

# COMPLEMENTARY LAW No. 105, OF JANUARY 10, 2001

This law addresses the confidentiality of transactions performed by financial institutions and other matters.

THE PRESIDENT OF THE REPUBLIC

I hereby state that the National Congress has decreed and I sign the following Complementary Law:

Article 1. The financial institutions shall keep the confidentiality of their active and passive transactions and services rendered.

Paragraph 1. For the purposes of this Complementary Law, financial institutions are the following:

I. banks of any kind; II . securities dealers;  
III. foreign currency and securities brokerage houses; IV. credit, financing, and investment companies; V. real estate financing companies; VI . credit card administrators; VII. leasing companies; VIII. organized over-the-counter markets; IX. cooperative credit entities; X. savings and loans associations; XI. stock, commodities, and futures exchanges; XII. settlement and clearing entities; XIII. other entities that due to the nature of their operations might be included in this list by the National Monetary Council.

Paragraph 2. For the purposes of this Complementary Law, the factoring companies shall comply with the regulations applicable to financial institutions set forth in Paragraph 1.

Paragraph 3. The actions listed below shall not be considered a violation of the duty of confidentiality:

I. the exchange of information between financial institutions for record purposes, including the exchange made through risk centers in compliance with the rules and regulations issued by the National Monetary Council and the Central Bank of Brazil; II. the provision of information contained in the records of bad check writers and defaulters to credit protection entities in compliance with the rules and regulations issued by the National Monetary Council and the Central Bank of Brazil; III. the provision of information referred to in Paragraph 2 of article 11 of Law No. 9311, of October 24, 1996; IV. the reporting of illicit activities to the competent authorities, including information on transactions that involve funds deriving from criminal activities; V. the disclosure of confidential information with the express consent of those concerned; VI. the provision of information as set forth in articles 2,3,4,5,6,7, and 9 of this Complementary Law.

Paragraph 4. The breach of confidentiality may be ordered, when it is necessary to verify the occurrence of any illicit activity, in any stage of investigations or legal proceedings, and especially in the case of the following crimes:

I. terrorism;  
II. illicit trafficking in narcotic substances or similar drugs; III. smuggling or trafficking in weapons, munitions, or materials used for their production; IV. extortion through kidnapping; V. acts against the Brazilian financial system; VI. acts against the Public Administration; VII. acts against the fiscal and social security order; VIII. money laundering or concealment of assets, rights, and valuables; IX. acts committed by a criminal organization.

Article 2. The duty of confidentiality also applies to the Central Bank of Brazil in regard of the transactions it performs and the information it receives in the fulfillment of its duties.

Paragraph 1. Confidentiality in regard of deposit accounts and investments kept in financial institutions cannot be denied to the Central Bank of Brazil:

I. when the Central Bank is fulfilling its surveillance duties, including the verification at any time of illicit activities practiced by comptrollers, managers, members of the boards, agents, and proxies of financial institutions; II. when the Central Bank is carrying out investigations on a financial institution subject to a special regime.

Paragraph 2. The committees charged with the investigations mentioned in item II of paragraph 1 shall be entitled to examine all the documents concerning assets, rights, and obligations of financial institutions, their comptrollers, managers, members of the boards, agents and proxies, including information on current accounts and transactions with other financial institutions.

Paragraph 3. The provisions in this article apply to the Securities and Exchange Commission (CVM), in regard of surveillance of transactions and services performed in securities markets, including the financial institutions that are open companies.

Paragraph 4. The Central Bank of Brazil and the Securities and Exchange Commission, within their respective jurisdiction, may sign cooperative agreements:

I. with other public institutions that regulate financial institutions in order to carry out combined surveillance, respecting their respective jurisdiction; II. with central banks or regulatory entities from other countries, in order to:

a) monitor agencies and branches of foreign financial institutions operating in Brazil and agencies and branches of Brazilian financial institutions which are located abroad; b) mutually cooperate and exchange information for the investigation of activities or transactions that involve investment, negotiation, concealment, or transfer of financial assets and securities related to the practice of illicit activities.

Paragraph 5. The duty of confidentiality referred to in this Complementary Law also applies to the surveillance entities mentioned in Paragraph 4 and their agents.

Paragraph 6. The Central Bank of Brazil, the Securities and Exchange Commission, and other surveillance entities, within their respective jurisdiction and for the purposes defined in article 14 of Law No. 9613, of March 3, 1998, shall provide to the Council for Financial Activities Control (COAF) the identification information and the cash transfer reports concerning the transactions referred to in item I of article 11 of that same Law.

Article 3. The Central Bank of Brazil, the Securities and Exchange Commission and financial institutions shall provide the information required by Court Order, preserving their confidential character by restricting access to the parties involved that shall not be allowed to use such information for purposes other than those pertaining to the investigation.

Paragraph 1. The provision of information and confidential documents requested by an administrative investigation committee designed to verify the responsibility of a public servant for a violation made in the fulfillment of his/her duties or which is related to the duties of the position he/she holds shall require prior judicial authorization.

Paragraph 2. In the cases mentioned in Paragraph 1, the requests for the breach of confidentiality does not require that judicial proceedings have been previously initiated.

Paragraph 3. In addition to the cases defined in this article, the Central Bank of Brazil and the Securities and Exchange Commission will provide the General-Attorney Office with the necessary information and documents for the Government's defense in proceedings in which the Government is one of the parties.

