	% Total Asset	Coverage of the FI's Universe by assets
SIFIs	Conduct Continuous Monitoring (ACC)	High	1 year	5	0,35%	0,35%	8.651.553.330,00	62,68%	62,68%
Public banks	Conduct Continuous Monitoring (ACC)	High	1 year	8	0,56%	0,91%	1.006.857.201,00	7,29%	69,97%
FX banks	Conduct Continuous Monitoring (ACC)	High	1 year	4	0,28%	1,18%	4.136.460,00	0,03%	70,00%
Banks with substantial transactions in the FX market	Conduct Continuous Monitoring (ACC)	High	1 year	3	0,21%	1,39%	20.782.759,00	0,15%	70,15%
Payment schemes settlors	Conduct Continuous Monitoring (ACC)	High	1 year	1	0,07%	1,46%	100.110.308,00	0,73%	70,88%
Other representative banks	Conduct Continuous Monitoring (ACC)	High	1 year	3	0,21%	1,67%	408.206.119,00	2,96%	73,83%
Medium and small banks	Remote inspections (ICR/IDR)	Medium	4 years	114	7,94%	9,62%	2.442.076.192,00	17,69%	91,53%
CTVMs with transaction in FX market	Remote inspections (ICR/IDR)	Medium	3 years	6	0,42%	10,03%	1.746.374,00	0,01%	91,54%
DTVMs with transaction in FX and gold markets	Remote inspections (ICR/IDR)	Medium	3 years	16	1,11%	11,15%	378.091,00	0,00%	91,54%
FX brokers	Remote inspections (ICR/IDR)	Medium	3 years	52	3,62%	14,77%	1.339.763,00	0,01%	91,55%
Payment institutions *	Remote inspections (ICR/IDR)	Medium	4 years	66	4,60%	19,37%	224.306.659,00	1,62%	93,18%
Credit Cooperatives (Credit Unions) ⁷⁶	Annual inspections carry out by Cooperative Audit Entities (EACs)	Low	1 year	822	57,28%	76,66%	727.548.669,00	5,27%	98,45%

⁷⁶ BCB's Conduct Supervision Department carries out AML/CFT inspections at confederations, central cooperatives and at the largest individual credit cooperatives. Regarding central cooperatives, BCB assesses the AML/CFT supervision/audits procedures applied on their singular cooperative's affiliates, considering the organizational structure of the segment. This approach allows BCB's supervision to reach coverage of a relevant number of credit cooperatives, in a risk-based approach perspective. Complementing BCB's supervision on the credit cooperatives segment, BCB has also accredited Cooperative Auditing Entities (EACs) to carry out AML/CFT assessments on all individual cooperatives.

Segment	Supervision model	Risk	Cycle	Qty of FIs	% Number of FIs	Coverage of the FI's Universe by number of FIs	Total Assets (R\$1.000)	% Total Asset	Coverage of the FI's Universe by assets
Consumer finance companies, platform lending companies, peer-to-peer lending companies, micro-financing institutions, leasing companies, mortgage companies, CTVMs and DTVMs without transactions in FX and Gold markets	Monitoring by AML risk matrix which indicates FI's for remote inspections (Reactive)	Low	Reactive	222	15,47%	92,13%	93.084.437,00	0,67%	99,12%
Consortium Manager (not part of a conglomerate)	Monitoring by AML risk matrix which indicates FI's for remote inspections (Reactive)	Low	Reactive	97	6,76%	98,89%	106.245.404,00	0,77%	99,89%
Development agencies	Monitoring by AML risk matrix which indicates FI's for remote inspections (Reactive)	Low	Reactive	16	1,11%	100,00%	15.170.395,00	0,11%	100,00%
TOTAL				1435**	100,00%		13.803.542.161,00	100,00%	

* Includes non-banking conglomerates with payment institutions

** number of FIs considering conglomerates as a one single supervised entity. For this reason, the total of financial institutions doesn't match with the number provided in paragraph 514. BCB conduct supervision model establishes that all financial institutions members of a conglomerate are supervised in one single inspection.

*** sources: www.bcb.gov.br/iftdata/ ; www.bcb.gov.br/estabilidadefinanceira/balancetesbalancospatrimoniais

Source: BCB Supervisory data, 2023

557. While the number of supervisory actions appears to be relatively stable over time, BCB provided explanations for the variations observed. For instance, the increase of 48 inspections conducted in 2019, is a result of the Decon restructuring process carried out during 2018, resulting in two new supervision teams being established in Salvador and Fortaleza. According to BCB, the number of inspections reached a certain stability in the following years as the findings and new inspections came to a balanced level. On the other hand, the significant variation in the number of inspections in 2022 is due to the three months BCB's employees strike which had a serious impact on all BCB's activities (provisional 2023 data shows that deliverables have realigned with prior trends).

558. BCB has made an adequate use of the supervisory resources according to the risks identified, ensuring a proper allocation of its supervisory actions to higher risks in each supervisory cycle, either in the banking and non-banking subsectors, as illustrated in Table 6-4.

Table 6.4. Allocation of supervisory actions in ACC (2019-2023)

Type of Entity	Nr of Entities	Nr of staff allocated	On-site inspections*	Meetings***	On-site inspections*	Meetings***	On-site inspections*	Meetings***	On-site inspections*	Meetings***	On-site inspections*	Meetings***
			2019	2020**	2021**	2022**	2023					
SIFI	5	5	7,80%	6,40%	0,80%	10,90%	0,00%	15,80%	0,20%	14,10%	1,20%	18%
State Owned	8	4	7,00%	6,00%	1,00%	14,00%	0,00%	9,00%	0,00%	5,50%	1,20%	2%
Acquirer	1	1	****	****	0,00%	4,50%	0,00%	2,00%	0,00%	4,00%	0,00%	4%
Universal Bank/ FX Bank	12	7	2,50%	2,93%	0,43%	3,79%	0,29%	7,50%	0,21%	4,93%	0,86%	4%
Paym. Arr.	5	1	****	****	0,00%	11,00%	0,00%	12,50%	0,00%	5,00%	0,00%	8%

*On-site inspections per entity (average percentage of total businesses day)

**pandemic restrictions have severely influenced BCB's ability to perform on site visits

*** meetings per entity (average percentage of total business day) - includes on-line and face-to-face meeting (does not include phone calls, e-mails, requisitions and documents analyse)

559. BCB and CVM do not often debate or coordinate supervisory efforts or planning, focusing instead on higher-level issues. At least as regards the segments that are within the shared supervisory remit of BCB and CVM, all of them should be subject to supervisory cycles with pre-established lengths to make sure that the diverse level of maturity of supervisors on AML/CFT supervision does not result in coverage gaps, despite the lower risks of some segments and the functioning of the so-called “reactive model”.

560. Lastly, BCB's supervisory action focuses on certain obligations, such as BO requirements, which is consistent with the major challenges identified by obliged entities during the onsite visit. With regard to group-wide policies, BCB focuses its supervision on the appropriateness of the procedures, assuming the existence of impediments for the sharing of customer and transactional information of branches and subsidiaries established abroad. However, one of the institutions interviewed informed that it has procedures for such sharing, by gathering the consent of customers established abroad. In any case, the incoming and outgoing international cooperation requests under the existing MoUs demonstrate that at least a reactive approach is being adopted to ensure cross border fulfilment of AML/CFT requirements, alongside participation in supervisory colleges of the most significant banking institutions.

561. SUSEP deployed a set of supervisory actions consistent with the low risks identified, through modular examinations, sectoral monitoring or global monitoring. While supervisory actions may not be exclusively focused on AML/CFT, SUSEP Risk and Control Analysis System (SUSEP) encompasses a qualitative assessment of ML/TF risks and controls covering the most significant firms.

Table 6.5. SUSEP: supervised entities with AML/CFT

Year	Total Number of Supervised Entities	Supervised Entities	
		On-Site Supervision	Off-Site Supervision
2021	230	0	34
2020	167	0	21
2019	169	3	9
2018	165	8	0
2017	171	1	0
2016	171	0	0

562. Even though ML/TF risk corresponds to one of the risk events to be assessed in its biannual supervision plan, CVM direct supervisory actions in this field appear to be at a premature stage. Despite some scarce initiatives to assess the conformity of financial intermediaries' AML/CFT policies with CVM Resolution 50/2021 and its biannual risk-based supervision plan (which includes one AML/CFT focused action out of thirteen)⁷⁷ actions are not in line with identified risks. Similarly, despite their broad outreach, audits performed by BSM in coordination with CVM cover participants admitted to B3, seem to a large extent focused on regulatory compliance with CVM Resolution 50/2021 and are part of a pre-established audit methodology. This limited risk-sensitive supervision may prove to be particularly challenging in those subsectors not subject to BCB's shared supervision or where self-regulatory activities are not covered by article 17 of Law 6,385/76 (for example as regards investment fund managers and "pure" asset managers, where no information was provided on CVM's direct supervisory action on AML/CFT).

DPMS Sector

563. While DNFBP supervisors are required to implement a risk-based approach towards supervision of compliance with AML/CFT requirements, the implementation of risk-based AML/CFT supervision is still emerging for most DNFBP supervisors with some supervisors providing more information and statistics on supervision than others. While some ML/TF risk indicators are used to formulate supervisory examination plans, including efforts by COAF and CFC, other supervisory authorities rely on general characteristics to craft supervisory examination plans. Overall, the assessment team concludes that DNFBPs supervision is somewhat constrained by the large number of reporting entities and the lack of resources dedicated to supervision.

564. ANM's supervisory structure for compliance with AML/CFT requirements has yet to be finalized. ANM stated that it is only able to conduct supervisory examinations on around 3% of the roughly 35 000 active title holders for mining of all substances. As mentioned above, ANM confirmed that it has few resources dedicated to supervision even though its leadership would like to devote more time and energy to these efforts. Given the limited resources and drastic cuts to its workforce over the past decade, ANM is also in the process of developing a risk matrix model to identify the subset of reporting entities most at-risk for ML/TF which would benefit the agency in prioritising which reporting entities to examine. Additionally, ANM

⁷⁷ CVM, Biannual Risk-Based Supervision Plan, 2021/2022. Available at www.gov.br/cvm/pt-br/aceso-a-informacao-cvm/acoes-e-programas/plano-de-supervisao-baseada-em-risco.

representatives appeared to display some confusion surrounding the supervisory efforts for AML/CFT compliance conflating this obligation with conducting confirmation checks of licensed miners for the types of mining activities undertaken. However, while ANM's AML/CFT supervisory framework remains at an early stage, the assessment team is encouraged by the ANM representatives' strong commitment to the AML/CFT process and believes that given significant more resources, ANM will be able to develop a sophisticated and effective supervisory regime.

565. BCB supervises DTVMs through its prudential and conduct supervision teams which maintain frequent dialogue with the reporting entities. While no further details were provided on BCB's supervisory findings on the DTVM sector, the assessment team understands that based on existing Brazilian legal practice of the "good faith" clause, buyers of mined minerals, including gold, can accept the declared origin of the precious metal as submitted by the seller. This has resulted in a longstanding practice where the first purchaser, including the DTVM sector, is not required to take additional steps to verify the origin of the precious metal. The Brazilian authorities acknowledge this could offer a loophole into the system and are working to mitigate the associated risks.⁷⁸

566. COAF takes a comprehensive risk-based approach to conducting supervisory examinations of its reporting entities. Based on the risk-matrix model, COAF identifies which DPMS are high and medium/low risk for ML/TF. For low and medium-risk entities, COAF utilises the APO examination process, which is less comprehensive in scope and generally is used to clarify any outstanding issues. For high-risk entities, COAF conducts APA examinations, which is greater in complexity and demands more data and documents for analysis in compliance with AML/CFT requirements. These supervisory examinations result in the PAS sanctioning proceeding for identified breaches. However, given the importance of the DPMS sector, the assessment team finds that the number of examinations remains low compared to the overall population (5 266). As confirmed during the onsite visit, COAF has limited resources for supervisory work to cover not just the DPMS sector, but also other sectors under its supervision; in total, COAF's Supervision Directorate maintains fifteen employees. The assessment team was encouraged by the strong will of COAF's supervisory team and recognises that with more resources in this division, Brazil's AML/CFT oversight of the DPMS sector would greatly benefit. Additionally, with more resources, COAF may be able to better detect AML/CFT violations proactively through its APA examinations as illustrated by the case studies presented to the assessment team of PAS sanctioning proceedings where investigations generated from other sources, including law enforcement investigations, rather than planned supervisory examinations.

⁷⁸ Ricardo Brito and Lisandra Paraguassu, Brazil court backs crackdown on illegal gold mining in Amazon, Reuters, 5 April 2023, available at www.reuters.com/world/americas/brazil-court-backs-crackdown-illegal-gold-mining-amazon-2023-04-05/.

Table 6.6. COAF APO Examinations

Sector	APO finished																			
	2018				2019				2020				2021				2022*			
	AC*		CNO**		AC		CNO		AC		CNO		AC		CNO		AC		CNO	
	Qty	status	Qty	status	Qty	status	Qty	status	Qty	status	Qty	status	Qty	status	Qty	status	Qty	status	Qty	status
Jewelry, gemstones, and precious metals	0	-	83	30 PAS 53 closed	0	-	56	56 closed	0	-	104	104 closed	1	1 closed	26	2 PAS 24 closed	0	-	30	2 PAS 28 closed

*AC: Absence of Registration Finding

**CNO: Communication of Non-Occurrence Finding

Table 6.7. COAF APA Examinations

Supervised sector	Preliminary investigations finished									
	2018		2019		2020		2021		2022*	
	N	Status	N	Status	N	Status	N	Status	N	Status
Jewelry, gemstones, and precious metals	18	13 PAS 5 closed	9	7 PAS 2 closed	1	1 PAS	5	5 PAS	4	4 PAS proposed

Other Sectors

567. As the CFC does not identify utilise a risk matrix to identify the high, medium, and low ML/TF risk accounting entities, the CFC prioritises conducting examinations on reporting entities that have never or have not been inspected in the last 5 years, who have been reported or represented for malpractice, and found to be illegal by RFB and the Ministry of Labor and Employment data. These supervisory exams are planned out by state-level coordinators carried out by 186 examiners across the country. Similar to COAF, the CFC has limited resources to oversee a very large reporting entity population.

568. Whilst the assessment team acknowledges the positive and successful work by CFC to inspect all obliged entities, targeted examinations that focus on specific ML/TR risks are advisable.

Table 6.8. CFC Examinations

Year	Number of Registered Accounting Organizations (includes firms with multiple accountants)	Number of remote exams held	Number of administrative procedures	Number of sanctions - fine (R\$)	Number of License revocation
2020	73,898	5,960	5,251	3,675	6
2021	79,506	8,743	7,961	4,776	13
2022	84,171	6,403	5,869	3,521	6

569. While the CNJ carries out supervisory compliance checks, limited information was provided on the details surrounding these efforts and how local judicial authorities conducts these checks. The assessment team is also concerned that the CNJ at the federal level merely carries out a couple of compliance checks every few years to ensure local authorities' examinations are adequate. However, the assessment team was reassured by interviews with the notaries themselves who provided more details on the compliance examinations by local level authorities.

Table 6.9. CNJ Examinations

Year	Supervisory Body	Compliance check – Presential	Compliance check - Remote	Sanctioning administrative proceedings – Supervised entity	Application of sanctions - Warning	Application of sanctions - Fine (R\$)
2022	CNJ	1.975	1.266	0	0	R\$ 0,00
2021	CNJ	1.975	1.266	0	0	R\$ 0,00
2020	CNJ	1.162	1.594	0	0	R\$ 0,00

570. For REA AML/CFT compliance examinations, COFECI-CRECI is focused on educational and awareness raising efforts for AML/CFT obligations rather than inspecting for compliance with these obligations. CRECI organises the inspections at local levels and COFECI coordinates over 500 inspectors nationwide. Overall, COFECI-CRECI look to prioritise inspections of REAs dealing in more risky transactions, for example companies that are launching new real estate residential properties or those that specialise in dealing with farms and rural properties. COFECI reiterated its commitment to ensuring that AML/CFT obligations are met by the REA sector and is in the process of developing the next round of examination procedures to focus more on checking for compliance with the AML/CFT obligations rather than education and awareness raisin efforts. However, given the large universe of REAs, its high materiality in ML risks and trends, the assessment team believes more needs to be done to better identify the most at-risk REAs for ML/TF, to ensure AML/CFT obligations are being met, and where a RE falls short, to apply appropriate measures.

Table 6.10. COFECI-CRECI Examinations

Year	Compliance check – Presential	Compliance check - Remote	Sanctioning administrative proceedings – Supervised entity	Application of sanctions - Warning	Application of sanctions - Fine (R\$)
2022	11,704	0	0	0	R\$ 0,00
2021	6,367	0	0	0	R\$ 0,00
2020	7,123	0	0	0	R\$ 0,00
2019	210,823	0	2,183	0	R\$ 9,793.00
2018	525,944	0	507	63	R\$ 0,00

Remedial actions and effective, proportionate, and dissuasive sanctions

571. According to the established supervised methodology, all inspections performed by BCB give rise to an inspection letter with the findings that must be addressed by firms. After the deadline (usually 90 days), supervised firms shall submit evidence on the amendment of the findings and supervisory analysts shall perform follow-up analysis of all outstanding findings, while ensuring the execution of the remaining supervisory planning. The assessment team had access to follow-up reports and to evidence of communications between firms and the supervisor via APS/SISCOAF system. This system allows the upload of the evidence that is necessary to sustain the correction of the finding, according to its underlying risk. The high percentage of addressed findings shows the overall effectiveness of BCB's remedial action – as per Tables 6-13 and 6-14 - including with regard to those requirements that the supervisor recognises as more challenging, both for the banking and non-banking sector. For instance, the average of amended findings concerning BO-related shortcomings (between 70% and 75%, depending on the type of inspection) appears not quite distant from the total average of amended findings (between 76% and 83%, depending on the type of inspections).

Table 6.11. BCB number of findings (2018-2022/per type of supervisory action)

Supervisory Action	2018	2019	2020	2021	2022	Total
Total NR of Inspections	113	161	137	139	87	637
ACC	118	134	97	219	95	663
ICR	825	1728	1422	2595	1018	7588
IDR	17	20	28	59	20	144
Total	960	1882	1547	2873	1133	8396

Table 6.12. BCB Percentage of findings solved from 2018 to 2021- ACC and ICR

Year	Findings	% Solved		% Solved
		ACC	ICR	
2018	118	99,15	825	94,79
2019	134	98,51	1728	92,65
2020	97	97,94	1422	84,6
2021	219	76,26	2595	82,58

572. Despite the effectiveness of the remedial follow-up actions in place, the number of administrative sanctioning proceedings opened by BCB (see table 6-13) is not entirely consistent with the nature of the shortcomings identified in the supervisory actions deployed by BCB in the period under review. While not all supervisory findings should give rise to the opening of sanctioning proceedings (given the fact that these proceedings do not cover findings individually, which may have variable severity), the consultation of samples of findings and supervisory reports allowed the identification of shortcomings where the opening of sanctioning proceedings seemed justifiable, in addition to the follow-up of remedial action. For instance, supervisory action aimed at addressing material findings related to KYC and BO requirements, internal risk assessment and IT systems that support AML and TFS-related requirements could have been complemented by the opening of sanctioning proceedings. Moreover, the time taken in certain cases for the amendment of relevant findings could have justified the subsequent opening of sanctioning proceedings. For instance, despite the non-negligible number of issues still pending from 2021 inspections, only two administrative sanctioning proceedings were proposed at the date of the onsite. Against this background, and while BCB advises that it will make further use of sanctioning proceedings in coming supervisory cycles, with the full implementation of Circular 3978/20, the current sanctioning approach is not entirely in line with the number of supervisory actions and the type of findings detected therein.

Table 6.13. Proposals to initiate administrative AML/CFT sanctioning proceedings

2014	2015	2016	2017	2018	2019	2020	2021	2022	Total
5	6	7	8	11	10	6	9	3	65

573. Moreover, the disaggregation of the administrative proceedings that was provided shows that BCB's sanctioning action is partly aligned with the risks identified, as the 65 administrative proceedings opened by BCB since 2014 concern foreign exchange brokers (43), banks (21, predominantly not SIFIs) and a travel agency (1). However, the low amounts of the pecuniary sanctions applied to date do not serve the general dissuasive nature of the sanctioning proceedings, even when considering the following aspects: (i) the strong follow-up system put in place by BCB that ensures effective remedial action and individual deterrence of the concerned supervised entities; (ii) the general deterrence that stems from publication of all sanctions; and (iii) the pecuniary contributions provided in the context of settlement

agreements (table 6-15). In fact, the use of settlement agreements is more widespread in the case of banks, while foreign exchange brokers were on several occasions the subject of more typical sanctioning proceedings, including prohibitions to operate and extra-judicial liquidation. For instance, statistics provided by BCB on sanctioning proceedings show that after 2018 it issued at least 17 decisions disqualifying persons from exercising their functions in remittance banks or foreign exchange brokers.

574. While there is no system in place to spontaneously detect unauthorised financial activity (a substantiated complain or communication sent by a citizen, entity or competent authority is needed), BCB demonstrated the use of its sanctioning powers in this context and provided evidence of regular cooperation with police authorities, as well as examples of sanctions applied (including the liquidation of the concerned entities). For example, BCB requested the extra-judicial liquidation of five exchange brokers since 2018 (two of them also allowed to provide brokerage services with securities). In this context, it should also be highlighted the extrajudicial resolution of foreign exchange operators associated with illegal operators (doleiros) and the closure of complicit unauthorised exchange correspondents.

Table 6.14. BCB Fines

Year	Fines in BRL	Fines in USD *	Pecuniary contribution due to TC in BRL	Pecuniary contribution due to TC in USD*
2015	551.072.331,17	141.126.903,09	-	-
2016	123.789.380,33	37.982.688,57	-	-
2017	-	-	-**	-**
2018	21.958.822,77	5.667.085,47	-	-
2019	292.051.019,79	72.456.650,16	5.800.000,00	1.438.956,01
2020	84.479.893,99	16.256.450,05	105.700.000,00	20.339.831,05
2021	8.500.819,60	1.523.307,88	4.000.000,00	716.781,65
2022	4.971.287,91	952.828,59	37.290.000,00	7.147.238,09
Total	1.087.459.395,56	275.965.913,81	152.790.000,00	29.642.806,80

Table 6.15. Settlement Agreements (TC) by BCB

Year	2017	2018	2019	2020	2021	2022	Total
Proposals of TC related to AML/CFT	2	9	9	7	4	3	34
TCs signed	0	0	4	5	1	2	12
TCs executed	0	0	2	1	1	2	6
Proposals of TC related to PLD/FT still in the negotiation phase	-	-	-	-	-	5	5
Proposals of TC related to PLD/FT rejected	0	8	1	3	4	1	17

575. Even though no disqualification or withdrawals were applied, the warning letters issued by SUSEP (and correspondent monitoring), together with the pecuniary sanctions applied, appear to be consistent with the low risks identified. In its turn, and apart from the scarce issuance of warning letters by CVM (most recently to follow-up

on breaches to Resolution 50/2021⁷⁹), no direct remedial or further sanctioning action was taken by this supervisor since the application of pecuniary penalties in 2018. Notwithstanding, BSM standardized auditing programme ensures follow-up of the issues identified in the warning letters addressed by this SRB to market participants, even though no disciplinary proceedings on AML/CFT issues were opened to date.

Table 6.16. SUSEP: Sanctioning Proceedings

Year	Supervised Persons	PAS - Supervised	PAS - Administrators	Warnings applied	Fines applied
2021	230	7	3	3	BRL 268,687.50
2020	167	0	0	4	BRL 306,000.00
2019	169	4	0	0	BRL 61,000.00
2018	165	4	0	0	BRL 43,334.00
2017	171	two	0	0	BRL 1,313,000.00
2016	171	4	0	16	BRL 261,083.33

DNFBPs

576. The sanctions framework for DNFBP sectors appears to be less effective with limited proportionality and dissuasiveness. In general, supervisors, except for COAF, have applied limited sanctions for breaches of AML/CFT obligations. Additionally, as most of the DNFBP supervisors' AML/CFT supervisory examination framework remains in initial stages, this combined with the very limited AML/CFT sanctioning actions limits the effectiveness and proportionality of the overall supervisory sanction regime.

577. In the few instances of supervisors applying sanctions, the authorities opt for a rather educational approach to supervision and findings of violations. Cases of disciplinary sanctions are limited.

578. Given the materiality of the DNFBP sectors and the linked inherent vulnerabilities for ML/TF risks, the lack of remedial actions and proportionate, dissuasive sanctions, there appears to be little effectiveness in the DNFBP sanctioning regime.

DPMS Sector

579. From 2021-2022, BCB carried out four Remote Compliance Inspections (ICR) to assess the AML/CFT procedures and controls adopted by DTVMs that operate in the gold market. The findings that resulted from those inspections are in the follow-up phase. In 2023, four other ICRs are scheduled covering the remaining DTVMs that operate in that segment. In addition, BCB carried out three Direct Remote Inspections (IDR) on two financial institutions that operate in the gold market, based on unusual behaviour signalled by BCB's Financial System Monitoring Department. The irregularities found led to the proposal of two sanctioning administrative proceedings. From the prudential supervision point of view, from 2018 to today, BCB has carried out 16 inspections on DTVMs that operate in the gold market. The most recent ones focused on internal controls and risk management, which includes

⁷⁹ CVM claims to have increased the issuance of warning letters with Resolution 50/2021. For instance, 12 warning letters were issued in 2021 and other 12 in 2022.

verifications regarding socio-environmental risk. The irregularities found led to the proposal of four sanctioning administrative proceedings, against three DTVMs.

580. ANM did not provide details on remedial actions or sanctioning measures against findings of violation for AML/CFT obligations. While ANM stated it has previously revoked licenses of miners, it did not clarify whether that was based on violations of AML/CFT obligations or other matters. As regards the DPMS sector, COAF carries out more substantial supervisory examinations over its reporting entities and therefore presented more concrete sanctioning measures for findings of AML/CFT violations.

581. While COAF's work is encouraging, the most egregious case studies of DPMS violations of AML/CFT obligations were generated from other leads or sources, including LEA activities or negative media, rather than COAF's planned supervisory examinations. For example, COAF issued a large and dissuasive penalty in 2020 to a large player in the DPMS market the conduct of which was uncovered during LEA investigations sending a message to the DPMS sector that AML/CFT obligations must be adhered to. Overall, more time and resources will help the work of the DPMS regulators to better identify AML/CFT violations and issue effective, dissuasive sanctions.

Table 6.17. COAF Fines for DPMS Sector

Year	Fines	Total Amount (R\$)
2018	17	140,500.00
2019	22	513,623.54
2020	9	23,604,298.55
2021	15	9,907,604.72
2022	3	431,710.78

Other Sectors

582. The CFC has issued several administrative procedures against reporting entities and has handed out a small number of fines. The CFC has also revoked the licenses of a few dozen accountants over the last three years. These efforts are encouraging however the number of fines is relatively small given the large number of administrative proceedings. Additionally, it was not clarified whether the number of fines and license revocations were due to AML/CFT violations or other matters.

Table 6.18. CFC Examinations and Outcomes

Year	Number of Registered Accounting Organizations (includes firms with multiple accountants)	Number of remote exams held	Number of administrative procedures	Number of sanctions - fine (R\$)	Number of License revocation
2020	73,898	5,960	5,251	3,675	6
2021	79,506	8,743	7,961	4,776	13
2022	84,171	6,403	5,869	3,521	6

583. No sanctions have been applied to the notary and REA sectors in the last three years.

Impact of supervisory actions on compliance

584. According to the examples and data provided by BCB, alongside the perception stemming from the interviews with the private sector, banking and non-banking institutions supervised by BCB address to a large extent findings identified further to supervisory actions.

585. Banks interviewed during the on-site visit consistently referred the specific action taken by BCB to harmonise screening routines to implement TFS related to TF, while non-banking financial institutions, mainly in the foreign exchange market, had also mechanisms in place to address such requirements. The impact of supervisory actions on TFS related to TF is further analysed and developed in section 4.2.2 (within IO10), and sections 4.3.1 and 4.3.2 (within IO11).

586. Moreover, BCB provided extensive evidence of the communications exchanged through APS | SISCOM system, demonstrating a clear commitment by obliged entities to address supervisory findings, including through the upload of the necessary supporting documentation. When asked about the progressive increase of ICR supervisory findings, BCB clarified that this is due to the more demanding requirements foreseen in Circular Nº 3.978/2020 and that it expects a decrease of findings in the coming supervisory cycle, once the initial stage for implementation of the new regulation is complete (otherwise, broader use of sanctioning proceedings will be considered).

587. Lastly, improvements were observed in the quality and timeliness of STRs submitted by financial institutions subject to the supervision of BCB.

588. Despite some scarce initiatives to assess formal compliance of the entities' AML/CFT policies with Resolution CVM 50/2021, no information was provided on the impact of CVM's direct supervisory actions in the level of compliance with AML/CFT obligations. In one specific case of a supervisory action deployed 8 months ago [from March 2023, date of the onsite], the obliged entity informed that no feedback was provided to date by CVM. Whenever also subject to the supervision of CVM, interviewed firms informed that supervisory actions usually take place with the BCB or with BSM, in case of market participants admitted to the stock market (B3) that are subject to the standardised auditing programme. Lastly, the follow-up actions put in place by SUSEP and the overall quality of the AML/CFT risk assessment models and policies in place (as per the examples of the supervisory reports provided) align with the risks identified.

DNFBPs

589. Given the large number of reporting entities in the DNFBP sectors, the low number of communications (STRs) to COAF compared to the DNFBP populations, and the lack of resources to carry out sufficient supervision and administer corresponding sanctions or enforcement actions, the impact of the actions of DNFBP supervisors could not be assessed.

590. The government has recently adopted several regulatory and legislative changes affecting the DNFBP sectors which makes it additionally difficult to assess the impact of supervisory actions on reporting entities as many of these efforts have only recently come into force. However, the supervisory authorities observe a growing awareness of the AML/CFT regulations among DNFBP reporting entities. This awareness is generally reflected in a steady increase in the number of suspicious reports and greater overall awareness of AML/CFT obligations.

Promoting a clear understanding of AML/CFT obligations and ML/TF risks

591. In addition to feedback provided on supervisory actions (in the case of BCB, SUSEP and BSM self-regulation activity), financial supervision authorities issue guidance and participate in awareness raising events, including with the participation of COAF, and industry associations.

592. During the onsite visit supervised sectors, mainly within the banking sector, denoted a satisfactory awareness of risks and AML/CFT obligations, including BO-requirements (where a transversal increasing assimilation of the BO concept clearly stemmed from the interviews), high-risk jurisdictions, PEP requirements, TFS-related obligations (even though without distinguishing their TF or PF nature) and internal controls, both at individual and group level.

593. In 2020, BCB established a Forum for the Conduct Supervision Department and the Brazilian Exchange Association (Forum Decon-Abracam). This initiative created the “Abracam Compliance Seal” certifying AML/CFT understanding and good practices which received significant support and adherence and led to a decrease of unregulated operators and a better understanding of ML/TF risks and applicable obligations

594. Apart from BCB’s Circular-Letter 4,001/20, no structured guidance on high-risk scenarios was issued to help informing the adoption of EDD measures based on firms’ risk assessment models, even though the regulatory instruments in force confer a high-level of discretion for such models. BCB carried out several engagement sessions and participated in industry events covering AML/CFT but these were generalist sessions with limited impact.

595. Despite some limited awareness on de-risking, no guidance was issued by financial supervisors to address a proper balance between AML/CFT requirements and financial inclusion.

DNFBPs

596. DNFBP supervisors have conducted several outreach activities both individually and in concert with other authorities to raise awareness on AML/CFT obligations. For example, COAF has conducted AML/CFT trainings in concert with other supervisors for the following sectors: notaries and registrars, real estate agents, and DPMS. Additionally, COAF makes available online trainings as well as recorded

video trainings for the public, including a course on AML/CFT developed in concert with the Brazilian National School of Public Administration. COAF's trainings have been taken by tens of thousands of individuals across the government and private sector.

597. COAF also regularly issues general AML/CFT guidelines to the public and works with other regulators to issue sector-specific guidance. For example, COFECI worked with COAF to promote an AML/CFT handbook that was disseminated to all COFECI reporting entities. Additionally, the CFC stated that COAF is helpful in coordinating AML/CFT guidance as well as providing feedback on how accountants are doing with respect to adhering to relevant AML/CFT obligations. COAF also organises bi-annual meetings with all DNFBP supervisors to share best practices and provide feedback:

Table 6.19. COAF outreach to the private sector (by year/theme)

Meeting	Year	Program
1 ^a	2018	Discussion of regulatory issues, specific characteristics and challenges of the supervision of each segment, and exchange of experiences, for conceptual alignment and promotion of greater effectiveness in the actions of regulators.
2 ^a	2019	To expand the collaboration agenda, to assess asymmetries, and to build engagement to improve the AML/CFT system
3 ^a	2019	AML/CFT Supervision
4 ^a	2021	Preparation for the 4th round of FATF mutual evaluation
5 ^o	2021	AML/CFT National Risk Assessment
6 ^o	2022	4th round of FATF mutual evaluation

598. Overall, supervisors showed a reasonable ability to promote a clear understanding of AML/CFT obligations and ML/TF risks. However, these efforts have not focused on specific sectoral or country risks and therefore should be further developed with a view to increase their impact and effectiveness in AML/CFT compliance.

Overall conclusion on IO.3

BCB has a well-established risk-based supervision model for both banking and non-banking financial institutions. Its supervisory remit is broad and significant to materiality (as it also includes the securities sector). BCB has in place a supervisory and remedial system which is consistent with a substantial level of effectiveness in the financial sector, despite the less mature stage of CVM supervision and the limited use of sanctioning proceedings by both financial supervisors.

Brazil's supervision of the DNFBP sector has improved since its last MER, including efforts to revamp supervision of the DPMS sector and precious metal and stones supply chain. However, the DPMS sector fragmented supervisory regime has led to disjointed efforts in supervisory priorities and activities. As a material sector for Brazil, with significant ML/TF risks the lack of concerted action in this sector – including a developed risk assessment and the application of proportionate and dissuasive sanctions – is of some concern.

Major deficiencies remain due to the nascent nature of the supervisory infrastructure across several DNFBP sectors stemming from very recent regulatory and legislative changes, and a systemic lack of resources across the different sectors.

Significant gaps remain at regulatory and implementation levels regarding VASPS (whilst acknowledging the ongoing legislative efforts) the legal sector and company service providers.

Whilst all supervisory authorities showed commendable commitment to the AML/CFT system, more needs to be done as regards the effective implementation of the risk-based approach by CVM and DNFBPs as well as regarding sanctions and sanctioning procedures.

Brazil is rated as having a Moderate level of effectiveness for IO.3.

Chapter 7. LEGAL PERSONS AND ARRANGEMENTS

Key Findings and Recommended Actions

Key Findings

- a) Brazil has a wide range of legal persons which must obtain a unique identifying number (CNPJ) with RFB before beginning operations in Brazil.
- b) Brazil has identified and assessed the ML/TF risks related to specific legal persons. This analysis, while a positive start, lacks a more in-depth discussion on the relationship between the country's specific vulnerabilities and threats and has only been shared with a limited number of stakeholders.
- c) Brazil relies on multiple sources of information to obtain BO information (including the CCS, CENSEC and others). The CNPJ database, managed by the RFB, is the main source of basic information accessible online by competent authorities, obliged entities, and the public, and it is easy to search. By looking at the basic information available in the CNPJ and other databases, competent authorities can trace the complete legal ownership and control structures of legal persons in many cases - except when the person includes Joint-Stock Companies, Joint Ventures and Limited Partnerships by shares or foreign companies that are not obliged to register full legal ownership with CNPJ.
- d) The REDESIM Network is a digital platform which integrates official databases (including CNPJ). Through REDESIM, information that is shared with one of the participating entities is automatically updated and available to all. This system simplified company formation and operations by integrating local and federal databases and allowing for the aggregation of basic information on a single platform, immediately available to competent authorities and the public.
- e) The mechanisms that ensure the accuracy and timely update of beneficial ownership information are insufficient and the legal framework contains some loopholes. While BO information should also be declared to RFB, in practice, most legal persons operating in Brazil are exempt from this requirement. The exemptions to declare beneficial ownership information are not necessarily risk-based and compromise the coherence and completeness of information available in addition to representing an ML/TF risk. RFB does not have sufficient resources to allow the rapid assessment of breaches or inaccuracies in the information it controls.
- f) Competent authorities sometimes rely on the BO register held by RFB and the information collected by FIs. However, competent authorities can

obtain the former information only through a court order, which may not be timely. In the case of FIs, COAF may receive BO information as part of an STR but would not typically seek to obtain further information from other reporting entities. The accuracy of BO information held by FIs is variable and normally not focused on control (see IO.4).

- g) While basic information is publicly available, declaratory beneficial ownership information (only required of some entities) is protected by tax secrecy and only available to the RFB. LEAs may access this information in the context of joint investigations with RFB when a tax crime is also involved. LEAs can also access BO information from RFB via judicial order (which can have delays in practice – see IO.7).
- h) Sanctions are not proportionate or dissuasive and while there is some evidence to support efforts by RFB to protect the integrity of information, competent authorities do not regularly ensure compliance with beneficial ownership requirements.

Recommended Actions

- a) Brazil should strengthen its sources of company information by requiring that all legal persons declare and update BO information in line with identified ML/TF risks.
- b) RFB should ensure that the CNPJ registry is complete, accurate, and updated periodically. Other registration and licensing authorities should similarly ensure the adequacy, accuracy, and updated nature of their registries. Additionally, RFB should establish a mechanism to monitor the submission of basic (via CNPJ) and BO information (as declared for tax purposes), monitor its accuracy and timeliness as well as ensure that sanctions are applied in case of non-compliance.
- c) Brazil should ensure that competent authorities can access BO information in a timely manner for both intelligence and investigative purposes, including by re-examining the extent to which declaratory BO information should be protected by tax secrecy.
- d) Brazil should significantly expand the risk assessment of legal persons to better reflect the associated ML/TF risks and the role of persons providing services to companies. The report should be published for maximum dissemination to promote greater awareness – with public and private sectors - of the threats of misuse of legal persons and arrangements. Based on the updated risk assessment, Brazil should implement commensurate measures to prevent the misuse of corporate structures.
- e) RFB should develop guidance and training for COAF, LEAs and the private sector to enhance understanding of what constitutes basic and BO information (i.e., the concept of control vs ownership), as well as the

nature, characteristics and any relevant ML/TF risks of legal persons and legal arrangements.

- f) Brazil should apply proportionate and dissuasive sanctions to breaches of basic information and beneficial ownership requirements. It should greatly expand the ongoing work to correct information already entered in the CNPJ and BO register; but DREI and RFB should also establish mechanisms to preventatively identify, mitigate and resolve breaches at the time of entering the information.
- g) DREI and RFB should have sufficient IT and human resources to allow for the adequate updating and constant monitoring of the CNPJ and RFB databases.

599. The relevant Immediate Outcome considered and assessed in this chapter is IO.5. The Recommendations relevant for the assessment of effectiveness under this section are R.24-25, and elements of R.1, 10, 37 and 40.⁸⁰

Immediate Outcome 5 (Legal Persons and Arrangements)

600. Brazil's framework for capturing basic and beneficial ownership information relies on a multi-pronged approach and a combination of databases (e.g., CCS and CENSEC) accessible, in whole or in part, depending on levels of permissions, to competent authorities and the public. Basic information is available with the state-level company registries⁸¹ centralised in the CNPJ registry (*Cadastro Nacional da Pessoa Jurídica*). This information is publicly available and includes the required documents to open a business and register a legal person.⁸² Access to CNPJ allows for the identification of the BO in some cases as demonstrated by the analysis below and mostly in line with the threshold approach to the identification of beneficial owner i.e., by mapping the company legal structure and ownership, although this would not cover exercising control of the legal person or arrangement through other means. Furthermore, since 2018, some legal persons are required to declare BO information to RFB which stores it on a more restricted level, along with the country's individual tax information – accessible only to RFB which may release it to LEA's further to a court order or investigation.⁸³ As a complement, basic and BO information can also be found with the private sector whenever a business relationship is established (mainly by FIs); or as information available directly with the legal persons themselves. This information may be liable to the deficiencies identified in the analysis of IO's 3 and 4.

⁸⁰ The availability of accurate and up-to-date basic and beneficial ownership information is also assessed by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes. In some cases, the findings may differ due to differences in the FATF and Global Forum's respective methodologies, objectives and scope of the standards.

⁸¹ Registration bodies that sync with CNPJ include: 27 integrated Boards of Trade – 100% across the entire federation of Brazil - Registration of commercial companies and related activity; PJ Registers 11 integrated Brazilian states: AC, AL, AM, CE, ES, MG, MS, MT, RJ, RS and SP – 65% of the federation – Registration of non-business legal entities such as NGOs, Associations, Civil Societies, religious, moral, scientific or literary, public utility foundations and associations; Sections of the OAB: 13 Brazilian states integrated: AC AL AM CE DF ES MT MG RJ RO RS SC SP – 70% of the federation – Registration of law firms.

⁸² See Annex VIII of RFB IN 2119 2022.

⁸³ See Annex XII of RFB IN 2119 2022.

601. The assessment team has based its findings on: policy documents, statistics from RFB and Trade Boards, ENCCLA publications, consultation of REDESIM and BO registers, interviews with RFB, AGU, COAF, FP, MP, Trade Boards, FIs and DNFBPs.

Public availability of information on the creation and types of legal persons and arrangements

602. Information on the creation and types of legal persons and arrangements is publicly available in Brazil. Under the umbrella of the Brazilian Department of Registration of Business and Integration (DREI) the national framework for identification, collection and management of basic information mostly relies on the National Registration for Legal Persons (CNPJ) database managed by the RFB. Every legal person in Brazil must register with CNPJ to operate in Brazil, except for Joint Venture Partnerships and closed Joint Stock Companies⁸⁴. Legal persons must fill in the National Registration Form⁸⁵ and confirm the act of registration with the local Trade Boards (or relevant body). Once the registration process is finished, information is integrated in the CNPJ registry through the REDESIM platform, becoming available at federal level to all participants. In addition, for tax purposes, some legal persons and legal arrangements must also submit any additional documents requested by RFB, including a declaration of beneficial ownership information.

603. The processes for recording basic and beneficial ownership information are available in the various pieces of legislation, albeit not structured in a systematic manner. DREI's website makes available to the public, information concerning the different types of legal persons that can be created in Brazil, as well as the relevant procedures for formation, authorisation and registration. The main hub for information in this context is the REDESIM⁸⁶ online platform which functions as a live aggregator of numerous state and federal databases of company information, hosting a significant proportion of the nationally available information on legal persons.

604. This portal also makes available options and instructions for the creation of legal persons, including on how relevant information can be updated. The main added value of REDESIM is its ability to provide competent authorities with immediate access to information held by different bodies, including trade boards, RFB and others, whilst allowing for the information to be updated – in line with legal requirements – if and when companies provide edits or additions to their registry. However, there is no monitoring of updated data at this stage (see below).

605. Trusts or other similar legal arrangements cannot be created under Brazilian legislation, but there is no prohibition on a Brazilian resident to provide the services of a trustee for a foreign trust. Foreign trusts may operate in Brazilian security market via a representative in Brazil, and this person must obtain a license as a non-resident investor with CVM. Subsequently, and after obtaining the CNPJ from the Federal

⁸⁴ While the former is still required to register for tax purposes and therefore identify the main shareholder but not all other silent partners⁸⁴, the latter needs only to register with CVM. For open JSCs, shareholders information is available to CVM. However, this only applies to operational JSCs.

⁸⁵ The model of the referred form (FCN) is available at the electronic address: www.gov.br/economia/pt-br/assuntos/drei/legislacao/arquivos/legislacoes-federais/anexoindrei1122022.pdf

⁸⁶ The REDESIM platform aggregates information from state registration bodies, AOB data, RFB and CNPJ, environmental and fire protection departments. REDESIM, Available at: www.gov.br/empresas-e-negocios/pt-br/redesim. Accessed 21 April 2023.

Revenue Service, this non-resident investor may be a client of a financial intermediary.

Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities

606. Brazil has started to identify and assess the vulnerabilities and risks related to the legal persons that operate in the country, although the understanding is not comprehensive or adequately addresses the links between threats, vulnerabilities and the existing types of legal persons or provides sufficient focus on the misuse of legal persons for TF (see also IO.10 for Associations and Foundations that are considered to be NPOs). According to the different studies conducted by the authorities – including a sectoral risk assessment, the national risk assessment and analysis by COAF - and based on discussions with the AT - the main areas of vulnerabilities and risks are: access to reliable BO information, which is obfuscated by the use of shell companies, informal nominees, and involvement of professional intermediaries (primarily, lawyers and accountants); the use of legal persons, including Associations/Social Organisations, for embezzlement of public funds corruption; limited transparency of some corporate vehicles, notably joint venture partnerships, closed Joint Stock Companies, and Limited Partnerships by Shares; limited controls to ensure the accuracy of basic information.

607. In 2022 this sectoral risk assessment mapped and analysed all types of legal entities and legal arrangements operating in the country.⁸⁷ The report, which reviews the entities' universe, describes the vulnerabilities of legal persons and theoretical risk scenarios to produce a risk matrix illustrating ML/TF risks per legal entity type (see Figure 7-1).

608. Joint Venture Partnerships, Closed Joint Stock companies and Limited Partnerships by Shares -- were considered as the most high-risk entities because of the limitations in transparency measures, including access to BO information. The legal person's risk assessment also found challenges to identify the corporate chains, issues in matching and connecting information related to specific legal entities, and the low "frequency of control and inspection procedures" combined with sometimes deficient legislation,⁸⁸ in particular, the gaps in BO requirements for the types of legal entities that are considered most likely to be abused by criminals.

⁸⁷ The study was conducted under ENCCLA Action 02/2022: Diagnose the challenges and propose measures to improve the final beneficiary identification requirements in accordance with FATF Recommendation 24 – Transparency and Corporate Ownership.

⁸⁸ See ENCCLA, Action 2/2022, pp. 128.

Figure 7.1. Risk Matrix focused on beneficial owner transparency

Legal person or arrangement	Incorporation and dissolution	Identification, responsibility and rights of partners, quota holders and administrators	Transparency and control mechanisms	Beneficial Owner transparency	Vulnerability level
Joint venture partnerships	4,85	4,75	4,95	4,95	4,85
Closed joint-stock company	2,77	4,09	4,23	4,41	3,91
Limited Partnership by Shares	1,82	3,73	2,68	4,00	2,45
Football Anonymous Society	1,40	2,10	2,30	2,65	2,48
Association	2,06	2,17	3,11	2,39	2,62
Limited Liability Company	2,82	1,73	3,41	2,09	3,09
EIRELI	2,64	1,09	3,41	1,86	2,80
Individual Entrepreneur	3,45	2,14	3,23	1,82	3,52
Cooperative	1,18	1,50	2,14	1,77	1,82
Open joint-stock company	1,09	1,45	1,45	1,64	1,27
Foundation	1,13	1,69	1,38	1,63	2,63
Simple Partnership	2,11	1,39	2,39	1,50	1,92
Limited Partnership	1,41	1,41	1,50	1,50	1,41
General Partnership	1,50	1,45	2,41	1,45	2,00
Simple Credit Company	1,50	1,23	1,86	1,41	2,43

Very low 1,0 a 1,5	Low 1,5 a 2,5	Medium 2,5 a 3,5	High 3,5 a 4,5	Very high 4,5 a 5
-----------------------	------------------	---------------------	-------------------	----------------------

609. While this is a positive first step to assess the risk of abuse of legal persons, the study could offer a more comprehensive and detailed analysis of the vulnerabilities of legal persons and the abuse of these persons in practice. Secondly, the study was led by COAF and ABIN – in the context of ENCCLA’s priority actions – while the main competent authorities – DREI and RFB – limited themselves to the provision of quantitative data for analysis, which is not optimal given that these agencies possess the greatest insight into company formation.

610. Another example of the limitation of the sectoral risk assessment is the absence of analysis of the issues surrounding the obligation to submit information to RFB, as well as the adequate treatment and processing of that information for AML/CFT purposes. The assessment also does not consider the extent to which relevant information is available to competent authorities in a timely manner when it is classified as tax secrecy.

