

## QUESTIONNAIRE

### Country self-assessment report on implementation and enforcement of G20 commitments on foreign bribery

G20 countries are invited to complete the questionnaire, below, on the implementation and enforcement of G20 commitments on foreign bribery.

Part I questions are drafted directly from the principles outlined in the G20 Guiding Principles on Enforcement of the Foreign Bribery Offence endorsed by G20 Leaders in St. Petersburg, and its background note on Enforcement of Foreign Bribery Offences. Part II questions are drafted from the G20 Anti-Corruption Action Plan and the St. Petersburg Leaders' Declaration.

Responses to this questionnaire could be compiled into a summary on the "state of play" in G20 countries on steps taken to date to implement the aforementioned commitments, as well as plans for future actions in this area.

#### I. Implementation of the Guiding Principles on Enforcement of the Foreign Bribery Offence in G20 Countries

*Note 1:* This section of the questionnaire is drafted from the principles outlined in the G20 Guiding Principles on Enforcement of the Foreign Bribery Offence and the background note on Enforcement of Foreign Bribery Offences.

##### **A. A robust legislative framework**

*In your jurisdiction:*

**1. Is there a clear and explicit foreign bribery offence that covers the key elements of the internationally agreed definition for foreign bribery, including offering, promising or giving of a bribe, bribery through intermediaries, and bribes paid to third party beneficiaries?**

- *If your jurisdiction criminalises foreign bribery*, please provide references to the relevant provisions and/or the full text, if possible.
- *If your jurisdiction does not have a foreign bribery offence:*
  - Please note whether an offence has been "drafted", "submitted for government review", or "adopted but not yet entered into force".
  - Please provide a timeline for the entry into force of draft legislation, where applicable.

**Response:**

Yes.

Article 337-B, Section XI of the Penal Code (Decree Law No. 2,848 of 7 December 1940) reads as follows:

***Active bribery in an international business transaction***

*Article 337-B: Promising, offering or giving, directly or indirectly, an improper advantage to a foreign public official or to a third person, in order for him or her to put into practice, to omit, or to delay any official act relating to an international business transaction.*

*Penalty - Deprivation of liberty from 1 (one) year to 8 (eight) years, plus a fine.  
Sole paragraph: The penalty is increased by 1/3 (one third) if, because of the advantage or promise, the foreign public official delays or omits, or puts into practice the official act in breach of his or her functional duty.*

A further offence, the “**traffic of influence in an international business transaction**”, was also included in article 337-C:

*Requesting, requiring, charging, or obtaining, for oneself or for another person, directly or indirectly, any advantage or promise of advantage in exchange for influencing an act carried out by a foreign public official in the exercise of his or her functions relating to an international business transaction.*

*Penalty - deprivation of liberty from 2 (two) to 5 (five) years, plus a fine.*

*Sole paragraph: The penalty is increased by half, if the perpetrator alleges or insinuates that the advantage is also intended for a foreign public official.*

Article 337-D provides the definition of the term “**foreign public official**” for the purposes of the foreign bribery offence:

*A foreign public official is deemed to be, for the purposes of the criminal law, anyone, even though temporarily or in an unpaid capacity, who holds a position, a job or a public function in state bodies or in diplomatic representations of a foreign country.*

*Sole paragraph. Anyone who holds a position, a job or function in an organisation or enterprise directly or indirectly controlled by the Public Authorities of the foreign country or in international public organisations is deemed to be equivalent to a foreign public official.*

As for the aspect of the promise, offering or giving being done **directly or indirectly**, Article 29 of the Brazilian Penal Code provides that whoever contributes to the commission of a crime is subject to its sanctions. Therefore, an intermediary in the bribery of public officials, both national and international, may be punished for the offence.

*Note 2: For questions 2 through 11, jurisdictions without a foreign bribery offence should include updates on plans to address the following issues in efforts to establish the criminalisation of foreign bribery and a framework for enforcing this offence.*

**2. What is the statute of limitations for investigating and prosecuting foreign bribery?** Please indicate the criteria for suspension, interruption or extension of the statute of limitations?

