# PARTICIPANTS' PAPERS

## THE BRAZILIAN LEGAL FRAMEWORK FOR INVESTIGATION, PROSECUTION AND TRIAL OF CORPORATE CRIME AND THE CRIMINAL LIABILITY OF CORPORATE ENTITIES

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### I. INTRODUCTION

This study intends to analyse Brazilian law enforcement concerning the criminal liability of corporate entities and also to briefly explain how the Brazilian legal system applies administrative and civil liability upon those entities and point out the serious consequences that flow from that liability.

In this context, it also intends to show that, although, generally, there is no legal foresight of the criminal liability of corporate entities, administrative and civil liability have been sufficient punishment for those illegal activities.

On the other hand, concerning the natural person, Brazilian law foresees a reasonable criminal punishment for those who commit crime through corporate entities.

Thus, this paper shall emphasize, with examples, a current Brazilian problem: money laundering. It is carried out by economic criminal organizations which penetrate state entities and corrupt public agents to work for them, to the advantage of the criminals and to the detriment of society.

In view of that, the paper shall demonstrate that Brazilian legislation on money laundering needs to be improved because in many situations it is not possible to punish the offender.

The paper will also mention the main legal tools for the investigation, prosecution, trial and punishment of those illegal activities committed by natural persons through corporate entities, mainly the money laundering legislation.

### II. MATERIAL AND PROCEDURAL WARRANTIES ESTABLISHED IN THE 1988 CONSTITUTION OF THE FEDERATIVE REPUBLIC OF BRAZIL

The 1988 Constitution of the Federative Republic of Brazil, containing 250 articles with many paragraphs and items, more than 50 amendments and six revision amendments, regulating the country's entire legal system, establishes material and procedural warranties for all citizens living in the country and guarantees the free exercise of Executive Power, Legislative Power, Judicial Power, Public Prosecution and the Constitutional Powers of the units of the Federation, mentioned below:

(i) There is no crime without a previous law to define it, nor a punishment without a previous legal sanction (Article 5, XXXIX);
(ii) Penal law shall not be retroactive, except to benefit the defendant (Article 5, XL);
(iii) The practice of torture, the illicit traffic of narcotics and related drugs, as well as terrorism, and crimes defined as heinous crimes shall be considered by law as non-available and not subject to grace or amnesty, and the principals, agents and those who omit themselves while being able to avoid such crimes shall be held liable (Article 5, XLIII);
(iv) No punishment shall go beyond the person of the convict, and the obligation to compensate for the damage, as well as the decreeing of loss of assets may, under the terms of the law, be extended to the successors and be executed against them, up to the limit of the value of the assets transferred

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(Article 5, XLV);

(v) The law shall regulate the individualization of punishment and shall adopt, among others deprivation or restriction of freedom, loss of assets, fine, alternative rendering of social service, suspension or deprivation of rights (Article 5, XLVI). Furthermore, there shall be no punishment of death, save in the case of declared war, under the terms of Aarticle 84, XIX, of life imprisonment, of hard labor, of banishment and which is cruel (Article 5, XLVII) Extradition of a foreigner on the basis of political or ideological crime shall not be granted (Article 5, LII);

(vi) No one shall be deprived of freedom or of his assets without the due process of law (Article 5, LIV);

(vii) No one shall be arrested unless in *flagrante delicto* or by written and justified order of a competent judicial authority, save in the cases of military transgression or specific military crime, as defined in law (Article 5, LXI);

(viii) No one should be considered guilty before the issuing of a final and unappealable penal sentence (Article 5, LVII);

(ix) The arrest of any person as well as the place where he is being held shall be immediately informed to the competent judge and to the family of the person arrested or to the person indicated by him (Article 5, LXII). The rights of a arrested be informed of his rights (among which the right to remain silent, and he shall be ensured of assistance by his family and a lawyer) and be entitled to identification of those responsible for his arrest or for his police questioning are also guaranteed (Article 5, LXIII and LXIV);

(x) The home is the inviolable refuge of the individual, and no one may enter therein without the consent of the dweller, except in the events of *flagrante delicto* or disaster, or to give help, or, during the day, by court order (Article 5, XI);

(xi) The secrecy of correspondence and of telegraphic, data and telephone communications is inviolable, except, in the latter case, by court order, in the cases and in the manner prescribed by law for the purposes of criminal investigation or criminal procedural finding of facts (Article 5, XII);

(xii) The privacy, private life, honour and image of persons are inviolable, and the right to compensation for property or moral damages resulting from their violation is ensured (Article 5, X).

Regarding evidence obtaining procedures, the Federal Constitution establishes that evidence obtained through illicit means is unacceptable in the process (Article 5, LVI), as well as that the secrecy of correspondence, financial data and telephone communications are inviolable, except if a written judicial order is obtained in order to break this secrecy, in the manner prescribed by an ordinary law, for purposes of criminal investigation or criminal procedure finding acts (Article 5, XII).

It is important to make clear that Article 5, paragraph 2 of the Constitution also states that the rights and guarantees expressed in the Constitution do not exclude others deriving from the regime and from the principles adopted by it, or from the international treaties to which the Federative Republic of Brazil is a party, of course, after the adoption of its statements by the Brazilian National Congress.

## III. THE CONSTITUTIONAL BASIS OF THE CRIMINAL LIABILITY OF THE LEGAL PERSON

The Federal Constitution of 1988, when it talks about the financial and economic order, establishes many principles, such as, among others, national sovereignty, private property, free competition, and the rights of the consumer and of the environment.

In the Brazilian legal system, the criminal liability of the legal person, although controversial to some jurists on grounds of jurisprudence, has been determined in the 1988 Constitution of the Federative Republic, which adopted it only in the defence of the environment and consumers (Art. 225, § 3 and Art. 173, § 5, respectively), through statutory laws such as the Law No. 9,605 of 2 December 1998 (Environmental Crimes Law).

The criminal liability of the legal person was constitutionally foresighted, in a comprehensive way, in the chapter "Of the general principles of economic activity", as follows:

(i) Except in the cases foresighted in this Constitution, the direct exploration of the economic activity by the State is allowed only when necessary to national security legal requirements or to a relevant collective interest, as defined in law;

(ii) The law, without damaging the individual liability of the legal person director, will establish its liability, submitting it to the punishment compatible to its nature, in all acts practiced against financial and economic order and against popular economy;
(iii) All have the right to an ecologically balanced environment, which is an asset of common use and essential to a healthy quality of life, and both the government and the community shall have the duty to defend and preserve it for present and future generations.
(iv) Conduct and activities considered hurtful to the environment will submit the offenders, legal or natural persons, to administrative and criminal sanctions, independent of the obligation of repairing the caused damage, applying in relation to the environmental crimes, as disposed in Article 202, paragraph 5.

**A. Criminal Liability of Corporations for Crimes Against the Environment**

Conduct that provokes the use of penal sanctions may come from public and legal entities, as well as natural persons. The national penal systems must foresee, when possible, on the level of the Constitution or basic laws, some penal sanctions and other punishments adaptable to public and legal entities.