611. Lastly, this risk assessment – whilst shared among competent authorities and FEBRABAN – is not aimed for publication and therefore does not contribute to a wider and shared understanding of the main vulnerabilities posed by legal persons.

612. Brazil’s understanding of beneficial ownership is, nevertheless, informed by multiple sources, including the 2021 National Risk Assessment. In this report, for example, there is a brief mention to the transparency and ownership of legal entities and other arrangements placing the risk of these structures as medium-high, especially as relates to unincorporated entities, e.g., Silent or Undeclared Partnerships (*Sociedade em Conta de Participação*).⁸⁹ The NRA also recognises beneficial ownership as one of the most important challenges in the context of Brazil, particularly by using professional money launderers and *doleiros* for the laundering of proceeds of drug trafficking, as well as access to BO information in the context of capital market entities, complex corporate structures and non-resident investors.

613. In addition to participating in risk assessments, competent authorities have collaborated, and are currently involved in, several criminal investigations where legal entities and misleading beneficial ownership information were shown to be a

⁸⁹ NRA, pp. 74.

crucial tool to the criminal activity.⁹⁰ The majority of the examples submitted for analysis corroborate the challenges identified in the sectoral risk assessment, but also highlight the challenges arising from the use of professional money launderers and intermediaries, informal nominees, the use of shell companies and legal entities with links abroad. COAF published a catalogue of typologies on the abuse of legal entities⁹¹ through its “Cases and cases”⁹² which broadly discusses the abuse of the financial system by legal persons.

614. In sum, while the country has started to identify and assess some ML/TF risks associated to legal entities, this understanding must be further developed and strengthened, in particular as regards links to the broader AML/CFT country vulnerabilities (including the lack of regulation and/or adequate supervision of lawyers and those providing services to companies).

Mitigating measures to prevent the misuse of legal persons and arrangements

615. Brazil has taken some steps to mitigate the misuse of legal persons and arrangements but there is a lack of evidence to demonstrate these actions are effective.

616. With regard to the transparency of legal persons, basic information – including the founder’s name, nationality, address, civil state, signature, as well as the company’s capital, business purpose and headquarters location⁹³ – is publicly available through consult of the CNPJ registry online.⁹⁴ Access to the CNPJ registry was improved by the REDESIM platform as it integrated information from different competent authorities⁹⁵ - including all Trade Boards and other state licensing bodies. Through REDESIM, Brazil has integrated multiple databases and facilitates access to basic information without the need to consult local authorities.

617. In December 2022 Brazil also implemented a new system between the Simples Nacional⁹⁶ and the CNPJ database so that these may be integrated and updated to all local and regional authorities in real time. This system should allow more information on companies to the relevant authorities and offer another source of information.

618. Nevertheless, some of the vulnerabilities identified in the 2022 risk assessment in relation to certain legal entities have not been adequately addressed (e.g., no changes to the status of joint venture partnerships has been proposed or any additional mitigating measures for entities based abroad in case they fail to provide information). Access to BO information is considered by the NRA as one of the most

⁹⁰ Brazil submitted a number of relevant examples including Operation Coalizão pelo Bem, Royal Flush, Amapa and Exchange-Fractal.

⁹¹ Main typologies deal with the involvement of frontmen, shell companies and over-invoicing.

⁹² See COAF, Cases and Cases, Collection of AML/CFT Typologies”, Special Edition, National Risk Assessment.

⁹³ See Global Forum on Asset Recovery (GFAR), Guide to Beneficial Ownership Information in Brazil: Legal Entities and Legal arrangements, February 2018, 2.

⁹⁴ Consulta CNPJ. Information available includes: CNPJ registration number, Opening data, Business name, Size, Code and description of the main economic activity, Code and description of secondary creative activities, Complete address, E-mail, Telephone, E-mail, Registration situation in the RFB, Date of registration status, Corporate structure. Available at: https://servicos.receita.fazenda.gov.br/Servicos/cnpjreva/cnpjreva_solicitacao.asp

⁹⁵ REDESIM partners include the Trade Boards and Brazil’s Bar Association, tax administrations at the federal, state and municipal levels and licensing bodies like the Fire Department, the Health and Environmental Agencies.

⁹⁶ A federal programme to promote entrepreneurship and simplify the taxation system for small and medium sized companies.

important challenges in Brazil's AML/CFT framework, and yet measures to improve it are quite recent and nascent in nature.

619. The information included in the CNPJ registry is mostly self-reported – within certain criterion which include validation by notaries and automated authentication systems. For example, the Trade Boards and RFB follow strict requirements that demand information submitted to the registries be digitally authenticated or notarised before submission – although these are mostly formal procedures that do not focus on the veracity of the information. Broadly, the mechanisms of verification that allow for the identification of fraud or that triggers enhanced measures have not sufficiently used by authorities that only recently began acting on the identified alerts.

620. To improve the accuracy and reliability of the CNPJ registry, RFB has carried out multiple actions with a view to reform the data collection and processing. Law 14 129/2021 ensured that CPF and CNPJ are national identification numbers for natural and legal persons and COCAD (*Coordenador-Geral De Gestão De Cadastros E Benefícios Fiscais*) was defined as the department within RFB responsible for data integrity. In 2022 RFB created the National Integrity of Registration Team (ENIC) tasked with monitoring and reviewing database entries in order to prevent criminal activity and fraud. Their activity led to the cancellation and annulment of a considerable amount of natural persons' numbers as shown in Table 7.1.

Table 7.1. RFB: ENIC actions on CPF numbers

	2018	2019	2020	2021	2022	2023
Cancelled due to duplication of entries	52.100	47.556	70.063	509.306	984.438	57.987
Annulled (due to inactivity)	691	926	2.359	9.770	2.825	877
Cancelled by former oficio	2.181	4.644	4.290	85.491	1.761.646	5.614.446
Total	56.990	55.145	78.732	606.588	2.750.931	5.675.333

621. While this is positive development, the risk of informal nominees and abuse of shell companies is not adequately addressed because this team's focus is not on issues linked to beneficial ownership information or linked challenges. Nevertheless, there are some ongoing efforts by RFB to review and tackle the existence of shell companies "*non existence of fact*" through the review of active CNPJ numbers as shown in Table 7.4.

622. Legal persons are required to provide BO information to RFB since 2018 however, at the time of the onsite visit only 35 000 companies had complied with this obligation.⁹⁷ Low numbers are partly explained by the fact that around 21 million entities (of a universe of around 23 million) are exempted from submitting beneficial ownership information mainly based on ownership criteria (i.e., when natural persons own a company for more than 25%, directly or indirectly).⁹⁸ However, while Brazil assumes individual entrepreneurs are the presumed beneficial owner,

⁹⁷ By comparing with the number of legal persons that have bank accounts (in CCS) - 39.963.129 – RFB was able to determine how many entities have not declared BO information.

⁹⁸ In Brazil, individual entrepreneurs are not considered as separate legal persons. Legal persons are those described in article 44 of the Civil Code which, despite the awarding of a CNPJ number, does not equal individual entrepreneurs to legal persons.

competent authorities do not have mechanisms to notice or test whether the element of control is present (unless there is an active investigation) or to monitor their activities in line with vulnerabilities identified. In this regard, the number of entities exempted, in relation to the universe of legal persons, is of material relevance especially when linked to the little emphasis on determining the degrees of control or specific ML/TF risks.

623. Brazilian authorities have, to some extent, acted to mitigate this problem through the creation of RFB's Nations Beneficial Ownership Team (Enbef) in 2021⁹⁹ with a view to supervise the identification, verification and integrity control of the natural persons that are designated beneficial owners. Among this team's attributions is the exchange of information with other competent authorities and international organisations for the combat of ML/TF and tax crimes. However, RFB informs that this team is at its early stages of operation and was not able to provide significant mitigating results at the time of the onsite visit.

Professional intermediaries

624. The incorporation of companies often requires the involvement of professional intermediaries which may include notaries, lawyers, accountants, or other service providers. Interviewees identified professional intermediaries as relevant intervenient in the formation of complex corporate structures and in the representation of foreign entities stressing the potential for ML/TF risk abuse and highlighting lack of proper regulation and supervision of those professionals' providing services to companies (see R.22 and IO.4).

Financial institutions

625. Basic and BO information concerning legal persons must be collected by financial institutions when there is a business relationship (e.g., bank account) – as part of the multi-pronged approach - thus somewhat mitigating any gaps present in other sources of information. FI's reported mostly using CNPJ to obtain information needed to identify the beneficial owners whilst additionally benefiting from access to banking data and account activity to inform their judgement. Some deficiencies persist as identified by BCB during its supervision. The supervisory findings show, for example, an entity with over 132 thousand corporate clients with no declared beneficial owner, however, it is noted that FIs are remedying the deficiencies – mostly related to KYC procedures - to a near to 70% correction rate (see Figure 7-2) and that, in relation to the specific case mentioned above, the FI identified 95% of all BO shown as missing within 6 months.

⁹⁹ Portaria 94 of 9 May 2022.

Figure 7.2. BCB Supervisory findings on BO

BCB Findings related to the identification and record keeping of BO information

ICR & ACC 2021	Total banking and non-banking Fis		
Total of Inspections 2021	126		
Finding:	Findings	Amended	%
AP 1162 - FI does not have formal procedures for identifying and qualifying the beneficial owner (Arts. 24 to 26 of Circular Letter No. 3,978, of 2020);	8	5	63%
AP 1163 – FI does not have adequate procedures for identifying and qualifying the beneficial owner (Arts. 24 to 26 of Circular Letter No. 3,978, of 2020).	45	32	71%
Total	53	37	70%

Reporting suspicions

626. Overall, Brazilian authorities demonstrated the ability to cooperate to identify suspicious activity related to specific types of legal persons. To identify situations of potential misuse of companies, DREI, RFB and the Trade Boards are required to submit STRs to COAF when cases of misinformation or other are identified. DREI Normative Instruction 76 details a list of situations that should be reported to COAF within the process of legal persons' registration. In addition, BCB also shares relevant communications with other competent authorities as per Table 7-2 below.

Table 7.2. BCB Communications to other competent authorities (shell companies)

Communications/Shell Company	2014	2015	2016	2017	2018	2019	2020	2021	Total
Coaf	3	9	3	16	1	0	1	2	35
MPF	5	6	3	15	1	0	1	1	32
RFB	2	6	2	6	0	0	2	1	19
Total	10	21	8	37	2	0	4	4	86

627. Despite the above shown efforts by DREI and BCB to provide STRs to COAF (see IO.6/IO4), no data is available showing the outcomes of the use of this information; and while Brazilian authorities note that the FIU uses all STRs for typologies and RIF purposes there is no data on the percentage of useful communications and their relevance to ongoing investigations.

628. DREI (or COAF as the lead in the risk assessment) have also not provided data to show these communications are analysed for content and focus, i.e., to identify emerging ML/TF risks or trends of abuse of specific legal entities.

629. Overall, Brazil has implemented measures to prevent the misuse of legal persons and arrangements for ML/TF purposes, but major challenges persist as regards the ability of competent authorities to manage and ensure the accuracy of basic and BO information. The existing legal framework limits ML/TF risk mitigation efforts through its fragmentation and by not following a risk-based approach to the registration and management of legal persons. For example, the obligation to update information and type of documents that must be delivered at the registration stage is not risk-based or verified by the competent authorities on an ongoing basis. Moreover, the numerous exemptions to the declaratory beneficial ownership requirements awarded to single ownership companies without consideration of ML/TF risks cannot be deemed proportionate.

Timely access to adequate, accurate and current basic and beneficial ownership information on legal persons

Basic Information

630. Competent authorities, in particular law enforcement (including the LAB LD network) and COAF, access basic information in a timely manner through the REDESIM network. This information must be updated whenever needed, or when changes to the legal persons occur.

631. LEAs and COAF use basic information to complement investigations, RIFs, and communications to national or international counterparts. COAF is also able to enhance the value of this information by matching and linking it to other data held in separate databases of its domain. Among others, COAF has immediate access to the CNPJ (reportedly its main source of information), to the CCS (Registry of Clients of the National Financial System), all non-tax secrecy data held by RFB, and CENSEC (the notaries database of powers of attorney, and others) through which they are able to investigate and cross check ownership and control data if needed. The Assessment Team was able to confirm the usefulness of the mechanisms available and databases to identify the beneficial owner through shareholdership and the 25% threshold criteria. The quality of the information available with REDESIM and Trade Boards is subject to official validation (e.g., by notaries) but this process is, however, more focused on simplification rather than on verification¹⁰⁰ and there is some overreliance on the integrity of information submitted by the applicant. For example, there is no mechanism to review and confirm information. When the Beneficial Owner is not determined by the 25% ownership threshold, including by controlling a company through informal arrangements, competent authorities showed they can obtain information by using a combination of different databases and more complex analytical and investigative techniques. Brazil provided a number of case studies identifying informal nominees and frontmen acting on behalf of criminals, including in complex and high-level cases.

632. Moreover, interviews with RFB suggest that legal persons do not inform the authorities of changes to their structure on a timely basis and, that the authorities do

¹⁰⁰ Brazil's efforts to promote easy access to company formation is best exemplified by the reduction of company formation time show in <https://estatistica.redesim.gov.br/tempos-abertura>.

not have an automated system that allows them to confirm or act on these breaches (see section on sanctions below). As a result, the use of basic information by competent authorities and obliged entities is effective to a limited extent because of the challenges associated to verification and ensuring its accuracy, as well as the availability of some parts of the RFB data.

Beneficial Ownership Information

633. Declaration of beneficial ownership information in the CNPJ registry is mandatory since 2018 and must be submitted to RFB within 30 days of registration (since December 2022).¹⁰¹ However, as noted above, there are many exemptions to this requirement, and in practice, at the time of the onsite visit, RFB only had around 35 000 BO declarations.

634. BO information held by RFB is additionally covered by tax secrecy, and any investigative authority other than RFB requires a court order to access the information. There is no statistical data available detailing timelines or frequency in which RFB receives court orders to access BO information. However, after the receipt of such court order, RFB demonstrated it responds to numerous information requests on a time frame that ranges from 10 and 36 days (data between 2018 and 2023) and that, for example in the state of São Paulo alone, it responded positively to 89 290 requests during the same time period. Brazilian authorities also presented examples of tax secrecy lift for investigative purposes. Nevertheless, court orders do not have a predefined timeline for response and the time given to provide beneficial ownership information is dependent on the nature of the case, and its urgency as determined by the judge assigned to the request. The assessment team views the system to access the declared BO information under tax secrecy as not fit to allow for the timely access and is limited to instances where an investigation is already ongoing, rather than widely available.

635. Information held by RFB may be accessed - without a court order - in the context of joint investigations with other competent authorities, only when RFB participates in investigations targeting tax crimes. COAF does not have access to the BO information held by RFB and was unable to show whether, and how often, it communicates with RFB. Overall, this means neither COAF nor other administrative authorities (including those working on preventing corruption – see IO.7) have the right to consult the RFB register, which is an important legal limitation with impact to the ability of competent authorities to cross-check the accuracy of the BO information available to them. This also supports the finding that the Brazilian regulatory framework and practice seems to a focus on BO by ownership (given a threshold of 25%) rather than control.

636. COAF's ability to obtain BO information is limited. COAF can trace legal ownership and management of companies in a number of cases by looking through the chain of ownership available in the REDESIM and other databases. This approach however is only able to identify the natural persons who own the company when the chain of ownership leads to natural persons and this information is updated, which is not necessarily the case for a JSC, a Limited Partnership by Share, a foreign company, or when any other legal person is owned by one of these companies. There are also information gaps and inaccuracies in the databases. BO information may be available

¹⁰¹ See RFB Normative Instruction 1634 2016, article 52. Updated by RFB NI 2119/2022 (article 54). The document requirements for registration are included in Annex VIII of RFB IN 2119/2022.

with reporting entities, however, in practice, while COAF receives this information as part of STRs, it does not regularly seek BO information from reporting entities. In the case of foreign ownership, COAF and other competent authorities report their reliance on mutual legal assistance and other forms of international cooperation to obtain beneficial ownership information for the purposes of ongoing investigations.

637. COAF has nonetheless demonstrated some ability to cooperate with its international counterparts, including examples of detailed analysis and financial mapping. For legal persons and legal arrangements COAF demonstrated it can respond to its counterpart requests through the retrieval of data held as part of its functions as the recipient of SARs, the ability to request additional information from obliged entities and, its access to the CNPJ registry. COAF also indicates that whilst information which falls under tax secrecy may only be shared through a court decision, it often includes, in its responses to international counterparts, beneficial ownership information shared with COAF in STRs by financial institutions or information it obtains through its access to federal databases (including REDESIM, the bank accounts database and others described above, etc).

Information held by obliged entities and CDD obligations

638. Broadly, obliged entities are aware and have a solid understanding of their beneficial ownership obligations. Financial institutions showed to be particularly well-prepared to identify and act in line with requirements collecting and sharing information as needed with competent authorities.

639. Obligated entities are however limited by the information received in the context of due diligence efforts, although large financial institutions – as the most significant actors - demonstrated some ability to mitigate these limitations. Overall, Brazilian authorities have access to basic current information on legal entities held by reporting entities, however information held by these entities may vary in quality depending on the effectiveness of internal controls (see IO.4). Beneficial ownership information – when obtained - is only immediately available to the COAF in the context of an STR, and COAF does not regularly seek to obtain additional information from reporting entities. LEAs can obtain BO information from reporting entities through a court order in the context of an investigation.

640. BCB supervisory findings shown in Figure 7-2, as well as interviews with DNFBPs on this issue, suggest that significant deficiencies persist. Challenges to identify beneficial ownership are linked to issues related to difficulties in updating of existing information or the poor understanding of the requirements, the latter being particularly relevant in the case of smaller financial institutions and DNFBPs. Interviews with the private sector suggest that they may over rely on the CNPJ to reconstruct the ownership structure and mentioned difficulties with the quality of data.

Timely access to adequate, accurate and current basic and beneficial ownership information on legal arrangements

641. The Brazilian legal framework does not allow for the creation of trusts. However, it is possible for a foreign trust to operate in Brazil as a non-resident investor through the Brazilian securities market and once registered with CNPJ. This scheme requires participants to also disclose relevant management information to CVM at the time of registration. The accurate determination of ownership of legal

arrangements is challenging given that information available would be mostly self-reported to FIs/DNFs or RFB.

Effectiveness, proportionality and dissuasiveness of sanctions

642. Brazil has not demonstrated the ability to implement proportionate or dissuasive sanctions which are effective to mitigating the ML/TF risks associated with the abuse of legal entities and legal arrangements.

643. DREI broadly supervises the registration process and can follow up with the entities if there is missing or incorrect information which mostly happens in relation to the initial requests for authorisation. For example, DREI reports Table 7-3 as the number of instances it requested additional documents or other clarifications, to entities based abroad, before confirming registration.

7

Table 7.3. Number of information requests/demands by DREI

YEAR	Quantity of Requests Received	Number of requests that were the subject of demands
2020	41	28
2021	50	27
2022	64	41
2023	16	10

644. Once registered, any changes to the structure, company details or ownership must be updated with the RFB (CNPJ registry). Legal persons must also keep their registration records updated and accurate. If they fail to comply or do not present the information their registration can be annulled, suspended or cancelled and will they be prevented from transacting with financial institutions, moving accounts, making financial investments and obtaining loans.

645. Even though the legal framework establishes an incentive for the legitimate owners of a company to update the information with Trade Boards and RFB (as it is the only way to legally operate),¹⁰² the automated mechanism to ensure this takes place – an RFB alert system – is not monitored and alerts are not always addressed. Companies may therefore operate in a different manner than their registration without immediate sanctions.

646. RFB has in place a three-phase system to monitor the information included in CNPJ¹⁰³ and carries out *ad hoc* sanctioning reviews. Nevertheless, these efforts are normally investigative, and/or post hoc rather than automated or aimed at ensuring information is updated and accurate unless the legal person self-reports.

647. More recently RFB also created and operationalised two task-force teams – ENBEF and ENIC - to step up the processing of the existing deficiencies in their

¹⁰² Brazil reports around 26 million alterations are made to CNPJ every year, either as updates (by entities) or corrections (by RFB).

¹⁰³ Brazil reports a three stage review approach: I - Centralized, nationally (all CNPJ base) or regional, carried out from the application of risk analysis and large-scale verifications, operationalized by the General Coordination of Management of Registrations and Tax Benefits - Cocad, in isolation or in partnership with other technical areas of the RFB; II - Decentralized, carried out by local units that are part of Cocad, through the application of risk analysis in a reduced universe of CNPJ; III - Arising from any other work process external to Cocad, within the scope of the RFB, acting in relation to a specific CNPJ or a group of CNPJ.

databases as regards beneficial ownership information of CNPJ and the integrity of the CPF (natural persons identifier). Operations to combat fraud and sanitation the CNPJ database have also been carried out on a large scale, declaring millions of CNPJ unfit, null or suspended. As a result of these efforts there has been some improvement in verification efforts with a significant number of suspensions, cancellations and updates (see table 7-1 on ENIC results).

648. Figure 7-4 below illustrates the number and type of actions taken by the authorities against legal persons to ensure the quality of information and CNPJ registry accuracy (e.g., breaches by fraud, misuse of registration or a use not consistent with, for example, economic status). These actions, albeit indirectly mitigating the abuse of legal persons for criminal purposes and the obfuscation of BO information, cannot be considered proportionate or dissuasive as they do not target BO requirements specifically or allow for the promotion of accountability among the natural persons behind the abuse.

Table 7.4. Outcome of RFB actions to safeguard the integrity of the CNPJ registry

Outcome	Breach	2018	2019	2020	2021	2022
Cancelled	Disability	67	21	15	51	23
	Disablement (Law 11.941/2009 Art.54)	4	10	42	1	1
	Non-Existence Of Fact	3929	3204	1741	1299	120
	Death of Mei - Deceased Holder	11710	11366	6097	74900	30739
	Continuous Omission	25	21	23	6	3
	Canceled Registration	320753	592	139	144	120
Inapt	Non-Existence Of Fact	99	83	65	237	329
	Unknown Location	0	307	95	143	23
	Omission Of Declaration	976273	971536	447114	88350	56074
	Irregular Foreign Trade Operation Practice	125	162	130	137	57
Null	Cancellation of Improper Registration	47	35	34	34	18
	Cancellation By Multiplicity of registration	102	104	56	55	19
	Cancellation For Vices	3633	2224	2608	3225	1451
Suspended	Fraudulent Interposed Indication	59	29	9	10	1
	Non-Existence Of Fact	62	85	52	100	84
	Irregular Foreign Trade Operation Practice	7	7	11	18	16
Total		1.318.913	991.805	460.251	170.731	91.100

649. RBF recent actions are noteworthy, but it appears authorities rely on the suspension or cancellation of registration as the main sanctioning procedures. While Brazil applies some mitigating measures to breaches of compliance with BO information requirements, these efforts may not be considered effective, proportionate, or dissuasive. Existing sanctions applied to legal persons lack an adequate legal framework and resources to ensure its effectiveness (including greater inclusion of all relevant types of legal persons and better monitoring and sanctioning of breaches).

Overall conclusion on IO.5

Brazil has some understanding of ML/TF risks related to legal persons and legal arrangements. However, it has not been able to fully mitigate these risks because of existing gaps in the legal framework and some constraints in accessing information. Due to the existing framework, which is heavily reliant on data available in the CNPJ database, the understanding and application of BO requirements are heavily influenced by the concept of ownership rather than control.

The Brazilian competent authorities collect and process basic information which is publicly available and accessible to all. However, access to declaratory beneficial ownership information to the RFB, is limited a) due to the reduced number of entities that are obliged to declare it; and b) due to its classification as tax secrecy which means it is only available through a court order or in the context of joint investigations.

The accuracy of information declared to the RFB and in CNPJ is ensured through notarised procedures or government led digital authentication, however Brazil is in the process of improving data quality and integrity, and sanctions for breaches of compliance are scarce. More intensive efforts targeting greater accuracy are still nascent.

Given Brazil's context and economic significance, major improvements are needed to prevent their misuse for money laundering and terrorist financing.

Brazil is rated as having a Moderate level of effectiveness for IO.5.

Chapter 8. INTERNATIONAL COOPERATION

Key Findings and Recommended Actions

Key Findings

- a) Brazil receives multiple MLA requests from a wide range of countries, and generally provides constructive and timely responses to them. The DRCI (MoJ) is the general central authority, while the MPF serves as the central authority for MLA involving Portugal, Canada and Portuguese-speaking countries. Both DRCI and MPF are staffed with specialized officers and have electronic systems to monitor and execute the requests. Urgent cases are prioritised as appropriate.
- b) Brazil provides extradition upon request and is party to multiple extradition agreements. In general, extradition provided is constructive, although the procedures in place are not entirely clear, and there were cases with some delay.
- c) Brazil actively seeks MLA to pursue domestic ML and predicate offences, and the requests appear to be in line with the main threats identified in the NRA. Brazil also requests extradition to other countries, including in relation to ML cases. The country takes part in joint investigative teams with foreign counterparts, especially with neighbouring countries in the southern cone. There were successful cases of repatriation of assets, particularly in cases of high-scale corruption.
- d) LEAs seek other forms of international cooperation, including for the identification and freezing of assets. Despite some case examples, more could be done to enhance outgoing international cooperation in high-risk areas (other than corruption), particularly environmental crimes. They also provide smooth assistance to foreign partners. MPF participates in informal networks such as IBERRED, AIAMP and RRAG, and the FP exchanges information through the Interpol, Ameripol, and the Europol channels. There is little information on the extent to which the Customs actually seeks cooperation from other relevant foreign counterparts.
- e) COAF provides timely and constructive cooperation to foreign FIUs and takes measures to protect the confidentiality of the exchanged information. It also regularly seeks cooperation from its counterparts, although the number of requests presents room for improvement, and these are not fully consistent with the risk profile of the country.
- f) Financial supervisors have signed MoUs with international counterparts which include AML/CFT provisions for exchanging information. The BCB, CVM and SUSEP seek international cooperation in the framework of its

licensing and supervisory activities, and provide constructive cooperation upon request. While there are no specific procedures regulating the handling of the international cooperation, the exchange is regulated by the MoUs, which include confidentiality provisions.

- g) Other competent authorities, such as RFB, AGU, and CGU, also exchange information with their foreign counterparts and participate in international fora and organisations.
- h) Brazil has an online system that contains basic information of legal persons, that can be shared immediately with foreign counterparts upon request. Regarding the BO, while the country is able to share information on the chain of ownership of companies registered, as well as on managers, partners, directors and presidents of companies, the weaknesses identified in IO 5 limit the possibility of providing updated and accurate information on BO to foreign counterparts.

Recommended Actions

- a) Take measures to ensure that Brazil can provide timely updated and accurate information on BO upon request to foreign counterparts.
- b) Increase international cooperation and MLA requests sent to foreign counterparts in accordance with the country's risk profile, particularly on environmental crimes.
- c) Establish specific procedures within BCB and CVM with respect to managing international cooperation requests, and, where appropriate, include provisions aimed at ensuring the confidentiality of the information exchanged.
- d) Given the risk of ML across the border, particularly through TBML and cash, Customs should engage in international cooperation in a way commensurate with the risks.
- e) Consider ways to streamline the MLA processes, so Brazil can continue to provide constructive and more timely MLA to foreign counterparts.
- f) Streamline the process to ensure that extradition can be processed in a timely manner. For those cases where an extradition request is denied because the individual is a Brazilian national, issue a procedure or guidance to start an investigation and possibly a prosecution based on the information received from a foreign partner.

650. The relevant Immediate Outcome considered and assessed in this chapter is IO.2. The Recommendations relevant for the assessment of effectiveness under this section are R.36-40 and elements of R.9, 15, 24, 25 and 32.

Immediate Outcome 2 (International Cooperation)

651. Seeking international cooperation is necessary to fight money-laundering in Brazil, as often criminal assets pass through or reach foreign jurisdictions. The main ML threats with an international dimension are: corruption, drug trafficking, tax evasion, environmental crime, human trafficking. While Brazil has not indicated the main destination of these illicit assets, the main partners for outgoing ML requests are (in order): United States of America, Paraguay, Argentina, Uruguay, Portugal, Switzerland, Spain, Bolivia, Italy, and Colombia, among others.

652. The importance of Brazil as an international economic and financial centre may expose the country to various cross-border threats, and Brazil often provides international cooperation on money-laundering. The main requesting countries for ML are (in order): Portugal, Peru, Switzerland, France, Spain, Argentina, Paraguay, Uruguay, United States of America, and Colombia, among others.

653. Overall, Brazil seeks and provides international cooperation to a large extent given its risk and context. The assessment team's findings are based on: statistics on MLA, extradition, and other forms of international cooperation; cases and examples; feedback from the Global Network;¹⁰⁴ interviews with all the relevant competent authorities and other data.

Providing constructive and timely MLA and extradition

654. Brazil generally provides constructive and timely MLA to its foreign counterparts. According to the feedback received, most of the delegations that received cooperation from Brazil stated that the information was of good quality. The country is party to 12 multilateral treaties and 21 bilateral treaties with foreign countries, and when there is no international or bilateral treaty it applies the reciprocity principle.

655. The MLA system is based on one main central authority, which is the DRCI of the MoJ, which coordinates the main aspects of judicial cooperation. While the DRCI is the main central authority, the MPF has been designated as the central authority for the MLA related to the Convention on Legal Assistance in Criminal Matters between the Member States of the Community of Portuguese Speaking Countries (which cover the MLA requests made by prosecutors from Portugal, Mozambique, Cabo Verde, São Tomé and Príncipe, Guinea Bissau and Angola).

656. Both the DRCI and the MPF have specialized officers and an electronic case management system that allow them to monitor the execution of the requests. Both bodies also provide support or assistance to the prosecutors in charge of executing the requests.

657. In turn, there are two bodies that also play a relevant role in the provision and execution of ML and extradition. The MRE, through the CJI, negotiates the agreements and treaties, and also receives requests through the diplomatic channel, which are sent

¹⁰⁴ The following jurisdictions provided inputs on the international cooperation with Brazil: Andorra, Argentina, Australia, Belgium, Bolivia, Chile, Costa Rica, Cuba, Cyprus, Dominican Republic, Ecuador, Guatemala, Germany, Hong Kong China, India, Macao China, Malaysia, Mexico, Nicaragua, Panama, Paraguay, Peru, Russian Federation, Slovenia, Spain, Switzerland, United Kingdom, United States of America and Uruguay.

to the DRCI. For its part, the CJF established the CECINT, which assists the judges regarding the MLA process, and translates the information.

658. Brazil receives multiple requests from a wide range of countries. From 2018 to 2022 the DRCI received 3 919 MLA requests from more than 90 countries, being the main frequent partners (in order) Portugal, Peru, Switzerland, France, Spain, Argentina, Paraguay, Uruguay, United States of America, and Colombia. At the same time, the PGR received a total of 564 requests from Portugal (541), Mozambique (11), Cape Green (7), Canada (2), São Tome e Principe (2) and Angola (1).

Table 8.1. Incoming MLA requests. Source: DRCI.

Year	2018	2019	2020	2021	2022	Grand Total
Total	919	817	717	710	756	3 919

659. The MLA provided in complex cases can be provided within a timeframe of approximately 150 to 300 days, depending on the nature of the measures required. In turn, urgent cases are treated and responded to with priority. Few cases were rejected, or could not be fully executed (e.g., restrained assets had to be released due to the expiration of the statute of limitations), which, according to the Brazilian authorities, is mainly connect with lack of documentation by the requesting authorities related to the maintenance of the freezing orders, the progress of investigations, and the withdrawal of the request by the requesting authority.

660. It is important to note that most of the delegations that provided feedback regarding the timelines of the responses were satisfied with the MLA from Brazil. However, according to some partners, there were some delays in a few cases. While slower responses may be reasonable in more complex cases, some partners indicated that Brazil at times requests large number of documentation to support the MLA request, which is connected to the lengthy judicial procedures, including to access financial records and information protected by tax secrecy, as identified in IO.7, as well as the possibility to appeal the provision of MLA (which follows the same appeal process in domestic proceedings when the party feels that intrusive measures create a prejudice).

Box 8.1. Relevant cooperation provided by Brazil to a foreign investigation

The cooperation provided by Brazil to the Serious Fraud Office (SFO) of the United Kingdom resulted in joint prosecutorial outcomes in the framework of a bribery case. In this regard, the SFO has entered into a significant Deferred Prosecution Agreement with Rolls-Royce PLC. The agreement with the company followed the SFO's four-year investigation into bribery and corruption. The indictment covers 12 counts of conspiracy to corrupt, false accounting and failure to prevent bribery. The conduct spans three decades and involves Rolls-Royce's Civil Aerospace and Defence Aerospace businesses and relates to the sale of aero engines, energy systems and related services. The conduct covered by the agreement took place across seven jurisdictions, and included a settlement of GBP 497.25m, which reflected the gravity of the conduct, the cooperation of Rolls-Royce PLC in the investigation, and the programme of corporate reform and compliance put in place by new leadership at the top of the company. Rolls-Royce has also reached a Leniency Agreement with Brazil's MPF for an amount of USD 25 million. The SFO appeared satisfied with the support received.

Source: International Cooperation feedback provided by UK - www.sfo.gov.uk/2017/01/17/sfo-completes-497-25m-deferred-prosecution-agreement-rolls-royce-plc.

661. With respect to the underlying offences, most of the MLA requests received by DRCI relate to ML, corruption, drug trafficking and tax crimes, which is coherent with the predicate offences identified as major threats for ML in the NRA.

Table 8.2. Incoming MLA requests related to the main threats. Source: DRCI.

Offence	2018	2019	2020	2021	2022	Grand total
ML	148	120	91	60	31	450
Corruption	57	40	81	27	12	217
Drug trafficking	47	43	41	50	22	203
Tax crimes	24	8	31	18	17	98
Total	276	211	244	188	82	1 001

662. Brazil also provides extradition upon request. The country signed 32 extradition treaties with other countries. In general, extradition provided is constructive, and most of the delegations that provided feedback on this were satisfied. The extradition requests are received by the central authority, the DRCI (or the MPF, if appropriate), that provides electronic forms with guided completion, updated and adapted year by year, with the aim of providing a reference model for the preparation of extradition requests. The extradition process is conducted before the Federal Supreme Court, and both the MPF and the PF intervene through their special units for international cooperation. While Brazil is committed to provide extradition upon request, it should be noted that the procedures are not totally clear, and there were cases with some delay.

663. Brazil does not extradite its nationals, and instead it can start its own investigations and prosecutions. Brazil did not demonstrate that in practice it does so.

Additionally, there is no clear process or guidance in place to start an investigation and possibly a prosecution based on the information received from a foreign partner through an extradition request.

664. From 2018 to 2021, the country received 295 extradition requests. The main predicate offences underlying in the incoming extraditions requests are the following:

Table 8.3. Main predicate offences in active extraditions. Source: DRCI.

Year	2018	2019	2020	2021	Grand Total
ML	1	1	1	4	7
Criminal organization	0	3	4	0	7
Arms trafficking	0	1	1	0	2
Robbery / Extortion	7	3	1	7	18
Total	8	8	7	11	34

665. According to the analysis above, the country generally provides constructive and timely mutual legal assistance and extradition to a large extent.

666. There is no information on the assets seized, confiscated and returned by Brazil following an MLA request. In this regard, the competent authorities indicate that they did not receive any request for seizure, confiscation, or repatriation of assets from foreign countries.

Seeking timely legal assistance to pursue domestic ML, associated predicates, and TF cases with transnational elements

667. Many of the ML and predicate offences, as well as possible TF have international elements. Brazil actively seeks MLA to pursue domestic ML and predicate offences, and no MLA in TF (see also IO.9). Both the DRCI and the MPF have specialized staff that provide support to the prosecutors that seek for international cooperation. Both bodies have developed forms and guidelines to ensure that requests meet the formal requirements needed to obtain MLA. These bodies also have an electronic case management system that allows them to monitor the execution of the outgoing requests.

668. During the assessed period, DRCI sent 4 845 MLA requests to more than 80 countries, mainly to United States of America, Paraguay, Argentina, Uruguay, Portugal, Switzerland, Spain, Bolivia, Italy and Colombia. During the same period, the MPF sent 98 requests to Portugal, Canada, Angola, Mozambique, Cape Green and Guinea Bissau.

Table 8.4. Outgoing MLA requests. Source: DRCI.

Year	2018	2019	2020	2021	2022	Grand Total
Total	1 099	1 110	884	850	902	4 845

669. The outgoing requests appear to be in line with the main threats identified in the NRA. Examples where MLA was sought were provided by the country, some of which included ML convictions (for instance, Lava Jato case, Operacao Paraiso Fiscal Case).

Table 8.5. Outgoing MLA requests related to the main threats. Source: DRCI.

Offence	2018	2019	2020	2021	2022	Grand total
ML	149	138	111	73	36	507
Corruption	45	44	99	33	24	245
Drug trafficking	118	69	49	60	30	326
Tax crimes	44	43	39	22	20	168
Total	356	294	298	188	110	1 246

670. One important aspect to mention is the active pursue of assets that have been moved abroad. In this regard, Brazil was able to recover and repatriate assets in some high impact cases, such as the Lava Jato Case, the Banestado case and others. The LEAs in general are active in asking foreign counterparts to freeze and share assets confiscate abroad in the area of corruption. As part of this approach, the Brazilian competent authorities obtained the seizure of around USD 650 million, and the final repatriation of around USD 73.5 million. For other risk areas, notably environmental crimes, Brazil does not seek cooperation to a level that would be commensurate.

Table 8.6. Outgoing requests – Seizures and repatriations (USD).

Year	2017	2018	2019	2020	2021	2022	Grand total
Amount in seizures	285.215.970,14	187.639.144,89	113.734.737,97	47.899.542,33	14.185.697,07	1.304.664,03	649.979.756,43
Amount in repatriations	32.056.887,22	32.103.762,50	713.988,10	8.676.403,59	N/A	N/A	73.551.041,41

Box 8.2. International Legal Cooperation in Criminal Matters Brazil/Switzerland – Lava Jato

In the framework of the Lava Jato Case / Operation Car wash (please see IO 6 and 7 for further information on the case), a request for mutual legal assistance in criminal matters was sent by Brazil to Switzerland seeking the forfeiture and repatriation of USD 2,071,065.92, which were kept in a bank account at Banco Itaú Europa, in Switzerland. After producing the relevant evidence, the repatriation of these funds was expressly authorised due to an agreement entered into with the Federal Public Ministry. Said request was handled by the Convention of Mérida, Palermo and by MLAT Brazil x Switzerland.

Source: Case provided by Brazil in IO 2.

8

671. Brazil also takes part in joint investigative teams with foreign counterparts (for instance, they have teams with Paraguay in cases of drug trafficking and human trafficking).

Box 8.3. Case “Status” – Investigation conducted with Paraguay

This is an ongoing case linked to a transnational drug-trafficking and ML scheme, where relevant information was shared with Paraguay that resulted in the opening of an investigation in that country and the triggering of simultaneous arrest orders, search and seizures warrants, and the freezing of assets. Due to the collaboration, it was possible to perform the delivery of the leaders of the criminal organization that were located in Paraguay, as well as seize the movables and real estate that were in the border country.

The investigation identified a criminal organization responsible for the laundering of proceeds from drug trafficking. According to the investigations, more than 3 tons of cocaine, brought from Paraguay to the big urban centre in Brazil between 2014 and 2020, were seized in possession of the investigated family. The laundering scheme involved the purchase of farms, registering of shell companies, hiring of *doleiros* to move values (in contact with other international criminal organizations), maintenance of a luxury vehicles store and high valued investments in Paraguay. As a result, 9 people were arrested and assets for BR\$230.000.000 were seized. Special investigative techniques were used, including the controlled delivery, vigilance and interception of communications.

Source: Case provided by Brazil in IO 2.

672. Brazil also requests extradition to other countries, including in relation to ML cases. During the assessed period, the country sent 733 extradition requests to foreign countries. Regarding the main threats in the country, the statistics are shown below:

Table 8.7. Main threats in active extraditions.

Year	2018	2019	2020	2021	Total
ML	10	8	3	4	25
Criminal organization	9	5	8	2	24
Arms trafficking	1	2	2	0	5
Robbery / Extortion	10	5	7	21	43
Total	30	20	20	27	97

Seeking other forms of international cooperation for AML/CFT purposes

673. The LEAs and competent authorities in general actively seek other forms of international cooperation, including for the identification, freezing and confiscation of assets moved abroad.

674. The MPF participates in informal networks aimed at exchanging information and recovering assets such as the Ibero-American Network of Public Prosecutors (IBERRED), AIAMP (Ibero-American Association of Public Prosecutors) and the Assets Recovery Network of GAFILAT (known as “RRAG”), and has MoUs signed with Federal Public Prosecutor’s Offices from Cabo Verde, Chile, China, Cuba, Colombia, Spain, Italy, Japan, Mozambique, Paraguay, Peru, Portugal, Dominican Republic, Russia, Ukraine and Venezuela.

675. The MPF routinely sends direct informal requests to facilitate an MLA through these channels. There are also exchanges of letters to intensify the cooperation with Finland, Norway and Switzerland. From 2018 to 2022, the MPF sent 348 direct requests for information to its foreign counterparts. Additionally, in the framework of the RRAG, 90 requests were sent to other countries from 2017 to 2021.

Table 8.8. Requests sent through RRAG

Year	2017	2018	2019	2020	2021	Total
Requests sent	23	8	37	15	7	90

676. COAF sends requests to foreign counterparts via the Egmont Secure Web. There are 2 analysts working in this area. There are measures in place to ensure the information is protected and used according to the purpose it was provided. COAF also signed several MOUs with the purpose of exchanging information with foreign FIUs.

677. COAF seeks for international cooperation from its counterparts. From 2020 to mid-2022, COAF sent 120 requests to foreign FIUs. Some requests have resulted in the freezing of assets abroad (16 cases). There were also domestic high-impact cases, such as the “Case Cambio – Desligo” case (please see in IO 7 for further details) where the international cooperation collected by COAF was critical for the success of the investigation. However, while there are outgoing requests related to corruption and tax crimes, requests related to drug trafficking are sent to a lesser extent and this may not be fully consistent with the risk profile of the country.

Table 8.9. Requests sent to foreign FIUs. Source: COAF.¹⁰⁵

Year	2018	2019	2020	2021	2022	Total
Requests	165	60	101	63	11	400

Table 8.10. Predicate offences underlying in outgoing requests from COAF. Source: COAF.

Subject or predicate offence	2020	2021	2022	Grand total
cybercrime	1	2	0	3
smuggling / embezzlement	0	0	1	1
corruption	21	17	1	39
Crime against the National Financial System	0	1	0	1
Crypto assets	11	1	0	12
Covid-19 Detours	5	0	0	5
Extraction/Illegal Trade of Ores	1	1	0	2
criminal organizations	4	0	0	4
Financing of Terrorism - General	2	0	0	2
fraud	5	5	3	13
illegal games	1	0	0	1
online games	0	0	1	1
Money Laundering (General)	2	5	3	10
Tax evasion	10	4	2	16
arms traffic	0	2	0	2
Drug trafficking	2	4	2	8
Total	65	42	13	120

Box 8.4. International cooperation received from foreign FIUs in a high-impact case

This is a case involving a large-scale corruption scheme and a very sophisticated laundering system organised by professional money launderers and who used more than 3 000 offshores in 52 countries to move and launder around USD 1.6 billion, deriving from public construction contracts of the Rio de Janeiro state government. 62 people were arrested for corruption, crimes against the financial system, tax evasion and money laundering. Many senior officials signed plea bargain agreements and revealed additional information on the scheme. The case is still open. (please see IO 7 for further information).

COAF played a critical role in the production of financial intelligence about the criminal organization's activities in Brazil and abroad. This information could be established thanks to the international

¹⁰⁵ There appears to be some inconsistencies between the tables 8.9 and 8.10 as the extraction of the data on the underlying predicate offences was made manually and it does not necessary match the number of requests made to foreign counterparts.

cooperation received from 26 foreign FIUs (17 requests sent abroad by COAF and 7 spontaneous disseminations received). From the responses received from foreign FIUs, COAF was able to identify new individuals and companies involved in the scheme, and also accounts and assets.

Source: Case provided by Brazil in IO 2.

678. COAF also disseminates information to foreign counterparts spontaneously. From 2020 to mid-2022 COAF spontaneously disseminated 22 pieces of information related to cybercrime, corruption, virtual assets, illegal gold mining, TF, fraud, ML, drug trafficking and human trafficking.

679. The FP also seeks for international cooperation from its foreign counterparts through the Interpol channel (for example, “Kryptos” case, which is ongoing). During 2021 and 2022, the FP had 76 exchanges of information related to Drug trafficking, corruption and ML. There have been cases where the FP requested international cooperation through Europol channel (for example, “Calvary” case). The AMERIPOL channel is also used, although to a lesser extent.

Box 8.5. Kryptos Case

This is a case involving a ponzi scheme, shell companies, illegal remittance of funds abroad using VASPs, and the purchase of real estate. Around 60 individuals and 100 legal persons are under investigation. The scheme is based on the public offer of an investment contract, without prior registration with regulatory bodies, the company speculated on the virtual currency market, with an unsustainable forecast of financial return on the amount invested. The Interpol channel was used for arrest warrants. As a result, about BRL 300 million (approx.. USD 61 million) were seized. In assets and funds, including 150 million in BTC, 21 luxury vehicles, 19 million in cash, watches, jewellery, luxury houses and apartments.

680. The FP has a specific system for managing and monitoring the cooperation (“Sinterpol”). Through this system, the FP can follow up on the requests made and eventually reiterate the requests that were not responded. Police officers, especially those serving in the tri-border area, normally have direct informal communications with police officers from neighboring countries, and exchange red flags.

681. Moreover, there is a specific integrated centre for exchanging information in the tri-border area where there is a fluid exchange of information with Argentina and Paraguay. Although there are no specific procedures regarding the confidentiality of the information, it appears that the authorities use the information according to the purpose for what it was provided.

682. As regards to the financial supervisors, all of them have signed MoUs with international counterparts which include AML/CFT provisions for exchanging information. These agreements were signed under Basel, IOSCO and IASIS standards,

including the IAIS Multilateral Memorandum of Understanding (MMoU) and IOSCO MMOU and the IOSCO EMMOU (Enhanced Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information).

683. In this regard, BCB seeks for international cooperation in the framework of its licensing and supervisory activities. At the end of 2021, the BCB had 34 MoUs signed with the European Central Bank and 39 supervisory authorities from 32 countries, which represent almost all of the jurisdictions in which Brazilian financial institutions have operations. There are several case examples where the BCB requested information and performed joint supervisions with foreign supervisors. The BCB sends an average of 45 request to foreign counterparts per year. The MoUs signed by the BCB contain confidentiality clauses and set forth the appropriate use of the information.

Table 8.11. Requests sent by BCB. Source: BCB.

Year	2017	2018	2019	2020	2021	Total
Letters	79	59	35	33	21	227

684. BCB hosts supervisory colleges for Brazilian financial institutions with relevant cross-border operations. These meetings cover prudential, resolution, cybersecurity and AML/CTF issues of the financial group, having as guests the supervisors of the host jurisdictions in which the financial institution has more significant presence. Currently, only one institution meets the criteria established by the BCB Supervision for college. The last college took place in November 2020, with the participation of foreign supervisors from 9 jurisdictions.

685. Some examples on how the BCB seeks cooperation include the following: In 2017, correspondence was sent to the OCC (US) and FINMA (Switzerland) requesting information on the operations of Brazilian financial institutions that have institutions considered as “shadow banks” in those jurisdictions. The requests were duly met, including requests for information from the authorities on the operations of these financial institutions in Brazil. In turn, in 2019, the BCB maintained an intense dialogue with the Central Bank of Paraguay regarding the movement of BR\$ in cash between the two jurisdictions through Brazilian and Paraguayan banks. This interlocution made it possible to clarify several aspects related to the Paraguayan economy and the flow of Brazilian currency in that country’s trade.

686. In turn, SUSEP is part of IAIS and seeks for cooperation when needed. From 2018 to 2022. SUSEP also participates in colleges of supervisors, where regulators from various countries meet to exchange information on specifics financial institutions, and where AML/CFT information can be exchanged.

687. Regarding CVM, it makes requests to foreign counterparts, especially on investigative matters. There are no specific procedures regarding the confidentiality of the information within CVM, although the MoUs usually include confidentiality clauses.

Table 8.12. Requests sent by CVM to foreign counterparts. Source: CVM.

