

Maria Lucia L. M. Padua Lima
Paulo Clarindo Goldschmidt
Editors

COMBATING CORRUPTION AND MONEY LAUNDERING IN BRICS COUNTRIES

**Legal Frameworks and Institutional
Arrangements**

Authors

Abhishek Bharti	Paulo Dóron Rehder de Araújo
Eduard Ivanov	Sufinnah Singlee
Heloísa Estellita	Tebello Thabane
Jacqueline Yeats	Trishna Mohan Kripalani
Maria Lucia L. M. Padua Lima	Vesselin Popovski
Mariana Tumbiolo Tosi	Wanderley Fernandes
Paulo Clarindo Goldschmidt	Zhiyuan Guo

Curitiba
Juruá Editora
2020

Visit our websites
www.jurua.com.br e
www.editorialjurua.com
e-mail: *editora@jurua.com.br*

This work was approved by the Scientific Editorial Board of Jurua Editora, adopting the blind view system (blind evaluation). The innominate evaluation guarantees the impartiality and impartiality of the body of reviewers and the autonomy of the Editorial Board, according to the requirements of the evaluation agencies and institutions, attesting to the excellence of the material that we publish and present to society.

This study was financed in part by the Coordenação de Aperfeiçoamento de Pessoal de Nível Superior – Brasil (CAPES) – Finance Code 001.

ISBN: 978-85-362-9305-9

JURUA
EDITORA

Brasil – Av. Munhoz da Rocha, 143 – Juvevê – Fone: (41) 4009-3900
Fax: (41) 3252-1311 – CEP: 80.030-475 – Curitiba – Paraná – Brasil

Europa – Rua General Torres, 1.220 – Lojas 15 e 16 – Fone: (351) 223 710 600 –
Centro Comercial D'Ouro – 4400-096 – Vila Nova de Gaia/Porto – Portugal

Editor: José Ernani de Carvalho Pacheco

C729 Combating corruption and money laundering in
BRICS countries: legal frameworks and institutional
arrangements./ organization of Maria Lucia L. M. Padua
Lima, Paulo Clarindo Goldschmidt./ Curitiba: Jurua,
2020.
196p.

1. Money laundering. 2. Corruption. 3. BRICS –
Combating corruption. I. Lima, Maria Lucia L. M.
Padua (editor). II. Goldschmidt, Paulo Clarindo (editor).

CDD 345.0268 (22.ed)
CDU 343.352

000274

TABLE OF CONTENTS

INTRODUCTION	15
---------------------------	----

Part 1 BRAZIL

A ANTI-CORRUPTION LEGAL FRAMEWORK IN BRAZIL	21
1 INTRODUCTION	21
2 BRAZILIAN ANTI-CORRUPTION LEGAL FRAMEWORK	23
2.1 Anti-Corruption Law (Law No. 12.846/2013).....	23
2.2 Law of State-Owned Enterprises (Law No. 13.303/2016).....	26
2.3 Law of Public Bidding (Law No. 8.666/1993).....	28
2.4 Law of Administrative Dishonesty (Law No. 8.429/1992).....	28
2.5 Criminal Code	29
2.6 Public Agent and Private Agent Relations	29
2.7 Overlaps and Contradictions of Laws.....	30
3 THE OECD ANTI-BRIBERY CONVENTION	31
4 CONCLUSION.....	36
5 REFERENCES	36
B ANTI-MONEY LAUNDERING IN BRAZIL	39
1 INTRODUCTION	39
2 REGULATION OVERVIEW.....	40
3 STATE BODIES DEDICATED TO FIGHT MONEY LAUNDERING.....	42
4 PRIVATE AGENTS AND MONEY LAUNDERING PREVENTION	43
5 LATEST DEVELOPMENTS IN AML ENFORCEMENT IN BRAZIL.....	44
6 REFERENCES	45

Part 2 RUSSIA

A ANTI-CORRUPTION LEGAL FRAMEWORK IN RUSSIA	49
1 INTRODUCTION	49

2	OVERVIEW OF RUSSIAN ANTI-CORRUPTION LEGISLATION	51
2.1	Main Anti-Corruption Laws and Regulations	51
2.2	Definition of Corruption.....	51
2.3	Liability for Corruption Offenses	52
2.4	General Anti-Corruption Measures	54
2.5	Anti-Corruption Compliance.....	56
3	IMPLEMENTATION OF THE OECD ANTI-BRIBERY CONVENTION IN THE RUSSIAN FEDERATION	58
4	OECD CONVENTION COMPARED WITH BRICS INTERNAL LEGISLATION – RUSSIA	60
5	CONCLUSION	64
6	REFERENCES	65
B	ANTI-MONEY LAUNDERING IN RUSSIA	67
1	DISTINCTIVE FEATURES OF MONEY LAUNDERING AND FINANCING OF TERRORISM IN THE RUSSIAN FEDERATION	67
2	LEGAL REGULATION OF COUNTERING MONEY LAUNDERING AND FINANCING OF TERRORISM	67
3	ROSFINMONITORING – THE RUSSIAN FINANCIAL INTELLIGENCE UNIT ..	69
4	AML/CFT COMPLIANCE IN FINANCIAL INSTITUTIONS AND DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS	71
5	CONCLUSION	74
6	REFERENCES	74
Part 3		
INDIA		
A	ANTI-CORRUPTION LEGAL FRAMEWORK IN INDIA	77
1	INTRODUCTION	77
1.1	Not to be Overlooked in the Indian Scenario: Major Risks Lie with the Small-Scale Industry	79
1.2	New Enforcement Trends in India.....	80
2	INDIAN ANTI-CORRUPTION LEGAL FRAMEWORK.....	81
2.1	Prevention of Corruption Act	81
2.2	Prohibition of Benami Transactions Act	84
2.3	Whistleblowers Protection Act.....	87
2.4	Prevention of Money Laundering Act	88
3	INDIA’S ANTI-CORRUPTION FRAMEWORK IN LIGHT OF PREVALENT INTERNATIONAL STANDARDS	92
4	OECD CONVENTION COMPARED WITH BRICS INTERNAL LEGISLATION – INDIA	93
5	CONCLUSION	94
6	REFERENCES	95

