FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING IN SOUTH AMERICA

FINANCIAL ACTION TASK FORCE

Mutual Evaluation Report Executive Summary

Anti-Money Laundering and Combating the Financing of Terrorism

Federative Republic of Brazil

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Brazil is a member of the Financial Action Task Force (FATF) and the Financial Task Force on Money Laundering in South America (GAFISUD). This joint GAFISUD-FATF evaluation was adopted by the FATF Plenary on 25 June 2010.

MUTUAL EVALUATION REPORT OF THE FEDERATIVE REPUBLIC OF BRAZIL

EXECUTIVE SUMMARY

1. This report summarises the anti-money laundering (AML)/combating the financing of terrorism (CFT) measures in place in the Federative Republic of Brazil (hereinafter Brazil) as of the time of the on-site visit (26 October to 7 November 2009), and shortly thereafter. The report describes and analyses those measures and provides recommendations on how certain aspects of the system could be strengthened. It also sets out Brazil's levels of compliance with the Financial Action Task Force (FATF) *40+9 Recommendations* (see the attached table on the *Ratings of Compliance with the FATF Recommendations*).

1. Key Findings

2. Brazil, which is a member of both the FATF and the *Grupo de Acción Financiera de Sudamérica* (GAFISUD), has developed a coherent AML/CFT strategy, the National Strategy Against Corruption and Money Laundering (ENCCLA), which has enabled it to make systematic progress to enhance its implementation of AML/CFT measures. An important outcome of this strategy is a Bill to amend Federal Law 9613/1998 (the *AML Law*) and criminalise terrorist financing. This Bill has been approved by the Senate and is currently under consideration in the House of Representatives.

3. Brazil has significantly enhanced its ability to prosecute money laundering (ML) offences by implementing a system of Specialised Federal Courts which bring together federal prosecutors and judges specialised and with experience in handling cases involving ML and other financial crimes. The main sources of proceeds of crime in Brazil are corruption and crimes against the national financial system, including fraud and capital flight. Drug trafficking, weapons trafficking, organised crime, smuggling and embezzlement of governmental money are also important sources of illegal proceeds.

4. The ML risks are higher in relation to the border areas and the informal economy. The banking sector is perceived to face greater ML risk in the business areas of foreign exchange and private banking. ML risk has been detected in the securities sector through the use of a broker to deposit funds and conduct stock market transactions. In the insurance sector, accumulation, life and pension/retirement products are perceived as being the most vulnerable to ML. Some cases of illicit drugs being exchanged for precious stones have been detected, although this is uncommon, as profit margins for precious stones sold on the open market are relatively low because most of the precious stone trade conducted in Brazil is carried out on the wholesale export market and the retail market is residual. No ML cases have been detected in the closed pension funds sector.

5. The government of Brazil has been working to mitigate the risk of terrorist financing (FT) in its territory. Such work has been carried out in close co-operation with other interested governments and allows it to keep under strict surveillance all activities considered to be of higher risk. Initiatives such as regional intelligence structures, joint operations and exchange of information, among others, are used to identify, prevent and disrupt activities that could be related to terrorism and its financing.

6. The ML offence is largely in line with international requirements; however, overall the number of final sentences and convictions is low, given the size of the country and the sophistication of its financial system. Brazil has not criminalised terrorist financing as a stand alone offence in a manner that is consistent with the international requirements. Since 2004, Brazil has pursued a strategy of enhancing its systems for applying provisional measures and confiscation. Overall, the statistics show a sufficient number of seizures, but a relatively low number of confiscations.

7. Brazil has effective mechanisms to facilitate policy and operational co-operation at the domestic level, particularly through the ENCCLA mechanism. Systems for providing mutual legal assistance (MLA) are not impacted by deficiencies in the criminalisation of terrorist financing because Brazil can provide MLA in the absence of dual criminality and has demonstrated its ability to do so in practice. Money laundering is an extraditable offence. However, deficiencies in the criminalisation of FT impede Brazil's ability to extradite (or prosecute its own nationals) in such cases, as dual criminality is required.

8. Preventative measures apply to all financial institutions, dealers in precious metals and stones, and real estate agents who are legal persons. However, the extent to which such measures are elaborated is much less robust outside of the banking (including money remittance and foreign exchange), securities and insurance sectors. All financial institutions are subject to comprehensive requirements to identify politically exposed persons (PEPs), keep records and report suspicious transactions. Banking, securities and insurance institutions are required to identify beneficial owners. Breaches of the AML/CFT requirements are punishable by a full range of sanctions.

9. Key recommendations made to Brazil include: criminalise FT in a manner consistent with the international requirements; continue to support the Specialised Federal Courts and other measures to enhance the ability to apply final sanctions for ML; extend corporate civil or administrative liability to legal persons who commit ML/FT; ensure that confiscation is systematically pursued; implement effective laws and procedures to take freezing action pursuant to the relevant United Nations Security Council Resolutions (UNSCRs); broaden the obligation to declare physical cross-border transportations of currency and bearer negotiable instruments (BNI); enhance supervisory powers and resources in some areas; increase supervision of non-bank financial institutions; and extend AML/CFT requirements to all categories of designated non-financial businesses and professions (DNFBP).

2. Legal systems and Related Institutional Measures

10. Brazil criminalised ML as an autonomous offence in 1998. Article 1 of the *AML Law* covers the concealment, disguise, conversion, transfer, acquisition, possession and use of proceeds in a manner which is largely consistent with 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*). The ML offence extends to self-launderers and instances where the proceeds were generated from a predicate offence committed abroad. All 20 FATF designated categories of predicate offences are predicate offences for ML. However, there is an insufficient range of

offences in the category of *terrorism, including terrorist financing* because FT is not criminalised as a stand alone offence in Brazil (other than in extremely limited circumstances), and offences in nine of the FATF designated categories of offences are predicates for ML only when committed by a criminal organisation. Criminal liability for ML does not extend to legal persons, due to fundamental principles of domestic law, and Brazil has not made corporate civil or administrative liability directly applicable to legal persons who commit ML, as is required in such circumstances. Natural persons who commit a ML offence are punishable by three to 10 years imprisonment (or more if the offence is committed by a criminal organisation), plus a fine.

11. The creation of the Specialised Federal Courts in 2003 has greatly enhanced Brazil's ability to prosecute ML by bringing together federal prosecutors and judges who are specialised and have expertise and experience in handling cases involving ML and other financial crimes. Before this step was taken, there were very few proceedings for ML; however, following the creation of the Specialised Federal Courts, the number of proceedings started to rise. Unfortunately, comprehensive statistics have not been maintained since the beginning of the process which means that a clear picture of the progress being made by the Specialised Federal Courts is not available. Comprehensive statistics of ML investigations, prosecutions and convictions are not kept at either the federal or state level. Overall, the limited statistics available indicate a very low number of final sentences and convictions for ML in a country with such an important and sophisticated financial system. This raises serious concern about the overall effectiveness of implementation, given the size of the financial system and level of money laundering risk in the country.

12. Brazil has not criminalised terrorist financing in a manner that is consistent with Special Recommendation II. The financing of terrorist acts is not covered as a stand alone offence (although such activity may be prosecuted as an ancillary offence to the commission/attempt of a terrorist act). Financing of terrorist organisations is covered to a very limited extent in articles 20 and 24 of Law 7170/1983. However, these offences, which were originally designed to deter a violent overthrow of the government, do not cover the vast majority of terrorist financing activities of the kind envisaged by Special Recommendation II. The financing of individual terrorists, for purposes unrelated to a terrorist act, is not covered. Terrorist financing, to the extent that it has been criminalised, is a predicate offence for money laundering. There have been no terrorist financing prosecutions or convictions in Brazil, and articles 20 and 24 have never been used to combat FT activity of the sort contemplated by Special Recommendation II.