Year	2017	2018	2019	2020	2021	Total
Requests for investigatory purposes	10	7	1	13	N/D	31

688. The RFB regularly seeks for cooperation from foreign tax authorities in the framework of its functions, and sometimes it also disseminates information spontaneously.

Table 8.13. Requests sent by RFB to foreign counterparts. Source: RFB.

Year	2017	2018	2019	2020	2021	Total
Requests	13	17	73	12	20	135

689. As well, the Customs are part in the WCO, have signed agreements with 38 jurisdictions and exchange information with counterparts. The Customs has established some systems with foreign counterparts in order to exchange red flags and information. For instance, the “Data Analysis & Research for Trade Transparency System (DARTTS)”, which is a system activated between the RFB and the United States of America Immigration and Customs Enforcement (ICE) that aims to identify transactions with commercial data containing financial irregularities, and the “International Customs Alert Portal”, which is a tool activated with the French Customs that facilitates the exchange of alerts and information with that country. However, there is little information on the extent to which the Customs actually seeks cooperation from other relevant foreign counterparts.

690. For its part, the AGU seeks for cooperation from foreign counterparts regarding corruption and has taken relevant actions to recover assets that had been moved abroad. The AGU participates in the UN GLOBE initiative and other relevant international forums related to assets recovery (for instance, the ALAP, the Latin-American Association of AGOs). It has signed 8 agreements with counterparts. During the assessed period, this agency has sent some requests to foreign counterparts. The CGU also exchanges information within the framework of its functions.

691. In the area of TF, LEAs can use the channels available, however, they have not demonstrated that they pursue them in practice to a fully effective extent (see IO.9 and IO.10).

692. According to the analysis above, competent authorities in Brazil seek other forms of international co-operation to a large extent, except in some areas.

Providing other forms international cooperation for AML/CFT purposes

693. The LEAS and competent authorities in general provide other forms of international cooperation in a timely and constructive manner.

694. The MPF participates in informal networks such as IBERRED, AIAMP and RRAG and responds to informal or direct requests received from foreign counterparts. In the framework of the MoUs signed and IBERRED, the MPF received 437 requests from 2018 to 2022. Moreover, it received 127 requests through the RRAG from counterparts from 15 countries from 2017 to 2021.

Table 8.14. Requests received through RRAG

Year	2017	2018	2019	2020	2021	Total
Requests received	18	26	31	30	23	128

695. COAF spontaneously disseminates information to foreign FIUs and it responds to requests from foreign counterparts in a constructive and timely manner. Most of the requests come from countries in South America, such as Argentina and Paraguay, and by the United States of the Americas, the Bahamas, Luxembourg, among others. The incoming requests usually require information on STRs, corporate structures, foreign exchange operations, the existence of bank accounts, and BO. The average time to respond requests received through the ESW is 30 days.

Table 8.15. Requests received by COAF from foreign FIUs¹⁰⁶

Year	2018	2019	2020	2021	Jun 2022	Total
Requests	82	111	99	97	39	428

Table 8.16. Requests received by COAF as per predicate offence

Subject or predicate offence	2020	2021	2022	Grand total
Illegal wildlife trade	1	0	0	1
Armed Conflicts/Wars	0	0	1	1
smuggling / embezzlement	0	1	0	1
corruption	13	9	4	26
Bribery of a foreign public official	2	2	1	5
Crypto assets	0	3	6	9
Covid-19 Detours	1	2	0	3
Extraction/Illegal Trade of Ores	2	2	2	6
criminal organizations	1	1	0	2
Financing of Terrorism	4	5	4	19
fraud	11	13	7	31
Money Laundering (General)	34	18	28	80
Financial pyramid	1	1	0	2
Tax evasion	8	9	8	25
Drug trafficking	15	21	12	48
human trafficking	2	5	2	9
Total	95	97	76	268

¹⁰⁶ There appears to be some inconsistencies between the tables 8.15 and 8.16 as the extraction of the data on the underlying predicate offences was made manually and it does not necessary match the number of requests received from foreign counterparts.

696. The PF also provides international cooperation to its foreign counterparts through the Interpol channel, and in the framework of the specific task forces. Also, Brazil established in 2019 an integrated centre with Argentina and Paraguay to support investigations, which has an operational focus and produces intelligence that is shared with LEAs at the domestic level. This centre also shares information with Argentina and Paraguay.

697. The BCB provides international cooperation in the framework of its licensing and supervisory activities upon request. It also regularly participates in colleges with foreign supervisors.

Table 8.17. Requests received by BCB

Year	2017	2018	2019	2020	2021	Total
Letters	70	63	49	38	45	265
Colleges where it participated	4	6	3	1	2	16
Grand total	74	69	52	39	47	281

698. The SUSEP and the CVM provide cooperation upon request too. SUSEP received 31 requests for information from foreign counterparts, mainly in relation to fit and proper test matters. From 2017 to 2021, CVM responded to 132 requests related to CDD, fit and proper test and for investigatory purposes.

Table 8.18. Requests received by CVM

Year	2017	2018	2019	2020	2021	Total
DDC – Fit and proper information	16	25	22	18	13	94
Requests for investigatory purposes	7	5	11	8	7	38
Grand total	23	30	33	26	20	132

699. The RFB provides cooperation to foreign tax authorities within the framework of its functions. From 2018 to October 2022 RFB received 343 requests from 30 countries.

Table 8.19. Requests received by RFB from foreign counterparts

Year	2018	2019	2020	2021	2022	Total
Requests	77	41	107	65	53	343

700. The AGU and the CGU exchange information with foreign counterparts upon request. In particular, during the assessment period the AGU received 4 requests (2 from Colombia, 1 from Bolivia, and 1 from Peru), and participates in the ALAP forums.

701. In sum, Brazilian competent authorities provide other forms of international co-operation to a large extent.

International exchange of basic and beneficial ownership information of legal persons and arrangements

702. Competent authorities are providing and responding to foreign requests for co-operation in identifying and exchanging basic and beneficial ownership information of legal persons to some extent. Brazil has an online system that contains some basic information of legal persons in Brazil, that is in part available online and part can be shared immediately with foreign counterparts upon request. Regarding Beneficial Ownership (BO) information, while the country is able to share information on the chain of ownership of companies registered, as well as on managers, partners, directors and presidents of several types of companies, the weaknesses identified in IO 5 limit the possibility of timely providing updated and accurate information on BO to foreign counterparts. The processes for obtaining information can be lengthy and require improvements (see IO.5, 6, and 7).

8

Overall conclusions on IO.2

Brazil constructively provides international cooperation with its partners, with some minor delays, particularly on extradition. It seeks international cooperation in ML and in some high-risk areas, particularly corruption and drug trafficking, but in some other risk areas (notably environmental crime) MLA and informal cooperation channels are underexploited in practice. Cooperation on basic and BO information can be done although there are some limitations in the collection of the information within Brazil.

Brazil is rated as having a substantial level of effectiveness for IO.2.

TECHNICAL COMPLIANCE

Recommendation 1 – Assessing risks and applying a risk-based approach

This is a new Recommendation and was not assessed in Brazil's previous MER.

Criterion 1.1 – Brazil identifies and assesses its money laundering, terrorist financing and proliferation financing risks through the 2021 National Risk Assessment (NRA) and through sectoral risk assessments¹⁰⁷. These assessments are based on a rigorous Methodology for ML which combines the assessment of threats, vulnerabilities and the impact on Brazil's economic and financial systems and society. A wide range of stakeholders from the government and private sector, as well as civil society representatives participated in the NRA exercise. Data collected included quantitative and qualitative information, such as typologies, statistics on ML, seizure and confiscation, and many surveys completed by public sector and private institutions. For TF, the NRA conclusions are based on the estimated presence of terrorist groups and individuals (those designated by the United Nations) in Brazil, as well as support networks and theoretical scenarios, and only marginally on real cases. Prior to the NRA, Brazil identified individual corruption and ML risks through the work of the National Strategy to Combat Corruption and Money Laundering (ENCCLA). Overall, the understanding of ML and TF risks in Brazil is reasonable.

Criterion 1.2 – The Working Group on the National Risk Assessment of Money Laundering, Financing of Terrorism and Financing the Proliferation of Weapons of Mass Destruction (WGNRA) is the authority responsible for the development of the NRA. The Council for Financial Activities Control (COAF) is the WGNRA's coordinator. Representatives of the Central Bank of Brazil (BCB) and of the Ministry of Justice and Public Security (MJSP) also serves on the group. In addition, the National Strategy to Combat Corruption and Money Laundering (ENCCLA) co-ordinates actions to assess risks and works with the WGNRA in a complementary way.

Criterion 1.3 – Brazil keeps risks assessments up-to-date. Since 2003, and over the years, ENCCLA has identified numerous corruption and ML risks. The first NRA was published in 2021 and should be reviewed in a period not exceeding two years (Rules of Procedure of the National Risk Assessment Working Group (NRAWG)/Resolution No. 1 GTARN, art. 2, paragraph 2).

Criterion 1.4 – Brazil has mechanisms to provide information on the results of the risk assessment(s) to all relevant competent authorities and self-regulatory bodies (SRBs), financial institutions (FIs) and designated non-financial businesses and professions (DNFBPs). The NRA is published online² and COAF has distributed its findings through its online system connecting with all reporting entities (SISCOAF) and by email. Authorities have also presented the results at forums attended by FIs,

¹⁰⁷ Including the BCB SRA of 2019, CVM SRA of 2020, the ENCCLA Legal Persons and Arrangements report (Action 02/2022: Diagnose the challenges and propose measures to improve the final beneficiary identification requirements in accordance with FATF Recommendation 24 – Transparency and Corporate Ownership) of 2022.

DNFBPs and public sector officials. The results of Sectorial Risk Assessment (SRA) were shared with the relevant public and private sectors institutions.

Criterion 1.5 – There is guidance to encourage the Brazilian authorities to apply a risk-based approach to allocating resources and implementing measures to mitigate ML/TF, however, these are not binding or have not been applied in all cases. Examples may be found in the analysis of R.26 and 28. The WGNRA explicitly requires promoting measures to address the risks identified in the NRA (Resolution No. 1 GTARN, art 3, item IV). The NRA’s methodology states that the highest risks should be included in an Action Plan alongside the ENCCLA’s National Strategy to Combat Corruption and Money Laundering. Following the NRA, the WGNRA issued an Action Plan which has served as a guide for authorities to prioritize areas of highest risk, as further explained under R.2. However, ENCCLA does not have powers to enforce its national strategy. There are areas identified as high risks in the NRA or by ENCCLA where the resources allocated are not commensurate (e.g., environmental crimes or in the DPMS sector).

Criterion 1.6 –

(a) COAF grants exemptions to supervised entities under certain criteria, in line with an assessment of low ML/TF risk determined by the entities, if approved by management, and if accepted by COAF (COAF Resolution 36/2021, article 13). For example, entities classified in category(ies) of lower size and volume of transactions may be granted the waiver. However, this decision is mostly linked to the entities’ size and volume of transactions as well as their own assessment of AML/CFT risk which is inconsistent with the requirement on a proven low risk within strictly limited and justified circumstances. VASPs are not covered by relevant AML/CFT legislation, despite being considered higher risk in the NRA.¹⁰⁸

(b) Brazil does not allow for any financial activity to be exempted from FATF standards.

Criterion 1.7 – Brazil ensures that the AML/CFT regime addresses the higher risks by requiring that FIs incorporate the findings of the NRA in their internal risk assessment, when available (Circular BCB No. 3978/2020, art.10, para.4). Further, supervised entities should, in higher risk situations, adopt reinforced management and mitigation controls. COAF requires the same from DNFBPs (COAF Resolution No. 36/2021, art. 6).

Criterion 1.8 – Brazil allows for simplified measures to be applied provided that lower ML/TF risk has been identified and is consistent with the country’s national risk assessment (BCB Circular 3978/2020, article 10, para. 3 and 4 and COAF Resolution, 36/2021, article 6).

Criterion 1.9 – Supervisors and SRBs ensure that supervised entities meet their obligations under R.1. BCB, COAF and CVM require reporting entities to take a risk-based approach and assess their conduct to determine AML/CFT policy effectiveness (BCB Circular 3978/2020, para.1, Article 10, COAF Resolution, article 6, CVM Resolution 50/2021, article 5 and 6). Some deficiencies remain as described in greater detail in the assessment of R.26 and R.28. Notaries have only been regulated since 2019 (NRA, p. 66) and despite upcoming legislation already approved, at the time of the onsite, VASPs were not regulated. Lawyers are also, by omission of

¹⁰⁸ Note that Brazil has passed this legislation however it entered into force after the on-site visit.

regulation and assigned supervisor, also not regulated and supervised for AML/CFT purposes.

Criterion 1.10 – Most FIs and DNFBPs are required to take appropriate steps to identify, assess, and understand their ML/TF risks (for customers, countries or geographic areas; and products, services, transactions or delivery channels). This includes (a) documenting their risk assessments; (b) considering all the relevant risk factors; (c) keeping the assessments up-to-date and (d) having appropriate mechanisms to provide information to competent authorities and self-regulatory bodies (SRBs) (Circular BCB No. 3978/2020, arts. 10, 66; COAF Resolution No. 36/2021, art. 6 and 14, CVM Resolution 50/2021, article 5, 6 and 26). Deficiencies persist in the non-regulated sectors and TCSPs.

Criterion 1.11 – FIs and DNFBPs are required to (a) have policies, controls and procedures, which are approved by senior management and that enable them to manage risks identified (Circular BCB No. 3978/2020, art. 2; COAF Resolution, art. 2). (b) For FIs, there is a requirement to monitor the implementation of policies, controls and procedures (Circular BCB No. 3978/2020; art. 61) and to enhance them, if necessary, and for DNFBPs, there are similar requirements under COAF Resolution 36/2021 and Law No 9613/1998; art. 9. (c) FIs are required to take commensurate measures, including enhanced measures, to manage and mitigate higher risks (Circular BCB No. 3978/2020, art.13, para 1 and art.38, para 3). DNFBPs are required to take enhanced measures to manage and mitigate risks where higher risks are identified (COAF Resolution 36/2021, article 7, para. 1, I).

Criterion 1.12 – Simplified measures are only allowed in instances where low risk has been identified (BCB Circular 3978/2020, article 10, para.3 and COAF Resolution No. 36/2021, art. 13, and COAF Resolution 6/2021)

Weighting and conclusion

Brazil has implemented some of the requirements of R.1. However, COAF allows simplified procedures that are not based on risk and there are no binding measures to manage and mitigate higher risks when identified. The existence of some unregulated or recently regulated sectors also means that there are still some gaps in authorities ML/TF risk understanding and a nascent implementation of AML/CFT.

Recommendation 1 is rated Largely Compliant.

Recommendation 2 – National cooperation and coordination

In its 3rd MER, Brazil was rated largely compliant with national co-operation and co-ordination requirements because of operational co-ordination problems and overlap in federal and state level investigations.

Criterion 2.1 – Brazil’s risk policies are regularly reviewed (Resolution WGNRA 1/2021, article 2). Brazil developed an Action Plan with actions to address risks identified in its NRA. Prior to and after the NRA, Brazil co-ordinated actions to mitigate risks through ENCCLA. Among the areas to improve are control and exchange of information on beneficial owners, use of cash, corruption and challenges on customs and border controls.

Criterion 2.2 – The WGNRA and ENCCLA are the two mechanisms to implement the national AML/CFT framework. The WGNRA is the main coordination body for the NRA process, and monitor the implementation of the Action Plan. ENCCLA decides the

annual goals in AML/CFT, works to implement the Action Plan, and assist in coordinating the activities of participating authorities. COAF is the main authority responsible for promoting dialogue and cooperation at national level (Law 13.974/2020, Art.3).

Criterion 2.3 – Brazil has mechanisms in place to enable policy makers, the FIU, law enforcement authorities, supervisors and other relevant competent authorities to cooperate and when appropriate exchange information. The WGNRA is a permanent institutional working group responsible for monitoring risks and the implementation of policies. The ENCCLA is the main network for the formulation, articulation and implementation of AML/CFT policies, including the AML/CFT Action Plan and its goals (e.g., the National Network of Technology Laboratories against Money Laundering). The COAF Plenary, which includes all supervisors, permits a permanent interaction between agencies and supports the work of coordination. This is complemented by the country authorities’ ability to act through bilateral agreements of cooperation and information sharing. There are mechanisms for operational cooperation. The National Network of Technology Laboratories against Money Laundering consists of a network of institutional coordination made of Laboratories of Technology against Money Laundering (LAB-LD) units, specialized in the analysis of large data for use in ML and other criminal investigations. These specialized units are set up in all 26 Brazilian states and the Federal District.

Criterion 2.4 – While there are export control measures of sensitive goods coordinated by the Ministry of Science, Technology and Innovation (MCTI), in conjunction with other agencies which participate in the Interministerial Commission for the Control of Sensitive Goods (CIBES), its activities do not yet include prevention and combating the financing of weapons of mass destruction.

Criterion 2.5 – There may be some mechanisms that enable the co-operation and co-ordination to ensure compatibility of AML/CFT requirements with data protection and privacy rules, although it is not clear how they can be used in practice. The National Data Protection Authority is the body responsible for ensuring the protection of personal data and regulating, implementing, and supervising compliance of the General Law for the Protection of Personal Data (Law No.13.709, 2018 - GLPPD). This body is competent for developing guidelines for the national policy for the protection of personal data and privacy as well as promoting knowledge of public standards and policies on the protection of personal data and security measures. GLPPD includes exception to enable the access of personal data for the purpose of security and for investigation and prosecution of criminal offences, although there is no clear framework for accessing information in criminal matters. Some authorities have demonstrated awareness of the data protection and privacy rules by amending regulations dealing with data sharing. For instance, after the enactment of the GLPPD, BCB issued a resolution updating the access of public entities to the Register of Clients in the National Financial System (CSS) (Resolution No. 124, 2021). In 2018, BCB and RFB updated their MoU to align the sharing of data to the rules established in GLPPD.

Weighting and conclusion

Brazil has a framework for national co-operation and co-ordination for AML/CFT matters. Coordination efforts do not cover the financing of proliferation. There are mechanisms to ensure the compatibility of legal requirements with data protection

law, although it is not clear whether in practice there is coordination or cooperation on AML/CFT matters.

Recommendation 2 is rated Largely Compliant.

Recommendation 3 - Money laundering offence

Brazil was rated PC on old Recommendations 1 and 2. The main deficiencies were related to an insufficient range of predicate offences, the criminalisation of the conversion or transfer of proceeds, and a lack of liability for legal persons.

Criterion 3.1 – Brazil criminalises the ML offence in article 1 of Law No. 9613 generally in line with the elements of the crime under the Vienna and Palermo Conventions. Brazil’s law criminalises the acts of concealing or disguising assets resulting directly or indirectly from crime and covers the offences contained in the Conventions through wording “converts [valuables resulting from a criminal offence] into lawful assets” (Law No. 9613, art. 1, para. 1(I)) and “transfers any such assets” (para. 1(II)). While there is no specific reference to the helping a person evade consequences, Brazil states that no intent or purpose needs to be shown aside from intentionally concealing or disguising, such that Brazil’s law appears more permissive than the FATF Standard. Brazil criminalises “acquisition, possession, or use” offences in the Conventions in article 1, para. 1(II) and para. 2(I), but it requires that they be committed for the purpose of concealing or disguising proceeds, which is a minor shortcoming because an additional intent requirement is imposed.

Criterion 3.2 – Brazil covers all serious offences as predicates for its ML offence, as Article 1 of Law No. 9613 refers to assets resulting from “a criminal offence.” Brazil in fact criminalises a range of offences within the FATF Glossary’s “designated categories of offences”. Predicate offences can include not only felonies, but misdemeanours.

Criterion 3.3 – Brazil applies an all-crimes approach.

Criterion 3.4 – The ML offence extends to any type of property, regardless of its value, that directly or indirectly represents the proceeds of crime. The offence explicitly refers to “assets, rights and valuables that result directly or indirectly” from crime (Law No. 9613, art. 1). While not defined, the terms are together expansive enough to cover any type of property without limitation, including virtual assets.¹⁰⁹ There is no monetary threshold.

Criterion 3.5 – When proving that property is the proceeds of crime, it is not necessary that a person be convicted of a predicate offence. Prosecution for the ML offence is “not dependent on the judicial proceedings and sentencing applicable to prior criminal offences” (Law No. 9613, art. 2(II)). “Sufficient indications of the existence” of the predicate offence are sufficient (art. 2, para. 1). ML is punishable even if the perpetrator of the predicate offence is unknown, exempt from punishment, or has their conviction annulled (art. 2, para. 1).

Criterion 3.6 – Predicate offences for ML extend to conduct that occurred in another country by implication. Support for this interpretation can be found in art. 2(II), where

¹⁰⁹ In the future, VA will be separately defined as digital representations of value that can be traded or transferred by electronic means and used to make payments or for investment, with certain carveouts for, e.g., national currency, securities, etc. While the definition of property for the purpose of the ML offence is considered sufficiently broad to cover laundering of, or through, VA, the VA/VASP Law of 2022, No. 14478, will not come into force and effect until after the on-site visit.

the law states that the ML offence is not dependent on a proceeding related to a predicate “even for crimes committed abroad.” The principle of dual criminality is satisfied as long as the offence in the foreign country generally meets the description of the crime under Brazilian law.

Criterion 3.7 – The ML offence extends to persons who commit the predicate offence. Article 1 of Law No. 9613 contains no statement to the contrary and there is no fundamental principle of law implicated. The CC generally recognises that one act or omission may comprise two or more offences (art. 69) and the Supreme Court considered the question of whether transactions charged as ML were actually the culmination of the receipt of bribes by the same defendants (deciding they were not) (Inq. 2245, Reporter Ministry Joaquim Barbosa, Full Plenary, judgment: 28.08.2007, Justice Gazette 09.11.2007). Several case examples of self-laundering were provided.

Criterion 3.8 – It is possible for the intent and knowledge required to prove the ML offence to be inferred from objective factual circumstances. The Brazilian CPC considers as evidence those known and proven circumstances, which, having relation to a fact, allow an inference to conclude the existence of another fact or circumstance (art. 239). The judge may form his or her conviction by the “free appreciation of the evidence produced in the judicial adversary system” (art. 155).

Criterion 3.9 – Proportional and dissuasive sanctions of three to ten years imprisonment and a fine apply to natural persons convicted of ML (Law No. 9613, art. 1). Fines are determined by reference to various factors related to the circumstances of the defendant, per the CC (art. 59). The custodial penalty can be increased by one-third to two-thirds when the crime follows a constant pattern or is committed by a criminal organisation (art. 1, para. 4). Furthermore, suspension from office (public office or certain private roles in the financial sector) is available (art. 7(II)). The range of three to ten years’ imprisonment can be applied in a sufficiently proportionate way to crimes of more or less severity and the custodial penalties do appear dissuasive. Compared to penalties for other crimes, the range for ML is in the middle (i.e., less than some violent crimes, but more than some predicates like racketeering, tax crimes, and fraud).

Criterion 3.10 – In Brazil, criminal liability does not normally apply to legal persons, but only their natural person managers and directors. Brazil’s Constitution states that “without prejudice to the personal liability of the managing officers of a legal entity, the law shall provide the liability of the latter, subjecting it to punishments compatible with the nature of the acts that contravene the economic and financial order and the popular economy” (art. 173, para. 5). This is, according to some jurists and scholars, a prohibition on corporate criminal liability. Even if such a fundamental principle exists in article 173 or elsewhere, some exceptions have been made in Brazil, particularly for environmental crimes. Further, Brazil has not articulated a fundamental principle of law precluding criminal liability for legal persons that commit ML, particularly given that ML could be considered an act that “contravene[s] the economic and financial order” under the asserted principle. While criminal liability for environmental crimes may be rooted in the Constitution (art. 225, para. 3), liability (without specifying which kind) also appears rooted in the Constitution for acts which contravene the economic and financial order. Article 173 does not contain a prohibition, but uses the word “punishment,” which evokes the possibility of a criminal law response. It is also unclear whether the article applies to private companies, as opposed to state-owned or mixed capital companies. Neither criminal

liability nor sanctions apply to legal persons for ML, but a fundamental principle preventing this is not apparent.

Criterion 3.11 – There are appropriate ancillary offences to ML including participation (Law No. 9613, art. 1, para. 2(II)); association or conspiracy (id.); and attempt (art. 1, para. 3). Criminal Code provisions of general applicability also apply to ML: art. 14 regarding attempt; art. 29 regarding participating as an accomplice, aiding and abetting, and facilitating; art. 288, which makes it an offence to join with three or more people for the specific purpose of committing crimes; as well as art. 31 regarding counselling the commission of a crime, but only if there has been an attempted offence.

Weighting and Conclusion

Brazil meets most criteria, but there are minor shortcomings. Brazil's ML offence is mainly in line with the elements of the Vienna and Palermo Conventions, but the criminalisation of the acquisition, possession, and use of property, where the perpetrator knows at the time of receipt it is the proceeds of crime, requires an additional showing of intent that goes beyond the requirements of the conventions. Additionally, criminal liability does not apply to legal persons for ML, yet the asserted fundamental principle of law has not precluded corporate criminal liability for certain other crimes in Brazil. Even if the fundamental principle asserted does state a general rule against corporate liability or the one Constitutional interpretation is that it does, ML could be considered one of the "acts that contravene the economic and financial order and the popular economy" such that legal persons could be punished. This deficiency is not highly weighted, however, because Brazil has civil and administrative sanctions available for legal persons who fail in their AML obligations. There is also the Corporate Liability Law No. 12,846 (2013), the Improbability Law No. 8,492 (1992), and public civil suits which provide for civil or administrative liability for legal persons in matters related to corruption, which is Brazil's most significant risk. The impact of the two shortcomings is therefore assessed to be minor, not moderate.

Recommendation 3 is rated Largely Compliant.

Recommendation 4 - Confiscation and provisional measures

Brazil was rated PC on old Recommendations 3. The main deficiencies were related to a lack of provisional and confiscation measures related to TF and asset management issues.

Criterion 4.1 – Confiscation is provided for in the Brazilian Constitution as a type of individualised punishment (Art. 5, XLVI(b)) and is possible for all types of crimes. It is further defined in the CC (art. 91 and 92) for all crimes, and in Law No. 9613, with additional specificity, for the crime of ML. Confiscation can be decreed when "convincing evidence of illicit origin of the assets" exists (CPC, art. 126). Assets of criminal defendants and third parties can be confiscated (CC, art. 91, para. 1).

(a) **Property laundered** is subject to confiscation under the CC, but only insofar as it is considered an instrumentality under Brazilian law (i.e., property whose disposal, possession, or use constitutes a crime). For the purpose of determining the instrumentalities of ML, the scope of the ML offence in Brazil is not quite as expansive as the offence defined by the Vienna and Palermo conventions, as assessed in R.3, and this may pose a minor limitation. While there are minor gaps in the CC as to property

laundered, Law No. 9613 makes up for them by authorising confiscation of “assets, rights, and valuables which are directly or indirectly related to the crimes referred to in this law” (e.g., ML). Therefore, property laundered also appears to be subject to confiscation under Law No. 9613, art. 7(I)), even if not by name – “related to” ML is broad enough.

(b) For predicate offences, the **proceeds of crime** are subject to confiscation (CC, art. 91, II). Proceeds are defined as “any good or value that constitutes a benefit obtained” by the sentenced person. However, there is no explicit reference in the CC to the ability to confiscate traceable income or benefits derived from criminal proceeds, so it is not clear whether the article is broad enough to include proceeds that are indirect, i.e., not obtained “from the practice of the predicate act” (id.) The maximum value of assets subject to confiscation is the damage caused to a victim or the proceeds obtained by the agent of the crime or a third party (CC, art. 45, § 3). The **instrumentalities of crime** may also be confiscated “provided that they consist of things whose manufacture, disposal, use, or possession constitutes an unlawful act” (CC, art. 91(II)). This covers contraband or assets whose possession, use, or disposal is a crime, which is narrower than the FATF’s concept of instrumentalities as any assets “used or intended for use in, ML or predicate offences.” For the ML offence only, confiscation is further elaborated to include “assets, rights, and valuables which are directly or indirectly related to the crimes referred to in this law” (e.g., the crime of ML). Therefore, the proceeds and instrumentalities of ML are well covered by Law No. 9613, art. 7(I), but this means that ML must be charged, so there is a gap related to some predicate offence instrumentalities.

(c) Property that is the proceeds of the financing of terrorism, terrorist acts or terrorist organisations is subject to confiscation under art. 91 (see (b) above). The instruments used for the commission of crimes by criminal organisations and militias must be confiscated even if they do not endanger safety or public order, and even if they do not pose a risk of being used to commit new crimes (CC, art. 91-A, § 5). Shortcomings in the TF offence (see analysis of R.5) may limit the scope of confiscation available for TF.

(d) Property of corresponding value is subject to confiscation, but only in situations where goods and values are not found or when they are located abroad (CC, art. 91, (1)). This is a minor shortcoming.

Some of the technical deficiencies mentioned above are mitigated by the fact that Brazil has extended confiscation for serious offences (including ML) punishable by a maximum of more than six years in prison. Under Criminal Code art. 91-A, the proceeds of crime are expanded to include “assets corresponding to the difference between the value of the assets of the convicted person” and his or her “lawful income.” This includes assets (1) owned by the convicted person, assets over which he or she has domain, and assets from which he or she benefits directly or indirectly, as of the date of the criminal offence or received later; and (2) gifts to third parties (for free or negligible consideration), as of the beginning of the criminal activity, when they qualify as unexplained by lawful income. The prosecutor must expressly make use of extended confiscation, indicating the difference between the defendant’s legal and unjustified property; the defendant can in turn demonstrate lawful origin of any such assets sought for confiscation (art. 91-A, §§ 2-4).

Criterion 4.2 –

(a) There are measures enabling competent authorities to identify, trace, and evaluate property that could be subject to confiscation. With court authorisation, bank secrecy can be lifted for the investigation of any criminal act in any phase of the investigation or judicial proceeding, including for the purpose of investigating ML and uncovering concealed assets (Comp. Law 105 (2001), art. 1, para. 4 (XIII)). Law No. 9613 states that police and federal prosecutors will have access to “registration” information kept by FIs and credit card companies without judicial authorisation, i.e., the name, identifiers, affiliation, and address of a client or customer (art. 17-B). Law No. 9613 requires the maintenance of a centralised bank account register (art. 10-A, known as CCS) and COAF is required to notify competent authorities whenever it finds evidence of ML or illicit activity to enable authorities to take appropriate measures (art. 15). LEAs have the authority to request information from the public administration, including COAF, in their respective empowering legislation. Information about Brazilian taxpayers and tax filings can generally be accessed with judicial authorisation when an administrative proceeding has been initiated, or to file criminal tax charges, or for an ML or predicate investigation (Tax Code, arts. 198-99). To identify and trace assets, certain information is public or accessible to competent authorities, including documents related to the tax registration/identification of natural and legal persons (through CNPJ and CPF), as well as information on the ownership of real estate, vehicles, vessels, and companies. For assets involved in TF, state security information is available to all participants in the Brazilian Intelligence System (Law 9883 (1999) and Decree No. 4376 (2002)). Organised Crime Law No. 12850 also allows competent authorities to use investigative techniques which can uncover the existence of assets subject to confiscation, and seek the lifting of bank secrecy, which requires a court order (art. 3, art. 15).

(b) Brazil can carry out provisional measures to prevent dealing, transfer, or disposal of property subject to confiscation. The “assurance measures” set forth in the CPC, Chapter VI, detail the process for seizures generally applicable to all crimes. However, these provisions appear to only apply to proceeds, not instrumentalities, creating a deficiency. Instrumentalities may only be seized under the Anti-Drug Law (arts. 60-62) and Law No. 9613. Under the CPC, the judge, by request of the prosecutor or the victim, or through representation of the police, may order asset seizure “at any stage of the process or even before the complaint” (art. 127). There are no provisions stating that applications for seizures can be made on an ex parte basis or clarifying that they may be imposed without prior notice, however, the seizure provision in Law No. 9613 (art. 4) is a measure “to secure assets” and Brazil points to this clear legislative intent as the basis for acting ex parte, without notice to the investigated or accused person. The situation is clearer on this point with respect to crimes resulting in damage to the public treasury (Decree Law 3240, art. 2).

Seizures under the CPC only last for 60 days if the criminal action is not initiated within that time. While this period may not be sufficient in all cases, it is possible to extend provisional measures if the reason for the restraint remains factually valid and in consideration of the complexity of the investigation. The use of extension was demonstrated through Supreme Court precedent. Seizures applications are assessed by the court separately and may be challenged by third-parties or the accused (for the latter, on the grounds that the assets were not acquired with the proceeds of crime) (arts. 129-130). Mortgages (i.e., liens or attachments) can be made on real estate, subject to an appraisal (art. 135), and assets which are fungible or easily deteriorated

may be liquidated or kept in custody of a reputable third-party upon a waiver (arts. 120, 137, 144-A).

Law No. 9613 sets out specific seizure measures for ML in article 4. The components are largely the same as those in the CPC, but they also apply to instrumentalities and specifically refer to assets, rights, and valuables in the name of the defendant or “registered under the name of an intermediary.” The standard to impose provisional measures is “sufficient evidence of a criminal offence.” Restrained assets can be sold at an anticipatory sale, including by the judge without a motion, for not less than 75% of the asset’s value.

There is a dedicated section for provisional measures related to TF or crimes of terrorism which cover instruments, products, and profits (TF Law No. 13260 (2016), art. 12).

(c) Brazil has only limited measures that allow competent authorities to prevent or void actions that prejudice the country’s ability to freeze, seize, or recover property. The CPC provides that real estate acquired by the accused with proceeds can be seized even if it has already been transferred to a third party (art. 125). Under the extended confiscation regime in Criminal Code article 91-A, assets subject to confiscation can include those over which the convicted person “has domain,” from which he or she benefits “indirectly,” and those transferred to third parties for “free or negligible consideration.” This may allow some contracts used to frustrate forfeiture to be unwound, but not all of them, and only with respect to real estate or under extended confiscation.

(d) Brazil has measures which enable competent authorities to take appropriate investigative steps with respect to confiscation. (Law on OC No. 12850, Ch. II (investigation and means of evidence collection); Law No. 9613, art. 1, para. 6 (permitting the use of undercover agents and controlled delivery), art. 4 (provisional measures); art. 4-B (halting arrest or seizure in order not to jeopardise an investigation)). See also analysis under R.31.

Criterion 4.3 – Laws and other measures provide protection for the rights of *bona fide* third parties. Pursuant to the CC, art. 91(II), the effect of a sentence for any crime includes confiscation “except for the right of the injured party or a third party in good faith.” Pursuant to Law No. 9613, art. 7(I), the effect of a guilty verdict for ML includes forfeiture with “provision being made for safeguarding the rights of a victim or a third party in good faith.” The CPC authorises the refund of assets belonging to a victim or third-party acting in good faith after the sentence (art. 119) and when assets are seized (art. 130).

Criterion 4.4 – Brazil has mechanisms for managing and, when necessary, disposing of property frozen, seized, or confiscated. The CPC provides for the evaluation and sale of confiscated assets at public auction and the possibility of repurposing assets for official or public use (arts. 133, 133-A). The CPC also articulates how certain types of confiscated assets should be dealt with (e.g., preservation in a museum) (arts. 124, 124-A, and 125). In ML cases, Law No. 9613 preferences the federal or state agencies responsible for combatting ML for the destination of assets (art. 7, para. 1 and Decree No. 11,008 (2022)). When assets are subject to provisional restraints, the judge, upon consultation with the prosecutor, may appoint a qualified individual or legal entity to manage assets (art. 5). Also pursuant to Law No. 9613, Brazil can conduct an anticipatory sale to preserve the value of assets (art. 4-A), or, if there is no market, appoint a qualified individual or entity to manage them (art. 5). Functionally, assets

and other funds held in financial accounts are seized directly through SISBAJUD, an electronic system linking the judiciary to FIs, and they are transferred to a court-controlled account, along with the proceeds of anticipatory sales under art. 4-A to preserve the value of assets.

SENAD's Asset Management Board is competent to manage all assets subject to seizure and confiscation in the country per Decree No. 10,073, arts. 20-21, and not just those linked to drug cases. But, in fact, individual judges have the legal power to make arrangements to manage assets and do so on their own in most cases, as SENAD's relatively new authority outside of drug-related cases is not well-known. Under its Decree, SENAD, when called upon, may dispose of assets finally confiscated or as a precautionary measure to preserve value (art. 21(II)); track assets through a computerised system (art. 21(III)); and support the judiciary in the management and sale of complex assets, such as companies and businesses (art. 21(X)). SENAD has issued asset disposal publications, guidance manuals for the evaluation and final disposition of assets, and an ordinance on incorporation/donation of assets. It has also established a communication channel with the police and catalogues the status and location of seized assets. Ultimately, confiscated assets or proceeds from their sale constitute revenue to the National Public Security Fund, except for assets from drug trafficking cases which are deposited into a separate fund.

Weighting and Conclusion

Brazil has partly remedied the deficiencies identified in its last MER, creating mechanisms for the management and disposal of assets and by establishing a TF offence and incorporating confiscation and provisional measures for it. Some shortcomings remain, including a gap in the ability to confiscate instrumentalities of certain predicate offences when ML is not also charged, and limitations in the circumstances in which corresponding value can be confiscated. These deficiencies are weighed as minor because they are partly made-up for by Brazil's extended confiscation regime. Although SENAD has been empowered, mechanisms of asset management are still retained by the judiciary, leading to a shortcoming in SENAD's country-wide reach and potential inconsistencies in management processes.

Recommendation 4 is rated Largely Compliant.

Recommendation 5 - Terrorist financing offence

Brazil was rated NC on old SR.II. The main deficiencies were related to the lack of a stand-alone offence (TF was ancillary to existing criminal offences); not criminalising the financing of terrorist organisations except in limited circumstances; and not criminalising the financing of individual terrorists for purposes unrelated to a terrorist act.

Criterion 5.1 – Brazil has two TF offences in Law No. 13260 (2016). The financing of terrorist acts is criminalised by article 6, and the financing of individual terrorists and terrorist organisations is criminalised by article 6, sole paragraph.¹¹⁰ However, there

¹¹⁰ Brazil defines terrorism (art. 2) and acts of terrorism (art. 2, para. 1) in Law No. 13260. Terrorism is: “the practice by one or more individuals of the acts provided for in this article, for reasons of xenophobia, discrimination, or prejudice of race, colour, ethnicity, and religion, when committed with the purpose of provoking social or generalised terror, exposing persons, properties, public peace, or public safety to danger.” The law defines an exception to categorising certain conduct as terrorism (art. 2, para. 2), stating in full: “[t]he provisions of this article do not apply to the individual or collective conduct of persons in

are serious shortcomings in the alignment of the TF offences with the requirements of the TF Convention. They are: (1) an incomplete definition of terrorism for the “catch-all” prong of the TF Convention as to intentional acts of terrorism, impeding the scope of the TF offence (i.e., compelling a government/international organisation is not recognised in Brazil); (2) an exemption to the definition of terrorism, limiting coverage of the TF offence; (3) the financing of terrorist acts offence does not cover provision/collection of funds “with the intention” that the funds should be used, regardless of the perpetrator’s knowledge; (4) a mental element of intent is imposed on certain treaty offences, which negatively affects the scope of the TF offence; and (5) there are missing treaty offences under Brazilian law, also impacting the scope of the TF offence as to those crimes.

Brazil’s offences criminalise TF on the basis of the TF Convention only in part. First, as compared to the TF Convention, Brazil’s definition of terrorism limits the criminalisation of TF because the acts it defines as terrorism are too narrow: they all require a reason (broadly, animus against a group) and a purpose (broadly, to terrorise or endanger the population).¹¹¹ Brazil’s definition of terrorism does not fully align with the FATF glossary definition of terrorism in that it does not cover acts causing death or bodily injury to civilians/non-combatants when the purpose of the act, by its nature or context, is to *compel a government or international organisation to do or abstain from doing any act*. Additionally, Brazil’s definition of terrorism requires a reason of animus or hatred towards a group; the TF Convention does not require any reason for the terrorist act other than to cause death or injury to a civilian plus the purposive elements.¹¹²

Second, Brazil’s exemption the definition of terrorism limits the criminalisation of TF because if certain conduct is exempted from categorisation as terrorism, then the financing of those acts cannot be TF. No exemption or exception to the definition of terrorism that is acceptable under the TF Convention (art. 6) or the FATF’s Standards and its precedents.

Third, Brazil does not cover the provision or collection of funds “with the intention” that the funds should be used, regardless of the perpetrator’s knowledge of actual plans for terrorism. The TF Convention requires that it be an offence for a person, by any means, directly or indirectly, unlawfully and wilfully, to provide or collect funds with the intention that they should be used or in the knowledge that they are to be used in full or in part to carry out certain acts. Brazil’s Article 6 implicitly criminalises the provision/collection of funds in the knowledge that they are to be used to carry out certain acts by specifying that the provision/collection should be “for the planning, preparation, or execution of the crimes provided for in this law.” Although not explicit, this requires the offender to have, at a minimum, knowledge that the funds provided are for carrying out terrorist acts. This does not cover provision/collection merely “with the intention” that the funds should be used,

political demonstrations, social, trade union, religious, class or professional category movements, directed by social or claiming purposes, aimed at challenging, criticising, protesting, or supporting, or defending constitutional rights, guarantees and freedoms, without prejudice to the criminal typification contained in the law.”

¹¹¹ Compare with the TF Convention, art. 1(b): the purpose of a terrorist act may be to intimidate a population, compel a government or international organisation to do or abstain from doing something. Brazil’s definition of terrorism has a similar purpose (provoking generalised terror or exposing persons to danger), but the definition does not recognise that one purpose of terrorism may be to compel a government or international organisation to act/not act.

¹¹² Id.

regardless of the perpetrator's knowledge, which is a gap because this alternative is sometimes easier to prove than knowledge of future terrorist acts.

Fourth, there is a significant deficiency because the TF offences do not cover the full scope of terrorist acts as required by the TF Convention.¹¹³ There are nine treaties annexed to the TF Convention, several of which contain offences that require no terroristic intent: if these offences are committed, they should be considered terrorist acts, *per se* (e.g., hijacking an aircraft). Under Brazilian law: (i) both art. 6 and the sole paragraph refer to financing “the crimes provided for in this Law” or financing persons or organisations whose activities include “the practice of the crimes referred to in this Law”; (ii) as set out in article 2, para. 1, “the crimes referred to in this Law” require both a reason and a purpose to be shown with respect to the acts of terrorism; (iii) this imports a purpose or intent element *even to those treaty offences under the TF Convention* like hijacking, which should have none; therefore, (iv) the scope of the TF offences is not wide enough to cover financing of these acts. Brazil's law places an additional burden on the prosecution to demonstrate another element beyond the elements of the TF offence, which is not in line with the TF Convention or the FATF Standards.

Fifth, Brazil's list of terrorist acts is not expansive enough to include a few of the treaty offences (e.g., types of hostage-taking or theft and embezzlement of nuclear materials). There are also minor gaps in terms of the coverage of threats to commit some acts.

Criterion 5.2 –

(a) Subject to the deficiencies assessed in c.5.1 regarding the limitations on the scope of acts the financing of which should be criminalised, Brazil partially extends the TF offence to the financing of terrorist acts (TF Law, art. 6).

(b) Brazil extends the TF offence to the financing of a terrorist organisation or individual terrorist (even in the absence of the link to a specific terrorist act or acts) (TF Law, art. 6, sole para.). The offence mentions that the individual, group, association, entity, or organisation financed can have as its primary or secondary activity the commission of terrorist acts and that these acts can be of an “eventual character.” Brazil criminalises the financing of an individual terrorist and, e.g., a new terrorist group, even if neither has yet committed a terrorist act, but would do so eventually, as part of its activities. This could cover a terrorist group which conducts other activities, e.g., charity, education, or politics, unless such a group fell into Brazil's exemption (see c.5.1).

Criterion 5.2^{bis} – Brazil appears to criminalise financing the travel of individuals who travel to a state other than their states of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts (TF Law, art. 5, para. 1(I)). The offence does not explicitly mention financing, however, it does cover recruiting, organising, transporting, or supplying and individual travelling to a country other than that of their residence or nationality “for the purpose of conducting acts of terrorism.” The breadth of the word “organises” in the article could conceivably cover aspects of financing, as could “supplies.” This offence also does not

¹¹³ The TF Convention requires that the financing of certain acts be made illegal, regardless of the purpose with which those acts are committed. Specifically, art. 2, para. 1, contains two requirements, both of which must be criminalised under national law: (a) the financing of the acts as defined in one of several treaties listed in the annex (the “treaty offences”), and (b) the financing of intentional terrorist acts. The annex offences are considered terrorism *per se* because of the heinous nature of the acts themselves.

mention travel for the purposes of planning or preparation, but these may be subsumed into the article's reference to "conducting" acts of terrorism. Brazil criminalises the provision or receipt of terrorist training (art. 5, para. 1(II)) in a country other than the perpetrator's residence or nationality. It is also an offence to commit any of the acts mentioned in this criterion without the aspect of travel to a country other than that of the perpetrator's nationality or residence; the penalty is simply reduced (art. 5, para. 2).

Criterion 5.3 – There is no restriction on the source of the funds or other assets that may be used to commit the TF offences contained in article 6. They may derive from legal or illegal activity.

Criterion 5.4 – Neither of Brazil's offences require that the funds or other assets were actually used to carry out or attempt a terrorist act or be linked to a specific terrorist act. For the purposes of TF related to an act under article 6, the act criminalised is receiving, providing, etc. resources "for the planning, preparation or execution" of any of the crimes set out in the TF Law. Planning or preparation does not require a demonstration that the funds were used in an attempted or a completed act, nor a link to a specific terrorist act (e.g., a plot on a certain date or location with a certain target). As to article 6, sole paragraph, the person or group funded should have as their primary or secondary activity the "practice of the crimes" of terrorism, including of an "eventual" character.

Criterion 5.5 – It is possible for the intent and knowledge required to prove the TF offence to be inferred from objective factual circumstances. The CPC considers as evidence those known and proven circumstances, which, having relation to a fact, allow an inference to conclude the existence of another fact or circumstance (art. 239). The judge decides based on a "free appreciation of the evidence produced in the judicial adversary system" (art. 155).

Criterion 5.6 – Proportional and dissuasive sanctions of fifteen to thirty years imprisonment apply to natural persons convicted of the main TF offences (TF Law, art. 6). The penalty can be increased by one-third if it results in serious bodily injury, or by half, if it results in death (art. 7). The separate crime of promoting, constituting, integrating, or "providing assistance to a terrorist organisation" personally or through an intermediary (art. 3), is punished with five to eight years of imprisonment and a fine. Finally, the crime of financing travel (of foreign terrorist fighters) is punishable by the same penalty as conducting a preparatory act of terrorism, which corresponds to the penalty for the completed terrorist act, reduced either by a quarter or a half (art. 5). This means imprisonment from twelve to thirty years (per art. 2), minus one-quarter or one-half. The range of fifteen to thirty years' imprisonment for TF is considered a sufficient range proportionate to crimes of more or less severity and the custodial penalties are dissuasive, especially with possible enhancements if TF is linked to an act with grave consequences.

Criterion 5.7 – Criminal liability does not normally apply to legal persons in Brazil, but only to their natural person managers and directors. Brazil's Constitution states that "without prejudice to the personal liability of the managing officers of a legal entity, the law shall provide the liability of the latter, subjecting it to punishments compatible with the nature of the acts that contravene the economic and financial order" (art. 173, para. 5). This is, according to some jurists and scholars, a prohibition on corporate criminal liability. Even if a fundamental principle against corporate liability exists, some exceptions have been made in Brazil, particularly for environmental crimes. Further, Brazil has not articulated any fundamental principle

of law precluding criminal liability for legal persons that commit TF, particularly given that TF could be considered an act that “contravene[s] the economic and financial order” under the asserted principle. Instruments, products, and profits of TF may be subject to provisional measures and eventual confiscation under Law No. 13260 (arts. 12-15), but they still need to relate to the natural person investigated or accused, meaning that the property of a legal person may be affected if it qualifies as proceeds or instrumentalities (e.g., if the defendant misused a legal entity or NPO for terrorist fundraising). In the TF setting, there is also the possibility that an entity may have its assets blocked through the imposition of targeted financial sanctions (see R.6). There do not appear to be a sufficiently proportionate range of civil or administrative sanctions available against legal persons.