Whenever a private legal entity or a public entity participates in an activity that implicates major risk of damage to the environment, it must be requested of the responsible authorities to manage and administrate these entities to exercise the responsibility of supervision as a way to prevent the occurrence of damage, and they must be criminally charged in case of serious damage in consequence of lack of appropriate fulfillment of this responsibility.

Despite the usual demand for criminal liability for criminal offences, the prosecution of private legal entities for crimes against the environment may be possible, even if responsibility for the crime can not be directly imputed to a human element of this entity.

Whenever a legal entity is responsible for serious damage to the environment, it might be possible to prosecute this entity for crimes against the environment, even if the damage resulted from an individual act or omission or of cumulative acts and/or omissions committed over time.

The imposition of criminal sanctions against private legal entities does not discharge the guilt of the human elements of these entities involved in the perpetration of crimes against the environment.

## IV. FEDERAL LAW No. 9,605 OF 12 FEBRUARY 1998 AND THE CRIMINAL LIABILITY OF THE LEGAL PERSON

Concerning environmental issues, the ordinary legislator, in view of the constitutional device, disposed that the legal person will be charged administratively, civilly and criminally as disposed in this Law, in cases where the transgression is committed by decision of its legal or contractual representative or by its administrative body, in the interest or benefit of their entity. The liability of the legal person does not exclude the liability of the natural person, plaintiff, joint-plaintiff or accessory in the same fact.

From the analysis of the device, we might notice the necessity of two requirements:

(i) The decision about the practice of the illegal act has to be made by the legal or the contractual representative or its administrative body, considering the institutional action, obeying the organization rule;
(ii) The infraction is committed in the interest or benefit of the legal person.

According to this law, the liability of the legal person does not exclude the liability of the natural person.

This law also adopted the disregarding of the corporate veil theory. According to this theory, whenever the corporate entity of the company represents an obstacle to the indemnification of the damages caused to the environment, it may have its legal person unconsidered, in order to reach the personal assets of the company partners.

## V. THE LIABILITY OF THE LEGAL PERSON IN CIVIL MATTERS

The Brazilian Civil Code – Federal Law No. 10,406 of 1 January 2002 – talks about the obligation of indemnification for damages caused to others, independent of guilt, in the cases foresighted in law, when the causality connection between the occurred fact and the suffered injury is observed, or, what has been termed objective liability. This liability bases itself in the theory of risk due to the illegal activity, but with potential to cause damage, and limits itself to the indemnification of the damages, and the indemnity is established according to its extension, in conformity with Article 944 of the Civil Code.

In the environmental issue, the civil liability of the legal person bases itself in the theory of activity risk. Therefore, independent of guilt, the activity exercise, with or without profit purposes, even if it is not dangerous, but which may damage the environment, is based on the repair of damages, as long as the causality connection is proved.

## VI. THE LIABILITY OF THE LEGAL PERSON IN ADMINISTRATIVE MATTERS

This sphere deals with the liability of the legal person facing the Government, in particular, the necessity of charging the offender for the social cost to the State of the protection of the environment.

Law No. 9,605 of 12 February 1998 shows the environmental administrative liability for environmental law infractions committed by every action or omission that violates the legal rules of use, enjoyment, promotion, protection and recuperation of the environment.

The environmental authority which has knowledge of environmental infraction is obliged to promote its immediate investigation, through proper administrative procedure, under the penalty of joint-responsibility. The right to due process of law is assured, observing the resolutions in this Law.

This way, independent of the existence of damage, conduct contrary to the legal devices is characterized as environmental infraction.

Therefore, the possibility of verifying civil liability subsists, even when there is no administrative liability: for example, when the environmental damage is caused by a lawful conduct. The same happens with administrative liability when there is no civil liability: for example, when there is legal infraction, without the occurrence of effective damage.

## VII. CRIMES AGAINST THE POPULAR ECONOMY OR CRIMES AGAINST CONSUMER RELATIONS

In these crimes, there is only the criminal liability of the natural person; however, the legal person can also be reached by some sanctions foreseen in law, which actually have an administrative nature.

They are accessory sanctions, such as the closing or interdiction, definitively or temporarily, of the commercial establishment where the infraction occurred. This sanction does not have a criminal nature, but it is commonly used by the public health inspection, which is authorized to interdict hotels or restaurants, in the administrative area. There is also the sanction applied to entertainment establishments that do not respect legal age restrictions or restrictions on what is sold and consumed by adolescents on their premises. In these cases, a criminal judge can close a commercial establishment for 15 days, which is not about a penalty applied to the legal person, but is imposed as an accessory penalty on the natural person of its legal representative, the defendant in the procedure and the only one to suffer the sanction of a criminal nature.

It is disposed in Article 6 of Law No. 1,521/51 – Crimes against the Popular Economy – that depending on the gravity of the facts, its repercussions and effects, the judge, in the sentence, will decree the appropriate scale of the deprivation of rights.

In fact, it is noticed that, in the Brazilian legal system, in economic crimes there is no criminal liability of the legal person, but occasional effects, through the imposing of accessory penalties or civil nature sanctions, such as the dissolution of the corporation (Article 1218, VII, Civil Procedure Code).

Although the 1988 Federal Constitution, as earlier expressed, has established that federal law, without damaging the individual liability of the legal person director, must also establish the liability of the legal person itself, in the acts practiced against the financial and economic order and against the popular economy in fact, this liability limits itself to the administrative and civil sphere.

**A. Economical Criminal Organization**

Economic criminal organizations are notable for the specific practice of economic crimes, such as fraud, especially against public administration, through *inter alia*, auctions, competitions, etc., money laundering, and cartel formation, where corruption is always observed.

One of the most important characteristics of the economic criminal organization is its money laundering through public agents who earn easy money working on behalf of those criminal organizations.

Doing so, those agents breach the security of society, compromising the image of the public service. Beyond that, they hurt the interest of society in a serious way, hindering the access of the citizenry to public services such as national health, public education and public safety.

Economic criminal organizations in Brazil act mainly through off-shore entities, extraterritorial bank centres which are not subject to the control of the administrative authorities of the country. Like tax havens, they share the idea of representing a legitimate purpose and some kind of commercial justification, although they are involved directly in the main cases of money laundering uncovered in the last years, all of them with the participation of criminal organizations in the execution of illegal strategies.

The securities market, which comprises a set of institutions and instruments enabling the transfer of resources between takers (companies) and investors (savers), and aiming for the compatibility of their objectives, in particular the stock exchanges, whose operations are conducted through Securities Unregistered Bonds Market Makers, also supports the realization of money laundering operations.

Another sector which is vulnerable to money laundering operations is insurance, either in relation to the shareholders of insurance companies, or in relation to the insured, subscribers, participants and middlemen.

The shareholders of an insurance company can determine the realization of some investments that can enable money laundering operations; the insured may present false or fraudulent damages, aiming at money laundering as well; the subscribers and participants may transfer the property of capitation bonds, or promote the registration of inexistent or deceased people as nominees in Private Social Security accounts, among other things.

The absence of control over the real estate market makes it very fragile. In this sector, criminals perform various operations of purchase and sale of real estate for prices far higher than the real market price and also create false real estate speculations.

