



Federative Republic of Brazil
Office of the Attorney General of the Union - AGU
International Department - DPI

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)

| | 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 |



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)
-



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)
-



Facing legal battles abroad to combat
corruption

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
-



Facing legal battles abroad to combat
corruption

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
-



Facing legal battles abroad to combat
corruption

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 2,3 million recovered in US
 - Nicolau dos Santos case (2001 and 2012): USD 7,6 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
-



Federative Republic of Brazil
Office of the Attorney General of the Union - AGU
International Department - DPI

Thank you!

Boni Soares

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