Revista ARACÊ
ISSN: 2358-2472

THE ROLE OF BRAZILIAN NOTARIES AND REGISTRARS IN COMBATING AND PREVENTING CRIMES OF CORRUPTION, MONEY LAUNDERING AND TERRORIST FINANCING

https://doi.org/10.56238/arev7n3-070

Submitted on: 02/10/2025 **Publication date:** 03/10/2025

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ABSTRACT

In this scientific article, the provision brought by Provision number 161/2024, of 03/11/2024, will be analyzed, with updates that are part of Provision number 149/2023, whose normative basis originated in Provision number 88/2019, all of the National Council of Justice – CNJ, originating and updating the obligations of Notaries and Registrars to carry out communications to the Financial Intelligence Unit – UIF, through the Financial Activities Control System – SISCOAF. Thus, Notaries and Registrars play an important role in combating and preventing, by reporting operations that may be considered suspicious of money laundering or terrorist financing, doing so, after prior assessment of the existence of suspicion in the operations or proposals for operations of their clients. The essential activity of Notaries and Registrars, their concepts and characteristics, as well as the repercussions of the changes in the internal procedures of the services for the implementation and updating of internal policies and controls for the prevention of money laundering and terrorist financing will be correlated. It will also analyze the consequences and legal effects of the implementation and updating of these new guidelines, in which the existing apparatus in the Notarial and Registry Services is used, for the collection and processing of information, essentially regarding the effectiveness of the performance of this role by Brazilian Notaries and Registrars.

Keywords: Notaries and Registrars. Provision number 149/2023 of the CNJ. Corruption. Money Laundering. Terrorist Financing. SISCOAF.

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INTRODUCTION

In the current legal and social scenario, with the evolution of society and the economy, we see a trend of speed and greater movement in business acts, real estate transactions, and financial operations. Currently, more and more legal transactions and financial operations are concluded, and in a simpler and faster way. Nevertheless, with the social evolution and reorganization of our society and business dealings and financial operations, the operators of the Law have been concerned with the evolution of this so that it always follows reality and fulfills its role.

Thus, we see that the Law has the primary function of being in constant evolution to always remain effective in the protection of diffuse and collective interests, and must always provide for inspection mechanisms that accompany the speed and volume of business deals and financial operations that are growing, so that the State can guarantee their fairness and legality.

In this context, the National Council of Justice – CNJ, initially issued Provision number 88/2019, which established obligations for Notaries and Registrars to communicate to the Financial Intelligence Unit – UIF, through the Financial Activities Control System – SISCOAF, any operations that may be considered suspicious of money laundering or terrorist financing, and must be carried out after prior assessment of the existence of suspicion in the operations or proposals for operations from its customers.

This innovative Provision became part of Provision number 149/2023, which established the National Code of Standards of the National Justice Internal Affairs Office of the National Council of Justice – Extrajudicial Forum, and was recently updated by Provision number 161/2024, of 03/11/2024, which brought significant changes in the system of communications to be carried out, aiming at greater efficiency of communications.

By the aforementioned Provisions, we see that there was also the institution and updating of the obligations of Notaries and Registrars to classify the client as a politically exposed person, after consulting the electronic register of Politically Exposed Persons, through Siscoaf, or a declaration by the parties themselves about this condition.

Thus, it established the National Council of Justice – CNJ and adapted it through updating, given the scope of the performance of Notaries and Registrars throughout the national territory, and the inherent importance of the notarial and registry activity for the execution of legal transactions and financial operations, and also, given its constitutional

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role of acting by the constitutional principles of legality, morality, publicity and efficiency, and as guarantors of publicity, authenticity, security and effectiveness of legal acts.

Thus, given the immeasurable importance of collective rights, and the need to search for procedural alternatives that aim to give greater effectiveness to the inspection, combat, and prevention of operations that may be considered suspicious of crimes of corruption, money laundering, and terrorist financing, we will study in this work this new task of Notaries and Registrars, emphasizing the effectiveness of compliance with the Provisions of the National Council of Justice – CNJ within the scope of Extrajudicial Services.

ON THE FUNCTION OF THE STATE AND THE COUNCIL FOR THE CONTROL OF FINANCIAL ACTIVITIES

In the global legal scenario, we see that with the speed and greater movement in business acts and financial operations, the need for government entities to start outlining strategies and measures to curb and punish the commission of crimes also arose.

It is known that the Law has to lend itself to meeting the desires of society, evolving along with it, under penalty of falling into disuse or becoming ineffective. In this section, we see the need for constant evolution and improvement of the Law. Thus, not only the legislative technique and the legislation itself have to evolve, but also the state apparatus itself has to constantly improve itself to ensure compliance with the legal provisions.