13. Brazil is generally able to confiscate property related to money laundering, predicate offences and some terrorist financing offences. However, Brazil is unable to confiscate property in relation to the following types of FT activity which are not criminalised in Brazil: *(i)* financing a terrorist organisation (other than in the limited circumstances set out in Law 7170/1983); *(ii)* financing a terrorist individual for a purpose unrelated to a terrorist act; and *(iii)* financing a terrorist act in circumstances where the act has not yet been committed or attempted, unless the assets are connected to some other type of illicit activity. Statistics for all courts from 2008 to 2009 show total seizures of about EUR 329 million/USD 489 million, of which EUR 71 million/USD 105 million was seized in relation to 8 273 ML cases. From 2006 to 2007, the Specialised Federal Courts alone seized over EUR 480/USD 712 million in relation to 423 ML cases. However, the statistics show a low number of confiscations, particularly given the size and crime rate of the country. For example, statistics provided in relation to state-level ML prosecutions show only 23 confiscation decisions being granted during the three-year period from 2007 to 2009, and no statistics were available concerning confiscation orders obtained in the Specialised Federal Courts. Part of

the problem is the lack of reliable statistics. However, other factors, such as the weak system for administering and managing assets also impact the overall effectiveness of the confiscation regime.

14. Brazil has transposed UNSCR 1267(1999) and UNSCR 1373(2001) into its domestic law through Presidential Decrees. However, it relies wholly on its ordinary criminal and MLA procedures to implement these Resolutions. This approach significantly undermines Brazil's ability to freeze, in a timely way, terrorist-related assets in the context of the UNSCRs and effectiveness has not been established. Brazil has not designated any person or entity pursuant to UNSCR 1373(2001), and has no clear mechanism for doing so. Brazil has not implemented any procedures for considering de-listing requests or unfreezing the funds/assets of de-listed persons/entities. There are no effective measures in place to monitor compliance with Brazil's implementation of these Resolutions, and no specific civil, administrative or criminal sanctions for failing to comply with the relevant Decrees. Brazil has not frozen any property pursuant to either UNSCR 1267(1999) or 1373(2001).

15. In March 1998, Brazil enacted the *AML Law* which established the Council for Financial Activities Control (COAF) as an administrative financial intelligence unit (FIU) under jurisdiction of the Ministry of Finance. COAF has been an Egmont Group member since 1999. It is an important institution in Brazil's AML framework, and is an effective and well-regarded FIU. Technically, COAF's authority is limited to receiving and analysing suspicious transaction reports (STRs) related to crimes specifically mentioned in the *AML Law*. However, the impact of this issue is mitigated since COAF's authority to disseminate STRs and other relevant information is much broader, applying also to indications of any other illicit activity. COAF is, essentially, a paperless FIU (all STRs and CTRs are received in electronic form) which facilitates its ability to manage and analyse the large number of reports that it receives. Overall, COAF appears to be performing its FIU functions effectively. Law enforcement and prosecutorial authorities expressed overall satisfaction with the products and co-operation received from COAF, indicating that the technical quality of its analysis is very high, its reports are generally useful, and COAF is readily accessible and able to provide further support to ongoing investigations and prosecutions.

16. Brazil's prosecution and enforcement authorities are designated with responsibility for ensuring that all crimes, including ML and FT are properly investigated. The federal law enforcement authorities, including the Department of Federal Police (DPF) appear to be well-resourced and are gaining AML/CFT training. However, it has not been established that the state-level law enforcement authorities (the Civil Police) have sufficient resources. All State and Federal Prosecution Services are empowered to investigate ML cases. In addition to the Specialised Federal Courts, specialised money laundering/financial crimes units also exist at the State level. Although the statistics demonstrate significant improvement since 2006, in some areas, the authorities are still focused on pursuing predicate offences, and are not yet targeting ML effectively. Both federal and state-level investigations and prosecutions are conducted pursuant to the procedures found in the *Criminal Procedure Code* and the *AML Law*. The powers to compel production of documents, and conduct search and seizure are technically sufficient, but are not always applied effectively.

17. Brazil has implemented a declaration system in relation to physical cross-border transportations of currency/BNI. This system appears to provide a solid basis for implementing Special Recommendation IX. However, the obligation to declare does not extend to physical cross-border transportations being made in containerised cargo or in unaccompanied baggage, and does not cover all types of BNI. Additionally, the customs authorities should be provided with additional human and technical resources, and have a greater range of sanctions available for persons who make a false

declaration or fail to declare as required. Overall, the authorities should focus on enhancing the implementation, as the number of false declarations and illicit cross-border transportations being detected is quite low.

3. Preventative measures – Financial institutions

18. The *AML Law* applies to a broad range of financial institutions (FIs) and covers all of the financial activities falling within the scope of the *FATF Recommendations*. The cornerstone of the legal framework of preventative measures is Law 9613/1998 (the *AML Law*) and the relevant regulations issued by supervisors. Financial institutions are required to implement measures for customer due diligence (CDD), record keeping, STR reporting, and internal controls. The general provisions of the *AML Law* apply to all FIs equally. However, the extent to which each supervisor has elaborated more specific preventative measures varies, and is much less robust outside of the banking (including money remittance and foreign exchange), securities and insurance sectors. Brazil has applied a risk-based approach to countering ML/FT, though not comprehensively of the kind contemplated in the *FATF Recommendations*.

19. Financial institutions are not permitted to keep anonymous accounts. Financial institutions in the banking sector are subject to the most explicit requirements, followed closely by those in the securities and insurance sectors. These institutions are required to identify the beneficial owner and any person purporting to act on behalf of the customer, and take reasonable measures to understand the ownership and control of the customer. Institutions in the banking sector are: expressly required to obtain information on the purpose and intended nature of the business relationship; and required to take action in line with Recommendation 5 when CDD cannot be completed. Banking and insurance institutions are required to conduct ongoing due diligence. None of these specific requirements extend to closed pension funds or factoring companies. Closed pension funds and factoring companies are not explicitly required to immediately conduct CDD when there are doubts about the veracity or adequacy of previously obtained customer identification. In terms of effectiveness, banking institutions are experiencing some difficulties in implementing the newer CDD requirements (such as the obligations to identify beneficial owners, obtain information on the purpose and intended nature of the business relationship and apply CDD measures to existing customers on the basis of materiality and risk). The effectiveness of implementation in the other sectors was not established.

20. Brazil has extended requirements relating to PEPs on all financial institutions. From 2006 to 2009, each of the five federal regulatory agencies issued regulatory instruments addressing the issue of PEPs. These instruments lay out similar, though not always consistent, obligations which address almost all the requirements outlined in Recommendation 6. While there is a sufficient level of awareness of the PEP requirements in the private sector, a number of the relevant regulatory instruments were issued quite recently and, as a result, it is too soon to determine effectiveness.

21. For the most part, financial secrecy does not impede implementation of the *FATF Recommendations.* The exception is in relation to COAF in its role as a supervisor. The supervisory arm of COAF is privy to STR information gathered in COAF's role as FIU. COAF has managed to leverage off its FIU function to monitor (off-site) compliance with the suspicious transaction reporting obligation. However, COAF has no powers of inspection which inhibits the implementation of Recommendations 23 and 29, and negatively impacts COAF's ability to properly perform its supervisory functions.