The lottery agencies, bingo houses, casinos and relatives by affinity are entities that also propitiate conditions conducive to money laundering by criminal organizations, which utilize techniques of manipulated awarding and realization of huge bets in some type of games.

In 1999, the investigation of the actions of the Italian Mafia in Brazil has begun; those actions involve the exploration of bingo games, mainly with the distribution of "*caça-niqueis*" (slot machines).

In the case of the lottery, the real winner is convinced to sell his or her winning ticket for a higher price than the announced prize. The buyer of the ticket presents him or herself to receive the money and may declare the amount to the State. Between the years of 1996 and 2000, it was verified that 200 people have won the Federal Lottery games 9095 times.

In 2005, the Civil Police of the Federal District of Brazil began an investigation that was concluded in July 2007 with the help of the Prosecutor of the State where they were looking for the identification of a criminal organization that embezzled money of the Federal District Government. That organization was composed of many fiscal auditors, staff of the Regional Bank of Brasília as well as its president, and politicians. One of

them, with the conclusion of the investigation, had to renounce his mandate as a senator of the Republic otherwise he would have been dismissed.

Many private entities received benefits, like tax exemptions, and also received money for work they had claimed to have done for the government, when in fact, they did not. The money they used to receive was shared with those corrupt public agents. For example, that criminal organization often carried out its activities by hiring private entities to provide a service to the government and that private company gave this contact to an NGO which did not fulfill the contract and then all of them, without doing the work, received and shared the public money.

One of the acts of embezzlement committed in such a way was uncovered during the case known as the *Aquarela Investigation*.[1]

1. Brazilian Antitrust Law

In the crime of cartel formation in Brazil, foreseen in Article 4 of Federal Law No. 8,137 of 12 December 1990 (Crimes against the Tax Order), companies or groups of companies control prices, sales and production. These corporations reduce production of a product altogether if the offer is low, in order to generate greater demand and enable price elevation. Enterprises, directly or through employees, generally executives, get together to direct and to establish sales to prearranged clients and consequently set whatever prices they want.

The ability to form cartels is linked directly not only to market control, but also to the power of market control, understood as the reunion of conditions to completely exclude bidders. The cartel enterprises establish some kind of "*carteira*" (list) of clients, dividing them among themselves. In this way, each enterprise participating in the cartel sells to its own clients, and if any one of their clients intends to buy from another enterprise and asks for a quotation, this other enterpriser, knowing that the client is part of the cartel, will present a fictitious price, higher than that charged by the cartel, obliging the client to buy always from the same company. This way, the enterprises participating in the cartel may charge the prices they want to, as the client will never find a cheaper price.

However, to act in this way, the participating companies of the cartel, together, must have market share, "*domínio de mercado*", and aim to make deals, covenants, adjusts and alliances, looking for the artificial settlement of the prices and quantities sold or produced, for regional control of the market by companies or groups of companies and for the control of the distribution network, in preference to the competition.

It might be observed, this way, that those companies are, as a matter of fact, economic criminal organizations, as there is preparation, organization, meetings, reunions, negotiations, client divisions, all directed to obtain profit. It is confirmed that one of the companies usually controls the cartel, and normally it is one that has better and greater structure, more clients and, therefore, a greater parcel of the market.

In one of the cases taken to court by the Public Prosecution Service of the State of Sao Paolo, a state of the Brazilian federation, the corporations that participated in the cartel used to receive price quotations orders and send them to their own syndicate, which concentrated all the orders and promoted weekly meetings in order to distribute new clients, according to the prearranged percentage, among the companies. In order to do that, the companies of the cartel developed software that receives, online, the copies of the price quotations orders of the clients. The material was analysed and separated for the correct division. Companies that decided not to participate were punished and could be excluded from the cartel. There were also foreseen punishments for companies that took a client from another company.

Parallel to the criminal investigation, there is the administrative procedure, which is the responsibility of the Secretary of Economic Law of the Justice Ministry, who has specific duties under Law No. 8,884/94, modified by Law No. 10,149/2000.

There is also Federal Law No. 6,024 of 13 January 1974, which establishes that private and non-federal

[1] Briefly explained in the Appendix.

public financial institutions, as well as credit co-operatives, are subject, according to this law, to intervention or extra-judicial liquidation, in both cases carried out and decreed by the "Banco Central do Brasil". The intervention will be adopted when the following abnormalities are found, concerning the business of the institution:

(i) - the entity submits to a loss, resulting from bad management, which exposes its creditors to a risk;
(ii) - repeated infractions of the terms of banking legislation are found and are not adjusted after the determinations of the "Banco Central do Brasil", using its power of supervision.

The police play an essential role in the fulfillment of provisional remedies, such as search and seizure, telephonic and general communications interceptions and field investigation. The Federal and State Revenue are also important.

There is foresight in Federal Law No. 8,137 of 12 December 1990 of the legal tool known as the Leniency Programme, whereby there is a reduction of one or two-thirds of the sentence in cases of spontaneous and effective collaboration of the suspect with the authorities. The foreseen punishment is of two to five years of confinement, or a fine.

In Law No. 8,884/94 there is provision for the use of the Leniency Programme. The Programme disposes that in crimes against the economic order, established in Law No. 8,137/90, the leniency agreement causes the suspension of the statute of limitation course and forbids the indictment from the Public Prosecutor's Office, which would initiate judicial proceedings.

As the law establishes that the power to make a lenient agreement belongs to the Secretary of Economic Law (SEL), the agreement in the administrative sphere forbids the Public Prosecution Service to prosecute the defendant for the cartel crime, but does not have any effects in relation to other crimes occasionally practiced by cartel integrals, such as, for example, the criminal association established in the Article 288 of the Federal Law No. 2,848 of 7 December 1940 – Criminal Code, according to which, when three or more people form an association in order to commit crimes, they are submitted to a punishment by imprisonment, for one to three years.

**B. Money Laundering**

Law No. 9,613/98 introduced to the Brazilian legal system the characterization of crimes called "money laundering".

In simple terms, the crime of money laundering or laundering of assets is a parasitic crime, because there will only be the laundering of assets when it is demonstrated by evidence that the objects of the crime of laundering (assets) come from another crime. That predicate crime will be necessarily a crime that brings economic advantages. That economic advantage is represented by the assets that will be laundered.

On the actual state of the Brazilian legislation, only the crimes listed in Article 1 of Law No. 9,613/98 are considered antecedents for the means of money laundering. With it, only those crimes can generate a product or illicit gain which could be an object of capital recycling.

The existence of a roll of predicate offences limits the actions of prevention and repression of the crime of money laundering, because the law does not mention some crimes such as the exploration of games of chance, robbery and extortion with kidnapping, as well as other crimes that involve money.

The Law of Money Laundering, besides listing the antecedent crimes and characterizing the crime of money laundering, regulates the judicial proceedings and sentencing of the crimes referred to in this law (Art 2 to 6) and establishes a supplementary norm of international co-operation (Art 8).

