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Towards a new relation of partnership between civil society organisations and the State: The legal framework for civil society organisations and Law 13.019 in Brazil

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1. Executive Summary

This working paper presents the latest developments regarding the legal framework for civil society organisations (CSOs) in Brazil following the recent approval of Law 13.019 of July 31st, 2014. It demonstrates that despite the fact that civil society organisations are key actors in collaborating with the implementation of public policies through partnerships with the public administration¹, that the previous legislation was inconsistent and did not provide adequate instruments to regulate such contractual relationships. This scenario weakened the recognition and the appreciation of CSOs and demanded an enabling legal environment that would guarantee access to participation, transparency in the use of public funds and effectiveness in the implementation of publicly-funded projects. As will be discussed in this paper, the approval of Law 13.019 represents an important milestone that is part of a much broader political agenda that is known in Brazil as the Legal Framework for Civil Society Organisations.

The Brazilian democracy has improved and matured robustly since 1985, following the end of twenty-one years of dictatorship. This improvement becomes evident with the growing guarantees towards social, economic, cultural, environmental and political rights, the strengthening of democratic institutions and indeed the protagonistic role of civil society in the political spectrum. Today, Brazil experiences a dynamic democracy, anchored in a vibrant and active civil society conscious of its rights.

There are wide ranges of participatory platforms in which civil society organisations engage with the State. Most of these mechanisms were created following the promulgation of the 1988 Constitution. They include public forums, national councils of public policies, public conferences, public hearings, public consultations, ombudsmen, dialogue tables, inter-council forums (a recent winner at

¹ In Brazil, the term “public administration” comprises all governmental entities at all levels of the federal system. As Law 13.019 has national coverage, this terminology becomes relevant to this article.

the UN Public Services Awards) and virtual platforms designed to foment social participation in public policies².

According to Silva, the opportunity to participate in the public policy cycle should be opened to all sectors of society so the barriers between the State and its people can be reduced. According to the academic, a pluralist society is only achieved if various sectors of society, and not only major groups, take part in this process, and CSOs are key actors in facilitating such goal (Silva, 2012).

Civil society organisations have undertaken different roles within the public policy cycle. During the formulation stage for example, they assume positions in national councils and conferences or simply share innovative practices of social technologies they developed. Moreover, during the implementation phase they support the monitoring and analysis of public policies through partnerships with the public administration.

Without necessarily limiting the role of the State, public interest partnerships with CSOs enhance the democratic and decentralised nature of the public administration and impact directly how public management works. This organisational structure allows public policies to acquire greater territorial capillarity while allowing the incorporation of distinctive features that resemble the vast diversity of realities that are often unknown by the State. Indeed, this collaboration between the public administration and CSOs points towards new directions, establishes new consensus and priorities to guide State action while reducing a governmental myopia which is inevitable for a country with the continental dimensions and such complex social challenges like Brazil.

Likewise, while the State learns with CSOs and the good practices that they either formulate or identify, the organisations themselves are strengthened through the partnerships that they secure with the State. Indeed, such projects allow the organisations to build up their capacity while promoting their respective causes. And

² SILVA, Enid Rocha Andrade. *Da Participação social e as Conferências Nacionais de Políticas Públicas: reflexos sobre os avanços e desafios no período de 2003-2006 [in Portuguese]*. Texto para discussão nº 1378. IPEA.

it is through these projects that CSOs develop good practices that are later on absorbed by State actors who have the possibility to transform them into public policies. This is especially true for those public officials with a special interest in groups that were historically marginalised within Brazilian society.

An interesting example of a good practice emerging from CSOs is the Brazilian Semiarid Articulation (ASA)³. In the semiarid North East of Brazil, ASA gathered several hundred small CSOs to build more than 548,000 water tanks, benefiting more than 2 million people. This practice is reflected in the recently approved Law 13.019, which recognises the value of project networks and promotes them by establishing clear rules for this organisational model.

While this agenda has significantly advanced over the last decade and Law 13.019 has finally been approved, the current challenge lies in the Law's successful implementation across 5,570 municipalities, 26 states, 1 federal district, 1 federal administration and approximately 290,000 organisations. Now, a clear and consistent law that was formulated in partnership with CSOs must be adopted by the public administration, so that legal uncertainty is reduced, transparency increases, the stigmatisation of CSOs is challenged and corruption scandals cease.