22. All financial institutions are generally required to keep updated CDD records and records of all transactions for a minimum period of five years from the closure of the account or conclusion of the transaction. However, there is no specific obligation to maintain records of business correspondence (*e.g.* other documents not related to financial transactions or the CDD process, such as letters to file or other notifications to the customer). Records must be made available to the competent authorities on a timely basis.

23. Implementation of Special Recommendation VII is integrated into Brazil's exchange control regime, and covers most aspects of Special Recommendation VII. However, compliance monitoring is insufficient, including the application of sanctions where appropriate. It is illegal to conduct remittance activity without BACEN authorisation. Where illegal money remitters are detected, the case is handled by the police as a criminal matter. The authorities have been working to crack down on illegal operators and the parallel (black market) exchange is reportedly decreasing in Brazil.

24. Financial institutions are required to pay special attention to complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose. However, this obligation is not sufficiently broad for closed pension funds and factoring companies, and these institutions are not expressly required to examine as far as possible the background and purpose of such transactions or set forth their findings in writing. Only banking and non-bank financial institutions are required to pay special attention to business relationship and transactions with persons from or in countries which do not or insufficiently apply the *FATF Recommendations.*

25. The obligation to report STRs applies to (attempted) transactions where there is a suspicion of one of the crimes mentioned in the *AML Law*. This formulation means that the reporting obligation is negatively impacted by the deficiencies in the range of predicate offences set out in the *AML Law*. However, this deficiency is mitigated as supervision of compliance with the reporting obligation has not revealed that this issue is having a negative impact on the implementation of the reporting obligation in practice. Most (90%) STRs are submitted by the banking sector, although the number of STRs being filed by other sectors is increasing. Financial institutions are protected from civil and administrative liability when they report in good faith and tipping off is prohibited. The reporting obligation does not extend to suspicious transactions related to financing a terrorist organisation (other than in the limited context of Law 7170/1983) or an individual terrorist, except in the case of persons and entities designated pursuant to UNSCR 1267(1999) and 1373(2001). COAF has received a low number of FT-related STRs. The STR reporting obligation in relation to terrorist financing is not very well articulated. Reporting entities do not appear to have a common understanding concerning the exact scope of the FT-related reporting obligation, which negatively impacts effectiveness.

26. Institutions in the banking, securities and insurance sectors are required to implement internal controls; however, such requirements have not been fully extended to factoring companies. The closed pension funds sector is not covered. Financial institutions (other than the foreign branches and majority-owned subsidiaries of SUSEP/FIs) are not required to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the *FATF Recommendations*.

27. While there is no explicit prohibition on operating a shell bank in Brazil, the licensing process for banks makes it impossible for a shell bank to be licensed and operate. However, financial institutions are not prohibited from entering into or continuing correspondent relationships with shell banks, or required to

satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

28. There are four primary supervisory authorities in the financial sector: the Central Bank of Brazil (BACEN) for banks and non-bank financial institutions (including money remitters and foreign exchange bureaus); the Securities and Exchange Commission of Brazil (CVM) for the securities sector; the Superintendence of Private Insurance (SUSEP) for the insurance sector and complementary pension plans; and the Secretariat of Complementary Providence (SPC)[1] for closed pension funds. Additionally, COAF supervises factoring companies.

29. BACEN, CVM and SUSEP are the licensing authorities in relation to the financial institutions that they supervise, and all incorporate "fit and proper" in their licensing procedures. SPC is responsible for authorising the establishment of closed pension funds, but in considering the suitability of persons to establish and manage such funds, the focus is on the fiscal/economic situation of the person, rather than issues that are particularly relevant to preventing criminals from holding or controlling such funds. Factoring companies are not subject to any licensing or registration requirements.

30. Overall, the supervisory framework and powers in the banking, securities and insurance sectors are generally adequate, but are not being implemented effectively. Supervision of non-bank financial institutions is currently less than fully adequate, with mainly awareness raising being conducted in the past. Factoring companies are not subject to effective AML/CFT supervision because COAF has neither adequate supervisory powers nor sufficient staff.

31. All five supervisors—BACEN, CVM, SUSEP, SPC and COAF—are authorised to apply the penalties set out in article 12 of the *AML Law*, in relation to those institutions within their jurisdiction, for non-compliance with the AML/CFT requirements. Article 12 provides a broad range of sanctions: warnings; fines ranging from 1% of up to two times the value of the transaction, or up to 200% of the profit (presumably) obtained from the transaction, or up to BRL 200 000 (EUR 78 000/USD 116 000); a temporary prohibition for a period up to 10 years from holding a management position in any FI; or cancelling the FI's licence to operate. These penalties may be applied to the institutions, and/or their directors and senior management.

4. Preventative measures – Designated Non-Financial Businesses and Professions

32. The following designated non-financial businesses and professions are subject to AML/CFT obligations: real estate agents (legal persons only), and dealers in precious metals and stones, collectively referred to as "Accountable DNFBPs". Casinos of all types have been prohibited in Brazil since 1946. The following businesses and professions do exist in Brazil, but are not subject to any AML/CFT obligations as is required by the *FATF Recommendations*: accountants; lawyers and notaries; and company service providers. There is a further gap because the AML/CFT requirements do not apply to natural persons conducting real estate business. Collectively, these are referred to as Uncovered DNFBPs.

33. The *AML Law* sets out general CDD and record keeping requirements that apply to all Accountable DNFBPs in the same way as they apply to financial institutions. However, it should be noted that real estate agents seem to be generally unaware of these obligations. COAF has issued sector-specific

[1] Now the National Superintendence for Pension Funds (PREVIC).

requirements for dealers in precious metals and stones extending the CDD obligations to all transactions, regardless of value or type. This goes farther than Recommendation 12 which only covers dealers when engaging in cash transactions with a customer equal to or above USD/EUR 15 000 in value. Dealers in precious metals/stones are not subject to the more specific requirements of Recommendation 5 (*e.g.* requirements to verify the customer's identity; identify beneficial owners; confirm whether the customer is acting on behalf of another person; understand the ownership and control structure of customers who are legal persons; obtain information on the purpose and intended nature of the business relationship; conduct on-going due diligence; or conduct enhanced CDD on high risk customers). They are, however, subject to requirements regarding PEPs and record keeping which are generally sufficient. However, the record keeping obligation does not extend to business correspondence, and the threshold for record keeping for "industrial sector sales" is higher than permitted. The requirements of Recommendation 8 do not apply to dealers in precious metals/stones, even though there is some non-face-to-face business in the form of retail jewellery sales over the internet. Recommendation 9 is not applicable to dealers in precious metals/stones given the nature of their business environment and clientele.

34. The *AML Law* sets out an obligation to report suspicious transactions, and also provides protections from liability and a prohibition against tipping off. These requirements apply to all Accountable DNFBPs in the same way that they apply to Accountable FIs. Additionally, COAF has issued sector-specific requirements applicable to dealers in precious metals/stones. Dealers are required to report any suspicious transactions, regardless of their value. This goes further than Recommendation 16 which only requires dealers to report STRs when engaging in cash transactions equal to or above EUR/USD 15 000. The level of reporting by real estate agents has been quite robust in recent years, but the level of reporting by dealers in precious metals/stones is very low. This is somewhat surprising considering that Brazil is the largest producer of coloured gems in the world, and also has a large precious metals industry. This raises concern that the reporting obligation is not effectively implemented in this sector.

