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Proposed Brazilian Money Laundering Legislation: Analysis and Recommendations

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Proposed Brazilian Money Laundering Legislation: Analysis and Recommendations

Paulina L. Jerez*

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I. INTRODUCTION

Money laundering is a serious challenge to the maintenance of law and order in the Americas and threatens the integrity, reliability, and stability of governments, financial institutions, and commerce.¹ The United States is the first nation to develop extensive anti-money laundering laws and enforcement mechanisms reaching across its borders.² Several international anti-money laundering model

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1. U.S. DEP'T OF TREASURY, TREASURY NEWS: SUMMIT OF THE AMERICAS MINISTERIAL CONFERENCE CONCERNING THE LAUNDERING OF PROCEEDS AND INSTRUMENTALITIES OF CRIME (Buenos Aires, Argentina, Dec. 2, 1994) Ministerial Communiqué 4 (1995) [hereinafter Buenos Aires Communiqué 1995].

2. See *infra* note 37 and accompanying text (discussing the impact of the signing of the United States anti-money laundering law).

regulations and treaties use the United States law as a model.³ Money laundering has vast detrimental effects on society: it undermines economic development and stability and legitimizes organized crime and drug trafficking proceeds.⁴ The United States government ranks countries by levels of priority which indicate their need to amend banking regulations and adopt anti-money laundering laws.⁵ Brazil is a medium-high priority country for the United States.⁶ A significant amount of drug traffic flows through Brazil,⁷ allowing illicit proceeds to circulate freely throughout the Brazilian economy.⁸ The Brazilian government has ratified the essential money laundering international agreements but has not implemented the necessary legislation.⁹

This Comment focuses on Brazil's pending adoption of stringent anti-money laundering laws and the proposed legislation's adherence to international agree-

3. Duncan E. Alford, *Anti-Money Laundering Regulations: A Burden on Financial Institutions*, 19 N.C. J. INT'L L. & COM. REG. 437, 442 (1994) (discussing the similarities between the international treaties and the money laundering statutes of the United States).

4. Phyllis Solomon, *Are Money Launderers All Washed Up in the Western Hemisphere? The OAS Model Regulations*, 17 HASTINGS INT'L & COMP. L. REV. 433, 434-37 (1994) (commenting on the money laundering methods that drug traffickers previously used to legitimize their proceeds); see generally Margaret Samuel, *Non-Cash Alternatives And Money Laundering: An American Model For Canadian Consumers' Protection*, 30 AM. BUS. L.J. 169 (1992) (stating the fight against money laundering is a significant contribution on behalf of the financial community to fight the war against illegal drugs).

5. U.S. DEP'T OF STATE, INT'L NARCOTICS CONTROL STRATEGY REP. 516 (1996) [hereinafter INCSR 1996] (discussing the methods used to rank the countries with lenient banking regulations). The Department of State Bureau for International Narcotics and Law Enforcement Affairs derives its rankings from a number of factors which indicate: 1) the money laundering situation of a nation/territory; 2) why this situation has international ramifications; 3) the effect on interests of the United States; 4) whether the government has taken appropriate legislative actions and the coverage of that legislation; 5) whether the laws are effectively implemented; and 6) "where U.S. interests are involved, the degree of cooperation between the [foreign nation] and the U.S. [government] agencies." *Id.* The INCSR provides a general check-list that drug money managers use to detect the vulnerability of a financial center. *Id.* at 516-17.

6. *Id.* at 520.

7. See Vannildo Mendes, *Drug Money Remittances Total \$1 Billion Annually*, FOREIGN BROADCAST INFO. SERVICE FOR LATIN AM., Dec. 1, 1994, at 20-21 (finding that Brazilian drug traffickers send \$1 billion abroad which exceeds the \$877 million in direct foreign investment in Brazil in 1993); *Sao Paulo Regarded as 'Financial Center' for Drug Trade*, FOREIGN BROADCAST INFO. SERVICE FOR LATIN AM., Dec. 1, 1994, at 20 (stating that the amount of drugs seized in 1994 would have yielded \$320 million in profits).

8. INCSR 1996, *supra* note 5, at 73 (discussing the transit patterns through Brazil from neighboring countries).

9. See *infra* notes 78, 93, 108, 152 and accompanying text (stating Brazil's ratification of the United Nations Convention, the Basle Convention, the OAS Model Regulations, and the Narcotics Treaty with the United States). The international agreements are executive agreements, and are therefore not binding until the parties enact the appropriate legislation.

ments and a bilateral agreement with the United States. The pending legislation aims to decrease the level of financial crimes in Brazil and facilitate the development of a sound economy by attracting legitimate foreign investments. Part I provides an introduction to money laundering. Part II defines money laundering and its relation to the international economy. Part III details the money laundering process. Part IV provides a brief overview of United States money laundering policies. Part V discusses the history of Brazil's efforts to combat money laundering, its involvement in international initiatives and organizations, and its current and proposed money laundering legislation. Part VI recommends that Brazil enforce the pending anti-money laundering legislation and join efforts with the United States to develop regulatory agencies and proficient training programs for bank officers. Adherence to these principals would place Brazil in compliance with the international agreements to which it is a party and the demands of the United States.

II. MONEY LAUNDERING: DEFINITION AND LINK TO INTERNATIONAL ECONOMY

Money is the lifeline of all international organized crime groups.¹⁰ Money laundering is the process by which criminals attempt to conceal the true origin and ownership of the proceeds of their criminal act.¹¹ If undertaken successfully, it also allows criminals to maintain control over those proceeds and create a legitimate backdrop for their sources of income.¹² Laundering the proceeds of criminal activity through the international financial system is vital to the success of criminal operations.¹³

10. See Michael Zeldin, *Money Laundering 101: Everything you Wanted to Know About Money Laundering But Were Afraid to Ask*, in FOCUS ON MONEY LAUNDERING & ASSET FORFEITURE: AN INT'L PERSP. 2 (1994) (providing a general overview of the money laundering process and the applicable United States law).

11. See OFFICE OF TECHNOLOGY ASSESSMENT, CONGRESS OF THE UNITED STATES, *Information Technologies For the Control of Money Laundering*, xii (1995) [hereinafter OFFICE OF TECH. ASSESSMENT] (defining money laundering as "[d]isguising the origin and ownership of money, often by placing it in a bank, moving it through multiple transactions."). See also Kirk W. Munroe, *Money Laundering: The Latest Darling of the Prosecutor's Nursery*, in FOCUS ON MONEY LAUNDERING & ASSET FORFEITURE: AN INT'L PERSP. 16, (1993) (defining money laundering and the increased criminalization of money laundering). The laundering of proceeds of illegal activity is only necessary if the proceeds cannot be absorbed into the criminal's lifestyle. Samuel, *supra* note 4, at 174 (commenting on the difficulty of legitimizing drug proceeds). For example, \$100,000 can be absorbed by purchasing cars and clothing, traveling, and eating in restaurants. *Id.* Drug proceeds, on the other hand, are too large to be absorbed. For example, five thousand pounds of cocaine, if sold on the streets, would generate \$355 million in cash. *Id.*

12. See Munroe, *supra* note 11, at 16 (discussing the inherent need for criminals to make illicit funds appear legitimate); Samuel, *supra* note 4, at 170 (commenting on the evil of money laundering because it allows criminals to profit from their illicit activity).

13. See Samuel, *supra* note 4, at 175 (remarking that an absence of money laundering

Drug traffickers, in the past, were accustomed to using domestic banks to launder their proceeds.¹⁴ With the increase in drug trafficking profits, however, domestic banks were unable to handle the large sums of cash without notifying law enforcement.¹⁵ The stricter banking regulations forced launderers to look abroad.¹⁶ Increased integration of financial markets and the removal of barriers for the free movement of capital enhance the ability to launder criminal money and complicate the tracing process.¹⁷ International money laundering is therefore more complicated because launderers need to seek out countries with strong bank secrecy laws.¹⁸

III. MONEY LAUNDERING PROCESS

There is no one method of laundering money. Methods range from the purchase and resale of luxury items to the passing of money through a complex international web of legitimate businesses and "shell" companies.¹⁹ Despite the variety of methods available, the laundering process proceeds in three stages: 1) placement, 2) layering, and 3) integration.²⁰ These stages may compromise numerous transactions by the launderers and alert an investment business to criminal activity.²¹ The three basic steps may occur as separate and distinct phases, they may occur simultaneously, or, more commonly, they may overlap.²²

would undermine the reason to commit the initial crime).

14. See *infra* notes 36-50 and accompanying text (discussing the history of the Bank Secrecy Act).

15. Alford, *supra* note 3, at 438-41.

16. *Id.* at 440 (discussing the methods used by money launderers and the increased regulations placed on banks to deter illegal activity); see generally M. Cherif Bassiouni, *Critical Reflections on International and National Control of Drugs*, 18 DENV. J. INT'L L. & POL'Y 311 (1990) (reviewing present national and international efforts to reduce the production and consumption of illicit narcotics).

17. See *FINCEN Mulls Offering Guidance on Anti-Money Laundering Programs*, COMPLIANCE REP., Mar. 4, 1996, at 1, 13 (commenting that the increased security on banks is forcing money launderers to utilize broker/dealers whose compliance departments are not structured to combat money laundering); Laura Lorber, *Compliance Clarified Money Laundering*, COMPLIANCE REP., Mar. 4, 1996, at 12 (discussing broker/dealers that are tightening their compliance policies).

18. See Charles A. Intrigato, *Money Laundering: New Penalties, Risks, Burdens for Bankers*, BANKERS MAG., Mar.-Apr. 1990, at 54 (discussing international initiatives to combat money laundering). The optimal goal of international agreements is to eliminate bank secrecy. *Id.* Bank secrecy laws are the "traditional shield" for nations to desist from international cooperation with money laundering cases. *Id.*

19. See OFFICE OF TECH. ASSESSMENT, *supra* note 11, at xiii (defining shell companies as "[corporations] that exists only formally, incorporated solely to serve as a cover for illegal operations").

20. Zeldin, *supra* note 10, at 4 (discussing the methods used to launder money).

21. *Id.* at 4 (discussing the methods used to launder money); see also *infra* note 92 (discussing a famous international money laundering transaction).

22. *Id.* How the basic steps are used depends on the available laundering mechanisms

The first step, placement, is the physical disposal of cash proceeds derived from illegal activity.²³ This step is the most vulnerable to law enforcement detection because of the practical problem of moving large quantities of cash into the layering stage.²⁴ A typical international transaction requires the launderer to move the illicit proceeds from the originating jurisdiction to a foreign bank account.²⁵ Launderers accomplish this by taking advantage of weaknesses in national regulatory schemes²⁶ via: 1) electronic transfers, 2) smuggling cash abroad, or 3) courier services.²⁷

The second step, layering, separates illicit proceeds from their source by creating complex layers of financial transactions designed to disguise the audit trail²⁸ and provide anonymity.²⁹ This phase is more resistant to law enforcement intervention due to the mechanics of international banking.³⁰ For example, a launderer can legitimize the money by depositing it in a foreign bank account, a securities account, or a shell corporation.³¹

and the requirements of the criminal organizations. *Id.* at 5. Certain points of vulnerability have been identified in the laundering process: entry of cash into the financial system; cross-border flows of cash; and transfers within and from the financial system. *Id.* at 5.

23. *Id.* at 4.

24. See Scott Sultzer, *Money Laundering: The Scope of the Problem and Attempts to Combat It*, 63 TENN. L. REV. 143, 149 (1995) (analyzing the placement step of money laundering).