Regarding the evolution of society and law, Pedro Lenza explains that:

> As a result of the new characteristics that singularize modern society, much more complex and ideologically differentiated from the individualistic and atomized society of classical liberalism, inevitably the classical doctrine has been giving way to this new understanding more consistent with the new desires. The law must always be improved, adapting to the new realities, to avoid a mismatch between the good of life protected and legally protected.[2]

In this scenario of the evolution of Law, the Vienna Convention of the United Nations emerged in 1988. This now provides that each State must adopt, by the fundamental principles of its domestic law, legislative or other measures that are necessary to characterize the crimes of money laundering and terrorist financing as a criminal offense.

[2] LENZA, Pedro. General Theory of Public Civil Action. 2nd Ed. Editora Revista dos Tribunais. São Paulo: 2005. p. 53.

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At the national level, Brazil ratified the aforementioned United Nations Vienna Convention through Decree 154/1991, as we can see explained by the Central Bank of Brazil:

> In the 1980s, the prevention of money laundering began to be considered a priority strategy to combat organized crime and, in particular, drug trafficking. Countries and international organizations began to encourage the adoption of measures to inhibit the proliferation of these crimes, signing several international agreements, notably after the Vienna Convention, within the framework of the United Nations, in 1988. This Convention, ratified by Brazil through Decree 154/1991, aimed to promote international cooperation in dealing with issues related to drug trafficking.[3]

Of the criminal offenses dealt with here, we see these related in their essence and of greater harm to those related to organized crime, making Mendroni's words about it important, as follows:

> Organized crime is characterized especially by its capacity to terrorize, paralyze, and eventually corrupt the structure of the judiciary and the political order. Criminals in the economic sector do not have these powers. In other words, only criminal organizations are sufficiently prepared to infiltrate government (executive) bodies, parliamentarians, politics, and courts, to immobilize the structures capable of theoretically combating and punishing them, thus achieving total and permanent impunity. In other words, they create a counter-society capable of negotiating with the rule of law. With this, says the German scholar, they manage to achieve what the Germans call *rechtsfreierraum*, that is, they create an unattainable space, unreachable by punitive legal norms, managing to keep their businesses, licit and illicit, active.[4]

Thus, we see that, through international cooperation, Brazil has internalized international provisions, starting to adopt measures against organized crime, typifying money laundering as a crime, and others related to it, such as corruption and terrorist financing. According to the doctrinaire José Paulo Júnior Baltazar, "Money laundering can be conceptualized as the activity of untying or removing money from its illicit origin so that it can be used".[5]

Still, on the correlation between the crime of money laundering and other crimes, such as corruption and terrorist financing, it is important to highlight the words of Daiana da Silva Toledo, who tells us:

[3]Central Bank of Brazil. State action and the role of the Central Bank. Available at: https://www.bcb.gov.br/fis/supervisao/acaoestado.asp?frame=1. Accessed on August 19, 2024.
[4] MENDRONI, Marcelo Batlouni. Organized crime: general aspects and legal mechanisms. 4. ed. São Paulo: Juarez de Oliveira, 2012. p. 197.
[5] BALTAZAR, José Paulo Júnior. Federal crimes. 7th ed. Porto Alegre: Livraria do Advogado, 2010. p. 598.

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> The same scholars assert that money laundering is one of a series of complex conducts aimed at the conversion of assets and values of criminal origin, into assets apparently of lawful origin, enabling a wide availability and integration in the economic market. This practice involves numerous transactions to hide the true origin of financial assets, allowing them to be used without compromising criminals.[6]

It is important to highlight, still on the conceptualization of the crime of money laundering, the words of Bitencourt and Monteiro, who complement us by arguing that:

> The criminalization of money laundering autonomously, and its progressive detachment from previous criminal offenses, must be interpreted from the perspective that this form of criminality has its substantiality and harmfulness.[7]

Thus, for the prevention of money laundering, we see that Brazil still has a significant international presence, being a member of intergovernmental organization groups, aiming to combat corruption, money laundering, and terrorist financing, as we can see exposed by the Federal Revenue of Brazil.

> Brazil is a member of the Financial Action Task Force (FATF), an intergovernmental organization whose purpose is to develop a global strategy to prevent and combat money laundering, corruption, and terrorist financing (PCLD). The country is also a signatory to several International Conventions, under which it has committed to preventing and combating these criminal activities.[8]

The importance of international action, in conjunction with intergovernmental organization groups, is because such crimes, in essence, are cross-border, involving and harming, in most cases, several countries at the same time.

Regarding the general losses caused by the commission of such crimes, the Federal Revenue Service of Brazil discusses:

> For such organizations, tax and customs offenses, money laundering and other financial crimes are crimes that threaten the strategic, political, and economic interests of several nations, and may deprive the State of the financial resources necessary for its development in a sustainable manner and shake the confidence of citizens in the ability of its leaders to promote tax justice.[9]

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[6] TOLEDO, Daiana da Silva. Organized crime and public policies for prevention and repression. Available at https://ambitojuridico.com.br/cadernos/direito-penal/o-crime-organizado-e-as-politicas-publicas-de-prevencao-e-repressao/. Accessed on August 22, 2024.
[7] BITENCOURT, Cezar Roberto; MONTEIRO, Luciana de Oliveira. Money laundering under current legislation. Brazilian Journal of Criminal Sciences, IBCCRIN, year 21, nº., 102, 2013. p. 175.
[8] Federal Revenue of Brazil. Prevention and Combating of Money Laundering. Available at https://receita.economia.gov.br/sobre/acoes-e-programas/combate-a-ilicitos/lavagem-de-dinheiro. Accessed on August 19, 2024.
[9] Federal Revenue of Brazil. *Op. cit*.