35. COAF is the designated competent authority responsible for monitoring and ensuring that dealers in precious metals/stones comply with their AML/CFT requirements. However, it is a serious deficiency that COAF does not have sufficient supervisory powers or resources to perform its supervisory functions. COAF is authorised to apply the sanctions set out in the *AML Law* to dealers in precious metals/stones who breach the AML/CFT requirements. Real estate agents are legally under the supervision of their own self-regulatory organisation—the COFECI. COFECI is authorised to apply the sanctions set out in the *AML Law* to real estate agents who breach the AML/CFT requirements. However, COFECI has not yet undertaken any AML/CFT monitoring or supervision, and does not have adequate supervisory powers or resources to do so.

5. Legal Persons and Arrangements & Non-Profit Organisations

36. Brazil has implemented a comprehensive system of tax registration which allows the authorities timely access to beneficial ownership information in circumstances where all parties in the ownership chain have been issued a CNPJ/CPF number. The requirement to obtain a CNPJ/CPF number extends to broad range of persons including: all natural persons who are Brazilian citizens/residents; all legal persons located or doing business in Brazil; and foreign legal persons with no physical presence in Brazil, but who have invested in publicly traded Brazilian companies. Nevertheless, a gap remains because this method of tracing does not work if the chain of ownership is broken by parties who do not have CNPJ/CPF numbers; in such cases, beneficial ownership information is not available. Although a small number of bearer shares which were issued before the prohibition came into effect still exist, the ML/FT risk is minimal as they

were issued in very narrow circumstances and cannot be used until full CDD is conducted and a declaration of their source is made. The creation of the centralised national company register (CNE), has enhanced the ability of the competent authorities to access information on the legal ownership and control of companies in a timely manner, and will also facilitate the tracing of assets. However, like most company registries, the CNE does not collect and maintain information on beneficial ownership and control which is the focus of Recommendation 33. Nevertheless, deficiencies in the CNE system are mitigated by the tax registration system which, in practice, is more commonly used by the authorities to trace beneficial ownership information.

37. The legal concept of a trust does not exist in Brazilian law. Brazilian law does not allow for the creation of trusts or similar types of legal arrangements. Brazil has not signed or ratified the *Hague Convention* of 1 July 1985 on the Law Applicable to Trusts and on their Recognition. A foreign trust may hold a bank account or operate in the Brazilian securities market, provided that it has registered with the RFB and obtained a Corporate Taxpayer Identification Number (CPNJ). The law of the jurisdiction where the trust was created governs how the trust may be operated and how much information on the trust (*e.g.* the trust deed) will be available in Brazil. Generally, foreign trusts are considered to be high risk clients.

38. Brazil has not reviewed the adequacy of its laws and regulations that relate to NPOs or undertaken an assessment of the terrorist financing risk in this sector. There has been no outreach to the NPO sector with a view to protecting the sector from terrorist financing abuse. NPOs are not subject to record-keeping requirements though a small proportion of the sector is currently subject to registration and must submit some information to competent authorities. The ability to gather information and investigate NPOs, where necessary, is seriously restricted due to the absence of information. A limited range of sanctions are available where there are violations of oversight measures or rules by NPOs or persons acting on behalf of NPOs. Brazil has not identified points of contact or procedures to respond to international requests for information regarding NPOs that are suspected of FT or other forms of terrorist support.

6. National and International Co-operation

39. Brazil has implemented a number of mechanisms that allow, at the domestic level, effective policy and operational co-operation and co-ordination. The cornerstone of domestic co-operation on issues relating to ML, FT and corruption is the ENCCLA. The ENCCLA is in charge of delivering national policy and enhancing the co-ordination of relevant government institutions and the private sector.

40. Brazil has signed and ratified the *Vienna Convention*, the *Palermo Convention*, and the *United Nations International Convention for the Suppression of the Financing of Terrorism* (the *Terrorist Financing Convention*). Brazil has implemented UNSCR 1267(1999) and 1373(2001) through Presidential Decrees, but overall the effectiveness of its implementation of these Resolutions has not been established.

41. Brazil provides mutual legal assistance in criminal matters on the basis of multilateral conventions, bilateral agreements or reciprocity, and on the basis of specific provisions in the *AML Law* using the following processes: the MLA request, letters rogatory and the enforcement of foreign decisions. Brazil's Central Authority for processing direct MLA requests and letters rogatory is the Department of Assets Recovery and International Legal Co-operation (DRCI) of the Ministry of Justice (or, in the case of MLA between Brazil/Canada and Brazil/Portugal, the Bureau of International Legal Co-operation (ASCJI) of the General Prosecutor's Office. The International Legal Co-operation Division (DCJI) of the Ministry of Foreign Affairs also plays an important role. The mechanism of enforcing a foreign decision

(*e.g.* foreign freezing and confiscation orders) is initiated upon request by an interested party or by the Chief Federal Prosecutor or the Ministry of Justice. Through these mechanisms, Brazil is able to provide a full range of mutual legal assistance in cases involving ML, FT and predicate offences. Although terrorist financing is not criminalized as a stand-alone offence in accordance with Special Recommendation II and there is an insufficient range of offences in some designated categories of predicate offences, these factors do not have a negative impact because Brazil is able to provide MLA in the absence of dual criminality and has demonstrated its ability to do so in practice. Although letters rogatory are, reportedly, slow to obtain, this deficiency is mitigated as very few MLA requests proceed on this basis. In the absence of specific information on the length of time taken to respond to MLA requests, effectiveness has not been established.

42. Money laundering is an extraditable offence. Extradition may be granted regardless of whether a foreign criminal conviction has been obtained; it is sufficient for an investigative criminal procedure to be underway in the requesting state, where a person's detention has been ordered. Extradition is provided for in the *Constitution* art.102(I)(g), *Foreigners Statutes* art.9(II) and Decree 6061/2007. Currently, Brazil has 21 extradition treaties in force. Extradition may also be granted on the basis of reciprocity. The above provisions apply equally to ML, terrorist financing and predicate offence cases. Although nine of the designated categories of predicate offence are only predicate offences for ML when committed by an organized criminal organization, this does not negatively impact the ability to meet the dual criminality requirement for extradition because the underlying activity is criminalized (albeit not as a predicate offence) when committed by persons other than a criminal organisation. Likewise, even though terrorist financing is not criminalized as a stand-alone offence, it is nevertheless able to meet the dual criminality requirement in many cases since Brazil interprets dual criminality very broadly. In practice, this means that Brazil is able to extradite a defendant who has attempted/committed the financing of a terrorist act or has financed a terrorist organisation in the very limited circumstances covered by Law 7170/1986. However, gaps remain in relation to the following types of FT activity which are not criminalized in Brazil: terrorist financing with the intention to finance a terrorist act which has not yet been committed/attempted; and financing a terrorist organisation (other than in the very limited circumstances covered by Law 7170/1983) or individual terrorist for a purpose unrelated to a terrorist act. Brazil does not extradite its own nationals as this is prohibited by the *Constitution*. In such cases, the Brazilian authorities are required to prosecute the national who has committed the crime. However, Brazil is severely limited in its ability to prosecute terrorist financing cases because it has not criminalised FT as a stand-alone offence in a manner that is consistent with Special Recommendation II. This has serious implications for its implementation of Special Recommendation V. Brazil has received 12 extradition requests relating to ML, of which eight were granted. There have been no extradition cases or requests relating to FT. The average time for granting an extradition request is about 17 months.

43. Brazil has implemented measures that enable its competent authorities to co-operate with their foreign counterparts. There are controls and safeguards in place to ensure that information received by the competent authorities is used only in an authorized manner. Law enforcement authorities are able to co-operate through the INTERPOL framework, and conduct joint investigations with their foreign counterparts. COAF has signed a number of MOUs with other FIUs, and is also able to exchange information, upon request or spontaneously, with foreign counterparts on the basis of reciprocity. All supervisory authorities are able to co-operate with their foreign counterparts. However, SUSEP has entered into only a small number of MOUs even though it is expected, in practice, to establish MOUs for the co-operation and information exchange with counterparts.