Law 13.019 aims to improve the legislative and institutional environments related to CSOs and their relations of partnership with the State. It is part of the strategic agenda of the Federal Government that, in conjunction with civil society, defined six guiding pillars (table 1) to address some of the main issues affecting the sector: legal uncertainty; the stigmatisation of CSOs; lack of transparency; corruption scandals; and the limited control over the effectiveness of the partnerships. These pillars focus on (i) contracting; (ii) economic sustainability; (iii) certification; (iv) capacity building and training; (v) communication and

³ ASA is a network of approximately 1000 CSOs that work with management and development of policies specific to the semiarid biome. Its mission is to strengthen civil society, especially organizations involved in projects related to sustainable development in the semiarid zone. For more information, see: <http://www.asabrasil.org.br>.

dissemination of information; and (vi) research and development⁴. These guiding strategies will be discussed in more detail in chapter 3, on the “strategic framework”.

Table 1: Legal Framework for Civil Society Organisations Strategic Agenda.



The strategy employed by the General-Secretariat of the Presidency to address the above pillars encompasses a normative dimension that involves the formulation of bills, decrees and other legal instruments, in addition to fomenting debates focused on certification and the economic sustainability of the sector. In addition, there is a knowledge dimension that promotes the development of studies, surveys, seminars, publications, capacity building courses and the dissemination of information regarding the universe of CSOs. Overall, this strategy aims to increase legal certainty, recognise the value of CSOs, enhance transparency and indeed the effectiveness of partnerships between the public administration and the organisations.

Some of the typical problems caused by the previous lack of an enabling legal environment include:

- The legal uncertainty generated by the inexistence of a specific law to regulate contractual relations between the public administration and CSOs;
- Analogous problems caused by the absence of legislation with national coverage at the federal, state and municipal levels;
- The limited level of transparency in calls for public tendering that were handled discretionarily;

⁴ Indeed, as showed on Table 1, these guiding pillars are based on two main Agendas: Knowledge and Normative.

- The proliferation of “dummy-CSOs” caused by the lack of clear criteria on which organisations could apply for funding;
- The precarious conditions for public interest workers who were unable to receive remunerations⁵ for work performed under contracts with the State;
- Bureaucratic accountability procedures that, instead of ensuring results, focused too much on administrative processes⁶;
- A complex electronic system for monitoring that often induced errors;
- Inappropriate legal instruments that treated CSOs either as businesses or as part of the public administration instead of as autonomous institutions;
- Limited space for civil society to identify and propose projects, reducing the capacity of the State to absorb and create public policies based on good practices created by the organisations; and
- The lack of a common space, like a National Council, where CSOs and the public administration may collaborate on proposals and discuss strategies to strengthen CSOs.

The above scenario was harmful to the organisations that were increasingly stigmatised, or even criminalised by a few cases of corruption or misconduct that were either pursued through illicit activities or from loopholes in the legislation. This reality resulted in a sharp reduction in the volume of public resources directed to fund contracts between the Federal Government and CSOs in 2011. For the State, this scenario was detrimental as CSOs represent extremely important partners in promoting diverse participation in the public policymaking process. At the same time, the State can learn from organisations that have the potential to formulate innovative practices that can be transformed into public policies that benefit a wider public.

There are two decisive events that contributed towards the consolidation of Law 13.019. First were the two “*CPI das ONGs*”⁷ that generated Bill 649/2011 in the

⁵ At the Federal level, remuneration was allowed as of May 2014, when President Rousseff signed Decree 6.244. At other levels, remuneration was not permitted until the approval of Law 13.019.

⁶ Instead of focusing on the results of the partnerships, civil servants often concentrated their efforts on a continuous accountability process that often contributed towards a fragmented analysis of the projects.