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Not only, internally, in addition to expressly classifying these conducts as crimes, Brazil began to foresee and adopt a structure that functioned as a mechanism for investigating and supervising the commission of such conducts, as we can see exposed by the Central White of Brazil.

> In the Brazilian state structure for the prevention of money laundering, the Council for the Control of Financial Activities (Coaf) stands out, an intelligence unit created within the Ministry of Finance by Law 9,613/98 (amended by Laws 10,701 of 7/9/2003 and 12,683 of 7/9/2012) and with organization and structure defined by Decree 2,799/98. It is a collective deliberation body whose plenary is composed of representatives of the Central Bank of Brazil (BCB), the Securities and Exchange Commission (CVM), the Superintendence of Private Insurance (SUSEP), the Attorney General's Office of the National Treasury (PGFN), the Federal Revenue of Brazil (RFB), the Brazilian Intelligence Agency (ABIN), the Federal Police Department (DPF), the Ministry of Foreign Affairs (MRE), the Office of the Comptroller General of the Union (CGU), the Ministry of Social Security (MPS) and the Ministry of Justice - Department of Asset Recovery and International Legal Cooperation (DRCI).[10]

Notwithstanding Brazil's performance on the world stage, as well as its internal action against corruption, money laundering, and terrorist financing, we see that, internally, starting from the internalization of the Vienna Convention in Brazil through Decree 154/1991, our national system began to provide for a body to inspect and control financial activity only in 1998, through Law 9.613/98.

It was only in 1998 that the Council for the Control of Financial Activities (COAF) was created, an intelligence unit of the Ministry of Finance, a collective deliberation body, with a plenary composed of representatives of the main financial bodies and national regulatory agencies.

> The responsibilities of COAF are: i) to coordinate and propose mechanisms for cooperation and exchange of information that enable quick and efficient actions to prevent and combat the concealment or concealment of assets, rights, and values; ii) to receive, examine and identify suspicious occurrences of illegal activities provided for in the Law; iii) to discipline and apply administrative penalties to companies linked to sectors that do not have their own regulatory or inspection body and; iv) to communicate to the competent authorities, for the initiation of the appropriate procedures, when it concludes the existence of well-founded indications of the practice of the crime of money laundering or any other crime.[11]

[10] Central Bank of Brazil. *Op. cit*.
[11] *Ibid*.

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The objectives of COAF are well defined, especially the fight against organized crime through the financial tracking of values and assets from proceeds of crime, as highlighted by Daiana da Silva Toledo:

> For the Council of Financial Activities – COAF (2013), the importance lies in attacking organized crime in the financial aspect, focusing on the objective of pursuing proceeds of crime, in particular the money obtained by drug trafficking.[12]

Thus, within the social and legal evolution in the national scenario, we see that the creation and operation of the Council for the Control of Financial Activities – COAF, comes to serve as an important tool for the prevention and combat of crimes of corruption, money laundering, and terrorist financing.

INSTITUTIONAL FUNCTION OF NOTARIAL AND REGISTRY SERVICES

The primary function of the Notarial and Registration Services is to give the population publicity, effectiveness, authenticity, and legal certainty in the acts performed. This precept is engraved in Article 1 of Law 8,935 of 1994, which are the fundamental principles that govern Notarial and Registry Services.

Regarding Notarial and Registry Services, despite the current initial image of its legality resulting from constitutional force and the Law, we see as important the words of André Villaverde de Araújo, who reminds us that:

> Notary offices are among the oldest institutions of humanity because since the emergence of the need for a third party to write, file, or prove an act or business, either due to the lack of knowledge of writing or due to the need to extract the real will of the parties or to perpetuate the agreement, the presence of some person exercising this function has already been perceived, that with the natural evolution of every institute, it became a state function, essential to the growth of the State and the evolution of human relations.[13]

We see, therefore, that it is an old public service, currently delegated to private individuals by constitutional force, through public competition, and these private individuals have the task of acting on behalf of the State in these delegated functions, having the

[12] TOLEDO, Daiana da Silva. Organized crime and public policies for prevention and repression. Available at https://ambitojuridico.com.br/cadernos/direito-penal/o-crime-organizado-e-as-politicas-publicas-de-prevencao-e-repressao/. Accessed on August 22, 2024.
[13] ARAÚJO, André Villaverde de. Brazilian extrajudicial notaries as instruments of access to a fair legal order through extrajudicialization. Thesis (Doctorate) - University of Fortaleza. Doctoral Program in Constitutional Law, Fortaleza, 2019. p. 20.