7. Resources and Statistics

44. COAF (as an FIU) is well-resourced, but would benefit from further human resources for its supervisory functions. There are no concerns in relation to federal level law enforcement and prosecutorial authorities; however, it is not established that the state-level police authorities are adequately structured and resourced, and judicial resources are insufficient in some areas of the country. Additionally, the customs authorities do not have adequate human and technical resources, although efforts are currently underway to improve the situation. BACEN is also in need of additional resources to enhance its supervision of non-bank financial institutions. The number of staff in the DRCI is not ideal in proportion to the number of cases, but the authorities are continuing to improve the situation through a comprehensive effort to increase the number of permanent public civil servants.

45. COAF and BACEN have good mechanisms for collecting statistics; however, in most other areas, improvement is needed. In particularly, there are insufficient mechanisms for collecting statistics on: the number of ML investigations, prosecutions and convictions; the number of supervisory inspections relating to/including AML/CFT and type of sanctions imposed by CVM, SUSEP and SPC; whether MLA and extradition requests relate to ML/FT or predicate offences; and the time taken to respond to MLA requests.

TABLE 1: RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS

The rating of compliance vis-à-vis the FATF Recommendations should be made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (NA).

Compliant	The Recommendation is fully observed with respect to all essential criteria.
Largely compliant	There are only minor shortcomings, with a large majority of the essential criteria being fully met.
Partially compliant	The country has taken some substantive action and complies with some of the essential criteria.
Non-compliant	There are major shortcomings, with a large majority of the essential criteria not being met.
Not applicable	A requirement or part of a requirement does not apply, due to the structural, legal or institutional features of a country *e.g.* a particular type of financial institution does not exist in that country.

Recommendations	Rating	Summary of Factors Underlying Rating[2]
Legal systems		
1 – ML offence	**PC**	• Effectiveness: Very few final convictions for ML and number of convictions in the first instance is also low given the level of ML risk and size of the financial sector. Very low penalties for conversion/transfer in the exceptional circumstances when the intention to conceal/disguise cannot be inferred from the circumstantial evidence (art.348-personal favouring offence) (1-6 months imprisonment and fine). • Insufficient range of predicate offences in 10 FATF designated categories of predicate offences (serious deficiencies in the criminalisation of FT; and offences in nine other designated categories are only considered predicates if they are committed by a criminal organisation). • Minor technical deficiencies in the criminalisation of the conversion/transfer of proceeds (self-laundering cases involving conversion/transfer performed for the purpose of helping a person to evade legal consequences not covered in those limited instances where the intention to conceal/disguise cannot be inferred from the circumstantial evidence).

[2] These factors are only required to be set out when the rating is less than Compliant.

Recommendations	Rating	Summary of Factors Underlying Rating[2]
2 – ML offence – mental element and corporate liability	**PC**	• Legal persons are not subject to direct civil or administrative liability for committing ML offences (corporate criminal liability not possible due to fundamental principles of domestic law). • Natural and legal persons are not subject to effective sanctions for ML because systemic problems in the court system seriously hamper the ability to obtain final convictions and sentences, and legal persons are not subject to direct civil/administrative sanctions for committing a ML offence. Very low penalties for conversion/transfer in the exceptional circumstances when the intention to conceal/disguise cannot be inferred from the circumstantial evidence (art.348-personal favouring offence) (1-6 months imprisonment and fine). • Effectiveness: Very few final convictions for ML and convictions in the first instance is low given the level of ML risk and size of the financial sector.
3 – Confiscation and provisional measures	**PC**	• Brazil is unable to apply provisional measures or confiscate property solely on the basis that it is related to the financing of a terrorist organisation (other than in the limited circumstances set out in Law 7170/1983), an individual terrorist for a purpose unrelated to a terrorist act, or financing of a terrorist act which has not yet been committed/attempted. • Effectiveness: Although the number of seizures is adequate, it is not established that the authorities are sufficiently focused on pursuing confiscation. In ML cases, the number of confiscations is very low given the size of the economy and ML risk. Courts may return seized property to defendants prior to the final resolution of the case, making confiscation impossible (although such decisions may be appealed to a higher court before the property is unfrozen). Asset management systems are weak which depreciates seized property. Property tracing is impeded because judicial orders for access to financial information may be difficult and lengthy to obtain and, for large/historical requests, FIs may be unable to provide the information requested in a timely fashion.
Preventive measures		
4 – Secrecy laws	**LC**	• The lack of a legal exception to financial secrecy for COAF inhibits its ability as a supervisor to access client information and therefore the implementation of Recommendations 23 and 29. • Effectiveness: Implementation of Recommendation 3 and 28 is impeded in urgent cases because of delays in appealing decisions which misapply the financial secrecy provisions.
5 – Customer due diligence	**PC**	• The following basic CDD obligations are set out in other enforceable means (not law or regulation) as is required by Recommendation 5: specifications as to when CDD is required and the obligation to use reliable, independent source documents for the verification process (for CVM/FIs, SUSEP/FIs, SPC/FIs and COAF/FIs); and the obligation to identify the beneficial owner (for CVM/FIs, SUSEP/FIs and COAF/FIs), and the obligation to conduct ongoing due diligence (for SUSEP/FIs). • SPC/FIs and COAF/FIs are not required to conduct CDD when there are doubts about the veracity or adequacy of previously obtained customer identification. • SUSEP/FIs are not required to conduct CDD measures when there is a suspicion of ML/FT. • SPC/FIs are not required to undertake CDD when carrying out occasional transactions or when there is a suspicion of ML. • COAF/FIs are not required to undertake CDD measures when establishing business relationships, carrying out occasional transactions or when there is a suspicion of ML. • SPC/FIs are not required to identify the beneficial owner. SPC/FIs and COAF/FIs are not required to determine if the customer is acting on behalf

Recommendations	Rating	Summary of Factors Underlying Rating[2]
		of another person or take reasonable measures to understand the ownership and control of the customer. • CVM/FIs, SUSEP/FIs (for investment-type insurance products), SPC/FIs and COAF/FIs are not expressly required to obtain information on the purpose and intended nature of the business relationship. • CVM/FIs, SPC/FIs and COAF/FIs are not required to conduct ongoing due diligence. • For SUSEP/FIs, SPC/FIs and COAF/FIs the obligation to conduct enhanced due diligence for higher risk categories of customers, relationships or transactions only applies to PEPs. • The circumstances in which SUSEP/FIs may apply simplified CDD measures to customers resident in another country is not limited to countries that the Brazilian authorities are satisfied are in compliance with the *FATF Recommendations*. • CVM/FIs may delay the signature of institutional customers for a period of 20 days, and SUSEP/FIs and SPC/FIs may delay CDD until the policy/fund is paid out; however, it was not established that these delays are essential not to interrupt the normal conduct of business or that the ML risks are effectively managed in such circumstances. • Where CDD cannot be completed, CVM/FIs, SUSEP/FIs, SPC/FIs and COAF/FIs are not expressly prohibited from opening an account, commencing business relations or performing transactions, or required to consider making an STR, nor are they required to terminate an existing business relationship and consider making an STR. BACEN/FIs are not expressly prohibited from conducting a transaction on behalf of an occasional customer when CDD cannot be completed. • CVM/FIs, SUSEP/FIs, SPC/FIs and COAF/FIs are not required to apply CDD requirements to existing customers on the basis of materiality and risk, nor to conduct due diligence on such existing relationships at appropriate times. • Effectiveness: BACEN/FIs are experiencing difficulty in implementing the new requirements to identify beneficial owners, obtain information on the purpose and intended nature of the business relationship and apply CDD measures to existing customers on the basis of materiality and risk. It is too soon to measure the effectiveness of newer measures applicable to SUSEP/FIs. COAF/FIs seem to have a low level of awareness of their CDD requirements. Effectiveness of implementation by SPC/FIs was not established.
6 – Politically exposed persons	**LC**	• CVM/FIs are not required to obtain senior management approval to continue a business relationship when an already existing customer or beneficial owner is subsequently found to be or becomes a PEP. • CVM/FIs are not required to take reasonable measures to establish the source of funds of customers and beneficial owners identified as PEPs. • Effectiveness has not yet been established as these measures for CVM/FIs, SPC/FIs and COAF/FIs are too recent. Effectiveness for SUSEP/FIs is not established. Non-bank BACEN/FIs are currently subject to less than fully adequate supervision and therefore effectiveness is not established.
7 – Correspondent banking	**LC**	• Effectiveness has not yet been established.
8 – New technologies & non face-to-face business	**LC**	• CVM/FIs are not required to have policies in place or take such measures as may be needed to prevent the misuse of technological developments in ML/FT schemes. • Effectiveness of the measures applicable to BACEN/FIs and SUSEP/FIs has not been established.

