

Brazil

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A. Protection of cultural property

1. What are the key characteristics of your country's regulations on cultural heritage and national patrimony?

Brazil's public administration is bound by Article 216 of Brazil's Constitution to promote and protect Brazilian cultural heritage. It has the authority to make use of such instruments as inventories, registers, vigilance, inscription (*tombamento*) and expropriation (*desapropriação*), as well as other forms of caution and protection within the existing legal framework, in collaboration with the community. The body in charge of this protection at a national level is the National Historic and Artistic Heritage Institute (Instituto do Patrimônio Histórico e Artístico Nacional) (IPHAN). The IPHAN is a federal public administration linked to Brazil's Ministry of Tourism, which absorbed the work, staff and resources of the former Ministry of Culture, abolished by President Bolsonaro in January 2019, as set out in Decree No 10,108, of 7 November 2019.

Brazil's current administration is also contemplating incentives set out by statute for the production and cognition of cultural goods and values, as well as penalties applicable in cases of loss or threat of Brazilian cultural heritage.

2. Under your national law, which criteria must be met, in order to classify goods as cultural property?

Brazil's cultural heritage comprises material and immaterial goods that, individually or as a whole, bear reference to the identity, action and memory of the different groups that form Brazilian society (Brazilian Constitution, Article 216). It includes: (1) forms of expression; (2) means of creating, doing and living; (3) scientific, artistic and technological creations; (4) works, objects, documents, buildings and other spaces destined to artistic-cultural manifestations; (5) urban settings and sites of historic, landscape, artistic, archaeological, palaeopathological, ecologic and scientific value.

In order to classify goods as cultural property, the IPHAN must observe the general criteria and procedures set out in Decree-Law No 25, of 30 November 1937 (the PHAN Law). In particular, the IPHAN must assess whether the conservation of a given material or immaterial good qualifies as a matter of public interest (*interesse público*) either for its linkage to memorable aspects of Brazil's history or for its exceptional value of archaeological or ethnographic, bibliographical or artistic nature.

Classification depends on an act of inscription (*tombamento*) of the goods by the IPHAN, separately or as a group, in one of the following register books (*livros do Tombo*):

- Archaeological, ethnographic and landscape heritage (*Tombo arqueológico, etnográfico e paisagístico*) – for the inscription of the objects pertaining to the categories of archaeological, ethnographic, Amerindian and popular art, as well as, by equivalence, of natural monuments, sites and landscapes that demand conservation and protection for their notable features, either by nature or human agency.
- Historic heritage (*Tombo histórico*) – for the inscription of the objects of historic interest and historic works of art.
- Fine arts heritage (*Tombo das belas artes*) – for the inscription of the objects of erudite art, national or foreign.
- Applied arts heritage (*Tombo das artes aplicadas*) – for the inscription of the works that belong to the category of applied arts, national or foreign.

Certain works of foreign origin located in Brazil are specifically excluded from the national historic and artistic heritage and, as such, not subject to the protection set out by the PHAN Law. This is the case for instance, of works of foreign origin that belong to diplomatic or consular representations or to commercial stores of historic or artistic objects in Brazil.

In cases of real estate properties, the IPHAN must notify the relevant real estate register (*registro de imóveis*) of the definitive inscription (*tombamento definitivo*) for registration in the respective record.

Cultural goods of immaterial nature are subject to a special register in Brazil introduced by Decree No 3,551, of 4 August 2000, in one of the following register books:

- Knowledges (*saberes*) – for the inscription of knowledges and ways of doing rooted in the routine of the communities.
- Celebrations (*celebrações*) – for the inscription of rituals and feasts that mark the collective livelihood of work, religiosity, entertainment and other practices of social life.
- Forms of expression (*formas de expressão*) – for the inscription of literary, musical, plastic, scenic and ludic manifestations.
- Places (*lugares*) - for the inscription of markets, fairs, sanctuaries, squares and other spaces where collective cultural practices are concentrated and reproduced.