Article 4. Within their respective jurisdiction, the Central Bank of Brazil and the Securities and Exchange Commission, and the financial institutions shall provide the Federal Legislative Branch with the confidential information and documents that are undoubtedly necessary for the fulfillment of their respective constitutional and legal duties.

Paragraph 1. The parliamentary inquiry commissions (CPI) in the fulfillment of their constitutional and legal duties of broad investigation shall obtain the necessary confidential information and documents directly from the financial institutions or through the Central Bank of Brazil or the Securities and Exchange Commission.

Paragraph 2. The information requests referred to in this article shall be subject to prior approval by the plenary meeting of the House of Representatives, of the Senate, or of their respective parliamentary inquiry commissions.

Article 5. The Executive Branch of Administration shall regulate the criteria (including the periodicity and amount limits to be reported) that the financial institutions shall follow to inform to the federal tax administration the financial transactions performed by their customers.

Paragraph 1. For the purpose of this article, financial transactions are the following:

I. cash and long-term deposits, including those made in savings accounts; II. payments made in current currency or in checks; III. issuance of credit orders or similar documents; IV. withdrawals in cash or long-term deposit accounts, including savings accounts; V. loan agreements; VI. abatement of promissory notes, debtor's obligations or any other credit instrument; VII. purchases and sales of fixed or variable-income securities; VIII. investments made in investment funds; IX. purchases of foreign currency; X. exchanges of foreign currency for Brazilian currency; XI. money transfers made to a recipient established abroad; XII. transactions of gold as a financial asset; XIII. transactions of credit cards; XIV. leasing transactions; and XV. any other transaction of similar nature that might be authorized by the Central Bank of Brazil, the Securities and Exchange Commission, or another competent agency.

Paragraph 2. The information provided in accordance with the provisions of this article shall be restricted to information related to the identification of the transaction parties and the total amounts monthly moved. It shall not be allowed to insert any element that enables to identify their origin or the nature of consequent expenses.

Paragraph 3. The information referred to in this article does not include the financial transactions conducted by direct or indirect administrations at Federal, State, Municipal, or Federal District levels.

Paragraph 4. After receiving the information referred to in this article, if the competent authority detects indications of lapses, mistakes, omissions or tax evasion, he/she may request other necessary information or documents and submit them to surveillance or auditing to adequately investigate the facts.

Paragraph 5. The information referred to in this article shall be kept under fiscal confidentiality pursuant to current legislation.

Article 6. The authorities and the tax agents of Federal, State, Municipal and Federal District administrations shall only examine documents, books and records of the financial institutions, including those relating to deposit accounts and financial investments, when administrative proceedings or tax proceedings have been initiated and said examination is considered indispensable by the competent administrative authority.

Sole Paragraph. The results of the examination of the information and documents referred to in this article shall be kept confidential pursuant to current fiscal legislation.

Article 7. Without prejudice to the provisions in paragraph 3 of article 2, the Securities and Exchange Commission, after an administrative investigation has been initiated, may request to the competent judicial authority the release of confidentiality in financial institutions concerning information and documents on assets, rights, and obligations of individuals or legal entities subject to CVM's regulating jurisdiction.

Sole Paragraph. The Central Bank of Brazil and the Securities and Exchange Commission shall keep a permanent exchange of information on the results of inspections they carry out, the proceedings they initiate, or the penalties they apply, whenever this information is necessary for the fulfillment of their duties.

Article 8. The compliance with the requirements and formalities mentioned in articles 4, 6, and 7 shall be expressly declared by the competent authorities in the requests addressed to the Central Bank, the Securities and Exchange Commission, or the financial institutions.

Article 9. When the Central Bank of Brazil and the Securities and Exchange Commission, in the fulfillment of their duties, verify the occurrence or indications of a crime defined by the law as a public action, they shall report them to the Department of Justice and attach to such report the necessary documents for the verification and demonstration of the facts.

Paragraph 1. The report referred to in this article shall be made by the chairpersons of the Central Bank of Brazil and the Securities and Exchange Commission (with the possibility of delegation of powers) within no more than fifteen days beginning on the date the proceedings are received, with acknowledgement of the respective legal services.

Paragraph 2. Regardless of the provisions in this article, the Central Bank of Brazil and the Securities and Exchange Commission shall report to the competent public agencies the administrative irregularities and torts that they have knowledge or indications of their occurrence, and they shall attach to said report all the pertinent documents.

Article 10. The breach of confidentiality, except for that authorized by this Complementary Law, constitutes a crime and those responsible for it shall be subject to confinement from one to four years and a fine, and the applicable penalties prescribed by the Penal Code, without prejudice to other applicable sanctions.

Sole Paragraph. The same penalties shall apply to those that omit, unjustifiably delay, or falsely provide the information requested pursuant to this Complementary Law.

Article 11. The civil servant that uses or enables the use of any information obtained as a result of the breach of confidentiality referred to in this Complementary Law shall be liable personally and directly for the damages that result from this breach, without prejudice to the public entity's objective responsibility, whenever it is proven that the civil servant has acted according to official orientation.

Article 12. This Complementary Law shall come into force on the date of its publication.

Article 13. This Complementary Law revokes article 38 of Law No. 4595, of December 31, 1964.

Brasília, January 10, 2001, the 180th of Independence and the 113th of the Republic.