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resulting public faith. In this sense, Marcelo Guimarães Rodrigues tells us that "the Latin notary is a legal professional who exercises a public function, being, therefore, at the same time, a liberal professional and a public official."[14]

Complementing this idea of the essential characteristic of Notaries and Registrars, Hely Lopes Meirelles argues that "they are private individuals who receive the task of performing a certain activity, work or public service and perform it in their name, at their own risk, but according to the rules of the State and under the permanent supervision of the delegator."[15]

An important point mentioned by the aforementioned author is the submission of Notaries and Registrars to the permanent supervision of the State and the Judiciary. Thus, they carry out the public activities delegated as private in collaboration, having public faith and being permanently supervised as to the acts performed and as to the strict observance of the legal and normative provisions that govern the activity.

As for public faith, according to André Villaverde, we have that it can be conceptualized as follows:

> Public faith means the trust that society has in the acts and documents performed by extrajudicial notary offices. Emphasizing the probative value of legal acts and transactions practiced in a notary's office, it is a constitutional rule that the Public Administration prohibits public faith attributed to the documents: Article 19 of the CF/88 - It is forbidden for the Union, the States, the Federal District, and the Municipalities: (...) II - refusing to authenticate public documents.[16]

Resende and Chaves, also refer us to an important point of the characteristic of the Notarial and Registry activity, the non-cost of these to the public coffers.

> It participates in the public administration of private interests by performing acts subject to its civil and criminal liability, but without entailing any expenditure to the public coffers. On the contrary, it exercises a public function, to contribute to the interests of the State, whether through the prevention of litigation, the inspection of taxes, the control of important data for the elaboration of public policies necessary for the development of the State, among other of the most outstanding issues.[17]

Thus, there are services performed with public faith by private individuals, by delegation of the Public Power and under permanent supervision of the latter, and without

[14] RODRIGUES, Marcelo Guimarães. Treaty on public records and notarial law. São Paulo: Atlas, 2014. p. 228.
[15] MEIRELLES, Hely Lopes. Brazilian administrative law. São Paulo: Malheiros, 2001. p. 75.
[16] ARAÚJO, André Villaverde de. *Op. cit.* p. 44.
[17] REZENDE, Afonso Celso F.; CHAVES, Carlos Fernando Brasil. Notary public and the perfect notary. 5. ed. Campinas: Milennium, 2010. p. 35.

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entailing any burden or need for funding by the State. The responsibility for all costs falls on the delegate holder Notary or Registrar, who receives, in return, the fees arising from the acts performed.

Still regarding the quality of the functions of the Notarial and Registry Services, Ana Carolina Bergamaschi Arouca tells us that "the notarial activity, due to the peculiarity of its specific functions, is among the activities that have a great responsibility in the maintenance of social peace, contributing greatly to the respect of fundamental rights."[18]

Thus, among the principles that govern the notarial and registry activity, the principle of publicity is inherent and main characteristic. According to this principle, Oliveira tells us that:

> Thus, real estate registry advertising [...] consists of technically organized records, intended to promote the knowledge, by any interested party, of the legal situation of the real estate, whose effect, at least, is the unassailable presumption of knowledge.[19]

In this section, we find in Souza's words that "publicity guarantees the security of legal relations to the extent that it allows any interested party to get to know the collection of services".[20] Complementing this idea, we see Nalini's words:

> The principle of publicity is related to transparency, that is, the registration act must reflect the legal reality, and it is not admitted that there are elements of doubt or ambiguity in it. For this reason, there are no secret registration acts. There is no obligation to make the act known, but only to make the act public, making it possible for anyone interested to know it.[21]

We can thus see that, the main aspect brought by the legislator in Law 6.015 of 1973, regarding registration publicity, is the certainty for the population that all necessary and relevant information about a given property must be duly registered in its registration, under penalty of not having effects before third parties, and therefore, not having the validity and effectiveness of real right.

In this section, João Pedro Lamana Pavia clarifies:

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[18] AROUCA, Ana Carolina Bergamaschi. Historical evolution of the notary and its social function. 111 f. Dissertation (Master's Degree in Law) - Fadisp, São Paulo, 2009. p. 97.
[19] OLIVEIRA, M. S. de. Real Estate Registry Advertising. JACOMINO, S. (coord). Real Estate and Environment Registry. 1. ed. São Paulo: Saraiva, 2010. p 15.
[20] SOUZA, Eduardo Pacheco Ribeiro de. Notarial and Registry Services in Brazil. Available at: http://www.irib.org.br/obras/os-servicos-notariais-e-registrais-no-brasil. Accessed on: August 15, 2024.
[21] NALINI, José Renato. The principles of Brazilian registry law and its effects. Brazilian Real Estate Law: Coord. Alexandre Guerra and Marcelo Benacchio, São Paulo, Apr./June 2011. p.1082.