Response:

In Brazil, under Article 109 of the Penal Code, the statute of limitations is determined by the length of the term of imprisonment available for the crime in question: the longer the term of imprisonment available, the longer the limitations period. The limitations period provided under article 109, clause III is twelve years for crimes carrying a maximum penalty of not less than four but not more than eight years imprisonment. Therefore the statute of limitations is twelve years for the offence of foreign bribery, which is the same as for domestic bribery.

Article 111 provides that the limitations period begins to run “from the day the crime was committed”. For the foreign bribery offence, it starts to run when the offer, promise or gift of a bribe is made. In the case of an attempt, it begins to run “on the day criminal activity ceased.”

The “interruption” of the limitation period for the prosecution of the foreign bribery offence is governed Article 117:

*The course of the prescription is halted:*

*I – by receipt of the accusation or complaint;*

*II – by the indictment;*

*III -- by the decision confirming the indictment;*

*IV – by the publication of a verdict of guilty, which is appealable against;*

*V – by the beginning or continuation of serving the penalty;*

*VI – by an act of recidivism.*

*Paragraph 1 – Except in the cases of clauses V and VI of this article, halting prescription produces effects in respect of all the perpetrators of the crime. In connected crimes, that are the object of the same action, the halt relating to any one of them is extended to all the others.*

*Paragraph 2 – Where prescription has been halted, other than in the case of clause V of this article, the entire term begins running again from the day of the halt.*

Regarding the aforementioned Article, it is worth noting that clauses I to IV are applicable to the limitations period for prosecution, and clauses V and VI stop the limitations period running in respect of the carrying out of the sentence.

Under paragraph 2 of article 117, a new limitation period starts to run after each interruption (except under clause V).

### **3. Please describe the form of jurisdiction available over the foreign bribery offence (i.e. territorial or nationality jurisdiction).**

Response:

Brazilian criminal law applies to offences – including foreign bribery – committed within its territory because the Penal Code adopts the principle of territoriality. Article 5 of the Penal Code provides:

*Brazilian law applies, without prejudice to conventions, treaties and rules under international law, to criminal offences committed within Brazilian territory.*

The concept of territory includes not only the land within Brazil’s borders, but also, by extension, the state’s aircraft or ships, or those in the service of the Brazilian government, wherever they may be, and privately-owned ships or aircraft when on the high seas or in international airspace. Brazilian criminal law also applies to offences committed on foreign ships or aircraft when in Brazilian territory.

The place where an offence is committed is determined according to Article 6 of the Penal Code:

*The criminal offence is deemed to have occurred in the place where the act or omission, in whole or in part, occurred, as well as where the result was produced or planned to be produced.*

Brazil’s Penal Code provides for extraterritorial jurisdiction, including nationality jurisdiction, in a broad range of cases. Article 7 lists a number of criminal offences over which the Brazilian courts have jurisdiction, even though they are committed abroad, including criminal offences committed by Brazilians (clause II b).

The conditions for establishing nationality jurisdiction are set forth in Article 7, clause II, paragraph 2, which states:

*In the cases set out in clause II, the application of Brazilian law depends on the concurrence of the following conditions:*

*a) The offender enters Brazilian territory;*

*b) The act is also punishable in the country where it was committed;*

*c) The criminal offence is included among those for which Brazilian law authorises extradition;*

*d) The offender has not been tried and found not guilty abroad or has not served the sentence there;*

*e) The offender has not been pardoned abroad or, for any other reason, the sentence has not been*

*eliminated, pursuant to the most favourable law.*

**4. Please indicate whether your jurisdiction has a corporate liability regime for the offence of foreign bribery.**

*If your jurisdiction does not have a corporate liability regime for the offence of foreign bribery, please provide a timeline for implementation of corporate liability.*

Response:

Also, Law n. 12,846/2013, enacted in August 2013, provides for the civil and administrative liability of legal entities that carry out wrongful acts against national or foreign public administration bodies, which includes the payment of undue advantage to public officials, the use of a third party to dissimulate or conceal such wrongful acts or the defrauding of public bidding processes and bidding-related contracts. The penalties for such acts comprise the payment of expensive fines, the prohibition to receive incentives, subsidies or loans from the public administration, and even the compulsory dissolution of the legal entity in some cases. The Portuguese version of the law is available at [http://www.planalto.gov.br/ccivil\\_03/ Ato2011-2014/2013/Lei/L12846.htm](http://www.planalto.gov.br/ccivil_03/ Ato2011-2014/2013/Lei/L12846.htm).

