

**Memorandum of Understanding
Between
Federal Prosecution Service of the Federative Republic of Brazil
and
Serious Fraud Office of the United Kingdom**

Purpose of Memorandum of Understanding

1. The **Federal Prosecution Service of the Federative Republic of Brazil** (“MPF”) and the **Serious Fraud Office of the United Kingdom** (“SFO”) (“the Parties”) are committed to working together in the investigation and prosecution of offences of serious or complex fraud including bribery and corruption. In support of that aim, this Memorandum of Understanding (“Memorandum”) sets out the framework for effective liaison and communications between the SFO and the MPF.

Aim of Memorandum of Understanding

2. The aim of this Memorandum is to promote and assist cooperation and co-ordination between the Parties, through the exchange of information for the prevention and detection of offences of serious or complex fraud including bribery and corruption. Such assistance should be carried out in accordance with each of the parties’ statutory functions, acting lawfully and in the public interest.

Legal Status and Effect

3. The Parties are genuinely committed to pursuing the aim and purpose of this Memorandum in good faith and intend to act in accordance with its terms on a voluntary basis to enhance mutual cooperation.
4. Nothing in this Memorandum shall, or is intended to:
 - a) Create any legal or procedural right or obligation which is enforceable by either of the parties against the other; or
 - b) Create any legal or procedural right or obligation which is enforceable by any third party against either of the parties, or against any other third party; or



- c) Prevent either of the parties from complying with any law which applies to them; or
- d) Fetter or restrict in any way whatsoever the exercise of any discretion which the law requires or allows the parties to exercise; or
- e) Create any legitimate expectation on the part of any person that either of the parties will do any act (either at all, or in any particular way, or at any particular time), or will refrain from doing any act.

Roles and Responsibilities

5. The SFO was set up in April 1988 following the report of the Fraud Trials Committee under the late Lord Roskill.
6. The SFO's status and powers derive from the Criminal Justice Act 1987 (CJA 1987). Section 1(3) of that Act provides that the Director may investigate any suspected offence which appears to him on reasonable grounds to involve serious or complex fraud which include offences of bribery and corruption and related money laundering.
7. In considering whether to take on an investigation, the Director of the SFO considers:
 - Whether the matter undermines the commercial interests of the UK in general and in the City of London in particular;
 - Whether the actual or potential loss involved is high;
 - Whether actual or potential harm is significant;
 - Whether there is a very significant public interest element, and
 - Whether there is a new species of fraud.
 - The principal power is contained in section 2 of the CJA 1987, which gives the Director or a designated member of staff the power to require a person or entity to provide information to the SFO for the purpose of an investigation.
8. The Brazilian Prosecution Service is a fundamental institution to ensure the rights of all citizens in fighting corruption. The 1988 Constitution established the Prosecution Service as an independent instance. The Constitution lays down the Prosecution Service's attributions in its chapter on essential services to ensuring justice, being the competent agency to initiate criminal proceedings.
9. Pursuant to the Complementary law 75/1993, The MPF strives to ensure government transparency and to safeguard the constitutional principles of legality, morality, impersonality, publicity and efficiency. The MPF is committed to fighting corruption and the embezzlement of public funds from essential areas of interest to the Brazilian population. To protect the assets, rights and values of all Brazilians, the MPF monitors the use of public funds to ensure that they are lawfully spent.

