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White Collar Crime - Brazil

Creation of a Mercosul criminal court proposed

Contributed by **Delmanto Advocacia Criminal**

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The Sao Paulo Section of the Brazilian Bar Association recently presented the Mercosul Parliament with a proposal for the creation of a criminal court with jurisdiction over the Mercosul region (ie, Brazil, Argentina, Uruguay and Paraguay).

Following the example of the International Criminal Court - created by the Treaty of Rome 2002, with jurisdiction accepted by several countries to pursue crimes of genocide, crimes against humanity, war crimes and crime of aggression - the proposed Mercosul Criminal Court would address crimes such as transnational money laundering and trafficking of people, drugs and arms, among other things. It would focus on specific crimes perpetrated in the Mercosul area. The proposal (EP/720/12) was deposited with the secretary of the Mercosul Parliament on March 19 2012.⁽¹⁾ At the same time, it was also delivered to Regis Arslanian, the Brazilian Ambassador to Mercosul and the Latin American Integration Association, who in turn informed the Brazilian Ministry of External Relations.

In the near future, Brazilian, Argentinian, Paraguayan and Uruguayan citizens will hold similar identity documents and be able to travel from one country to another without any restriction. Furthermore, drivers will hold similar licences and cars will have similar registration plates, allowing them to be tracked across country borders and forcing them to take responsibility for driving transgressions that occur in other Mercosul nations. Such integration should encourage economic development, creating a strong commercial bloc. However, the opening of frontiers for Mercosul citizens is likely to increase problems in relation to transnational crimes.

It is hoped that the proposed court will deal with cross-border money laundering - for instance, when the crime starts in Brazil and continues in Argentina, Uruguay or Paraguay. Money obtained through drug trafficking or crimes against the public administration (eg, bribery of public servants and politicians) often returns to Brazil in the form of 'clean' (and legal) investments through offshore companies, with the identity of its owners remaining secret.

Brazil has provided strong law enforcement against money laundering within the country since the passage of Bill 9613 on March 3 1998. Three years later, the UN Vienna Convention against drug trafficking and money laundering was formally accepted as Brazilian law. However, when money laundering and other special crimes become transnational, law enforcement becomes almost impossible, despite the existence of international multilateral agreements, including those recently signed by the members of Mercosul (eg, RMI 03/04 - SISME).

When crime spreads across borders - often enhanced by the free (and practically uncontrolled) passage of Mercosul citizens across the many kilometres of Brazil's land and river frontiers with Argentina, Paraguay and Uruguay - it becomes almost impossible to tackle the perpetrators of serious crimes unless transnational legislation is in place. It is therefore hoped that the Mercosul International Criminal Court can be introduced to take action on specific transnational crimes in the region.

For further information on this topic please contact [Roberto Delmanto, Jr](#) at [Delmanto Advocacia Criminal](#) by telephone (+55 11 3887 6251), fax (+55 11 3051 6382) or email (robertojr@delmanto.com).

Endnotes

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