3. **What are the legal consequences arising from classifying an asset as cultural property? Does the classification of a private asset as cultural property affect the right of ownership?**

If the goods classified as cultural property belong to the federal, state or municipal governments, they are deemed incontrovertible in nature and can only be transferred among government entities (PHAN Law, Article 11). The acquirer must notify the IPHAN immediately after the transfer is concluded.

If the goods classified as cultural property belong to an individual or private sector entity, their owner can still transfer them subject to certain restrictions. The acquirer must notify the IPHAN within 30 days of the transfer, even if done in court or *causa mortis*, under penalty

of being fined at ten per cent of the value of the goods (PHAN Law, Article 13). Similar obligations punishable by the same fine apply in the event of: relocation of the goods, in which case the owner must seek inscription on the record of the destination within 30 days of the event; and loss or theft of the goods, in which case the owner must notify the IPHAN within five days (PHAN Law, Article 16).

Goods classified as cultural property cannot leave the Brazilian territory, except for a short period, with no transference of ownership and for the purpose of cultural exchange, at the discretion of the IPHAN (PHAN Law, Article 14; IPHAN Ordinance No 262, of 14 August 1992). In the event of an attempt to export cultural property from Brazil in violation of this rule, the owner will be subject to a fine of 50 per cent of the goods' value, which will be seized by the federal or state authorities in security for the payment (PHAN Law, Article 15). In cases of repeated offence, the amount of the fine is doubled to 100 per cent of the value of the goods. The owner may also be subject to criminal prosecution for smuggling (*contrabando*) under the Brazilian Penal Code, Decree-Law No 2,848, of 7 December 1940.

The owner of goods classified as cultural property is banned from destroying, demolishing or damaging goods in any circumstance. The owner must obtain special prior authorisation from the IPHAN before repairing, painting or restoring goods, under penalty of being fined at 50 per cent of the amount of the loss caused to the goods (PHAN Law, Article 17). If the owner is a government entity, the officer responsible for the act will be personally liable.

If the owner does not have the resources required for works of conservation and repair that a given item classified as cultural property may demand, they must inform the IPHAN of the need of such works, under penalty of being fined 200 per cent of the amount of the loss caused to the item (PHAN Law, Article 19). On receipt of such notice, if confirmed the need of conservation or repair works, the IPHAN will either: order the undertaking of requisite works at the expense of the federal government, commencing no later than within six months of the notice; or proceed with the expropriation (*desapropriação*) of the item. If the IPHAN does not take any such action, the owner of the item may request that the inscription is cancelled, a scenario that seldom materialises in practice. If the IPHAN determines that the conservation or repair works are urgent, it has authority to plan and implement such works at the expense of the federal government, even in the absence of a notice from the owner.

Furthermore, the IPHAN has the power to inspect any item classified as cultural property at any time, in the exercise of 'permanent vigilance' (PHAN Law, Article 20). Owners or responsible parties cannot impose obstacles to IPHAN's regular inspection, under penalty of being fined.

Finally, an offence committed against an item classified as cultural property is, by law, an offence committed against national property (*patrimônio nacional*) (PHAN Law, Article 21). As a result, the offender will be subject to Brazil criminal law, even if the offence was committed abroad (Brazilian Penal Code, Article 7, item I, subitem 'b'), and the damage caused to such an item will be prosecuted as qualified damage, subject to more severe penalties (Brazilian Penal Code, Article 163, sole paragraph, item III).