25. See Barbara Webster & Michael S. McCampbell, *International Money Laundering: Research and Investigation Join Forces*, NATIONAL INSTITUTE OF JUSTICE, 4-5 (1992) (commenting on the various methods available to money launderers to remove money from a country); see also Solomon, *supra* note 4, at 436-37 (outlining an international money laundering scheme with the use of a "shell" company); Molly Moore & John Ward Anderson, *Drug Profits Crisscrossing Border Plague U.S., Mexican Prosecutors*, WASH. POST, July 8, 1996, at A1, A9 (describing an international money laundering transaction and diagramming the process).

26. *International Conference on Preventing and Controlling Money-Laundering and The Use of the Proceeds of Crime: A Global Approach, Report and Recommendations*, U.N. Doc. E/Conf.88/7, at 4 (1994) (discussing trends in money laundering techniques and its expanding global nature).

27. *Id.* See also Alford, *supra* note 3, at 441 (commenting on the various methods of transporting illicit proceeds abroad).

28. See Zeldin, *supra* note 10, at 5 (discussing the necessity for the layering process to disrupt the paper trail that regulatory agencies would use to trace the transaction to its illegitimate source). The audit trail is defined as the transactional statements that the financial institutions maintain when a client uses their services. *Id.* A money laundering scenario involves multiple transfers of cash into false and legitimate accounts which makes following the 'paper trail' extremely difficult. *Id.*

29. *Id.* (commenting that multiple transactions eventually separate the proceeds from their source). Money launderers use international wire transfers to jurisdictions with bank secrecy laws and the attorney-client privilege to maintain anonymity. *Id.*

30. See generally Sultzer, *supra* note 24, at 150-51 (discussing the various methods of layering and its vulnerability to detection in the international arena).

31. See OFFICE OF TECH. ASSESSMENT, *supra* note 11, at xiii (defining a shell company).

The third step, integration, creates apparent legitimacy to criminally derived wealth.³² If the layering process succeeds, integration schemes place the laundered proceeds back into the economy so that they appear as legitimate business profits.³³ The authorities can seize entire accounts, including legitimate ones, if integration fails.³⁴ In this final step, the launderer repatriates and invests the money in businesses and in personal and real property of its jurisdiction of origin.³⁵

IV. OVERVIEW OF UNITED STATES MONEY LAUNDERING LAWS

In the 1980s the United States enacted comprehensive laws to address the increasing problem of money laundering; the Bank Secrecy Act,³⁶ including its amendments: the Money Laundering Control Act,³⁷ the Annunzio-Wylie Act,³⁸

32. See Zeldin, *supra* note 10, at 5 (discussing the methods of integrating the money back into the economy).

33. See *id.* at 5 (stating that once the money appears to be clean, the criminal can spend it with impunity).

34. Sultzer, *supra* note 24, at 151 (discussing the legal ramifications of failed integration). See also *Federal Government's Response to Money Laundering: Hearings Before the Comm. on Banking, Finance, & Urban Affairs*, 103d Cong. 43-45 (1993) (statement of Tom Clifford, Assistant Special Agent, Drug Enforcement Agency).

35. Alford, *supra* note 3, at 441; see also Webster & McCampbell, *supra* note 25, at 5 (discussing legitimizing and repatriating illegal funds).

36. Bank Secrecy Act, Pub. L. No. 91-508, 84 Stat. 1114-1124 (1970) (codified as amended at 31 U.S.C. §§ 5311-5344 (1988 & Supp. V 1995)) [hereinafter BSA]; see Sultzer, *supra* note 24, at 151-54 (discussing the evolution of the Bank Secrecy Act).

37. Money Laundering Control Act, Pub. L. No. 99-570, 100 Stat. 3207 (1986) (codified as amended in 18 U.S.C. §§ 1956, 1957 and 31 U.S.C. §§ 5324-5326 (1988 & Supp. V 1994)) [hereinafter MLCA]; see Intrigo, *supra* note 17, at 51-53 (discussing the amendments to the Bank Secrecy Act); see Sultzer, *supra* note 24, at 158 (providing general historical background of money laundering legislation). MLCA applies to non-U.S. citizens located outside the United States as long as the unlawful conduct occurs "in part" within U.S. borders. MLCA, 18 U.S.C. § 1956(f). The MLCA makes criminal structuring, attempted structuring, and aiding and abetting in structuring transactions. *Id.* § 5324. Specifically, a depositor will deposit slightly less than \$10,000 in several financial and non-financial institutions to avoid the reporting of the cash transaction, a practice known as "smurfing". MLCA also prohibits the concealment of criminal profits. *Id.* § 1960. The concealment may occur by anyone who "conducts, controls, manages, supervises, directs, or owns all or part of a business, knowing that the business is an illegal money transmitting business." *Id.* Another provision of the MLCA attempts to combat organized crime by attacking the profits of criminals. See MLCA, §§ 981, 982 (providing for civil and criminal forfeiture of any real or personal property involved in a transaction that violates the money laundering statutes).

38. Annunzio-Wylie Anti-Money Laundering Act, Pub. L. No. 102-550, 106 Stat. 3672 (1992) (codified in scattered sections of 12 U.S.C., 18 U.S.C., and 31 U.S.C. (Supp. IV 1992)) [hereinafter Annunzio-Wylie Act].

and most recently, the 1994 Money Laundering Suppression Act.³⁹ In 1986 President Ronald Reagan signed the Money Laundering Control Act, enacting the first law in the world that made unlawful money laundering occurring nationally and internationally.⁴⁰ The increase in the drug trade forced Congress to create stricter laws.⁴¹ These laws serve two purposes: 1) they make the act of laundering funds a crime,⁴² and 2) they establish reporting and record keeping require-

39. Pub. L. No. 103-325, § 407(a)(1), 108 Stat. 2169, 2247-48 (1994) (to be codified at 31 U.S.C. § 5311); see also *The Anti-Money Laundering Act of 1993: Hearings on H.R. 3235 Before the Subcomm. on Financial Institutions Supervision, Regulation and Deposit Insurance of the House Comm. on Banking, Finance, and Urban Affairs*, 103d Cong. 4-6 (1993) (statement of Hon. Ronald K. Knoble, Assistant Secretary for Enforcement, Dep't of Treasury). The substantive focus of the Money Laundering Suppression Act is to combat money laundering achieved through non-bank financial institutions and to reconcile the anti-money laundering laws with the interests of the financial services industry. *Id.* See Lisa A. Barbot, Comment, *Money Laundering: An International Challenge*, 3 TUL. J. INT'L & COMP. L. 161, 190-93 (1995) (discussing Congress' response to various criticisms from financial institutions concerning the reporting requirements); Sultzer, *supra* note 24, at 216-19 (reviewing in detail the specific aspects of MLSA). The amendment required financial institutions to exempt from filing Currency Transaction Reports (CTR's) businesses which "have little or no value for law enforcement purposes." Pub. L. No. 103-325, § 402, 108 Stat. 2160, 2242 (to be codified at 31 U.S.C. § 5313(d)); see also John J. Byrne, *Bank Secrecy Act Compliance in the 1990s: Banking Efforts Are Rewarded*, BANKERS MAG., Jan.-Feb. 1996, at 16-17 (describing a two-tier system which would reduce the number of CTR filings). This alleviated the burden imposed on banks for filing cash transaction reports. *Id.*

40. See Munroe, *supra* note 11, at 16 (stating the importance of the signing of the Money Laundering Act). The "Laundering of monetary instruments" focuses on criminals and conspirators who seek to either hide the origins of tainted money, or to use the money to further their criminal operations. 18 U.S.C. § 1956.

41. Barbot, *supra* note 39, at 184-85 (describing the drug trade as the impetus for the United States Congress' decision to enact anti-money laundering legislation); see generally Michael A. DeFeo, *Depriving International Narcotics Traffickers and Other Organized Criminals of Illegal Proceeds and Combating Money Laundering*, 18 DEN. J. INT'L L. & POL'Y 406 (1990) (discussing the United States' efforts to combat international money laundering); Intriago, *supra* note 18, at 50 (describing Congress' utilization of banks as soldiers in the war against drugs); cf. Dr. Joseph D. Douglass Jr., *Banks and Drug Sabotage of U.S. Society: Vested Interests Impede Drug War*, INT'L CURRENCY REV., Winter 1995-96, at 82 (proposing that corruption at all levels of the government has undermined the "war on drugs" in the United States.).

42. Pub. L. No. 99-570, 100 Stat. 3207-18 (codified as amended at 18 U.S.C. §§ 1956-1957, 31 U.S.C. §§ 5324-5326). Section 1956 (a)(1) requires proof that a putative defendant knew that the property involved in the financial transactions was the proceeds of an unlawful activity and thereafter conducted a transaction with those proceeds with the intent to: a) engage in tax fraud or tax evasion; b) conceal or disguise the proceeds; c) promote the continuation of the crime; or d) avoid a state or federal transaction reporting requirement. 18 U.S.C. § 1956 (a)(1). The second statute, Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity, vastly expands the potential reach of section 1956's criminal prohibition against money laundering. 18 U.S.C. § 1957. Section

ments⁴³ for cash or monetary instrument transactions.⁴⁴ The latter requirement necessitates the creation of a clear audit trail that the government can use to detect and prevent laundering.⁴⁵ Critics of the legislation argue that it creates various restrictions that unfairly burden financial institutions in the pursuit of curtailing money laundering.⁴⁶

The evolution of the United States money laundering laws has seen an attempt

1957 encompasses situations where a defendant's criminal act is the acceptance of funds greater than \$10,000 with knowledge of their illicit origin. *Id.* § 1957(a). The statute does not require that a defendant conduct the transaction for any additional criminal purpose. *Id.* The statute makes criminal trades and businesses who knowingly do business with individuals or entities that possess criminal proceeds. *Id.* The penalty for transactions in violation of the statute is a maximum ten year term imprisonment, a fine of \$250,000 or twice the value of the proceeds laundered, whichever is greater, or both. *Id.* 1957(b).

43. 31 U.S.C. § 5313(a). The BSA requires domestic financial institutions to file a Currency Transaction Report (CTR) for each deposit, withdrawal, or exchange of currency or other payment or transfer by, through, or to a financial institution that involves more than \$10,000 in currency. *Id.* § 5313(a). Multiple same day transactions must be aggregated if the financial institution involved in the transactions knows that the transactions: 1) are being conducted by or on behalf of the same person; and 2) involve either cash-in or cash-out in excess of \$10,000. *Id.*

44. 18 U.S.C. § 1957. A monetary transaction includes: a deposit, withdrawal, transfer, or exchange of cash, personal and bank checks, money orders in any form, wire transfers, investment securities by, through, or to a financial institution. 18 U.S.C. § 1957(f)(1); *see also* 18 U.S.C. §§ 1956(c)(3)-(4) (defining transactions in both financial and nonfinancial institutions). A financial institution is defined broadly, encompassing nontraditional financial institutions: stock brokerage houses, currency exchange dealers, check cashing services, credit card companies, insurance companies, precious metal dealers, pawn shops, loan or finance companies, travel agencies, money transmittal services, automobile, boat or plane dealers, or the United States Postal Service. 18 U.S.C. § 1956(c)(4), 31 U.S.C. § 5312(a)(2). The amendments to the BSA requires all financial institutions, not just banks, to adopt anti-money laundering programs. 31 U.S.C. § 5344. *See* Suzanna J. Costello, *Compliance for International Bankers*, in *FOCUS ON MONEY LAUNDERING & ASSET FORFEITURE: AN INT'L PERSP.*, July 1993, at 33 (discussing what bank examiners should be looking for, commonly known as "know-your-customer"). The Annunzio-Wylie Act also obligates the reporting of suspicious transactions, those persons suspected of criminal activity, and the identity of non-bank financial institutions. 31 U.S.C. § 5344. If there is a violation of the Act the penalty depends on whether the bank is foreign or domestic. 12 U.S.C. §§ 93 (c), 1818. Domestic banks may have their charters or deposit insurance revoked while foreign banks may have their U.S. licenses canceled. 12 U.S.C. § 3105; *see also* Byrne, *supra* note 39, at 15-16 (discussing the penalties for financial institutions for failing to report suspicious transactions).