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> No legal fact or legal act that concerns the legal situation of the property or subjective changes can be indifferent to the registration in the registration. In addition to the acts transferring property, the institutions of real rights, judicial acts, acts that restrict property, constrictive acts (seizures, seizures, sequestrations, embargoes), even of a precautionary nature, declarations of unavailability, personal actions for re-prosecution and real actions, decrees of public utility, immissions in expropriations, decrees of bankruptcy, the listings, lending, administrative easements, protests against the sale of property, leases, partnerships, in short, all acts and facts that may imply in the legal alteration of the thing, even in a secondary character, but that can be opposed, without the need to seek other information elsewhere, which would conspire against the dynamics of life.[22]

As seen in the words cited above, in addition to the acts of registration itself, being those that imply modification or extinction of the property, we also must register other acts that may imply changes in rights and facts about the properties.

Thus, we have that "the Real Estate Registry is the guardian of the property right, of the holders of said right, its extension and effects. In Brazil, it is constitutive of rights that arise within the Real Estate Registry that exercises the function of controlling real estate trafficking."[23]

Not only that, Law 8.935 of 1994 also discusses that it is up to Notaries to legally formalize the will of the parties, to intervene in the legal acts and transactions to which the parties must or want to give legal form or authenticity, and also to authenticate facts.

Thus, publicity is inherent to the characteristics of Notarial and Registry Services, which is closely related to the theme of this article about communications of suspicious acts by Notaries and Registrars to the Council for the Control of Financial Activities (Coaf), also having as characteristics the effectiveness, authenticity and legal certainty in the acts performed, and by these, these Services are the official path of several business acts, real estate transactions, and financial operations, having in their records and drafts the formalization of a large volume of acts, proving to be an effective inspection tool, as will be seen below.

[22] LAMANA PAIVA, João Pedro. Real Estate Law Journal n. 49. July to December 2000.
[23] MELO, Marcelo Augusto Santana de. NEW FOREST CODE AND THE REGISTRATION OF REAL ESTATE. Available at http://irib.org.br/obras/3974 Accessed on August 15, 2024.

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PROVISIONS OF THE CNJ AND THE ROLE OF NOTARIES AND REGISTRARS IN PREVENTING AND COMBATING CRIMES OF CORRUPTION, MONEY LAUNDERING, AND TERRORIST FINANCING

In line with the aim of greater effectiveness of international provisions and measures against the crime of money laundering, and others related to it, such as corruption and terrorist financing, and also given the functions and objectives of the COAF, in particular the fight against organized crime through the financial tracking of values and assets proceeds of crime, the Brazilian legislator decided to use the vast structure at the national level of the Notary and Registry Services to provide efficient information.

Thus, considering that the Notary and Registration Services are present throughout the national territory, and even though it has a solid structure that provides publicity, effectiveness, authenticity, and legal certainty in the various business acts and financial operations practiced by them, to the detriment of the reliability that these services provide to the population, the National Council of Justice – CNJ, initially instituted Provision number 88/2019, which was integrated into Provision number 149/2023, recently updated by Provision number 161/2024, of 03/11/2024.

The role of Notaries and Registrars in the practice of their acts is considered important, according to legal provisions, as they observe in their performance the constitutional principles of legality, morality, publicity, and efficiency, as well as the subjection of these Services to the duties of collaboration imposed by law as measures to prevent money laundering and terrorist financing.

Notaries and Registrars, in the performance of their function, must cooperate in the prevention of money laundering and terrorist financing, through the assessment of the existence of suspicion in the operations of the users of the Services, and must pay attention to unusual operations or that due to the characteristics, whether in terms of the parties involved, the values of the transactions, the way of carrying out, purpose, complexity, instruments used or lack of economic or legal basis, may constitute evidence of the crimes provided for in Law No. 9,613, of 1998.

Thus, by obligation of Notaries and Registrars, this is how Provision number 88 of the National Council of Justice – CNJ originally provided:

> Article 6 - Notaries and registrars shall communicate to the Financial Intelligence Unit (FIU), through the Financial Activities Control System (SISCOAF), any operations that, due to their objective and subjective elements, may be considered suspicious of money laundering or terrorist financing.

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With this provision, Notaries and Registrars are now responsible for being agents who supervise real estate transactions or financial transactions that are suspected of the crime of money laundering or terrorist financing, or activities related to them.

No, however, with an update of the wording given by Provision number 161/2024, of 03/11/2024 of the National Council of Justice – CNJ, the aforementioned provision now reads as follows:

> Article 142. Notaries and registrars shall communicate to the FIU, through the Financial Activities Control System (Siscoaf), any operations, transaction proposals, or situations in which they conclude, after analysis by article 141, paragraph 3, that, due to their characteristics, as indicated in paragraph 1 of the same article, may constitute evidence of the practice of LD/FTP or a related infraction.
> Sole Paragraph. Without prejudice to the provisions of the *caput*, notaries and registrars shall also communicate to the FIU what is defined in this Chapter as a hypothesis in which they must do so regardless of analysis, and must implement procedures for monitoring and selection of what is to be communicated.