Article 5 of Law 12.846/2013 establishes a list of harmful acts that could lead to the liability of legal entities in civil and administrative spheres. According to that article, "Acts considered harmful to the public administration, domestic or foreign, for the purposes of this Law, are all those acts committed by the legal entities mentioned in the sole paragraph of article 1 against national or foreign public equity, the principles of public administration or the international commitments assumed by Brazil, as follows: I - promise, offer or give, directly or indirectly, an undue advantage to a public agent or to a third party related to him; II - finance, fund, sponsor or otherwise subsidize the practice of unlawful acts provided for in this Law; III - make use of an intermediary person or entity to conceal or disguise their real interests or the beneficiaries of the actions ( ... ) " .

**5(a) Please describe the sanctions and confiscation measures available for natural and legal persons for the crime of foreign bribery.**

**5(b) Please provide the number of criminal, administrative, and civil cases of foreign bribery that have resulted in a final disposition, and indicate (i) how many of these cases have resulted in a criminal conviction or acquittal, or similar findings under an administrative or civil procedure, and (ii) the number of natural and legal persons who have been convicted or otherwise sanctioned.**

- *Where possible, please provide references to the relevant provisions and/or the full text, if possible.*

Response:

**5(a)** As mentioned in question 1, the sanctions for natural persons for the crime of foreign bribery are provided by Article 337-B of the Brazilian Penal Code, and include deprivation of liberty from 1 (one) year to 8 (eight) years, and a fine.

Regarding the sanctions and confiscation measures available for legal persons, Law 12,846/13 provides for civil and administrative sanctions:

**Article 6.** *Within the administrative sphere, the sanctions listed below shall apply to legal entities held liable for the wrongful acts provided for in this Law:*

*I – a fine in the amount of 0.1% (zero point one percent) to 20% (twenty percent) of the gross revenues earned during*

*the fiscal year prior to the filing of administrative proceedings, excluding taxes, which shall never be lower than the obtained advantage, when it is possible to estimate it; and*

*II – extraordinary publication of the condemnatory decision.*

*Paragraph 1. The sanctions will be applied on a grounded manner on an isolated or cumulative basis, according to the peculiarities of the concrete case and to the severity and nature of the perpetrated offenses.*

*Paragraph 2. The application of the sanctions set forth in this Article shall be preceded by a legal opinion prepared by the Public Advocacy Office or the body of legal assistance, or its equivalent, of the public entity..*

*Paragraph 3. The application of the sanctions set forth in this Article does not exclude, in any case, the obligation of full restitution for the damage caused.*

*Paragraph 4. In the event of item I of the head provision, in case it is not possible to adopt the criterion regarding the value of the legal entity's gross earning, the applicable fine will range from BRL 6,000.00 (six thousand Brazilian reais) to BRL 60,000,000.00 (sixty million Brazilian reais).*

*Paragraph 5. The extraordinary publication of the condemnatory decision will be made as a summary of the decision at the legal entity's expenses, through a means of communication widely circulated in the area where the violation was committed and the legal entity has business or, in its absence, in a nationally circulated publication, as well as by fixing a public notice, for the minimum term of 30 days, at the establishment or at the place where the activity is conducted, in a manner visible to the public, and at an electronic site in the world wide web.*

**Article 19.** *The Federal Government, the States, the Federal District and the Municipalities, through their respective Public Advocacy Offices or legal representation bodies, or their equivalent, and the Public Prosecution Office may file a judicial action in relation to the wrongful acts set forth in Article 5 of this Law, with a view to the application of the following sanctions to the responsible legal entities:*