45. *See supra* note 28 and accompanying text (defining the audit trail).

46. *See* Alford, *supra* note 3, at 437-38 (analyzing the regulatory burden on banks to curb money laundering). *See also* Byrne, *supra* note 39, at 15 (discussing the influence of the American Bankers Association in Congress in creating more practical and efficient laws to combat money laundering, taking into consideration banker's due diligence efforts).

to balance the demands of the banking industry and the Department of Justice.⁴⁷ Arguably, the law is still too broad because it requires too much paperwork and incriminates innocent people.⁴⁸ The vast scope is beneficial, however, because it punishes all participants of a laundering scheme, not just the narcotic traffickers.⁴⁹ Furthermore, the law is not limited to cash transactions—it encompasses all monetary instruments and financial transactions.⁵⁰

V. BRAZILIAN EFFORTS TO COMBAT MONEY LAUNDERING

Brazil is an attractive venue for money launderers because of its strong currency,⁵¹ stable economy,⁵² lack of anti-money laundering laws,⁵³ and geographic location, since it borders many of the largest producers of illicit drugs in South America.⁵⁴ In his first year in office, Brazilian President Fernando Henrique Cardoso and his administration demonstrated remarkable efforts in combating money laundering.⁵⁵ According to the United States Department of State, Brazil

47. See *supra* note 46 and accompanying text (discussing changes in laws to adapt to the financial services industry).

48. See Alford, *supra* note 3, at 466-68 (analyzing the impact of the money laundering statutes on the operations of financial institutions).

49. See *supra* note 41 and accompanying text (discussing the United States Congress's concern to attack drug traffickers).

50. See 18 U.S.C. §§ 1956, 1957.

51. See INCSR 1996, *supra* note 5, at 73 (stating reasons for money launderers' attraction to Brazil).

52. *Id.*

53. See *id.* at 74. The lack of due diligence on behalf of Brazilian financial institutions facilitates the movement of illegal proceeds derived from narcotics and other unlawful activities. *Id.* See Bruce Zagaris, *Brazilian-U.S. Financial Cooperation Under Basle Accord*, *LATIN AM. L. & BUS. REP.*, Nov. 30, 1995, at 16 (discussing the inadequate money laundering laws in Brazil).

54. See LUIZA THEREZA BAPTISTA DE MATTOS, *Brazil*, in *INTERNATIONAL HANDBOOK ON DRUG CONTROL*, at 121-22 (Scott B. MacDonald & Bruce Zagaris eds., 1992) (noting that Brazil borders Colombia, Bolivia, and Peru); see also Jan Rocha, *Cocaine Trade Promotes Brazil New Regional Drugs Capital*, *THE GUARDIAN*, June 10, 1991, at 10 (commenting that Brazil is a drug traffickers paradise because of the open frontier, hundreds of uncontrolled rural airports, and modern telecommunications). Brazil is a major transit route of Colombian, Bolivian, and Peruvian produced cocaine traveling to the North American, Middle Eastern, and European markets. DE MATTOS, at 121. Brazil also facilitates air shipments of cocaine base from Peru destined for cocaine labs in Colombia. See INCSR 1996, *supra* note 5, at 73 (describing the drug traffickers route via Brazil); see also, Ricardo Feltrin, *PF Say Rio State Cocaine Route for 23 Countries*, *F.B.I.S FOR LATIN AM.*, Dec. 6, 1994, at 29 (claiming the state of Rio de Janeiro ships narcotics to 23 countries in Europe, Africa, Asia, North America, Central America, and South America).

55. Matt Moffett & Jonathan Friedland, *A New Latin America Faces a Devil of Old: Rampant Corruption*, *WALL ST. J.*, July 1, 1996, at A1. Brazil's previous president, Fernando Collor de Mello, was ousted in 1992 on corruption charges. DE MATTOS, *supra* note 54, at 122. Early in Collor's presidency he portrayed an image of concern with the

has cooperated with the United States government and has made commendable efforts to meet the goals and objectives of the United Nations Convention of 1988.⁵⁶ Debates addressing money laundering legislation in the Brazilian Congress date back to 1991.⁵⁷ Brazilian bank secrecy laws, however, have restricted all administrative anti-money laundering initiatives.⁵⁸ The judicial system also lacks efficacy.⁵⁹ An insufficient number of prisons and judges has resulted in impunity for individuals laundering criminal proceeds.⁶⁰ The government succeeded only in passing laws concerning the regulation of chemicals and organized crime.⁶¹

A. INTERNATIONAL PRESSURE

International efforts⁶² have attempted to force nations to cooperate in fighting

drug problem. *Id.* In April of 1990, Collar jogged wearing a T-shirt stating, "Drugs: Out of Here." *Id.* He also began a campaign against illicit drugs in reaction to a demonstration by the mothers of Corumba, the capital of the state of Mato Grosso do Sul which borders Bolivia. *Id.*

56. See INCSR 1996, *supra* note 5, at xix.

57. *Id.*

58. See Zagaris, *supra* note 53, at 16. Brazilian law does not require financial institutions to develop policies and practices to curb money laundering or to train employees. *Id.* Brazil will continue to be a magnet for illegally derived profits if Brazil does not enact anti-money laundering laws and if it retains banks secrecy laws. See Solomon, *supra* note 4, at 454.

59. *Impotence Against Drugs*, LATIN AM. NEWSL. BRAZIL REP., Oct. 21, 1993, at 5 (commenting on the slowness of the judiciary). The Brazilian police force lacks trained personnel to detect the entry and exit of drugs along its borders. *Id.* In 1993, the police drug control division only consisted of 500 people including administrative staff. *Id.*

60. See *id.* Eighty percent of those accused of drug trafficking are released before facing trial and only 10% of those involved in the drug trade are in prison. *Id.*; see also Rocha, *supra* note 54, at 10 (stating that the Brazilian judicial system allows launderers who have connections in the political system to escape criminal punishment).

61. See INCSR 1996, *supra* note 5, at 74; see *infra* notes 162-163 and accompanying text (discussing Brazilian laws prohibiting drug trafficking and use of illegal proceeds). Many countries have comprehensive laws on their books and conduct aggressive enforcement efforts, but still have high volumes of money laundering. INCSR 1996, *supra* note 5, at 492. In the late 1980's, Brazil's economic crisis fueled the production, consumption, and trafficking of illicit drugs. DE MATTOS, *supra* note 54, at 121. See generally Fernando Cepeda Ulloa, *International Cooperation and the War on Drugs*, in *DRUG TRAFFICKING IN THE AMERICAS* 513 (Bruce M. Bagley & William O. Walker, III, eds., 1994) (discussing the importance of an international legal system to combat drug trafficking).

62. See *Money Laundering: U.S. Efforts to Combat Money Laundering Overseas, Testimony Before the Committee on Banking and Financial Services, House of Representatives*, Feb. 28, 1996 (discussing the necessity for the international community to cooperate against combating money laundering). The G-7 Economic Summit created the Financial Action Task Force in 1989 to develop coordinated legislative and enforcement systems to combat money laundering. ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, *FINANCIAL MARKET TRENDS* 37 (1995). Members of the G-7 Task Force

money laundering. Illicit drug money is not likely to contribute positive net results to growing economies and societies.⁶³ Furthermore, because unilateral efforts are inefficient, a concerted multilateral effort will facilitate detection and cessation of international money laundering.⁶⁴

1. Adoption of United States 1988 Narcotics Convention

On December 19, 1988, at a United Nations⁶⁵ conference in Vienna, Austria, one hundred and six countries adopted by consensus the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.⁶⁶ The

include: Austria, Australia, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, Turkey, the United Kingdom, the United States, the Commission of the European Union, and the Gulf Cooperation Council. *Id.* at 64 n.1; *see also* Samuel, *supra* note 4, at 183-84 (discussing the development of the Financial Action Task Force).

63. *See* Solomon, *supra* note 4, at 439 (discussing the negative effects of illicit drug money on economies and societies); *see also* Ellen Leander, *How Money Launderers Are Fighting Back*, *GLOBAL FIN.*, Feb. 1996, at 54 (stating that money laundering is growing into a \$1 trillion business, facilitating the growth of criminal activity).

64. *See* Solomon, *supra* note 4, at 441 (explaining the necessity for efforts by multiple countries to combat international money laundering). The increased development of anti-money laundering laws has stimulated more sophisticated money laundering practices. *Id.* For example, in order to avoid mandatory reporting requirements, launderers make deposits of less than \$10,000, a practice known as "smurfing." *See generally* Solomon, *supra* note 4 (discussing in detail the art of "smurfing"). The executive director of the United Nations, Giorgio Giacomelli, stated, "International coordination is essential in the war on drugs." Gustavo Gonzalez, *Latin American Drugs: U.N. Pulls Southern Cone Together*, *INTER PRESS SERVICE*, Dec. 21, 1995, available in WESTLAW, 1995 WL 10136412.

65. *See* Yearbook of Int'l Org., 1, 1490-93 (Union of International Organizations ed., 32d ed. 1995/1996). The United Nations represents more than one hundred and fifty-nine states, aggregating nearly ninety-eight percent of the world's population. *Id.* at 1490-93. Considering its tremendous range of membership, the United Nations wields a significant amount of influence. *Id.* This influence is visible by the international effort to bring effective law enforcement measures against drug trafficking by criminalizing money laundering. *See e.g.*, David P. Stewart, *Internationalizing The War on Drugs: The UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, 18 *DENV. J. INT'L L. & POL'Y* 387, 387 (1990) (detailing the development of the United Nations initiative against narcotic drugs and money laundering); Bruce Zagaris, *Developments in International Judicial Assistance and Related Matters*, 18 *DENV. J. INT'L L. & POL'Y* 339, 340-48 (1990) (discussing the development of the United Nations 1988 Narcotics Conference and detailing the elements of the international agreement); William B. McCallister, *The International Nexus: Where Worlds Collide, in* *DRUG TRAFFICKING IN THE AMERICAS*, 521 (Bruce M. Bagley & William O. Walker III, eds., 1994) (discussing the history of narcotics control and the successes and failures of the international drug control system).

66. Final Act, including resolutions, and the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, U.N. Doc. E/Conf. 82/14 (1988) [hereinafter UN Convention]. The Convention came into force on November 11, 1990 af-

Convention established a framework for placing international controls on money laundering, thus setting the standard for international money laundering efforts to follow.⁶⁷

The Convention requires signatory nations to make money laundering a criminal and extraditable offense.⁶⁸ The signatories must take necessary legislative and administrative measures that conform with the fundamental provisions of their respective legislative systems.⁶⁹ In carrying out their obligations, nations must ensure that measures are consistent with the principles of sovereign equality, territorial integrity, and non-intervention in the domestic affairs of other states.⁷⁰ Finally, a signatory nation may not undertake the exercise of jurisdiction and performance of functions in the territory of another nation that domestic law in the other nation exclusively reserves for its own authorities.⁷¹

Article 3 of the Convention defines the offenses and sanctions.⁷² Each signatory agrees to make criminal the following acts: 1) the management or financing of the cultivation or manufacture of psychotropic substances,⁷³ 2) the conversion or transfer of property derived from drug trafficking,⁷⁴ and 3) the concealment or disguise of the true nature of property derived from drug trafficking.⁷⁵ The United Nations based these provisions criminalizing money laundering on the United States statutes.⁷⁶ Although Article 3 requires nations to make these offenses criminal, the adoption of the provisions is subject to a nation's constitutional principles and the basic concepts of its legal system.⁷⁷

ter the minimum of twenty governments had deposited instructions of ratification with the United Nations. See Solomon, *supra* note 4, at 442 (discussing the adoption of the United Nations Convention in Vienna, Austria in 1988); see also U.S. DEP'T OF STATE, INT'L NARCOTIC CONTROL STRATEGY REP. 411 (1992) [hereinafter INCSR 1992] (discussing the adoption of the United Nations Narcotics Convention).