Criterion 5.8 – Law No. 13260, article 6, sole paragraph, makes it an offence to “in any way contribute” to the acquisition of assets with the purpose of financing a terrorist or a terrorist organisation. This is broad enough to cover several ancillary offences, including participating as an accomplice in a TF offence and organising or directing others to commit TF. Article 6, relating to the financing of terrorist acts, does not have the same “contributory” language. However, general CC provisions apply (art. 14 regarding attempt; art. 29 regarding participating as an accomplice, aiding and abetting, and facilitating; as well as art. 31 regarding counselling the commission of a crime, but only if there has been an attempted offence). It is also an offence to contribute to the commission of one or more TF offences(s) or attempted offence(s) by a group of persons acting with a common purpose (the CC makes it an offence to join with three or more people for the specific purpose of committing crimes (art. 288) and the TF Law makes it an offence to “promote, constitute, or integrate” to a terrorist organisation (art. 3)).

Criterion 5.9 – TF, as a stand-alone crime, qualifies as a predicate offence for ML (Law No. 9613, art. 1).

Criterion 5.10 – TF can be charged regardless of whether the person alleged to have committed the offence is in the same or a different country from the one in which the financed terrorist act/terrorist individual/terrorist organisation is located. A crime is considered to have been committed in the place where the act/omission took place “in whole or in part,” and in the place where the result took place or should have taken place (CC, art. 6). Furthermore, the Code’s principle of extraterritoriality may apply even if the TF is committed abroad if certain conditions are satisfied. For example, TF is a crime that Brazil is obligated by international treaty to repress, therefore, it is one type of offence to which extraterritoriality may apply if certain other facts are present (art. 7).

Weighting and Conclusion

While Brazil now criminalises terrorist financing as a standalone offence, there are several serious deficiencies. Brazil does not criminalise TF on the basis of the TF Convention because it defines terrorism for the purposes of the TF offence both too broadly (requiring a reason for all acts of terrorism that can be financed) and too narrowly (by having an exemption to the definition of terrorism), thus limiting the scope of the TF offence. It is also missing criminalisation of certain treaty offences and requires an additional level of intent for certain treaty offences, among other shortcomings detailed above. Overall, the lack of alignment of Brazil’s TF offence with the requirements of the TF Convention is weighed as a moderate shortcoming.

Recommendation 5 is rated Partially Compliant.

Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing

Brazil was rated NC on old SR.III. Brazil relied on ordinary criminal and MLA procedures to implement UNSCR 1267 and 1373 which was incompatible with the UN Resolutions and the FATF Standards.

Criterion 6.1 -

(a) Brazil has identified the MOJ and Ministry of Foreign Affairs (MRE) as having nominal responsibility for proposing persons or entities to the 1267/1989 and 1988 committees for designation. However, these entities cannot initiate their own proposals. Proposals for designation (either at the national level or to one of the UN sanctions committees) can only originate in the judiciary, so the courts are considered the competent authority to initiate proposals for designation under UNSCRs 1267/1989 or 1988. A judge alerts the AGU that measures are necessary to secure the assets of persons which are the instruments, products, or profits of crimes of terrorism under the TF Law No. 13260. AGU in turn informs the MOJ and MRE “so they may decide on the national designation and, if necessary, communicate it” to the UNSC or relevant sanctions committee (TFS Law No. 13810 (2019), art. 24). Under Decree No. 9825, article 14, it is also possible for the MOJ/DRCI, to “be informed about police, financial or intelligence information which demonstrates connections with perpetrators or associates in crimes of terrorism [or] its financing” and approach the AGU to seek a judicial ruling, but the proposal must originate from the judiciary and the MOJ and MRE may decide to bring it to the UN.

(b) Brazil has only a criminal justice-oriented mechanism for identifying targets for designation to the UN committees. The TFS Law refers to art. 12 of the TF law, which creates a necessary link to a criminal proceeding (the measure to secure assets arises “in the course of the investigations or criminal proceedings”). This cross-reference in the TFS Law to article 12 of the TF Law means that proposals for measures to secure assets could only arise out of a domestic “investigation or criminal proceeding” (TFS Law, art. 24; TF Law, art. 12). **Firstly**, this mechanism for identifying targets is not precisely based on the designation criteria set out in the relevant UNSCRs, but on Brazilian criminal law, which, in some respects overlaps with the UNSCR criteria as set out in INR6, Section E(a)-(b), but which is not coextensive with all possible reasons for a designation under UNSCR criteria.¹¹⁴ The mechanism to identify a target requires a connection between Brazil and the designee since the prerequisite is an *investigation or criminal proceeding* (TF Law, art. 12). **Secondly**, Brazil states that there is a second mechanism allowing MOJ to prompt a designation based on “police, financial or intelligence information” by approaching the AGU to seek provisional measures from the court with respect to specific assets, and then considering whether MOJ and MRE should propose the designation to the UN. The purported mechanism derives from article 14 of the TFS Decree, however, it contradicts the process set out in the relevant article of the TFS Law. There is strong doubt about the legal basis for the second mechanism because (1) the TFS Law has legal superiority over the Decree,

¹¹⁴ For instance, it is not clear that Brazil could identify a target for designation that is an undertaking owned or controlled by, or a person acting on behalf of, or at the direction of, a person or entity designated for financing Al-Qaida, its affiliates, or the Taliban, as required by INR.6, Section E(a)-(b). This is because pertinent article 12 of the TF Law refers to the possibility to secure assets of or on behalf of “interposed persons” if they constitute instruments, products, or profits of terrorism/TF.

(2) the Law does not empower MOJ in accordance with the second mechanism,¹¹⁵ and (3) the Law refers back to the provisional measures in the TF Law, which contemplates an ongoing investigation or criminal proceeding in Brazil (i.e., referring back to the first mechanism).

(c) The evidentiary standard of proof for deciding on a designation is “sufficient evidence” of a crime of terrorism or TF, as defined under Brazilian law, which is slightly different than the “reasonable grounds” or “reasonable basis” in the Standards. Under the TF Law, art. 12, the evidentiary standard is “sufficient evidence” of a crime of terrorism or TF, which is somewhat limited by the deficiencies in the TF offence identified in R.5. Then TFS Law, article 2(III) rephrases sufficient evidence (as mentioned in the TF law) as “objective grounds: existence of evidence or proof of the practice of terrorism, its financing, or acts related to it, by individuals or legal entities, as provided for in” the TF Law. The TFS Law implies that the two standards are identical, but the later TFS Law cannot change pre-existing standard that is referred to in the (criminal) TF law and they are not exactly the same standard. Further, there is a gap in that proposals for designations are conditional upon the existence of an investigation or criminal proceeding (due to TFS Law, art. 24, with internal reference to the TF Law, art. 12).

(d) Brazil appears to follow the procedures and (in the case of UN Sanctions Regimes) standard forms for listing, as adopted by the relevant committee. TFS Law, art. 24, para. 2, states that “national designation shall be accompanied by the support elements, in accordance with the procedure established in the corresponding resolution” of the UNSC (applicable all relevant resolutions).

(e) Brazil appears to be able to provide as much relevant information as possible on the proposed name, a statement of case which contains as much detail as possible on the basis for the listing, and (in the case of proposing names to the 1267/1989 Committee) could specify whether their status as a designating state may be made known. The TFS Law requires the judge to subpoena (alert) the Union of decisions to secure assets (art. 24), after which the MOJ and MRE decide on the designation and communicate it accompanied by “supporting elements” in accordance with the procedure of the pertinent UNSCR. No specific provision requires Brazil to provide identifying information, a statement of the case, or a basis for the listing, outside of what could be expected to be contained in a judge’s decision issued under art. 12 of the TF Law.

Criterion 6.2 –

(a) The competent authority with responsibility for designation of persons or entities who meet the specific criteria set forth in UNSCR 1373 is similar to what is described in c.6.1(a), above (TFS Law, art. 24; Decree No. 9825, art. 14), as to designations **on the country’s own motion** (namely, the court initiates the process, and the MOJ/MRE decide whether Brazil will designate). As to examining and **giving effect to a third-country request**, the TFS Law provides that MOJ, in coordination with MRE, shall verify without delay whether the request is in accordance with the applicable legal principles and presents objective grounds for its fulfilment (art. 18). In this sense, MOJ and MRE are the competent authority for evaluating requests made to Brazil pursuant

¹¹⁵ While the Decree No. 9825, art. 14, states that MOJ/MFA (i.e., the government) can go to AGU and then to the judge to seek a designation, the TFS Law, art. 24, which prevails in hierarchy and is the legal basis for the subsequent Decree, states that the judge, acting by virtue of his position, may subpoena the government (and not the other way around) to suggest a designation.

to UNSCR 1373, so as a threshold matter, they must approve it (and communicate with the foreign authority, per art. 13). Then, the ultimate decision-maker is the court (arts. 14, 18, 19). Article 14 specifically states that “having heard the request...the judge shall determine, within 24 hours counted from the date of receipt of the document...the relevant measures to comply with the sanction.” The judge’s discretion to reject the imposition of measures after MOJ and MRE have acceded to the UNSCR 1373 request, is unspecified, but appears not to be wide (this was demonstrated in practice after the on-site visit).

(b) Brazil’s mechanism for identifying targets for designation based on the criteria set out in UNSCR 1373 is the same as described in c.6.1(b), above. Brazil has only a criminal justice-oriented mechanism for identifying targets for designation to the UN committees. The cross-reference within the TFS Law to article 12 of the TF Law means that proposal for measures to secure assets could only arise out of a domestic “investigation or criminal proceeding” (TFS Law, art. 24; TF Law, art. 12). This mechanism for identifying targets is not precisely based on the designation criteria set out in the relevant UNSCR, but on Brazilian criminal law, which only in some respects, overlaps with the UNSCR criteria. Brazil point to two mechanisms to originate a domestic designation: one originating from the court and the second from the MOJ. As discussed in c.6.1(b) above, there does not appear to be an adequate legal basis of the second mechanism because it is based in the Decree and refers to a section of the TFS Law which clearly does not allow this possibility (and in any event, it refers to the TF Law’s provisional measures, which are of a criminal nature). While decrees may elaborate on provisions of Law, they cannot contradict them.

(c) Upon receiving a request, Brazilian law requires a prompt determination of whether MOJ is satisfied that the request is supported by reasonable grounds to suspect or believe that the proposed designee meets the criteria for designation in UNSCR 1373, but it also requires proof of the existence of assets in Brazil, which creates a deficiency. The TFS Law, article 18, para. 1, requires MOJ and MFA to verify “without delay” the request’s compliance and “objective grounds,” and then forward, without delay, the approved request to the AGU to “promote it” with the court. But AGU will approach the court only if there are “elements that demonstrate the existence...in Brazil...of assets” to be frozen (art. 18). This may entail an investigation, potentially negatively impacting the promptness of the determination, but it also has the effect of curtailing any preventative effect of TFS to block the person from ever accessing the Brazilian financial system (even if for the first time). Once AGU’s application is with the court, the judge has 24 hours to determine the asset freezing measures (art. 14). Decree No. 9825, article 11, also reiterates and elaborates on this process.

(d) The evidentiary standard of proof for deciding on a designation is “sufficient evidence” of a crime of terrorism or TF, as defined under Brazilian law, which slightly different than the “reasonable grounds” or “reasonable basis” in the Standards. Under the TF Law, art. 12, the evidentiary standard is “sufficient evidence” of a crime of terrorism or TF, which is somewhat limited by the deficiencies in the TF offence identified in R.5. However, the TFS, article 2(III) rephrases the standard of sufficient evidence as “objective grounds: existence of evidence or proof of the practice of terrorism, its financing, or acts related to it, by individuals or legal entities, as provided for in” the TF Law, but the later TFS Law cannot change standard that is referred to in the (criminal) TF law and they are not exactly the same. The reasonable grounds analysis is also used by the authorities to assess the nexus between the assets to be frozen and the “facts under investigation in the origin jurisdiction of the request”

(Decree No. 9825, art. 10(V)), which creates a gap in that it goes further than “reasonable grounds”.

Proposals for national designations on a country’s own motion are conditional upon the existence of an investigation or criminal proceeding (TFS Law, art. 24 with internal reference to TF Law, art. 12). The designation of a person or entity pursuant to a third-country request is not conditional upon the existence of a criminal proceeding in the requesting country. The TFS Law specifies that Brazil may seek direct judicial assistance for asset freezing upon a foreign request “to ensure the outcome of *administrative* or criminal investigations” of terrorism or TF (art. 18). However, because all the provisions pertaining to third-country requests pursuant to UNSCR 1373 fall under Section II of the TFS Decree entitled “Mutual Legal Assistance Upon Request by a Foreign Central Authority. It was demonstrated that an MLA request is not a requirement, but the titles do imply that a request *stemming from or related to* a criminal proceeding abroad may be required to satisfy reasonable grounds.

(e) There are no provisions of Brazilian law related to the possibility to make an outgoing request to foreign country, asking it to give effect to actions initiated under Brazil’s freezing mechanism. However, the TFS Law does require that national designations be accompanied by supporting elements in accordance with the procedures in the corresponding UNSCR (art. 24, para. 2; Decree No. 9825, art. 14, § 2), implying that information supporting a request to a third-country for a designation would also be fulsome.

Criterion 6.3 –

(a) Brazil has legal procedures and mechanisms to collect or solicit information to identify persons and entities that, based on reasonable grounds, or a reasonable basis to suspect or believe, meet the criteria for designation. Specifically, Decree No. 9825 states that MOJ/DRCI should be informed about police, financial, or intelligence information which demonstrates “connections with perpetrators or associates in crimes of terrorism, its financing, or correlated acts” (art. 14). The information would be derived from the police, intelligence agencies, or the FIU using their respective powers.

(b) Brazil is able to operate *ex parte* against a person or entity who has been identified and whose (proposal for) designation is being considered. For designations contemplated under UNSCRs 1267/1989, 1988, or 1373 upon the proposal of the country, the ability to act *ex parte* is implied by article 29 (“the measures . . . shall be processed under secrecy of justice”). This suggests that the judge considering a request deliberates *ex parte* and without any prior notice to the affected person. For requests from third-countries pursuant to UNSCR 1373, article 19 of the TFS Law refers to article 14, which notes that “the defendant” should have no prior notice while the judge is considering the imposition of the measures to comply with the sanction (i.e., the asset freeze).

Criterion 6.4 – Brazil can mainly implement TFS under UNSCRs 1267/1989 and 1988 without delay. Firstly, the TFS Law defines the term “without delay” as “immediately or within a few hours” (art. 2(V)). Secondly, article 6 states that “the sanctions resolution of the UNSC and the designations of its sanctions committees are given immediate enforceability” in Brazil.¹¹⁶ This direct applicability is enforced by the

¹¹⁶ It is noted that Brazil passes additional decrees containing the Portuguese translation of each relevant UNSCR. This is done later in time to enhance interpretation and implementation and has no legal effect

mechanism contained in article 8.¹¹⁷ Under that article, compliance with the sanctions and designations includes respecting the “unavailability of assets of individuals and legal entities” under article 1 (i.e., an asset freeze), meaning that the obligation to comply with the asset freeze is covered by article 8’s enforcement mechanism. Under this system, the moment the designation is pronounced by the relevant UN committee, “all Brazilians, residents or not” are bound directly to implement TFS (art. 8); prohibition on making asset assets available to designated persons is also covered by article 8. Implementing TFS Decree No. 9825 defines the term *asset freeze* as a “prohibition to directly or indirectly transfer, use, move, make assets available or dispose of them” (art. 2(II)). It echoes the “direct and immediate” enforceability of the UNSCRs and the concept that sanction committees may update their lists (art. 3). While Brazil as a country implements TFS without delay, there is some doubt as to whether all *natural and legal persons* are specifically obligated to implement without delay. The TFS Law explicitly requires *reporting entities* to freeze “without delay” and “without prior notice” (art. 9). But the article binding Brazilian natural and legal persons (art. 8) does not contain the same clear obligation, nor a reference to implementation without delay. This is a gap, and it is only somewhat tempered by article 6’s language on UNSC designations being given “immediate enforceability” in Brazil.

For UNSCR 1373, and per the FATF Standards, the obligation to take action without delay would be triggered by a designation at the national level.

For a third-country request, Brazil’s MOJ and MRE consider it without delay and once satisfied, forward it to AGU to promote the application “without delay” to the court only if there are elements demonstrating the existence of assets subject to freezing located in Brazil (TFS Law, art. 18). MOJ/MRE verify the request as one that should be fulfilled, and then AGU confirms the location of Brazilian assets subject to freezing, which may, potentially lead to delay. AGU then approaches the court, and the judge has 24 hours to consider the relevant measures to comply with the sanction (arts. 18, 14).

For national designations at the initiative of Brazil and related to the criteria in UNSCR 1373, the judge initiates the implementation of freezing measures which may give rise to national sanctions orders (TFS Law, art. 24). The judge’s decision is forwarded to the MOJ and MRE “so that they may decide on the national designation” (id.). Although the court’s order may serve to freeze the *specific assets* at issue or even “all assets” of a designee, the obligation *for other persons and entities to freeze assets linked to the designated person* is unclear, and therefore, so is the “without delay” aspect. The TFS Law articles 6-8 mentioned above appear only to apply to *UN committee* listings, meaning that the “enforcement mechanism” requiring persons to freeze and not deal with designated persons would not be triggered.

Criterion 6.5 –

(a) Brazil requires all natural and legal persons within the country to freeze the funds or other assets of designated persons or entities pursuant to UNSCRs 1267 and its successors and 1988. The TFS Law states that “it is forbidden to all Brazilians,

(i.e., the publication of the decree need not be without delay because UNSCRs are directly applicable under Brazil’s TFS Law). Brazil issues decrees which formally incorporate each relevant UNSCR into its legal framework. For example, Decree No. 7606 (2011) incorporates UNSCR 1989 as to Al-Qaida and Decree No. 7608 (2011) incorporates UNSCR 1988 as to the Taliban.

¹¹⁷ Publication of designations in the Federal Gazette is done solely for awareness-raising purposes and without prejudice to the obligation to immediately comply with the sanctions and designations (art. 7).

residents or not, or to individuals, legal entities, or entities in the Brazilian territory, not to comply, by action or omission, with sanctions imposed by resolutions of the UNSC or by the designations of its sanctions committees” (art. 8). Per article 1, “compliance” for the purpose of article 8 includes “the unavailability of assets” (i.e., asset freezes). As asset freeze is defined as “prohibition to transfer, convert, copy, make assets available, or dispose of them, directly or indirectly” (art. 2(II)). Because article 8 specifies non-compliance is forbidden through action *or* omission, this means that the failure to implement an asset freeze is forbidden. Thus, all natural and legal persons are required to freeze. While there is direct enforceability of UN sanctions for all persons, the specificity needed to impose an obligation on the general populace to the freeze *without delay and without prior notice* is not provided for under Brazilian law. Reporting entities under Law No. 9613, article 9 (i.e., FIs and DNFBPs), are bound to comply (freeze) without delay or prior notice (TFS Law, art. 9).

The TFS Law (art. 25) refers to the general administrative liability provision of Law No. 9613 (art. 12), meaning that reporting entities that violate TFS-related obligations may be subject to a range of penalties for TFS breaches (see also R.35). Specific financial sector supervisors have their own resolutions setting out TFS obligations and more specific sanctions.¹¹⁸ There is a deficiency because there are no penalties available for TFS violations by non-reporting entities, i.e., individuals and legal persons, unless violations constitute the offence of TF. Sanctions violations should be considered “strict liability” offences, whereas TF is a crime which requires proof of wilfulness and intent.

With regard to asset freezes pursuant to a national designation or a request under UNSCR 1373, the law is unclear (see background in c.6.4, above). The judge’s order would apply to particular assets, but the expansion of the freezing obligation to any or all funds or assets (i.e., through the listing of a specific person and accompanying requirement to block all assets belonging to him) is not contained in law or regulation.¹¹⁹ While a judge has discretion in issuing an order, the legal basis in the TFS Law to cover all assets of a person (as opposed to specific assets) is not clear. Brazil does not maintain a national list and the legal authority to use TFS preventatively (i.e., in situations where there are not identified and pre-existing assets) is not set in law. Note this is not an issue for UN-issued designations (direct reference is made to the UN consolidated list).

(b) Under the TFS Law assets include “goods, rights, values, funds, resources, or services, of any kind, financial or otherwise” (art. 2). This complies with the definition of “funds or other assets” in the FATF Glossary, including, ostensibly, oil and other natural resources and property of a tangible or intangible nature (plus legal documents or instruments, in any form, electronic or digital, evidencing rights thereto). The obligation to freeze assets mainly covers the required range of assets.¹²⁰

¹¹⁸ E.g., BCB Res. No. 44 (2020); BCB Res. No. 131 (2021); CVM Res. No. 50 (2021); SUSEP Circ. No. 612 (2020), PREVIC Instr. No. 25 (2020); COAF Res. No. 31 (2019).

¹¹⁹ After the on-site visit, an “all assets” order was issued by the court. See IO.10.

¹²⁰ (i) All funds or other assets owned or controlled by the designated person/entity (not just those that can be tied to a particular terrorist act, plot, or threat) are largely covered (arts. 8-9). (ii) Funds or other assets that are wholly or jointly owned or controlled, directly or indirectly, by the designated person/entity are largely covered. Joint ownership or control is not mentioned, but “indirect” ownership or the “for the benefit” / “available in favour of” appears sufficient to cover these assets (arts. 8-9). (iii) Funds or other assets derived or generated from funds or other assets owned or controlled, directly or indirectly, by the designated person/entity: The concept is explicitly covered, but only in the case of financial assets whose administration shall be the responsibility of the institutions in which they are located, “with the incidence

(c) Brazil prohibits its nationals, or any persons and entities within their jurisdiction, from making any funds or other assets, economic resources, or financial or other related services, available, directly or indirectly, wholly or jointly, for the benefit of designated persons and entities (TFS Law, art. 8). This is subject to some minor, potential gaps in the coverage of certain assets discussed in (b), above (i.e., the law is not explicit in many instances, but the phrases “indirect ownership” and assets “for the benefit” / “available in favour of” designated persons appear to extend the reach of the prohibition).

(d) Brazil has mechanisms for communicating designations to the financial sector and DNFBPs immediately upon taking such action. As an initial matter, MOJ is charged with maintaining the list of individuals and entities whose assets are subject to freezing under the UNSCRs, pursuant to the request of a third-country, and under national designation authority (i.e., a consolidated list) (TFS Law, art. 26).¹²¹ Additionally, sanctions resolutions and designations from the UN are published in Portuguese in the Federal Gazette by the MRE for non-legally consequential, publicity purposes (art. 7). Moreover, MOJ immediately communicates the sanctions and asset freezes to the regulatory and supervisory bodies of the reporting entities (art. 10), to raise awareness among the financial and non-financial sectors. These communications are electronic and require a confirmation of receipt (id.). Accordingly, those bodies are required to communicate sanctions onward to their reporting entities (Decree No. 9825, art. 4). Again, this is for communication only and does not have legal effect. The TFS Decree requires MOJ and MRE to maintain an “exchange of information” anticipating changes to the UN lists and information to be observed for their enforcement (Decree No. 9825, art. 5). Brazil also requires the provision of guidance to FIs and DNFBPs that may be holding funds or other assets about their obligations to act under freezing mechanisms. Decree No. 9825 mandates the regulatory and supervisory agencies to “guide, supervise and inspect” their entities for TFS compliance (art. 21). Brazil has issued limited guidance through COAF (Guideline on the Application of Law No. 13810 (2021)). As cited in c.6.5(a) above, some supervisors have their own resolutions related to TFS.

(e) Brazil requires FIs and DNFBPs to report to competent authorities any assets frozen or actions taken in compliance with the prohibition requirements of the relevant UNSCRs, including attempted transactions (TFS Law, art. 11). The TFS Law also sets out a process for these entities—under the conditions outlined by their regulator or supervisor—to approach the MOJ in cases of doubt (for instance, if they have not taken action due to a false positive or an error in the identification of assets), with an emergency process for court intervention (TFS Law, arts. 12-17).

(f) Brazil has measures which protect the rights of *bona fide* third parties acting in good faith when implementing TF TFS. The TFS law voids any acts of disposition related to frozen assets, except those involving *bona fide* third parties (art. 5). Under the emergency process for court intervention described in (e) above, REs must alert when they become aware of the existence of persons or assets subject to sanctions and any reasons for non-compliance with the freeze. Whether the entity is a party

of blocking interest and other civil products and income arising from the contract” (art. 31). For non-financial assets the same analysis applies as in (i) above based on articles 8 and 9. “Indirect” ownership or the “for the benefit” / “available in favour of” largely covers derivative assets. (iv) Funds or other assets of persons and entities acting on behalf of, or at the direction of, the designated person/entity are largely covered (arts. 8-9). The concept of the assets of a front entity are not explicitly covered, but “indirect” ownership or the “for the benefit” / “available in favour of” may reach these assets.

¹²¹ Note, no such list has been created or maintained, to date.

acting in good faith or not, they must appear before the judge for a factual hearing, and they have an ability to challenge the judicial determination of measures to comply with the sanction. Both the Government and the party who did not comply with the asset freeze are heard and a decision is reached by the judge (TFS Law, arts. 12-17).

Criterion 6.6 – Brazil has certain procedures to de-list and unfreeze the funds or other assets of persons and entities which do not, or no longer, meet the criteria for designation.

(a) Brazil does not have procedures to submit de-listing requests for persons or entities designated pursuant to the UN Sanctions Regimes when, *in the view of the country*, the designated person/entity does not or no longer meets the criteria for designation. This accords with the finding in c.6.1-c.6.2 that the judiciary initiates proposals for designations which could be sent to the relevant UN Committees. There is no ongoing review within MOJ or MRE of designations.

(b) Brazil does not have full procedures to de-list and unfreeze the funds or other assets of persons and entities designated pursuant to UNSCR 1373. It is not clear which Government entity would make such a determination that a person designated no longer meets the criteria for national designation. For third-country requests, the foreign authority may inform Brazil that the asset freeze is no longer warranted, and the parties may file an action with the court to revise the freezing order (TFS Law, art. 21; Decree No. 9825, arts. 17-19).

(c) With regard to designations pursuant to UNSCR 1373, Brazil has procedures to allow, upon request, review of the designation decision before a court or other independent competent authority (TFS Law, art. 27; Decree No. 9825, art. 17). For third-country requests, the foreign authority may inform Brazil that the asset freeze is no longer warranted, and the parties may file an action with the court to revise the freezing order (TFS Law, art. 21; Decree No. 9825, arts. 17-19). For designations under the country's own initiative, the procedure enabling review would fall to those contained in the TF Law, article 12, which is the same article permitting the asset freeze in the first place (e.g., paragraph 2 allows the judge to release assets, in whole or in part, when their lawful origin is proven). As to the emergency court process contained in TFS Law, the designated person or entity can bring a challenge. The "defendant" can be summoned by the judge and challenge, within 15 days, the sanction based on: homonym, error in identification, exclusion from the relevant UN list, or expiration of the sanctions regime. For third-country requests, the absence of a reasonable basis may also be a ground for challenge, per. article 19. It is not clear that a sanctioned person can *initiate* review upon request because the judge must summon the defendant, and review is not possible after the 15-day period.

(d) With regard to designations pursuant to UNSCR 1988, Brazil has some procedures to facilitate review by the 1988 Committee in accordance with applicable guidelines or procedures adopted by the Committee. The TFS Law establishes that any individual or entity sanctioned pursuant to UNSCRs may request their exclusion from the sanctions list (art. 27). Such a request should be forwarded to the MOJ and substantiate the reasons why the person does not meet the criteria for designation in the relevant resolution. The MOJ analyses the request and forwards it to MRE and the relevant sanctions committee (see also Decree No. 9825, art. 17). COAF published Guidelines on its public website for the application of the TFS Law and Decree which provide information on how individuals or entities may request their exclusion from the sanctions lists. Brazil does not directly inform the populace of the UN Focal Point

mechanism for UNSCR 1988, but MOJ's public website instructs the public to channel all requests for exclusion from a UN list through this office.

(e) With respect to designations on the al-Qaida Sanctions List, Brazil has some procedures for informing designated persons and entities of the availability of the U.N. Office of the Ombudsperson, pursuant to UNSCRs 1904, 1989, and 2083 to accept de-listing petitions. The TFS Law establishes that any individual or entity sanctioned pursuant to UNSCRs may request their exclusion from the sanctions list (art. 27). Such a request should be forwarded to the MOJ and substantiate the reasons why the person does not meet the criteria for designation the relevant resolution. The MOJ analyses the request and forwards it to MRE and the relevant sanctions committee (see also Decree No. 9825, art. 17). COAF published Guidelines for the application of the TFS Law and Decree which provide, publicly, information on how individuals or entities may request their exclusion from the sanctions lists. Brazil informs the populace of the UN Office of the Ombudsman with regard to UNSCR 1267/1989 designations.

(f) Brazil has procedures to unfreeze the funds or other assets of person or entities with the same or similar names as designated persons or entities who are inadvertently affected by a freezing mechanism. The TFS Law envisions this "homonym" situation, but it is not evident that the challenge may be initiated by the person affected by the false positive directly (as the judge must summon the affected person) (art. 15). An RE obliged to freeze assets or a government agency can approach MOJ and AGU to initiate a judicial intervention. Brazil is bound to inform the relevant UN Sanctions Committees in the event of any release of assets (Decree No. 9825, art. 19).

(g) Brazil has partial mechanisms for communicating de-listings and unfreezings to the financial sector and the DNFBPs immediately upon taking such action, and providing guidance to FIs and other persons or entities, including DNFBPs, that may be holding targeted funds or other assets, on their obligations to respect a de-listing or unfreezing action. Under Decree No. 9825, a "new or updated UNSC list," which would entail any de-listings, should be communicated without delay to the regulatory and supervisory agencies, who are bound to further communicate this to their REs (art. 4). When a judicial decision authorises the partial release of assets subject to a freezing order issued pursuant to a third-country request or under Brazil's own initiative (as opposed to an UN-issued list), the AGU must communicate this fact without delay to MOJ and the MRE (who should further inform the UN or the requesting country). However, there is no attendant obligation on the government to inform the private sector immediately. Brazilian authorities state that the judge would immediately communicate to reporting entities through the BACENJUD system, however, this is not specified in law. The regulators and supervisors are required to provide relevant guidance to their REs (Decree No. 9825, art. 21).

Criterion 6.7 – Brazil authorises access to frozen funds or other assets which have been determined to be necessary for basic expenses, for the payment of certain types of fees, expenses and service charges, or for extraordinary expenses, in accordance with the procedures set out in UNSCR 1452. The TFS Law incorporates the pertinent provisions of UNSCR 1452 (art. 28). Access to funds or other assets, for national designations or a third-country pursuant to UNSCR 1373, may be allowed by the relevant judge (art. 28, para. 3).

Weighting and Conclusion

Brazil can implement targeted financial sanctions (TFS) related to TF. However, the mechanism to identify targets for UN designation is conditional upon the existence of a criminal proceeding in Brazil and criminal provisional measures under the TF law. Brazil will only grant third-country requests when there are assets located in Brazil, which means that TFS cannot be used for preventative purposes. National designations are also conditional on the existence of criminal proceedings (a decree is not viewed by the assessors as overruling the two relevant laws in this regard). It is unclear how a prohibition would be put into place preventing persons from dealing with any assets controlled by the designee, as opposed to a freeze related to assets “of the designated person” and there is no list maintained in accordance with the TFS Law. There are also doubts around the ability of a listed person to challenge a freezing measure on his/her own initiative and beyond a fifteen-day period, as well as certain aspects of the de-listing process. Some procedures for submitting delisting requests to the UN committees/focal points are lacking as to c.6.6(a), as is communication to the private sector of de-listing/unfreezings for non-UN issued sanctions. Brazil does prohibit nationals or persons in Brazil from making funds available to listed persons, but there are no specific penalties that apply to all natural and legal persons (beyond FIs and DNFBPs). While all natural and legal persons are required to freeze assets, only reporting entities have the obligation to do so without delay and without prior notice.

Recommendation 6 is rated Partially Compliant.

Recommendation 7 – Targeted financial sanctions related to proliferation

This is a new Recommendation that was not assessed in the 3rd round MER of Brazil.

Criterion 7.1 – Brazil implements TFS without delay to comply with the UNSCRs, adopted under Ch. VII of the Charter of the UN, relating to the prevention, suppression, and disruption of the proliferation of weapons of mass destruction and its financing (referred to herein as “PF”). Decree No. 19841 (1945) codified the direct enforceability of UNSC decisions. Brazil uses the same 2019 law to implement PF TFS as it does to implement TF TFS (Law No. 13810). The new 2019 TFS law explicitly revoked Law No. 13170 (2015), which required a court order to implement resolutions of the UNSC. The scope of article 1 of the TFS law broadly refers to any sanctions imposed by the resolutions of the UN, including asset freezes, of persons involved in terrorism, its financing or “acts related to it.” Under the Law’s implementing Decree No. 9825, “related acts” are defined to include “financing of proliferation of weapons of mass destruction” (art. 1(II)). Regarding freezing, Brazil can implement TFS under the relevant UNSCRs without delay. See the full analysis of implementation without delay under R.6, c.6.4, as it relates to the UN sanctions regimes (specifically arts. 2(V) and 6).

Brazil has issued a series of one-page decrees which incorporate each relevant resolution into the national legal framework. As described in R.6, Brazil passes additional decrees containing the Portuguese translation of each relevant UNSCR after it is issued. This is done later in time to enhance interpretation and implementation and has no legal effect (i.e., the publication of the decree need not be

without delay because UNSCRs are directly applicable under Brazil's TFS Law). The UNSCRs applicable under R.7 correspond to the Brazilian decrees.¹²²

Criterion 7.2 –

(a) Brazil requires all natural and legal persons within the country to freeze the funds or other assets of designated persons or entities pursuant to the relevant UNSCRs on PF TFS. Law No. 13810 states that “it is forbidden to all Brazilians, residents or not, or to individuals, legal entities, or entities in the Brazilian territory, not to comply, by action or omission, with sanctions imposed by resolutions of the UNSC or by the designations of its sanctions committees” (art. 8). Per article 1, “compliance” for the purpose of article 8 includes “the unavailability of assets” (i.e., asset freezes). As asset freeze is defined as “prohibition to transfer, convert, copy, make assets available, or dispose of them, directly or indirectly” (art. 2(II)). Because article 8 specifies that non-compliance is forbidden through action *or* omission, the failure to implement an asset freeze is forbidden. Thus, all natural and legal persons are required to freeze, albeit in a roundabout manner. For all persons, this should be done on account of the direct enforceability of UN sanctions, but the freeze without delay and without prior notice to the designee cannot be guaranteed and is not an obligation imposed on the populace under Brazilian law. However, with respect to reporting entities under Law No. 9613, article 9 (i.e., FIs and DNFBPs), they are bound to freeze without delay or prior notice (Law No. 13810, art. 9). The TFS Law (Law No. 13810, art. 25) refers to the general administrative liability provision of Law No. 9613, art. 12, meaning that reporting entities that violate TFS-related obligations may be subject to a range of penalties for TFS breaches (see also R.35). Specific financial sector supervisors have their own resolutions setting out TFS obligations and more specific sanctions (e.g., BCB Res. No. 44 (2020); BCB Res. No. 131 (2021); CVM Res. No. 50 (2021); SUSEP Circ. No. 612 (2020), PREVIC Instr. No. 25 (2020); COAF Res. No. 31 (2019)). There are no penalties available for TFS violations by non-reporting entities, such as individual and legal persons, which is a shortcoming.

(b) See analysis under R.6, c.6.5(b), with respect to the scope of funds or other assets.

(c) See analysis under R.6, c.6.5(c), with respect to the general prohibition on making funds or other assets, economic resources, or financial and other related services available to designated persons/entities.

(d) See analysis under R.6, c.6.5(d), with respect to mechanism for communicating designations to FIs/DNFBPs and issuing guidance.

(e) See analysis under R.6, c.6.5(e), with respect to reporting requirements on FIs/DNFBPs concerning assets frozen and attempted transactions.

(f) See analysis under R.6, c.6.5(f), with respect to protecting the rights of *bona fide* third-parties.

Criterion 7.3 – Brazil has measures in law and other enforceable means (a decree) for monitoring and ensuring compliance by financial institutions and DNFBPs with the obligations under R.7. Regulatory and supervisory bodies “shall orient, supervise,

¹²² On DPRK, UNSCR 1718 (2006)/Decree No. 5957 (2006), on DPRK, and its successor resolutions (1874 (2009)/Decree No. 6935 (2009); 2087 (2013)/Decree No. 8007 (2013); 2094 (2013)/Decree No. 8011 (2013); 2270 (2016)/Decree No. 8825 (2016); 2321 (2016)/Decree No. 9033 (2017); and 2356 (2017)/Decree No. 9097 (2017)). Several additional UNSCRs related to DPRK sanctions, such as 2371, 2375, and 2397, have also been decreed by Brazil. On Iran, UNSCR 2231 (2015)/Decree No. 8669 (2016) on Iran.

and oversee the compliance with” the asset freezes by reporting entities specified in article 9 of Law No. 9613 (TFS Law No. 13810, art. 25). These bodies shall also issue rules necessary to comply with and enforce the TFS law for their regulated sectors (id., Decree No. 9825, art. 21). Some, but not all, have done so. The Central Bank, the Securities Commission, the Superintendence of Private Insurance, the Superintendence of Supplementary Pensions, and COAF have (see BCB Res. No. 44 (2020); BCB Res. No. 131 (2021); CVM Res. No. 50 (2021); SUSEP Circ. No. 612 (2020), PREVIC Instr. No. 25 (2020); and COAF Res. No. 31 (2019)). These bodies are obligated to guide their reporting entities and inspect compliance with the PF (and TF) TFS sanctions regimes. If reporting entities fail to comply, are subject to administrative sanctions, including those set out within article 12 of Law No. 9613 (Decree No. 9825, art. 21, sole para.) or the more specific sanctions set out in one of the sectoral regulations above. However, SUSEP has no administrative penalties which it can apply directly on its supervised population for breaches of UN sanctions, which is a shortcoming (Circular SUSEP No. 612 (2020), art. 44, excludes UN sanctions compliance from the reach of administrative liability).

Criterion 7.4 – Brazil has no procedures to submit de-listing requests to the UNSC in the case of designated persons and entities that, *in the view of the country*, do not or no longer meet the criteria for designation. It does have other relevant procedures enabling listed persons and entities to challenge their inclusion on a UN sanctions list:

(a) Law No. 13810 enables listed persons to petition a request for de-listing at the Focal Point established pursuant to UNSCR 1730. Article 27 of that Law establishes that any individual or entity sanctioned pursuant to UNSCRs may request their exclusion from the sanctions list. Such a request should be forwarded to the MOJ and substantiate the reasons why the person does not meet the criteria for designation provided in the relevant resolution. The MOJ analyses the request and forwards it to MFA and the relevant sanctions committee (see also Decree No. 9825, art. 17). COAF published Guidelines on its public website (in Portuguese and English) for the application of Law No. 13810 and Decree No. 9825 which provide information on how individuals or entities may request their exclusion from the sanctions lists. Brazil does not directly inform the populace of the availability of the UN Focal Point mechanism with regard to UNSCR 1730 designations (it points only to the UN Ombudsperson for the UNSC’s ISIL (Da’esh) and Al-Qaida Sanctions List).

(b) Brazil has procedures to unfreeze the funds or other assets of person or entities with the same or similar names as designated persons or entities who are inadvertently affected by a freezing mechanism. Law No. 13810, art. 15, envisions this “homonym” situation exactly, but as discussed in R.6, c.6.6 (c) and (f), it is not evident that the challenge is available to the designated person upon request at any time (because the judge must summon the “defendant” who has 15 days to challenge). A reporting entity (obliged to freeze assets) or government agency can approach MOJ and the AGU to initiate such a judicial intervention. Brazil is bound to inform the relevant UN Sanctions Committees in the event of any release of assets (Decree No. 9825, art. 19).

(c) Brazil has procedures authorising access to funds or other assets when it has determined that the exemption conditions set out in UNSCRs 1718 and 2231 are met (Law No. 13810, art. 28). Brazil authorises access to frozen funds or other assets which have been determined to be necessary for basic expenses, for the payment of certain types of fees, expenses and service charges, or for extraordinary expenses, in accordance with most procedures set out in UNSCRs 1718 and 2231. However, article

28 aligns the time period for approving access to funds for basic expenses with UNSCR 1452's shorter objection window of 48 hours, whereas under UNSCRs 1718 and 2231, the relevant UN committees should be permitted five working days to object.

(d) Brazil has mechanisms for communicating de-listings and unfreezings to the financial sector and the DNFBPs immediately upon taking such action and for providing guidance to FIs and other persons or entities, including DNFBPs, that may hold targeted funds or other assets, on their obligations to respect a de-listing or unfreezing action. Under Decree No. 9825, article 4, a "new or updated UNSC list," which would encompass any de-listings, should be communicated without delay to the supervisory agencies, who are bound to further communicate this to their reporting entities. As to guidance, the regulators and supervisors are required to provide this to their obliged subjects (Decree No. 9825, art. 21). As discussed in c.7.3, above, some, but not all these bodies have done so.

Criterion 7.5 – With regard to contracts, agreements, or obligations that arose prior to the date on which accounts became subject to TFS, Brazil has the following measures.

(a) Brazil permits additions to accounts frozen pursuant to UNSCRs 1817 and 2231, of interest, other earnings, and income due on those accounts (Law No. 13810, art. 31, para. 2). Although such additions are to be frozen under article 31, the Law does not specify precisely that the contracts under which payments could be allowed should be in existence *prior* to the date on which the accounts are blocked.

(b) Under this sub-criterion, freezing action taken pursuant to UNSC 1737, and continued by UNSCR 2231, or taken pursuant to UNSCR 2241, should not prevent a designated person or entity from making any payment due under a contract entered into prior to the listing of such a person/entity, provided that certain conditions are met. Brazil has no provision in its legal framework on this point, but points to the general decree incorporating the entirety of UNSCR 2231 into the national legal framework, Decree No. 8669 (2016). In practice, Brazil may be applying the requirements of this sub-criterion and the UNSCRs, but because the conditions require both analysis of the facts presented and notification to the UNSC for an authorisation to make such payments, technical compliance is not clear under Brazil's TFS law or framework nor is it laid out in guidance to the financial sector.

Weighting and Conclusion

Brazil has in place the core measures to implement PF TFS without delay. There are some shortcomings, and chief among them is that there is no way to enforce compliance with TFS by non-reporting entities (i.e., against individuals or legal persons) who are not otherwise obliged under Brazil's Law No. 9613. There is no penalty if a member of the public makes funds or other assets available to designated persons, aside from the TF offence, the applicability of which would be highly dependent on the facts of any given case and is not deemed sufficient by the assessors. Moreover, SUSEP, does not have sanctions available if its supervised entities fail to comply with PF TFS.

There are a few minor deficiencies in delisting procedures, but mainly, listed persons and entities can request delisting. There are also some small technical gaps in the access to funds process and the nuances of contracts, agreements, and obligations with respect to frozen funds or assets. Overall, the shortcomings are minor, since the

bulk of the criteria are met with respect to the implementation of sanctions by the financial and non-financial sectors.

Recommendation 7 is rated Largely Compliant.

Recommendation 8 – Non-profit organisations

Brazil was rated NC on old SRVIII in its 2010 MER for not having implemented any of the Recommendation's requirements.

Criterion 8.1 –

(a) Brazil has recently identified the subset of NPOs which fall within the FATF definition of NPO (86.34% of the NPO population), and it has used relevant sources of information to identify the features and types of NPOs which may be at risk of TF abuse. A sectoral risk assessment was completed at the end of 2022. Since there is no overarching NPO supervisor, COAF conducted the SRA with a methodology agreed by public sector agencies and representatives of the NPO sector.

Brazil's 2021 NRA included a review of the non-governmental sector under the TF Risk Analysis. The national score for TF risk was determined to be low (threat = low/vulnerability = medium). However, regarding NPOs, Brazil concluded that there were deficits in its regulatory framework and supervision, and NPOs were considered a "critical area" which should be prioritised in the action plans. Accordingly, Brazil's main AML/CFT coordinating body, Enccla, decided on Action 5/2021, which required further studies in the field of TF. For Action 5's NPO workstream, the working group included the Institute for Applied Economic Research (Ipea) and the Brazilian Association of Fundraisers.

In Brazil, several types of legal persons referred to as Civil Society Organisations (CSOs) may act for non-commercial purposes, such as associations, cooperatives, foundations, and institutes. CSOs must legally incorporate and obtain a tax identification number (CNPJ). To register with RFB and obtain a CNPJ, CSOs must declare the specific activity they are engaged in, submit bylaws containing the organisation's purpose and objectives, and disclose the identity of the people who compose the board of directors, among others. The legal framework for CSOs is mainly governed by Law No. 13019 (2014) and Decree No. 8726 (2016). Decree No. 8726 generated the CSO Map, developed by Ipea.¹²³

Through Action 5, Enccla approved two methodologies to identify the subset of NPOs falling within the FATF definition and to group NPOs, by virtue of their activities, which are likely to be at risk of TF abuse. Brazil concluded that 704,275 of 815,675 CSOs fall within the FATF definition. Next, Brazil used information from the CSO Map as well as the organisation's CNAE (i.e., a code number associated with a very specific type of economic activity), as the main sources of information to identify the features and types of NPO which are relatively more likely to be at risk of TF abuse.

¹²³ The CSO Map is a collaborative, virtual platform containing CSO information; it is free and publicly accessible. It integrates a large amount of data originating from public and private sources. Its main objectives are creating transparency about CSOs, fostering partnership with the public administration, promoting projects and diverse activities, publicising data and research, and supporting decision-making especially for public funds. The CSO Map includes data related to employment of individuals within CSOs, certifications, projects, and resources allocated. The quantity of volunteerism, fundraising, donations, tradename and other identifying information, and descriptions of area of operations, governance structure, etc., is self-reported.

The 2022 NPO SRA uses the TF risk-indicators from the 2014 FATF typologies report and applied them in the context of Brazil to identify NPOs at lower risk of abuse of TF (the “risk mitigators”) and NPOs at higher risk of misuse for TF (the “risk events”). The risk mitigators were mainly functions of the legal structure of the CSO, i.e., does the CSO category require certain certifications and qualifications which lessen its risk, or does it engage in merely expressive activity, as opposed to service activity. Four categories of NPO were determined to be lower risk and therefore should be subject to simplified mitigating measures in the future: **social organisations** (1,160 social organisations; 5,153 CSOs of public interest [OSCIP]; 4,236 Certificate of Charitable Organisations for Social Assistance [CEBAS]; 1,357 Certificate of Charitable Organisations for Education [CEBAS-ED]; 627 Certificate of Charitable Organisations for Health [CEBAS-H]; 347 environmentalist entities; and 156 State Public Utility and 101 Municipal Public Utility organisations); 7,759 **private foundations**; more than 141,000 **religious organisations with tax immunity** at the federal, state, or city level; and 93% of Brazilian **CSOs engaged in expressive activities**. The risk events were: **location of the CSO** (e.g., the area of Foz de Iguaçu is higher-risk and requires more counter-terrorism attention due to presence of Islamist communities, some linked to Hezbollah leadership; the city of São Paulo is medium-risk); CSOs, especially private associations and religious organisations, with **foreign managers or partners** from high or very high-risk countries; and CSOs that engage in **remittance of funds abroad** to high or very high-risk countries.

(b) Brazil has to some extent identified the nature of threats posed by terrorist entities to at-risk NPOs, as well as how terrorist actors could abuse those NPOs. Through the 2021 NRA, it has taken steps to understand and assess the risk of abuse of NPOs for TF in a general sense. The 2022 SRA relies on the threat actors and activities identified in the NRA, and acknowledges that emerging threats are not yet understood or mapped.

(c) Brazil has not yet reviewed the adequacy of measures, including laws and regulations, that relate to the subset of the NPO sector that may be abused for terrorism financing in order to be able to take proportionate and effective actions to address the TF risks identified. As of year-end 2022, Brazil has just identified the NPOs facing a higher and lower level of TF risk, and therefore it cannot be said to be taking proportionate or effective actions to address those identified risks. Although collaboration between the Government and the NPO sector resulted in the enactment of Law No. 13019 (2014) and Decree No. 8726 (2016), currently, there are few laws or regulations specifically to address particular TF risks that Brazil identified on the basis of the features and types of NPOs that may be vulnerable to abuse. CVM is the only supervisor that requiring that as part of an entity’s RBA and internal risk assessment, the entity should pay special attention to NPOs as a class of customers, like PEPs, for AML/CFT purposes (CMV Res. No. 50 (2021)).