*I – loss of the assets, rights or valuables representing the advantage or profit directly or indirectly obtained from the wrongdoing, except for the right of the damaged party or of third parties in good faith;*

*II – partial suspension or interdiction of its activities;*

*III – compulsory dissolution of the legal entity;*

*IV – prohibition from receiving incentives, subsidies, grants, donations or loans from public agencies or entities and from public financial institutions or government-controlled entities from 1 (one) to 5 (five) years.*

*Paragraph 1. The compulsory dissolution of the legal entity will be established when the following is evidenced:*

*I – the corporate personality was used on a regular basis to facilitate or promote the performance of wrongful acts; or*

*II – the legal entity was organized to conceal or dissimulate illegal interests or the identity of the beneficiaries of the acts performed.*

*Paragraph 2. (VETOED).*

*Paragraph 3. Sanctions may be applied in an isolated or cumulative manner.*

*Paragraph 4. The Public Prosecution Office or the judicial representative body of the public entity, or their equivalent, may request the freezing of assets, rights or values necessary to guarantee the payment of the fine or to ensure the full restitution for the damages caused, as provided for in Article 7, except for the right of third parties in good faith.*

It is worth mentioning that administrative and civil spheres are independent and the sanctions may be cumulated.

**5(b)** Brazil has not concluded any case of transnational bribery yet.

**B. Effective detection and domestic coordination**

*In your jurisdiction:*

**6. What steps have been taken to engage with relevant agencies, such as overseas missions, broader tax administrations, trade promotion, public procurement and export credit agencies, as well as with the private sector, on issues related to implementation and enforcement of the foreign bribery offence? Where possible, please cite specific examples.**

Response:

Brazil implemented the National Strategy to Fight Corruption and Money Laundering (ENCCLA), which was established in 2003 by the Ministry of Justice as a tool designed to enhance capacity, training and coordination of efforts to the systematic fight against money laundering and corruption in Brazil. It coordinates the efforts of numerous bodies from the three branches of government, Prosecution Offices and civil society that are direct or indirectly aimed at preventing and fighting corruption and money laundering. The purpose is to identify existing initiatives and suggest alternatives for their enhancement.

Presently, there are approximately 60 agencies and entities associated with ENCCLA, including, but not limited to Prosecution Offices, Police Offices, the Judicial Branch, control and monitoring agencies, such as the Office of the Comptroller General (CGU), the Federal Court of Accounts (TCU), the Securities Commission (CVM), the Controlling Council of Financial Activities (COAF), the National Superintendence for Pension Funds (PREVIC), the Federal Insurance Commissioner (SUSEP), the Central Bank of Brazil (BACEN), the Brazilian Intelligence Agency (ABIN), the Office of the General Counsel to the Federal Government (AGU) and the Brazilian Federation of Banks (FEBRABAN). Many outcomes from the ENCCLA initiatives aim at the implementation and enforcement of the foreign bribery offence and related issues. For example, the consolidation of a central authority for the purpose of international legal cooperation, designed to seek greater judicial effectiveness and encouraging the search for evidence abroad; the regulation on the access of control agencies to the accounts of entities hired by the public administration; the establishment, under the Department of Federal Police, of Police Stations to Fight Financial Crimes; and the creation of the National Group to Fight Criminal Organizations, established under State Prosecution Offices, among other initiatives. It is also worth noting that ENCCLA's strategy #6, established in 2013, was especially focused on foreign bribery, which provided for great dissemination of the related OECD Convention and of the offences referred to in Articles 337-B, 337-C and 337-D of the Brazilian Criminal Code.

With regard to overseas missions, the Ministry of Foreign Affairs has addressed specific instructions on the efforts implemented by the Federal Government to promote policies for combating bribery of foreign public officials in international business transactions and to ensure that eventual reports of suspected cases abroad are forwarded to the competent authorities in Brazil. Those instructions were sent to all missions abroad, including embassies, consulates and permanent representations or missions to international organizations. Brazilian missions abroad have been provided with information on the approval, in August 2013, of Federal Law 12.846/2013, according to which legal entities are subject to civil and administrative sanctions, including in cases of bribery of foreign public officials. Furthermore, Brazilian missions abroad were instructed to broadly circulate information among Brazilian natural and legal persons under their jurisdictions about the OECD Convention and report suspected cases of bribery.