Senate and Bill 3.877/2004 in the Chamber of Deputies (these Bills would later on form the backbone of Law 13.019). These were Parliamentary Hearing Commissions (CPI) that emerged from corruption scandals affecting contracts between the public administration and CSOs. Second was the creation of the “*Plataforma por um Novo Marco Regulatório das Organizações da Sociedade Civil*”⁸, an initiative from a group of CSOs representing more than 50,000 entities that aimed to create a new legal regulatory framework for CSOs in Brazil. The government responded to this initiative by creating an interministerial working group and organising the first International Seminar for the Legal Framework for Civil Society Organisations. Fifty proposals were drafted at that Seminar and contributed towards the consolidation of Law 13.019.

Overall, three groups of actors and institutions contributed towards the consolidation of the new legislation through the creation of an Interministerial Working Group: (i) civil society, either directly through the “*Plataforma*” or indirectly through other forms of consultations; (ii) the Congress, through the Chamber of Deputies and the Senate; and (iii) the Executive, through the General-Secretariat of the Presidency, in addition to the other ministries that composed the Interministerial Working Group. These actors and institutions will be discussed in greater detail in the third chapter, on “the strategic framework.”

Before proceeding to the main discussion it is important to identify which organisations we are talking about and how Law 13.019 defines them. Civil society organisations are not-for-profit private organisations that develop actions in the public interest and do not have profit as their objective. These organisations are active in the promotion of rights and activities in the areas of health, education, culture, science and technology, agricultural development, social assistance, housing, among others. Law 13.019 defines CSOs as not-for-profit entities with

7 CPI das ONGs means “Parliamentary Inquiry Commission for Non-Governmental Organisations. On February 19, 2001, the first CPI das ONGs was established to inquire about complaints that environmental NGOs, mainly in the Amazon region, were involved in corruption.

8 The “Platform for a New Legal Regulatory Framework for Civil Society Organisations” was an initiative from CSOs to get together and propose a new specific legal instrument to regulate and promote their sector. It represents more than 50,000 organisations. For more information see their website: <http://www.plataformaosc.org.br>.

legal personality that cannot distribute profits between their directors, counsellors, employees or donors (Art. 2, Item I). Furthermore they must follow a social purpose defined by their constitution or statute.

In Brazil, the ever more frequent adoption of the term "civil society organisations" strengthens the leading role and the initiative of society itself. The term - which has increasingly gained strength and has been promoted by various national and international organisations - affirms the autonomous character, the public purpose and the very voice of organised civil society. Data released by the survey Private Foundations and Non-for-Profit Associations (Fasfil⁹, acronym in Portuguese) indicates that there are 290,700 CSOs in Brazil. Most of them emerged after the promulgation of the Federal Constitution of 1988, which recognised social organisation and participation as rights and values to be guaranteed and promoted. Previous constitutions were limited in this aspect, covering tax related instruments and being extremely limited in the recognition of freedom of association to enable a suitable environment for CSOs to thrive.

Regarding the labour market, the survey revealed that CSOs employ, together, 2.1 million formal workers, in an average of 7.3 people employed per organisation. This figure is very expressive since it is equivalent to 4.9% of formal Brazilian workers, or nearly one quarter (23.0%) of the total number of employees in the public administration in the same year. This is particularly important because the previous legislation contributed towards the precariousness of the conditions affecting public interest workers. Moreover, one of the expectations of the new legislation is that it values the expertise and knowledge of the public interest workers who can now be remunerated by the projects funded by the public administration.

Regarding the sources of income that constitute the revenues of CSOs, it is important to mention that, even though Federal Government resources can be

⁹ Brazilian Institute of Geography and Statistics (IBGE); Institute of Applied Economic Research (IPEA); Group of Institutes, Foundations and Enterprises (Gife) and the Brazilian Association of Non Governmental Organisations (Abong). Private Foundations and Non profit Associations in Brazil (Fasfil). Rio de Janeiro: IBGE, 2012.

mobilised by Brazilian CSOs, they do not depend on the State, and most of them are organised, historically, based on their own resources and private donations. A recent study reveals that only approximately 3 per cent of organisations have contracts with the Federal Government ¹⁰. Indeed, it is also important to mention that other sources of public financial support such as tax incentives or transfers from other levels of the public administration such as states and municipalities would increase significantly this figure.

¹⁰ Study developed by the General-Secretariat of the Presidency in partnership with the Getulio Vargas Foundation based on data from Siconv.