This Law set up the Brazilian system of prevention and fight against the crime of money laundering, whereas the Financial Activities Control Council (COAF) (Arts 14 to 17) was created as a National Intelligence Unit of prevention; it established rules of compliance for certain kinds of compulsory subjects, members of relevant economic groups (Arts 9 to 11); it set up the administrative liability of the compulsory subjects (Art.12); and it created the list of the National Clients of the National Financial System (Art. 10-A).

Brazilian law follows the model suggested by the inter-governmental Financial Action Task Force (FATF), created in 1989 under the auspices of the Organization for Economic Co-operation and Development (OECD) and of the G8. In the following year, the FATF issued its 40 recommendations which serve as a standard for the prevention and fight against money laundering. The Financial Action Task Force unites the financial intelligence units of various countries, called co-operators, inclusive of the COAF, and has regional representatives, such as the example of FATF-Jud which represents the countries of South America.

The Financial Intelligence Units, identified internationally as FIUs, are responsible for the gathering, analysis and spread of financial information regarding suspect transactions. The FIUs are central organs in the prevention of money laundering, because they receive communications of financial transactions given by the subjects under obligation, in other words, by the legal and the natural persons who work in certain economic areas, such as financial institutions, share brokers, companies which provide goods of high value, and factoring companies, among others.

The work of COAF is extremely important for the prevention of money laundering. But the information given by the Council is also indispensable for criminal prosecution, helping the identification of all the authors and co-authors of the crime and the localization of laundered assets, allowing the condemnation of the guilt and the confiscation of profit, instruments and proceeds of crime.

There are other organs, besides the COAF, in the Brazilian anti-money laundering system, which receive communications of suspect transactions. This is the case of the Central Bank of Brazil (BACEN) which receives news from the financial institutions under its inspection and passes it to the COAF. The same pattern is followed by other national organs, such as the Private Insurance Superintendence (SUSEP) and the Brazilian Securities Commission (CVM), which receives communications of the legal persons who act in the insurance area and brokers.

The databases of the Brazilian FIU are also fed information from foreign branches. This is a two-way system. The information put together by COAF is given to the State Public Prosecution Service, to the Federal Government of the State and to the Federal Police, to make it possible to block current financial transactions and/or allow the beginning of a criminal investigation.

The function of the prevention system does not depend only on the financial intelligence unit and the others involved. The development of the private sector is essential, especially of the economic entities which are obliged by Law No. 9,613/98 to report the suspicious activities of their clients. The compulsory subjects must keep a register of property with a complete identification of their customers and must scrutinize transactions.

Those duties reflect the prevention policy known as KYC (know your customer). The compulsory subjects must know their customers. Only with knowledge of the structure, composition and means and profession of the legal person, and the activities and income of the natural persons, can the compulsory subjects check if transactions are of a suspicious nature or not. However, what is observed is that the compulsory subjects work as watchtowers (or gatekeepers), which are responsible for the stiffness of the financial system and of the economy.

Checking the relevance of the collaboration of the compulsory subject, the importance of demanding the observation by those legal persons of their duties regarding anti-money laundering can be understood. The obliged companies must count on areas or departments responsible for the complete identification of customers, and maintain for five years a register of customers' financial transactions and the frequency of those transactions. They must also present of information of suspicious legal business, while maintaining the confidentiality of the customer.

There are various circumstances that allow the identification of a suspect. They are known as red flags. The Circular Letter BACEN No. 2,826/01 lists many suspicious activities that financial institutions must follow, register and communicate to the Central Bank of Brazil. They are as follows: substantial alterations in bank account routine; large-scale activities by wire transfer; transactions of no economic sense; simultaneous use of money accounts; transactions incompatible with the kind of business or profession of

the client; relationships with tax havens; refusing to inform the bank of the origin of the income or their identity; inconsistency of documents.

Violation of the obligation to report suspicious transactions is not characterized as a crime. However, compulsory subjects that do not fulfill Law No. 9,613/98 will be charged administratively by the COAF or the correspondent regulatory organ and can be brought into a criminal action as co-author or participants of money laundering, based on Article 13 of the Penal Code, which treats of the causal relevance of the omission. It is good to say that the lack of compliance can favour the practice of crime, because, "It can be considered cause, the action or omission without which the result would not have happened" (Article 13 of the Penal Code, *in verbis*).

In the federal sphere, the criminal prosecution of money laundering is concentrated in the specialized jurisdiction, already installed in various States of the Federation, by the resolution of the Federal Justice Council, issued in 2003.

The investigation of those crimes, when under federal competence, rests on the Public Prosecution Service and the Federal Police, nearly always with the operational support or information of the Federal Tax Bureau and the Central Bank of Brazil and of other organs of the Union, for example, COAF.

The institution of prosecution will be conducted with respect for due process and the right to legal defence, until the final decision of the judicial power.

To effectively fight money laundering, the criminal punishment of the author perpetrator is not enough. It is essential to make efforts to freeze and confiscate the assets that come from criminal activities and to recover them and return them to the State.

However, differently from what we see in the criminal field, at the civil level, the theme of assets recovery has another character. The General Proctorship of the National Treasure (PGEN), the General Union of Advocacy (AGU), and the correspondent organs of the State-members structure have the legitimacy to act before a court on fiscal execution and in other civil actions, as well as in administrative violation actions.

The first attribution of the Department of Asset Recovery and International Legal Cooperation (DRCI) is acting as a central authority of the system of international co-operation in almost all the penal bilateral and multilateral treaties settled by Brazil, except the agreement between Brazil and Portugal, in which the central authority is the International Center of Juridical Cooperation (CCJI).

The second attribution of the DRCI is of collaborating with the criminal prosecution and with the other entities in charge of the recovery of assets, for the effectiveness of the measures of recovery of the State Assets and its beings, as well as to the confiscation of values obtained in criminal activities, especially in money laundering.

The DRCI is also responsible for the co-ordination of the National Strategy of Fighting against Corruption and Money Laundering (ENCCLA).

Step by step, Brazil has made efforts to develop its mechanisms of prevention and to fight against money laundering. In 2004, for the first time, Goiás, a State of Brazil, has fulfilled the task of joining all the organs involved with money laundering and of presenting annual goals for the responsible organs, such as the Central Bank of Brazil, the Federal Revenue, the Justice Ministry, CVM, COAF, etc.

Many instruments of investigation and prosecution existing today and used by the police, public prosecutors and judiciary were created or definitely improved thanks to ENCCLA. That happened with the national list of customers of the National Financial System (CCS), created by the amendment of the Law No. 9,613/98, which introduced Art 10-A. Those records, administrated by the Central Bank of Brazil, were only implemented in 2004, because of the negotiation of the first meeting of the National Strategy of the Fight against Money Laundering. It was ENCCLA which initiated the establishment of the Freezing of Values

System, in real time, in the Central Bank of Brazil (BACEN-Jud).

It is also good to mention here other isolated initiatives by public organ members of the system of prevention of money laundering. The Central Bank of Brazil (BACEN) established rules making obligatory the declaration of Brazilian capital abroad, if it amounts to more than a hundred thousand US dollars, according to the National Monetary Council.