Regarding steps taken to engage the private sector in the fight against foreign bribery, it is noteworthy the Pro-Ethics Company Registry, which was jointly created by the CGU and the Ethos Institute (a not-for-profit legal entity governed by private law) and required great coordination efforts to promote the adoption of measures that addressed corporate ethics, integrity and internal control. The Registry acknowledges and publicizes the efforts of the companies that implemented such measures. It is broadly disseminated by the members of the Steering Committee and through the distribution of promotional material prepared by the CGU, which grants visibility to issues like compliance in the work environment of other companies.

Also, the national bank for development - BNDES ties the granting of export credit to the signing of the Statement of Commitment for Exporters. Such document states that the exporter is obliged by all rules and regulations implemented to combat the corruption of foreign governments and that the exporter is aware that Brazil is a party to the OECD Convention. Additionally, the exporter assumes the obligation to disclose any act related to the crimes set forth therein. Failure to comply with the terms of the declaration entails suspension of the official support: "Art. 1 Brazilian official support for export, either through financing or refinancing, equalization of interest rates, credit insurance or any combination of these modalities, is conditioned to the signing of the Statement of Commitment for Exporters, attached to this resolution, in accordance with the obligations assumed by Brazil as part to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, ratified on June 15, 2000 and promulgated by Decree No. 3,678, of November 30, 2000". (CAMEX Resolution nº 62/2010).

The Statement expressly mentions Decree No. 3,678, of November 30, 2000, which has internalized the OECD Convention in Brazil, and the article 337-B and following of the Brazilian Criminal Code, making sure that those seeking loans for export are made aware of the concept of the crime of foreign bribery and its legal consequences.

**7(a) Are appropriate reporting channels available for whistleblowers in both the private and public sectors?**

**7(b) Are appropriate protections available for whistleblowers in both the private and public sectors?**

*Where possible, specific reference should be made to implementation of the G20 Study on Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation.<sup>1</sup>*

**Response:**

**7(a)** Various mechanisms are available to Brazilian citizens to report criminal offences that they become aware of, and the report can be made to several agencies. As regards foreign bribery offences, they would be reported most probably to law enforcement authorities directly, either referred by private citizens or by public agencies. An instrument known as *disque-denúncia* (hotline) exists for reporting by individuals, and is generally used by the police agencies to receive reports related to various criminal offences. Reports are generally received on the Internet, by telephone, or directly at the agencies' office.

Regarding the public sector, according to Law 8,112/90 it is a duty of all public officials "to inform the irregularities that they become aware of due to its post to a higher authority or, when there is a suspicion of involvement of such authority in the irregularity, to other competent authority able to start an investigation". Clause XIV(m) of Decree 1 171 of 22 June 1994 further specifies, for civil servants of the federal executive, that it is their duty to communicate immediately to their superior any act or fact that runs against the public interest, demanding that appropriate measures be taken. The channels available are those internal to each public body.

**7(b)** In its article 44, the Access to Information Law adds article 126 - A to the Law 8,112/90 (Federal Public Servant Single Law), ensuring that "no public official shall be civil, criminal or administrative liable by informing a higher authority, or when there is suspicion of involvement of such higher authority in the irregularity, another authority competent for the verification of the information concerning the practice of crimes or misconduct of which it has knowledge, even if such knowledge arises through the exercise of office, employment or public office." In this sense, the Access to Information Law reaffirms the duty of any public official to report and exempts him/her from any liability arising therefrom.

Regarding the citizen who gives the State information on irregularities and criminal activities, the Office of the Comptroller General understands that information related to his identity shall be classified as personal information and, therefore, remain restricted to public access for a period of one hundred (100) years according to Access to Information Law terms.

Besides setting the binding understanding mentioned above, the Office of the Comptroller General has worked on

<sup>1</sup> Available online here: <http://www.oecd.org/corruption/48972967.pdf>

the decree that will regulate the Federal Ombudsmen System at the executive branch. The terms of such decree shall reinforce the obligation to protect the identity of the whistleblower and it is intended, moreover, to determine the procedure and mechanisms for anonymous complaints.

