

BRAZIL

I. INTRODUCTION

Brazil has been working towards improving its mechanisms on combating corruption, organized crime and money-laundering, and these objectives must pass through the strengthening of assets recovery provisions. Therefore, Brazil is a signatory to several international conventions on the matter, besides being active on working groups, networks and negotiating mutual legal assistance treaties, especially with bordering countries.

The Central Authority for dealing with international legal cooperation requests for asset recovery is the Department of Assets Recovery and International Legal Cooperation of the Ministry of Justice. Its duties go from receiving international requests, analyzing them and then forwarding it to the competent authority to execute the request.

Yet, some of these proceedings might need legal decisions before being executed. In this sense, it might be internalized and become a national judicial process, or a foreign decision is homologated by the Superior Court of Justice (STJ). Brazil may provide assistance to identify assets in broad terms and might freeze, restrain or seize assets depending on the existence of a judicial order to do so.

II. HOW TO SEEK RESTRAINT, SEIZURE AND FORFEITURE/CONFISCATION FROM BRAZIL

In order to seek the restraint, seizure and forfeiture/confiscation of criminal proceeds from Brazil, the following steps should be followed:

1. IDENTIFICATION OF THE ASSET

In order to recover the proceeds of corruption held within [Brazil], there might be some level of certainty on where the asset is located. Hence, the first step is the identification of each good investigated. Through formal pathways, the request for asset identification must indicate clearly what the object of research is and which diligences are in need. In order to assist identify assets in Brazil, the following mechanisms are available:

- Use of blind discovery provisions (compulsory notice/orders which are designed to locate assets based only on a suspected offender or related entity) to locate bank accounts, casino accounts etc.
- Access to government held property ownership records including real property, motor vehicles, vessels, aircraft.
- Access to corporate records showing directors and shareholders of registered corporations.
- Access to taxation records for personal income tax, business/company tax.
- Access to registered trusts and their beneficiaries.

- Other types of investigative assistance available - interviews, surveillance, controlled action (controlled delivery), etc.

Informally, Brazil is part in mainly two international legal cooperation networks:

- Stolen Asset Recovery Initiative by Interpol;
- GAFISUD Assets Recovery Network.

2. CONFISCATION OF PROPERTY RELATING TO FOREIGN OFFENCES

All international legal cooperation requests on assets recovery needs to follow some formal requirements before being executed. The request must:

- Describe the investigated facts;
- Causation among the crimes investigated and the necessity of freeze, restrain, seize of assets and their amounts;
- Full transcription of the legal provisions which foresee the crimes;
- Clear and precise identification of the proceedings to be done;
- Identification of assets to be frozen, restrained, seized or confiscation.

When assets have been identified and following the aforementioned requirements, Brazil offers the following means of assistance to recover the assets:

To restrain/ freeze/ seize assets located in your country based on a **foreign arrest or charge**, the demanding Party might send a copy of the judicial order that requests the restrain, freeze or seize of the asset, indicating its location, value and all detailed information to perform such tasks.

To restrain/ freeze/ seize assets based on a **suspicion/belief** that a person has committed a **foreign serious offence** and holds assets in Brazil, unless there is an urgent precautionary measure issued by the Judiciary, freeze, restrain or seize assets must be after a Brazilian court decision.

To restrain assets through the enforcement of **foreign orders and judgements** it is necessary to obtain a court order on the matter Brazilian previously, being appealable.

To restrain assets where there has been **no conviction** ('non-conviction-based asset forfeiture'), unless there is an urgent precautionary measure issued by the Judiciary, freeze, restrain or seize assets must be after a Brazilian court decision.

To confiscate assets through the enforcement of **foreign orders and judgements for a person convicted of a foreign offence** including statutory forfeiture, pecuniary penalty orders and substituted asset orders, Brazil does not confiscate assets without a non-appealable legal decision condemning the defendant and declaring the assets confiscated.

To confiscate assets through the enforcement of **foreign orders and judgements for a person not convicted of a foreign offence** including pecuniary penalty orders and substituted asset orders, Brazil does not confiscate assets without a non-appealable legal decision on the matter.

To confiscate the **proceeds and/or instrumentalities of a foreign offence through the enforcement of foreign orders and judgements**, Brazil does not confiscate assets without a non-appealable legal decision condemning the defendant and declaring the assets confiscated.

3. DISPOSAL/RETURN OF ASSETS

In order to return forfeited assets with a foreign State, the following requirements must be met:

At first, the Requiring State must solicit the assets freeze/restrain, once that a criminal investigation or procedure is on the way, even though there is still not a final decision on the matter. By the end of the criminal procedure, if the defendant is condemned and the assets confiscation is declared, the demand for definitive assets confiscation and repatriation is due.

III. ASSET RECOVERY AGENCY/ AGENCIES – CONTACT INFORMATION

Department of Assets Recovery and International Legal Cooperation (DRCI)
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General Coordination for International Legal Assistance in Criminal Matters
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IV. OTHER USEFUL REFERENCES

For detailed information on Mutual Legal Assistance in Criminal Matters with Brazil, please refer to the 2019 Manual on Mutual Legal Assistance in Criminal Matters and Asset Recovery, available at:

<https://www.gov.br/mj/pt-br/assuntos/sua-protecao/lavagem-de-dinheiro/drci/publicacoes/manuais/cooperacao-juridica-internacional-em-materia-penal/manual-penal-online-final-2.pdf>