(d) Brazil has conducted its first SRA for NPOs, so the establishment of periodic reassessment through the review of new information on the sector’s potential vulnerabilities to terrorist activities to ensure effective implementation of measures is not yet ripe for Brazil. By Resolution NRAWG No. 1 (2021) the NRA itself should be periodically reassessed at intervals not exceeding two years. The SRA for NPOs states that it will be revised after the next demographic census, CSO map update, and NRA update.

Criterion 8.2 – Brazil does not currently engage in outreach on TF issues towards the NPO sector; through Action 5, described above, it opened an initial dialogue with

the sector about the contours of Recommendation 8, and it intends to establish more sustained outreach in the future.

(a) Brazil has certain policies to promote accountability, integrity, and public confidence in the administration and management of NPOs, albeit not specifically related to TF. Among other things, Brazil requires registration of each non-commercial legal entity with the Corporate Taxpayer's Registry (CNPJ), a Company Registration Number (NIRE), and the declaration of one of four legal statuses available for CSOs (e.g., association or foundation). Depending on the legal status and declared activity of the NPO, various policies come into play concerning its governance. For example, partnerships between CSOs and public authorities are regulated through Law No. 13019 and Decree No. 8726 and made transparent through a list. CSOs having no government partnerships are not monitored through this law and regulation, and Brazil acknowledges the residual risk of TF for NPOs that do not have any relationship with the public sector.

(b) Brazil does not currently encourage and undertake sustained outreach and educational programmes to raise and deepen awareness among NPOs as well as the donor community about the potential vulnerabilities of NPOs to TF abuse and terrorist financing risks, and the measures that NPOs can take to protect themselves against such abuse. This is being explored through Enccla Action 5.

(c) Brazil does not currently work with NPOs to develop and refine best practices to address TF risk and vulnerabilities and thus protect them from terrorist financing abuse. This is being explored through Enccla Action 5.

(d) Brazil does not currently encourage NPOs to conduct transactions via regulated financial channels. It has several financial inclusion initiatives, but none specifically geared towards NPOs.

Criterion 8.3 – There are no targeted or risk-based measures which apply to NPOs at risk of TF abuse. There are certain measures applicable to all CSOs (e.g., registration with CNPJ), and CSOs that partner with the public sector or are tax-immune, but these are not calibrated to TF risk. It remains to be seen what mitigation measures will be implemented in response to the 2022 SRA on NPOs.

Criterion 8.4 – There is no specific authority to monitor the compliance of NPOs with the requirements of this Recommendation. There is no authority to apply sanctions for violations by NPOs of measures taken in line with Recommendation 8.

Criterion 8.5 –

(a) Brazil does not have specific measures aimed at ensuring effective cooperation, coordination, and information-sharing to the extent possible among all levels of appropriate authorities or organisations that hold relevant information on NPOs. The CNPJ and CSO Map are tools to enable such cooperation, but no one authority or source centralises information NPOs. Brazil's institutions involved in AML/CFT/CPF (namely supervisors, tax authorities, and intelligence, police and prosecutorial bodies) have wide investigative competence and ability to gather information. Brazil's GovData information platform also permits the electronic sharing of data between government agencies about citizens, which would aid in the effort to exchange information related to NPOs.

(b) Brazil has some investigative expertise and capability to examine those NPOs suspected of either being exploited by, or actively supporting, terrorist activity or

organisations. At least one case of NPO abuse for potential (not actual) TF was detected and investigated by the Polícia Federal.

(c) Through the CSO Map, Brazil has enabled some access to information on the administration and management of particular NPOs (including financial and programmatic information) which may be obtained during the course of an investigation and is searchable according to different criteria. This would include a mix of information held by the government about particular CSOs (which investigators can otherwise access easily) and information self-declared by active CSOs. Investigators and prosecutors would be able to access government databases such as CNPJ, on the legal status of an NPO, main economic activity, and other foundational details. The Annual Social Information Report (RAIS) is used to identify formal employment relationships associated to the entities registered with CNPJ. A few other secondary databases exist containing information about certain types of CSOs, such as charitable entities of social assistance. Financial intelligence on CSOs, if available, would be accessible through COAF.

(d) Brazil has no particular mechanisms to ensure that when there is suspicion or reasonable ground to suspect an NPO of involvement in TF (e.g., as a front for fundraising for a terrorist organisation; as a conduit exploited for evading assets freezes or to provide other terrorist support, or as a means to conceal/obscure clandestine diversion of funds for the benefit of terrorists) that this information is promptly shared with competent authorities, in order to take preventive or investigative action. There are generic information-sharing mechanisms between intelligence bodies (ABIN, COAF) and investigative bodies (PF), which would be applied in the case of a suspicious NPO.

Criterion 8.6 – Brazil has identified appropriate points of contact (POCs) and procedures to respond to international requests for information concerning TF, which may include responses related to particular NPOs suspected of terrorist financing or involvement in other forms of terrorist support. Relevant intelligence and investigative bodies (e.g., COAF, PF), have POCs to send and reply to international requests, including for information related to countering terrorism or TF, including if it involved NPOs. Such channels of coordination could include Egmont exchanges through COAF and international cooperation/MLA through the Office of the Prosecutor General’s International Cooperation Unit, assessed elsewhere in this report. There is not one main NPO POC, but an array of POCs for TF inquiries based on institutional competence and the nature of the request.

Weighting and Conclusion

Brazil has identified the subset of CSOs in Brazil falling under the FATF definition of NPOs, i.e., 7/8th of the entire population. Brazil recently identified the features and types of NPOs which are at greater (and lesser) risk of TF abuse through its late-2022 SRA, and concluded that the overall risk of terrorism financing in the third sector is low. A review of the adequacy of laws and regulations is needed vis-à-vis the recently identified subset of NPOs facing relatively higher risk—those organisations having “risk events”—and the CSOs flagged for simplified measures—those organisations having “risk mitigators”—according to the new SRA. A risk-based approach, including sustained outreach to the sector and effective supervision or monitoring over NPOs in the subset, is not yet in place.

Recommendation 8 is rated Partially Compliant.

Recommendation 9 – Financial institution secrecy laws

In its 3rd MER, Brazil was rated largely compliant on financial secrecy because secrecy inhibited COAF's ability to access customer specific information.

Criterion 9.1 –

Brazil's financial secrecy laws do not inhibit to a large extent the implementation of FATF Recommendations. While financial institutions must preserve the confidentiality of their transactions and services, Complementary Law 105/2001 lists the conditions under which exemptions from secrecy provisions are possible (Art.1(1) and Art.1(3)). Law 13.709/2018 on the Protection of Personal Data do not hinder the implementation of the FATF Recommendations in accessing and sharing protected information (Art. 7 and 11).

Access to information by competent authorities

Brazil's Central Bank (BCB) and the Securities Exchange Commission (CVM) can directly access from financial institutions to information covered by financial secrecy when executing their supervisory functions (Complementary Law 105/2001, art. 2 para. 1 and 2). LEAs can access such information through court order for the investigation or prosecution of any crime (Complementary Law 105/2001, art. 1, para. 4, items I to IX). Direct access by COAF to information held by obliged entities is foreseen in Article 10(5) of AML/CFT Law. Access by COAF to, information subject to secrecy held by obliged entities can occur in those situations where it is necessary to analyse STRs and/or ML/TF suspicions, including information held by obliged entities other than the reporting institution. There are no provisions that prevent SUSEP from accessing information.

Sharing of information between competent authorities nationally or internationally

Supervisors can share secret information when conducting their duties. The BCB and CVM can enter into agreements with other public institutions to conduct supervisory activities and with foreign regulators for the purpose of joint supervision (Complementary Law 105/2001, Art.2(4)). The BCB, the CVM and other supervisory authorities are required to provide identification information and suspicious transaction and cash transfer reports to COAF (Complementary Law 105/2001, art.2, para.6). In addition, COAF is required to establish cooperation and information exchange mechanisms (Complementary Law 105/2001, art. 2, para. 4 and Law No. 9613, art. 14) and as noted above, COAF is required to communicate evidence of crimes or other illicit activities to supervisors.

In this context, COAF may access information through consultation of the various official databases available, including CNPJ, CCS and CENSEC, in addition to information submitted by obliged entities in the context of STRs.

Likewise, the BCB and CVM are required to communicate to Public Prosecutors Office, information related to the occurrence or indication of crimes and to report to the competent public agencies indication or occurrence of administrative irregularities or torts (Complementary Law 105/2001, art. 9). The Federal Revenue of Brazil (RFB) also communicates information relating to tax representations for criminal purposes to the Public Prosecutors Office (Ordinance 1750, article 15).

Sharing of information between financial institutions (R. 13, 16 and 17)

For the purposes of R.13, 16, and 17 FIs not pertaining to the same group may share information relevant to the operations and in line with AML/CFT compliance requirements (Complementary Law 105/2001, article 1, para. 3). In addition, articles 26 and 27 of BCB Circular 3978/2020 provide additional requirements to share information that concerns PEPs and customers residing abroad on information sharing for the purposes on AML/CFT.

Weighting and Conclusion

Financial Secrecy laws do not inhibit the implementation of AML/CFT requirements.

Recommendation 9 is rated Compliant.

Recommendation 10 – Customer due diligence

In the last MER, Brazil was partly compliant with customer due diligence requirements. The country showed CDD measures were applied but not necessarily set out in legislation. The main deficiencies concerned the use of independent and reliable sources for verification, identification of beneficial ownership, and insufficient response mechanisms to compliance failures (account closures, freezing of business relations).

Article 10 of Law No. 9613 is the main source of customer due diligence obligations for FIs setting out main requirements for customer due diligence. Furthermore, the Brazilian legal framework is complemented by sectoral regulations including, CMN Resolution 4753/2019 (FIs), BCB Circular 3978/2020 (BCB supervised entities), CVM Resolution 50/2021 and 35/2021 (securities market), SUSEP Circular 612/2020 (insurance providers), CVM Resolution N35/2021 (securities on regulated stock markets), PREVIC Normative Instruction 34/2020 (pensions fund), COAF Resolution 41/2022 (factoring).

Criterion 10.1 – Law No. 9613 requires the performance of customer due diligence (art. 10) for all business relations, including the opening, maintenance and closure of deposit accounts (CMN Resolution 4753/2020).

Whilst a specific requirement prohibiting anonymous accounts is absent from regulations (with the exception of article 23 of BCB Circular 3978/2020), Brazil's legal framework calls for the closure of accounts in instances where CDD breaches are identified (CMN Resolution 4753/2020, art. 6). In foreign exchange markets the Law No. 14.286 (Article 4) established FIs obligations for the identification of its customers. This is also required by Resolution BCB No. 277/2022.

CVM Resolution 50/2021 (Article 11) establishes the obligation to identify investors and keep their registers updated. This provision also applies to intermediaries (CVM Resolution 35/2021).

SUSEP Circular 612/2020 sets out obligations to implement CDD requirements including verification and validation of information in cooperation with the RFB database. PREVIC/FIs follow similar requirements (Normative Instruction 34, Article 2).

COAF/FIs are obliged Resolution 41/2022 requiring the identification and qualification of clients before the start of a business relation.

Criterion 10.2 – All FIs are required to apply CDD procedures (Law No. 9613, art 10, para. I-III). In particular:

(a) Brazilian FIs are required to undertake CDD measures when establishing business relationships (article 23 BCB Circular 3978/2020, art. 18; SUSEP Circular 612/2020, art. 20, para. 2; COAF Resolution 41/2022, art. 2, para. 2(b)).

(b) FIs are required to undertake CDD measures when carrying out occasional transactions regardless of threshold (Law No. 9613, art. 10, para. 2; BCB Circular 3978/2020, art. 28; COAF Resolution 41/2022, art. 19).

(c) FIs are required to perform CDD on occasional transactions that are wire transfers (BCB Circular 3978/2020, art. 28-30; BCB Circular 3691/2013, art. 62). Law 14.286, art. 4 and BCB Resolution 277/22, art. 3).

(d) FIs are required to undertake CDD measures in case of ML/TF suspicion (Law No. 9613, art. 11). Articles 38 and 39 of BCB Circular 3.978/2020 require institutions to implement procedures for monitoring, selecting and analysing operations to identify and pay special attention to ML/FT suspicious operations. COAF Resolution 41/2022 (article 10), SUSEP Circular 612/2020 (art. 35) and CVM Resolutions 50/2021 (art. 17) further complement the Brazilian legal framework with the requirement to continuously identify assess customer's ML/TF risk.

(e) FIs are able to verify previously obtained CDD data pursuant to Article 16 and 17 of BCB Circular 3978/2020, however this provision is inferred, and no specific criteria foresees action in case of doubt. Other FIs are covered by SUSEP Circular 612/2020 (article 32) and COAF Resolution 41/2022 (art. 10).. Article 6 of CMN Resolution 4753/2019 further confirms the requirement to close accounts where irregularities are found.

Criterion 10.3 – FIs are required to identify the customer (a natural or legal person) and verify that identity using one of the specified reliable public and private sources.

BCB Circular 3978/2020 (Ch. V, Sec. II, art. 16) provides for the identification of all clients, occasional or permanent, and provides validation (CFP taxpayer number), and verification using public and private databases. BCB Resolution 277/22 (article 7) applicable to foreign exchange transactions links verification requirement with BCB Circular 3978/2020 provisions.

CVM Resolution 50/2021 establishes identification and the need to verify and validate the information. Explanatory Note to Resolution 50/2021 added reference for using public or private databases. SUSEP/FIs are under similar requirements (Circular 612/2020). Similarly, article 12 of COAF Resolution 41/2022 defines the sources and type of documents for use in CDD efforts.

PREVIC Normative Instruction 34/2020 (art. 11) determines the need to keep an updated registry in order to ensure the reliability of information but does not detail the use of specific data sources.

Criterion 10.4 – FIs are required to identify and verify any person acting on behalf of a customer (BCB Circular 3978/2020, art. 19; CVM Resolution 50/2021, Article 11 and 13); Circular SUSEP No. 612/ 2020, art. 20 (d), para. 3; COAF Resolution 21/2012 (arts. 2, 7).

Identification requirements for customers and representatives must be duplicated to collect information on all relevant parties.

PREVIC has not adopted a similar requirement.

FIs authorised to operate in the foreign exchange market apply this requirement similar to provisions in BCB Circular 3978/2020. BCB Resolution 277/2022, art. 68, also establishes specific obligations for correspondent accounts (see R.13).

Criterion 10.5 – FIs are required to identify the natural person(s) who ultimately owns or controls a customer (in line with the FATF Glossary) and carry out related provisions.¹²⁴

For BCB supervised entities the requirements to identify beneficial ownership are set out in BCB Circular 3978 (ch. V, sec. VI) which ensures the identification and validation procedures to determine the beneficial ownership.

CVM Resolution 50/2021, articles 11 to 17, covers the CDD procedures to identify the beneficial owner for legal entities and investment funds.

SUSEP Circular 612/2020, article 20, requires the identification of clients, beneficiaries, beneficial owners, and establishes obligations for verifying and validating the authenticity of the information provided.

COAF Resolution 41/2022, article 15, maintained the requirements to identify the beneficial owner and included representatives and proxies as part of the requirements.

Criterion 10.6 – FIs are required to understand and as appropriate, obtain information on, the purpose and intended nature of the business relationship (BCB Circular 3978/2020, art. 18 and BCB Circular 3691/2013, art. 139). CVM/FIs (Resolution 50/2021 art. 18), SUSEP/FIs (Circular 612/2020, arts. 20- 21), COAF/FIs ((Resolution No. 41/2022, art. 14 (a)(I)) includes similar provisions in their regulations.

FIs authorised to perform cross border transactions must refer to “*the client’s evaluation and characteristics of the operation*” (Article 7, BCB Resolution 277/2022).

Criterion 10.7 – Brazil’s legislation provides the framework for ongoing CDD (Law No. 9613, art. 10). Law No. 9613 is complemented by sectoral regulation BCB Circular 3978/2020, CVM Resolution 50/2021, SUSEP Circular 612/2020, COAF Resolutions 21/2012 and 41/2022. In line with these:

(a) FIs are also required to conduct ongoing due diligence on transactions and clients to ensure their consistency with the business and risk profiles, including as regards the source of funds.

(b) FIs must ensure that information collected for the above purposes is updated and appropriate.

Criterion 10.8 – FIs are required to understand the nature of the customer’s business, their ownership and control structure. The framework in place includes general requirements to understand business relationships (Circular BCB 3978/2020, art. 20,

¹²⁴ BO is defined by different legal instruments including articles 24 and 25 of BCB Resolution 3978/2020. The RFB definition included in article 53 of Normative Instruction 2119/2022 defines BO as: (i) the natural person who ultimately, directly or indirectly, owns, controls or significantly influences the entity; or (ii) the natural person on whose behalf a transaction is conducted. Significant influence is presumed when the natural person: (i) owns more than 25% of the entity’s capital, directly or indirectly; or (ii) directly or indirectly, holds or exercises preponderance in corporate deliberations and the power to elect the majority of the entity’s administrators, even without controlling it.

para. I; Resolution CVM 50/2021, arts. 5 and 18; SUSEP Circular No. 612/2020, art. 24; COAF Resolution 42/2022, arts. 2, 14 and 15).

Criterion 10.9 – FIs are required to identify and verify information related to legal persons or legal entities through the identification of name, legal form and proof of existence, the powers that regulate and bind the legal person and the address of the registered office or place of business. Brazil’s legal framework applies this requirement through:

- BCB Circular 3978/2020, articles 16 and 18 which include requirements for customer identification and qualification.
- Trusts that operate in the country’s financial and capital markets are considered to be “Non-Resident Investors”. Article 15 of CVM Resolution 50/2021 includes specific requirements to identify a) the person who established the trust or similar vehicle (the settlor); b) the investment vehicle supervisor, if any (protector); c) the administrator or manager of the investment vehicle (curator or trustee); and d) the beneficiary of the trust, whether one or more natural or legal persons. However, this requirement does not clearly apply to FIs when establishing business relations with foreign trusts.
- SUSEP Circular 612/2020 (art. 20, para. 3).
- COAF/FIs are obliged by of Resolution N. 21/ 2012, article 7.

Criterion 10.10 – Brazil requires FIs to identify and take reasonable measures to verify the identity beneficial owners of legal persons. Law No. 9613 requires the identification of customers as set forth in Article 10 and subsequently in BCB Circular 3978/2020 (art. 24), CVM Resolution 50/2021 (arts. 13-17), COAF Resolution (art. 15) and SUSEP Circular 612/2020 (article 20). If customers are legal persons FIs must:

- (a) Identify the identity of the natural person who has the controlling ownership interest (threshold of 25% of ownership)
- (b) Identify the natural person exercising control through other means
- (c) Identify the identity of the relevant natural person who holds the position of senior managing official.

However these provisions are not mirrored in legislation as sequenced approach, including that one set of information may be called for in the absence of the former, rather as an all-encompassing effort to identify the customer. There are some exceptions to the rule to identify the BO of a legal person that are not in line with the FATF Recommendations, notably for non-profit entities, cooperatives, and public-held companies. For these entities, FIs must identify the natural person who represents the company, as well as that of their controllers, managers, and directors (BCB Circular 3978, Art. 24 (3) and (4); CVM Resolution 50/2021, Art.13).

Criterion 10.11 – As mentioned in c.10.09, CVM FIs are specifically required to conduct identification procedures, including on beneficial ownership (CVM Resolution 50/2021 (art. 15)). No other FI is required to take measures regarding trusts or other similar legal arrangements.

Criterion 10.12 – FIs are required to conduct the following CDD measures on the beneficiary of life insurance and other investment related insurance policies (SUSEP Circular 612/2020 (art. 25)):

- (a) Taking the name of the person (art. 20, para. 3)
- (b) Obtaining sufficient information concerning the beneficiary to satisfy the financial institution that will be able to establish the identity at the time of payout (arts. 20-25)
- (c) The verification of identity at the time of payout (art. 25, paras. 2, 26).

Criterion 10.13 – There is no specific requirement to identify as high risk the beneficiary of a life insurance policy. However, SUSEP Circular 612/2020, article 13, requires the consideration of customers and beneficiaries in the determination of risk whilst article 16 establishes the need enforce enhanced monitoring in cases where higher risk is identified as high risk. Article 32 furthermore establishes the need to identify the beneficiary at the time of payout.

Criterion 10.14 – FIs are required to verify the identity of the customer and beneficial owner prior to the start of a business relationship (BCB Circular 3978/2020, art. 23; CMV Resolution 35/2021, arts. 18, 37; COAF Resolution 41/2022, arts. 11, 20) and SUSEP Circular 612/2020, articles 16 to 30.

As regards the possibility of completion of information after the establishment of the business relationship, BCB FIs:

- a) Shall complete missing information within a maximum of 30 days from the beginning of the business relationship (Circular 3978/2020, art. 23).
- b) There is no provision which connects this requirement to the normal conduct of business.
- c) Article 39 of BCB Circular 3978/2020 establishes the type of transactions that may be subject to monitoring and analysis and defines a period of 45 days to carry out monitoring and analysis of these transactions (also established by COAF Resolution 41/2022, art. 20).

PREVIC Regulations do not include any requirements to verify the identity of a customer before the beginning of a business relationship.

Criterion 10.15 – Some FIs are required to adopt procedures concerning the conditions under which a customer may utilize the business relationship prior to the verification (BCB Circ. 3.978/2020, art. 18, paras. 2-3; CVM Res. 50/2021, art. 17; COAF Res. 41/2022 and SUSEP Circ. 612/2020, art. 25).

Criterion 10.16 – FIs are required to apply CDD requirements according to the risk profile (BCB Circ. 3978/2020, arts. 13, 18, para. 4, and 20; SUSEP Circular 612/2020, COAF Res. 41/2022, arts. 8-10; CVM Res. 50/2021, arts. 5,6 and 17, and PREVIC Normative Instr. 34/2020, art. 12).

Criterion 10.17 – FIs are required to perform enhanced due diligence where they identify a greater risk (BCB Res. 3978/2020, art 10; CVM Res. 50/21 art. 16); SUSEP Res. 612/2020, arts. 16, 32; COAF 41/2022, art. 7).

In the foreign exchange markets, BCB Resolution 277/2022 (art. 7) links the requirements for doing transactions with BCB Circular No. 3.978/2020.

No specific requirements to implement enhanced CDD measures apply PREVIC/FIs.

Criterion 10.18 – BCB regulations allow FIs to apply appropriate simplified CDD measures where they have established that the business relationship or transaction presents a low risk of ML/TF. BCB regulations provide the possibility of adopting

simplified controls only in situations where low risk is verified and in accordance with the national and internal risk assessments (BCB 3978/2020, art. 10).

CVM Resolution 50/2021 foresees simplified situations in article 11, defined in Annex C.

SUSEP/FIs are covered by Circular 612/2020 (art. 13, para. 4) but this does not appear to specifically mention lower risk exemptions. Similar considerations apply for PREVIC/FIs.

COAF/FIs under Resolutions 21/2012 and 41/22 allow FIs only simplified registration procedures for lower risk customers and excludes these procedures in all cases where there are suspicions of ML/TF.

Criterion 10.19 – When a BCB/FI, CVM/FI, and COAF/FI is unable to complete CDD, they are required to not open the account, commence business relations or perform the transaction. (BCB Circ. 3978/20, arts. 23, 39; Res. CVM 50/21 arts. 16, 18, and 20; SUSEP Res. 612/2020, art. 25; and COAF Res. 41/2022, art. 11). BCB/FIs are required to submit a suspicious transaction report whenever the operation is deemed to circumvent CDD procedures, which implies that FIs must consider submitting an STR when they are not able to complete CDD (BCB Circ., Art. 39).

Criterion 10.20 When FIs form a suspicion of ML or TF and reasonably believe that performing CDD measures will tip off the customer, there is no provision allowing the FI to elect not to pursue CDD and requiring it instead to file an STR. While the legal framework does not prevent an STR from being filed before CDD occurs it also does not offer clarity regarding the possibility of tipping-off if CDD is pursued.

Weighting and Conclusion

Most of Brazil's CDD measures meet the FATF Standards. Deficiencies related to beneficial ownership have been weighted in accordance with R24 and, in particular, with R25. Requirements to understand a customer's ownership and control structure do not clearly extend to foreign legal arrangements which are considered non-residents investors. Small gaps exist in the requirements on information collection and verification related with PREVIC FIs, though this sector is objectively less crucial. Whilst the insurance sector applies the RBA there is still a gap in the requirement to consider beneficiaries of insurance policies within the appropriate risk categories. There is no provision that allows FIs not to pursue CDD and require the filing of an STR when suspicions arise.

Recommendation 10 is rated Largely Compliant.

Recommendation 11 – Record-keeping

In its previous MER, Brazil was found largely in compliance with record-keeping obligations. Deficiencies were identified regarding exemptions to record-keeping requirements, as well as their poor adoption by non-financial institutions.

Criterion 11.1 – FIs are required to retain data and information collected on domestic transactions for at least five years (Law No. 9613 9613/1998, § 10 para. 2).

In international transactions Resolution BCB 277/22, article 8 (in accordance with the Law N° 14.286), provides that FIs authorised to operate in foreign exchange

markets must keep at the disposal of the BCB and keep for a minimum period of ten years.

Specific requirements are issued by supervisory authorities, BCB (Circulars 3.978/2020 and 3.691/2013), CVM (Law No. 6,385/1976, article 9, CVM Instruction No. 301/1999 (revoked by CVM Resolution 50/201), as well as in CVM Resolution 50/2021, arts. 25-26), for private insurance companies (Circular SUSEP No 605/2020) and in case of factoring companies (COAF Resolution No. 21/2012).

The public pensions sector institutions are required to retain transactional data only for transactions above BRL 10 000 (approx. USD 1 905) (PREVIC Normative Instruction 34/2020, § 17).

Criterion 11.2 – FIs are required to maintain CDD data and information (Law No. 9613, article 10, para 1 and 2) for five years following the termination of the business relationship or after the date of the occasional transaction (Law No. 9613, art. 10, para. 5(c)(2)). BCB regulation establishes the obligation to keep records of CDD measures and transactions for a period of 10 years for domestic transactions (BCB Circular 3.978/2020, art. 67). In foreign exchange transactions, preserved documents and information must include proof of the client's consent to the agreed conditions and the information about the operation and the supporting documents that have been collected (Res. BCB 277/22, articles 8, 50 and 68).

Criterion 11.3 – Records must ensure reconstruction of individual transactions including information that could be essential for an investigation (Law 14.286, article 5; BCB Circ. 3.978/2020, §§ 28-30; BCB Res.277/22, § 41, CVM Res. 50/2021, articles 25 and 26).

Criterion 11.4 – Information kept must be made available to the COAF upon request (Law 9613, art. 10, para. 5) in line with the provisions of Complementary Law 105/2001.

Law 14.286 (article 5) and BCB Resolution 277/22 covers information exchanges in relation to foreign exchange market and provides that data, information, documents and bookkeeping records kept in physical or digital form are available to supervisors. BCB Circular 3347/2007 created the financial system customer database which provides public entities with relevant client information. Additional information, such as account and transfers data, may also be obtained through the SISBAJUD system.

Article 3 of Complementary Law 105/2001 requires the BCB, CVM and FIs provide information to law enforcement authorities upon appropriate authority.

Weighting and Conclusion

All criteria are met.

Recommendation 11 is rated Compliant.

Recommendation 12 – Politically exposed persons

In its previous MER, Brazil was largely compliant with the requirements for politically exposed persons. There were deficiencies with the identification of PEPs as beneficial owners and related to the need for senior management intervention to establish or continue business relations related to PEPs.

Criterion 12.1 –

Brazilian regulations broadly apply equally to domestic and foreign PEPs (BCB Circular 3978/2020, Article 27; Annex A of CVM Resolution 50/2021; SUSEP Circular 612/2020, article 4). The definitions of foreign PEPs and of domestic PEPs generally cover the elements required by the FATF Standards, however, the legislation provides for a closed list of persons to be considered as foreign or domestic PEPs, which is not fully in line with the FATF Glossary because it can be restrictive.

(a) FIs are required to put in place risk management systems to determine whether a customer or the beneficial owner is a PEP (BCB Circ. 3978/2020 (art. 27, para. 4), CVM Res. 50/2021 (art. 5 (I), para. 2), SUSEP Circ. 612/2020 (article 23), PREVIC's Norm. Instr. No. 34/2020 (ch. V, sec. II, and ch. VII), and COAF Res. 40/2021 (arts. 1-2)).

(b) FIs are obliged to authorise starting or maintaining a relationship with a PEP through someone who holds a high hierarchical level in the FI. The condition of PEP must be applied for five years from the date on which the person no longer belongs to the categories defined by the regulation (BCB Circ., arts. 19, para. 3 and 27, para 5, and COAF Res. 40/2021, art. 2, SUSEP Circ. 612/2020, art. 32). While this limit is quite long, R.12 does not set a time limit to how long a person can be a PEP and this should be considered on a risk sensitive basis, which is a deficiency.

(c) FIs must take reasonable measures to establish the source of wealth and nature of business relation. Requirements on the source of funds appear to only apply in the context of requirements related to transfers of funds (e.g., BCB Circ., art. 30).

(d) for the status of PEP is a criterion in the determination of the client risk SUSEP Circular 612/2020 (art. 32), BCB Circular 3978/2020 (art. 19, para. 2) and the annexes to CVM Resolution 50/2020, however, it is not explicitly mandatory to carry out enhanced ongoing monitoring for all foreign PEPs (COAF Res. 41/2022, art. 20, § 1, item III and art. 21, item XV).

Criterion 12.2 – The measures set out in c.12.1 broadly apply to domestic PEPs and persons entrusted with a prominent function by an international organisation.

Criterion 12.3 – The legislation applies to the family members (however, this is limited only up to the second degree) and close associates of all types of PEPs (BCB Circ. 3978/2020, art. 19, CVM Res. No. 50/2021, Annex A, Circ. SUSEP 612/202, art. 4, PREVIC Norm. Instr. 34/2020, COAF Res. 40/2021).

Criterion 12.4 – FIs offering life insurance policies are required to take reasonable measures to determine whether the beneficiaries and the beneficial owner of the beneficiary, are PEPs. This is done through a register maintained by the FIs which includes customers, beneficiaries, third parties, other related parties and beneficial owners, and which must be updated every year to identify new PEPs and in any case at the time of the settlement (SUSEP Circ. No. 612/2020, §§ 20, 23 and 25). However, identification that are PEP, the issues raised in the analysis of c.12.1 to c.12.3 also apply to the current item.

Weighting and Conclusion

Brazil adequately performs CDD measures required in relation to PEPs, including the implementation of risk management systems, taking reasonable measures to determine whether a customer or the beneficial owner are PEPs. Nevertheless,

Brazil's closed list and function-based nature of the PEP regulations are somewhat restrictive and open to abuse.

Recommendation 12 is rated Largely Compliant

Recommendation 13 – Correspondent banking

In its 3rd MER, Brazil was rated partially compliant with these requirements because it lacked a prohibition from entering or continuing correspondent relationships with shell banks and FIs were not required to satisfy themselves that correspondent financial institutions in a foreign country do not permit their accounts be used by shell banks.

Criterion 13.1 – In correspondent banking relationships for payments in BRL, Brazilian banks must gather information about the institution domiciled or headquartered abroad, to fully understand the nature of its activity, its reputation, and the quality of supervision to which it is subject, as well as to assess its internal controls regarding combating money laundering and the financing of terrorism (Law No 14.286, art. 6).

(a) Brazilian FIs are required to gather information to understand the nature of and the reputation of the respondent's business and whether it has been subject to a ML/TF investigation or regulatory action (Circ. 3978, art. 59). (b) FIs are required to know but not assess counterpart's controls. (c) FIs are required to obtain approval from senior management (BCB Res. 3978/2020, art. 59(V)). (d) and understand the AML/CFT controls of the contracted entity (id., article 59, IV).

Criterion 13.2 – FIs in Brazil are not permitted to have payable through accounts held by residents, non-residents or those with foreign domicile, including when payments in BRL are carried out by foreign FIs in Brazil (Law No. 14.286, art. 6, and BCB Res. 277/2022, art. 68)

Criterion 13.3 – FIs must certify the company contracted has a physical presence in Brazil or a license in the country where it is incorporated (BCB Circ. 3978/2020, art. 59, para. III, and art. 60).

Weighting and conclusion

Recommendation 13 is rated Compliant.

Recommendation 14 – Money or value transfer services (MVTs)

In its 3rd MER, Brazil was rated largely compliant with these requirements because of related customer due diligence, record keeping and other deficiencies which had an impact on compliance with this Recommendation and because of issues with effectiveness now assessed separately under IO.3.

Criterion 14.1– Natural or legal persons that provide domestic or international money or value transfer services (MVTs) in Brazil, are licensed by the BCB. MVTs services can be provided by: banks, credit, financing and investment companies, securities brokerage companies, securities distributing companies, exchange brokerage companies, Brazil's Postal Services (Empresa Brasileira de Correios e Telégrafos (ECT) and payment institutions. (Law No. 4131, art. 23; Law No. 4595, art. 10 and 17; Circ.3691, art. 23 and also BCB Res. 80/2021 and 81/2021).

Criterion 14.2 – Providing MVTS services without a license or with a license obtained through false declarations is punishable with one to four years imprisonment and a fine, or two to six years imprisonment and a fine, if performed with the aim of evading country currency restrictions (Law 7492, arts. 16, 22). It is also an administrative offence to carry out operations or activities that are prohibited, unauthorised or in disagreement with the authorisation granted by the BCB. Penalties are the following: public admonition cumulated with a fine; fine from EUR125 15678 to EUR 1 960 656 for legal entities and from EUR 3921 thousand to EUR 392 050 for individuals; and disqualification from six to ten years of acting as an administrator and holding a high-level position in the relevant entity. In addition, the BCB maintains an online list¹²⁶ of entities authorised to operate that facilitates checking for unauthorised entities. Moreover, it requires that operators in the foreign exchange market publicly disclose an updated list of their contractors CMN Res. No. 4,935, art. 21).

Criterion 14.3 – MVTS in Brazil are subject to the Law No. 9613, art. 9 and supervised by BCB for AML/CFT compliance (BCB Circ. 3978/2020, art. 1).

Criterion 14.4 – MVTS providers in Brazil are required to maintain a current list of its agents accessible by competent authorities in the countries in which the MVTS provider and its agents operate (CMN Res. n 4935, arts. 21 and 23). BCB Circular No. 3.691 so determines that operators in the foreign exchange market register their contracted companies with BCB's Information System on Entities of Interest (UNICAD).¹²⁷

Criterion 14.5 - MVTS providers are required to establish and maintain AML/CFT programmes and ensure they are being complied with by their correspondents/agents (BCB Circular 3978/2020, art. 2). Article 3 of CMN Resolution No. 4,935 notes that correspondents act on behalf of and under the guidelines of the contracting institution, which assumes full responsibility for ensuring that transactions made via the correspondent comply with the applicable legislation and regulations. Additionally, articles 2 and 3 of Circular3,978/2020 explicitly require that AML/CFT policies contain instructions addressed to partners and external service providers of the supervised institution and these include correspondent/agents.

Weighting and conclusion

All criteria are met.

Recommendation 14 is rated Compliant.

Recommendation 15 – New technologies

R.15 has been amended and the FATF Standards have developed further since Brazil's previous MER. The Standards include new provisions related to virtual assets (VAs) and virtual asset service providers (VASPs).

¹²⁵ Currency exchange rate used (to note in Chapter 1): 1 BRL = 0,195967 EUR.

¹²⁶ List available at: www.bcb.gov.br/estabilidadefinanceira/encontreinstituicao.

¹²⁷ UNICAD is the Central Bank's Information System on Entities of Interest which manages and stores the database of registration information of entities supervised by the BCB, as well as individuals linked to these entities. In addition, it also contains information on various individuals and legal entities that have a relationship with entities supervised by the BCB or that are inserted in its area of activity, such as tourism agencies, companies operating in the rate exchange market and others.

Criterion 15.1 – Entities subject to supervision of BCB are required to:

(a) Define procedures for the previous assessment of new products, services and technologies, in light of ML/TF risks (BCB Circ. 3.978/2020, art. 3, item I(b))

(b) Assess and measure ML/TF risks related to operations, transactions, products, and services, covering all distribution channels and the use of new technologies (BCB Circular 3.978/2020, art. 10, para. 1, item III). These parameters shall be revised whenever material changes occur, thus including new products or delivery mechanisms (BCB Circ. 3.978/2020, art. 12, para. 3). In addition, CMN Resolution No. 4.865 and BCB Resolution 29/2020 foresee the establishment of regulatory sandboxes, where payment and financial innovations shall comply with AML/CFT requirements, including those above described. Moreover, the Strategic Committee of Prevention of Money Laundering and Terrorist Financing of BCB, at the strategic level, and the Technical Group of Prevention of Money Laundering and Terrorist Financing of BCB, at the technical level, discuss the market entry of new products and services from an AML/CFT perspective within the central bank.

Persons and entities subject to supervision of CVM are also required to, ahead of implementation, assess new technologies, services and products for ML/TF risk mitigation purposes (CVM Resolution No. 50 (2021), art. 7, item I(a)).

CVM Resolution 29/21 provides for the establishment of a regulatory sandbox where chosen innovative business models shall be developed in compliance with AML/CFT rules.

Entities subject to supervision of SUSEP are required to:

(a) Include guidelines in their AML/CFT policies for the previous assessment of new products, services and technologies, in light of ML/TF risks (SUSEP Circular 612/2020, art. 6, Clause I(b));

(b) Perform an internal assessment with the purpose of identifying, understanding and measuring the ML/TF risk of their products and services, as well as all their delivery channels and the use of new technologies (Circular SUSEP No. 612 (2020), art. 13)).

Like in the banking and capital markets sectors, CNSP Resolution No. 381/2020, provides for the establishment of a regulatory sandbox in the insurance sector, in compliance with the applicable AML/CFT rules to the sector, including on risk assessment.

Factoring companies supervised by COAF are also required to perform a prior assessment of new products and services, as well as the use of new technologies, with respect to ML/TF risks (COAF Resolution 41/2021, art. 2, item I(b)).

No specific requirements are established for Closed-end Complementary Pension Plan Systems supervised by PREVIC.

ENCCLA is responsible for the assessment of risks and vulnerabilities faced by the country, including on new products and technologies, as per R.1.

From a country/competent authorities' perspective (and without prejudice to BCB's internal *fora*), the establishment of regulatory sandboxes is limited because it does not allow a sufficiently broad view of the ML/TF risks related to the use of new products, business practices, delivery mechanisms and developing technologies, if

these are carried out by incumbent FIs in their efforts to innovate their business models or launch new products.

Criterion 15.2 –

See c.5.1. Apart from Complementary Pension Fund Systems supervised by PREVIC, all legal instruments described in c.15.1 (from the perspective of obliged entities) require that the corresponding obliged entities adopt mitigation measures in conformity with the risks identified and ahead of implementation.

Criterion 15.3 –

(a) Brazil has not fully identified the ML and TF risks emerging from VAs/VASPs. Instead of a detailed identification of ML/TF risks related to virtual assets and VASPs, the NRA contains some generic remarks on the risks of virtual assets, alongside some estimations on the dimension of the VASP market in Brazil and in Latin America. Moreover, Brazil recognizes that the high vulnerability of VASPs is due to the absence of regulation and supervision, without further elaborating on the specific ML/TF threats.

(b) No law or other enforceable means were in force with regard to the VASP sector at the end of the onsite visit.¹²⁸ VASPs can voluntarily register with Siscoaf, however, this does not equate to any binding regulation of the sector or to any sort of registration for the exercise of activities with virtual assets.

(c) There are no requirements for VASPs to identify, assess, manage and mitigate their ML and TF risks.

Criterion 15.4 – No law or other enforceable means were in force with regard to the VASP sector at the end of the onsite visit.

Criterion 15.5 – Despite the legislative initiatives already adopted, no relevant law or enforceable means were in force at the end of the onsite visit.

Criterion 15.6 – Despite the legislative initiatives already adopted, no relevant law or enforceable means were in force at the end of the onsite visit.

Criterion 15.7 – Despite the legislative initiatives already adopted and the recent appointment of BCB as the competent authority, no relevant law or enforceable means were in force at the end of the onsite visit.

Criterion 15.8 – Despite the legislative initiatives already adopted, no relevant law or enforceable means were in force at the end of the onsite visit.

Criterion 15.9 – Despite the legislative initiatives already adopted, no relevant law or enforceable means were in force at the end of the onsite visit.

Criterion 15.10 – Despite the legislative initiatives already adopted, no relevant law or enforceable means were in force at the end of the onsite visit.

Criterion 15.11 – Despite the legislative initiatives already adopted and the recent appointment of BCB as the competent authority, no competent authorities were legally empowered to provide the widest range of international cooperation at the end of the onsite visit.

¹²⁸ Brazil has enacted legislation regulating the activities of VASPs (Law 14478, of 21st December, 2022), however, the law entered into effect after the on-site visit (July 2023). While no regulatory or supervisory system was in place at the end of the onsite visit, Decree 11563 of 13th July appointed BCB as the competent authority to that end.

Weighting and Conclusion

The financial sector operators are in general required to assess ML/TF risks stemming from the use of new technologies. Brazil has also passed Law 14478/2022 regulating the new technologies sector but this law was not in force at the time of the on-site. It is noted that whilst VA/VASPs were not regulated in time for this assessment, compliance with this recommendation is in progress.

Recommendation 15 is rated Partially Compliant.

Recommendation 16 – Wire transfers

In its 3rd MER, Brazil was rated largely compliant with these requirements because of issues with effectiveness now assessed separately under IO.3 and because in domestic wire transfers, the obligation to obtain an address did not extend to natural persons or occasional customers who are legal persons.

Criterion 16.1 – Law 14.286/2021 established requirements for: i) the identification and the qualification of its customers; ii) ensuring the lawful processing of operations in the foreign exchange market; and iii) adopting measures and controls to prevent foreign exchange market operations from being carried out for the commission of illicit acts, including money laundering and terrorism financing, in accordance with Law No. 9613.

All cross-border wire transfers may only be carried out by authorised FIs (article 14 Law 14.286/2021), and accompanied by required and accurate information, regardless of threshold. These transfers must use means that ensure that the respective payment instruction is accompanied by information related to the sender and the beneficiary of the resources (BCB Res. 277/2022).

In the case of offshore remittances, the electronic message must contain the 1) name, 2) the identification number, 3) address, and 4) number of bank account or CPF/CNPJ of the originator. Regarding the beneficiary, the electronic message must contain the 1) name, 2) number of bank account or unique transaction identifier (BCB Res. 277/22, art. 13).

BCB Resolution 277/22 (art. 79 Annex I) also requires further information which is delivered through (2) the Sistema Câmbio.

Criterion 16.2 – FIs are required to ensure all files contain the required and accurate originator information and full beneficiary information regardless of how they are shared (article 13 of BCB Resolution 277/2022). Individual files must contain this information and are shared with BCB (BCB Resolution 277/2022, article 79).

Criterion 16.3 – Brazil does not apply de minimis requirements.

Criterion 16.4 – Brazil does not apply de minimis requirements.

Criterion 16.5 – Domestic wire transfers require that the information accompanying the wire transfer includes originator information as indicated for cross-border wire transfers (BCB Circular No. 3691, art. 11, para. 1). Name and CPF or CNPJ registry number of the sender or payer and identification codes of institutions involved in the

transfer, as well as numerical codes of branches and accounts involved in the transactions should be recorded (BCB Circular No. 3978, art. 30, para. 3).

Criterion 16.6 – This criterion is not applicable because ordering FIs are required to include full originator and beneficiary information on all domestic wire transfers (see c.16.5).

Criterion 16.7 – FIs are required to maintain all originator and beneficiary information collected, in accordance with R.11 and for a minimum of ten years (BCB Circ. No. 3978, arts. 30 and 67).

BCB Resolution BCB No. 277/2022 (art. 79 and Annex I), establishes that agents authorised to operate in the foreign exchange market must hold and forward to the BCB a mandatory information set.

Criterion 16.8 – FIs are not prohibited from executing a wire transfer if it does not comply with requirements explained in 16.1 – 16.7 above under regulations. However, in accordance with Law 14.286 (art. 4) only authorised FIs can execute wire transfers and have an obligation to verify the legality of the transaction and compliance.

Criterion 16.9 – There are no specific requirements for intermediary FIs, however, further to Law 14.286 (art.14) and BCB Res. 277/2022 (art. 13) all transactions must be carried out by authorised institutions and follow the information collection and recordkeeping requirements applicable by the general AML/CFT framework.

Criterion 16.10 – The ordering FI is required to maintain all originator and beneficiary information collected, for a minimum of ten years (BCB Circ. No. 3978, arts. 30, 67).

In addition, FIs must hold and sent data information of the cross-border wires transfers to the BCB (Res. BCB No. 277/2022, art. 79 and Annex I).

Criterion 16.11 – There are no specific requirements for intermediary FIs but general requirements apply as described in 16.9.

Criterion 16.12 – There are no specific requirements for intermediary FIs but general requirements apply as described in 16.9.

Criterion 16.13 – FIs are required to take reasonable measures to detect cross border wire transfers that lack required originator information or required beneficiary information (Annex I, BCB Circular 3691/2013).

Criterion 16.14 – See criterion 16.1, thresholds are not applicable in Brazil, beneficiary FIs are required to verify the identity of the beneficiary, if not previously identified and keep this information, in line with R.11.

Criterion 16.15 – In line with the requirements in 16.2 all BCB authorised FIs are required to refuse transactions if beneficiary information is missing (Article 13 of BCB Resolution 277/2022). Risk-based policies are adopted as standard practice pursuant BCB Circular 3978/2020 and the relevant articles as per R.10).

Criterion 16.16 – MVTs need to be authorised by BCB in Brazil. Circular BCB No. 3 978/2020 determines that FIs and other institutions authorised by BCB need to ensure the application of the AML/CFT policy.

Criterion 16.17 – MVTS need to be authorised by the BCB. Circular BCB No. 3 978 determines that FIs and other institutions authorised by BCB need to ensure the application of an AML/CFT policy. Further to article 3 of Law 14.286/2021 all transfers must be carried out by BCB authorised institutions pursuant to the regulations issued by this competent authority.

Criterion 16.18 – FIs must comply with specific responsibilities in wire transfer processing, including obligations set out in the relevant UNSCRs resolutions (1267 and 1373 and successor resolutions) (BCB Resolution No. 444, art. 2).

Weighting and conclusion

Recommendation 16 is rated Compliant.

Recommendation 17 – Reliance on third parties

In its previous MER, requirements regarding reliance on third parties did not apply to the Brazilian context given the inability of most regulated entities to rely on third parties.

Criterion 17.1-

(a) FIs may rely on third parties to perform elements of CDD (identification of customer and beneficial owner, understanding the nature of the business, establishing whether the customer or beneficial owner is a PEP). Nevertheless, the responsibility for CDD remains with the FI in line with applicable CDD requirements (BCB Circ. 3978/2020, art. 13).

(b) Clouding and data processing are covered by CMN Resolution 4893/2021 which provides that FIs authorised by BCB must ensure high management commitment in proportion to the contracted services, verification of the capacity and capabilities of the provider, including compliance with the law and regulations, and timely access to the information stored by the third-party provider. Those outsourced activities can only be done under specific requirements (CMN Res. 4893/2021, arts. 12, 16-17), for instance following an information sharing agreement between the BCB and the foreign supervisory authorities.

(c) For FIs under CVM regulation 50/2021 some CDD processes are allowed to be relied on “trustworthy” foreign institutions. Foreign FIs should be under international supervision standards and include a signed MoU (IOSCO Principles). Failures or deficiencies in the CDD processes done by a foreign institution require the adoption of specific measures to mitigate the ML/FT risks (Res. CVM No. 50 (2021), annex C, art. 1, V, § 6).

Under SUSEP Circular 612/2020 regulation reliance on third parties is permitted. However, the responsibility remains with FIs which must ensure prompt access of data and consider country risks where relevant.