**C. Effective investigation and prosecution**

*In your jurisdiction:*

**8(a) Please describe the investigative powers granted to law enforcement authorities to proactively and effectively investigate and prosecute foreign bribery.**

**8(b) Please describe the specialized training on detecting, investigating and prosecuting foreign bribery provided and/or planned to be provided to law enforcement authorities.**

Response:

**8(a)** According to art. 10 of Law 12,846/2013, the public entity undertaking an administrative procedure to determine the liability of a legal entity in acts against foreign public administration may solicit all judicial measures necessary for the investigation and processing of offences, including search and seizure, through its judicial representation body, or equivalent. In Brazil, measures such as search and seizure are, as a rule, judicial measures, and therefore cannot be performed exclusively by administrative means without proper judicial authorization. General and special investigative techniques are provided for under the Code of Criminal Procedure, including cross-examination, forensics analysis, confrontations, and search and seizure. In addition, Law 9 296 of 24 July 1996 regulates the interception of telecommunications. Where the investigation requires the use of more intrusive investigative powers (such as search and seizure or interception of telecommunication, etc.), legal authorization from a judge must be requested, either by the police authority in the course of the investigation and/or by the Public Prosecution. As of September 20th of 2013, Federal Law no. 12,850 introduced a whole new body of investigative techniques applicable to offences perpetrated by criminal organizations and transnationally committed offences set forth in international treaties and conventions, which comprise foreign bribery. Such techniques include immunity agreements for cooperative suspects and defendants, court-warranted infiltration of police officers, delayed arrests for monitoring purposes and access through administrative subpoenas to customer information on suspects and defendants held by telephone companies, financial institutions and internet service providers, including full name, birth place and date, parents' names addresses, telephone numbers and records of calls placed and received. Access to banking information (i.e. statements, balances and transaction reports) and tax returns remains dependent on court warrants.

Some of the techniques set forth by Federal Law no 12.850, such as reprieve for cooperative suspects and defendants, were already available, albeit in a less clear-cut way and often based on judicial precedent. The advent of the new federal law will create a more stable and predictable set of tools to investigate the offences to which it applies, including foreign bribery.

Regarding CGU, according to Law No. 10,683/2013 it can perform inspections, order procedures and initiate administrative proceedings, request information and documents needed to conduct its work (art. 18, § 5). The same law also provides that all bodies and entities of the federal public administration must respond to the requests made by the Minister of CGU within the indicated deadline (article 20, sole paragraph).

It is also worth mentioning the enactment of Law n. 12,830/13, which strengthens the role of the police authority (Federal and Civil Chiefs of Police) when conducting a criminal investigation, preventing, for instance, a chief of police from being arbitrarily removed from a criminal investigation or unjustifiably removed from his/her position as retaliation or undue pressure. To that extent, the police authority has now greater independence to investigate crimes.





When conducting a criminal investigation, the police authority may directly require any information that is not constitutionally deemed confidential, to any organization, and the provision of such information shall not be denied by the requested authorities (Article 2, Paragraph 2).

Regarding the Public Prosecutor's office, its members have functional independence that guarantees freedom in their decrees and in the exercise of their functions. They are not even subordinated to their hierarchic superiors; they owe obedience only to the legal order. The hierarchy that exists among the members and their superiors is merely administrative.

The members of the Prosecutor's Office also have the following constitutional guarantees: life tenure; irremovability; irreducibility of subsidies. The prerogative of life tenure guarantees that after two years in office, the agent can only lose his or her office by a final and unappealable judicial decision. By the guarantee of the irremovability, the member of the Judiciary or the Prosecutor's Office can only be removed or promoted upon his or her own initiative, except in case of public interest and the vote of the absolute majority of the respective court or of the National Justice Council. They are also assured subsidy irreducibility, which prevents political pressures from influencing the decisions and decrees of judges and prosecutors.