2. What changes with the new legislation?¹¹

This section of the working paper aims to illustrate the reality that Law 13.019 aims to change by identifying some of the problems related to the previous legislation and the changes brought by the new one. It is hoped that the Brazilian experience can offer lessons or models that can be adapted or used by other countries that are formulating their own legal frameworks to enable CSOs to thrive. The full Law 13.019 is available in English in the appendix of this paper so the reader can gain a greater understanding of the analysis developed throughout this section.

The lack of a standard approach to collaboration between the government and CSOs generates confusion across the sector and also within the public administration. Different requirements were applied both horizontally (amongst different ministries, secretaries or departments) and also vertically (amongst the federal, state, the federal district and municipal administrations). This lack of standards is detrimental to both CSOs and the public administration as it generates legal uncertainty. The new law will be enforced nationwide, and thus be applied to all levels of the federation.

The main legal instrument used to regulate partnerships¹² between CSOs and the State was the “*convênio*”. This mechanism was originally established to regulate partnerships between the Federal Government and states or municipalities. Thus, CSOs were subjected to rules that were originally designed for public entities. By replacing the system of “*convênio*” with the “Promotion Contract” and the “Collaboration Contract,”¹³ the State recognises the distinctiveness and peculiarities of the organisations. Indeed, CSOs claimed that they are often regarded as service

¹¹ See table I in the appendix for a summary of the changes brought by Law 13.019/2014. Please, also refer to Law 13.019 in English in the appendix of this working paper.

¹² A partnership comprises a contractual relation between the public administration and a CSO. However, it is important to understand that the new legislation intends to create a relationship that goes beyond the idea of “contracting a service.” As will be presented later, Law 13.019 creates instruments that value the knowledge produced by the organisations. For this reason, rather than a top down contractual relation, this legal instrument creates a horizontal system of mutual learning which is better described as a “relationship”.

¹³ The terms employed by Law 13.019 in Portuguese are *Termo de Fomento* e *Termo de Colaboração* respectively.

providers or “arms of the State” to implement policies managed by the public administration. This treatment undermined the role of CSOs as civil society representatives and also formulators of innovative experiences that contribute towards good practices to crafting public policy.

Both the “Promotion Contract” and the “Collaboration Contract” are instruments designed to specifically regulate partnerships between the public administration and CSOs. They will ensure more transparency while addressing previous issues identified with the model of “*convênio*,” such as the significant level of bureaucracy imposed on CSOs.

The new legislation recognises CSOs as autonomous organisations instead of mere contractors for the public administration. Furthermore, under the new rules, CSOs will be able not only to deliver governmental projects, but will also be able to propose them under the Contract of Promotion. And most importantly, a specific legal instrument brings clearer rules, so both CSOs and the public administration understand the “rules of the game.” This is relevant as it addresses one of the main issues related to the previous regulations: legal uncertainty.

Overall, while the Contract of Promotion is better understood as a grant for a project proposed by the organisations, the Contract of Collaboration represents a partnership between the public administration and a CSO to deliver a project devised by the government itself (Law 13.019/2014, Art. 2, Items VII and VIII).

Moreover, the legislation proposes good practice standards to be followed by all three levels of the public administration to bring more clarity to the system. In this way, it will simplify the work of civil servants, CSOs and government regulators, while increasing legal certainty for all actors and institutions involved in these partnerships.

2.1 Planning phase

Planning is a crucial step towards the achievement of a good partnership. With the new legislation, the CSO shall state in the working plan¹⁴, following the call for proposals, the aims it intends to achieve; the public interest involved; the analysis of the reality it intends transform; and the benefits and deadlines for implementation. The working plan is part of the CSO's proposal that provides the objectives, goals, costs, activities and the professionals involved in each stage of the project.

Under the new legislation, the public administration must adopt the necessary measures to successfully implement partnerships. This involves both training of personnel as well as provision of material and technological resources necessary to ensure their technical and operational capacity to monitor the partnerships (Law 13.019/2014, Art.8).

The new legal framework establishes the "Social Interest Manifestation Procedure"¹⁵ that allows CSOs, social movements and other interested actors to draw up proposals of public interest that can serve as the basis for government contracts (Law 13.019/2014, Art. 18). This initiative values social technology strategies that were originally devised by civil society and can be adopted by the State and potentially become public policies in the future, thus valuing the work of the organisations while increasing the social benefits of their innovations.