Recommendations	Rating	Summary of Factors Underlying Rating[2]
9 – Third parties and introducers	**N/A**	• This Recommendation is not applicable.
10 – Record keeping	**LC**	• Accountable FIs are not required to maintain records of business correspondence. • For SPC/FIs, record keeping requirements only apply to business relationships when the transactions reach a monthly threshold of BRL 10 000 (EUR 3 900/USD 5 800). • Effectiveness: COAF/FIs demonstrate a low level of awareness of their specific record keeping obligations. Effectiveness not established for non-bank BACEN/FIs and SPC/FIs.
11 – Unusual transactions	**LC**	• SPC/FIs and COAF/FIs are required to pay special attention to certain complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose, although this requirement is not comprehensive enough to fully meet the requirements of R11. • SPC/FIs, and COAF/FIs are not required to examine as far as possible the background and purpose of such transactions and to set forth their findings in writing. • CVM/FIs, SPC/FIs and COAF/FIs are not required to keep findings of examinations of the background and purpose of complex and unusual transactions available for competent authorities and auditors for at least five years. • Effectiveness for non-bank BACEN/FIs, SPC/FIs and COAF/FIs not established.
12 – DNFBPs – R.5, 6, 8-11	**NC**	• ***Scope issue:*** The requirements of R.5-6 and 8-11 do not apply to: *(i)* lawyers, notaries, other independent legal professionals and accountants; *(ii)* company service providers; or *(iii)* real estate agents/brokers who are natural persons. • ***Applying R.5:*** Accountable DNFBPs are not required to: identify beneficial owners; confirm whether the customer is acting on behalf of another person; understand the ownership and control structure of customers who are legal persons; obtain information on the purpose and intended nature of the business relationship; conduct on-going due diligence; or conduct enhanced CDD on high risk customers. Nor do obligations exist for this sector with respect to failure to satisfactorily complete CDD or application of CDD measures to existing customers. • ***Applying R.6:*** Real estate agents are not subject to any specific requirements in relation to PEPs. Effectiveness is not established for dealers in precious metals/stones. • ***Applying R.8:*** Real estate agents are not subject to any requirements in relation to this Recommendation. • ***Applying R.9:*** Real estate agents are not subject to any requirements in relation to this Recommendation. • ***Applying R.10:*** Accountable DNFBPs are not required to keep business correspondence. Real estate agents are not required to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon request. The record keeping threshold for dealers in precious metals/stones in relation to industrial sector sales is too high. • ***Applying R.11:*** Accountable DNFBPs are not subject to comprehensive requirements in relation to this Recommendation**.** • ***Effectiveness:*** Effectiveness is not fully established.
13 – Suspicious transaction	**LC**	• Deficiencies in the range of predicate offences and its criminalisation of FT

Recommendations	Rating	Summary of Factors Underlying Rating[2]
reporting		impact on the scope of the STR reporting requirement which only covers "crimes", although this technical deficiency is mitigated as supervision of compliance with the reporting obligation has not revealed that this issue is having a negative impact on the implementation of the reporting obligation in practice. • Effectiveness: A low number of FT-related STRs has been received. FIs do not have a common understanding of the scope of the FT-related reporting obligation. The intertwined nature of the STR and CTR requirements cause confusion for SUSEP/FIs and SPC/FIs, and the lack of feedback from the FIU to these sectors means that they do not understand how to improve the quality of their STRs.
14 – Protection & no tipping-off	**C**	• This Recommendation is fully met.
15 – Internal controls, compliance & audit	**LC**	• Scope issue: SPC/FIs are not covered. The exemptions for insurance brokers whose total amount of brokerage in the previous financial year was less than BRL 10 000 000 (EUR 3.9 million/USD 5.8 million) are not consistent with R.15. Factoring companies are only covered to the extent that they are generally required to implement internal controls relating to STR reporting. • BACEN/FIs and SUSEP/FIs are not specifically required to ensure that the compliance officer has timely access to CDD, transaction records and other relevant information. • CVM/FIs are not specifically required to maintain an adequately resourced and independent audit function or have employee screening procedures. • Effectiveness has not been established for non-bank BACEN/FIs and COAF/FIs.
16 –DNFBPs–R.13-15 & 21	**NC**	• ***Scope issue:*** The requirements of R.13-15 and 21 do not apply to: *(i)* lawyers, notaries, other independent legal professionals and accountants; *(ii)* company service providers; or *(iii)* real estate agents/brokers who are natural persons. • ***Applying R.13:*** Deficiencies noted in section 3.7 of this report apply to Accountable DNFBP in the same manner as they apply to Accountable FIs. • ***Applying R.15:*** Dealers in precious metals/stones and real estate agents are not subject to any requirements relating to this Recommendation. • ***Applying R.21:*** Dealers in precious metals/stones and real estate agents are not subject to any requirements relating to this Recommendation. • ***Effectiveness:*** Effectiveness is not established for dealers in precious metals/stones.
17 – Sanctions	**LC**	• Effectiveness: Although there is a sufficient range of sanctions in place, due to weaknesses in AML/CFT supervision for all sectors, effectiveness is not established. Number of sanctions applied is low (CVM/FIs). No information available on final outcome of sanctioning process (SUSEP/FIs). Sanctions not being applied to breaches of requirements other than the reporting obligation (COAF/FIs).
18 – Shell banks	**PC**	• FIs are not specifically prohibited from entering into or continuing correspondent relationships with shell banks. • FIs are not required to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.
19 – Other forms of reporting	**C**	• This Recommendation is fully met.
20 – Other NFBP & secure transaction techniques	**LC**	• Effectiveness: Although Brazil has taken some important steps to reducing the reliance on cash as a payment method, there remains a marked