**8(b)** Brazil has established the National Training and Capacity Building Program for the Fight against Corruption and Money Laundering (PNLD), and, as of 2012, approximately 11 thousand agents had been trained nationwide on issues related to anticorruption actions, money laundering and foreign bribery.

Four officials of the Office of the Comptroller General of Brazil took part at a course on "Foreign Bribery and Corruption Training for Investigators and Prosecutors Conference" held on February, 2013 in Washington DC - USA. The course was undertaken by the Department of Justice, FBI and Securities and Exchange Commission of the United States of America. The course aimed at the training of public officials from different countries on issues related to investigation and prosecution of the crime of bribery of foreign public official.

In order to disseminate what was learned from the USA authorities and foster the internal debates on the matter, the Office of the Comptroller General of Brazil and the Federal Public Prosecutor Office, in partnership with the U.S. Securities and Exchange Commission (SEC), held a similar training in Brazil in November 2013. The training was attended by servants of several governmental agencies, such as Public Prosecutor's Office, Federal Police Department, Ministry of Justice, and General Attorney's Office.

The Brazilian Federal Revenue Service (RFB) has implemented a permanent Professional Education Program aiming at the improvement of the skills aligned with the strategic goals of the institution for its agents. Between 2007 and 2012 the percentage of trained public officials increased from 63.45% to 72%. In 2012, 18,929 public officials were trained and more than US\$ 18 million invested.

Also noteworthy is the training program on Preventing and Combating Money Laundering – PCLD, which has trained more than 4,000 public officials since 2003. The program also aims at raising awareness related to treaties and conventions, including the OECD Convention on Combating foreign bribery.

In addition to traditional classroom training, in 2013 RFB implemented a distance learning basis program, designed to increase the institutional capacity of transmitting to their public officials the basic knowledge necessary to act in combating crimes and related offences.

The Federal Police of Brazil carries out constant training of its police officers, either through the National Police Academy (ANP), located in Brasilia/DF, or through partnerships with other institutions that fight corruption, such as the Office of the Comptroller General, the Federal Court of Auditing, the RFB, Federal Public Prosecutor's Office, etc. Every year, each sector of the Federal Police prepares an action plan for training activities, which must then be submitted to the ANP for evaluation and further execution.

**9(a) Please describe the procedures in place for ensuring prompt and effective handling of outgoing and incoming mutual legal assistance requests in relation to foreign bribery cases.**

<p><b>9(b) Please describe how informal assistance is encouraged, in conformity with your jurisdiction’s legal system.</b></p> <p><i>Where possible, specific reference should be made to implementation of the G20 High-Level Principles on Mutual Legal Assistance.<sup>2</sup></i></p>
<p><u>Response:</u></p> <p><b>9(a)</b> With regard to mutual legal assistance, Brazil is capable of offering legal cooperation on grounds of provisions established in multilateral and bilateral treaties or based on the principle of reciprocity. Brazil is signatory of numerous bilateral treaties that regulate mutual legal assistance on criminal matters. The country has also established, in 2004, the Department of Assets Recovery and International Legal Cooperation (DRCI), an agency of the National Secretariat of Justice of the Ministry of Justice which is the Brazilian Central Authority for most matters pertaining to International Legal Cooperation, having its powers defined by the Decree 6,061/2007. Brazil can provide mutual legal assistance either by means of rogatory letters or directly with the foreign requesting authority, depending on the nature of the request. All requests for international legal cooperation received by the DRCI are analyzed to ensure compliance with legal requirements that apply to the requested measure. In cases where the request is made by rogatory letters, the mutual legal assistance requests are initially filed with the Superior Court of Justice in order to obtain the necessary authorization to proceed with the execution of the request (known as the <i>exequatur</i>). After the authorization has been granted, Federal judges are competent to determine, at first instance, the execution of the letters. In circumstances where mutual legal assistance can be provided by means of direct assistance to the foreign authority, the DRCI will arrange execution of the request, by referring the request to the relevant Brazilian authority or, where required by law, filing the request with a court to obtain the necessary judicial authorization (e.g. for the production of documentation or obtaining access to financial records).</p> <p>A range of measures can be used to respond to mutual legal assistance requests, including: the service of documents; depositions by suspects and witnesses; the examination of people, goods, and places; the production of documents, records and goods; and the search and seizure of goods. However, where a request requires the use of specialist investigative techniques (e.g. telephone intercept powers) the measure must be specifically envisaged in the agreement or treaty that provides the grounds for the request. In cases where a request for MLA is based on reciprocity, Brazil is able to execute the request, provided that legal provisions in both Brazil and the requesting country for the use of the relevant specialist investigative techniques have been complied with.</p>