67. See *infra* notes 103, 108, 171 and accompanying text (discussing the development of international initiatives).

68. UN Convention, *supra* note 66, art. 3. The Convention lays out a broad framework for signatory nations to promote effective control of the international drug trade.

69. *Id.* art. 2(1). The signatories must enact legislation and implement regulations. *Id.*

70. *Id.* art. 2(2).

71. *Id.* art. 2(3).

72. *Id.* art. 3.

73. UN Convention, *supra* note 66, art. 3(a)(i). Psychotropic substances and narcotic drugs mean any substance, natural or synthetic. *Id.* arts. 1(n), 1(r).

74. *Id.* art. 3(b)(i).

75. *Id.* art. 3.

76. See Alford, *supra* note 3, at 442 (commenting that the UN provisions that make money laundering criminal are similar to United States statutes); *supra* notes 36-46 and accompanying text (discussing the United States statutes which make money laundering criminal).

77. UN Convention, *supra* note 66, art. 3 (2). This provision allows nations substantial room for interpretation and delay in their enactment of laws. See Alford, *supra* note 3, at 443 (stating this provision can potentially undermine the purpose of the Convention); see also Stewart, *supra* note 65, at 393 (stating that negotiating countries encountered dif-

Brazil signed the United Nations Convention and the Brazilian Executive Branch declared its entry into force in June, 1991.⁷⁸ According to the United States Department of State, however, Brazil is not complying with the regulations of the Convention.⁷⁹ If Brazil repealed its bank secrecy laws and enacted provisions that allowed undercover operations, it would begin to align itself with the spirit of the Convention.⁸⁰

2. Basle Committee Minimum Standards

The Basle Committee on Banking Regulations and Supervisory Practices consists of representatives from the central banks and supervisory authorities of the major industrialized nations.⁸¹ In December 1988, the Basle Committee adopted a Statement of Principles that addressed money laundering.⁸² The Committee stated that a bank should make reasonable efforts to "determine the true identity" of its customers,⁸³ commonly referred to as the "know-your-customer rule."⁸⁴ This rule discourages money launderers from using banks because national and international banks require evidence of a customer's true identity.⁸⁵

ficulties when drafting precise definitions that could be acceptable to varying legal systems).

78. DE MATTOS, *supra* note 54, at 133. The Brazilian Senate approved the 1988 UN Convention on June 12, 1989. *Id.* The Brazilian Chamber of Deputies passed the Convention on May 23, 1990. *Id.*

79. See INCSR 1996, *supra* note 5, at 73, 75 (commenting that Brazil has been contemplating passage of the necessary legislation since 1991).

80. *Id.* at 75 (stating that Brazil needs to enact money laundering legislation to be in compliance with the UN Convention).

81. See Duncan E. Alford, *Basle Committee Minimum Standards: International Regulatory Response to the Failure of BCCI*, 26 GEO. WASH. J. INT'L L. & ECON. 241, 241 n.1 (1992) (listing the twelve nations participating in the Task Force). The nations, which meet in Basle, Switzerland, include: Belgium, Canada, France, Germany, Great Britain, Luxembourg, Italy, Japan, the Netherlands, Sweden, Switzerland, and the United States. *Id.*

82. See e.g., *National Banks Alerted to Statement of Principles on Money Laundering*, 1 Fed. Banking L. Rep. (CCH) ¶ 87,606 (Jan. 9, 1989) [hereinafter *Basle Principles*]; *The Basle Committee's New "Minimum Standards,"* SPECIAL SUPPLEMENT FIN. REG. REP., June 1992, at 1 [hereinafter *Basle New Minimum Standards*]; Alford, *supra* note 81, at 241 (tracing the historic development of the Basle Committee and analyzing the formation of the new "minimum standards").

83. See *Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering*, reprinted in 1 Fed. Banking L. Rep. (CCH) ¶ 52-351 (Dec. 1988) [hereinafter *Banking Restrictions*].

84. See Costello, *supra* note 44, at 33-36 (discussing the details of the "know-your-customer" rule). Bank supervisors cannot be indifferent to the criminal use of the banking system. *Id.* at 38. This type of indifference may cause banks to suffer losses through fraud or the adverse effects of being associated with criminals. *Id.*

85. See Alford, *supra* note 3, at 444-45 (discussing the importance of inter-bank regulations). The Committee recognizes that the main purpose of bank supervisors is to maintain the financial stability of banks and not to ensure the legitimacy of individual banking

On July 6, 1992 the Basle Committee issued new minimum standards regarding governmental regulation of international banks.⁸⁶ The four principle elements are: 1) a home country authority should supervise any international banking group,⁸⁷ 2) the creation of a cross-border banking establishment requires the prior consent from the host-country's supervisory authority and the requesting bank's supervisory authority,⁸⁸ 3) supervisory authorities should possess the right to gather information from the cross-border banking establishments of the banks or banking groups for which they are the home-country supervisor,⁸⁹ and 4) if a host-country authority determines that any one of the foregoing minimum standards is not met to its satisfaction, that authority can impose restrictive measures, including the prohibition of the creation of banking establishments.⁹⁰

The Basle Committee's Statement of Principles lacks enforcement under international law.⁹¹ Its implementation depends on each individual nation's legal system. The Committee, however, works closely with international organizations in order to strengthen the implementation of its suggestions.⁹²

The Brazilian National Monetary Council decided to adopt the rules of the Ba-

transactions. *Banking Restrictions*, *supra* note 83, ¶ 52-351. The association of banks with criminal activity erodes public confidence and undermines the stability of the banking system. Alford, *supra* note 3, at 445.

86. *Basle New Minimum Standards*, *supra* note 82, at 1.

87. *Id.* at 2. For example, in the case of Brazil, the Brazilian Central Bank should supervise the various international branches of Brazilian banks.

88. *Id.* at 2.

89. *Id.* at 3. For instance, the Brazilian Central Bank may receive information concerning the operation of its banks abroad and consent to sharing information with foreign supervisors such as the United States Federal Reserve or the Office of the Comptroller of Currency.

90. *Id.* at 3-4.

91. See Alford, *supra* note 3, at 445 (stating the minimum standards as the most efficient standards and procedures in the banking industry).

92. See Alford, *supra* note 81, at 241 (discussing the Basle Committee's international influence). For example, the Basle Committee strongly encouraged the international banking community's coordinated approach toward monitoring the Bank of Credit and Commerce International ("BCCI") when allegations of scandal surrounded the Bank. *Id.* The international community eventually forced the BCCI to close its operations in 1991, an action that demonstrated the Committee's increasing role in the regulation of international money movement. See *id.* at 241 (analyzing the fall of the BCCI and the response of the international community). In the case of the BCCI, launderers deposited the illicit proceeds into banks in the United States and later wired them to a BCCI branch in Tampa, Florida. Solomon, *supra* note 4, at 437. The next wire transfer occurred through a New York bank to BCCI headquarters in Luxembourg. *Id.* at 437. The money was then transferred/routed to BCCI of London with instructions to place the money in a certificate of deposit. *Id.* The certificate converted into security for a loan for a shell company in the Bahamas. *Id.* The loan was wired back to the account in Tampa which transferred the money to Uruguay which was finally converted into cash in Colombia where the launderers could access "clean money." *Id.*

sle Accord.⁹³ The enactment of the Basle Accord, through Resolution 2099, established new standards for gauging the stability of the Brazilian financial system and for standardizing the rules for evaluating the stability of banking and financial institutions among the signatory countries.⁹⁴

By incorporating the Basle Accord Regulations, Resolution 2099 emerges as a comprehensive piece of economic legislation. The law consolidates the rules authorizing the operation of banks and the opening of branches and other offices. Furthermore, Resolution 2099 establishes a minimum capital requirement for financial institutions that operate in Brazil.

Brazilian banks express concern that their clients will abandon them because of both the infringement on the bank's long-standing confidentiality rules and the overall instability to the banking system.⁹⁵ Concern, on behalf of the Brazilian bankers and clients, may stem from the Brazilian Government's negotiations with offshore jurisdictions to repeal bank secrecy regulations.⁹⁶

On the other hand, the Basle Accord meets with criticism for not adopting a global system for risk analysis.⁹⁷ Undeniably, the Basle principles benefit Brazil especially as it reenters the international financial markets. Foreign investment continues⁹⁸ and several Brazilian broker/dealers are placing bonds abroad. Institutions critical of the Accord, therefore, should welcome the adoption of the international standards. Problems will arise as to the correct interpretation of the rules for specific transactions. The Basle regulations, however, demonstrate a positive step for a country that intends to find a place in the international financial market.⁹⁹

3. Organization of American States

The Organization of American States (OAS) operates as a multinational or-

93. Resolução N. 2099, 17 Agosto 1994, 58 Coletânea de Legislação e Jurisprudência 1230 (1994) [hereinafter Resolution 2099].

94. See *id.* art. 1, annex (I)-(IV). The Resolution discusses: a) authorization for operation, b) minimum limits of paid-up capital and net worth, c) installation and operation of offices in Brazil, and d) the necessity of maintaining net worth in balance with the degree of risk of the asset structure. *Id.* art. 1, annex II.

95. *More Control Needed*, LATIN AM. L. & BUS. REP., Nov. 30, 1995, at 7. The concern stems from the numerous Brazilians involved in the underground economy. *Id.* An estimated 30 million Brazilians earn money from the underground economy. *Id.*

96. *Id.* Among other countries, Brazil is negotiating with the Cayman Islands. *Id.*

97. See generally Alford, *supra* note 81, at 270-74 (discussing the weaknesses in the principles).

98. See *Roundup of Economic Reports Through 29 Nov.*, FOREIGN BROADCAST INFO. SERVICE FOR LATIN AM., Nov. 30, 1995, at 26 (discussing the recent trends in foreign investment).

99. See *Roundup of Economic Reports Through 30 Nov.*, FOREIGN BROADCAST INFO. SERVICE FOR LATIN AM., Nov. 30, 1995, at 25 (reviewing basic economic indicators in financial investments).

ganization dedicated to the process of peace and development in the Americas.¹⁰⁰ The Inter-American Program of Action of Rio de Janeiro Against the Illicit Use and Production of Narcotic Drugs and Psychotropic Substances¹⁰¹ recommended that the countries of the OAS form a regional Inter-American Drug Abuse Control Commission (CICAD).¹⁰²

OAS representatives examined CICAD's progress at the Inter-American Meeting of Ministers in Ixtapa, Mexico in 1990.¹⁰³ The representatives at this meeting outlined twenty points in the Declaration and Program of Action of Ixtapa.¹⁰⁴ These representatives also enumerated five specific actions pertaining to money laundering.¹⁰⁵ Most importantly, the representatives suggested that an Inter-American group of experts draft model regulations that conform with the United Nations Convention on narcotics.¹⁰⁶ The Ministers recommended that an

100. Yearbook of Int'l Organization, 1, at 1291 (Union of International Organization ed., 1995/1996) (stating the essential aims of the Organization of American States).

