

# COAF regulation in Brazil: the duty of lawyers and law offices to inform on money laundering

**E**nacted March 1998, Law 9613 states as criminal money laundering offences or concealment of assets, rights, and valuables resulting directly or indirectly from: illicit traffic in narcotic substances or similar drugs; terrorism and its financing; smuggling; weapon trafficking; extortion through kidnapping; acts against public administration; against the Brazilian Financial System; acts committed by a criminal organisation; and acts committed against foreign public administration.

The law creates the Council of Financial Activities Control (COAF), aiming to regulate, penalise, receive, examine and identify the suspicious illicit activities together with other authorities.

However, the crimes and other misdemeanours not defined by Law 9613 as money laundering offences could not be prosecuted by the Brazilian authorities until the new law, Law 12.683 of 9 July 2012, was enacted.

Law 12.683/2012 improves and enlarges the definition of money laundering crimes in Brazil, criminalising all concealment or disguise of nature, origin, location, disposal, movement or property of assets, rights, and valuables that result directly or indirectly from a criminal offence.

One of the most controversial points arising from Law 12.683/2012 was the broadening of the range of persons and legal entities subject to the procedures of control by COAF and other Brazilian authorities. That list includes, among others those, who engage, on a permanent or temporary basis, in consulting, advising, accounting, auditing, counselling, assisting or any other kind of services involving the purchasing and selling of real property, commercial and industrial businesses or societary stakes; asset management, bonds and securities or any other assets; banking operations; all kinds of corporate transactions, as well as any other business structures; and acquisition of rights

over contracts related to sports or artistic professionals.

The Brazilian Bar Association immediately had concerns about the inapplicability of that statute over legal practitioners and on 20 August 2012 issued the following note:

'Law 12683/12 which alters Law 9613/98 to [make] more effective the prosecution of money laundering crimes. Inapplicability to lawyers and law offices. Honor to constitutional principles protecting professional privilege and the indispensability of lawyers to Justice. Special Law, Bar Statute (law 8906/94), cannot be implicitly revoked by statute treating other professions generically. Lawyers and law offices should not register with COAF, nor disclose their clients' confidential data which was granted to them in their professional practice. Regionals Bar Associations and Prerogative Committees had to support lawyers illegally forced to do so.'<sup>1</sup> [*sic*]

Therefore, the Brazilian Bar Association understood that the new law will not apply to law practitioners in their professional relationship with clients, which is protected by professional privilege pursuant to Law 8906/94<sup>2</sup> and Article 133<sup>3</sup> of the Brazilian Constitution.

The Confederação Nacional das Profissões Liberais (NDC), representing legally regulated professionals other than lawyers, sued for the unconstitutionality of Law 12.683/2012 before the Supreme Court, considering that those professionals are also bound by professional privilege.

Although the Supreme Court has not ruled on the subject, COAF has just released Resolution 24, of 16 January 2013, which is due 1 March 2013, regulating the procedures to be followed by persons and legal entities, not submitted to their own regulatory associations, who render even occasional consulting, advising, accounting, auditing, counselling, assisting services.

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In conclusion it seems that the Resolution 24, issued by COAF, comes in line with the claims of the associations representing legally regulated professionals, liberating persons and legal entities from its procedures, and postponing the debate about the inviolability

of lawyers' professional privilege.

Notes

- 1 Process 49.0000.2012.06678-6.
- 2 Brazilian Bar Statute.
- 3 Article 133 – Lawyer is indispensable to Justice, being inviolable for its acts and doings in the professional exercise, in the limits of the law.