Despite all of that, there are yet many difficulties in the effective prevention of money laundering. First of all, it is worth remembering that the police, public prosecution service and judiciary must respect the laws and the individual guarantees foreseen in the Constitution during the prosecution of all and any offences, obeying the Constitution as well as the Pact of San José da Costa Rica (Intra- American Convention on Human Rights).

The main worry when dealing with money laundering is not permitting the use in the criminal procedure of illegally obtained proofs and to respect the legal defence and the adversarial system, guarantees that, if disregarded, would make worthless all the efforts to punish the guilt. Whereas the criminal perpetrators do not have limits for their actions, the State must respect the constitutional guarantees.

Another issue concerns the legislative entanglement regarding the subject and some deficits of our specific legislation which is not yet apt to permit a quick and complete prosecution, in order to protect important legal properties of society. This affirmation is particularly true with regard to Law No. 9,613/98, with its roll of basic offences, and Law No. 9,095/95, which deals with criminal organizations, without properly defining them, without specifying the predicate offence and without establishing appropriate proceedings for the utilization of particular important techniques of investigation, such as controlled delivery and wiretaps.

As if the above is not enough, authorities and State employees do not yet have the proper capacity to deal with this kind of economic criminality, which is complex and demands constant formation and constitution of multidisciplinary teams in order to effectively combat it.

To all of this, factors that propitiate money laundering or make it difficult to repress, are added the problems of obtaining information of the suspects along with the public officers and concessionaires of public services, and the lack of concrete control of our frontiers, which concerns the movement of people and goods and the existence of a parallel and clandestine system of movement of assets, using currency exchange shops, black market dollar dealers known as "*doleiros*", factoring companies and other alternative systems of financial remittance. There is also the possibility for criminals to take advantage of tax havens in various locations around the world.

It is extremely hard to recuperate assets in cases of domestic money laundering. When the crime is transnational, the difficulties are increased.

The first step of the authorities of criminal prosecution is to identify the author of the offence and also the objects of the money laundering. The next step is the tracing of the valuables, through following the documentary trace left by the launderer, during the diverse operations of dissimulation.

If the tracing is successful, judicial freezing of the assets and their derivatives, wherever they are, is sought. In Brazil, freezing has been used by the BACEN-Jud for this purpose, upon the authorization of the competent judge.

However, when it is necessary to freeze assets existing outside of the country, it is necessary to request international assistance, either by the judiciary or by the public prosecution service, through the central authority.

Upon receiving the assistance request, the Brazilian central authority (the DRCI or the CCJI) will be in charge of sending the request to its counterpart in the requested State. If all the demands of the co-operation request based in an international treaty have been observed, the freezing will be carried out by the foreign State. In case there is no specific criminal treaty, it will be possible that there may be co-operation based on

the promise of reciprocity or on a multilateral convention that has appropriate and subsidiary rules on the subject.

Freezing the assets in Brazil, it will be necessary to protect them and wait for the final decision of the criminal action, in order to definitely declare in favour of the Union, or order restitution to the defendant declared not guilty. To avoid the deterioration of the apprehended assets, which may be vehicles, aircraft, real estate or livestock, the judge, by official letter or upon request from the public prosecution service, may determine the anticipated alienation of these assets, to preserve their value, as there is no loss to the innocent defendant, or, on the contrary hypothesis, it is preserved for the State in case of conviction.

If the assets are frozen abroad, depending on the legislation of the foreign country, the assets may be immediately delivered to the requested State or may be maintained under care until the final decision of the Brazilian authorities.

In all cases, the repatriation of the frozen assets is not a simple procedure, because it demands a specific requirement of an international assistance treaty in the internal law of the requested State or a reciprocity promise. Asset sharing, when the requested State reserves for itself part of the frozen assets to indemnify itself for the rendered co-operation, may also occur.

Anyway, what remains of the assets, after the indemnification of the victims and after the international share, must be destined to the Union, in the criminal actions of federal and state jurisdiction. The draft of the new money laundering law foresees the return of the recovered assets to the state treasury, when the criminal action is judged by a State judge.

**C. Crimes Against the Public Administration**

Federal Law No. 2,848 of December 1940, Criminal Code, contains a title with various descriptions of crimes that hurt the functional activity of the State, which in their majority, characterize acts of administrative violation, especially the acts of illegal enrichment expressed in Articles 312 (embezzlement); 315 (irregular use of public incomes and budgets); 317 (passive corruption) and 318 (facilitation of contraband or smuggling). These are called functional crimes, as they are practiced by State agents, who can be punished criminally and administratively.

The crime of embezzlement of public money is the first in the chapter of the crimes practiced by public employees against public administration in general and can be defined as the appropriation, deviation or subtraction of public or private movables by a public official taking advantage of his or her position.

In the crime of irregular use of public incomes and budgets there is non-conformity with the destination given to these budgets as disposed in budgetary law or other law, usually using bribery to privilege a specific economic group.

In the crime of passive corruption, the public employee attempts against the impersonal performance of the public activity, executing acts in exchange for retribution, to favour the obtaining of personal advantages to the detriment of the public interest.

In the crime of facilitation of contraband and smuggling, the officers in charge of customs collaborate in the import of prohibited merchandise or import without the proper payment of taxes.

Brazil signed, in December, 1997, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organization for Economic Cooperation and Development (OECD).

Federal Law No. 10,467 of June 2002 implemented this Convention in the national legal system and included as an antecedent crime of money laundering the crime perpetrated by individuals against foreign public administration.

## VIII. CRIMINAL PROCEDURES IN BRAZIL: POLICE INQUIRY (INVESTIGATION) AND CRIMINAL PROCEDURE (PROSECUTION)

Under Article 144 of the Federal Constitution, public safety is a duty of the State and the right and responsibility of all citizens, being exercised to preserve public order and the safety of persons and property, by means of the Federal Police, Federal Highway Police, Federal Railway Police, Civil Police and the Military Police & Fire Brigades.

The duties of the Federal Police include prevention of interstate and international drug trafficking and smuggling, protection of the national borders, and the execution of orders demanded by federal judges, such as execution of arrest warrants for those indicted on federal offences, for instance.

In Brazil, the state polices are divided into two nearly autonomous entities, the civil and military polices (Art. 144, IV and V), both of them under the control of the state governor, even though the military police forces are also auxiliary and reserve units of the National Army.

The civil polices are responsible for the investigation of the vast majority of criminal activities, excluding from their jurisdiction only military crimes (Art. 144, Paragraph 4). They also work as the states' judicial polices and are authorized by law to perform investigations which are run by precincts. Each precinct is run by a precinct chief called by the Constitution *Delegado de Polícia* (*Police Chief*), who by law must hold a law degree.

### A. The Police Inquiry

Once a crime has occurred, in order to gather evidence, a police inquest, conducted by the Civil Police Chief, may be initiated by written orders of the appropriate police authority *ex officio*; at the request of the victim or offended party; or by orders of the judge or the public prosecutor's office. Inquiries must be opened whenever the police are informed of a possible violation of the penal code (Criminal Procedure Code, Articles 4 and 5).