101. See *Execution of the Legal Development Project*, 1 OEA/ser.L/XIV.2.15, CICAD/doc. 585/94 (1994). The Rio Program emphasized the need for measures to harmonize relevant legislation among OAS member states such as: 1) authorization of forfeiture of assets derived from illicit drug trafficking while controlling precursors and other chemicals essential for the manufacture of narcotic drugs and psychotropic substances, 2) support for crop substitution and eradication of illicit production, and 3) creation of an efficient system of cooperation among anti-drug agencies and the judicial systems of member states. *Id.*

102. CICAD stands for Comisión Interamericana Para el Control del Abuso de Drogas (Inter-American Drug Abuse Control Commission). CICAD is an "autonomous regional organization" within the OAS. Solomon, *supra* note 4, at 444.

103. *Meeting of Ministers on the Illicit Use and Production of Narcotic Drugs and Psychotropic Substances and Traffic Therein—Alliance of the Americas Against Drug Traffic*, OEA/ser.K/XXVIII.2.1, RM/NARCO/doc. 29/90 rev.1 (1990) (Spanish version) [hereinafter *Ixtapa 1990*]. Eighteen members of the OAS signed the Declaration and Program for Action: Argentina, the Bahamas, Bolivia, Brazil, Canada, Chile, Columbia, the Dominican Republic, Guatemala, Honduras, Jamaica, Panama, Paraguay, Peru, Mexico, Surinam, the United States, and Venezuela. *Id.*

104. *Ixtapa 1990*, *supra* note 103, at 3-8. These twenty principles established CICAD's priorities for the following ten years. *Id.*

105. *Id.* at 5. The first step emphasized the need for legislation that criminalized all activities related to the laundering of property and proceeds related to drug trafficking. This first step also emphasized the need for laws that enable law enforcement to identify, trace, seize, and forfeit such property and proceeds. *Id.* at 4. Second, CICAD suggested that member states encourage banks and financial institutions to cooperate with the appropriate authorities in order to prevent the laundering of property and proceeds related to illicit drug trafficking and to facilitate the identification, tracing, seizure, and forfeiture of such property and proceeds. *Id.* Furthermore, the CICAD representatives encouraged its member countries to develop mechanisms and procedures for bilateral and multilateral cooperation aimed at the prevention of money laundering related to illicit drug trafficking within the framework of their respective legal systems. *Id.*

106. *Ixtapa 1990*, *supra* note 103, at 5. The primary purposes of the model regulations would be to: 1) criminalize laundering of property and proceeds related to illicit drug traf-

Inter-American expert group forward the model regulations to the United Nations General Assembly for consideration by its Expert Group on Money Laundering.¹⁰⁷

On March 10-13, 1992, at CICAD's eleventh regular session, its members considered and approved the Model Regulations Concerning Laundering Offenses Connected to Illicit Drug Trafficking and Related Offenses.¹⁰⁸ The Model Regulations complement Latin American civil and common law legal systems and prepare legal models conditioned for enactment, individually or as part of a comprehensive program.¹⁰⁹ Although the Model Regulations are not binding, they serve as a suggested statutory framework.¹¹⁰

Article Two of the Model Regulations addresses the offense of money laundering.¹¹¹ According to Article Two, money laundering occurs when "any person converts or transfers property and knows, should have known, or is intentionally ignorant of the fact that such property is proceeds from illicit traffic or related offenses."¹¹² A court or another competent authority will investigate, try, judge,

ficking; 2) prevent the use of financial systems for laundering, conversion or transfer of property or proceeds; 3) enable authorities to identify, trace, seize and forfeit property and proceeds related to illicit drug trafficking; 4) change legal and regulatory systems to ensure that bank secrecy laws do not impede effective law enforcement and mutual legal assistance; and 5) study the feasibility of reporting large currency transactions to national governments and permit governments to share such information. *Id.*

107. *Id.*

108. *Organization of American States, CICAD, Model Regulations Concerning Laundering Offenses Connected to Illicit Drug Trafficking and Related Offenses*, AG/RES. 1198 (1992) (XXII/O-92) [hereinafter *Model Regulations*]. The development of the OAS Model Regulations focuses attention on drug producers and traffickers rather than on the demand side of the drug problem. Solomon, *supra* note 4, at 447 n.99.

109. *Model Regulations*, *supra* note 108, at introduction.

110. See Solomon, *supra* note 4, at 444-45 (describing the legal effect of international agreements on domestic policies). When the label "soft law" attaches to intergovernmental organization recommendations or resolutions they are not binding on member states. See Solomon, *supra* note 4, at 444-46 (providing a general history of the regulations). The actual model facilitates the enactment of legislation for member countries that do not have vast resources to develop anti-money laundering legislation. *Id.* at 445. Critics claim that a broader definition of money laundering would have criminalized more illegal acts that facilitate money laundering. *Id.* at 450.

111. *Model Regulations*, *supra* note 108, art. 2.

112. *Id.* art. 2(1). It is criminal to acquire or possess property derived from drug proceeds. *Id.* art. 2(2). An offense is also committed when one "conceals, [deceives,] or impedes the establishment of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property and knows, should have known or is intentionally ignorant that such property is proceeds from illicit traffic or related offenses." *Id.* art. 2(3). Finally, an offense is committed by "any person who participates in, associates with, conspires to commit, attempts to commit, aids and abets, facilitates and counsels, incites, publicly or privately, the commission of any of the offenses" previously mentioned. *Id.* art. 2(4). These regulations receive criticism for only applying to money laundering that facilitate drug trafficking. *Id.* art. 8. See also Solomon, *supra* note 4, 449-50 (analyzing and

and punish money laundering offenses separately from other illicit drug trafficking or related offenses.¹¹³ Pursuant to Article Two, the court possesses the authority to order that all property,¹¹⁴ proceeds,¹¹⁵ or instrumentalities¹¹⁶ connected with the crime be forfeited and disposed of in accordance with the law.¹¹⁷ A court or competent authority may also order the forfeiture or seizure of property when the crimes committed violate the laws of another country if such acts would be criminal if committed within the second nation's jurisdiction.¹¹⁸

Article Ten of The Model Regulations directly addresses the lenient banking regulations in South America. This article establishes various regulations for financial institutions.¹¹⁹ These regulations include a requirement that financial in-

suggesting recommendations for the Model Regulations). "Knowledge, intent or purpose as required as an element of an offense may be inferred from objective, factual circumstances." *Id.*; see *Model Regulations*, *supra* note 108, art. 2(5) (stating the requirements for knowledge).

113. *Model Regulations*, *supra* note 108, art. 2(6). Jurisdiction, under Article three of the Model Regulations, states that: "the crime will be tried whether or not the illicit traffic or related offenses occurred in another territorial jurisdiction, without prejudice to extradition when applicable in accordance with the law." *Id.* art. 3.

114. *Id.* art. 1(1). Property is defined as "assets of every kind, whether corporal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets." *Id.*

115. *Id.* art. 1(7). The regulations define proceeds as "any property derived from or obtained, directly or indirectly, through the commission of illicit traffic or related offenses." *Id.*

116. *Model Regulations*, *supra* note 108, art. 1(5). The regulations define instrumentality as "something that is used in or intended for use in any manner in the commission of illicit traffic or related offenses." *Id.* art. 1(5).

117. *Id.* art. 5(1). If the property described in Article 5(1) cannot be forfeited, the court has the opportunity to order the "forfeiture of any other property of equivalent value or may order a fine of such value." *Id.* art. 5(2). The court may transfer forfeited property, proceeds, or instrumentalities not required to be destroyed, and will not harm the public or a government agency, responsible for the seizure of such items, or elsewhere for official use. *Id.* The court or competent authority may also sell the property and transfer the proceeds to the agency assisting in the seizure. *Id.* The court may also deposit proceeds into the Special Fund provided for in the Inter-American Program of Action of Rio de Janeiro or into other funds used to combat illicit drugs. *Id.*

118. *Model Regulations*, *supra* note 108, art. 8.

119. *Id.* art. 9(1)(a). The Regulations define a financial institution as: "a commercial bank, trust company, savings and loan association, building and loan association, savings bank, industrial bank, credit union, or other thrift institution or establishment authorized to do business under the domestic banking law." *Id.* Additionally, the Model Regulations consider a broker or dealer in securities and a currency dealer or exchanger financial institution. *Id.* art. 9(1)(b)-(c). The Model Regulations, unlike statutes in the United States, do not cover insurance companies. Solomon, *supra* note 4, at 450. In the United States, the insurance industry stands as a formidable player in money laundering schemes. *Id.* Although, the regulations could be interpreted to encompass insurance companies, specifying the insurance industry depends on each adopting country. *Id.* at 450-51; *Model Regulations*, *supra* note 108, art. 9(1)(c). The inability of financial institutions to maintain

stitutions accurately identify clients and maintain records for at least five years.¹²⁰

Article Eleven of The Model Regulations emphasizes that financial institutions will provide information and records that competent authorities request.¹²¹ Such a request for information and records remains confidential.¹²² Lastly, Article Eleven suspends all bank secrecy laws which may impede an investigation.¹²³

Article Twelve stipulates that financial institutions must record cash transactions that exceed an amount that a "competent authority"¹²⁴ determines. Multiple cash transactions in which the aggregate sum exceeds the applicable determined amount constitute a single transaction.¹²⁵ Article Thirteen requires financial institutions to report suspicious transactions.¹²⁶ Specifically, financial institutions must "pay special attention to all complex, unusual, or large transactions, whether completed or not; to all unusual patterns of transactions; and to insignificant but periodic transactions, which have no apparent economic or lawful purpose."¹²⁷

anonymous accounts or accounts with fictitious or incorrect names remains one of the most important reasons for creating stringent banking reporting requirements. *Id.* The Model Regulations do not provide incentives for strict compliance on behalf of the financial institutions. Solomon, *supra* note 4, at 452. For example, incentives such as tax breaks for financial institutions and economic incentives for employers who report suspicious transactions are excluded from the Model Regulations. *Id.*

120. *Model Regulations*, *supra* note 108, art. 10(4), (5).

121. *Id.* art. 11(1). Critics of the regulations claim that when banks report suspicious transactions they are unaware of their client's specific unlawful activity. Solomon, *supra* note 4, at 450. Therefore information that banks supply should be used to pursue criminal investigations other than money laundering. *Id.* at 450 n.127.

122. *Model Regulations*, *supra* note 108, art. 11(1). The information is restricted to the use of the court or competent authority. *Id.* Accordingly, this provision aims to keep bank clients from learning of an investigation of them. Solomon, *supra* note 4, at 448.

123. *Model Regulations*, *supra* note 108, art. 11(4). "The legal provisions referring to bank secrecy or confidentiality shall not be an impediment to compliance with the Article when the information is requested by or shared with the court or other competent authority." *Id.* This provision avoids any problems which may arise in jurisdictions where bank secrecy laws would force the cessation of official investigations. Solomon, *supra* note 4, at 448. Articles 12 and 19 also contain exemptions for bank secrecy laws. *See generally Model Regulations*, *supra* note 108, arts. 12, 19 (noting the disclosure of information during transactions and in court proceedings).

124. *Id.* art. 12. The records should include detailed information to assist authorities in locating the person. *Id.* art. 12(2). Reporting multiple transactions is only required when a financial institution's employees, officers or agents have knowledge of the multiple transactions. *Id.* art. 12(4). The Model Regulations do not impose an affirmative duty on the financial institution to inquire whether the multiple transactions exceed the specified amount. Solomon, *supra* note 4, at 449; *cf. supra* notes 36-45 and accompanying text (discussing the development and requirements of the United States money laundering law).

125. *Model Regulations*, *supra* note 108, art. 12(4).

126. *Id.* art. 13.

127. *Id.* art. 13(1). Financial institutions should report suspicious activity promptly to the competent authorities. *Id.* art. 13(2).