Criterion 17.2 – For BCB supervised entities, article 56 of BCB Circular 3978/2020 establishes that entities must consider the risk categories defined in the internal risk assessment when contracting third parties. Article 59 also requires FIs to obtain information about contracted companies (when FIs) to understand the nature of its activity and reputation in addition to knowing whether it has the right AML/CFT controls and whether it is the subject of any AML/CFT breaches Similarly CMN

Resolution 4.893/2021 also has risk mitigation measures which make difficult to rely on third parties located in high risk or non-cooperative jurisdictions.

However, these provisions do not refer specifically to high-risk jurisdictions.

Reliance on third parties located direct or indirectly in non-cooperative jurisdictions is not allowed for CVM supervised FIs (CVM Res. 13/2020, annex A, art. 1).

Criterion 17.3 – A FI can rely on third parties to undertake CDD measures if it is part of the same financial group for (a)-(c) (BCB Res. 3978/2020, art. 5).

(a) CDD and record-keeping requirements and its AML/CFT policies and procedures are the ultimate responsibility of the FI,

(b) the financial group is supervised for compliance with AML/CFT requirements at a group-level by a home or host supervisor (SUSEP Circ.612/2020, art. 27).

(c) the Brazilian legal framework provides only risk reduction measures for ML or TF in general terms, but there is no explicit requirement referring to high risk countries.

Weighting and Conclusion

Obligated entities are permitted to rely on third party providers in line with the criterion set out by the FATF standards. FIs must ensure that the necessary information is available regarding the defined CDD elements and that it takes sufficient steps to ensure the availability and adequacy of that information. Generally, obligations to consider ML/TF risk and high-risk jurisdictions in this context are not clearly set out in the national legal framework.

Recommendation 17 is rated Largely Compliant.

Recommendation 18 – Internal controls and foreign branches and subsidiaries

In its 3rd MER, Brazil was rated largely compliant with these requirements because of the following deficiencies: (i) closed pension funds supervised by the Secretariat of Complementary Providence (SPC) were not covered; (ii) the exemptions for insurance brokers whose total amount of brokerage in the previous financial year was less than EUR 3.9 million/USD 5.8 million, were not consistent with FATF requirements; (iii) factoring companies only covered to the extent required to implement internal controls relating to STR reporting; BCB/FIs and SUSEP/FIs not required to ensure that the compliance officer has timely access to CDD, transaction records and other relevant information; CVM/FIs not required to maintain an adequately resourced and independent audit function or have employee screening procedures, as well as effectiveness issues for non-bank BCB/FIs and COAF/FIs.

Criterion 18.1 – FIs are required to implement programmes against ML/TF, which have regard to the ML/TF risks and the size of the business (Law No. 9613, art. 10, para. III; BCB Circ. 3978/2020, art. 2; CVM Res. 50/2021, ch. II; SUSEP Circ. No. 612/2020, art. 5; CMN Res. No. 4595, arts. 5-8, PREVIC Norm. Instr. No. 34, art. 2, and COAF Res. 41/2022, art. 2). Details of what programmes include vary among supervised entities as follows:

(a) Compliance management arrangements (including the appointment of a compliance officer at a management level). (BCB Circ. No. 3978/2020, arts. 8-9; CVM Res. No. 50/2021, art. 8; SUSEP Circ. No. 612/2020, art. 11; COAF Res. 41/2022, art. 2; PREVIC Norm. Instr. 34/2020, arts. 6 and 7)

(b) screening procedures to ensure high standards when hiring employees (BCB Circ. No. 3978, art. 3 (e)-(g) and arts. 56 and 58; CVM Res. No. 50, art. 7; SUSEP Circ. No. 612, arts. 5, 6, 11, 13 and 40; PREVIC Norm. Instr. 34/2020 § I(f), art. 3. COAF requires that the compliance policy of entities includes procedures for selection and training employees (COAF Res. 41/2022, art. 2).

(c) an ongoing employee training programme (BCB Circular No. 3978, § I(g), art. 3; CVM Resolution No. 50, art. 7, para. II; SUSEP Circular No. 612, art. 5, item IV; COAF Resolution 41/2022, art. 2, para 1, i-f; PREVIC Normative Instruction 34/2020, para I, line g, article 3.

d) an independent function to test the system (BCB Circ. No. 3978, art. 61; CVM Res. No. 50, art. 8, para. 7; SUSEP Circ. No. 612, art. 5, item V; COAF Res. 41/2022, art. 2; arts. 27 and 28 of PREVIC Norm. Instr. 34/2020).

Criterion 18.2 – Financial groups in Brazil apply (while not “required”) - except for CVM supervised entities who “must” adopt a group wide programme - to implement group-wide programmes against ML/TF, which are applicable, and appropriate to, all branches and majority-owned subsidiaries of the financial group (BCB Circular 3978/2020, art. 4; CVM Resolution 50/2021, art. 5; SUSEP Circular 612/2020, art. 7; COAF Resolution 36/2021, art. 3). This criterion is not applicable to PREVIC supervised entities. These group wide programmes include the measures set out in criterion 18.1, and the following:

(a) policies and procedures for sharing information required for the purposes of CDD and ML/TF risk management.

BCB entities have policies and procedures for sharing information though limited to where there is a customer of the same group residing abroad and supervised by a supervisory authority with which the BCB has an agreement to exchange information. In this case, information on beneficial ownership and persons politically exposed can be obtained from the other entity (BCB Circular No. 3978, art. 26 and art. 27, para. 6). In addition, BCB entities can centralize a number of risk management functions including its internal risk assessment (id., art. 11). CVM supervised FIs must establish mechanisms for information exchange between their internal control areas to ensure compliance with the AML/CFT policy (CVM Resolution No. 50, art. 4, paras. 2-3); confidentiality provisions cannot be used as an impediment to information sharing (see explanation provided under Explanatory Note to CVM Resolution No. 50). This can include information on the customer's profile held by companies. SUSEP supervised entities can also adopt a single AML/CFT policy, centralise their internal risk assessment, keep a central register for customer information and provide a joint effectiveness report to authorities (SUSEP Circular No. 612, arts. 28, 43). In all cases, the centralised system must meet the business characteristics and be well documented, for accountability purposes.

(b) BCB supervised entities can carry out the monitoring, selection, analysis and reporting to COAF of suspicious operations and situations in a centralized, group manner. In all situations, the formalisation of the option for accountability purposes is required (BCB Circular 3978/2020, arts. 42, 46, 52); COAF supervised entities must include guidelines for the implementation of information sharing procedures within the conglomerate or group for AML/CFT purposes in any single AML/CFT policy adopted, without prejudice of any legal limits that must be observed with regard to this sharing (COAF Res. 41/2022 arts. 3-4); and

(c) adequate safeguards on the confidentiality and the use of the information exchanged including safeguards to prevent tipping-off (Comp. Law 105/2011 Law 9613/1998, art. 11, and Circ. Letter 1/2022-CVM/SMI-SIN).

Criterion 18.3 – FIs are required to ensure that their foreign branches and majority-owned subsidiaries apply AML/CFT measures consistent with the home country requirements (though no specific mention of action if host country requirements to be less strict) (see BCB Res. 3978/2020, art. 5 and COAF Res. 41/2022 arts. 3-4, and Law 4596/64, art. 9). Article 2 of SUSEP’s Circular No. 612 also references the obligations of entities based abroad. This criterion does not apply to PREVIC supervised entities.

If there are any limitations to implementing requirements, FIs are required to prepare a report (not indicated that they need to inform their supervisors) (BCB Circ. 3978/2020, art. 5, sole para.; CVM Res. 50/2021, art. 8) but are not specifically required to implement additional measures to manage ML/TF risks as required by this criterion.

Weighting and conclusion

Brazil implements most of the requirements of R.18, however, FIs are not required to apply additional AML/CFT measures to their foreign branches and majority-owned subsidiaries in instances where the host country does not permit the proper implementation of AML/CFT measures.

Recommendation 18 is rated Largely Compliant.

Recommendation 19 – Higher-risk countries

In its 3rd MER, Brazil was rated partially compliant with these requirements because CVM/FIs, SUSEP/FIs, SPC/FIs, and COAF/FIs were not subject to the specific requirements of this Recommendation.

Criterion 19.1 – Brazil does not require FIs to apply enhanced due diligence (EDD), proportionate to the risks, business relationships and transactions with natural and legal persons (including FIs) from countries for which this is called for by the FATF. However, FIs are required to apply EDD for higher risk situations, which may include situations for which this is called for by the FATF, however, there is no specific requirement that addresses this criterion.

Entities subject to the supervision of the BCB are required to adopt due diligence measures compatible with the risk of the customers, including enhanced measures in the higher risk categories, as defined in article 10 of the BCB Circular 3978/2020, and to identify higher risk situations as red flags or situations that merit suspicious transaction reporting (BCB Circ. 3978/2020, art. 13, para. 1, item I; art. 39; BCB Circ. 4001, art. 1). BCB publishes a list of countries with strategic deficiencies after each FATF Plenary.

For CVM supervised entities, jurisdictions identified by the FATF shall be considered as red flags in the context of ongoing monitoring (CVM Res. No. 50, art. 20, item IV (a)). In addition, CVM publishes the list of countries with strategic deficiencies issued by FATF after each Plenary, although this cannot be regarded per se as a binding requirement to adopt EDD.

COAF supervised entities shall place in the highest risk category legal persons whose equity chain or representation is held by a natural person established in FATF-listed jurisdictions (COAF Res. No. 41, art.1 7, item III). Article 21 of the Resolution contains further references to FATF-listed jurisdictions, but solely in the context of the monitoring to detect potential ML/TF suspicions.

Entities subject to SUSEP supervision are required to consider FATF-listings in their internal ML/TF risk assessments and to apply reinforced and continuous monitoring for operations originating in or destined for countries or territories classified by the FATF as non-cooperative or with strategic deficiencies (SUSEP Circ. No. 612, arts. 13, 32).

SUSEP publishes the list of countries with strategic deficiencies issued by the FATF after each Plenary, although this cannot be regarded per se as a binding requirement to adopt EDD.

This criterion does not apply to PREVIC supervised entities.

Criterion 19.2 – (a)-(b) there are no specific legal provisions that allow the country to apply countermeasures when called upon to do so by the FATF or independently from a call by FATF. BCB can disclose a list of information to be collected, verified and validated in specific customer qualification procedures, thereby enabling the possibility of requiring specific elements of enhanced due diligence on a case-by-case basis (BCB Circ. No. 3978 (2020), art. 18, para. 6), therefore applicable in cases (a) and (b) above. Supervised entities trigger measures based on their own understanding of risk but this may not be seen as fully complying with the requirement

Criterion 19.3 – COAF translates and publishes the communications issued by the FATF on higher risk jurisdictions. Financial supervisors, except for PREVIC, replicate this in their own websites. However, no information was provided on the dissemination of any other information related to concerns about specific weaknesses in the AML/CFT systems of other countries.

Weighting and conclusion

There are no explicit EDD and countermeasures requirements from countries for which this is called for by the FATF. The dissemination of information on specific country weaknesses is limited to the publication of FATF statements.

Recommendation 19 is rated Partially Compliant.

Recommendation 20 – Reporting of suspicious transactions

In its last MER, Brazil was rated largely compliant with the former R.13 and SR.IV. Deficiencies were related to the predicate offences on the STR requirements which only covered “crimes” and due to the impact of a NC rating on SR. II.

Criterion 20.1 – All FIs are obliged to submit STRs to COAF (Law No. 9613, art. 11(II)(b)). Financial institutions should report any transaction that may represent “serious indications” of or be related to ML or related crimes, including TF (*ib.*). While the obligation to report appears to be narrower than the FATF Standard, “serious indications” is interpreted as equivalent to “suspecting” or “having reasonable grounds to suspect” that the funds are the proceeds of ML, TF or predicate offences.

Criterion 20.2 – FIs are obliged to report attempted or performed transactions regardless of their amount (Law No. 9613, art. 11). This is also set forth in the sectoral regulations (BCB Circ. 3978/2020, arts. 43. 48; Res. CVM 50/2021, art. 22; Circ. SUSEP No. 612, art. 35.2; Norm. Instr. PREVIC No. 34, art. 20; COAF Res. No. 41, art. 23; and Norm. Instr. PF No. 196, art. 6).

Weighting and Conclusion

Brazil has a framework for reporting STRs and attempted transactions within 24 hours. The reporting obligation appears to be narrower than the FATF Standard, but this is interpreted as equivalent to “suspecting” or “having reasonable grounds to suspect” that the funds are the proceeds of ML, TF, or predicate offences. Therefore, this is a minor shortcoming.

Recommendation 20 is rated Largely Compliant.

Recommendation 21 – Tipping-off and confidentiality

In its 3rd MER, Brazil was rated compliant with these requirements

Criterion 21.1 – FIs and their directors, officers and employees are protected by law from both criminal and civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, if they report their suspicions in good faith to COAF (Law No. 9613, art. 11, para. 2). This provision is reproduced in sectoral regulations (CVM Res. No. 50, art. 22; SUSEP Circ. No. 612, art. 35; National Supplementary Health Agency Norm. Res. No. 526, art. 6; Res. COAF (for factoring) No. 41, art. 34). This protection applies even when not knowing precisely what the underlying criminal activity was, and regardless of whether illegal activity occurred as reporting does not require identifying the underlying criminal activity and covers attempted transactions.

Criterion 21.2 – FIs and their directors, officers and employees are prohibited from disclosing the fact that they intend to or have filed an STR (Law No. 9613, art. 11, para. 2). This provision is reproduced in sectoral regulations (BCB Circ. No. 3978, art. 50; CVM Resolution No. 50, art. 22; SUSEP Circ. No. 612, art. 35; Normative Instr. PREVIC No. 34, art. 22; Resolution COAF (for factoring) No. 41, art. 27. These prohibitions do not inhibit information sharing within financial groups in line with R.18 (BCB Circ.3.978/2020, arts. 46 and 52; COAF Res. 41/2022, art. 4).

Weighting and conclusion

All criteria are met.

Recommendation 21 is rated Compliant.

Recommendation 22 – DNFBPs: Customer due diligence

In its previous MER Brazil was rated as non-compliant with relevant DNFBP standards. Deficiencies persisted in the implementation of a broad and encompassing supervision of this sector, in particular the legal professions, company service providers and real estate brokers. Competent authorities were also found to provide little guidance to the sector.

DNFBPs requirements are currently included in Law No. 9613 (arts. 10-11) as well as by the relevant sectorial regulations.

Criterion 22.1 –

(a) Casinos are not authorised in Brazil (Decree-Law 9215/1946).

(b) Real estate agents, both natural and legal persons, are required to conduct CDD when promoting, purchasing, or selling property equal or greater to BRL 100,000.00 (first established by Law No.9.613/1998, Art.9 and 10). CDD obligations are further regulated by the real estate council (COFECI Resolution No.1.336/2014, as amended by 1463/2022, art.3). However, legal entities with less than ten (10) employees and with less than BRL 1,000,000.000 in annual revenue or performing five (5) or less real estate transactions per month may not be subject to the same requirements (COFECI Resolution No. 1336/2014; Art. 3). Additionally, real estate purchases less than BRL 100,000.00 (approximately USD 19,300) are not subject to the same CDD requirements as those with a greater purchase price.

(c) Natural or legal persons that engage in the business of jewellery, precious stones and metals, works of art and antiques when they engage in operations equivalent to BRL 10 000 (approximately USD 2 000) are required to identify “final beneficiaries”, which according to the Brazilian authorities have the same meaning as ultimate beneficial owner in COAF Resolutions (Law No.9.613/1998, art. 9 and 10, qualified by COAF Resolution 23/2012, articles 1 and 4).

(d) According to Law No.9.613/1998, arts. 9 and 10, any natural or legal person is required to perform CDD when they provide, even if occasionally, advisory, consultancy, accounting, auditing, counseling or assistance services in the following activities: the purchase and sale of real estate; management of funds, securities or other assets; opening or management of bank, savings accounts, investments or securities accounts; creation, operation or management of companies of any nature, foundations, trust funds or similar structures; activities of a financial, business, or a real estate nature. The broad wording of the legislation is expected to include lawyers, notaries, independent legal professional and accountants. Separate regulations to implement these requirements have been issued by the CNJ for notaries (CNJ Prov. No. 88/2019; arts. 9-10), and the Federal Accounting Council (CFC) for accountants (CFC Res. No. 1.530/2017; Art. 2, 3, and 4). However, the SRB for lawyers (Brazilian Bar Association) has not regulated the obligations for this category and therefore lawyers are not covered by CDD or other AML/CFT requirements.

(e) Trust and company service providers are not covered by AML/CFT legislation as a separate sector. Even though some services to companies are provided by other regulated persons in Brazil covered under article 9 of Law No. 9613, not all activities foreseen in the FATF Glossary are covered.¹²⁹

Criterion 22.2 – Casinos are not authorised in Brazil (Law 9215/1946) and trust and company service providers are not covered by AML/CFT legislation. Real estate agents, both natural and legal persons, are required to maintain all records and registry information for at least five years counting from the conclusion of transactions real estate transactions equal to or larger than BRL 100,000.00 (COFECI Res. No. 1336/2014, art. 13). Natural or legal persons that engage in the business of

¹²⁹ Namely, “acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another form of legal arrangement; and, acting as (or arranging for another person to act as) a nominee shareholder for another person”

jewellery, precious stones and metals, works of art and antiques in operations equivalent to BRL 10,000 (appx. USD 2,000) are required to maintain five years of records (COAF Res. 23/2012; art. 13). Accountants must maintain records and registry of customers and operations for at least five years counting from the date when the contracted service was provided (CFC Res. No.1.530/2017, art. 12). Notaries must maintain the records and registry referred to in relevant regulations for at least five years (CNJ Prov. No. 88/2019, art. 37).

Criterion 22.3 – Casinos are not authorised in Brazil (Law 9215/1946) and trust and company service providers are not covered by AML/CFT legislation.

Per Resolution COAF No. 40/2021, art. 1 and 2, sectors regulated by COAF for AML/CFT purposes, including the DPMS sector, must maintain specific procedures and internal controls to establish business relationships and to monitor operations and operation proposals carried out with PEPs. Additionally, DNFBPs must pay special attention to operations involving PEPs and their family, close collaborators and/or legal persons in which they take part, observing, in case of higher risk.

For reporting entities outside of COAF's jurisdiction, SRBs have promulgated PEP requirement regulations set out in R.12. For the real estate sector, Resolution COFECI No. 1.336/2014, art. 5 requires the indication of the PEP in records of the customers who are natural persons must be identified in the records of customers that are legal persons if the partners or their representatives or the beneficial owners of the operations are considered PEPs. Notaries must maintain customer records that include the indication of PEPs, including the verification of electronic records of PEPs, via Siscoaf, or collect a Statement from parties themselves about this condition (Provision CNJ No.88/2019, art. 9). Accountants must include PEP information in customers' records (CFC Res. No. 1.530/2017, art. 3).

Criterion 22.4 – COAF imposes obligations on its reporting entities to conduct ML/TF risk assessments of new products and services, and the use of new technologies, prior to their adoption (COAF Res. 36/2021, art. 2). The CNJ Provision No. 88/2019, art. 7, requires notaries to cover procedures and controls aimed at mitigating the AML/CFT risks from new technologies.

Criterion 22.5 – COAF reporting entities are not allowed to rely on third parties to carry out due diligence. This requirement is not covered by other sectoral regulations.

Weighting and Conclusion

Brazil has a number of deficiencies in relation to the implementation of requirements as regards legal arrangements, by lawyers and TCSPs and regarding ML/TF risks management and mitigation.

Recommendation 22 is rated Partially Compliant.

Recommendation 23 – DNFBPs: Other measures

In its 3rd MER, Brazil was rated non-compliant with these requirements because STR reporting, customer due diligence and tipping-off requirements did not apply to: (i) lawyers, notaries, other independent legal professionals and accountants; (ii) company service providers, and (iii) real estate agents/brokers who were natural persons and because of effectiveness elements now assessed separately under IO.3.

Criterion 23.1 – (a) Notaries and accountants are subject to STR reporting requirements set out in R.20 when, on behalf of, or for, a client, they engage in a financial transaction in relation to the activities described in criterion 22.1(d) (Law No. 9613, art. 9, and 11; CNJ Prov. No.88/2020; CFC Res. No. 1.530/2017). However, the SRB for lawyers (Brazilian Bar Association) has not regulated the obligations for this category except as regards professional privilege, which means that in practice lawyers are not covered by CDD or other AML/CFT requirements.

(b) DPMS are required to comply with STR reporting requirements set out in R.20 when they engage in a transaction with a customer that is equal to approximately BRL 10 000 (appx. USD 2 000) (Law No. 9613, art. 9, item XI). The threshold is lower than the FATF requirement of USD/EUR 15 000.

(c) There are no requirements for trust and company service providers.

Criterion 23.2 – Accountants, notaries, dealers in precious metals and stones are subject to internal controls set out in R. 18 and are required to have AML/CFT programmes which take into account the ML/TF risk and the size of the business. Most DNFBPs – i.e., excluding lawyers, TCSPs, real estate agents and accountants (CFC Resolution No. 530 only includes general AML/CFT provisions) – also have requirements to screen and provide ongoing training to employees. Most sectoral regulations do not specify the need for appointing a compliance officer or an independent audit (except Notaries under CNJ Provision No. 88, art. 8). Nevertheless, COAF Resolution 36/2021 mentions, in article 3, the need for periodic verification of the effectiveness of the AML/CFT policy adopted.

COAF reporting entities that are part of a conglomerate or economic group, including when management is located overseas, can adopt a single AML/CFT policy as long as this single policy encompasses the minimum AML/CFT requirements established by Law No. 9613. Further, regulated entities which are part of conglomerates or economic groups must include guidelines for the implementation of procedures for information sharing within the conglomerate or the group for the purposes of AML/CFT (COAF Resolution No. 36, arts. 3-4). There are no provisions regarding conglomerates in other sectoral legislation (e.g., CFC Resolution No. 1530 lacks provisions which would have a material impact should there be accountants, for example, that are part of a group). See R.18 for further details for COAF supervised entities.

Criterion 23.3 – DNFBPs are required to comply with higher risk countries requirements. Limitations persist in line with regulatory gaps identified in R.22.

Criterion 23.4 – DNFBPs are required to meet tipping-off and confidentiality requirements in line with R.21. COAF Res. No. 23, art. 17 (for DPMS); COFECI Res. No. 1336, art. 10; CFC Res. No. 1530, art. 15; CNJ Prov. No. 88, art. 39; DREI Norm. Instr. No. 76, art. 8; SECAP Ord. MOF No. 537, art. 14.

Weighting and conclusion

Brazil meets most STR reporting and other internal controls and tipping-off requirements. However, there are no requirements for lawyers and company service providers, and there are some omissions in sectoral regulations for real estate agents, notaries and accountants, which can represent a significant deficiency given Brazil's

country's risk and context and weaknesses identified in the NRA. See also deficiencies regarding R.18, R.19 requirements.

Recommendation 23 is rated Partially Compliant.

Recommendation 24 – Transparency and beneficial ownership of legal persons

In the last MER, Brazil was rated partly compliant with former R.33. Deficiencies included: competent authorities do not have access in a timely fashion to adequate, accurate and current information on the beneficial ownership and control of legal persons where the chain of ownership is broken by parties who do not have a CNPJ/CPF number; and a small number of unidentified bearer shares still existed even after having been prohibited.

The main types of companies that can be incorporated in Brazil under the Civil Code or other specific legislation¹³⁰ are: Joint-Stock Company (JSC), Limited Liability Company (LLC), Limited Liability Partnership by Share, General Partnership, Cooperatives, Individual Microentrepreneur (MEI), Individual Entrepreneur. Associations, foundations, and Simple Partnerships are the types of legal entities that can be incorporated for non-profitable purposes under the Civil Code. Unregistered partnerships and Joint-Venture partnerships are types of companies that are not legal persons (e.g., they cannot sign contracts or own bank accounts in their own names).

Criterion 24.1 –

(a) The Trade Boards (organised by each Federal State) provide some information on the creation of companies¹³¹, but they do not describe the different types, forms and basic features of legal persons in the country. The country adopted a sectoral risk assessment (SRA) of legal persons and arrangements in Brazil that identifies and describes the different types, forms and basic features of legal persons in the country. This information has been disseminated to the competent authorities and some – not all – private sector actors (ENCCLA action 02/2022).

(b) The processes for creating legal persons are described in the SRA of legal persons and arrangements and are available in the Trade Boards and REDESIM websites.¹³² The general provisions for incorporating companies are set in arts. 44, 45 and 46, 967 to 971, 985, 997 to 998 of the Civil Code (Law No. 10.406). The processes for obtaining and recording basic and BO information can be deducted from the legislation (including Annex XII of RFB Instr. No. 2.119/2022).

Criterion 24.2 – Brazil assessed the ML/TF risks associated with all the types of legal persons that can be created in the country. The assessment includes the identification and description of all legal entities existing in the country as well as their incorporation process. It also covers the process for obtaining basic and ownership information, and the assessment of the vulnerabilities related to any type of legal person that can be created in the country. The risk assessment does not systematically

¹³⁰ For JSC, LLCs, Limited Liability Partnership by Share: Company Law No. 6404/1976. For Cooperatives: Law No.5764/1971. For individual entrepreneurs: Complementary Law No.123/2006. Football Anonymous Society can be created as a JSC and in accordance with Law No.14193/2021. EIRELI (Individual Limited Liability Company) were created under Law No. 14195/2021 and their incorporation has been terminated in 2021.

¹³¹ See www.gov.br/empresas-e-negocios/pt-br/redesim/saiba-mais and www.gov.br/empresas-e-negocios/pt-br/redesim/abra-sua-pessoa-juridica.

¹³² See www.gov.br/empresas-e-negocios/pt-br/redesim/saiba-mais, under “Conheça os tipos de Pessoa Jurídica” (“Know the types of Legal Persons”).

take into consideration how legal persons can or are being misused for criminal purposes, even though the NRA and other studies have identified in a number of instances how legal persons have been misused for criminal purposes.

Criterion 24.3 – Any legal persons acquire legal personality after registering the constitutive acts with respective registry (Civ. Code, art. 45). All commercial legal persons must register with the Trade Board in the State of incorporation. Trade Boards keep a local register that is not centralised at national level. Non-commercial legal persons must register in the Civil Registry of Legal Entities. All commercial and non-commercial legal entities must register with the Federal Revenue Service (CNPJ number), where all information on legal persons recorded centrally (REDESIM system).

Legal persons are required to record a number of documents and information with the Trade Board or the Civil Registry of Legal Entities, including: the company name, the list of directors, proof of incorporation, the legal form and status, the address, the basic regulating powers (Civ. Code, art. 46 and Law 8934/1994, art. 32). This information contained in the Trade Boards and in REDESIM is public (Law 8.934, arts. 29-30).

Criterion 24.4 – DREI Resolution 81/2020 includes detailed information on the registration of all types of legal persons – including companies, foundations and other – which includes information on the registration of shareholders, members and other similar categories, as well as of their quotas and other instruments. Paragraph IX of Article 10 includes the requirement to update information. This may suggest that companies have an indirect requirement to maintain this information in their own registries, as also suggested by article 32 of Law 8934/1994 which requires the archiving of registration documents. However, there is no explicit obligations on legal persons to maintain the information set out in criterion 24.3 as well as to maintain a register of shareholders/partners, containing the number of shares held by each shareholder and the categories of shares (including the nature of the associated voting rights). There is no requirement to keep this information within Brazil or at a location notified to the company registry.

Criterion 24.5 – Obligated entities are required to *immediately* update and report to the Trade Boards (CNPJ) any changes to information on legal entities (RFB Normative Instruction 2119/2022, article 22). Registration in CNPJ may be suspended (article 37) or declared unfit (article 38) if the basic information is not submitted or is proven to be inconsistent; or when required documents are not submitted for verification within 90 days.

Art. 4 of Law 8.934 establishes that DREI is responsible for organizing and keeping updated the Trade Boards operating in the country. Art. 40 of Law No. 8.934 establishes that every act, document or instrument submitted to the Registry will be subject to an examination of compliance with legal formalities. Regarding the accuracy of the basic information, DREI Resolution 81/2020 (Title II, Chapter II) details the requirements for document submission and verification in physical and digital form.

There is no mechanism to ensure that the information is updated on a timely basis other than a post-hoc verification or alert through the CNPJ database.

Criterion 24.6 – Brazil uses at least two mechanisms to ensure that BO information of legal persons is available. (1) when a legal entity has a relationship with an FI/DNFBP, the reporting institutions should identify and take reasonable measures to verify the identity of the BOs of their clients who are legal persons. While there is no requirement to maintain a relation with an FI/DNFBP, the majority of legal entities would do so (e.g., a bank account).

(2) Some legal entities should register their BO with the CNPJ Registry (RFB Instr. No. 2119/2022, art. 4). Legal persons should also register the persons authorised to represent them, as well as the chain of corporate participation until reaching the natural persons characterized as BOs (ibid., art. 16).¹³³ The majority of legal entities created in Brazil are exempted from the obligation to submit BO information to CNPJ Registry (RFB Instr. No. 2119/2022, art. 55). These include but are not limited to associations and foundations that do not act as trustees and that are not incorporated in jurisdictions with favoured taxation or subject to a privileged tax regime; social security entities, pension funds and similar institutions, provided that they are regulated and supervised by a competent government authority in the country or in their country of origin. These exceptions limit the scope of the BO information available in the CNPJ Registry.

Criterion 24.7 – Legal persons are obliged to update the CNPJ about any change in its registration data (RFB Instr. No. 2119/2022, art. 22). For entities required to submit BO info to RFB, there is a requirement or suggestion to provide updated info within 30 days from the change, or within 60 days if the entity is based abroad (art. 54). However, RFB has no systematic verification mechanism to ensure that the information is accurate or updated.

Reporting institutions are required to update their BO information on a risk sensitive basis (see c.10.7), which does not ensure that the BO information is as updated as possible for all legal entities.

Criterion 24.8 – Legal entities must appoint a representative before the CNPJ (RFB Instr. No. 2118/2022, section IV). A legal person's representative before the CNPJ must be an individual who has the legitimacy to represent the entity (RFB Instr. No. 2119/2022, art. 6). In the case of an entity domiciled abroad, the representative for the CNPJ must be its attorney-in-fact or legally constituted representative domiciled in Brazil, with powers to manage the entity's assets and rights in the country and represent it before the RFB. The entity's representative at the CNPJ may appoint an agent to perform registration acts at the CNPJ. The foregoing indication does not eliminate the original competence of the entity's representative in the CNPJ. The representative is responsible for providing whatever information is required about the legal person he represents, however there is no provision establishing accountability of the representative to the authorities (any sanction would be applied to the legal person).

Criterion 24.9 – Information registered under the CNPJ (basic information) and the Trade Boards is kept indefinitely as historical records. Regarding the identification of

¹³³ BO is defined as: (i) the natural person who ultimately, directly or indirectly, owns, controls or significantly influences the entity; or (ii) the natural person on whose behalf a transaction is conducted. Significant influence is presumed when the natural person: (i) owns more than 25% of the entity's capital, directly or indirectly; or (ii) directly or indirectly, holds or exercises preponderance in corporate deliberations and the power to elect the majority of the entity's administrators, even without controlling it (article 53).

the BO by the reporting institutions, Law No. 9613, article 10.2 establishes that the registration information of all customers and the records of operations must be kept for a minimum period of five years from the end of the relationship or the conclusion of the transaction.

Criterion 24.10 – Basic information is broadly accessible to all competent authorities, including the FIU, through the REDESIM network. Beneficial ownership information held by RFB is protected by tax secrecy and only accessible to LEAs via court order or in instances where RFB is part of a joint investigation. As established in R.31, authorities conducting investigations of ML, associated predicate offences, and TF can access all necessary documents and information for use in those investigations, prosecutions, and related actions, which may include BO information, although it is unclear if this information can be obtained in a “timely” manner.

The FIU cannot obtain BO information from the RFB database. It may receive and request beneficial ownership information from obliged entities but only in the context of the analysis and report of suspicious activity reports (see R.9).

Criterion 24.11 – The redemption and issuance of bearer shares were prohibited in 1990 by Law No. 8.021 and No. 8.088. The current Civil Code (2002) re-established the possibility of issuing bearer shares, but only with the authorization of a special law. Currently, shares issued by corporations must be nominative and there is no possibility of issuing bearer shares.

Criterion 24.12 – The concept of nominee shareholder does not exist in Brazilian Law. All the shares/ownership rights issued by Brazilian companies are registered shares that identify the name of their owner, entitling him/her of all rights. Any nominee share arrangement would have to be dealt with by private contract, and according to the Brazilian authorities, there is no law, including any contract law, that regulates the relationship between the nominator of the share and the nominees. It is possible to appoint nominee directors, and any participation by proxy must be, through power of attorney, included in the letters of association, statutes or document registered in the Trade Boards and/or the CNPJ database.

Criterion 24.13 – Available sanctions for natural or legal persons that fail to comply with the requirement to submit information may not be considered proportionate or dissuasive.

Basic information

When discrepancies or errors are identified in the CNPJ database, the request for registration can be denied or suspended until the mistakes are corrected.

Sanctioning of natural persons or legal entities who fail to maintain information in accordance with c.24.4 and c.24.5 is limited to administrative procedures linked to the registration framework and ability to operate.

BO information

FIs/DNFBPs holding BO information are subject to sanctions, which are applicable to both natural and legal persons (Law No. 9613, art.12).

Similarly, a company that fails to comply with the obligation to report the BO information can be suspended from the CNPJ Registry which means that the legal entity will be prevented from transacting with banking establishments, including the movement of checking accounts, making financial investments and obtaining loans, among others, as per RFB Instruction 2119/2022, sec. 6. This provision does not

appear to be proportionate as it does not provide for escalating measures in case of minor failures to provide or update BO information. Documents issued by an entity whose registration has been declared unsuitable or cancelled are considered disreputable.

Legal entities must appoint a representative before the CNPJ however there are no sanctions on the natural persons (see c.24.8).

Criterion 24.14 –

Brazil provides international cooperation in relation to basic and beneficial ownership through existing cooperation and legal assistance agreements. However, there are some limitations on how rapidly some basic information for some companies and beneficial ownership information can be obtained and shared.

(a) LEAs, FIUs and supervisors can exchange most basic information regarding companies rapidly. According to Art. 29 of Law 8,934, anyone may access the information in Trade Boards and obtain basic information of legal persons, (b) including shareholders information (which is available and updated in the Register for many types of companies – except for Joint-Stock Companies and Limited Partnerships by Share, for which information must be obtained directly from these companies).

(c) Some BO information is held by FIs/DNFBPs, and the RFB and protected by secrecy provisions. While LEAs are allowed to request the RFB for this information, an MLA request should be submitted and a Court Order would have to be requested, and there are no time limits set in law to provide this information. In this context, there are doubts about the possibility of sharing BO rapidly with foreign LEAs counterparts in all cases. The FIU can rapidly share with foreign counterparts the BO information available to it, e.g., when provided to the FIU by FIs/DNFBPs (AML/CFT Law, art. 14) or available in CNPJ and other databases. Supervisors can get BO information from their obliged entities and share it with foreign counterparts for supervisory and regulatory purposes.

Criterion 24.15 – Competent authorities have monitoring mechanisms both for incoming as well as for outgoing information exchanged in the framework of international cooperation requests. In particular, the COAF exchanges information with its counterparts and monitors its quality in the framework of the Egmont Secure Web. Whilst a number of information exchange examples are available there is no available data regarding how the country monitors the quality of the assistance provided and received.

Weighting and Conclusion

Brazil has a basic and BO information system that meets some of the requirements under Rec. 24. However, while it has assessed the ML/TF risks associated with all the types of legal persons in the country, the risk assessment does not systematically take into consideration how legal persons can or are being misused for criminal purposes. There is no explicit obligation on legal persons to hold the required information and inform of its location. Basic information is included in the CNPJ Registry and some entities are required to submit BO information to the RFB. However, the mechanisms to ensure that basic and BO information is accurate and updated on a timely basis are

ineffective. There is a general absence of dissuasive and proportionate sanctions for non-compliance with basic and BO requirements.

Recommendation 24 is rated Partially Compliant.

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

In the last MER, this Recommendation was considered as non-applicable. Brazilian law does not allow the creation of trusts however nothing prevents a person in Brazil from being the trustee of a trust created under foreign law. When a foreign trust operates in the Brazilian financial and securities markets, it should register with the CVM as a non-resident investor.

Criterion 25.1 –

(a) and (b) Brazilian law does not allow the creation of trusts. Therefore, these sub-criteria are not applicable.

(c) Any natural or legal person providing for the creation, operation or management of a trust funds or similar structure is required to perform CDD (Law No.9613/1998, arts. 9-10) (see R.22), however there is no requirement to keep the information specified in c.25.1(a) and (b). When a foreign trust operates in the Brazilian financial and securities markets, it should register with the CVM as a non-resident investor and follow CVM requirements on CDD (CVM Res. 13/20 and 50/21, art. 22 and 25) which include CDD requirements, corroborated by RFB Norm. Instr. 2119, art. 53, para. 5.

Criterion 25.2 – While there are some requirements to conduct CDD when providing the services of a trustee and to update the information, the type of information is insufficient to identify the parties of a trust in line with c.25.1. Articles 15, 17 and 25 of CVM Resolution 50/21 require the identification of all parties to a trust and the updating and maintenance of this information for a period of, at least, 5 years.

Criterion 25.3 – CVM Resolution 13/20 requires non-resident investors to disclose CDD information Annex A when forming a business relationship, however when registering the trust with CVM, the representative does not need to declare information about the trustee. CVM may demand, if needed, within the scope of art. 15 of CVM Resolution 50/21, information from him or any other service provider in Brazil that acts on behalf of an investor. Other than for trusts that operate in the CVM-regulated markets, there are no other measures to ensure that trustees disclose their status to financial institutions and DNFBPs when forming a business relationship or carrying out occasional transactions above the threshold.

Criterion 25.4 – Non-resident investors registered with CVM are not prevented by law or enforceable means from providing authorities with information on the trusts (see CVM Res. 13/20, art. 15) There are no specific prohibitions for a professional trustee who manages a foreign trust in Brazil to provide information collected through CDD to FIs and DNFBPs or to LEAs.

Criterion 25.5 – Competent authorities may be able to obtain timely access to some information held by persons acting as trustees of foreign trusts when they are able to locate the trustee. When the trust is foreign investor, information on the trust would be available in the CNPJ register. BO information, as well as other information collected through CDD, is subject to secrecy, and unless otherwise declared to the FIU in the context of a suspicious transaction, it must be requested via the Public Prosecutor's office (through court order) thus there are doubts that this would be

timely in all cases. BO information registered with representatives and custodians such as FIs and B3 is also protected by secrecy (Comp. Law 105), so only their supervisor, in this case CVM, has access to the information outside of a court order.

Criterion 25.6 –

Competent authorities can exchange information concerning the trusts when available (e.g., CVM would have some information concerning investment vehicles structured as trusts). For other information, competent authorities can use their investigative powers to identify, obtain and exchange information concerning trusts. It should be noted that CDD information, including beneficial ownership information, concerning a trust held by FIs/DNFBPs would be considered as secret, and a Court Order is necessary to exchange it, and there are no time limits set in law to provide this information, thus limiting the ability to rapidly exchange this information rapidly in all cases.

Criterion 25.7 – Article 24 of CVM Resolution 13/20 considers non-compliance with its recommendations as a serious infraction focusing, among others, on the requirements of article 11 whereby the “*legal representative of a non-resident investor in the country must act on his representation duties (...) in good faith, with diligence and loyalty*”. Notwithstanding, there are no specific sanctions targeting (a) trustees of foreign trusts and their liability for any failures to perform the duties relevant to meeting their obligations; There are also no (b) proportionate and dissuasive sanctions, whether criminal, civil or administrative, for failing to comply.

Criterion 25.8 – There are no proportionate and dissuasive sanctions for failing to grant to competent authorities rapid access to information regarding the foreign trust operating in the country.

Weighting and Conclusion

Brazilian law does not allow for the creation of trusts, although foreign trusts can operate in the country as non-resident investors, and nothing prohibits a person in Brazil from acting as a trustee of a foreign trust. Most of the requirements set in R. 25 are only partially met. BO information cannot be considered accessible to competent authorities in a timely manner and there are limited sanctions – that are not dissuasive or proportionate - available for failing to comply with the requirements of R.25.

Recommendation 25 is rated Partially Compliant.

Recommendation 26 – Regulation and supervision of financial institutions

In its 3rd MER, Brazil was rated partially compliant with these requirements because of issues with effectiveness now assessed under IO.3.

Criterion 26.1 – Brazil designated the natural or activity supervisors as the supervisors with responsibility for regulating and supervising (or monitoring) FIs compliance with AML/CFT requirements (article 8 of Law 4595/1964 which created the National Monetary Council and empowered BCB). COAF is residually responsible, for the AML/CFT supervision of activities for which there is no designated supervisor (Law No. 9613, arts. 9-11, 14 and item 109-110 of the explanatory statement to Law 9613/1998 defining competent authorities).

Brazil’s Monetary Council (CMN) and Brazil’s Central Bank (BCB) regulate and supervise banks and other FIs of Brazil’s National Financial System (Law No. 4595,

arts. 2 and 10; Law No. 759, art. 6) as well as other entities as follows: (i) real estate credit companies (Law No. 4380); (ii) brokers and distributors of securities (Law No. 4728 (the BCB supervises transactions of fixed income securities and the CVM transactions with securities); (iii) savings and loan associations (Law No. 70); (iv) credit cooperatives (Law No. 5764 and Compl. Law No. 130); (v) leasing companies: (Law No. 6099); (vi) representative offices of foreign financial institutions (Law No. 9 613); micro-entrepreneur credit societies (Law No. 10194); (vii) development agencies: Provisional Measure No. 2 192-70; (viii) accounting auditing companies and independent accounting auditors (Law No. 6385 with the wording given by Law No. 9447, in performing activities of auditing of financial institutions and other institutions authorised to operate by the BCB); (ix) consortia administrators (Law No. 11795); (x) cooperative auditing companies, being entities of any nature, aimed to exercise, in relation to a group of credit unions, supervision, control, auditing, management or execution on a larger scale of their operational functions (Compl. Law No. 130) and (xi) payment institutions and payment schemes (Law No. 12685).

Brazilian companies that issue and manage international credit cards and the Post Office of Brazil (ECT) are also subject to supervision by the BCB in international transfers of funds linked to international postal vouchers, pursuant to Law 12,865/2013 and Resolution 3.568/2008.

The Brazil's Securities Exchange Commission (CVM) is the supervisor for reporting entities that operate in the securities market, including activities related to issuing and distributing securities; trading and intermediation, among others (Law No. 6385, art. 8); the Superintendence of Private Insurance (SUSEP) is the supervisor for private insurance entities; companies and insurance brokers; reinsurers pursuant to different Laws (Law No.73, art. 36; Companies and insurance brokers (id., art. 36); reinsurers and reinsurance brokers (Compl. Law No. 126); open private pension entities (Complementary Law No. 109, art. 74); and capitalization companies (Law No. 261, art. 3). The National Superintendence of Complementary Pensions (PREVIC) is the supervisor for Closed Complementary Pension Entities (Law No. 12154) and the FIU (COAF) supervises factoring institutions (Law No. 9613, art. 14; Law No. 9663, art. 12).

Criterion 26.2 – Core principles FIs and other FIs are required to be licensed (or registered in the case of one non-core principle FIs). FIs supervised by the BCB may only operate in the country with prior authorization from BCB. Decree 1009/2019 and BCB Circular 3977/2020 further authorise the Central Bank to recognise, as national interest, the operations and establishment of new branches of FIs domiciled abroad. The BCB is the competent authority to authorise foreign exchange market agents (Ibid, art.10). FIs supervised by the CVM also require prior authorisation (Law No. 6385, arts. 16, 18, 23-24). SUSEP's prior authorisation is also mandatory for the functioning of its supervisees (CNSP Resolution No. 422). Closed Complementary Pension Entities (EFPC) require prior and express authorization by PREVIC (Comp. Law No. 109, combined with Law No. 12154, art. 2). Factoring companies must register with COAF (Law No. 9613, art. 10; Norm. Instr. COAF No. 5).

Criterion 26.3 – The BCB takes the necessary legal or regulatory measures to prevent criminal, or their associates, from holding (or being the beneficial owner of) a significant or controlling interest or holding a management function in FIs. There are no specific measures for COAF and, when it comes to holders of a management function, PREVIC supervised entities.

CMN Resolution No. 4970 establishes the conditions for holding relevant positions in FIs and other institutions supervised by the BCB and this includes for the interested party to demonstrate the unblemished reputation of the holders of positions in statutory or contractual bodies, of the controllers and of the holders of a qualifying holding, in the case of natural persons¹³⁴.

BCB has the necessary powers to:

- perform the assessment of reputation against relevant criteria (CMN Res. No. 4970, art. 3, para. 2; arts 6-7);
- review the licensing decision and react against and the appointment or maintenance of relevant individuals (CMN Res. No. 4970, arts. 18-20, 24).

Resolution CMN No. 4122 also establishes procedures for the change in control and acquisition of a qualified shareholding in financial institutions, as well as conditions for the exercise of functions within corporate bodies, that are in line with Resolution CMN No. 4970. The authorization process for payment institutions, regulated by Resolution BCB 80 and BCB Resolution 81, follows a similar approach than the process for FIs.

CVM practices in this regard mostly rely on the BCB's authorisation process as well as a cooperation agreement with ANBIMA (the self-regulatory body) which also verifies the adequacy of investors upon registration. Specific regulations were provided to cover the requirements as regards other CMV supervised entities e.g., wallet administrators

SUSEP supervised entities are also subject to criteria and assessment of reputation like those defined for the banking sector (SUSEP Resolution 422, arts. 5, 7, 9, 17, 21 and 44).

While Closed Complementary Pension Entities (EFPC) – and inherently the respective management positions – are subject to prior authorization by PREVIC (Comp. Law No. 109, art. 33, combined with Law No. 12154, art. 2), no evidence was presented on the existence of explicit legal requirements to confirm the good repute of the holders of relevant positions.

Before or after the registration of factoring companies, COAF may request documents and information deemed necessary for registration purposes (Law No. 9613, art. 10, item V) (including access to relevant databases). However, there is no explicit requirement on the good repute of the holders of relevant positions.

Criterion 26.4 – (a)-(b) The BCB, CVM, and SUSEP's regulation and supervision is in line with the Basel,¹³⁵ IOSCO and IAIS core principles (regardless of their core principle institutions status) and with the implementation of a risk-based approach.

Closed Complementary Pension entities and factoring companies, as stated above, are subject to PREVIC's and COAF's supervision (respectively) and must comply with the AML/CFT requirements established in articles 10 and 11 of Law No. 9613 and regulations issued by the respective authority.

¹³⁴ While the threshold for considering the existence of a controlling interest seems too high (75% of the capital stock), the one set forth for qualifying holding seems to allow an appropriate level of surveillance (CMN Res. No. 4970/2021, art. 8).

¹³⁵ See also IMF Brazil's Financial Sector Assessment Programme 2018, available at: Brazil: Financial Sector Assessment Program-Detailed Assessment of Observance – Basel Core Principles for Effective Banking Supervision (imf.org)

Criterion 26.5 – Brazil presented information on the existence of supervisory structures within the respective authorities, plans, tools (on-site and off-site) and practices (including ML/TF risk matrixes and the consideration of the NRA/SRA). The BCB procedures for a risk-based supervisory approach are detailed in Technical Note 146/2022-BCB/DECON, of March 15, 2022, and evidence was provided on the performance of supervisory activity commensurate with ML/TF risks. CMN Resolution 3427/2006 only foresees the generic adoption of a risk-based supervision model (SBR) for CVM, even though supervisory plans issued on that basis would consider ML/TF risks in more generic terms than BCB. Recommendation MPS/CGPC No. 2/2009 establishes the adoption of Risk-Based Supervision (SBR) in relation to the supervision of close-ended pension fund entities and of the benefit plans managed by them, but also in rather generic terms.

Criterion 26.6 – There is no legal requirement to review the ML/TF risk profile of institutions or groups, periodically, and when major changes or developments occur. Nevertheless, the BCB Technical Note 146/2022 (para. 13) includes the possibility of reactive supervisory actions based on specific issues and relevant findings, alongside periodical supervision plans by DECON that consider the evolution of ML/TF risks per institutional type and are adjusted when significant events occur. Similarly, the CVM biannual plan (2021/2022) includes a generic mention to a risk-based approach and AML/CFT as one of the risks to be considered (noting that this refers to CVM actions, rather than CVM supervised entities' risk).