Containing substantial modification, it was previously the duty to report any transactions that may be considered suspicious of money laundering or terrorist financing, and currently, Notaries and Registrars must only report transactions or situations that, after objective analysis, conclude that they may constitute evidence of money laundering or terrorist financing or related infraction.

This change, of guiding communications only after objective analysis, is justified to the extent that it was necessary to have greater quality and effectiveness of communications, as can be seen:

> The new regulation determines that notary offices must communicate in a more qualified and effective way the information of operations or proposals for operations considered suspicious sent to the Financial Intelligence Unit of Brazil, the COAF (Council for the Control of Financial Activities).[24]

Thus, only a large amount of the number of communications was no longer honored, and with the updating of the regulation, it is hoped that the communications made can have more technical quality and be more efficient.

It is important to note that, even before the entry into force of the updates brought by Provision number 161/2024, the need for such changes was debated at an event of the

[24] INR. Provision of the Internal Affairs Office that qualifies communications to Coaf – (CNJ) comes into force. Available in https://inrpublicacoes.com.br/site/boletim/noticia/33060/entra-em-vigor-provimento-da-corregedoria-que-qualifica-comunicaes-ao-coaf--cnj. Accessed on August 23, 2024.

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National Council of Justice (CNJ) held on 11/07/2023, which brought together experts on the subject.

Among these, the position of the Corregidor-General of Justice of Bahia, Judge José Edvaldo Rocha Rotondano, is important, as can be seen:

> To improve the effectiveness of the provision, with technical advancement, he defended the qualification of services, resulting in more assertive and accurate communications. Rotondano also highlighted the need for the involvement of the internal affairs departments of the courts of Justice, due to their capillarity and proximity to the final activities performed by the notary offices.[25]

Also important were the words of Edson Garutti, general coordinator of institutional articulation of the Department of Asset Recovery and International Legal Cooperation of the Ministry of Justice and Security, who according to the publication:

> He agreed that the amount of information passed on by notaries and registrars is important, but the quality must also be observed. "It is necessary to create critical mass on the subject, what are the good practices, they come out of the segment. We have the normative, now we are going to adjust. It will not be ready, because it is an evolving process and crimes also change," he pointed out.[26]

There is an imminent need for the changes brought about by Provision number 161/2024 of the National Council of Justice so that the communications carried out could have more technical quality and be more efficient. This is due to the current high numbers of communications, as we can see in a publication by the Association of Notaries and Registrars of Brazil, in which it is exposed that complying with the rules outlined in Provision No. 88/2019 of the National Council of Justice, the total number of suspicious acts reported by Notaries and Registrars to the Council for the Control of Financial Activities (Coaf), of the Ministry of Economy, has already totaled the number of 5,263,739 (five million, two hundred and sixty-three thousand, seven hundred and thirty-nine)[27] from the year 2020 to part of the year 2023.

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[25] NATIONAL COUNCIL OF JUSTICE – CNJ. Collaboration between notary offices and other institutions contributes to combating money laundering. Available at https://www.cnj.jus.br/colaboracao-entre-cartorios-e-outras-instituicoes-contribui-para-combater-lavagem-de-dinheiro/. Accessed on August 23, 2024.

[26] *Ibid*.

[27] ANOREG – Association of Notaries and Registrars of Brazil. NOTARY IN NUMBERS. Electronic Acts, Debureaucratization, Capillarity, Citizenship and Trust. Public services that cost nothing to the State and that benefit the citizen in all municipalities of the country. Special Dejudicialization. 5th Edition 2023. Available at https://www.anoreg.org.br/site/wp-content/uploads/2024/01/Cartorios-em-Numeros-5a-Edicao-2023-Especial-Desjudicializacao.pdf. Accessed on August 11, 2024. p. 37.

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Thus, due to the main changes brought about by Provision number 161/2024 of the National Council of Justice, so that the communications carried out could have more technical quality and be more efficient, we see the following provision as important:

> Article 139. Notaries and registrars must observe the provisions of this Chapter in the provision of services and the service to clients or users, including when they involve intermediaries, including all business and all operations submitted to them, observing the following particularities:
> I - the information that they can reasonably obtain for this purpose; and
> II - the specificity of the various types of notarial and registry services.
> Paragraph 1 - The adoption of policies, procedures, and internal controls in compliance with the provisions of this Chapter shall take place in the following manner: (...).

The update now provides for the hypothesis of analysis of suspicious acts to be reported by Notaries and Registrars to the Council for the Control of Financial Activities (Coaf), including in cases where the business and operations submitted to them involve intermediaries, also creating a policy of procedures and internal controls for the analysis of suspicious acts in which there is concealment of their final beneficiary.