Article Fourteen discusses the liability of financial institutions.¹²⁸ Vicarious liability applies to financial institutions for the acts of their employees, staff, directors, owners, or other authorized representatives who violate the money laundering laws.¹²⁹

To facilitate internal controls of the financial institutions, Article Fifteen requires mandatory compliance programs.¹³⁰ This requirement includes the adoption of strict procedures to ensure the honesty of employees,¹³¹ "know your client" programs,¹³² and audit checks.¹³³

The Model Regulations are a suggested statutory framework designed to facilitate the adoption of anti-money laundering legislation. The Regulations help countries that do not have the resources to develop their own legislation.¹³⁴ Critics of the Model Regulations argue, however, that these proposed statutes only criminalize money laundering linked to drug trafficking and fail to define money laundering more broadly.¹³⁵ The Model Regulations, however, function as a framework within which legislative bodies of foreign countries may model their domestic law.

4. Summit of the Americas

The finance ministers of countries participating in the Summit of the Americas met in New Orleans, Louisiana in May of 1996¹³⁶ to discuss the challenges of achieving stable and sustainable economies.¹³⁷ These discussions included financial crimes.¹³⁸ The Communiqué reaffirmed the ministers shared commitment to combat the laundering of proceeds, properties, and other instrumentalities of drug trafficking, as well as other illegal activities.¹³⁹

128. *Id.* art. 14.

129. *Id.* art. 14(1). Those representing the financial institution who willfully fail to comply with the Articles 10 and 13 will face criminal liability. *Id.* art. 14(3).

130. *See Model Regulations*, *supra* note 108, art. 15 (setting a minimum guideline for financial institutions to follow).

131. *Id.* art. 15(1)(a).

132. *Id.* art. 15(1)(b).

133. *Id.* art. 15(1)(c).

134. Solomon, *supra* note 4, at 446-50.

135. *Id.* at 439-42.

136. Summit of the Americas Meeting of Western Hemisphere Finance Ministers, New Orleans, Louisiana, May 18, 1996 Joint Communiqué [hereinafter New Orleans Summit].

137. *Id.* at 1; *see Latin America: Latin American Countries Need to Develop Stable Financial System, Ministers Say*, BNA INT'L BUS. & FIN. DAILY, May 21, 1996, at D8 (discussing outcome of New Orleans Summit).

138. New Orleans Summit, *supra* note 136, at 1.

139. *Id.* at 4. The Finance Ministers found money laundering a threat to the integrity of financial markets as well as to economic and political systems. *Id.* Furthermore, chronic poverty could potentially undermine democratization and impede the gradual shift towards capitalism in emerging democracies in Latin America. *See Economic Development: Poverty and Money Laundering Focus of Finance Ministers*, BNA INT'L BUS. & FIN. DAILY,

The Summit also encouraged the Inter-American Development Bank (IDB), in coordination with the Organization of American States (OAS), to develop a framework for the implementation of a hemispheric plan to provide training and technical assistance to the financial sector.¹⁴⁰ This short-term plan would provide courses in legislation, regulation, investigation, prosecution, and financial intelligence support.¹⁴¹ Each country seeking assistance would participate in a two step process: 1) training and technical needs assessment,¹⁴² and 2) training and technical assistance tailored to the needs of a specific country.¹⁴³

The Ministers present at the Summit endorsed the obligations undertaken by their governments upon ratification of the UN Convention at the Buenos Aires Summit. At this convention the ministers agreed to recommend to their governments a Plan of Action¹⁴⁴ for a coordinated hemispheric response to combat money laundering.¹⁴⁵ In the Declaration of Principles set forth in the Buenos Aires Summit, the Summit members emphasized the necessity to: 1) criminalize money laundering; 2) make the possession proceeds of serious crimes a criminal offense; and 3) revise or enact laws, regulations, and other policies to facilitate the identification, seizure, and forfeiture of the proceeds and instrumentalities of money laundering.¹⁴⁶ The Summit encouraged the legislators to empower their courts in order to facilitate the sharing of financial and commercial information with requesting institutions.¹⁴⁷ In particular, countries should consider enacting and enforcing domestic laws that approve the use of investigative techniques.¹⁴⁸

May 21, 1996, at D4 (reviewing initiative of participants at New Orleans Summit).

140. New Orleans Summit, *supra* note 136, at 6-8. The Inter-American Development Bank (IDB), the World Bank, and bilateral leaders were asked to address prevention of financial crimes in their operations, including support for official programs. *Id.* The IDB will fund the programs, and other organizations may be asked to finance specific activities. *Id.* The establishment of the programs is an effort to support the commitments of the December 1995 Buenos Aires, Argentina Money Laundering Conference. *Id.*; see Buenos Aires Communiqué 1995, *supra* note 1, at 3-10 (listing detrimental economic consequences of money laundering); U.S. DEP'T OF TREASURY, TREASURY NEWS, Statement By President William J. Clinton at the Summit of The Americas Ministerial Conference On Money Laundering, Buenos Aires, Argentina, Dec. 2 1995, RR-751 (declaring the importance of international conformity of anti-money laundering laws).

141. New Orleans Summit, *supra* note 136, at 8.

142. *Id.* at 6-8. Step one includes: 1) inquiring into the unique laws, law enforcement, economy and banking sector of each country, and 2) development of country-specific recommendations for training and technical assistance. *Id.*

143. *Id.* Step two builds on the assessment of step one and suggests six strategies to incorporate training and technical needs: a three-week training program, a train-the-trainer module, consultations, a self-instruction module, a linkage to other international training programs, and technology transfer. *Id.*; see New Orleans Summit, *supra* note 136, at 6-8 (describing each of these six strategies).

144. Buenos Aires Communiqué 1995, *supra* note 1, at 4.

145. *Id.*

146. *Id.* at 3.

147. *Id.*

148. *Id.* at 6.

The judiciary should approve the use of undercover police operations and the use of electronic surveillance to facilitate the identification and prosecution of criminals and the forfeiture of proceeds.¹⁴⁹ The Ministers also encouraged a review of each nation's bank secrecy laws with the goal of determining whether the laws permit disclosure of financial records to the appropriate authorities.¹⁵⁰ Finally, the Ministers recommended the adoption of the OAS/CICAD Model Regulations.¹⁵¹

5. Mutual Agreements with the United States

On April 12, 1995, the Brazilian and United States governments signed a mutual cooperation agreement to reduce the demand of, prevent the illicit use of, and combat the illicit production and trafficking of drugs.¹⁵² This agreement requires both nations to update their laws concerning money laundering.¹⁵³

Article I states that the two nations agree to exchange pertinent information and supply equipment, human and financial resources, and mutual technical assistance in order to combat illicit trafficking of psychotropic substances.¹⁵⁴ Sub-

149. Buenos Aires Communiqué 1995, *supra* note 1, at 6

150. *Id.*

151. *Id.* at 34; *see also* U.S. DEP'T OF TREASURY, TREASURY NEWS, Statement of Treasury Secretary Robert E. Rubin Closing Press Conference Of the Buenos Aires Money Laundering Conference, Buenos Aires, Argentina, Dec. 2, 1995, RR-748 at 29-30 (stating importance of combating money laundering to cease the drug trade and allow economies and societies to grow).

152. Mutual Cooperation Agreement Between the Government of the United States of America and the Government of the Federative Republic of Brazil for Reducing Demand, Preventing Illicit Use and Combating Illicit Production and Trafficking of Drugs, Apr. 12, 1995, U.S.-Braz. [hereinafter Narcotics Treaty of 1995] (on file with Am. Univ. Journal of Int'l Law & Policy). When this Treaty enters into force, the Narcotics Treaty of 1986 will terminate. *Id.* art. X; *see* Mutual Cooperation Agreement Between the Governments of the United States of America and the Federative Republic of Brazil for Reducing Demand, Preventing Illicit Use and Combating Illicit Production and Traffic of Drugs, Sept. 3, 1986, U.S.-Braz., T.I.A.S. 11382 (entered into force June 13, 1991). Until he signed the 1995 Agreement, Brazilian President Cardoso expressed his dissatisfaction with the declining amount of aid offered to Brazil by the United States. In 1993, the United States offered only \$200,000, while in 1987, the United States offered \$3.1 million for assistance and international drug control. Cleber Praxedes, *Cardoso To Refuse Minor U.S. Drug Enforcement Aid*, F.B.I.S. FOR LATIN AM., Apr. 13, 1995, at 22; *see also* Maria Helena Tachinardi, *Proposed Drug Enforcement Accord with United States Viewed*, F.B.I.S. FOR LATIN AM., Feb. 22, 1995, at 58 (discussing the pretense for the mutual agreement between the United States and Brazil).

153. Newton Duarte, *Lampreia, U.S. Envoy Sign Drug Enforcement Accord*, F.B.I.S. FOR LATIN AM., Apr. 14, 1995, at 20 (commenting on the expansion of and depth of agreement); *cf. Jobin Views Anti-Drug Legislation, Reforms*, F.B.I.S. FOR LATIN AM., May 9, 1995, at 36 (emphasizing the importance of regional agreements over "generic" accords with the United States).

154. Narcotics Treaty of 1995, *supra* note 152, art. I.

ject to the unique constitutional principles and basic legal concepts present in the legal systems of the signatories, the signatories agreed to take the steps necessary to achieve compliance with the UN Convention. These steps include the adoption of the Model Anti-Money Laundering Regulations of the OAS Inter-American Commission on Drug Abuse Control.¹⁵⁵ The signatories also agreed to take substantial measures in order to combat the laundering of financial assets related to serious crimes.¹⁵⁶

The initial step requires the implementation of legislation that criminalizes laundering drug proceeds and requires financial institutions to report suspicious financial transactions.¹⁵⁷ The agreement encourages preliminary discussions about cooperation in asset sharing between Brazil and the United States.¹⁵⁸ This cooperation is an important measure designed to help Brazil enact anti-money laundering legislation and require due diligence by its banks and financial institutions.

B. CURRENT BRAZILIAN LAWS

The supreme law of Brazil is the Federal Constitution.¹⁵⁹ Each state¹⁶⁰ has an individual constitution and an elected government.¹⁶¹ In 1976, Brazil enacted its first narcotics law, Law 6368,¹⁶² which criminalized the illegal traffic and misuse of drugs that cause psychological dependence.¹⁶³ Additional laws to prevent money laundering in Brazil will inevitably deter foreign investment.¹⁶⁴ None-

155. *Id.* art. III.

156. *Id.*

157. *Id.*

158. *More Control Needed*, *supra* note 95, at 17. The Agreement also requires implementation of legislation authorizing the seizure and forfeiture of property and financial assets. Narcotics Treaty of 1995, *supra* note 152, art. III. The parties also agreed to consider the future sharing of proceeds from successful forfeiture efforts. *Id.*

159. DE MATTOS, *supra* note 54, at 122. The constitution was amended and published on October 5, 1988. *Id.*

160. *Id.* Brazil is a federal republic composed of twenty-six states and a federal district in which the capital is located. *Id.*

161. *See id.* (providing a brief overview of the Brazilian legal system); Brazil Law Digest, in *Selected International Conventions Martindale-Hubbell Law Digest*, at Brz-3 (1996) (providing an overview of Brazil's constitution and government).

162. LEI N. 6.368, 21 Outubro 1976, XL Coletânea de Legislação e Jurisprudência 775 (1976).

163. DE MATTOS, *supra* note 54, at 123-31 (documenting the extensive history of Brazilian bills passed on drugs since 1940); *see also* LEI N. 7.560, 19 Dezembro 1986, L Coletânea de Legislação e Jurisprudência 1280 (1986) (criminalizing the goods obtained as a result of drug trafficking or related activities); LEI N. 9.017, 30 Março 1995, 59 Coletânea de Legislação e Jurisprudência 541 (1995) (setting forth rules to control the surveillance of chemical products and other substances that cause physical or psychological dependence).