Weighting and conclusion

Brazil designated supervisors with the responsibility of regulating and supervising (or monitoring) FIs compliance with AML/CFT requirements and has put in place licensing or registration requirements and supervision in line with Core Principles. Even though there are no explicit and binding legal requirements for AML/CFT supervision to review the risk profiles of institutions whenever major developments or events occur, supervisory plans – to a bigger and more detailed extent in the banking sector – consider the evolution of ML/TF risks.

Recommendation 26 is rated Largely Compliant

Recommendation 27 – Powers of supervisors

In its 3rd MER, Brazil was rated partially compliant with these requirements because COAF had no powers of inspection and could not require the production of customer-specific information for supervisory purposes without a court order. In addition, there were issues with effectiveness now assessed separately under IO.3.

Criterion 27.1 – FI supervisors have powers to supervise or monitor and ensure compliance by FIs with AML/CFT requirements (Law No. 4595, art. 2 and corresponding provisions in CVM, SUSEP, PREVIN and COAF regulations) Further details as follows:

Supervisor	General legal instruments (other than the AML/CFT Law)
BCB	Law No. 4,595, of 1964, particularly art. 2 and 10 item IX Specific legislation referred to in c.26.1 Complementary Law No. 105, of January 10, 2001 Law No. 13506 of November 13, 2017 (together with article 12 of Law No. 9.613/1998 for sanctions) Law No. 10303, of October 31, 2001 (in conjunction with CVM) Internal Regulations of the Central Bank of Brazil (RIBCB), approved by Ord. No. 84287
CVM	Law No. 6,385, of 1976 Complementary Law No. 105, of 2001 CVM Resolution No. 135, of 2022 Law No. 13506 of November 13, 2017 (together with article 12 of Law No. 9.613/1998 for sanctions) CVM's Internal Regulations, under the terms of CVM Resolution No. 24, of 2021
SUSEP	Decree-Law No. 73, of 1966 Decree-Law No. 261, of 1967 Complementary Law No. 105, of 2001 Complementary Law No. 109, of 2001 CNSP Resolution No. 393, of 2020 (together with Article 12 of Law No. 9.613/1998 for sanctions)
PREVIC	Law No. 12,154, of 2009 Instruction No. 34, of 2020 (together with article 12 of Law No. 9.613/1998 for sanctions)
COAF	Decree No. 9,663, of 2019 (without prejudice to sectorial regulations) Law No. 13,974, of 2020 (together with article 12 of Law No. 9.613/1998 for sanctions) Internal Regulations of COAF, approved by Ordinance No. 330, of 1998

Criterion 27.2 – Financial supervisors are enabled to conduct inspections pursuant to their general powers (Law No. 4595, art. 10, item IX). See legal instruments mentioned in c.26.1 and 27.1.

Criterion 27.3 – FIs are required to provide access to all relevant information and documents to supervisors (Law 4595, art. 8); (Law No. 6385, art. 9); (Law No. 73, art. 36); (Compl. Law No. 109, art. 41); (Law No. 9613, art. 10, item V). Failure to provide access constitutes an enforceable breach.

Criterion 27.4 – Natural supervisors of each obliged entity/FIs are authorised to impose sanctions for breaches of AML/CFT requirements on the activities they regulate¹³⁶ (Law No. 9613, art. 12).

Among other legal instruments, Law No. 13,506 provides for the disciplinary sanction process within the BCB and CVM (together with Law No. 6,385 in the case of CVM). CNSP Resolution No. 393/2020 sets the parameters for gradating sanctions for entities regulated by SUSEP, including disciplinary sanction processes in the field of AML/CFT. The disciplinary sanction process within the scope of PREVIC follow Law No. 4942. Regarding factoring companies (subject to COAF supervision under article 14 of the AML/CFT Law), sanctioning procedure is handled within COAF in

¹³⁶ Applicable sanctions: (i) Warnings; (ii) variable pecuniary fines, not higher than: twice the amount of the operation; twice the real profit obtained or which would presumably be obtained as a result of the transaction; or approximately EUR 3,800 / R\$ 20 000000 00 (twenty million reais); (iii) temporary prohibition for up to 10 (ten) years on holding any management position; (iv) cancellation or suspension of authorization to carry out the activity, to operate or to function.

accordance with Law No. 9663/2019 (COAF legal basis), and COAF Internal Regulations.

All competent authorities are duly empowered and have the necessary proceedings to impose a range of disciplinary and financial sanctions, including the power to withdraw, restrict or suspend the financial institution's licence. On this aspect, it should be noted, that Law No. 13506 in articles 33 and 37 explicitly safeguard the prevalence of the penalties and respective gradation established by article 12 of Law No. 9613.

Weighting and conclusion

Recommendation 27 is rated Compliant.

Recommendation 28 – Regulation and supervision of DNFBPs

In its 3rd MER, Brazil was rated non-compliant with these requirements because some DNFBPs (lawyers, notaries, other independent legal professionals and accountants; company service providers; real estate agents/brokers who are natural persons; dealers in precious metals/stones and real estate agents) were not subject to AML/CFT requirements, monitored or supervised for compliance. In addition, COAF and COFECI did not have sufficient supervisory powers (no powers to inspect or compel the production of documents, and no ability to request customer-specific information for the purpose of fulfilling its supervisory function) and there were issues with effectiveness which is now assessed separately under IO.3.

Criterion 28.1 – (a) – (c) Casinos have been prohibited in Brazil since 1946 (Law No. 9215). This prohibition applies to casinos of all types, including land, Internet and ship-based casinos. Ship-based casinos that are not situated on a Brazilian vessel are also subject to this prohibition when in Brazilian territory. However, Brazilian citizens are not prohibited from using foreign casinos that are operating on the Internet.

Criterion 28.2 – CFC is the designated supervisor for accountants (CFC Res. No. 1.530 (2017)) and the CNJ for notaries (Federal Constitution, art. 103B; National Justice Council's Rules of Procedure; and Law No. 8935, articles 37 and 38, and Provision No. 88, of 1 October 2029). COAF may marginally supervise AML/CFT activities by the legal professionals insofar as it concerns the activities listed in Law No. 9613 (article 9). CVM regulates the securities sector as well as independent auditors that provide services in the securities market (CMV Resolution 50/2021). Trust and company services providers are not obliged entities and therefore not supervised. Similarly, the legal profession is also not supervised as a result of lack of regulation by the Brazilian Bar Association.

Criterion 28.3 – Other DNFBPs are subject to systems for monitoring compliance with AML/CFT requirements, including those supervised by COAF and supervising bodies of the corresponding regulated sector as follows, also in line with Law No. 9613, article 9:

- The real estate sector is supervised by the Federal Council of Real Estate Brokers (COFECI) further to COFECI Resolution 1.336/2014, altered by Resolution COFECI 1.463/2022 and Law 6530-78.
- Dealers in precious metals and stones are regulated by different supervisory bodies. The National Mining Agency has the regulatory competence for

granting licenses and issuing exploration certificates. COAF regulates AML/CFT provisions related to this sector and BCB may also supervise depending on the involvement of FIs in the trade (COAF Resolution 23/2012 and BCB Circular 3978/2020).

- Trade of luxury or high-value goods are regulated by COAF (COAF No. 25)
- Promotion, intermediation, marketing, recruiting or negotiation of transference rights over athletes or artists (COAF Res. No. 30)
- Distribution of money or movable or immovable assets, via operations with lotteries - The Ministry of Finance's Secretariat for Economic Reforms Decree 11344/2023)
- Commercial registry offices: Article 4 of Law No. 8934/1994;
- Trade of antiques and art objects (Law No. 9.238, art. 12, Law No. 25, art. 26-27);
- Value Transportation companies: Federal Police's Rules of Procedures, approved by Ordinance No. 155.

Criterion 28.4 –

DNFBPs in Brazil are supervised to some extent with relevant competent authorities having sufficient powers to ensure compliance as described in 28.3. However, Brazil has not provided sufficient evidence to demonstrate that supervision of DNFBPs is performed on a risk-sensitive basis. Sanctions in line with R.35 are available to DNFBPs to deal with failure to comply with AML/CFT requirements.

Criterion 28.5 – Brazil presented information on the existence of supervisory structures within the respective authorities, plans, tools (on-site and off-site) and practices (including ML/TF risk matrixes and the consideration of the NRA/SRA) that may be relevant for the effectiveness assessment of AML/CFT financial supervision. However, there seem to be no explicit binding requirements for AML/CFT supervision, off-site, on-site, to be on the basis of ML/TF risks and the policies, internal controls and procedures associated with the institution or group; ML/TF risks in the country and characteristics of FIs.

Weighting and conclusion

Brazil designated competent authorities with the responsibility of regulating and supervising (or monitoring) the majority of DNFBPs compliance with AML/CFT. Lawyers and TCSPs are not supervised and the DPMS sector has a fragmented supervisory system. For the supervised sectors, requirements for licensing or registration are in place. However, there are no explicit and binding legal requirements for AML/CFT supervision to take into account ML/TF risks present in the country.

Recommendation 28 is rated Partly Compliant.

Recommendation 29 - Financial intelligence unit

In the last MER, Brazil was rated largely compliant with former R.26. Deficiencies included the following: Technically COAF's authority to receive and analyse STRs did not extend to certain types of FT activity which were not criminalised and crimes which were not specifically mentioned in article 1 of Law No. 9613 (nine offences were only predicate offences for ML if committed by a criminal organisation),

although this deficiency was somewhat mitigated because COAF is receiving FT-related STRs.

Criterion 29.1 – The Council for Financial Activities Control (COAF)- is the national centre for receipt and analysis of STRs and other information relevant to ML and related offences; and for the dissemination of the results of that analysis to competent authorities (Law No. 9613, arts. 14-15; Law 13.974, art. 3). COAF is an administrative FIU located under the umbrella of the Central Bank.

Criterion 29.2 – COAF is the central agency for the receipt of disclosures filed by all reporting entities, including:

(a) STRs submitted by FI and DNFBPs, as described in R.20 and 23 (Law No. 9613, art. 11.II.b).

(b) Cash transactions reports (CTRs) from reporting institutions, as provided by articles 10.II and 11.II of Law No. 9613. The scope of the CTRs is set in the specific sectoral regulations. Additionally, notaries should submit threshold-based reports.

Criterion 29.3 –

(a) According to Art. 10.V of Law No. 9613, the reporting entities should respond to the requests made by COAF. As referred to in Rec. 9, access by COAF to information subject to secrecy held by obliged entities can occur in those situations where it is necessary to analyse STRs and/or ML/TF suspicions, including information held by obliged entities other than the reporting institution.

(b) COAF has direct access to multiple databases, including foreign exchange operations, national registry of account holders, real-estate registry declarations, national registry of social information, criminal records, vehicles, aircrafts, basic information and ownership chain of legal persons, and identification data of natural persons.

Criterion 29.4 –

(a) COAF conducts operational analysis based on the information received from reporting entities and other available information, in order to identify instances of ML/TF (based on Law 13974/2020, art. 3).

(b) COAF conducts strategic analysis to identify trends and patterns related to ML and related crimes (Law 13974/2020, art. 3). There are two types of strategic analysis: (i) thematic strategic analysis, which is meant to provide a special focus on themes considered of high risk or of special interest by the COAF and also aimed to identify relevant risk indicators, new typologies and eventually new cases not yet disseminated to competent authorities; and (ii) strategic analysis aimed at perfecting the COAF methods of applying a risk-based analysis to its procedures (with the assistance of predictive models and supervised machine learning models).

Criterion 29.5 – COAF is able to disseminate the outcomes of its analysis and information to competent authorities spontaneously and upon request (Law No. 9613, art. 15).

COAF disseminates Financial Intelligence Reports (FIRs) to a broad range of competent authorities at the federal and state level, including the Police, the PPO, AML supervisors, among others. The dissemination of FIRs to competent authorities is performed electronically through the Electronic Exchange System of COAF, named

SEI-C, which enables the encrypted exchange of documents between competent authorities and the COAF.

Criterion 29.6 –

(a) COAF has in place rules governing the security and confidentiality of information (Information and Communication Security Policy - POSIC). Article 12 of POSIC regulates the handling, storing, transmitting, and processing of information. This includes security measures such as classification, compartmentalization of information, access control, security credentials, encryption, monitoring, log records and auditing trails. COAF also has an Institutional Security Development Plan (PDSI) that encompasses human resources, information, material and facilities security. All STRs and CTRs must be filed electronically by reporting entities in a secure system named SISCOAF.

(b) Staff members have the necessary security clearance levels and understanding of their responsibilities. Staff members are responsible for the security and assets that they access and must sign a responsibility agreement (Responsibility Term) during admission phase. Every new staff must complete a basic admission training that includes specific training on security and counterintelligence measures.

(c) COAF has measures in place to ensure that there is limited access to its facilities and information, including information technology systems. Access clearance to COAF facilities is ruled by POSIC and by Ordonnance No. 4 of February 2021. According to POSIC, restricted areas must be physically isolated from common areas and, when not feasible, must be subject to complementary risk mitigation measures (Article 11). Access to IT systems is subject to strict rules of compartmentalization and monitoring.

Criterion 29.7 –

(a) COAF is an autonomous and independent authority which is administratively affiliated to the Central Bank of Brazil (Law 13,974, art. 2). The President and the Plenary Members of COAF are appointed by the President of the Central Bank. As per article 4 of the aforementioned law, the President and Plenary Members should be tenured civil servants, with unblemished reputation and proven expertise in AML, chosen among members of relevant competent authorities and agencies.

The attributions related to production and analysis of financial intelligence are under the responsibility of the President of the COAF and to its Technical Staff, which is chosen and appointed by him in case the requirements regarding professional and academic qualification are met (Law No. 13,974, art. 4, para. 6). In particular, the financial intelligence is produced by the Financial Intelligence Directory (DIFIN), as provided by Decree 9.663/2019.

The procedure of approval of the dissemination of FIRs is provided in the Manual of DIFIN and it is founded in a risk-based approach regarding the persons involved, the gravity of the probable offences and the complexity of the analysis.

(b) According to Articles 14 and 15 of Law No. 9613, the COAF is able to make arrangements or engage with other domestic competent authorities or foreign counterparts on the exchange of information. COAF has signed multiple MoUs with foreign counterparts without need for authorization

(c) As mentioned in c.29.7.1, COAF is an administrative FIU located under the umbrella of the Central Bank. Article 2 of Law 13,974 establishes that COAF has technical and operational independence. While it is administratively affiliated to the

Central Bank, its core functions are distinct and are provided by Law No. 9613 and Law 13,974/2020. Instead, the core functions of Central Bank are defined in articles 9 and 10 of Law 4,595/1964.

(d) COAF has its own budgetary allocation as provided in the annual budget proposal (PLOA) approved by the National Parliament. COAF has a specific division responsible for managing the budget and other aspects on contracts, assets, and logistics, which is the General Coordination of Institutional Development (CODES).

Criterion 29.8 – COAF is an Egmont Group Member since 1999.

Weighting and Conclusion

All criteria are met.

Recommendation 29 is rated Compliant.

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

Brazil was rated LC on old Recommendation 27 mainly due to issues of effectiveness (e.g., an emphasis on pursuit of predicate offences to the detriment of ML investigations) and questions as to whether state-level LEAs were sufficiently structured and resourced.

Criterion 30.1 – There are designated law enforcement authorities that have responsibility for ensuring that money laundering, associated predicate offences and terrorist financing offences are properly investigated, within the framework of Brazil’s national AML/CFT policies. As a federal union of states, criminal investigations are carried out at the federal level by the Federal Police (an autonomous part of MOJ) and Federal Prosecution Service (MPF), and at the state level by the Civil Police of the States (26) and Federal District (1) and the Public Prosecution Offices of the states (26) and the Federal District (1). Collectively the police are referred to as the Judicial Police and they have investigative authority deriving their authority from the Federal Constitution, article 144 (I), para. 1, and IV; Criminal Procedural Code, article 4. The Public Prosecutor’s Office has the power to carry criminal prosecutions, to exercise the external control over police activity, and to request investigative measures and police investigations (Fed. Const., art. 129). The Public Prosecutor’s Office is not part of any of the three branches of government – the Constitution expressly provides for its functional independence. The Federal Prosecution Service is organised by Complementary Law No. 75 (1993) and the State and District Public Prosecutor’s Offices are regulated by Law No. 8265 (1993).

Under Brazil’s criminal justice system, attribution defines the scope of action of the criminal investigative bodies and competence defines the scope of action of judicial bodies. Federal competence requires an express command in the Constitution or federal law and is exclusive where there is a strong federal interest and extraterritoriality (including when the crime is the subject of an international treaty). Terrorism and TF are of federal competence (Law No. 13260 (2016), art. 11). Money laundering may be of federal competence (a) when practiced against the financial system/economy of the nation; to the detriment of goods, services, or interests of the nation, its entities or public companies; and (b) when the predicate offence falls under federal court jurisdiction (Law No. 9613 (1998), art. 2(II)-(III)). Otherwise, attribution and competence for ML fall to the respective states. Each judicial police

agency and public prosecutor's office determines its own structure and several of them have specialised ML units (some are of a coordinating nature; others are operational and conduct their own ML investigations or provide support to other units).

LEAs across the country are responsible for investigating ML and TF, but a few entities are specifically endowed with jurisdiction over these crimes. Within the PF, there is the Directorate for Investigating and Combatting Organised Crime (DICOR). Within DICOR, the General Coordination of Repression of Corruption and Financial Crimes has an Money Laundering Repression Division (DRLD/CGRC/DICOR/PF) and within that unit is the Asset Recovery Service and Police Intelligence Data Analysis Center. DRLD/CGRC/DICOR/PF was established in 2018 and plays a central role in AML efforts on behalf of the Federal Police, including national ML projects, training, and analysis and strategic support. Also, within the FP, there are Regional Superintendencies (SRs) that have specialised stations for different subject matters, including high-risk ML predicates. Additionally, decentralised police stations are organised locally according to the resources and priorities of the region. Circular Memorandum No. 13-2013-DICOR-DPF (2013), advises that ML must be investigated by the same unit (or even the same officer) having attribution to investigate the predicate offence (paras. 1-2) and that DICOR is charged with the investigation of ML committed by organised groups and when predicate offences occur abroad or are unknown (pars. 3-4). As to TF, the part of the PF responsible for investigating TF is DETER (formerly known as the Counter-Terrorism Coordination - CET), responsible broadly for investigating crimes of terrorism. It either investigates TF directly or works closely with the relevant local unit of PF.

Finally, within MPF, there are Units for Combatting Corruption (NCCs) and Groups of Special Performance for Combatting Organised Crime (GAECOS), both of which often prosecute ML. GAECOS are a recent development at the federal level (2020) and replicate successful GAECOS at the state levels. They specialise in major cases and complex investigations and exist in 21 locations including major cities.

Criterion 30.2 – Law enforcement investigators of predicate offences are authorised to pursue the investigation of any related ML/TF offences during a parallel financial investigation, or refer the case to another agency to follow up with such investigations, regardless of where the predicate offence occurred. In Brazil, financial investigations related to ML/TF are performed by the same body in charge of the underlying criminal investigation (either the same team/unit or a different team/unit within the same body). As a general rule, all teams and units mentioned in c.30.1 are competent to carry out financial investigations. Task Forces can also be formed among various public agencies, as the attribution of their constituent parts may contribute unique knowledge/expertise, especially when evaluating the same set of facts having different implications (civil, criminal, administrative liability). The process of creating, altering, and extending task forces within the ambit of the MPF is governed by policy (Norm. Instr. No. 7 (2019)). Finally, if a public agency without criminal investigative authority finds evidence of financial crime, it is mandatory to report this to either the federal or state prosecutor for the possible opening of a criminal investigation by federal or civil (state) police, respectively (e.g., in the BCB and CMV setting, this is required by Comp. Law No. 105 (2001), art. 9). Regarding predicates that occur in another locale than the ML, “the processing and trial of money laundering crimes are independent from the processing and trial of the predicate offenses, even if practiced in another country, being up to the competent judge for the

crimes foreseen in [Law No. 9613] the decision on the unity of processing and trial” (Law No. 9613, art. 2).

Criterion 30.3 – There are several competent authorities designated to expeditiously identify, trace, and initiate freezing and seizing of property that is, or may become, subject to confiscation. Most directly, at the federal level, Normative Instruction 108/2016-DG/PF regulates judicial police activity as follows: “[i]n presiding over the criminal investigation, the Federal Police Commissioner is responsible for coordinating the work, being able to request inspections, expert examinations, information, documents, data and analyses that are of interest to the investigation of the facts, as well as to represent precautionary arrests and restrictive or precautionary measures, by means of a technical-legal analysis” (art. 4). Additional legal authority requiring judicial police to conduct investigations which may include financial components and result in confiscation are found in: Law No. 12830 (2013), art. 2 [organisation of the Federal Police]; Law No. 9613, art. 17-B [Law No. 9613]; Law No. 12850 (2013), arts. 15-16 [Organised Crime Law]). The Public Prosecutor’s Office is the competent authority to initiate the seizure of property that may become subject to confiscation (Criminal Procedural Code, art. 127 [generally]; Law No. 9613, art. 4 [ML context]; Law No. 13260, art. 12 [CT/TF context]; Law No. 8429, arts. 7, 12 [illicit enrichment of public officials plus NCB confiscation]). Under the AML and TF laws, the Police Commissioner may also make an urgent request for precautionary asset measures as long as the Public Prosecutor is consulted within 24 hours (Law No. 9613, art. 4; Law No. 13260, art. 12). In non-federal ML or predicate cases, the civil police have the authority to identify, trace, and initiate the freezing of assets (Criminal Procedural Code, arts. 4, 6(III)).

Criterion 30.4 – The requirements of R.30 apply to those competent authorities which are not law enforcement authorities, per se, but which are responsible for pursuing financial investigations of certain predicate conduct or other infractions, including:

- Office of the Comptroller General (CGU) – CGU is a corruption prevention and control body for both the public administration and private sector, as well as a federal inspector general and ombudsman. CGU may investigate and initiate administrative proceedings under the Anti-Corruption Law. If evidence of an act of impropriety or financial crime is uncovered by CGU, it must be referred to the judicial police and prosecutors (Law No. 8429, art. 7) who must verify the facts and investigate as needed (Law No. 12846, art. 27).
- The Attorney General’s Office (AGU) – The attributions of AGU’s the Department of Public Patrimony and Probity are provided for in Ordinance No. 7/2021/PGU/AGU (2021) pursuant to of Decree No. 10994 (2022) article 24, establishing its competence to plan, coordinate and oversee the activities related to the representation and judicial defence of the Union in matters of public patrimony, environment, probity, and recovery of assets. AGU (and CGU) also deals with leniency agreements entered into by companies in federal prosecutions. If AGU needs judicial authorisation to breach bank, tax, telephone, or data secrecy, or needs permission to share information obtained in its administrative proceedings with criminal investigators, this is possible under Law No. 12,846 (2013).
- Federal Audit Court (TCU) – This is the federal government’s external control agency and assists the National Congress in its mission to monitor the country’s budgetary and financial execution and to contribute to the

improvement of the Public Administration. For instance, in the case of irregularities in government contracts, the court verifies debts and may refer them to the Public Prosecutor. It also sanctions persons responsible for illegal expenditures or other discrepancies (which may be escalated to criminal liability). The TCU also deals with citizen complaints (including confidential whistle-blowers) (Law No. 8443 (1992)).

- Secretariat of Federal Revenue (RFB) – The federal tax authority is responsible for investigating ML and TF associated with tax or customs matters (e.g., tax evasion and fraud, invoice forgery, smuggling, embezzlement, piracy, drug and animal trafficking). When conducting such predicate investigations, it works in a Task Force with the police and prosecutorial authorities, as discussed in c.30.1.
- Administrative Council of Economic Defence (CADE) – This antitrust body is responsible to investigate violations of the economic order and competition and analyses mergers (Law No. 12529 (2011)). Evidence of financial crime uncovered would be referred to the judicial police and prosecutors.

Criterion 30.5 – There is no anti-corruption authority specifically designated to investigate ML/TF offences stemming from corruption offences, but if a public body such as CGU or TCU, described above, uncovered indications of ML/TF, it would refer to or partner with federal or state judicial police and the appropriate prosecutor's office. Likewise, the criminal investigative bodies may call upon bodies with attribution for certain types of administrative, civil, or financial investigations for specific contributions such as information or analysis within their area of responsibility. A Task Force may also encompass an agent or investigator of an anti-corruption body. Identifying, tracing, and seizing assets would remain the area of responsibility of the authorities discussed in c.30.1.

Weighting and Conclusion

All criteria are met.

Recommendation 30 is rated Compliant.

Recommendation 31 - Powers of law enforcement and investigative authorities

Brazil was rated LC on old Recommendation 28 for a lack of effectiveness surrounding mechanisms to compel the production of financial records (slowness/difficulty in obtaining judicial orders and FIs unable to provide responsive documents in a timely fashion).

Criterion 31.1 – Authorities conducting investigations of ML, associated predicate offences, and TF can obtain access to all necessary documents and information for use in those investigations, prosecutions, and related actions.

(a) Production of records held by FIs, DNFBPs, and other natural or legal persons: Police and Public Prosecutors, collectively at the federal and state levels, are empowered to directly request information that is *not protected* by a form of secrecy (Criminal Procedural Code, art. 6; Law No. 12,830 (2013), art. 2 (police may request expert examination, information, documents and data that are of interest to the investigation of the facts); Compl. Law No. 75, art. 8(IV) (1993) (prosecutors may request information and documents from private entities); Law No. 8265 (1993), art. 26 (same)). However, Complementary Law No. 105 (2001) places secrecy over

banking transactions. Bank secrecy may be ordered lifted when necessary to verify the occurrence of illicit activity, in any stage of the investigation or legal proceeding (id., art. 1, para. 4). A court order is required to compel financial institutions to provide records (without the prior consent of the account holder), and access to records protected by bank secrecy is limited to those persons who need it for the purpose of investigation (art. 3). No pre-existing judicial proceeding is required to obtain such a court order (art. 3, para. 2). Under Law No. 9613, FIs and tax authorities must respond to court orders to lift bank or fiscal secrecy through electronic means, in files that allow data integration seamlessly into the case files of LEAs (Law No. 9613, art. 17-C). Certain “registration” information is available from, among other entities, FIs and credit card companies *without* judicial authorisation, such as information permitting the identification of an individual, affiliation, and address (id., art. 17-B). Bank statements and transactional data in standardised, confidential, and secure form are made available to investigators through the SIMBA system, subject to judicial process, whereas the national CCS system is immediately accessible to determine whether persons or entities hold accounts, or signature authority over accounts, in Brazil.

Other categories of information available upon request, without a court order, include transportation records (travel and reservations); caller ID records held by telecom companies; and basic personal data held by a suspect’s internet service provider (see, e.g., the Law No. 12850 (2013), arts. 15-17). LEAs can obtain information from an array of databases, including more than 170 databases open to MPF. A recent decision of the Federal Supreme Court ruled that RFB is able to share taxpayer’s bank and tax data with the criminal prosecution bodies for investigative use (see c.31.4).

(b) Search of persons and premises: Searches are authorised in Chapter XI of the Criminal Procedural Code, including searches of buildings and persons. Unless there is an arrest, a well-founded suspicion that a person is concealing a prohibited weapon or the objects or papers of a crime, or a personal search becomes necessary during a premises search, a judicial warrant is required for all searches (arts. 240-244; art. 3-B). Although the Code uses the term “house” instead of premises, it can also include a place where someone exercises a profession or activity (art. 246).

(c) Taking witness statements: the police may interview witnesses and take statements (Criminal Procedural Code, art. 6(VI), and Chapter VI, arts. 202-225, pertaining to witnesses at trial). Federal prosecutors may also do so, notifying witnesses of the need for their appearance and requesting a bench warrant in case of the witness’s unexcused absence (Compl. Law No. 75, art. 8(I)). They may issue notifications or summonses necessary in the course of investigation (id., art. 8(VI)). State prosecutors have coexistent powers, per Law No. 8625, article 26(I)(a).

(d) Seizing and obtaining evidence: the police may seize objects related to the facts of a case and collect all evidence that services to clarify the facts and circumstances of a crime (Criminal Procedural Code, art. 6(II)-(III)). Under this Code, a search may be carried out to seize things found or obtained by criminal means; seize forged or counterfeit objects, seize weapons, ammunition, and instrumentalities of crime; discover objects necessary for proof; and seize papers when there is suspicion that knowledge of their content may elucidate facts (art. 240). Police have the power to require the provision of expert evidence, information, documents, and data that “add to the progress of ongoing investigations” (Law No. 12830, art. 2, para. 2). Prosecutors may obtain evidence via simple request from sources such as the public administration and private entities, and via court order with respect to evidence

contained in dwellings or protected by tax or bank secrecy (Compl. Law No. 75, art. 8). They may issue notifications or summonses during an investigation as needed and enlist the aid of the police (*id.*, art. 8(VI), (IX)). Failure to respond to requests, groundless absence, and improper delay by persons/entities in possession of requested information may be cause for liability (art. 8, para. 3).

Criterion 31.2 – Competent authorities conducting investigations can use a wide range of investigative techniques for the investigation of ML, associated predicate offences, and TF. The special techniques enumerated in the organised crime (OC) law are also available to investigate crimes of terrorism, including TF (Law No. 13260 (2016), art. 16).

(a) Undercover operations: These are authorised by the law to combat OC (Law No. 12850, art. 3(VII)); Law No. 9613, article 1, para. 6; and the Anti-Drug Trafficking Law No. 11343 (2006), article 53(I). A court order is required prior to infiltration and operations may be authorised for up to six months (Law No. 12850, arts. 10-14).

(b) Intercepting communications: These are authorised by the law to combat OC for telephonic and telematics communications (i.e., wiretaps), as well as for the ambient capture of electromagnetic, optical, or acoustic signals (i.e., bugging) (Law No. 12850, art. 3(II), (V)). The technical details of intercepting telecommunications are contained in Law No. 9296 (1996). Articles 1 and 3 of that law require a court order to protect the privacy in communications guaranteed by the Federal Constitution, article 5 (XIII). The court order may be obtained under judicial secrecy. A judge is required to decide on the “requirements of telephone interception, the flow of communications in computer or and telematics systems, or other forms of communications” (Criminal Procedural Code, art. 3 (XI)).

(c) Accessing computer systems: Law No. 9296 allows access to computer systems during a criminal investigation or prosecution by request of the police or prosecutors (art. 1). This law applies to the interception of the flow of communications in computer and telematics systems. A more modern law also provides for access by police and prosecutors to “connection records or access records” for internet-based applications (Law No. 12965 (2014), art. 22). The request to the court must contain well-founded evidence of an offence and a justification of the usefulness of the records requested to the investigation. Brazil’s data protection and privacy law contains an exception for data stored in computer systems for the purposes of a criminal investigation (Law No. 13709 (2018), art. 4).

(d) Controlled delivery: This is authorised by the law to combat OC (Law No. 12850, art. 3(III)); Law No. 9613, article 1, paragraph 6; and the Anti-Drug Trafficking Law No. 11343, article 53(II). “Controlled action” is the terminology used in the OC Law, meaning that police action can go beyond delivery. LEAs are permitted to observe, conduct surveillance, and track acts or members of criminal organisation to identify the opportune moment for intervention (Law No. 12850, arts. 8-9).

Criterion 31.3 –

(a) Brazil has mechanisms to identify, in a timely manner, whether natural or legal persons hold or control accounts. As mentioned in c.31.1(a), access to CCS is direct for investigators and prosecutors and can aid determination of whether persons or entities (foreign or domestic) control deposits or financial assets managed by Brazilian institutions. CSS is the Customers of the National Financial System database, managed and maintained by BCB. Queries may be made based on the basis of the taxpayer’s unique identification number (CPF), and owners or authorised persons

may be located by reverse searching by account number. Start and end dates for account relationships are also available, but balances or values are not. Enhanced access to CCS, which is available to certain LEAs, provides additional details such as branch numbers and relational data on representatives, guardians, or attorneys enlisted with banks. Pure registration data, including from FIs, is available without judicial authorisation (Law No. 9613, art. 17-B).

(b) Brazil has mechanisms to ensure that competent authorities have a process to identify assets without prior notification to the owner. Under the generally applicable provisions of the Criminal Procedural Code, the LEA “will ensure in the investigation the confidentiality necessary to elucidate the facts or required by the interests of society” (art. 20). Moreover, information provided to MPF is assumed to be secret (Compl. Law No. 75, art. 8, para. 2).

Criterion 31.4 – Competent authorities conducting investigations of ML, associated predicate offences, and TF can ask for all relevant information held by the FIU. Law No. 9613 states that “COAF shall notify the competent authorities whenever it finds evidence of the crimes defined in this Law or any other illicit activity, so as to enable such authorities to take the appropriate legal measures.” The power of LEAs to affirmatively seek and request information from COAF is defined elsewhere, in their respective empowering legislation (Law No. 12,830, art. 2 (as to the PF); Compl. Law No. 75, art. 8(II) (as to the MPF); and Law No. 8625, art. 26(I)(b)). These provisions allow LEAs to request information, examinations, expert investigations, and documents from the authorities of the public administration writ large. COAF and the LEAs exchange information electronically through the SEI-C system, with response times from the FIU ranging from 24-48 hours. In 2019, the Federal Supreme Court held that it is constitutional for the FIU to share financial intelligence reports with LEAs in criminal investigations without court authorisation and that the secrecy of financial intelligence and tax information must be preserved in formally opened matters and before the courts (Extraordinary Appeal No. 1.055.941).¹³⁷

Weighting and Conclusion

All criteria are met.

Recommendation 31 is rated Compliant.

Recommendation 32 – Cash Couriers

Brazil was rated PC on old SR.IX for several reasons, including that the declaration system: did not apply to physical cross-border transportations made through containerised cargo or in unaccompanied baggage; did not apply to bearer negotiable instruments (BNI) other than cheques or traveller’s cheques; did not have proportionate nor dissuasive sanctions for false or non-declarations; and did not enable seizures or sanctions of cash related to TF or TF TFS.

Criterion 32.1 – Brazil implements two relevant declaration systems: the Traveller’s Electronic Declaration of Goods (e-DBV) and the Declaration of Physical Movement of Values (e-DMOV).

¹³⁷ In October 2019, the FATF publicly expressed concern about the provisional injunction issued by one Supreme Court justice which called into question the ability of LEAs to access FIU and tax information. When the full court considered the issue in an extraordinary appeal, the opposite conclusion was reached. The Court ruled that such information can be shared without judicial authorisation.

The e-DBV is a **traveller system** implemented by the tax authority, RFB, pursuant to Normative Instruction No. 1385 (2013). It applies to incoming travellers for all “goods,” plus, specifically, to travellers who enter or leave Brazil transporting cash in the amount of 10,000 USD or more (Law No. 14286, art. 14 (2021); Instr. No. 1385, art. 7). Until 30 Dec. 2022, the threshold for cash was denominated in 10,000 BRL and therefore was lower in real terms for most of the assessment period. The e-DBV applies only to *accompanied baggage* (art. 1) and it does not require the declaration of BNI in any form. These are gaps.

The e-DMOV is a **commercial system**, implemented by RFB pursuant to Normative Instruction No. 1082 (2010). This system applies to BCB or any authorised institution or company that imports or exports gold, currency in the amount of 10,000 BRL or more, or cheques and traveller’s cheques (art. 1). Authorised institutions are those licenced by BCB to engage in currency exchange or the importation/exportation of gold as a financial asset or instrument of exchange. Although a declaration is required for all physical cross-border transportations of cash and some BNI, the system does not cover promissory notes or money orders, in line with the FATF Glossary definition of BNI.

Cash and BNI movements by cargo are covered by the e-DMOV declaration, by reference to transports carried out by authorised companies (Instr. No. 1082, art. 1). This would cover cash movement by commercial cargo transport, containers, armoured trucks, etc. The transportation of currency and BNI via mail is prohibited, and therefore, no declaration is required (Postal Law No. 6538 (1978), art. 2).

Criterion 32.2 – Brazil’s dual declaration systems apply to all persons making a physical cross-border transportation of currency (and some BNI) which meets or exceeds 10,000 USD. This applies to equivalent amounts in Reais and in other foreign currency (Instr. No. 1385, art. 7; Instr. No. 1082, art. 1). Cash in the amount of 10,000 USD or more must be declared on a mandatory, electronic form. For e-DBV, the form is made available online in Portuguese, Spanish, English, and French and can be accessed via internet or at a self-service terminal at a port of entry/exit (Instr. No. 1385, art. 2).

Criterion 32.3 – Brazil does not use a disclosure system.

Criterion 32.4 – Upon discovery of a false declaration or disclosure of currency or a failure to declare or disclose them, RFB Customs has the authority to request and obtain some limited information from travellers under the e-DBV (Instr. No. 1385, arts. 8-9). For entry or exit, verification of the e-DBV is carried out and only then would the Customs Inspector certify the e-DBV. This verification requires paperwork to prove the origin of only outbound (and not inbound) currency. There are no provisions in the Instruction or elsewhere authorising further questioning about intended use of the cash or facts surrounding a potential case of false or non-declaration. As to e-DMOV, the declarant institution must include a digital copy of the bill of lading and the packing list (Instr. No. 1082, art. 4). After registration, e-DMOV is subjected to financial analysis and may be selected for verification (art. 10).

Under e-DBV, failure to comply with the verification process contained in articles 7-9 of the Instruction is subject to a sanction of “forfeiture of the surplus value” (art. 11, Instr. No. 1385). Under e-DMOV, if no irregularity is detected, the release is authorised; if there are any irregularities, physical verification is conducted, including, as needed, via x-ray or scanner (this physical check is also available at the discretion of the Customs Inspector) (Instr. No. 1082, art. 10). Per articles 20 and 21,

clearance will not be granted in the case of deviations from the requirements and criminal sanction, forfeiture under Law No. 9069, or “withholding” of surplus amounts can be imposed.

Criterion 32.5 – Persons who make a false declaration are subject to sanctions as described above in c.32.4, final paragraph. The values exceeding the amounts declared in e-DBV (Instr. No. 1385, art. 11) and e-DMOV (Instr. No. 1082, art. 21(I)(a) and Law No. 9069 (1951), art. 65, §3) are administratively seized. After due process, the cash or BNI may be forfeited. The applicable confiscation is of the undeclared amount or amount exceeding the declaration, pursuant to Decree No. 6759 (2009), article 700, with provisional measures available under article 788. These sanctions are considered proportionate and dissuasive if the offender loses the entire amount *not declared*, but in the case of a *false* declaration under the traveller’s system, the administrative penalty of loss of the amount undeclared is not entirely dissuasive in light of the perpetrator’s (possible) act of intentional concealment. This system allows the traveller to retain part of the money, i.e., the amount truthfully declared. Under the commercial system (e-DMOV), the full amount of cash smuggled may be subject to forfeiture (Decree No. 6759 (2009), article 700, § 30). There is an offence which could be used to penalise a lie in a required document such as a declaration (Criminal Code, art. 299), however, RFB does not view this offence as applicable to non-declarations, nor is used in practice, so the assessors give it no weight.

Criterion 32.6 – Information obtained through the dual declaration systems is not available to the FIU via law or regulation, and it is covered by tax secrecy. There is no legal provision allowing direct access to COAF of information from e-DBV or e-DMOV, and there is no notification to COAF about particular, suspicious cross-border transportation incidents. COAF has not had access to RFB’s declaration databases since 2018, though efforts are underway to restore this. RFB has on occasion shared datasets from e-DMOV to COAF for their use in strategic analysis.

Criterion 32.7 – As discussed in c.32.6, there is limited, ad hoc coordination between RFB and the FIU. RFB is both the tax and customs authority in Brazil, and as such, is responsible for customs control at the border and tax administration. Meanwhile, the Federal Police are responsible for immigration control. Information on e-DBV and e-DMOV is only available to customs authorities, not immigration authorities, which is a shortcoming because information held by one body may be relevant to the other and might increase the chances of detection of currency smuggling or opportunity to detect suspicious behaviour or patterns. Instruction No. 1082 establishing e-DMOV does require communication of discrepancies to BCB, which is the licensing authority for the companies authorised to transport cash under e-DMOV (art. 21), but these companies are supervised by another agency entirely, the Federal Police. If an inspection of e-DBV or e-DMOV data reveals evidence of crime, RFB could alert the Federal Police, but no provision mandates this. Ordinance RFB No. 1750 (2018), Ch. III, requires RFB to send a representation (i.e., a referral) of certain crimes, including ML, to the MPF within ten days of becoming aware of a fact constituting a crime. This Chapter appears to apply to RFB acting in any capacity, unlike the rest of the Ordinance, which relates to RFB acting in its capacity as a tax agency, but the Ordinance does not specifically mention cross-border currency checks, and there is some doubt due to the lack of clarity of this Ordinance and its overall context as a tax rule.

Criterion 32.8 – Brazil may stop or restrain currency for an unspecified amount of time when there is evidence of a commission of an infraction whose proof requires

the retention of the entire amount of currency (not only the amount undeclared or in excess of the declaration) (Decree No. 6759, art. 778, § 2). This is a minor shortcoming because the reason for the stop under Brazilian law is not coterminous with a suspicion of ML/TF or predicate offences, and it is also not clear that ML/TF or predicate offences would qualify as “infractions” legally or practically as determined by Customs Inspectors. The object or purpose of such a restraint under the Brazilian system is not to ascertain whether ML or TF may have occurred, or to confirm a suspicion, but to preserve evidence. It does appear that Brazil can stop or restrain currency/some BNI when there is a false declaration or disclosure (see c.32.4 and 32.5).

Criterion 32.9 – All information obtained through e-DBV and e-DMOV is registered electronically in a system and can be made available to competent authorities to assist administrative or judicial investigations, as well as to respond to international cooperation requests. However, it is covered by tax secrecy and thus requires a court order for disclosure in most circumstances. The length of retention is not set out in law, and all data is kept regardless of circumstances, e.g., the occurrence of a false or non-declaration, the declaration of amounts exceeding the threshold, or the suspicion of ML or TF. RFB can search this information for an individual declarant (by name) and by date or location of declaration, including in response to an international request. But instances of non-declaration or false declaration, or the habitual import/export of amounts above the threshold, cannot be specifically queried, which could hinder certain international cooperation. There is no established channel of cooperation or exchange about cash flows established between Brazil and its regional neighbours, despite the level of travel, currency movement, and commerce among Argentina, Paraguay, and Brazil, among others.

Criterion 32.10 – There are safeguards to ensure proper use of information collected through the dual declaration systems, none of which restrict trade payments between countries for goods and services or the freedom of capital movements, in any way. For regularisation and registration of the e-DMOV, the Head of the Dispatch Office forwards the data from the DMOV form to the Coordination of the General Administration of Customs within ten days, for central keeping (Instr. No. 1082, art. 31). The verifications by RFB in secondary zones must be carried out in secure physical facilities (art. 13, § 2). Both BCB itself and the companies which it authorises must make e-DMOV declarations, but these are not seen as restricting payments or the flow of capital.

Criterion 32.11 – Persons carrying out physical cross-border transportations of currency or BNIs that are related to ML/TF or predicate offences may be prosecuted directly for ML, TF, or predicate crimes, if the facts warrant it. The movement or transfer of currency, resulting from a criminal offence, in order to conceal or disguise its origin, constitutes money laundering. The sanctions available for non-declaration or false declaration are discussed above in c.32.4, 32.5, and 32.8.

Brazil has measures consistent with R.4 which would enable the confiscation of currency or BNI related to ML/TF or predicate offences. The instrumentalities of crime are subject to confiscation “provided that they consist of things whose manufacture, disposal, use, or possession constitutes an unlawful act” (Criminal Code, art. 91(II)). Proceeds of an offence may also be confiscated, i.e., “any good or value constituting a benefit obtained by the practice of the [criminal] act” (Criminal Code, art. 91(II)). Upon conviction for ML, “any assets, rights and valuables which are directly or *indirectly* related to” ML are subject to confiscation (Law No. 9613, art.

7(I)). Lastly, there is a specific provision permitting the confiscation of undeclared values within Decree No. 6759 (2009) (arts. 700, 778).

Weighting and Conclusion

Brazil's dual declaration system (one for travellers and one for companies/commercial purposes) has some gaps. BNI are not required to be declared by travellers, and only some BNI are required to be declared for commercial transport. Cash in unaccompanied baggage or cargo is not required to be declared by individual travellers. This shortcoming is partially mitigated because currency and other valuables as cargo must at least be declared by companies under the commercial system (e-DMOV). Information obtained through the dual declaration systems is not regularly available to the FIU, either directly or in the case of suspicious incidents, and coordination among domestic authorities for the purpose of implementing R.32 is limited, in part because cash declarations in the possession of RFB are protected by fiscal secrecy. The power to stop and restrain currency is not predicated on suspicion, but this gap is weighed moderately because false declaration can be a basis to stop and restrain. Due mainly to deficiencies in the declaration requirements for the physical, cross-border transportation of BNI and certain movements of currency which persist from the last MER, as well as the ad hoc nature of the coordination between domestic authorities, including the lack of access to cash data by the FIU, the shortcomings are considered moderate. This weighting takes into account the risk and context of Brazil as identified in the NRA (porosity/size of borders, cash transport to/from neighbouring countries as a result of tightened restrictions among financial institutions, and the prevalence of cash in ML typologies).

Recommendation 32 is rated Partially Compliant.

Recommendation 33 – Statistics

In its 3rd MER, Brazil was rated PC with these requirements because it lacked statistics on ML investigations, prosecutions, and convictions. In addition, Brazil had insufficient statistics in areas such as cases and amount of property confiscated, on-site examinations, and MLA and extradition requests.

Criterion 33.1 – Brazil maintains statistics on matters relevant to the effectiveness and efficiency of their AML/CFT system through different systems. Brazil keeps information on:

(a) STRs, CTRs, and financial intelligence reports. COAF, as FIU, keeps a record of the breakdown of STRs received and disseminated by reporting entity and agency, including spontaneous disclosures. Evidence of these statistics being maintained is publicly available on COAF's website.¹³⁸

(b) As to ML, Brazil maintains federal statistics on investigations and prosecutions, but there are some gaps in recent years. State-level investigation and prosecution data is available, but non-comprehensive across recent years. Federal ML conviction statistics are kept, but authorities state they may not be entirely reliable. State-level conviction statistics are kept, but there are questions around their consolidation and comprehensiveness. As to TF, the Federal Police are maintaining statistics, but there are few cases to track.

¹³⁸ See Brazil's Financial Intelligence Unit website, available at: Página Inicial do COAF — Português (Brazil) (www.gov.br)

(c) Brazil maintains agency-specific statistics on assets frozen and seized (PF and the Federal Highway Police), RFB maintains seizure and confiscation statistics related to cash, and SISBAJUD enables recordkeeping on the freezing of financial assets pursuant to judicial orders. This is not entirely comprehensive but the data exists. There is a major lack of statistics related to final confiscations (i.e., judgments, not provisional measures). Some relevant data is maintained by SENAD, the asset management agency, but this mainly relates to their key area of responsibility, drug trafficking cases, and it only covers assets which are auctioned, which excludes some important asset types. The availability of state-level statistics related to confiscation are inconsistent, and in several states, figures combine seized and confiscated assets.

(d) Brazil is maintaining ample statistics on international cooperation, including number of international requests made and received through the central authority the Department of Assets Recovery and International Legal Co-operation (DRCI).¹³⁹ Further clarity about who maintains these statistics is warranted and in general for (a) – (d), there is a need to confirm whether it is a requirement for the authority to maintain them. COAF maintains statistics on cooperation requests for STRs via the Egmont Group. In addition, the Federal Police also maintains statistics on active requests for international cooperation.

Weighting and Conclusion

While Brazil maintains some statistics across the four relevant areas, there are shortcomings related to the comprehensiveness of ML statistics related to convictions, a lack of federal statistics on confiscation, and an incomplete picture of state-level efforts related to both ML and confiscation. Since there are no gaps related to sub-criteria (a) and (d), and the gaps related to sub-criteria (b) and (c) are partial and not a complete absence of statistics, the deficiencies overall are considered minor for the purposes of TC.

Recommendation 33 is rated Largely Compliant.

Recommendation 34 – Guidance and feedback

In its previous MER Brazil was partly compliant with FATF Standards related to the provision of guidance and feedback by competent authorities to obliged entities.