2.2 Selection phase

The new legislation creates the Selection Committee.¹⁶ Its main purpose is to judge processes of public tendering. Two thirds of the Commission members are permanent civil servants; it aims to increase transparency in public tendering while ensuring a minimum level of standardisation of the process (Law 13.019/2014, Art. 2, Item X).

¹⁴ The working plan is a proposal that details the foreseen activities planned to be executed by the awarded CSO; it is later approved by the Public Administration.

¹⁵ The acronym in Portuguese is *Manifestação de Interesse Social*.

¹⁶ The acronym in Portuguese is *Comitê de Seleção*.

Prior to the new legislation, public tendering for State funded projects was not obligatory and the selection process varied significantly among public entities. This scenario generated controversy, as the selection process was not transparent and occasionally presented conflicts of interest. The current legislation requires the public administration to widely advertise a call for proposals with clear rules for the selection process, thus allowing establishing a system of checks and balances (Law 13.019/2014, Art. 23).

Besides strengthening legal stability, the above instrument increases public trust towards CSOs and their partnerships with the State. Furthermore, the new Law includes an anti-nepotism clause that prohibits awards to CSOs that have any family links with civil servants¹⁷ (Law 13.019/2014, Art. 39). This is particularly important in light of previous concerns of nepotism identified in so many contracts awarded to CSOs managed by relatives of civil servants working for the public administration.

While compulsory public tendering¹⁸ was already enforced at the federal level, at the state and municipal levels it was discretionary. Following the sanctioning of Law 13.019, it becomes obligatory at all levels of government (Law 13.019/2014, Art. 1). The exceptions provided for executing a partnership without following public procurement procedures are: (i) urgent cases; (ii) cases of war or serious disturbance of the public order; (iii) protection programs for individuals under threat or in a situation that might compromise their safety; and (iv) cases in which the object of the partnership has been properly performed by the same organisation for at least five years (Law 13.019/2014, Art. 30).

The lack of clear rules and transparency in contracting allowed the establishment of “dummy CSOs” by corrupt groups that aimed to embezzle public funds. In addition to the measures described above, the new Law requires that the

¹⁷ This is a controversial provision in Law 13.019, and an issue that will be addressed in the Decree that will regulate the Law. While nepotism is a serious problem in Brazil, many CSOs, especially those from small towns, claim that this rule would be detrimental as it is extremely common for CSO personnel to have familiar links with civil servants. Indeed, a balance will have to be reached on this particular matter.

¹⁸ This rule was established in Decree 7.568/2011; the Regulatory Framework of Civil Society Organizations strengthens it even more.

CSO demonstrate three years of experience in order to access public funds, as well as a “clean record” (Law 13.019/2014, Art.24). Inspired by the electoral Clean Record Law, the new law prevents organisations and leaders who have used public money improperly in previous projects, as determined by a judicial ruling, from entering into new partnerships. Furthermore, all partnership recipients are also required to demonstrate previous experience in the implementation of similar projects as evidence that they have the operational capacity to develop the foreseen activities.

2.3 Implementation phase

Under the “*convênio*” regulation, projects carried out by CSOs working together were not encouraged, making the realisation of projects by a “consortium of CSOs” difficult (Law 13.019/2014, Art.25). These collaborative arrangements are allowed by the new legislation since they are foreseen in the working plan¹⁹ submitted by the organisation during the tendering phase. In such cases, the CSO in charge must demonstrate that it has both the technical and operational capacity to coordinate and directly supervise the performance of the other organisations taking part in the project.

The previous rules, that were originally designed to regulate partnerships between public entities, did not allow the remuneration of CSOs personnel working in any approved partnerships. This scenario generated precarious working conditions for public interest workers and challenges to the organisation’s capacity building. Both the Collaboration Contract and the Promotion Contract allow remuneration of CSO employees working on publicly-funded projects (Law 13.019/2014, Art. 46). Staff payments are permitted once the CSO demonstrates that wages provided for in the working plan match salaries in the market for similar positions. Furthermore, this provision ensures that organisations have the autonomy

¹⁹ The working plan is submitted by the CSO applying to the tendering process. It states how the organisation intend to implement the project. In this case for example, it will state that the entity intends to work with other organisations. The working plan is particularly important because it will guide the whole project throughout the planning, selection, implementation, monitoring evaluation and accountability phases.

to employ specialists that are more familiar with their work, in this way potentially enhancing the quality and effectiveness of such projects.