4. Which authorities in your country define cultural property and who advises these authorities?

At the national level, the authority which defines cultural heritage is the IPHAN, a federal public administration body linked to Brazil's Ministry of Tourism (see question A.1 above; Decrees No 9,238, of 15 December 2017, and No 10,108, of 7 November 2019). The review and decision-making process initiates a proposal of inscription of goods as cultural heritage (*tombamento*) instructed by the relevant management within the IPHAN. The proposal is submitted to the IPHAN's Department of Material Heritage and Oversight (Departamento de Patrimônio Material e Fiscalização) for review and opinion (Decree No 9,238, of 15 December 2017, Article 20, item IV) and then to the IPHAN's Cultural Heritage Advisory Board (Conselho Consultivo do Patrimônio Cultural) for decision (Article 13, item I). The advisory board is led by the president of the IPHAN and comprises 22 members, namely: nine representatives of both public and private sector bodies and 13 civil society representatives, appointed by the president of the IPHAN and designated by Act of the Minister of Tourism. Following a favourable decision, the president of the IPHAN must sign the act of inscription and submit it to the Minister of Tourism for homologation (Article 26, item IX).

Acts of promotion and protection of cultural heritage can also be taken by relevant authorities at state or municipal level, subject to special regulations within their respective authorities in accordance with the same general principles set out in Article 216 of Brazil's Constitution. In the State of Rio de Janeiro, for example, the relevant authority is the State Cultural Heritage Institute (Instituto Estadual do Patrimônio Cultural) ('Inepac'), a state-level public administration entity linked to the State of Rio de Janeiro's Secretariat of Culture and Creative Economy. In the exercise of its statutory duties, the Inepac consults an expert advisory board led by the Inepac's director-general and composed of 11 other members: a representative of the Brazilian Historical and Geographical Institute (IHGB), a representative of the Brazilian Architectures Institute (IAB), a representative of the IPHAN and eight experts nominated by the state governor.

5. Has your country ratified the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, and, regarding the illegal export of cultural objects and artwork: what are the main characteristics of the national implementation?

Brazil approved the 1970 UNESCO Convention on 28 November 1972 (Legislative Decree No 71), deposited its instrument of ratification with UNESCO on 16 February 1973 and promulgated its content internally on 31 May 1973 (Decree No 72,312).

The authority in charge of maintaining and updating the national inventory of cultural goods under protection at the national level is the IPHAN, to which activity state or municipal authorities can concur within their respective spheres of authority.

Relevant national laws and regulations enacted in Brazil before the approval and ratification of the 1970 UNESCO Convention but have not been revoked include:

- the PHAN Law, which organises the protection of the national historic and artistic heritage (see question A.2 above);

- Decree-Law No 3,866, of 29 November 1941, which allows the President of Brazil to cancel the inscription (*tombamento*) with the federal public administration entity that today is the IPHAN, for reasons of public interest, of any given goods belonging to any entity of the public administration or to the private sector persons, by act of the President of Brazil;
- Law No 3,924, of 26 July 1961, which regulates archaeological and prehistoric monuments, banning the export of any object that presents archaeological or prehistoric interest, numismatic or artistic, without prior IPHAN authorisation;
- Law No 4,845, of 19 November 1965, which prohibits the permanent export of art works and traditional crafts produced in Brazil before the end of the monarchic period (ie, before 15 November 1889); and
- Law No 5,471, of 9 July 1968, which regulates the export of ancient Brazilian books and bibliographical sets.

Relevant national laws and regulations enacted in Brazil after the approval and ratification of the 1970 UNESCO Convention and remaining in force include:

- Decree No 3,551, of 4 August 2000, which introduces and regulates the special register for cultural goods of immaterial nature in Brazil (see question A.2 above);
- Decree No 9,238, of 15 December 2017, which approves the internal structure of the IPHAN (superseding previous decrees with similar scope) and attributes to the IPHAN the authority to introduce and regulate a national policy for the protection of the Brazilian material cultural heritage; and
- IPHAN Ordinance No 375, of 19 September 2018, which introduces and regulates the national policy for protection of the Brazilian material cultural heritage (*Política de Patrimônio Cultural Material*).

