Facing legal battles abroad to combat corruption: the Brazilian experience
Facing legal battles abroad to combat corruption

Types of legal remedies against corruption: criminal, civil and administrative

Cases to apply non-criminal procedures (NCP):
- criminal procedure is not possible (v.g. death)
- criminal procedure is not effective (v.g. immunities)
- proof available is not beyond a reasonable doubt
- compensation for damages caused by corruption
- proprietary claims (v.g. restitution of proceeds of crime owned by the State)
- disgorgement of profits
- sanctions by unjust enrichment
### Forms of Liability in Public Legal Actions: Criminal, Civil and Administrative* (World Bank)

<table>
<thead>
<tr>
<th></th>
<th>Criminal</th>
<th>Civil</th>
<th>Administrative</th>
</tr>
</thead>
</table>
| **Possible punishments** | - Imprisonment  
- Fines and other monetary penalties  
- Asset confiscation and restitution | - Fines and other monetary penalties  
- Asset confiscation and restitution | - Fines and other monetary penalties  
- Asset confiscation and restitution  
- Warnings  
- Revocations/ suspensions of licenses or permits |
| **Source of authority** | Written laws | Written laws or case law | Written laws or regulations |
| **Burden of proof** | Beyond a reasonable doubt or intimate conviction | Probability, more likely than not to have committed the infraction | Highly variable, usually lower than criminal standard |
| **Objectives** | Punish, deter, rehabilitate, restore victim’s position | Punish, deter, confiscate profits derived from illegal activity, compensate for harm caused | Punish, deter, regulate activities. |
| **Enforcers** | Prosecutors | Prosecutors, regulators | Regulators |
| **Examples of enforcement agencies** | - US Department of Justice  
- UK Serious Fraud Office | - US Securities and Exchange Commission  
- UK Serious Fraud Office | - US Securities and Exchange Commission  
- UK Financial Conduct Authority |
Key concepts in NCP to combat corruption:

- NCP do not replace criminal prosecution
- NCP authorities shall work jointly with criminal authorities
- NCP shall be filed in the more “suitable” jurisdiction (forum shopping)

Facing legal battles abroad to combat corruption
Facing legal battles abroad to combat corruption

**Going to face a legal battle abroad: What type? (article 53 of UNCAC)**

- Plaintiff in a civil procedure to establish ownership of proceeds of corruption (art. 53, a)
- Plaintiff in a civil procedure or third party (“parte civile”) in a criminal procedure seeking compensation (art. 53, b)
- Third party in a criminal procedure to seek ownership of confiscated assets (art. 53, c)
Going to face a legal battle abroad: Who will represent you? Hiring a foreign legal counsel

- how to choose a legal counsel?
- controlling each step of the case
- public procurement rules vs. best lawyers
- alternatives on State legal representation: international cooperation
Facing legal battles abroad to combat corruption

Going to face a legal battle abroad: What if you need cooperation from another State? (article 43 of UNCAC)

- international cooperation on civil and administrative procedures is not mandatory (art. 43, 1)
- exploring possibilities on case-by-case basis
- future developments: Expert’s Meeting on Int Cooperation
Brazilian experience with legal actions abroad - outcomes

- Jorgina de Freitas case (2001): USD 15 million recovered in US, Channel Islands and Switzerland
- Banestado case (2012): USD 2 million recovered in US
- Nicolau dos Santos case (2001 and 2012): USD 9 million recovered in US, Switzerland and Bahamas
- Paulo Maluf case (ongoing): USD 28 million in the island of Jersey
- Propinoduto case (ongoing): USD 30 million in Switzerland
- Banestado case (ongoing): USD 8 million in US

Facing legal battles abroad to combat corruption
Thank you!

Boni Soares
State Attorney – Director
International Department - DPI
Office of the Attorney General of the Union – Brazil
(boni.soares@agu.gov.br)