It is also seen that as for the policy of procedures and internal controls, Notaries and Registrars are responsible for the implementation, according to the diction contained in Article 144 of Provision number 149/2023 of the National Council of Justice – CNJ. Also according to the new wording given, it must be compatible with the size of the notary's office and the volume of its operations or activities and must be guided by a risk-based approach, proportionally, to identify and evaluate such risks with a view to their mitigation, and also be done considering the level and type of contact with documentary information and with parties and others involved.

Also regarding the analysis of suspected acts of money laundering terrorist financing or related infractions, it now provides the:

> Article 139-A. To identify and assess AML/FTP risks related to their activities, notaries, and registrars must consider, among other reliable sources of information, national or sectoral risk assessments conducted by the Government, as well as sectoral or sub-sectoral assessments carried out by their representative entities.

Thus, with the amended legal provisions, there is now a need for the adoption of internal systems by Notaries and Registrars, with the adoption of a policy, procedures, and internal controls, as a way to carry out the analysis of suspected acts of money laundering

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or terrorist financing or related infraction, based on objective criteria and reliable sources. Before the operation is communicated to the Financial Activities Control Council (Coaf).

With the modifications to Provision number 161/2024 of the National Council of Justice, we have that:

> Article 151. Notaries and registrars, or their compliance officer, must communicate to the FIU operations, transaction proposals or situations in these cases:
> I - finding, after analysis by article 141, paragraph 2, of evidence of the practice of LD/FTP or a correlated infraction; and
> II - hypothesis of communication to the FIU regardless of analysis, as defined in this Chapter.

Due to these provisions, it became necessary for communication to be made through procedures for analyzing operations, with the implementation of what is contained in the policy of procedures and internal controls and guided by a risk-based approach, for only after concluding the framework, as we can see:

> Article 154-A. Communications under article 151, I, must be duly substantiated, including:
> I - detailed statement of the reasons that led to the conclusion that there is a possible indication of the practice of LD/FTP or a correlated infraction;
> II - all relevant data of the operation, proposal for operation, or situation communicated, such as those referring to the description of goods or rights and forms of payment, as well as the identification and qualification of the persons involved; and
> III - indication of the sources of the information conveyed or considered in the communication, such as documents in which they appear, statements made, direct observation, correspondence, e-mail messages or phone calls, journalistic articles, search results by internet search engines, social networks maintained within their scope or even, when applicable, suspicions informally shared in a certain local context, regional, family, community or commercial area, for example.
> *Sole Paragraph.* The elements provided to support the communications referred to in the *caput* must be:
> I - clear, precise, and sufficient to support a reasonable conclusion that the communication contains evidence of the practice of AML/FTP or a correlated infraction, to facilitate its understanding by competent authorities.

Thus, we see that the conclusion of the Notary or Registrar regarding the operations, transaction proposals, or situations that conclude that they constitute evidence of the practice of acts of money laundering or terrorist financing or a correlated infraction, must be based on objective criteria, and must also gather and provide to the Financial Activities Control Council (Coaf) the objective elements based on which it was based to conclude that there is a possible indication of the practice of acts that must be communicated.

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To this end, this same provision, in addition to instituting changes in the internal procedure in the Services, adapting the mode of service, implementing policies, procedures, and internal controls, also updated the provision on the need for a customer registration database, so that suspicious communications are effective. It provided as follows:

> Article 145. Notaries and registrars will identify and keep a record of those involved, including representatives and attorneys-in-fact, in protocol and registration notarial acts with economic content.
> Paragraph 1 - The following data shall be included in the register of individuals:
> j) any inclusion on the list of natural persons affected by the sanctions referred to in Law No. 13,810, of 2019, related to terrorist practices, proliferation of weapons of mass destruction or their financing and imposed by resolution of the United Nations Security Council (UNSC) or by designation of any of its sanctions committees; and
> k) possible classification in the condition of a politically exposed person, as well as in the condition of a family member or close collaborator of a person of this gender, under the terms of the norm issued in this regard by the FIU.

Thus, integrating the policy of procedures and internal controls and as a way to achieve an effective risk-based approach, Notaries, before performing the acts, must consult the electronic register of Politically Exposed Persons, through Siscoaf, or even collect the declaration of the parties themselves on this condition in the cases permitted, and together with the Registrars, must keep a record of such condition in the register, and ensuring that the registration information is updated at the time of providing the service.

Thus, as for the practice of instrumentation of any business acts, whether real estate transactions or financial operations, practiced by Politically Exposed Persons, the electronic register must be consulted and the record of this condition must be kept in its register of those involved. However, it is important to note that with the changes brought about by Provision number 161/2024 of the National Council of Justice, acts performed by Politically Exposed Persons are no longer mandatory communication to the Council for the Control of Financial Activities - COAF, but even without the obligation, the Notary and the Registrar must carry out the analysis of the other elements of the act or operation, to formulate the reasoned conclusion of whether or not it was a suspicious transaction.