Within this national legal and regulatory framework, the 1970 UNESCO Convention is implemented in Brazil by the IPHAN. In addition to the authority and duty of regulating, evaluating potential impacts, supervising and conserving the Brazilian material cultural heritage, the IPHAN is the body in charge of reviewing and deciding on the cases of export of cultural goods that depend on prior authorisation, namely: (1) temporary export of art works and traditional crafts produced in Brazil before the end of the monarchic period (ie, before 15 November 1889); (2) temporary export of movable cultural goods protected by inscription (*tombamento*); (3) temporary export of archaeological goods; (4) consignment of archaeological material for analysis abroad; (5) temporary export of art works and traditional crafts originated in Portugal and incorporated to the national milieu during the colonial and imperial regimes (ie, before 15 November 1889); and (6) temporary export of art works and traditional crafts (painting, sculpture and graphic arts) that, although produced abroad before the end of the monarchic period (ie, before 15 November 1889), represent personalities that are either Brazilian or related to the history of Brazil, as well as the country's landscape and customs (IPHAN Ordinance No 375, Article 41).

In exercising its authority, the IPHAN must take steps to: avoid incidents of material cultural heritage becoming damaged and irregularities in the trade of works of arts and antiques; control the movement of protected cultural goods; monitor and support actions against illegal traffic in cultural goods; and promote the compensation of damages caused to Brazil's material cultural heritage, among other actions (Article 49).

6. Has your country ratified the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, and, regarding the illegal export of cultural objects and artwork: what are the main characteristics of the national implementation?

Brazil approved the 1995 UNIDROIT Convention on 21 January 1999 (Legislative Decree No 4), depositing its instrument of adhesion with UNIDROIT on 23 March 1999 and promulgating its content internally on 14 September 1999 (Decree No 3,166).

See question A.5 above, regarding the national implementation of this Convention in Brazil.

7. Has your country ratified any other international conventions or bilateral agreements relating to the export of cultural objects?

Brazil has ratified other international conventions, notably: (1) 1954 UNESCO Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention, including its first Protocol of 1954 (instrument of ratification deposited on 12 September 1958) and its second Protocol of 1999 (instrument of accession deposited on 23 September 2005); (2) 1972 UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage (instrument of acceptance deposited on 1 September 1977); (3) 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (instrument of ratification deposited on 1 March 2006); and (4) 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (instrument of ratification deposited on 16 January 2007).

Brazil is also a signatory to bilateral agreements of technical cooperation with the following 15 countries: Angola, Benin, Bolivia, Cape Verde, Ecuador, France, Mexico, Mozambique, Nigeria, Panama, Paraguay, Peru, Spain, Uruguay and Venezuela. The purpose of these bilateral agreements typically involves technical consultancy, formation and training of national human resources, and complementation of infrastructure by donation of equipment, based on the shared interest in the conservation of goods and common memory. Brazil is currently in ongoing negotiations for similar bilateral agreements with three other countries: Colombia, the Netherlands and Portugal.

B. Restrictions on the export of cultural property and artwork

1. What are your country's export restrictions regarding cultural property and artwork?

1.1 Under which conditions is export permission granted?

Export permission is granted in the form of an authorisation issued by the IPHAN after an examination of the cultural property or artwork the owner wishes to export.

If the local superintendent of the IPHAN finds that the cultural property or artwork is protected under Brazilian law, either because of an inscription as cultural heritage or is subject to another cause of restriction, permanent export will not be permitted. In such cases, the IPHAN may authorise exceptional temporary export or exit of the goods (*saída temporária*), but this must be granted by an act of the president of the IPHAN, following a favourable decision of the IPHAN's Cultural Heritage Advisory Board (Decree No 9,238, of 15 December 2017, Articles 13, item III, and 26, item IX; IPHAN Ordinance No 375, of 19 September 2018, Articles 40 and 41).

If the local superintendent of the IPHAN finds that the cultural property or artwork is not (or not yet) protected under Brazilian law, permanent export will generally be authorised (Decree No 9,238, of 15 December 2017, Article 24, item VI; IPHAN Ordinance No 375, of 19 September 2018, Articles 40 and 41).

For more information, see questions A.4 and A.5 above.

1.2 Which authority grants such export permission and who advises this authority?

See questions A.4, A.5 and B.1.1 above.