The time limit for the civil police to conclude an investigation is, ordinarily, of 30 days if no one is being held in detention (Criminal Procedure Code, Art. 10), and 10 days if a suspect has been arrested. If these time limits are exceeded, the judge (usually at the request of the police chief or the prosecutor) can extend the investigation for the same period. In practice, the time limit established by law for the end of the inquiry is almost never met, especially in complex investigations.

The police inquiry may only be closed by a judge's order, ordinarily at the request of the prosecutor or by suggestion of the police chief who writes the final report on the result of the investigation (Criminal Procedure Code, Art. 17 and 18).

However, Brazilian legislation includes Federal Law No. 9,099 of 26 September 1995, which has as one of its main objectives the simplification of the procedure in cases involving minor offensive potential crimes, in which the maximum penalties are not more than two years.

In these cases, the police inquiry is simplified, because there is no demanding of substantial proofs of the offence. The purpose is not the criminal sanction, but the repair of the damage with the immediate application of the punishment which, in this case, does not involve deprivation of freedom.

### B. The Criminal Procedure

Once investigations are finished, the police chief must write a detailed written final report to the judge. This final report is passed on to the prosecutor to determine whether a suspect should be accused. An accusation may be issued whenever the prosecutor determines there is enough *prima facie* evidence to so justify (Criminal Procedure Code, Art. 41 and 43). If the prosecutor or the judge believes that further police investigation is necessary, they may order it to be undertaken by the police.

Concerning the procedural aspects of criminal responsibility of the corporate entity, the public prosecution service will interpose the criminal action, which must obey Law No. 9,605 of 12 February 1998, specifying natural and legal persons, but, if the ascertainment of these natural persons is not possible, this

circumstance must be clarified in the accusation document under the penalty of being considered inept.

Concerning the interrogation, the corporate entity will be interrogated through the natural person of its legal representative. However, it is perfectly suitable for an employee, when he has more knowledge of the facts, or when the legal representative is also a defendant at in same case, to take part in interrogations.

In the case of minor offensive potential crimes, these are regulated by the Environmental Crimes Law in its Articles 27 and 28 as well as by Law No. 9,099 of 26 September 1995, as mentioned before. Article 27 stands the possibility of penal settlement (consistent with the immediate application of the deprivation of rights when there is an earlier repair of the damage. According to Article 28, the punishment extinction may also occur, as long as there is an environmental damage repair testifying report.

The repair of the damage also enables the suspension of the procedure. The sentence for minor offensive potential crimes obeys the rule disposed in Article 76 of Law No. 9,099/95. The sanction imposed in a criminal action has no civil effects.

As for the penalties applicable to the corporate entity, the legislator disposed in Article 21 the possibility of alternative, cumulative and isolated imputing of the fine; the deprivation of rights; the partial suspension of activities; the temporary interdiction of the establishment, work or activity; or the prohibition of contracting with the Government; as well as obtaining from it either subsidies, donations or grants.

The fine must be fixed from 1 to 360 times the minimum wage, and can be increased three times if, due to the economic situation of the offender, it shows no efficacy (Art. 6, III, Law No. 9,065/98). The proceeds of the fine will be awarded to the National Penitentiary Fund after the costs of civil repair have been deducted.

The deprivation of rights can be applied through partial suspension of activities, when the company is not diligently abiding by the rules of temporary interdiction of the establishment, work or activity (when working without the proper licences) and, finally, the prohibition of contracting with the Government (for that the maximum term is ten years) .

In relation to other terms of deprivation of rights, the duration of the sanction will correspond to that which would be applied in case of punishment by confinement.

## IX. LEGAL TOOLS USED FOR INQUIRY, PROCESS AND JUDGMENT OF ECONOMIC CRIMES

### A. Leniency Programme

The situation of revelation of crime data involves the defendant and the state attorney, but the final decision is made by the judge, who will verify if the piece of information collaborates effectively with the justice administration.

The Leniency Programme is foreseen in the following Federal Laws, among others:

Federal Law No. 9,034 of 3 May 1995 (Organized Crime)
Federal Law No. 9,613 of 3 March 1998 (Money Laundering)
Federal Law No. 9,807 of 13 July 1999 (Witness and Victims Protection)
Federal Law No. 8,137 of 27 December 1990 (Crimes against the Tributary Order)
Federal Law No. 7,492 of 16 June 1986 (Crimes against the Financial System)
Federal Law No. 9,269 of 24 June 1996 (introduced the crime of extortion by means of kidnapping to the Criminal Code)

However, the focus will be on those laws that concern the theme of this essay.

1. Federal Law No. 9,034 of 3 May 1995

This law disposes the utilization of operational means for the prevention and repression of acts practiced by criminal organizations and must be applied in situations in which the defendant, through spontaneous collaboration, leads the authorities to the clarification of crimes of his or her own authorship, of criminal facts

for which he or she is not being investigated or prosecuted, and of other crimes that have been practiced by any criminal organization, including one in which he or she participates. The penalty will be reduced by one to two-thirds.

2. Federal Law No. 9,613 of 3 March 1998

This law addresses the crimes of money laundering or concealment of assets, rights, and valuables. The measures designed to prevent the misuse of the financial system for illicit actions, as described in this law, create the Council for Financial Activities Control (COAF). It also allows the application of the Leniency Programme in cases in which they investigate money laundering. The Law of Organized Crime has to be applied, where and when it fits, to the predicate crimes of money laundering: illicit traffic of drugs similar narcotics; terrorism and its financing; smuggling, trafficking of weapons, munitions or materials used for munitions production; kidnapping with extortion; acts against the Public Administration; and acts against the Brazilian financial system, perpetrated by criminal organizations, practiced by the private sector against a foreign public administration (active corruption in foreign commercial transactions, trading of influence in international commercial transactions – Articles 337-B and 337-C of the Federal Law No. 2,848 of 7 December 1940, Penal Code).

The Leniency Programme is applied in these cases where the accused collaborates spontaneously with the police authorities or the judge, giving an explanation that helps the investigation of the crime or the location of the assets, rights and valuables that were the object of the crime. The accused must point, for example, to names, conduct, and locales; in other words, concrete data or at least facts that indicate where to find the proof of the crime. The sentence will be reduced by one or two-thirds, served in an open system of imprisonment.

3. Federal Law No. 9,807 of 13 June 1999

This law establishes rules for the organization and maintenance of special programmes for the protection of victims and threatened witnesses It set up the Federal Program of Assistance for Victims and Threatened Witnesses and makes use of the protection of the accused and condemned who have voluntarily granted effective collaboration to the police investigation for a criminal trial by the identification of the other criminals and in the total or partial recovery of the proceeds of the crime. The investigated suspect (accused by the police chief or accused by the attorney general), in case of conviction, will have his or her sentence reduced by one or two-thirds.

4. Federal Law No. 18,127 of 27 December 1990

This law establishes that in the case of crimes committed by gangs or by more than one person, against the tributary order (those that defraud the collection of taxes foreseen in law) and against the economic order and consumer relations (formation of cartels and other crimes committed against consumers in general) that the person who committed the offence, presenting him or herself spontaneously to the police chief or to the judge, will have his or her sentence reduced by one or two-thirds.