164. *See* Solomon, *supra* note 4, at 452 (commenting on the importance of considering

theless, the United States views these laws as a desirable and necessary step to combat money laundering.¹⁶⁵ Such laws may, however, disrupt the Brazilian economy.¹⁶⁶

C. PROPOSED ANTI-MONEY LAUNDERING LAW

Inadequate banking and monetary transaction legislation facilitates money laundering in Brazil.¹⁶⁷ A lack of coordination between the police, Justice Department, Internal Revenue Service, and the Central Bank makes it almost impossible to control suspect accounts under the protection of bank secrecy laws.¹⁶⁸ Furthermore, the lack of control over exchange houses¹⁶⁹ and the underground

the effect of money laundering laws on developing countries); LEI N. 9.017, 30 Março 1995, 59 *Coletânea de Legislação e Jurisprudência* 541 (1995) (establishing an obligation for any financial institution with cash deposits or inflow and outflow of cash to provide a security system approved by Ministry of Justice).

165. Solomon, *supra* note 4, at 449-53.

166. *Id.* at 452. The imposition of United States regulations should be backed with economic assistance to Brazil to facilitate the aggressive investigation and prosecution of money laundering signs. *Id.* at 453 (encouraging United States to provide financial assistance to facilitate developing economies to establish anti-money laundering laws); *see generally Foreign Ministry Denies End to U.S. Anti-Drug Aid*, F.B.I.S. FOR LATIN AM., Jan. 18, 1995, at 43 (discussing the United States promise to Brazil that the United States would not cut anti-drug financial assistance); Ayrton Centeno, *Justice Minister 'Unaware' of U.S. Drug Aid Suspension*, F.B.I.S. FOR LATIN AM., Jan. 17, 1995, at 43 (reporting to Brazilians that its government will petition the United States for increased financial aid and technical assistance to fight the war on drugs).

167. INCSR 1996, *supra* note 5, at 73-74.

168. *Cf.* Vannildo Mendes, *Drug and Remittances Total \$1 Billion Yearly*, F.B.I.S. FOR LATIN AM., Dec. 13, 1994, at 33 (stating that in the case of an exchange house, Casa Piano, the Brazilian Federal Supreme Court authorized the seizure of documents, the interrogation of employees, and the suspension of bank secrecy in response to a court petition from The Hague, Netherlands).

169. FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING ANNUAL REPORT 1994-1995, in *Financial Market Trends*, No. 62, Dec. 1995, at 65. The Financial Action Task Force (FATF) acknowledged the increasing use of exchange houses in money laundering schemes. *Id.* FATF suggested several necessary counter-measures to deter their use. *Id.* The exchange houses need to be under a regulatory scheme to enforce continuous reporting requirements. *Id.* at 65-67. Throughout Central and South America, exchange houses launder an estimated \$100 billion in drug profits each year. Douglas A. Kotlove, *Casas de Cambio: Currency Exchange Houses or Money Laundering Hubs for Drug Traffickers?* in *FOCUS ON MONEY LAUNDERING & ASSET FORFEITURE: AN INT'L PERSP.*, Sept. 1994, at 18 (discussing the rise of exchange houses as safe options for money launderers). Exchange houses (*casa de cambio*) are usually owned and operated by affluent persons. *Id.* at 17. On a daily basis, large sums of cash, travelers checks, and personal and cashier checks are exchanged for currency. *Id.* at 29-33 (examining various types of illegal activity in Mexico and South America). A mid-size exchange house along the Mexico-United States border is capable of making \$500,000 to \$700,000 a year, while a large exchange house makes over one million dollars a year. *Id.* at 31. Most of these exchange houses are part of travel

lottery¹⁷⁰ allows money launderers to develop efficient mechanisms with which to convert illegal proceeds. Unless these financial crimes are strictly penalized, the enforcement of the money laundering law will be extremely difficult.¹⁷¹

agencies which are authorized to conduct transactions involving United States currency. Zagari, *supra* note 53, at 17; see also Kotlove, *supra*, at 34-38 (discussing various United States legislative efforts to deter money laundering in exchange houses and offer alternative solutions). The use of exchange houses is an excellent means by which money launderers avoid the banks' \$10,000 reporting requirement. Pierre F.V. Merle, *The New Focus- Casa de Cambio, Money Transmitters, and Non-Bank Financial Institutions*, in FOCUS ON MONEY LAUNDERING & ASSET FORFEITURE: AN INT'L PERSP., Sept. 1994, at 14 (discussing the new methods of money laundering with the increased controls on banks). The laws are structured so that the only available legal recourse against failure to report large transactions is as a tax crime. Zagari, *supra* note 53, at 17-18. The bank secrecy laws prohibit the investigation of these transactions. *Id.* at 18. The acting director of the Federal Police in Brazil confirms the use of exchange houses for the laundering of drug money and states that the only method to curtail the activity is with constitutional revisions and the elimination of bank secrecy laws. *PF Official Backs U.S. Money Laundering Charge*, F.B.I.S. FOR LATIN AM., Mar. 6, 1995, at 38. Under the current law, the Central Bank supervises only banks; there is no regulatory agency for money exchanges. *Id.* The head of the National Federation of Federal Policemen claims that the laws need to be changed. *Id.* Both officials, however, insinuated that their requests, as well as court proceedings, are not acted upon because the money launderers have connections everywhere. *Id.*

170. See *Link Between Illegal Lottery, Drug Trafficking Reported*, F.B.I.S. FOR LATIN AM., Mar. 11, 1994, at 26 (commenting on the connection between the illegal lottery and drug trafficking); *Lack of Will to Fight Drug Trafficking*, LATIN AM. NEWSL. BRAZIL REP., May 5, 1994, at 4 (explaining that the Brazilian police have linked the international drug trafficking business and an illegal lottery with money laundering). The lottery is usually used as a front for underground crimes of money laundering, drug trafficking, and arms running. Mac Margolis, *LA Brazilian Authorities Link Lottery to Political Corruption*, L.A. TIMES, Apr. 9, 1994, at A2. The illegal lottery, known as "jogo do bicho," the animal game, dates back to the late 1800s. *Id.* Jogo do bicho was a favorite pastime for Brazilians and tolerated by the authorities. *Id.* Recently, the Brazilian prosecutors office uncovered the headquarters of jogo do bicho and found evidence directly linking its activities to Colombian representatives of the Medellín drug cartel. *Id.* Brazil's Federal Prosecutor, Antonio Carlos Biscuit, received the tip from a bookmaker of a leading bichero who facilitated the investigation. *Id.* In Brazil, a conviction for running a gambling operation is only a misdemeanor, but the link to drug trafficking permits a jail sentence. *Lack of Will to Fight Drug Trafficking*, *supra*, at 4. This discovery threatened to expose corruption throughout the entire society, ranging from shanty towns to the highest political offices. Margolis, *supra*, at A2. It was confirmed from the log books that the bicheros received payoffs from high ranking officials. *Id.* Among those on the list were the civil police (many of whom resigned after exposure), congressmen, judges, prosecutors, a former federal police superintendent, and Rio de Janeiro's mayor and governor. *Id.*; see also *Senator Asks for Leave of Absence Over Drug Charges*, F.B.I.S. FOR LATIN AM., Mar. 22, 1995, at 54 (investigating Senator Ernandes Amourium for involvement in drug trafficking).

171. See *More Control Needed*, *supra* note 95, at 17 (discussing the tensions between Brazilian bankers and their clients with the Brazilian Government concerning stricter controls to counter money laundering).

Brazil recently submitted a money laundering law proposal to the CICAD Committee.¹⁷² This law, Money Laundering,¹⁷³ is similar to the Model OAS Regulations.¹⁷⁴ The first chapter makes criminal the act of money laundering and the concealment of goods, titles and assets¹⁷⁵ resulting directly or indirectly from the illegal traffic of narcotics related crimes, organized crime, terrorism, or weapons smuggling.¹⁷⁶ The penalty for these crimes is two to five years imprisonment and a fine.¹⁷⁷ Individuals who participate in any aspect of the unlawful activity are liable for criminal actions¹⁷⁸ and will be found guilty of committing the principle crime.¹⁷⁹ Accordingly, this chapter broadens the crime of money laundering beyond drug trafficking and increases the ability of enforcement agencies to restrict the flow of illegal proceeds.¹⁸⁰

Chapter Four concerns the seizure of goods, titles, and assets resulting from crimes that took place abroad.¹⁸¹ If a treaty or international agreement exists with a foreign jurisdiction, a Brazilian judge will determine if the seizure of goods results from the perpetration of crimes abroad.¹⁸² In the absence of a treaty or international agreement, a Brazilian judge will honor the request if the requesting country assures reciprocity with Brazil.¹⁸³ The proceeds from the seizure will be divided equally between Brazil and the requesting nation absent an agreement.¹⁸⁴ This provision is important for Brazil because it allows adherence to the interna-

172. Anteproyecto de ley de Brasil, Reunion del Grupo de Expertos Sobre lavado de dinero, OEA/ser.L/XIV.4.4, CICAD/LAVEX/doc.11/96 corr. 1 (1996) [hereinafter Anteproyecto 1996] (presenting proposed money laundering law before CICAD); see also *Draft Bill Money Laundering Law* (visited Mar. 21, 1997) <<http://www.mj.gov.br>>.

173. Anteproyecto 1996, *supra* note 172.

174. Compare *infra* notes 175-204 and accompanying text (discussing proposed Brazilian Money Laundering Law) with *supra* notes 112-33 and accompanying text (analyzing the OAS Model Regulations).

175. Anteproyecto 1996, *supra* note 172, ch. I.

176. *Id.* art. 1.

177. *Id.*

178. *Id.* § 1.

179. *Id.* § 1(I). If an individual "knowingly acquires, receives, exchanges, keeps, stores, moves or transfers, goods, titles or assets resulting or originating from any of the crimes" in Article One they will be found guilty of having committed the principal crime. *Id.* Second, an individual importer is criminally liable for exporting goods of any value for the purpose of concealing usage of money or assets in the regular market. *Id.* § 1(II). Furthermore, an individual will be liable for knowingly concealing or disguising the true nature, origin, locality, disposal, movement, or ownership of goods, titles and assets resulting or originating from a crime above. *Id.* § 1(III). If the accused collaborates with the authorities in facilitating the investigation, the sentence, however, may be reduced by up to two-thirds or entirely suspended by the judge. *Id.* § 3.

180. Anteproyecto 1996, *supra* note 172, ch. I.

181. *Id.* ch. IV, art. 8.

182. *Id.*

183. *Id.* § 1.

184. *Id.* § 2.

tional initiatives while maintaining Brazil's sovereignty.

Chapter Five is a comprehensive list of those persons who have a duty to maintain records and information concerning their clients.¹⁸⁵ These persons include financial institutions,¹⁸⁶ insurance companies, insurance agents, institutions in charge of welfare and social security, and capitalization institutions.¹⁸⁷

Chapter Six outlines the reporting requirements for those persons referred to in Article Nine of the pending legislation.¹⁸⁸ All institutions mentioned in Article Nine must identify their clients and maintain a current list of the active clients in accordance with the terms of the instructions that the appropriate authorities issue.¹⁸⁹ An institution must keep a specific and individualized registry of all the transactions made in local or foreign currency, titles of personal property, credit instruments, precious metals, or any assets that may be converted into cash and the value of which exceeds the limits that the appropriate authorities set.¹⁹⁰

The Central Bank of Brazil will receive notification when the transaction exceeds the limits and conditions that the appropriate authorities set.¹⁹¹ The information given to the Central Bank of Brazil is legally confidential.¹⁹² Institutions

185. Anteproyecto 1996, *supra* note 172, ch. V, art. 9. The law applies to:

[A]rtificial persons of public or private law who permanently or sporadically. . . "[engage in the following]" principal or secondary activity: 1) seizure, mediation and implementation of financial resources from third parties in local or foreign currency; 2) purchase and sale of foreign currency or gold as financial asset or as instrument of exchange; and 3) custody, issuance, distribution, negotiation, mediation or administration of titles of personal property.