Additionally, indirect administrative costs are permitted when foreseen by the working plan submitted prior to implementation of the project (Law 13.019/2014, Art. 47). This includes expenditures for legal services, rent, Internet, and energy costs, among others, that can amount to up to 15 per cent of the project expenses. This provision allows the organisations, especially the smaller ones that do not have vast reserves, to cover the administrative costs of the project with awarded funds. This increases the universe of organisations that can access public funds, and provides extra security to organizations that develop projects, knowing that public funds will cover both direct and indirect expenditures.

It has not been uncommon for the public administration to require that an organisation pay a share of project costs according to a set percentage of the full value of the project. Financial cost-sharing is no longer permitted (Law 13.019/2014, Art. 35, Paragraph 1). Financial cost-sharing was part of the “*convênio*” rationale applicable to agreements between public entities and was often used as part of the selection process. This shift represents a significant achievement for CSOs, as projects can be fully funded by public funds. Furthermore, this change recognises the value of CSOs’ technical capacity and know-how transferred to the public administration.

2.4 Monitoring Phase

The new Law requires the creation of a Commission of Monitoring and Evaluation²⁰, which will be responsible for formulating procedures to oversee partnerships, suggest standardisation procedures and identify good practices, among other support activities (Law 13.019/2014, Art 58).

Following several consultations with both government and CSOs, it became evident that the government should shift from a control-based monitoring and

²⁰ The acronym in Portuguese is *Comissão de Seleção e Monitoramento*.

evaluation system towards a result based set of simplified mechanisms that would eliminate unnecessary levels of bureaucracy.

The Commission of Monitoring and Evaluation was inspired by an existing successful experience within the General-Secretariat of the Presidency and aims to monitor the implementation of the partnerships entered into by the Ministry. Moreover, the Commission aims to enhance procedures by clarifying understandings, resolving disputes and standardising instruments, costs and indicators while promoting the oversight of results and transparency.

Civil society organisations in Brazil have claimed that the public administration did not have a planned strategy for contracts and partnerships with the organisations. They contend that this scenario contributed to the legal uncertainty and vulnerability of CSOs in Brazil, especially those financed with public funds. The new legal framework foresees the creation of the National Council for Promotion and Collaboration²¹, discussed in more detail later in this article, (Law 13.019/2014, Art.15). If established, the Council will have parity representation between CSOs and the government and will disseminate good practices and propose and support policies and actions to strengthen CSOs.

Moreover, norms related to the accountability process used to vary significantly among public departments at the federal, state and municipal levels. Additionally, norms changed frequently and reinforced an unnecessary level of bureaucracy that contributed towards legal uncertainty. Furthermore, the previous legal framework lacked instruments concerned with planning, monitoring and evaluation phases of the contracts, and thus, reinforced a merely formal oversight. The new legal framework is results oriented, so both the monitoring and the evaluation processes are designed to strengthen an accountability process that contributes towards this goal. Amongst the mechanisms foreseen is the visit to projects where civil servants will monitor implementation of the partnerships.

²¹ The acronym in Portuguese is *Conselho Nacional de Fomento e Colaboração*.

Furthermore, the new Law foresees the simplification of the System of Management of Agreements and Contracts of Transfers (Siconv) through the creation of an interface for CSOs, which has been a demand from the organisations for years. Created in 2008, Siconv is an electronic management and transparency platform that facilitates oversight of funds transferred by the Federal Government. The system supports monitoring and recording of all stages of projects carried out in partnership with organisations at the federal level, however the new legislation encourages transfer of this technology to other levels of the federation (Law 13.019/2014, Art. 81). This is particularly important as the current system was originally devised only for use by public entities. It is often regarded as misleading, and users contend that it induces errors.