Recommendations	Rating	Summary of Factors Underlying Rating[2]
		reliance on cash as a payment method in very remote rural areas.
21 – Special attention for higher risk countries	**PC**	• Scope issue: CVM/FIs, SUSEP/FIs, SPC/FIs, and COAF/FIs are not subject to the specific requirements of this Recommendation.
22 – Foreign branches & subsidiaries	**PC**	• Except for foreign branches and subsidiaries (other than majority owned subsidiaries) of SUSEP/FIs, Brazil has not implemented any requirements in relation to this Recommendation, although BACEN/FIs appear to observe them based on an indirect requirement in BACEN's inspection manual.
23 – Regulation, supervision and monitoring	**PC**	• Effectiveness: Supervisory approach of CVM and Securities SROs is overly focused on market conduct and reporting, with insufficient attention to other AML/CFT obligations. Low number of inspections by CVM and the inspectors of Securities SROs (on which CVM heavily relies) receive no AML/CFT training. No AML/CFT training for SPC inspectors and insufficient focus on AML/CFT issues during inspections. COAF has insufficient staff to handle supervisory role. • Non-bank BACEN/FIs: Subject to less than fully adequate supervision (mainly awareness raising being conducted in the past). Sector has low awareness of its AML/CFT obligations. • No on-site supervision of Post Office in its conduct of remittance activity. • Banking sector: No enforcement of more recent AML/CFT obligations for BACEN/FIs. Effectiveness not established as supervision is overly focused on prudential issues, and small number of AML/CFT specialists who do not routinely participate in inspections. • SPC does not take sufficient measures to ensure that criminals cannot own or manage closed pension funds.
24 – DNFBP: regulation, supervision and monitoring	**NC**	• ***Scope issue:*** As the following Uncovered DNFBP are not yet subject to AML/CFT requirements, they are not being monitored or supervised for compliance: *(i)* lawyers, notaries, other independent legal professionals and accountants; *(ii)* company service providers; or *(iii)* real estate agents/brokers who are natural persons. • ***Dealers in precious metals/stones and Real estate agents:*** COAF and COFECI do 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). • ***Effectiveness:*** Monitoring and supervision of Covered DNFBPs is not being undertaken at this time, and the competent authorities (COAF and COFECI) have insufficient staff and resources to do so.
25 – Guidelines & Feedback	**PC**	• STR reporting feedback is too sharply focussed on banks at the expense of other sectors. • No written guidance has been issued for any Accountable FIs that will assist them to implement and comply with the applicable AML/CFT requirements. • Accountable DNFBPs have not received any AML/CFT guidance.
Institutional and other measures		
26 – The FIU	**LC**	• Technically COAF's authority to receive and analyse STRs does not extend to certain types of FT activity which is not criminalised and crimes which are not specifically mentioned in article 1 of the *AML Law* (9 offences are only predicate offences for ML if committed by a criminal organisation), although this deficiency is somewhat mitigated because COAF is receiving FT-related STRs, reporting entities would have to be certain that there is no criminal organisation behind the suspicious activity in order to be satisfied that its reporting obligation had not been triggered, and COAF has a broader dissemination authority.

Recommendations	Rating	Summary of Factors Underlying Rating[2]
27 – Law enforcement authorities	**LC**	• Effectiveness: In some areas, the authorities are still focused on pursuing predicate offences, and are not yet targeting ML effectively. The number of ML investigations is low when compared to the incidence of revenue-generating predicate crimes. Not established that law enforcement authorities at the state level are sufficiently structured and resourced.
28 – Powers of competent authorities	**LC**	• Effectiveness of the power to compel production of documents authorising access to financial information: Judicial orders may be difficult to obtain, the process may be lengthy and, in some cases, FIs are unable to provide the requested information in a timely fashion.
29 – Supervisors	**PC**	• COAF has no powers of inspection. • COAF cannot compel production of customer-specific information for supervisory purposes without a court order. • Effectiveness: BACEN is only beginning to exercise its supervisory powers in relation to non-bank BACEN/FIs (it has mostly conducted awareness raising in the past) or banking institutions (strong focus on prudential issues, few AML/CFT specialists). CVM does not exercise its supervisory powers effectively (few CVM inspections, no AML/CFT training for inspectors of Securities SROs, supervision primarily focused on market conduct). Effective application of sanctions not established for any sector.
30 – Resources, integrity and training	**PC**	• Not established that the state-level police authorities are adequately structured and resourced, and judicial resources are insufficient in some areas of the country. • Customs authorities do not have adequate human and technical resources. • BACEN and COAF need further human resources to properly perform their supervisory functions. • The inspectors of SPC and the Securities SROs receive little AML/CFT training. • COFECI does not have and resources dedicated to supervising real estate agents for AML/CFT compliance, and does not currently have the expertise needed to do so.
31 – National co-operation	**LC**	• Operational co-ordination: Some operational co-ordination problems are evident where investigations at the federal and state levels overlap.
32 – Statistics	**PC**	• Insufficient statistics on ML investigations, prosecutions and convictions. • Insufficient statistics on number of cases and amounts of property confiscated. • Insufficient statistics by CVM, SUSEP and SPC on the total number of on-site examinations relating to or including AML/CFT, number of breaches detected or type of sanctions imposed. • Insufficient statistics on whether MLA and extradition requests relate to ML/FT or predicate offences, and the time taken to respond.
33 – Legal persons – beneficial owners	**PC**	• 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 (*e.g.* where the legal person is: privately owned by foreign legal persons with no physical presence in Brazil; or publicly traded and owned by foreign legal persons which have no physical presence in Brazil which are, in turn, owned by foreign legal persons with no physical presence in Brazil). • A small number of unidentified investors hold bearer shares that were issued prior to the issuance of such shares being prohibited; however, the ML/FT risk is minimal as the shares were issued in very narrow circumstances and cannot be used until full CDD is conducted and a

Recommendations	Rating	Summary of Factors Underlying Rating[2]
		declaration of their source is made.
34 – Legal arrangements – beneficial owners	**N/A**	• This Recommendation is not applicable.
International Co-operation		
35 – Conventions	**PC**	• Implementation of the Vienna and Palermo Conventions: Technical deficiencies in the criminalisation of the conversion/transfer of proceeds. Insufficient range of offences in 10 designated categories of predicate offence. No direct civil or administrative liability to legal persons who have committed ML. Ineffective implementation of the ML offence. • Implementation of the Terrorist Financing Convention: Brazil has not criminalised terrorist financing as a stand-alone offence, consistent with the Convention. Brazil has not extended civil or administrative liability directly to legal persons who have committed FT.
36 – Mutual legal assistance (MLA)	**LC**	• Effectiveness: Letters rogatory may take a long time to obtain, although this is mitigated because few MLA requests are processed via letters rogatory. No information on the time taken to respond to MLA requests generally. Concerns about the length of time it may take to compel the production of financial records (see R.3) also impact on Brazil's ability to provide MLA under R.36.
37 – Dual criminality	**C**	• This Recommendation is fully observed.
38 – MLA on confiscation and freezing	**LC**	• Effectiveness: Concerns about the length of time it may take to compel the production of financial records (see R.3) also impact on Brazil's ability to provide MLA under R.36. Letters rogatory may take a long time to obtain, although this is mitigated because few MLA requests are processed via letters rogatory. No information on the time taken to respond to MLA requests generally.
39 – Extradition	**LC**	• Measures are not in place to ensure extradition requests and proceedings related to ML will be handled without undue delay.
40 – Other forms of co-operation	**LC**	• Effectiveness: Although SUSEP is expected in practice to establish MOUs for the co-operation and information exchange with counterparts, only a small number of MOUs have been entered into by SUSEP. COAF has not signed any MOUs with foreign supervisors. SPC has not signed any MOU.
Nine Special Recommendations		
SR.I – Implement UN instruments	**NC**	• Implementation of the Terrorist Financing Convention: Brazil has not criminalised terrorist financing as a stand-alone offence, consistent with the Convention. Brazil has not extended civil or administrative liability directly to legal persons who have committed FT. • The effectiveness of laws and procedures to implement S/RES/1267(1999) and S/RES/1373(2001) is not established.