Concerning to the protection of the criminal collaborator, the application of especial measures of security and protection are possible, but have to be determined by a judge because there is no specification of those measures in concrete cases.

5. Federal Law No. 7,492 of 16 June 1986

This law establishes the crimes against the National Financial System.

Article 21 of this law specifies the crime of tax evasion which is characterized by imputing to itself or to a third party false identity for the realization of currencies. It is committed by offshore companies set up in tax havens, whose proprietors, apart using false names to open a bank account in Brazil, also run illegal currency business.

**B. Controlled Delivery**

Controlled delivery is foreseen in Federal Law No. 10,207 of 11 April 2001. It consists of delay and waiting for a better moment for police action against members of a criminal organization.

It grants police the right to wait for a more appropriate opportunity to act, where, in the right moment, according to the police chief, they can create a situation more conducive to obtaining proof of the crime. It can be done with or without the infiltration of police officers. In the latter case, judicial authorization is required. However, in Brazil, this kind of thing has not been used thus far.

**C. Access for Data in the Media**

Although the Federal Constitution of 1988 provides that the secrecy of postal and telegraphic communications is inviolable, it makes an exception, according to law, for criminal investigation or penal procedure instructions, where there is judicial authorization, determining the violability of the secrecy of telephonic communications.

In this way, according to Federal Law No. 9,296 of 7 July 1996, the police and/or the Government can trace the suspects. This is called wiretap. This law, foreseeing modern situations, enlarged its application in cases of information technology, and allows interception of messages via email.

According to the law, the police chief must conduct the procedures of cutting off telephone calls, reporting it to the Government.

On the other hand, illegal recording (recording not obtained by judicial order), is a crime, according to the law.

**D. Acoustic Surveillance**

Federal Law No. 9,034 of 3 May 1995, which talks about criminal organizations, was partially modified by Law No. 10,217 of 11 April 2001. It makes use, in any phase of the investigation, of the collection and interception of optical or acoustic electromagnetic signals, after the judicial authorization.

**E. Inversion of the Burden of Proof**

The inversion of proof is foreseen in the law relating to money laundering. It is a mechanism that aims to cope with the difficulty of the investigation, which elapses from the complexity of situations created by the money launderers.

It treats the provisional seizure and freezing of assets with the inversion of the burden of proof. The suspect has to prove the licit origin of the assets, which, once done, will allow the release of those assets.

**F. Breach of Bank and Fiscal Secrecy**

These are very important provisions, mainly when invoked against public administration and money laundering. They are very useful in the investigative phase, which is conducted by the police.

Complementary Law No. 105/2001, which talks about the secrecy of transactions of financial entities, establishes in which cases authorization of breach of banking secrecy is possible: in any phase of police inquiry or trial; under judicial authorization; in cases of terrorism; in cases of illicit traffic of narcotics or drugs; in cases of smuggling or traffic of weapons, munitions or materials used for munitions production; extortion on kidnapping; crimes against the national financial system and public administration; crimes against the tributary order and national health; and money laundering or hiding of assets, rights and valuables committed by criminal organizations. In fact, the conditions are referred to in the law establishing the offence of money laundering. Information about banking transactions of legal persons should be also undertaken by judicial order.

In the case of fiscal secrecy, if a natural person has property evidently superior to the limits of his or her origin or income, it signifies gain through illicit activities, civil or criminal.

Thus, income tax of either legal or natural persons is important material in any procedures necessary for the verification of goods and valuables.

**G. Breach of Credit Card Transactions**

There is no established legal foresight concerning the obligatory maintenance of secrecy in relation to transactions made through the Administration of the Credit Cards Entity, because they are not Financial Entities.

However, aiming for the preservation of the proof, the police chief must request the judge to determine, under judicial order, the data required of the Administration of the Credit Cards Entity.

**H. Protection of Victims and Witnesses**

*Inter alia*, DNA examinations, graphic techniques, comparison of materials, recognition of voices, and examination of documentary evidence, are more often used for the proving of criminal facts.

Nevertheless, testimonial proof cannot be dispensed with, being, in any situation, determinant for the investigation of the crime. What happens is, normally, the person feels uncomfortable about testifying, even at a police station or at a court of law. The situation is even worse for simple or humble people who, many times, through ignorance, may be afraid of justice, even though they are serving as witnesses.

The Penal Code determines that the crime of false testimony is punishable by one to three years of confinement. Nonetheless, if the condition of the witnesses in a common penal trial is already delicate, a situation in which they testify of the actions of people connected or supposedly connected with criminal organizations will be even more serious. It was necessary to introduce a mechanism for protection of witnesses, according to Federal Law No. 9,807 of 13 July 1999.

The lack of resources is the big obstacle to the efficient application of this Law and of the programmes foreseen in it, such as the change of residential address, and the support of the witness/victim and of their family during the months of the trial, in addition to the matter of police protection.

Article 11 of the Law mentioned above foresees a maximum duration of two years for State protection of the witness/victim, which can be extended in exceptional cases; in other words, when the reasons for the protection subsist.

This legislation also mentions the hiding of qualified data of the witness/victim from third parties, in other words, parties who are not part of the trial, including the press.

His or her identity must be preserved from the investigative phase.

Article 9 allows for the change of identity of the witness/victim, with alteration of the names of the people to be protected and also of people closely related to them.

**I. Search and Seizure**

Articles 240 to 250 of the Criminal Procedure Code, Federal Law No. 3,689 of 3 October 1941, establish the possibility of using search and seizure as provisional remedies to ensure the collection of crime proofs and instruments. It is usually accomplished by the police during a criminal investigation, after the judge's order, through the representation of the police chief, or without the judge's order, when it is permitted by the resident or by the person who is responsible for the locale where the measure will be executed.

## X. CONCLUSION

Thus, as it was pointed out in this paper, the Brazilian framework for criminal liability of corporate entities is determined in the 1988 Constitution of the Federative Republic, but only as it relates to the environment and consumer defence.

Nevertheless, the punishment foresighted has, as a matter of fact, an administrative legal effect. However, in order to avoid economic organized crime through corporate entities, the Brazilian legal framework has developed important and modern tools which are being applied by the police and prosecutors, leading to greater success in solving crime, but not particularly in crimes of money laundering. This is because the law determines that only assets that come from a limited number of predicate crimes may make it possible to identify the money laundering crime.

Nowadays, the Brazilian institutional entities of law enforcement are promoting closer co-operation in order to apply the rule of law against natural persons who commit crime through corporate entities and some assets of such persons have been seized. In this regard, it is important to remember that, in many

ways, these entities do not develop economic and social activity; their only interest is to launder money that results from other crimes, which greatly damages society, especially the needy.

Of course, there must be many improvements of the legal system and developments in investigation in Brazilian law enforcement. Police, public prosecutors and judges are trying their best to fight economic criminal organizations in any way they can. It is important to say that the Brazilian legislation is efficient, and it is only necessary to secure the commitment of those who are responsible for putting into practice Brazilian law enforcement.