2.5 Accountability Phase

The new Law ensures that the accountability process is differentiated and aligned with the volume of resources allocated in each partnership, so the norms are stricter for values above R\$600,000²² (Law 13.019/2014, Art. 63, Paragraph 3). This stratification is based on research that showed that 80 per cent of the projects amount to only 20 per cent of the universe of the total value of contracts between the Federal Government and CSOs. The remaining 20 per cent of the contracts, those above R\$600,000, represent 80 per cent of the resources provided by the Federal Government to CSOs. The rationale here is that by simplifying the accountability process for 80 per cent of the contracts, these procedures will be more effective.

Previously, accountability norms did not define a clear time frame for performance. It was common for ministries to analyse the accountability process of projects four or five years after their conclusion. It was not rare for CSOs to be summoned for explanations or to return to the government resources with interest and penalties applied long after the close of the project. According to the office of the Inspector General of the Union (CGU) there are ministries that would take over 20 years to finalise their accountability procedures. In this respect, another

²² In US Dollars this value represents approximately US\$241,300 (October 2014).

innovation of the legislation is the establishment of timeframes and deadlines for the accountability process. The public administration will aim to conclude accountability considerations between 90 and 150 days from the date the CSO received the resource (Law 13.019/2014, Art. 71). In case of delay, the public administration will not be allowed to charge the CSOs interest or penalties.

3. Strategic Framework

As mentioned previously, it is important to consider that Law 13.019 is part of a much broader agenda known in Brazil as the Legal Framework for Civil Society Organisations. The purpose of this chapter is twofold: First, it briefly addresses some of the main events, institutions and actors that promoted this agenda over the last ten years. And secondly, it identifies some of the main features that contributed to the successful approval of Law 13.019. Overall, this section aims to answer the following question: Who drives this change and how is it achieved? It is hoped that the strategies devised by Brazil can offer some contribution to other countries experiencing similar challenges.

3.1 The role of civil society, the Legislature and the Executive.

In total, between 2001 and 2002, 14 public hearings were conducted as a result of the first “CPI das ONGs” in Brazil. During the second “CPI das ONGs,” between 2007 and 2010, 11 public hearings were conducted. The final report of the second CPI requested by the Senate stressed the need for reform of the legislation that regulates contractual relations between CSOs and the public administration:

“The present issue of lack of regulation, scrutiny and control must be addressed urgently [...]. The solution for such problems involves the drafting of a Law, in the strict sense, to discipline the relations of partnership between the State and not-for-profit private organisations”.

Likewise, the Centre for Advanced Studies for the Third Sector of the *Pontifícia Universidade Católica* of São Paulo developed a series of investigations involving the modernisation of the “*convênio*” system of public administration vis-à-vis CSOs, concluding:

“The current format of the regulation generates legal uncertainty and imposes restrictions that are typical of the legal framework of Public Law on private not-for-profit organisations. Hence, new legislation is recommended to modernise the

“convênio” system of the public administration towards CSOs through a specific Law that can definitely address this scenario²³” (Brazil, 2012c).

In light of these challenges, CSOs formed the Platform for a new Legal Framework for Civil Society Organisations in 2010. The *“Plataforma”* represented more than 50,000 organisations, social movements, religious institutions and private foundations.

This movement stimulated the creation of a working group within the Federal Government through Decree 7.568/2011. The Inter-ministerial Working Group (IWG) as it was later called, was coordinated by the General-Secretariat of the Presidency in Brazil and aimed to promote the creation of a bill to address the challenges faced by the sector. The IWG was composed of seven ministries²⁴ and 14 CSOs²⁵ (seven acting and seven substitutes). It organised several public debates and bilateral meetings with the government and civil society more broadly. In 2011, the group held an international seminar to build a plan of action and set out three key guidelines for its activities already presented in this paper: (i) contracting; (ii) economic sustainability; and (iii) certification.

The IWG aimed to *“evaluate, review and propose improvements to the federal legislation related to the implementation of programs, projects and public interest*

²³ Ministério da Justiça, Núcleo de Estudos Avançados do Terceiro Setor da Pontifícia Universidade Católica de São Paulo (NEATS/PUC/SP). *Modernização do Sistema de Convênios da Administração Pública com a Sociedade Civil* (Série Pensando o Direito n. 41). Brasília: Secretaria de Assuntos Legislativos do Ministério da Justiça (SAL), 2012.

