

Forms of Liability in Public Legal Actions: Criminal, Civil and Administrative* (World Bank)

	Criminal	Civil	Administrative
Possible punishments	<ul style="list-style-type: none"> - Imprisonment - Fines and other monetary penalties - Asset confiscation and restitution 	<ul style="list-style-type: none"> - Fines and other monetary penalties - Asset confiscation and restitution 	<ul style="list-style-type: none"> - 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	<ul style="list-style-type: none"> - US Department of Justice - UK Serious Fraud Office 	<ul style="list-style-type: none"> - US Securities and Exchange Commission - UK Serious Fraud Office 	<ul style="list-style-type: none"> - US Securities and Exchange Commission - UK Financial Conduct Authority

Group “OK” case: a reference for non-criminal procedures (NCP).

- R\$ 1.2 billion seized in real estate assets;
 - many properties were being rented for the Brazilian Government itself;
 - right after judicial forfeiture (in a civil court), the group voluntarily postulated for payment in installments, which was deferred by the Federal Union;
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Facing legal battles abroad to combat
corruption



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)
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Facing legal battles abroad to combat corruption



Facing 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)
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Facing legal battles abroad to combat
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Facing 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
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Facing 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
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Thank you!

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