Id. art. 9(I-III).

186. *Id.* art. 9(III), § (1)(I). Also required to maintain client records are: companies that issue identification cards and credit cards as well as deal with mercantile leases and commercial promotion; societies that distribute moneys or any type of personal property, real estate, consumer goods, services or that offer discounts in the acquisition of same through lotteries or similar methods; lending institutions; and foreign entities in Brazil practicing any of the above. *Id.* art. 9 (III) § (1)(III-VIII). The following are subject to the same obligations: "natural or artificial persons who exercise, regularly or sporadically" in Article Nine; any other entities who depend on the authorization of the regulatory organization of the financial exchange, capital and insurance markets; natural or artificial persons, domestic or foreign, who act as agents, directors, procurers, person working on a commission basis, or that in any manner represents the interests of foreign entities who exercise any of the activities in Article Nine with or without Brazilian authorization. *Id.* art. 9(III) § (2)(I-IV).

187. *Id.* § (1)(II); *cf.* *Model Regulations*, *supra* note 108, art. 9 (commenting on the absence of insurance companies in the Model Regulations).

188. See *supra* notes 185-87 and accompanying text (discussing Article Nine).

189. Anteproyecto 1996, *supra* note 172, ch. VI, art. 10(a).

190. *Id.* art. 10(b).

191. *Id.* art. 10(c).

192. *Id.* art. 10(d). The terms of legal confidentiality are set by the appropriate judicial organization and the requirements specified by the Council for the Control of Financial Activities (COAF). *Id.*; see *infra* notes 202-06 and accompanying text (discussing the

should keep records for five years following the date of the closing of the account or after the finalization of the transactions.¹⁹³ An institution must also keep an individualized registry when a natural or artificial person, or its related entities conducts, in a single calendar month, operations with a single institution, conglomerate, or group that exceed the appropriate authority's limits.¹⁹⁴ This is an extremely important provision because it establishes a process by which to trace the origin of the funds. It will be essential for Brazil to provide substantial training for the specific employees in charge of this task.

Chapter Seven addresses the reporting of financial operations.¹⁹⁵ The required financial institutions who are contracted or offered suspicious proposals must inform COAF¹⁹⁶ and abstain from informing their clients of the notification.¹⁹⁷ Furthermore, the whistle-blowers, their comptrollers, administrators, and employees acting in good faith shall not respond to civil, administrative, or criminal proceedings for refusing to carry out suspicious operations.¹⁹⁸

Chapter Eight concerns responsibilities of the administrative staff.¹⁹⁹ If the individuals implicated in Articles Ten and Eleven stop carrying out their obligations with the objective of promoting the illicit practices, they will face criminal sanctions.²⁰⁰ Requiring incentives for employers to report suspicious transactions is essential at the inception of the program, considering the amount of corruption in the government.²⁰¹

Finally, Chapter Nine establishes the Council for the Control of Financial Activities (COAF).²⁰² The COAF is authorized to receive, examine, identify, and

functions of the COAF).

193. Anteproyecto 1996, *supra* note 172, ch. VI, art. 10, § 1. The terms of years can be increased by the appropriate authority. *Id.*

194. *Id.* § 2.

195. *Id.* ch. VII.

196. See *infra* notes 202-06 and accompanying text (describing COAF).

197. Anteproyecto 1996, *supra* note 172, ch. VII, art. 11§1.

198. *Id.* § 2.

199. *Id.* ch. VIII.

200. *Id.* ch. VIII, art. 12. Penalties range from 5% to up to three times the value of the operation; or up to 500% of the profits obtained or profits that would have been obtained; or a fine of up to two hundred thousand reais, which is equivalent to US \$206,000. *Id.* art. 12 (I) (stating penalty for failing to abide with the reporting requirements). For those persons mentioned in Article nine the following sanctions may apply cumulatively or for illegal acts not mentioned in the Act: 1) a warning, 2) a monetary fine from 1% to up to twice the amount of the operation or 200% of profits, or 3) temporary disqualification for up to 5 years as an administrator. *Id.* art. 12 § (1)(I)(II)(III); see also § 2(1)(II) (discussing sanctions for Article Nine persons with premeditation to commit an illicit act).

201. See Joachim Bamrud, *The Other Face of Business in Latin America*, LATIN TRADE, Sept. 1996, at 34, 37-39 (discussing the detrimental effects of corruption on growing economies).

202. Anteproyecto 1996, *supra* note 172, ch. IX. The organization and functioning of the COAF will be defined by statute approved by decree of the Executive Power. *Id.* art. 16.

investigate suspicious facts related to illicit activities.²⁰³ In addition, the COAF is responsible for coordinating and establishing methods to share information efficiently.²⁰⁴ The Council will act as the appropriate authority for the establishment of procedures necessary to combat money laundering.²⁰⁵ Furthermore, the staff of the COAF will consist of competent employees of unquestionable reputation and recognized expertise.²⁰⁶ The establishment of this agency will be crucial to the success of the enforcement mechanisms of the Money Laundering Law.

VI. RECOMMENDATIONS

Brazil should enact and enforce the Money Laundering Law. The proposed Money Laundering Law shows Brazil's desire to comply with international efforts to combat money laundering.²⁰⁷ It is questionable, however, how Brazil will implement this law. The following measures are essential for effective implementation: 1) the development of comprehensive compliance programs for all members of the financial industry, 2) the creation of an efficient regulatory body, and 3) the securance of financial assistance from the United States.

It is to Brazil's national and international economic benefit to enact the proposed Money Laundering Law.²⁰⁸ If Brazil defers enacting the proposed law, it will likely alienate nations participating in the international effort to combat money laundering, including the United States.²⁰⁹ Brazil has the largest economy in Latin America and the most sophisticated financial sector.²¹⁰ Even though the banking industry fears strict regulations,²¹¹ the adoption of an anti-money laun-

203. *Id.* art. 13. COAF is established within the jurisdiction of the Ministry of Finance. *Id.*

204. *Id.*

205. *Id.* art. 14.

206. *Id.* art. 15. The staff will be appointed by the Ministry of Finance from personnel of the Brazilian Central Bank, the Commission of Personal Property, the Office of the Attorney General, the Ministry of Finance, the Department of Internal Revenue, and the Federal Police Department. *Id.*

207. See Anteproyecto 1996, *supra* notes 175-206 and accompanying text (discussing the contents of the proposed law). This law expands the definition of money laundering which the United Nations Convention and the OAS Model Regulations limited to narcotic activity. See *supra* notes 68-75, 111-33 and accompanying text (analyzing the two international agreements). The law makes criminal the act of money laundering resulting directly or indirectly from narcotic related crimes, organized crime, terrorism, or weapon smuggling. Anteproyecto 1996, *supra* note 172, ch. I, art. 1.

208. See *supra* notes 175-206 and accompanying text (discussing in detail the proposed Money Laundering Law).

209. See *supra* notes 67-80, 82-99, 108-33 and accompanying text (detailing various international efforts to deter money laundering).

210. U.S. DEP'T OF STATE, INT'L NARCOTICS CONTROL STRATEGY REP. 508 (1993) [hereinafter INCSR 1993].

211. See *supra* note 95 and accompanying text (discussing reasons for apprehension of banking restrictions).

dering law will set an example for other South American nations. The attempt to freeze out money derived from illicit activities will eventually benefit the Brazilian economy by attracting legitimate foreign investors.²¹² The increase in foreign investment will help stabilize Brazil's economy.

Effective implementation of the law is crucial to its success. First, Brazil should create strict compliance programs for the financial industry. The Money Laundering Law requires banks to report suspicious transactions and maintain records of monetary transactions.²¹³ Specifically, financial companies should train employees to spot potentially suspicious activity. Suspicious activity can range from the deposit of large sums of cash, the purchase of luxury items in cash, the existence of multiple transfers/wires of funds through financial institutions, and the existence of multiple cash deposits individually below the reporting minimum.

The financial industry should also enact a program similar to the "know-your-customer" system.²¹⁴ Employees should record substantial customer information to meet suitability and creditworthiness standards. Once employees discover suspicious activity, they should immediately report it to the regulatory authorities. To avoid corruption and bribery, financial institutions should implement a strict ethical code rewarding those employees who alert the authorities.

Brazil also needs to create a respectable and efficient regulatory system. The required adoption of a regulatory system demonstrates Brazil's commitment to combat money laundering.²¹⁵ Without a regulatory agency, Brazil will be passing a law without enforcement mechanisms.²¹⁶ It is essential for the regulatory agency to aggressively investigate suspicious activity. In addition, the regulatory system needs to reach out and effectively control nonbanking institutions in order to prevent launderers from making use of the illegal lottery and exchange houses.²¹⁷ To ensure honesty on behalf of the employees, the regulatory agency should adopt mechanisms rewarding diligent employees. The regulatory agency should also provide continuing educational seminars to make employees familiar with the latest money laundering schemes.

212. See *supra* notes 95-99 and accompanying text (providing an overview of the Brazilian economy).

213. See *supra* notes 186-205 and accompanying text (detailing the guidelines in the proposed law). This aspect of the proposal facilitates international investigations and allows banks to create compliance programs. Anteproyecto 1996, *supra* note 172, ch. VI, arts. 10(a)-(c).

214. See *supra* note 44 (discussing the United States law concerning the "know-your-customer" rule).

215. See *supra* notes 202-06 and accompanying text (discussing the details of the regulatory agency).

216. INCSR 1996, *supra* note 5, at 74.

217. See *supra* notes 168-70 and accompanying text (discussing the use of illegal lottery and exchange houses to launder money). Institutions which handle large amounts of cash such as exchange houses, broker/dealers, banks, and jewelry stores must adopt compliance programs.

Finally, Brazil should secure financial assistance from the United States to develop the most efficient regulatory agencies and training programs. Insight from international organizations and financing from the United States will allow Brazil to begin enforcement sooner and more effectively.

VII. CONCLUSION

Money laundering is a substantial challenge for Brazil due to the volume of funds derived from criminal activities that pass through its financial institutions.²¹⁸ Brazil's lack of regulatory bodies and adequate legislation²¹⁹ combined with government corruption²²⁰ attract money launderers. More importantly, Brazil currently prosecutes money laundering as a civil matter rather than as a criminal offense.²²¹ Brazil must take an aggressive stance on money laundering if it wants to effectively curb drug trafficking and other crimes which generate large amounts of illegal proceeds. The adoption of pending money laundering legislation is only the first step. The manner in which Brazil implements and enforces this legislation will determine its eventual success.

218. See INCSR 1993, *supra* note 210, at 509. The current Brazilian law only permits disclosure of bank records with a court order, *cf. supra* notes 36-50 and accompanying text (discussing United States law addressing the "know-your-customer" rule). Other types of disclosure are prohibited. INCSR 1993, *supra* note 210, at 509.

219. See INCSR 1996, *supra* note 5, at 74. The inefficient supervision of the financial markets facilitates the use of fictitious names when opening accounts and conducting financial transactions. *Id.* Furthermore, an experienced police force and judiciary also increases opportunities for money launderers. Bamrud, *supra* note 201, at 38.

220. Bamrud, *supra* note 201, at 38-39 (discussing the level of corruption found in the Brazilian government and comparing it to other Latin American countries).

221. INCSR 1993, *supra* note 210, at 509.