1.3 What does the proceeding look like, who are the parties to the proceeding and what is the duration of the proceeding?

In cases of cultural property or artwork not protected under Brazilian law, the owner, acting directly or through an attorney-in-fact, must fill in an application form for authorisation of exit of art works from the country (*solicitação de autorização de saída de obras de arte do País*) and file it with the IPHAN superintendent located in the respective Brazil state. The applicant must indicate technical information about the object (type, title (if any), date, authorship, materials, dimensions and production techniques); and enclose photographs from at least two angles, a copy of personal identification and, if acting through an attorney-in-fact, of the power-of-attorney. Recently, the IPHAN has committed to respond to the application and issue the authorisation within 15 business days of the filing date.

In cases of cultural property or artwork that are protected under Brazilian law, the owner or cultural institution must fill in an application form for authorisation of temporary export of protected cultural goods (*solicitação de autorização de exportação temporária de bens culturais protegidos*) and file it with the IPHAN superintendent located in the respective Brazil state at least 90 days prior to the intended exit date. The applicant must indicate all technical information about the object (type, title (if any), date, authorship, materials, dimensions, production techniques, marks, inscriptions, status of conservation), enclose three photos of the object and a copy of personal identification and, if acting through an attorney-in-fact, of the power-of-attorney. The applicant must also include in the form of application information about the exhibition, a detailed route of transportation of the goods, expected date of return to Brazil, an evaluation of the goods for insurance purposes, the indication of the parties responsible for packaging, for loading and unloading, for transportation and

for insurance, and the indication of the lots for shipping purposes (if applicable). The applicant will be required to deliver a copy of the insurance policy 15 calendar days in advance of the intended exit date. Recently, the IPHAN has committed to respond to the application and issue the authorisation within 90 calendar days of filing.

1.4 Are there any monetary thresholds (*de minimis*)?

There are no monetary thresholds (*de minimis*), but the protection is expected to apply solely to cultural goods that have ‘national representativeness, signification or importance’ (IPHAN Ordinance No 375, of 19 September 2018, Article 29). Accordingly, the IPHAN must avoid protecting by inscription (*tombamento*): (1) material goods that do not enable cultural fruition; (2) complete sets of works of artists or architects; or (3) goods associated with the memory or life of personalities that are not related to social processes of collective interest (Article 30).

1.5 Does the circumstance of the artist still being alive or the time of creation of the artwork matter?

No. The only norm that considers the time of creation of the artwork as relevant is the ban on permanent export of art works and traditional crafts that date prior to the end of the monarchic period (ie, before 15 November 1889) and were: (1) produced in Brazil; (2) originated in Portugal but incorporated to the national milieu; or (3) produced outside of Brazil but representing personalities who are either Brazilian or related to the history of Brazil, as well as the country’s landscape and customs (Law No 4,845, of 19 November 1965; IPHAN Ordinance No 375, of 19 September 2018, Article 41). See question A.5 above.

2. Is the State obliged to buy out the artwork for which an export permission was denied?

No.

3. Are there any exceptions to these regulations (eg, temporary export for exhibitions, conservation or private reasons of the owner)?

Special rules apply for the protection of the material cultural heritage of native peoples (*povos indígenas*), of traditional peoples and communities of African origin (*povos e comunidades tradicionais de matriz africana*), of maroon communities (*quilombos*) and certain other cases (IPHAN Ordinance No 375, of 19 September 2018, Article 61 ff.). See also questions A.4, A.5 and B.1.1 above.

C. Consequences in case of violation of export restrictions; restitution and repatriation of illegally exported cultural property

1. What are the legal consequences in case of breach of export restrictions?

In the event of an attempt to export cultural property from Brazil in violation of restrictions, the person held liable by the IPHAN after an administrative inquiry proceeding will be subject to a fine of 50 per cent of the value of the goods (IPHAN Law, Article 15; IPHAN Ordinance No 262,

of 14 August 1992, Article 14). In cases of repeated offence, the fine will be doubled to 100 per cent of the value of the goods. The relevant Brazil government authorities will seize the goods and keep them as security until the conclusion of the proceedings and full payment of the fine.