Recommendations	Rating	Summary of Factors Underlying Rating[2]
SR.II – Criminalise TF	**NC**	• Brazil has not criminalised the financing of terrorist acts as a stand alone offence (financing of terrorist acts is criminalised only as ancillary offences to existing criminal offences which generally correspond to the types of acts referred to in article 2 of the *Terrorist Financing Convention*). • Brazil has not criminalised the financing of terrorist organisations for purposes unrelated to a terrorist act other than in two limited circumstances - acquiring funds through the perpetration of a violent act for the purpose of maintaining a clandestine or subversive political organisation, and maintaining a military-like illegal organisation. • Brazil has not criminalised the financing of individual terrorists for purposes unrelated to a terrorist act. • The full range of terrorist financing activities contemplated by Special Recommendation II are not predicate offences for money laundering. • The definition of *funds* in article 20 (collection for a clandestine/subversive political organisation) does not extend to assets of any kind. • Legal persons are not subject to direct civil or administrative sanctions for FT. • The full range of ancillary offences do not apply to the financing of terrorist acts as this activity is itself an ancillary offence. • Effectiveness has not been established as the offences have never been used in practice.
SR.III – Freeze and confiscate terrorist assets	**NC**	• Laws and procedures for implementing S/RES/1267(1999) rely on ordinary criminal/MLA procedures which do not allow for effective freezing action to be taken without delay, and are inconsistent with the obligation to freeze property of persons designated by the UN Security Council, regardless of the outcome of domestic proceedings. • Laws and procedures for implementing S/RES/1373(2001) rely on ordinary criminal/MLA procedures which do not allow for effective freezing action to be taken without delay. • There is no specific mechanism to examine and give effect to actions initiated under the freezing mechanisms of other jurisdictions pursuant to S/RES/1373(2001), and no mechanism that would allow Brazil to designate persons at the national level. • Communication mechanisms are not working effectively and consistently across the financial and DNFBP sectors. • Insufficient practical guidance has been issued on how to effectively implement the obligations pursuant to S/RES/1267(1999) and S/RES/1373(2001). • Measures to monitor compliance are not being applied consistently across the banking sector, and other sectors (other than SUSEP) are not subject to monitoring. There are no sanctions for failing to comply. • Effectiveness: The effectiveness of Brazil's existing measures to implement S/RES/1267(1999) and S/RES/1373(2001) is not established. • The definition of *funds* does not extend to all of the funds or other assets that are owned or controlled by designated persons and terrorists, including property from legitimate sources; only proceeds, instrumentalities and property of equivalent value are covered. • The power to freeze terrorist-related property in contexts unrelated to the relevant UNSCRs suffer from the same deficiencies set out in section 2.3. • No procedures for considering de-listing requests and unfreezing the funds/assets of de-listed persons/entities. • No specific provisions for authorising access to funds/assets in accordance with S/RES/1452(2002).

Recommendations	Rating	Summary of Factors Underlying Rating[2]
		• It was not established that Brazil's measures for unfreezing the funds/assets of someone inadvertently affected by a freezing mechanism operate in a timely manner.
SR.IV – Suspicious transaction reporting	**LC**	• Deficiencies in Brazil's criminalisation of FT impact on the scope of the STR reporting requirement because it is not a crime to: finance a terrorist organisation (other in very limited situations pursuant to Law 7170/1983) or an individual terrorist in circumstances unrelated to a terrorist act), other than in the context of persons/entities designated by S/RES/1267(1999) and S/RES/1373(2001) as set out in the regulatory instruments which extend the reporting obligation to those contexts. • Effectiveness: A low number of FT-related STRs has been received. FIs do not have a common understanding of the scope of the FT-related reporting obligation. The intertwined nature of the STR and CTR requirements cause confusion for SUSEP/FIs and SPC/FIs, and the lack of feedback from the FIU to these sectors means that they do not understand how to improve the quality of their STRs.
SR.V – International co-operation	**PC**	• ***Applying R.36:*** Effectiveness – Concerns about the length of time it may take to compel the production of financial records (see R.3) also impact on Brazil's ability to provide MLA under R.36. Letters rogatory may take a long time to obtain, although this is mitigated because few MLA requests are processed via letters rogatory. No information on the time taken to respond to MLA requests generally. • ***Applying R.37:*** This aspect of the Recommendation is fully met. • ***Applying R.38:*** Effectiveness – Concerns about the length of time it may take to compel the production of financial records (see R.3) also impact on Brazil's ability to provide MLA under R.36. Letters rogatory may take a long time to obtain, although this is mitigated because few MLA requests are processed via letters rogatory. No information on the time taken to respond to MLA requests generally. • ***Applying R.39***: Terrorist financing has not been criminalised as a stand alone offence, consistent with Special Recommendation II, which undermines Brazil's ability to provide extradition in terrorist financing matters and seriously undermines its ability to prosecute its own nationals in such cases. Measures are not in place to ensure extradition requests and proceedings related to FT will be handled without undue delay. • ***Applying R.40:*** Effectiveness: Although SUSEP is expected in practice to establish MOUs for the co-operation and information exchange with counterparts, only a small number of MOUs have been entered into by SUSEP. COAF has not signed any MOUs with foreign supervisors. SPC has not signed any MOU.
SR.VI – AML requirements for money/value transfer services	**LC**	• The application of the FATF Recommendations to MVTS Providers suffers from the same deficiencies as identified in relation to the BACEN/FIs as set out in sections 3.2-3.3, 3.5-3.8 and 3.10 of this report. • The Post Office remittance service is not being monitored or supervised on-site. • Effectiveness: Supervision of BACEN/FIs (particularly in relation to non-bank institutions and Special Recommendation VII) suffers from the same effectiveness concerns as described in section 3.10.

Recommendations	Rating	Summary of Factors Underlying Rating[2]
SR.VII – Wire transfer rules	**LC**	• Effectiveness: The Post Office is not being monitored on-site for compliance with these requirements. In the absence of sufficient monitoring for compliance with these obligations (*e.g.* BACEN does not routinely conduct sample testing in the wire room of an FI), the authorities have not established that the requirements under Special Recommendation VII are being implemented effectively. The lack of monitoring also negatively impacts the effective application of sanctions for non-compliance with these obligations. • For domestic wire transfers, the obligation to obtain an address does not extend to natural persons or occasional customers who are legal persons.
SR.VIII – Non-profit organisations	**NC**	• Brazil has not implemented any of the requirements of SR VIII.
SR.IX – Cross-border Declaration & Disclosure	**PC**	• The declaration system does not apply to physical cross-border transportations being made through containerised cargo or in unaccompanied baggage. • The declaration system does not apply to BNI other than cheques and travellers' cheques. • Sanctions for making a false declaration or failure to declare are not proportionate and dissuasive. • Persons who are found to be carrying out a physical cross-border transportation of currency/BNI that is related to FT are not subject to sufficient sanctions (see the deficiencies in the criminalisation of FT noted in section 2.2). • There is limited ability to seize currency/BNI related to terrorist financing, or to apply sanctions in such cases (see the relevant deficiencies noted in section 2.3). • There is limited ability to seize currency/BNI related to persons designated pursuant to S/RES/1267(1999) and S/RES/1373(2001) (see the relevant deficiencies noted in section 2.4). • Effectiveness: The number of declarations received is very low considering the volume of international travellers and cargo moving in/out of Brazil. The number of false declarations detected is correspondingly low. The number of ML investigations and convictions related to bulk cash smuggling is low. Customs authorities are in need of further human and technical resources. • Upon discovery of an unusual cross-border movement of gold or precious metals/stones, Brazil does not consider notifying, as appropriate, the Customs Service or other competent authorities of the source or destination countries.