At least, to achieve real results against the economic criminal organizations, the most important thing to do is to improve the investigation, prosecution and trial of crimes like embezzlement, corruption, and crimes against public administration, as mentioned in the *Aquarela Investigation* below.

# APPENDIX

The *Aquarela Brasileira* investigation began in 2005, when financial transactions were observed by means of a corporate card of a State Bank, for the payment of large and small companies, non-governmental organizations, and other financial institutions. Thus, a police chief requested the approval of a judge for telephone interception of the suspicious companies and of their main staff members, including the president of the State Bank.

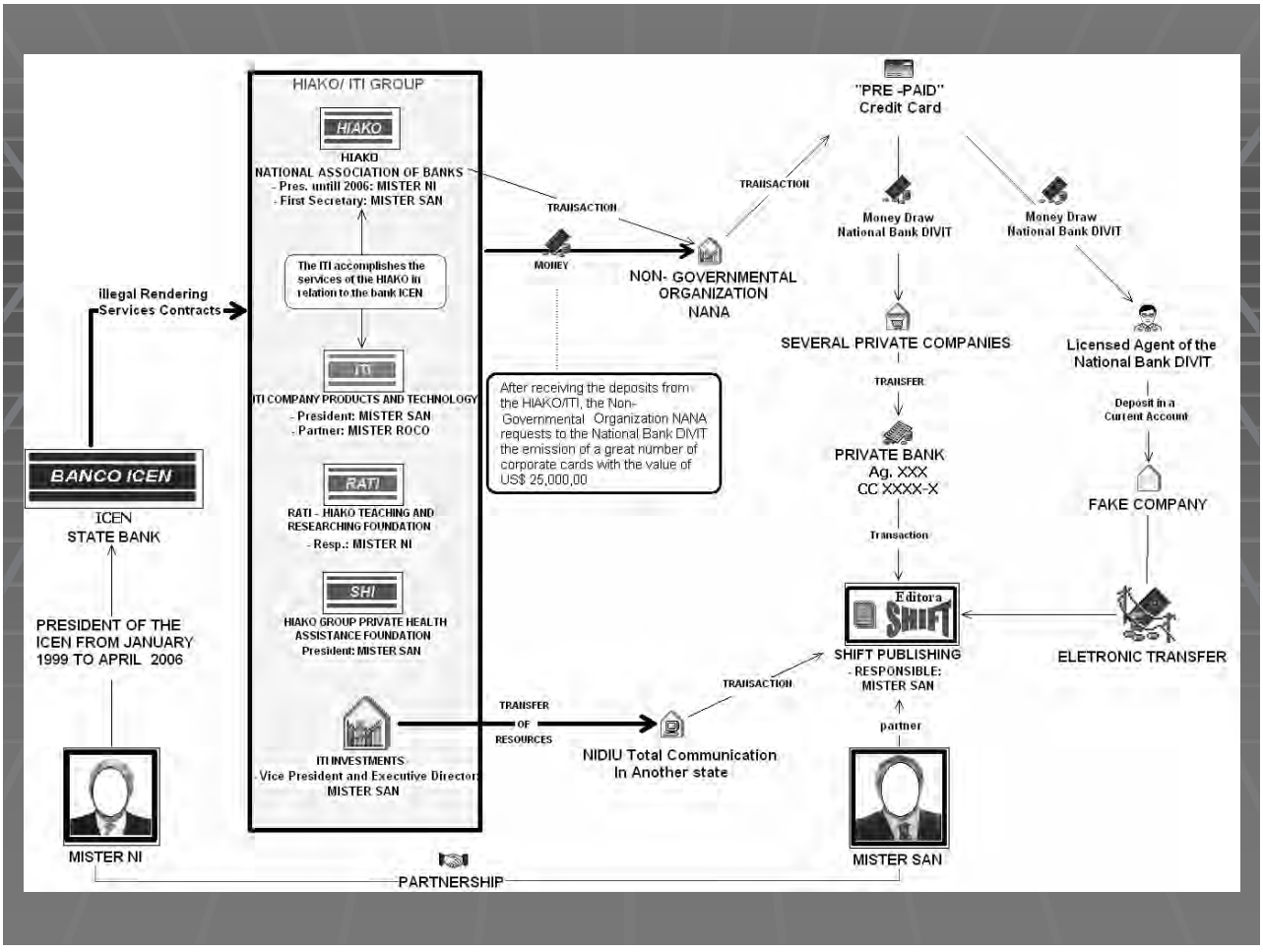
After two years of investigation, where those legal tools were applied, the police and the public prosecution service were able to identify how this criminal scheme worked. Police chiefs and prosecutors requested the judge's permission to apply legal tools such as search and seizure and cautionary lockdown. Seventeen prosecutors, 41 police chiefs and 283 police officers took part in the execution of these measures.

As a result, 20 people were arrested in Brasília and other states of Brazil. Also, 40 search and seizure warrants were executed resulting in the seizure of 130 computers.

In the State Bank, US$ 240,000 (two hundred and forty thousand U.S dollars) was seized at the headquarters and all books named *Aquarela Brasileira* found with the suspects were arrested.

The suspects will be prosecuted for offences such as money laundering and crimes against public administration. It is assumed that the deviated money was around US$ 30,000,000 (thirty million U.S dollars).

The foreseen punishment is around 25 years' imprisonment, a fine and freezing of the assets.



All the real names involved in this case where changed because, in Brazil, no one shall be considered guilty before the issuing of a final penal sentence.

The criminal organization used to work in this way:

- (i) Mr. Ni was the president of that ICEN bank from January 1999 until April 2006;
- (ii) Mr. Ni used to make illegal Rendering Services Contracts through the ICEN Bank with these groups below;
- A – Hiako Group: Mr. Ni was the president of this group until 2006 and Mr. San was one of its board members;
- B – ITI Company Products and Technology. It used to work for the Hiako Group which was contracted to provide the services by the ICEN Bank. The president of the ITI Company was Mr. San.
- C – RATI: Teaching and Researching Foundation; used to render services to ICEN Bank. Mr. Ni was the chairman;
- D – SHI: Hiako Group Private Health Assistance Foundation: Mr. San was the chairman;
- E – ITI Investments: The chairman and business director was Mr. San.

Hiako Group used to trade with an NGO called NANA and used to pay for the service with a corporate debit card belonging to ICEN Bank. After receiving the money, NANA required the issuing of some corporative cards to the value of 25,000 U.S. dollars.

This amount of money was withdrawn and passed again to many private companies which deposited the money in private banks. The banks then used that money to pay Shift Publishing, which belonged to Mr. San, who was its chairman. The most interesting thing is that Shift Publishing, during its existence, published only one book, called *Aquarela Brasileira*. This publishing company also received money from ITI Investments, but not directly, because ITI transferred the money through NIDIU Total Communication in another state. The money received by SHIFT Publishing was incorporated as property of Mr. San who divided it among them.

Those companies used to withdraw the money with the corporate debit card of ICEN bank and used to make deposits at the DIVIT Bank. The bank had an employee who used to make the transaction, depositing the money into the account of fake companies who transferred the money electronically to SHIFT Publishing.