

Brazil actions and next steps on beneficial ownership transparency

Brazil is committed to promoting greater transparency in beneficial ownership information of legal persons and arrangements and to implementing the G20 High-Level Principles on Beneficial Ownership Transparency. Brazil has taken concrete steps to enhance the effectiveness of national legal, regulatory and institutional frameworks.

I. Brazil has a comprehensive system of tax registration which allows competent authorities timely access to beneficial ownership information related to legal persons operating in Brazil.

All legal entities doing business in Brazil are required to register with the federal tax authority (the RFB), which generates a unique tax identification number, the National Register of Legal Persons (CNPJ). The CNPJ database is a central registry currently available to all relevant authorities, including law enforcement and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units. Therefore, Brazil has always ensured the availability of very good quality ownership information concerning companies established under Brazilian law. In relation to foreign legal persons operating in Brazil, many actions have been taken in order to guarantee that accurate beneficial ownership information is provided therein. As a result of the work done within the National Strategy for Combating Corruption and Money Laundering (ENCCLA), a governmental initiative which gathers relevant authorities from both public and private sectors, foreign legal persons are now required to provide information on the respective beneficial owner when registering with the RFB. Additional measures in this area are currently being discussed by Brazil, including within the ENCCLA, (Action 8 – 2015, continued action 3/2014) Brazil is identifying the different types of legal arrangements and legal entities incorporated abroad, aiming to improve the collection of information from their final beneficiaries.

II. Brazilian legislation requires financial institutions and designated non-financial business and professions (DNFBPs) to identify the beneficial ownership of their customers. In cases of noncompliance, sanctions may be imposed in accordance with article 12 of Law 9.613/1998.

The Central Bank of Brazil has adopted a regulatory instrument (Circular 3.461/2009) which provides that financial institutions and other institutions authorized to operate in Brazil by the Central Bank should identify the natural person characterized as the beneficial owner. The Securities and Exchange Commission (CVM) Instruction 301/1999 establishes that identification and customer register should include information of the beneficial owner. The Council for Financial Activities Control (COAF) has adopted resolutions (for instance, Resolutions 21/2012, 23/2012 and 24/2013) which require COAF regulated sectors to adopt measures to identify the beneficial owner of the operations carried out.

III. Brazil has taken steps to assess the risks of laundering and hiding of the proceeds of corruption associated with different types of legal persons and arrangements, from a domestic and an international perspective.

The CVM Instruction 301/1999, for instance, defines specific operations and situations which should be continuously monitored by regulated sectors. These operations and situations include those associated with some types of legal persons and arrangements and take into account the risks that may be associated with countries that do not comply with FATF recommendations.

The Central Bank of Brazil Circular 3.461/2009 sets the obligation for financial as well as other institutions to implement internal control policies and procedures, designed according to their operations' volume and size, for collecting and registering timely information on customers. The norm also determines that special attention be granted to situations in which it is not possible to identify the beneficial owner, instituting reinforced and ongoing monitoring and more rigorous proceedings for the evaluation of those suspicious situations; analysis aiming to verify the need to alert the Brazilian financial intelligence unit (COAF); and evaluation by senior management on the convenience of starting or maintaining a relationship with that specific client.

IV. Brazil is committed to prevent the misuse of legal persons and legal arrangements which may obstruct transparency.

Brazilian legislation does not provide for the creation of trusts or similar types of legal arrangements and prohibits the issuance of bearer shares, in accordance with Law 8.021/1990. Brazil is currently engaged in rulemaking to improve the procedures for collecting information on beneficial ownership, including the definition of this concept, in order to ensure that information provided is adequate, accurate and updated.

V. Brazil has a system that allows relevant national authorities to cooperate domestically and internationally. Brazil is committed to improve its mechanisms of information exchange on beneficial ownership amongst national and international competent authorities.

Beneficial ownership information in the CNPJ database is available on a timely basis to competent national authorities. Currently, the RFB is considering the adoption of additional measures aimed at improving the efficiency of mechanisms to exchange information among relevant national bodies. Foreign authorities may obtain information on legal entities, legal arrangements, or relevant persons through mutual legal assistance requests, based on reciprocity or bilateral and multilateral agreements. Brazil is part of main international conventions against corruption and has in force mutual legal assistance treaties with 19 countries.