Criterion 34.1 – COAF offers regular trainings to reporting entities to improve STRs quality, together with broader trainings directed to sectors subject to AML/CFT rules (including two webinars in 2020 in partnership with BCB on the financing of terrorism). Regarding its supervised entities, COAF used the Electronic Conformity Assessment (Avec) as a thematic guidance mechanism in 2020 and 2022. Upon completion of the assessment, COAF system provides individualized feedback. COAF publishes typologies and guidelines for compliance with AML/CFT rules on its website, as well as issues normative instructions to clarify certain aspects of the

¹³⁹ The Department of Assets Recovery and International Legal Cooperation (DRCI) was created by Decree 6061/2007 as the Central Authority for international legal cooperation in Brazil, including for the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) and the 2000 UN Convention against Transnational Organised Crime (the Palermo Convention). This Department receives and examines requests for mutual legal assistance, including seizure and confiscation requests. It also receives and analyses requests for assistance grounded on reciprocity, which are transmitted to the Ministry of Foreign Affairs, to be proceeded via diplomatic channels. DRCI is also in charge of coordinating the national strategy against corruption and money laundering.

AML/CFT regime, including the list of warning signs to be considered by dealers in high-value goods and precious metals/stones (Normative Instr. No. 7/2021).

BCB Circular 3.978/2020 was subject to prior public consultation, with a view to increase awareness on the expected regime. Subsequently, BCB published Circular Letter 4.001/2020 containing a list of operations and situations that may constitute evidence of money laundering crimes, subject to reporting to COAF.

BCB also makes available on its website the Supervision Practices Guide, setting out its supervisory expectations. However, the parts of the guide devoted to ML/TF risk seem too generic and undetailed. After each inspection, the BCB also sends an official letter along with summary notes and the determination to present a regularization plan to the supervised entity (ES) and holds annual meetings with Systemically Important Financial Institutions (SIFIs).

Lastly, BCB liaises with industry associations (FEBRABAN and ABRACAM), either through the establishment of forums or participation in events.

Regarding CVM, in addition to AML themed events and in the context of inspection and monitoring activities, an Explanatory Note to Resolution 50/21 has been issued alongside Circular Letters to clarify certain aspects and contributions to guidance issued by industry self-regulatory associations, such as BSM. CVM also participated in a vast set of events and training sessions, mainly in partnership with BSM.

SUSEP also provides feedback further to supervisory actions on AML/CFT and subjected Circular 612/2020 to public consultation. Despite some scarce content available on its website (e.g., FAQs) and the participation in external events, no structured guidance was issued to date.

PREVIC carried out a public consultation preceding Normative Instruction 30/2020 however its Guide to Best Practices in Investments does not contain any specific guidance on AML/CFT, apart from underscoring the importance of AML governance measures.

Regarding real estate brokers, lectures, courses and training materials were delivered by COFECI and CRECISP. Additionally, physical events have been of limited geographical outreach (all held in the State of São Paulo).

Weighting and Conclusion

While more focused on the financial sector, COAF has a general concern to improve STR quality. Guidance is provided in a systematic manner to the banking and capital markets sectors, even though without a pre-established frequency. Despite some initiatives carried out by COAF – mainly addressed to dealers with high-value goods and precious metals/ stones –, specific guidance to DNFBPs seems limited if not inexistent (e.g., auditors, TCSPs,) in some sectors.

Recommendation 34 is rated Largely Compliant.

Recommendation 35 – Sanctions

In its previous MER Brazil was considered largely compliant with FATF Standards related to the implementation of sanctions. The report identified weaknesses related to the low implementation and the effectiveness of sanctions and showed that other

than related to the reporting obligations, no sanctions were applied by Brazilian authorities.

Criterion 35.1 –

For TFS obligations (R.6), obliged entities may be subject to a range of administrative penalties for breaches (TFS Law No. 13810, art. 25; COAF Res. No. 31, art. 6 (2019)). BCB supervised entities may also be sanctioned for non-compliance with BCB Res. 44 (2020).

Failure to comply with UN sanctions by COAF supervised entities shall be regarded as administrative offences punishable under article 12 of Law No. 9.613. An identical approach is followed by Article 27 and 28 of Resolution CVM No. 50/2021.

Other than for obliged entities, there is no specific sanction for breaches of TFS provisions by natural and legal persons. Violations may result in criminal prosecution for TF, as per Law 13.260, article 6 (see analysis under R.5).

For breaches related to NPOs (R.8), the Brazilian legal framework does not include provisions concerning the issuing of sanctions for non-compliance with the provisions of R.8.

For breaches of preventive measures and reporting obligations (R.9-23), article 12 of Law No. 9613 establishes the sanctions applicable to legal and natural persons performing AML/CFT regulated activities defined in Article 91. However, not all DNFBPs covered by R.22/23 are persons or entities subject to article 9 of Law No. 9613.

Criterion 35.2 – Obligated entities and the members of their board are subject to the administrative sanctions, cumulative or not, specified in article 12 of Law No. 9613. Competent authorities are limited in their ability to punish senior management other than members of the board of directors.

Weighting and Conclusion

Brazil seems to have in place a transversal ability to sanction entities and their directors for failures to comply with relevant AML/CFT requirements, except for the implementation of TFS by natural and legal persons that are not obliged entities.

Recommendation 35 is rated Largely Compliant.

Recommendation 36 – International instruments

In the last MER, Brazil was rated partially compliant with former R.35 and SRI. Deficiencies included the following: gaps in the criminalisation of the conversion/transfer of proceeds; insufficient range of offences in ten designated categories of predicate offences; no direct civil or administrative liability to legal persons who have committed ML; TF not criminalised as a stand-alone offence; and no civil or administrative liability extended directly to legal persons who commit TF.

Criterion 36.1 – Brazil is a party to all the relevant conventions. The Vienna Convention was enacted through Decree No. 154 (1991). The Palermo Convention was enacted in Brazil through Decree No. 5015 (2004). The Merida Convention was enacted in Brazil through Decree No. 5,687 (2006). The Terrorist Financing Convention was enacted through Decree No. 5640 (2005).

Criterion 36.2 – Since its last MER, Brazil amended the ML offence and established a TF offence through Law No. 12.683 (2012) and Law No. 13.260 (2016), respectively, which addressed certain deficiencies identified in Brazil’s 3rd round MER. The Conventions are implemented to a large extent. However, there is a minor shortcoming identified in Rec. 3 impacting on the full implementation of the Vienna and Palermo Conventions, whereas some shortcomings flagged in Rec. 5 affect the full implementation of the TF Convention (see analysis of R.3 and 5). Regarding the implementation of the Merida Convention, Brazil received its first review under the Implementation Review Mechanism conducted within the Conference of the State Parties for UNCAC (cycle 2010-2015). In this sense, the Country Review Report of Brazil identified some challenges in the implementation of some provisions. Notwithstanding the previous, some of these elements of the Merida Convention appear to be minor, as well as the shortcoming identified in R. 12.

Weighting and Conclusion

Brazil has ratified and generally implemented the provisions of the Vienna, Palermo, Merida and TF Conventions, although there are some minor shortcomings in the criminalization of ML and TF and minor shortcomings in R.12.

Recommendation 36 is rated Largely Compliant.

Recommendation 37 - Mutual legal assistance

In its previous MER, Brazil was rated largely compliant with R.36 and partially compliant with SR.V. The deficiencies identified were the following: letters rogatory may have taken a long time to obtain, although this was mitigated because few MLA requests were processed via letters rogatory; no information on the time taken to respond to MLA requests generally; concerns about the length of time it may have taken to compel the production of financial records to provide MLA; and deficiencies in the criminalisation of TF.

Criterion 37.1 – Brazil has legal basis that allows it to provide a wide range of MLA on ML, associated predicate offences and TF investigations, prosecutions and related proceedings. MLA can be provided in accordance with bilateral and multilateral treaties ratified by the country, and in the absence of such treaties, based on the principle of reciprocity (Civil Procedural Code, § 26.1). Brazil is party to 12 multilateral treaties and 22 bilateral treaties with foreign countries. Competent authorities can use their own domestic criminal procedural legislation to respond to MLA requests in criminal matters received from foreign counterparts.

Criterion 37.2 – The Ministry of Justice (MoJ) is the central authority in the absence of a specific designation (Civil Procedural Code, § 26.4), and by means of Decree No. 9.662/2019, section 14(IV), the Department of Assets Recovery and International Legal Cooperation of the National Secretariat of Justice within the MoJ (DRCI) exercises the role of central authority through the coordination of incoming and outgoing MLA requests.

The Office of the Prosecutor General (MPF) acts as central authority for the Convention on Legal Aid in Criminal Matters between Member States of the Community of Portuguese Speaking Countries in relation to requests sent by prosecution offices and such like authorities, and for the Agreement on Mutual Assistance in Criminal Matters between the Government of the Federative Republic

of Brazil and the Government of Canada. There is interaction between de DRCI and Office of the Prosecutor General, which is regulated under the Joint Regulation N° MJ/PGR/AGU N° 1 of 2005.

The DRCI has a system called “Electronic Information System” (SEI) which allows the monitoring of requests, possible delays, and the most recurrent issues where cooperation has not been working properly. Within the MPF, the MLA is monitored through the system called “UNICO”. There are no clear processes for the timely prioritisation of MLA requests, although Brazilian authorities can prioritize that are urgent upon request.

Criterion 37.3 – MLA is not prohibited nor made subject to unreasonable or unduly restrictive conditions in Brazil. According to Civil Procedural Code, section 26.3, only those requests that contradict or that produce results incompatible with the fundamental rules of the Brazilian State will be disallowed. In turn, section 39 of this Code establishes that a request will be refused if it constitutes a clear threat to public order in Brazil. These provisions are not considered to be unreasonable or unduly restrictive.

Criterion 37.4 –

(a) Brazil does not refuse requests for MLA on the basis that the offence involves a fiscal matter. These actions are criminalised in Brazil and are considered predicate offences (Law No. 8.137, §§ 1-3 (1990)).

(b) While there are financial secrecy provisions in place, the secrecy may be lifted by court order. Brazil may use its domestic procedural legislation applicable to national cases to respond to MLA requests from other countries.

Criterion 37.5 – According to the Brazilian legal framework and the provisions included in the agreements signed with foreign countries (for instance, with Spain and the United States of America), competent authorities should maintain the confidentiality of mutual legal assistance requests. The criminal procedural legislation is applicable in the framework of an MLA request involving criminal matters. In particular, Criminal Procedure Code, article 20, establishes the authority will ensure the confidentiality necessary to elucidate the facts or as required by the interests of society. As well, it established that in course of conducting requested background checks, the police authority may not refer to the initiation of an investigation.

In turn, once submitted to the Judiciary, the confidentiality of the requests is the responsibility of the respective judge, but national bodies maintain secrecy until the effective execution of the requests.

Criterion 37.6 – Dual criminality is not required when the assistance requested is basic, evidentiary, or merely procedural, except in cases where precautionary measures are required (Civil Procedural Code, arts. 26-27).

Criterion 37.7 – Even when dual criminality is required per some of their international agreements, the competent authorities have interpreted the crimes provided for in foreign legislation in a broad way, regardless of the wording of the offence or the terminology used. Additionally, the feedback received from the Global Network does not flag any concern on this matter.

Criterion 37.8 – Competent authorities can utilise all powers specified under R.31 in response to an MLA request subject to the conditions under Brazilian law that would be in place in an equivalent domestic investigation.

Weighting and Conclusion

Brazil has legal basis that allows it to provide a wide range of MLA, and this is not prohibited nor made subject to unreasonable or unduly restrictive condition. However, there is a minor shortcoming related to the lack of specific procedures for prioritising requests, although the competent authorities can prioritise urgent cases upon request.

Recommendation 37 is rated Largely Compliant.

Recommendation 38 – Mutual legal assistance: freezing and confiscation

In its previous MER, Brazil was rated largely compliant with R.38. The deficiencies identified at that time were the following: concerns about the length of time it may take to compel the production of financial records also impact on Brazil's ability to provide MLA; letters rogatory may take a long time to obtain, although this is mitigated because few MLA requests are processed via letters rogatory; and there was no information on the time taken to respond to MLA requests generally.

Criterion 38.1 – Brazil has the authority to take action in response to requests by foreign countries to identify, freeze, seize, and confiscate criminal assets to the extent permitted under domestic law. Dual criminality is required when coercive or provisional measures are requested (for instance, for search and seizure of property). As described in R.37, Brazil is able to use its own domestic criminal procedural legislation to process international cooperation requests. The general rules related to provisional measures in criminal cases are provided for in Criminal Procedure Code, sections 125-144. In turn, as described in R.31, the Criminal Procedure Code, sections 240-250, establishes powers for investigative authorities to trace and seize criminal assets. Additionally, the existence of evidence of the illicit origin of the assets is sufficient for the granting of freezing measures (Criminal Procedure Code, § 126).

However, shortcomings identified in Recommendation 4 impact on the full compliance with this criterion, although these are considered to be minor deficiencies, as described below:

- (a) Laundered property is largely covered under Law No. 9613, § 7 (I). Refer to c.4.1(a).
- (b) Proceeds of crime are largely covered under Law No. 9613, § 7(i). Refer to c.4.1(b).
- (c) Instrumentalities of crime are partly covered under Law No. 9613, § 7(i). Refer to c.4.1(b).
- (d) Instrumentalities intended for use in crime are partly covered under the Criminal Code, § 91.5. Refer to c.4.1(c).
- (e) Property of corresponding value is covered under Criminal Code, §91.1. Refer to c.4.1(e).

Criterion 38.2 – Brazil is able to provide assistance to requests for co-operation made on the basis of non-conviction-based confiscation proceedings and related provisional measures as per the Vienna, Palermo and Merida Conventions.

Additionally, Brazil has entered into various agreements with third countries where there are provisions on confiscation and sharing of assets.

Criterion 38.3 –

(a) Brazil is part of international asset recovery networks, such as the Asset Recovery Network of the Latin American Financial Action Group (RRAG) and the Global Initiative of the StAR-Interpol Network, aimed at identifying and sharing recovered criminal assets. Brazil has also signed multiple multilateral and bilateral treaties allowing it to coordinate the seizure and confiscation of assets with other countries.

(b) Brazil has mechanisms for managing and disposing of confiscated property. As per Decree No. 10.073/2019, sections 20-21, there is an Asset Management Board within the National Secretariat for Drug Policy (Senad), with the power to manage seized and confiscated assets in favour of the Union. There are specific regulations establishing a special destination for certain kinds of confiscated assets. Law No. 9.613/1998, section 7.1 and its amendments establish that the Federal Government and the States, within the scope of their powers, shall regulate the form of destination of the assets and rights of forfeited assets, ensuring that it is used by federal agencies responsible for the prevention, combat, prosecution, and judgment of the crimes. In turn, the National Council of Justice (CNJ) Resolution No. 356 (2020) establishes the procedures for the early disposal of assets seized in criminal proceedings.

Criterion 38.4 – Brazil has legislation that allows for the sharing of assets confiscated as a result of transnational investigations coordinated with other countries. In the absence of a treaty or convention, those assets should be shared in equal parts 50%/50% (Law 9.613, art. 8.2). A similar rule applies to TF cases (Law No. 13.260 (2016), art. 15.2). Brazil has in force fifteen bilateral treaties that allow its authorities to share confiscated assets.

Weighting and Conclusion

Brazil has the authority to take action in response to requests by foreign countries to identify, freeze, seize, and confiscate criminal assets. As well, Brazil is part of international asset recovery networks, and has legislation that allows for the sharing of assets confiscated as a result of transnational investigations coordinated with other countries. However, minor shortcomings identified in R.4 impact the full compliance of this Recommendation.

Recommendation 38 is rated Largely Compliant.

Recommendation 39 – Extradition

In its previous MER, Brazil was rated largely compliant with R.39. The deficiency identified was that measures were not in place to ensure extradition requests and proceedings related to ML would be handled without undue delay.

Criterion 39.1 – Brazil is able to execute extradition requests in relation to ML/TF. The process of extradition is regulated by Law No. 13.445 (2017) (Migration Law), §§ 81-105. The process is conducted by the DRCI – the central authority – in coordination with the competent judicial and police authorities. The decision on the extradition belongs to the federal court in the district where the person is arrested/found. In principle, the general stages for the process appear to be reasonable and may allow the country to grant extraditions without undue delay.

(a) ML and TF are extraditable offences as per Migration Law § 82. However, minor shortcomings identified in the criminalisation of TF may limit the scope of the extradition.

(b) Competent authorities can prioritise extradition upon request by the foreign country or if it is a matter of urgency (Migration Law, § 84). The country has a case management system for executing the requests and has indicated that the DRCI has an internal electronic calendar indicating the final deadline for the submission of documents regarding the formal extradition requests and the final deadline for the surrender of the person to be extradited on those cases already granted. In principle, extradition can be executed timely, although there are no clear procedures in place in addition to the general framework set for in the law.

(c) Brazil does not appear to place unreasonable or unduly restrictive conditions on the execution of extradition requests. Reasons for denial of the extradition requests include the following: (I) the individual whose extradition is requested from Brazil is born Brazilian; (II) the fact motivating the request is not considered a crime in Brazil or in the requesting state; (III) Brazil is competent, according to its laws, to judge the crime charged to the person to be extradited; (IV) Brazilian law imposes a prison sentence of less than two years; (V) the person to be extradited is responding to proceedings or has already been convicted or acquitted in Brazil for the same fact on which the request is based; (VI) the punishment is extinguished by the statute of limitations, according to the Brazilian law or that of the requesting state; (VII) the fact constitutes a political or opinion crime; (VIII) the person to be extradited must respond, in the requesting state, to an Exceptional Court (i.e., a court created ad hoc, to judge specific crimes in question after they have occurred); (IX) the person to be extradited is a beneficiary of refugee status or territorial asylum in Brazil (Migration Law, § 82). Under item (III), it is unclear what considerations Brazil may take into account in determining whether it should prosecute an individual or whether the individual should be extradited, assuming both countries have a basis for exercising jurisdiction over the individual who committed the crime. Under item (IV), there may be a minor gap between the offences considered extraditable by Brazil (i.e., punishable by two years' imprisonment or more) and those offences deemed extraditable felonies by other countries (i.e., punishable by one year or more).

Criterion 39.2 –

(a) According to the Federal Constitution article 5 (LI), no Brazilian shall be extradited, except naturalised Brazilians, if they committed a common crime prior to naturalisation or if their participation in unlawful drug trafficking is proven.

(b) According to Migration Law, section 82 (III), Brazil can charge the person requested to be extradited with the crime alleged. This means that, if there is a request from a foreign competent authority and the background information or evidence is sent, the person could be charged, although there are no specific procedures in place for ensuring this can be conducted thoroughly.

Criterion 39.3 – Dual criminality is required for extradition. Extradition shall not be granted when the fact motivating the request is not considered a crime in Brazil or in the requesting State (Migration Law, § 82(II)). According to the Brazilian Supreme Court, dual criminality is recognised if the structural elements of the crime (*essentialia delicti*) are present, as defined in the in Brazilian legislation and in force in the requesting state, regardless of the formal designation attributed by them to the criminal facts.

Criterion 39.4 – Brazilian law provides for a simplified extradition procedure when the requested person consents to surrender (Migration Law, § 87).

Weighting and Conclusion

Brazil is able to execute extradition requests in relation to ML/TF, and there are no unreasonable or unduly restrictive conditions to grant it. Also, the law provides for a simplified extradition procedure when the requested person consents to surrender. The country has a case management system for executing the requests, although there are no clear procedures in place in addition to the general framework set for in the law. Upon request from the foreign country, a national can be charged, although there are no specific procedures in place for ensuring this can be conducted thoroughly.

Recommendation 39 is rated Largely Compliant.

Recommendation 40 – Other forms of international cooperation

In its previous MER, Brazil was largely compliant with these requirements. However, only a small number of MOUs had been signed by SUSEP and SPC and COAF had not signed any MOUs.

Criterion 40.1 – Competent authorities in Brazil are generally able to provide a wide range of ML/TF and predicate offences related co-operation to their foreign counterparts, either spontaneously or upon request. This co-operation can be granted through multilateral or bilateral treaties signed by the country, MOUs signed by the competent authorities and through channels and informal networks of the AML/CFT agencies. Without prejudice to the former, the shortcoming identified in R.3-5 may impact the scope of the provision of international co-operation, although this can be considered a minor deficiency.

Criterion 40.2 –

(a) In general, competent authorities have a lawful basis for providing international co-operation (COAF, Law No. 9613 s.14.2; MPF, Civil Procedural Code s.26; BCB Complementary Law No. 105/2001 s.2.4.II; CVM Law N^o 6.385 s.10; SUSEP, LCP 126 s.25.2.II. Federal Police: Ordinance 155 of 2018 and Ordinances 503 and 514 of 2019. RFB, Law 5172 S.199; AGU: Internal Rules of the Office of the Attorney General of the Republic, s.24). In addition, Brazil has 12 multilateral treaties and bilateral agreements with 21 jurisdictions.

(b) Competent authorities can co-operate directly with their counterparts. Most of the competent authorities have signed MOUs and are part of informal networks allowing the rapid exchange of information with their counterparts.

(c) As regards international cooperation, the competent authorities use the secure channels and gateways established in the agreements and networks they are part of. The COAF is a member of the Egmont Group and exchanges information through the Egmont Secure Web. The MPF, the Federal Police and the DRCI of the Ministry of Justice are part of IBERRED. The Federal Police is part of Interpol. As well, the MPF is a member of the Ibero-American Association of Public Prosecutors (AIAMP). The RFB has signed agreements for cooperation for tax and customs purposes. Brazil is part of the GAFILAT Asset Recovery Network (RRAG), with contact points assigned by the MPF, the DRCI of the Ministry of Justice and the Federal Police. Financial supervisors are members of international organizations such as the Basel Committee on Banking Supervision (BCBS), IOSCO and IAIS, and have signed MOUs for exchanging

information with counterparts. The AGU is part of the Latin-America Association of Attorney Generals and Public Attorneys (ALAP).

(d) The Federal Police has criteria for screening cases according to their urgency, giving priority to cases whose urgency is requested and demonstrated by the authorities of the requesting country. In turn, the MPF uses the so-called "unique" system which allows for the registration and monitoring of all requests for cooperation and allows for the adoption of measures according to the urgency.

Without prejudice to the previous, there are no clear processes for the prioritisation of requests, although this is a minor shortcoming given that the competent authorities in general prioritize cases labelled as urgent.

(e) A breach of confidentiality is a crime for which the penalty is from 1 to 4 years imprisonment and a fine. Administrative sanctions are also available for the BCB and CVM (Complementary Act 105/2001 s.10). In general, there are no clear internal processes regarding the information received, although this is normally used according to the agreements signed by the competent authority.

Criterion 40.3 – The COAF, the Federal Police, the MPF, the BCB and RFB, which are key competent authorities have a wide range MOUs to facilitate co-operation with foreign counterparts. In general, competent authorities have the capacity to negotiate and sign bilateral or multilateral agreements with foreign counterparts if needed.

Criterion 40.4 – There are no limitations in the Brazilian legal system to provide feedback to countries with which information has been exchanged. The MPF, the COAF and the Police provide information to foreign counterparts about the usefulness of the information obtained upon request.

Criterion 40.5 – Brazilian legal framework does not place unreasonable or unduly restrictive conditions on the provision of exchange of information or assistance. In particular:

(a) Brazil do not refuse requests when they involve fiscal matters. In Brazil tax crimes are punished by Law No. 8,137 s.1-3. As well, tax crimes are predicate offences for ML.

(b) Brazil does not prohibit the exchange of information on the basis of secrecy or confidentiality. Secrecy of FIs and DNFBPs can be lifted by court orders and that information can be provided to foreign counterparts.

(c) Brazil indicates that the request for cooperation can be denied or deferred if, at that particular moment, the information to be provided could endanger a criminal investigation already in place in Brazil. However, there are doubts on the legal basis regulating this aspect.

(d) Brazil does not deny cooperation requests based on the nature of the requesting foreign counterpart.

Criterion 40.6 – The information exchanged by competent authorities is used for the purpose for, and by the authorities, for which the information was sought or provided, unless prior authorisation has been given by the requested competent authority. Relevant clauses are included in the bilateral agreements signed by the competent authorities. In particular, the cooperation agreements signed by the BCB and the COAF with their foreign counterparts include provisions for the use of the information.

Criterion 40.7 – Competent authorities are able to keep the confidentiality of the requests and information exchanged. Although there are no specific internal

procedures for this purpose, the cooperation agreements signed by the BCB, CMV, SUSEP and the COAF with their foreign counterparts include provisions on the confidentiality of the information.

Criterion 40.8 – The powers to conduct inquiries applicable for domestic purposes can be equally applied for international purposes (see R.31 and R.37).

Exchange of Information between FIUs

Criterion 40.9 – The COAF has a legal basis for providing co-operation on ML, TF and associated predicate offences (Law No. 9613 s.14.2-15 and Law 13,260). On this basis, the competent Brazilian authorities have legal mechanisms to use their own domestic criminal procedural legislation to respond to requests for international legal cooperation in criminal matters received from foreign countries.

Criterion 40.10 – There are no legal provisions to prevent COAF from the provision of feedback to foreign counterparts. In turn, Brazil indicates that the COAF provides feedback to its counterparts in the framework of the Egmont Secure Web and even during the Egmont Group meetings. It has also often requested feedback from competent authorities on the use of information received from foreign counterparts and shares the feedback with the respective FIU.

Criterion 40.11 – COAF is able to exchange information obtained by COAF directly or indirectly in domestic databases, and any other information which COAF can obtain or access, directly or indirectly, at the domestic level (as per Law No. 9613 s.10.V).

Exchange of information between financial supervisors

Criterion 40.12 – Financial supervisors have a legal basis for providing co-operation with their foreign counterparts. The BCB and the CVM have a legal basis for providing co-operation with their foreign counterparts through the execution of agreements or MoUs (as per Complementary Law 105 s.2.4.II). The specific regulation for the CVM to co-operate with foreign counterparts is the Securities Law (s.10) and it establishes that it can enter into agreements with similar entities in other countries, or with international entities, for assistance and co-operation in the investigations relating to infringement of regulations pertaining to the securities market occurring in Brazil and abroad. The CVM is a signatory to both the IOSCO MMOU and the IOSCO EMMOU (Enhanced Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information). The SUSEP has a legal basis for international co-operation with foreign counterparts (Art. 25 (II)(b) of the LCP 137). The SUSEP is also a signatory to the IAIS Multilateral Memorandum of Understanding (MoU) and has signed bilateral agreements.

Criterion 40.13 – Based on the MoUs signed, the supervisors should comply with the international co-operation requests. In this sense, Brazilian supervisors may exchange, with foreign counterparties, information available internally.

Criterion 40.14 – Financial supervisors can exchange any regulatory, prudential and AML/CFT information they hold in line with the legal framework referred to in c.40.12 above and pursuant to the MoU provisions.

Criterion 40.15 – According to Complementary Law 105/2001 s.2.4, the BCB and the CVM may sign international agreements to monitor agencies and branches of foreign FIs operating in Brazil, and to mutually cooperate and exchange information for the investigation of activities or transactions that involve investment, negotiation, concealment or transfer of financial assets and securities related to illicit activities, Brazil indicates that

financial supervisors have the power to perform all necessary tasks on behalf of foreign supervisors on account of the agreements in force, including the conduct of inquiries on behalf of foreign counterparts, and, as appropriate, to authorise or facilitate the ability of foreign counterparts to conduct inquiries themselves in the country. The country reported also that there are several on-site inspections carried out by foreign supervisors in Brazil at the cross-border establishments of financial institutions under their supervision during the period in question, as well as inspections carried out by the BCB in cross-border establishments of Brazilian banks abroad. There are still some doubts regarding SUSEP capacity to conduct inquiries on behalf of foreign counterparts, or to authorise or facilitate the ability of foreign counterparts to conduct inquiries themselves in the country.

Criterion 40.16 – The information exchanged is only used for supervisory purposes as established in the MoUs signed with foreign counterparts.

Exchange of information between law enforcement authorities

Criterion 40.17 – LEAs are able to exchange domestically-available information with foreign counterparts for intelligence or investigative purposes relating to money laundering, associated predicate offences, or terrorist financing, including the identification and tracing of the proceeds and instrumentalities of crime. The Federal Police exchange information and intelligence through channels such as Interpol, cooperation networks (e.g., RRAG), Brazilian police attachés in foreign countries (and local attachés posted in Brazil), etc., coordinated by the Division of International Legal Cooperation (DCJ/CGCI/DIREX/PF). As to Public Prosecutors, the Secretariat for International Cooperation of the Federal Prosecution Service is the institutional point of contact for exchanging information with foreign bodies, and likewise would forward incoming information to the appropriate unit in accordance with their attribution (see R.30 on attribution). While formal assistance would be directed through the central authority (DRCI, under most agreements), informal assistance can be dealt with quickly based on Ordinance MJSP Nos. 503 and 514 (2019).

Criterion 40.18 – LEAs are able to use their powers, including any investigative techniques available in accordance with domestic law, to conduct inquiries and obtain information on behalf of foreign counterparts. Requests for assistance from foreign countries can be processed in Brazil for the purpose of criminal investigation and prosecution, and an investigative technique available in a domestic investigation (as detailed in R.31) would equally be available if, for example, the Federal Police were executing a request on behalf of another country, assuming all legal requirements were met. The only limitation on international legal cooperation is that the acts should not contradict or produce results incompatible with the fundamental norms that govern the State, meaning that Brazil could employ any technique permitted by law in response to a request (Civil Procedure Code, art. 26, § 3 and art. 27(VI)).

Criterion 40.19 – LEAs are able to form joint investigative teams (JITs) to conduct cooperative investigations, and, when necessary, establish bilateral or multilateral arrangements to enable such joint investigations. Brazil has no restriction in forming JITs on the basis of bilateral or multilateral treaties or on the principle of reciprocity. As a state party to the major UN conventions, for example, it could do so on the basis of Vienna (art. 9), Palermo (art. 19), or Merida (art. 19). Having approved the Framework Agreement on Cooperation between the MERCOSUR States Parties and Associates States for the Creation of JITs (Council of the Common Market Decision No. 22 (2010)), Brazil can easily undertake joint investigations with 11 of its South

American neighbours. Two multi-jurisdictional investigations with two different countries have been established in the past.

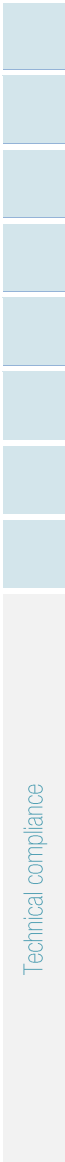
Exchange of information between non-counterparts

Criterion 40.20 – There are no legal provisions inhibiting indirect exchange of information with non-counterparts. According to the Brazilian authorities, all kinds of international cooperation are authorised by Brazilian Civil Procedure Code, unless expressly forbidden by law.

Weighting and Conclusion

Competent authorities in Brazil in general are able to provide a wide range of co-operation to their foreign counterparts, either spontaneously or upon request. In general, competent authorities have a lawful basis for providing international co-operation, they are able to conduct inquiries on behalf of foreign counterpart, and there are no unreasonable or unduly restrictive conditions on the provision of exchange of information or assistance, among other aspects. However, some shortcomings identified in Recommendations 3-5 may impact the scope of the provision of international co-operation, and there are some minor shortcomings related to processes for the prioritisation of requests, and on the processes in place for safeguarding the information received.

Recommendation 40 is rated Largely Compliant.



Summary of Technical Compliance – Key Deficiencies

Compliance with FATF Recommendations

Recommendations	Rating	Factor(s) underlying the rating
1. Assessing risks & applying a risk-based approach	LC	<ul style="list-style-type: none"> There are exemptions that are not based on risk and there are no measures to manage and mitigate all higher risks areas when identified. Implementation of R.1 by the private sector is not ensured for some sectors (see also R.26 and R.28). Some DNFBPs are not required to take appropriate steps to identify, assess and understand their ML/TF risks.
2. National cooperation and coordination	LC	<ul style="list-style-type: none"> Cooperation and where appropriate coordination does not include CPF There are mechanisms to ensure the compatibility of legal requirements with data protection law, although it is not clear whether in practice there is coordination or cooperation on AML/CFT matters.
3. Money laundering offences	LC	<ul style="list-style-type: none"> Shortcoming in criminalisation of acquisition, possession, or use of proceeds No criminal liability for legal persons despite no clear fundamental principle of domestic law preventing it
4. Confiscation and provisional measures	LC	<ul style="list-style-type: none"> Indirect proceeds not obtained directly from criminal act not subject to confiscation (unless ML is charged) Shortcoming in the scope of instrumentalities subject to confiscation (unless ML is charged) Minor gap in ability to confiscate corresponding value Deficiencies above mitigated by existence of extended confiscation regime Gap in provisional measures available for instrumentalities (only in the CPC) Only partial measures available to prevent or void actions that prejudice the ability to recover property subject to confiscation Remaining shortcomings in mechanisms to manage and dispose of assets
5. Terrorist financing offence	PC	<ul style="list-style-type: none"> TF is only partly criminalized on the basis of the TF Convention (see 6 gaps listed below) (1) Acts of terrorism are defined too narrowly (all require a require a reason such as xenophobia, discrimination, or prejudice) (2) Acts of terrorism are not fully in line with FATF definition (purpose to compel a government or international organisation to act or not to act is missing) (3) TF offence is subject to an exemption, even though acts of terrorism under the TF Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature (4) Provision or collection of funds "with the intention" that the funds should be used, regardless of the perpetrator's knowledge of actual plans for terrorism, is not covered (5) The TF offence subjects certain treaty offences from the TF Convention's Annexes to intent requirements when they should not be subject to such requirements (i.e., they are considered as <i>per se</i> acts of terrorism), thus limiting the scope of the TF offence (6) A few treaty offences (e.g., types of hostage-taking and embezzlement of nuclear materials, plus threats to commit some acts) are not covered Minor gap in financing of travel, and financing for the purpose of preparing or planning No criminal liability for legal persons despite no clear fundamental principle of domestic law preventing it
6. Targeted financial sanctions related to terrorism & TF	PC	<ul style="list-style-type: none"> Criteria for identifying targets for designation to the UN is limited as it is tied to Brazilian criminal law and not coextensive with all possible reasons for designation under UNSCR criteria (e.g., INR.6(E))

Recommendations	Rating	Factor(s) underlying the rating
		<ul style="list-style-type: none"> • Evidentiary standard of proof for deciding on a designation is “sufficient evidence” of a crime of terrorism or TF, as defined under Brazilian law, which slightly different than the “reasonable basis” (and also limited by the R.5 deficiencies above) • Proposals for designation to the UN are conditional upon existence of criminal proceedings • Proposals for national designation are conditional upon existence of criminal proceedings • When determining whether to give effect to a third-country request under UNSCR 1373, Brazil requires proof of the existence of assets in Brazil, which creates a deficiency and negates the preventive nature of sanctions • Brazil can give effect to requests from third countries to ensure the effectiveness of criminal or administrative investigations, but the law is unclear as to whether such an administrative investigation would have to relate to an ongoing criminal proceeding (though it does not require an MLA request) • There are no provisions authorising or suggesting that Brazil could make a request to another country give effect to actions initiated under the freezing mechanism • For UNSCR 1373, the judge blocks specific assets or “all assets” of the person, but the law is not clear on how this becomes an enforceable obligation on all persons and entities to freeze assets linked to the designee (the “enforcement mechanism” in article 8 of the TFS Law is only applicable to UN-issued lists); it is also not clear how or how a UNSCR 1373 designation would become known to the public (MOJ should maintain a list under art. 26 of the TFS Law), but no list exists • While all natural and legal persons are required to freeze assets in line with sanctions imposed by resolutions of the UNSC, only reporting entities have the obligation to do so without delay and without prior notice • There are no penalties available for TFS violations by non-reporting entities, such as individuals and legal persons, unless violations constitute the crime of TF (which is not sufficient) • The scope of the freezing obligation is not explicit as to several types of assets (e.g., joint ownership, assets derived or generated by frozen assets held outside financial sector, and assets of persons acting at the direction of designees), a minor gap • No procedures to submit de-listing requests for persons or entities designated pursuant to the UN Sanctions Regimes when, in the view of the country, the designated person/entity does not or no longer meets the criteria for designation • No clear procedures to de-list and unfreeze funds or assets of persons subject to national designation (unclear what government entity would make the determination that the criteria of USNCR 1373 are no longer met) • It is not clear that a designee can initiate a challenge to his/her/its designation on this on their own request (or after a limited 15-day period) • There are no publicly known procedures pointing to the Focal Point mechanism to facilitate potential de-listing/unfreezing for persons designated by the 1988 Committee • The law does not specify how to communicate de-listing and unfreezing immediately to FIs/DNFBPs for sanctions issued pursuant to UNSCR 1373 (domestic or request)
7. Targeted financial sanctions related to proliferation	LC	<ul style="list-style-type: none"> • While all natural and legal persons are required to freeze assets in line with sanctions imposed by resolutions of the UNSC, only reporting entities have the obligation to do so without delay and without prior notice • There are no penalties available for TFS violations by non-reporting entities, such as individuals and legal persons • SUSEP, the insurance regulator, has no penalties which it can apply in its sector for breaches of UN sanctions obligations • No procedures to submit de-listing requests for persons or entities designated pursuant to the UN Sanctions Regimes when, in the view of the country, the designated person/entity does not or no longer meets the criteria for designation • There are no publicly known procedures pointing to the Focal Point mechanism to facilitate potential de-listing or unfreezing for persons designated under UNSCR 1730 • While there are procedures to allow defendants to challenge their designation on the basis of a false positive before a court, it is not clear that the designee can initiate this on his/her own request (or after a 15-day period wherein the judge summons the defendant)

Recommendations	Rating	Factor(s) underlying the rating
		<ul style="list-style-type: none"> The time period allowing the UN to object to a request for access to funds is slightly shorter than required by all relevant UNSCRs, a minor gap The law does not specify that the contracts under which payments could be allowed should be in existence <i>prior</i> to the date on which the accounts are blocked There are no provisions enabling payments to be made under preexisting contracts which allow an analysis of the situation and a process for UN approval for any such payments in line with the relevant UNSCRs
8. Non-profit organisations	PC	<ul style="list-style-type: none"> Brazil has not yet reviewed the adequacy of measures, laws, and regulations, that relate to the subset of the NPO sector that may be abused for TF to be able to take proportionate and effective actions to address the TF risks identified Outreach to the NPO sector on TF issues is just beginning and not yet sustained Authorities are not yet developing best practices to protect NPOs from TF abuse No targeted or risk-based measures apply to NPOs at risk of abuse (some measures are in place not specifically aimed at TF which may mitigate some risk) and there is no authority currently monitoring compliance with risk-based measures under R.8
9. Financial institution secrecy laws	C	<ul style="list-style-type: none"> N/A
10. Customer due diligence	LC	<ul style="list-style-type: none"> Deficiencies relate to CDD provisions on legal arrangements and beneficial ownership as well as the collection of information on PREVIC FIs and beneficiaries of life insurance policies.
11. Record keeping	C	<ul style="list-style-type: none"> N/A
12. Politically exposed persons	LC	<ul style="list-style-type: none"> The definition of PEPs is more restrictive than the Standard
13. Correspondent banking	C	<ul style="list-style-type: none"> N/A
14. Money or value transfer services	C	<ul style="list-style-type: none"> N/A
15. New technologies	PC	<ul style="list-style-type: none"> Despite the legislative initiatives already adopted, no relevant law or other enforceable means were in force at the end of the onsite visit.
16. Wire transfers	C	<ul style="list-style-type: none"> N/A
17. Reliance on third parties	LC	<ul style="list-style-type: none"> Some deficiencies persist regarding the risk assessment requirements pertaining to high-risk jurisdictions
18. Internal controls and foreign branches and subsidiaries	LC	<ul style="list-style-type: none"> There is no requirement to apply additional measures in instances where the host country does not permit the proper implementation of AML/CFT measures.
19. Higher-risk countries	PC	<ul style="list-style-type: none"> There is no specific requirement to act on calls made by the FATF regarding high-risk jurisdictions.
20. Reporting of suspicious transaction	LC	<ul style="list-style-type: none"> The reporting obligation appears to be narrower than the FATF Standard, but this is interpreted as equivalent to “suspecting” or “having reasonable grounds to suspect” that the funds are the proceeds of ML, TF or predicate offences.
21. Tipping-off and confidentiality	C	<ul style="list-style-type: none"> N/A
22. DNFBPs: Customer due diligence	PC	<ul style="list-style-type: none"> There is a lack of regulatory requirements on trusts and legal arrangements, as well as provisions that cover lawyers and TCSPs.
23. DNFBPs: Other measures	PC	<ul style="list-style-type: none"> There are gaps in the requirements as regards real estate agents, notaries and accountants.
24. Transparency and beneficial ownership of legal persons	PC	<ul style="list-style-type: none"> There is no mechanism that describes and identifies the process to obtain BO information. The risk assessment does not systematically take into consideration how legal persons can or are being misused for criminal purposes. Unclear requirements on legal entities to maintain accurate and updated basic information. Gaps on the availability of BO information, and there are ineffective mechanisms to ensure that the BO is updated and accurate. The legal representative is not accountable to the authorities for the provision of BO information. Access to BO information is not timely. There is a general absence of dissuasive and proportionate sanctions for non-compliance with basic and BO requirements. There are some limitations on how rapidly some basic information for some companies and beneficial ownership information can be obtained and shared. No data on how the country monitors the quality of assistance provided and received.

Recommendations	Rating	Factor(s) underlying the rating
25. Transparency and beneficial ownership of legal arrangements	PC	<ul style="list-style-type: none"> The CDD requirements are not sufficient to allow the adequate identification of the beneficial owner The requirements to gather accurate and updated information are incomplete Information is not readily available to authorities There are no proportionate or dissuasive sanctions
26. Regulation and supervision of financial institutions	LC	<ul style="list-style-type: none"> There is no explicit or binding requirement to review the risk profile of institutions when major developments occur
27. Powers of supervisors	C	<ul style="list-style-type: none"> N/A
28. Regulation and supervision of DNFBPs	PC	<ul style="list-style-type: none"> Lawyers and TCSPs are not regulated for AML/CFT purposes No binding requirement for internal ML/TF risks mitigation efforts to take into account the NRA
29. Financial intelligence units	C	<ul style="list-style-type: none"> N/A
30. Responsibilities of law enforcement and investigative authorities	C	<ul style="list-style-type: none"> N/A
31. Powers of law enforcement and investigative authorities	C	<ul style="list-style-type: none"> N/A
32. Cash couriers	PC	<ul style="list-style-type: none"> BNI are not subject to declaration under the system for travelers, and only some BNI are covered under the commercial declaration system Cash in unaccompanied baggage or cargo is not required to be declared Cross-border currency declarations are not available to the FIU Coordination between domestic authorities is limited on issues relating to the implementation of R.32, in part because the declarations are subject to tax secrecy The power to stop and restrain currency is not predicated on suspicion, a minor gap The deficiencies are weighted in light of the risk and context of Brazil (
33. Statistics	LC	<ul style="list-style-type: none"> There are shortcomings related to the comprehensiveness of ML statistics related to convictions, a lack of federal statistics on confiscation, and an incomplete picture of state-level efforts related to both ML and confiscation.
34. Guidance and feedback	LC	<ul style="list-style-type: none"> Guidance to DNFBPs is limited
35. Sanctions	LC	<ul style="list-style-type: none"> Some limitations remain regarding the implementation of TFS by natural and legal persons that are not obliged entities
36. International instruments	LC	<ul style="list-style-type: none"> Brazil has ratified and generally implemented the provisions of the Vienna, Palermo, Merida and TF Conventions, although there are some shortcomings in the criminalization of ML and TF and minor shortcomings in R.12 affecting their full implementation.
37. Mutual legal assistance	LC	<ul style="list-style-type: none"> There are no clear processes for the timely prioritisation of MLA requests, although Brazilian authorities can prioritize cases that are urgent upon request.
38. Mutual legal assistance: freezing and confiscation	LC	<ul style="list-style-type: none"> Minor shortcomings identified in R.4 impact the full compliance of this Recommendation
39. Extradition	LC	<ul style="list-style-type: none"> Shortcomings identified in the criminalisation of TF may limit the scope In principle, extradition can be executed timely, although there are no clear procedures in place in addition to the general framework set for in the law. Offences considered extraditable by Brazil (i.e., punishable by two years' imprisonment or more) may differ from deemed as extraditable felonies by other countries (i.e., punishable by one year or more) If there is a request from a foreign competent authority and the background information or evidence is sent, the person could be charged, although there are no specific procedures in place for ensuring this can be conducted thoroughly
40. Other forms of international cooperation	LC	<ul style="list-style-type: none"> Shortcomings identified in Rs. 3-5 may impact the scope of international cooperation There are minor gaps related to processes for the prioritisation of requests There are minor shortcomings related to safeguarding the information received

Glossary of Acronyms

ACRONYM ¹⁴⁰	DEFINITION
ABIN	Brazilian Intelligence Agency
ACC	Conduct Continuous Monitoring
AGU	Attorney General of the Union
ANM	National Mining Agency
APA	Comprehensive Preliminary Assessments
APO	Objective Preliminary Assessments
AVEC	Electronic Conformity Assessment
BCB	Central Bank of Brazil
Civ. Code	Civil Code
CC	Criminal Code
CFC	Federal Accounting Council
CNB	Brazilian Notaries Council (<i>Conselho Notarial do Brasil</i>)
CNJ	National Justice Council (<i>Conselho Nacional de Justiça</i>)
CPC	Criminal Procedural Code
COAF	Council for the Control of Financial Activities (FIU) (<i>Conselho de Controle de Atividades Financeiras</i>)
COFECI	Federal Council of Realtors
COFECON	Federal Economic Council
CVM	Securities and Exchange Commission
DNFBPs	Designated Non-Financial Businesses and Professions
DPMS	Dealers in Precious Metals and Stones
DREI	Department of Business Registration and Integration, within MOJ
DTVM	Dealers in Securities and Valuables (<i>Distribuidora de Títulos e Valores Mobiliários</i>)
ENCCLA	National Strategy to Combat Corruption and Money Laundering (<i>Estratégia Nacional de Combate à Corrupção e à Lavagem de Dinheiro</i>)
FTF	Foreign Terrorist Fighter
FIs	Financial Institutions
FUNAI	National Indigenous People Foundation (<i>Fundação Nacional dos Povos Indígenas</i>)
GAECO	Special Action Group Against Organised Crime
IBAMA	Federal Environment Agency (<i>Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais e Renováveis</i>)
ICR	Remote Compliance Inspection
IDR	Remote Direct Inspection
LAB-LD	National Network of Technology Laboratories against Money Laundering
MOJ	Ministry of Justice and Security
MPF	Federal Prosecution Service
MRE	Ministry of External Relations
NRA	National Risk Assessment
OAB	Order of Attorneys of Brazil (bar association)
PAS	Administrative Sanctioning Process (<i>Processo Administrativo Sancionador</i>)
PLG	Mining Permit
PF¹⁴¹	Federal Police (<i>Polícia Federal</i>)
RFB	Federal Revenue Office (<i>Receita Federal do Brasil</i>)
SIFI	Systemically Important Financial Institution
SISCOAF	Financial Activities Control System
SNJ	National Secretariat of Justice

¹⁴⁰ Acronyms already defined in the FATF 40 Recommendations are not included into this Glossary.

¹⁴¹ When PF refers to proliferation finance and not the police, this will be clear from context.

ACRONYM ¹⁴⁰	DEFINITION
SRA	Sectoral Risk Assessment
TF Law	Law No. 13260 (2016)
TFS Law	Law No. 13810 (2019)
Res	Reporting Entities (i.e., obliged entities under Law No. 9613)
REAs	Real Estate Agents
SUSEP	Superintendence of Private Insurance



© FATF | GAFILAT

www.fatf-gafi.org | www.gafilat.org

December 2023

Anti-money laundering and counter-terrorist financing measures - Brazil

Fourth Round Mutual Evaluation Report

In this report: a summary of the anti-money laundering (AML) / counter-terrorist financing (CTF) measures in place in Brazil as at the time of the on-site visit from 13-31 March 2023.

The report analyses the level of effectiveness of Brazil's AML/CTF system, the level of compliance with the FATF 40 Recommendations and provides recommendations on how their AML/CFT system could be strengthened.