Information Sharing and Permitted Uses of Information

10. Where it is lawful and in the public interest to do so, the Parties agree to timely disclosure of information to the other so that suspected criminality, is properly assessed, and where appropriate, investigated.
11. The SFO may provide information to the MPF pursuant to the gateway at section 3(5) of the CJA 1987.
12. Depending on (i) how such information was obtained and (ii) the use to which the information will be put by the receiving party, the SFO as the disclosing party may be under a legal requirement to provide the person from whom the information was obtained with an opportunity to object to disclosure, before reaching a decision on whether the information may lawfully be disclosed through that gateway.
13. Where there is no such legal requirement, the disclosing party may, at its sole discretion, voluntarily provide such advance notification, but is not required to do so as a pre-condition to cooperation or exchange of information pursuant to this Memorandum.
14. The MPF may provide information to the SFO pursuant to article 5 of the 1988 Constitution and to Chapter II, articles 26 through 41 of the Code of Civil Procedure ("CPC").
15. Under article 5 (XIV) of the 1998 Constitution, access to information is ensured to everyone and the confidentiality of the source shall be safeguarded, whenever necessary to the professional activity.
16. Chapter II of the CPC laid down through articles 26 to 41 of the legal framework for international legal cooperation. It establishes a set of legal and procedural rules concerning the viability of mechanisms for collaboration at international level between States, with the primary objective of facilitating and expediting the processing of all forms of international legal cooperation. Under articles 26 (V) and paragraph 3; 27 (VI); 30 (III) and 41, of the CPC information between authorities can be exchanged based on the principal of reciprocity.
17. Any form of international legal cooperation shall be admitted if its practice does not contradict or produce results that are incompatible with the fundamental norms that govern the Brazilian State.
18. Exchange of information under this Memorandum and in accordance with the laws applicable to the disclosing party may take place voluntarily as well as in response to a request.
19. The disclosing party also agrees to notify the recipient of:
 - a) Any restrictions on the use to which the information can be put, and
 - b) Any restrictions which apply to the onward disclosure of the information.


In the absence of such notification, the receiving party may assume that there are no such additional restrictions other than any restrictions that apply as a matter of law and those set out in clause 17 below.

20. Neither party will disclose data supplied by the other to any outside organisation unless:
- a) Permitted by law, in which case the receiving party will always first seek and obtain the consent of the supplying party before providing disclosure; or
 - b) Required by law, in which case the receiving party will, so far as is practicable, first notify the supplying party before providing disclosure.
21. The recipient of information from the other party will:
- a) Keep the information secure;
 - b) Only use the data for the purposes for which they have received it;
 - c) Ensure that only people who have a genuine business need to see that data will have access to it;
 - d) Use the information only for legal investigations;
 - e) Liaise or co-operate where appropriate to avoid action that prejudices or may prejudice an investigation by another party or person;
 - f) Report data losses or wrongful disclosure to the designated Single Points of Contact ("SPOC");
 - g) Follow retention and destruction guidelines in accordance with national legislation and policies.

Liaison Officers

22. All information exchanged between the parties should be passed via the following Units which are the designated SPOCs for their organisation for the purposes of this Memorandum:

All enquiries
SFO
Head of Intelligence The Serious Fraud Office Intelligenceunit@sfo.gsi.gov.uk
MPF Head of the International Cooperation Unit Brazilian Prosecution Service pgr-international@mpf.mp.br



Additional assistance

23. Either of the parties may request additional cooperation consistent with the aims in paragraph 2, and such requests shall be given due consideration.

Freedom of Information

24. When there is a request for information from a member of the public under any applicable and relevant freedom of information law then the party receiving the request will inform the other party and invite representations on the potential impact of disclosure.

Costs

25. No charges will be made in relation to the supply of information by either of the parties.

Resolving problems

26. Problems that arise between the parties will be resolved through discussion by the SPOCs, with escalation to more senior managers where necessary.

Length of Memorandum and Review Arrangements

27. This Memorandum will come into force upon signatures of the parties and will last initially for a period of 5 years. Such time period can be extended by agreement in writing of both parties.

28. The parties will use their best endeavors to review its operation every two years.

29. Any changes to this Memorandum may be agreed in writing and shall take effect thirty days upon conclusion of such change.



30. This Memorandum may be terminated by written notice of either party to the other party. The termination shall take effect three months from the date of receipt of such notification.

Transparency

31. This Memorandum is a public document and the Parties may publish it as they separately see fit.

IN WITNESS WHEREOF, the undersigned, duly authorized representative of the respective parties, have entered into this Memorandum of Understanding.

Signed on 23 January 2018 in 2 (two) original copies in Portuguese and English.

For the Serious Fraud Office 	For the Federal Prosecution Service of the Federative Republic of Brazil 
David Green CB QC Director	