The owner is responsible to the IPHAN for the integrity of the goods until their return to Brazil (IPHAN Ordinance No 262, Article 10). The owner is also required to notify the IPHAN within 30 calendar days from the date of return of the goods to Brazil, enclosing a technical report (*laudo técnico*) about their conservation status and the number of the import statement issued by Brazil's tax authorities (IPHAN Ordinance No 262, Article 13). In cases of non-compliance, the owner may be prohibited from obtaining new authorisations from the IPHAN for two years.

In addition to these legal consequences in the administrative sphere (IPHAN), the person held liable for the breach may also be subject to criminal prosecution for smuggling (*contrabando*) or other offences pursuant to the Brazilian Penal Code (Decree-Law No 2,848, of 7 December 1940), depending on the circumstances.

2. Give a description of the regulations and practices in your country relating to the restitution and repatriation of illegally exported cultural property?

The IPHAN is the custodian of an integrated system of knowledge and management of Brazilian cultural heritage (*Sistema Integrado de Conhecimento e Gestão*) (SICG) and is required to keep it up-to-date (IPHAN Ordinance No 375, Articles 95 to 99). Among other data, the SICG was designed to serve as a repository of information about the status of cases of disappearance or theft of protected cultural property.

For the approval, ratification and implementation of the 1970 UNESCO Convention in Brazil, see question A.5 above.

3. Under which conditions does your country assist foreign countries seeking repatriation of cultural property/artwork?

See questions A.5 and C.2 above.

4. Does a buyer enjoy protection against restitution claims for violation of foreign export restrictions?

As a signatory of the 1970 UNESCO Convention (promulgated internally, after approval and ratification, by Decree No 72,312, of 31 May 1973), Brazil undertook,

‘at the request of the State Party of origin, to take appropriate steps to recover and return any such cultural property imported after the entry into force of this Convention in both States concerned, provided, however, that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property. Requests for recovery and return shall be made through diplomatic offices. The requesting Party shall furnish, at its expense, the documentation and other evidence necessary to establish its claim for recovery and return. The Parties shall impose no customs duties or other charges upon cultural property returned pursuant to this Article. All expenses incident to the return and delivery of the cultural property shall be borne by the requesting Party.’ (1970 UNESCO Convention, Article 7(b) (ii)). See questions A.5 and C.2 above.

5. Which regulations exist for the protection of the purchaser against title claims?

In general, a good faith purchaser of movable property is entitled to favourable legal treatment under Law No 10,406, of 10 January 2002 (Civil Code) in relation to certain legal effects, including the degree of liability in case of loss or damage to the property during the possession (Article 1,217) and the extent of compensation to which the purchaser may be entitled in case of dispossession (Article 1,219).

Even acting in good faith, however, a purchaser of cultural property is not expected to be able to retain ownership in case of a valid title claim made by a lawful owner who can demonstrate that the sale of the cultural property resulted, directly or indirectly, from illegal export or other illicit conduct under the 1970 UNESCO Convention, the 1995 UNIDROIT Convention or applicable Brazil laws. The dispossessed purchaser may be entitled to compensation depending on the circumstances. See question C.4 above.

6. Does a lender from abroad enjoy protection against seizure of items on loan to local exhibitors if the good fails to have proper export licence?

Brazilian law does not offer special protection to lenders in this scenario. See questions C.4 and C.5 above.

7. What regulations exist concerning the import of cultural property that may have been exported illegally from its country of origin or that is the subject of claims?

See questions A.5, C.2 and C.4 above.