**II. Implementation of Foreign Bribery Provisions in the 2012-2013 G20 Anti-Corruption Action and the St Petersburg Declaration**

*Note 3: This section of the questionnaire is drafted from the 2012-2013 G20 Anti-Corruption Action Plan and the St. Petersburg Leaders’ Declaration. It also seeks updates from G20 countries on next steps for fighting foreign bribery.*

<p><b>10. Please specify next steps for continuing “efforts to adopt and enforce laws and other measures against foreign bribery”.<sup>3</sup></b></p>
<p><u>Response:</u></p> <p>Civil and administrative channels for international cooperation need to be improved. Despite internal changes regarding the fight against foreign bribery, countries usually face problems when seeking international cooperation</p>

<sup>2</sup> Available online here: <http://www.oecd.org/g20/topics/anti-corruption/High-Level-Principles-on-Mutual-Legal-Assistance.pdf>

<sup>3</sup> G20 Anti-Corruption Action Plan 2013 – 2014, Point 2.



in civil and administrative matters. Foreign bribery cases may therefore remain unsolved because they are based upon civil or administrative procedures that are dependent upon the assistance and cooperation of other states for their success. Requested countries may refuse assistance in civil and administrative matters because their legal system does not allow them to provide such means of cooperation and this refusal should therefore be stated in a clear and unambiguous language.

In that regard, UNCAC provides that, “where appropriate and consistent with their domestic legal system, States Parties shall consider assisting each other in investigations of and proceedings in civil and administrative matters relating to corruption”.<sup>4</sup>

Moreover, the OECD Anti-Bribery Convention also establishes that Parties “shall, to the fullest extent possible under its laws and relevant treaties and arrangements, provide prompt and effective legal assistance to another Party for the purpose of criminal investigations and proceedings”, but also “for non-criminal proceedings within the scope of this Convention brought by a Party against legal person”.<sup>5</sup>

International conventions provide a very useful framework for international legal cooperation on civil and administrative matters. Fostering the implementation of their provisions will contribute to international efforts to combat foreign bribery.

**11. Please specify next steps for engagement with the OECD Working Group on Bribery with a view to explore possible adherence to the OECD Anti-bribery Convention as appropriate.**

**Specifically and where applicable, please indicate any plans to:**

- Attend meetings of the WGB in 2014;
- Co-organize or attend meetings on foreign bribery; and/or
- Engage in technical assistance activities on the issue of implementation and enforcement of the foreign bribery offence;
- Open discussion for Membership in the WGB, with a view to acceding to the OECD Anti-Bribery Convention.

**Response:**

Brazil is a State Part of the OECD Anti-bribery Convention and has attended to every WGB meeting over the past years and plans to participate in the next meetings in 2014, especially considering the on-going evaluation of the country by the Group. Brazil is currently on the phase 3 of the evaluation process, and the on-site visit occurred on May 2014. The draft report shall be sent by July 2014.

Brazil also attends to several other meetings on foreign bribery and related issues, notably the G20 Anti-Corruption Working Group’s meetings and UNCAC Implementation Review Group’s meetings.

Within the Office of the Comptroller General it was created by Decree n. 8,109, of September 17, 2013 the Department for the Promotion of Integrity, International Agreements and Cooperation. The Department is responsible for coordinating and engaging in technical assistance activities related to the competencies of the Secretariat for Transparency and Corruption Prevention, which include the implementation and enforcement of the foreign bribery offence.

<sup>4</sup> UNCAC, article 43(1).

<sup>5</sup> OECD Anti-Bribery Convention, article 9(1).