B	ANTI-MONEY LAUNDERING IN INDIA	97
1	CONCEPT & FIGURES.....	97
2	COMBATING MONEY LAUNDERING IN INDIA.....	97
3	DEFINITION IN PMLA.....	98
4	PUNISHMENT.....	99
5	CONCLUSION – INTER-CONNECTED ACTIVITIES	102
6	REFERENCES	103

**Part 4
CHINA**

A	ANTI-CORRUPTION LEGAL FRAMEWORK IN CHINA	107
1	INTRODUCTION: A HISTORICAL REVIEW OF CHINA’S ANTI-CORRUPTION POLICIES FROM 1949 TO 1979	107
2	FEATURES OF CHINA’S ANTI-CORRUPTION LAW	110
3	LEGAL FRAMEWORK TO COMBAT CORRUPTION AND BUILD A CLEAN GOVERNMENT	112
3.1	Intra-Party Rules and Regulations on Combating Corruption	112
3.2	Laws and Regulations on Supervision over the Exercise of Power.....	113
3.3	Laws and Regulations on Punishment of Corrupt Behavior.....	113
3.4	Criminal Procedure Law	114
3.5	Laws and Regulations to Prevent Corruption	114
3.6	Chinese Anti-Corruption Laws and International Conventions.....	115
3.7	Recent Institutional Adjustments and Procedural Reforms of Anti-Corruption Movements in China.....	115
4	OECD CONVENTION COMPARED WITH BRICS INTERNAL LEGISLATION – CHINA	117
5	CONCLUSION.....	120
6	REFERENCES	120
B	ANTI-MONEY LAUNDERING IN CHINA	121
1	INTRODUCTION	121
2	LEGAL FRAMEWORK OF ANTI-MONEY LAUNDERING IN CHINA	123
2.1	Criminal Law	123
2.2	Anti-Money Laundering Law.....	124
2.3	Administrative Regulations.....	124
2.4	International Treaties.....	125
3	STATE BODIES DEDICATED TO FIGHTING MONEY LAUNDERING.....	125
4	SPECIAL DUTIES OF PRIVATE AGENTS AND MONEY LAUNDERING PREVENTION	126
5	CONCLUSION.....	127

Part 5
SOUTH AFRICA

A	ANTI-CORRUPTION LEGAL FRAMEWORK IN SOUTH AFRICA	131
1	INTRODUCTION	131
2	DOMESTIC LEGISLATION OVERVIEW	133
2.1	The Prevention and Combatting of Corrupt Activities Act (2004).....	133
2.2	Anti-Corruption Agencies	134
2.3	The Prevention of Organized Crime Act (1998).....	136
2.4	The Protected Disclosures Act (2000).....	137
2.5	The Financial Intelligence Centre Act (2001)	138
2.6	The Companies Act (2008)	141
2.7	The King IV Report on Corporate Governance (2016)	143
2.8	Johannesburg Stock Exchange Listing Requirements	144
3	KEY CHALLENGES CONFRONTING ANTI-CORRUPTION AGENCIES	145
4	COMPARATIVE ANALYSIS WITH OECD CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS.....	146
5	CONCLUSION.....	155
6	REFERENCES	155
B	ANTI-MONEY LAUNDERING IN SOUTH AFRICA.....	157
1	INTRODUCTION	157
2	THE CONCEPT OF MONEY LAUNDERING IN SOUTH AFRICA	157
2.1	The Definition of Money Laundering.....	157
2.2	The Money Laundering Process	158
2.3	Money Laundering Trends in South Africa	159
2.4	Consequences of Money Laundering	161
3	LEGAL AND REGULATORY FRAMEWORK	162
3.1	Domestic Anti-Money Laundering Legislation.....	162
3.2	Applicable International Anti-Money Laundering Instruments.....	166
4	INSTITUTIONAL MECHANISMS TO COMBAT MONEY LAUNDERING ...	168
4.1	Domestic Anti-Money Laundering Agencies	168
5	THE ROLE OF COURTS AND TRIBUNALS IN COMBATING MONEY LAUNDERING	169
6	INTERNATIONAL AGENCIES AND COOPERATION	170
7	PRIVATE AGENTS AND MONEY LAUNDERING PREVENTION	171
8	BRIEF COMMENTARY ON THE ANTI-MONEY LAUNDERING REGIME'S EFFICACY	173
9	CONCLUSION.....	174
10	REFERENCES	174

FINAL REMARKS	177
ARTICLE 1: THE OFFENCE OF BRIBERY OF FOREIGN PUBLIC OFFICIALS ..	177
ARTICLE 2: RESPONSIBILITY OF LEGAL PERSONS.....	178
ARTICLE 3: SANCTIONS	178
ARTICLE 4: JURISDICTION.....	179
ARTICLE 5: ENFORCEMENT	180
ARTICLE 6: STATUTE OF LIMITATIONS.....	180
ARTICLE 7: MONEY LAUNDERING	180
ARTICLE 8: ACCOUNTING.....	181
ARTICLE 9: MUTUAL LEGAL ASSISTANCE.....	181
ARTICLE 10: EXTRADITION	181
ARTICLE 11: RESPONSIBLE AUTHORITIES	181
INDEX	183