Not only, further on in Provision number 149/2023, recently updated by Provision number 161/2024, we see an extremely effective provision against the concealment or evasion of assets, let's see:

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> Article 155-A. In the event of article 151, I, involving the duty of analysis with special attention (article 141, §§ 1 and 3), the notary and the registrar shall pay attention to operations, proposals for operation, or situations that, based on the documents submitted to them for the practice of the act:
> XVI – involves the drafting or use of a power of attorney that grants broad powers of administration of a legal entity or business management, business management or bank account operation, payment, or of a similar nature, especially when conferred on an irrevocable or irreversible basis or exempt from accountability, regardless of whether it is a matter of: or not, of power of attorney in their cause or for an indefinite period;
> XVII - reveal capital increase operations that seem to clash with the actual attributes of value, equity, or other aspects related to the economic and financial conditions of the company, given circumstances such as, parties involved in the act or characteristics of the enterprise.

It is a persistent practice of criminals who hide their assets, place them in the name of third parties, or keep them in the name of the former owners. It turns out that, even if they are criminals, they want some guarantee or security about the assets they are trying to hide. Thus, in everyday practice, the buyer of real estate or any other asset, who does not want it to appear in his assets, has a power of attorney to have full powers to dispose of this asset that is in the name of third parties.

With the legal provision brought above in an updated form, we see that the Council for the Control of Financial Activities – COAF, through the information sent by Notaries, will also have the knowledge, and will be able to evaluate, the legality of transactional acts, entered into irrevocably or irreversibly or when exempt from accountability, of persons who have powers to dispose of the assets that are in the name of third parties.

Nevertheless, there are still specific cases guiding each attribution, in which the regulation expressly brought indicative objective elements for the analysis of the act or operation, as a way of providing predefined parameters, of special attention, which help in the conclusion of the Notary or the Registrar as to whether or not it is a suspicious transaction so that such communications are effective. Such provisions are contained in articles 160, 162, and 164 of Provision number 149/2023 of the National Council of Justice.

Furthermore, there are also cases in which communication is mandatory, in which the regulation itself brought objective parameters defining the configuration of evidence of the practice of acts of money laundering or terrorist financing or related infraction regardless of analysis, applying to Notaries of Notes, Notaries of Protest, Real Estate Registrars, Registrars of Deeds and Documents and also to Civil Registrars of Legal Entities.

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As provided respectively in articles 171, 159, 161, and 163 of Provision No. 149/2023 of the National Council of Justice, in summary, it is hypothesized that any operation or proposal involving payment or receipt in cash, or by bearer bond, of an amount equal to or greater than R$ 100,000.00 (one hundred thousand reais) or the equivalent in another currency, and there is also in article 181 a provision for the possible updating of said amount periodically by the National Justice Department.

Thus, the objective of the National Council of Justice in entrusting Notaries and Registrars with such communications was correct and effective, since, due to their trust and efficiency, they concentrate a high number of business acts, real estate transactions, and financial operations. And yet, with the updates brought by Provision number 161/2024 of the National Council of Justice, communications are now carried out based on objective parameters, with strict internal procedures, and tend to have more technical quality and be more efficient to the Council for the Control of Financial Activities – COAF.

CONCLUSION

With Provision number 88/2019, the National Council of Justice – CNJ innovated in the legal system, creating an important tool against the crime of money laundering, and others related to it, such as corruption and terrorist financing. Such legislative provision proved to be a true legal advance in the inspection and prevention of such crimes, since it used the Notary and Registration Services, which are present throughout the national territory, and also have a solid structure that provides publicity, effectiveness, authenticity, and legal certainty, and participate in various business acts, real estate transactions and financial operations.

With Provision number 88 of the National Council of Justice – CNJ, the State, through the Council for the Control of Financial Activities – COAF, an intelligence unit of the Ministry of Finance, became aware of several business acts, real estate transactions, and financial operations that may be suspicious. The primary objective of the aforementioned rule was that the State could have knowledge of acts and operations that may be considered suspicious of money laundering or terrorist financing, and this objective was excellently met by Notaries and Registrars, who already in the first month of the effectiveness of the aforementioned rule led in terms of the number of communications.

However, even with such innovation, over time the quantity of communications proved to be too much and lacking in objective foundations, raising the need for regulatory

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updates so that the communications made by Notaries and Registrars could have more technical quality and be more efficient. In this sense, Provision number 161/2024 of the National Council of Justice was issued, which with the updates brought, communications are now carried out based on objective parameters, with strict internal procedures, tend to have more technical quality and be more efficient to the Council for the Control of Financial Activities – COAF.

In this way, the National Council of Justice improved the previously provided tool, moving towards the purpose of the effective knowability of business acts, real estate transactions, and financial operations that may be suspicious, to the Council for the Control of Financial Activities – COAF. Thus, the aforementioned measures in which the State began to rely on Notaries and Registrars as allies in the fight against and prevention of money laundering or terrorist financing crimes, or activities related to them, and also the updates that improved and made more efficient the communications carried out by them, are considered correct.

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