D. Due diligence obligations

1. What general due diligence is required from the seller/buyer of artwork if the artwork is intended to be exported?

Generally, the buyer of artwork is expected to have reviewed the legal title that the seller claims to have over the property, including appropriate evidence of provenance, when available, to mitigate the risk of a potential title claim of restitution of cultural property due to illegal export or other illicit conduct under the 1970 UNESCO Convention, the 1995 UNIDROIT Convention or applicable Brazilian laws. The specific degree of due diligence expected from the seller/buyer depends on the value, origin and other characteristics of the artwork, the expertise and trustworthiness of the seller/buyer, and other circumstances of the purchase. See questions C.4 and C.5 above.

2. Are there any anti-money laundering regulations applicable in the art trade and at art auctions?

Generally, Brazil has a stringent anti-money laundering law that subjects anyone that conceals, dissimulates the nature, origin, localisation, disposition, handling or ownership of goods, rights or values resulting directly or indirectly from a penal contravention to criminal prosecution (Law No 9,613, of 3 March 1998) (Anti-Money Laundering Law). Conviction may result in severe penalties, including imprisonment. The Anti-Money Laundering Law subjects to the same penalties to anyone who, for the purpose of concealing or dissimulation: (1)

converts those goods, rights or values into licit assets; (2) acquires, receives, swaps, negotiates, gives or receives in guarantee, storage or deposit, handles or transfers these goods, rights or values; (3) imports or exports goods in amounts that do not correspond to their real value; (4) uses such goods, rights or values in economic or financial activity; or (5) participates in a group, association or office knowing that its primary or secondary activity is directed to the practice of money laundering.

Art dealers are listed among the legal entities and individuals that, due to the nature of their activity, either permanent or occasional, primary or secondary, are subject to special regulations that establish a ‘control mechanism’ (Anti-Money Laundering Law, Article 9, sole paragraph, item XI). The same special regulations apply to legal entities and individuals that promote, intermediate, sell, broker or negotiate rights of artists or fairs, exhibitions or similar events, among several other cases. Legal entities and individuals dealing with cultural property are subject to two levels of regulation, supervision and disciplinary action in this regard: the IPHAN, a federal public administrative body linked to Brazil’s Ministry of Tourism (see questions A.1 and A.4 above), as sector-specific authority in the field of national historic and artistic heritage; and the Financial Activities Control Council (Conselho de Controle de Atividades Financeiras) (COAF), a federal public administrative body linked to Brazil’s Central Bank (Banco Central do Brasil), restructured by Law No 13,974, of 7 January 2020, as the general authority for the regulation and supervision of anti-money laundering. The sector-specific anti-money laundering regulations established by the IPHAN are found in Normative Instruction No 01, of 11 June 2007, Ordinance No 396, of 15 September 2016, and Ordinance No 80, of 7 March 2017, all within the general framework of the IPHAN’s Material Cultural Heritage Policy (Ordinance No 375, of 19 September 2018).

The control mechanism set out in the Anti-Money Laundering Law requires legal entities and individuals active in the art trade and at art auctions to: (1) identify and maintain an updated register of their clients according to instructions set out by the IPHAN and the COAF, within their respective spheres of authority; (2) maintain a register of all transactions above the threshold amount set out by the IPHAN, (3) adopt internal policies, procedures and controls that are compatible with their size and volume of operations as required for fulfilling their statutory obligations; (4) register and maintain their information updated with the IPHAN’s Register of Art Works and Antiques Dealers (*Cadastro de Negociantes de Obras de Arte e Antiguidades*) (CNART); and (5) address requirements issued by the COAF (Article 10).

The control mechanism also requires legal entities and individuals active in the art trade and at art auctions to: (1) pay special attention to the transactions that, according to the instructions issued by the relevant authorities, may present ‘serious indications’ of money laundering or relate to its practice; (2) report to COAF all transactions that are subject to registration for having an amount above the threshold or that may present ‘serious indications’ of money laundering or relate to its practice; and (3) notify the relevant regulatory or oversight authority from time to time, according to applicable instructions, the absence of transactions to report (Article 11). Non-compliant individuals or, in the case of legal entities, their managers are personally liable to penalties ranging from warnings and fines to loss or suspension of authorisation to exercise their activities (Article 12).