²⁴ The General-Secretariat of the Presidency of the Republic (*Secretaria-Geral da Presidência da República*), the Office of the Chief of Staff (*Casa Civil*), the Attorney General (*Advocacia Geral da União*), the General Controller (*Controladoria Geral da União*), the Ministry for Planning, Budget and Management (*Ministério do Planejamento, Orçamento e Gestão*), the Ministry of Justice (*Ministério da Justiça*), and the Ministry of Finance (*Ministério da Fazenda*).

²⁵ The Brazilian Association of NGOs (ABONG), the Group of Institutes, Foundations and Enterprises (GIFE), the Latin American Council of Churches (CLAI Brasil), the Brazilian Confederation of Foundations (CEBRAAF), the Institute for Social-Economic Studies (INESC), the Ethos Institute of Social Responsibility Enterprises, the Brazilian Confederation of Cooperatives for Land Reform (CONCRAB), National Union of the Agricultural Cooperatives (UNICAFES), Esquel Foundation, the Association for the Protection of the Environment (APEMA), the Social-Environmental Institute (ISA), Cáritas Brasil, World Vision Brasil and the National Federation of the Association of Parents and Friends of the Disabled (FENAPAE).

activities and the transfers of resources from the Federal Government through” contracts established with CSOs.

In August 2012, the IWG published a Final Report²⁶. The Final Report presented several proposals to improve the agenda, providing particular emphasis to the “contracting” agenda that aimed to improve relations between CSOs and the public administration.

Within the Congress the Bills²⁷ were approved and received support from both the Government and the opposition. This scenario was particularly important because without this multi-partisan support, the Bills were unlikely to be approved in the run up to the 2014 general elections. Additionally, it was fundamental to have the active support of influential rapporteurs in both houses of the Congress. Without their support, it is unlikely that the Bills would have advanced so fast through both Houses.

Here, there are three main aspects that help to explain the consolidation of Law 13.019. First is the combination of instruments that facilitate effective government oversight but do not necessarily restrict CSOs’ autonomy. This feature is important as it pleases more conservative congressmen who appreciate the control-based instruments that were developed during the two CPIs, while satisfying more progressive politicians who welcome the innovative oversight mechanisms that not only strengthen the organisations but also increase their autonomy.

Second is the proactive attitude of influential rapporteurs who championed the Bills in the Congress. In the Senate, Aloysio Nunes (Brazilian Social Democrat Party – opposition) was the rapporteur for Bill 649/2011., Senator Rodrigo Rollemberg (Brazilian Socialist Party, at the time part of the coalition, but currently in the opposition) also promoted the Bill after proposing a friendly amendment in 2013. While Nunes was the candidate for the Vice-Presidency of Brazil in the opposition during the 2014 general elections, Rollemberg won the

²⁶ www.plataformaosc.org.br.

²⁷ Bill 3877/2004 (Chamber of Deputies), Bill 649/2011 (Senate) and Bill 7.168/2014 (approved in the Chamber of Deputies on July 7th 2014).

elections and will become the governor of the Federal District beginning in 2015. In the Chamber of Deputies, Bill 07/2003 Eduardo Barbosa (Brazilian Social Democrat Party – opposition) also championed the Bill after introducing friendly amendments. Indeed, having such influential and experienced rapporteurs contributed towards the successful consideration of the Bill.

Third is the active role of CSOs who joined the General-Secretariat of the Presidency, to advance debates on the Bills in Congress. While CSOs carried out a tactical campaign that identified strategic actors within both houses, the General-Secretariat of the Presidency produced studies and reports to inform the discussions in Congress. CSOs coordinated a nationwide campaign in which federal deputies were contacted by organisations from their respective states and asked to support the Bill. Indeed, this strategy helped persuade Alexandre Mollon (Worker's Party – Rio de Janeiro) to become one of the most outspoken federal deputies promoting passage of the Bill in the Chamber of Deputies.

Indeed, the above discussion describes three phenomena that were vital to the positive developments of the Agenda from 2011. First, strong leadership from the Executive that placed the Agenda as a priority for the General-Secretariat of the Presidency; secondly, civil society's engagement in the process of construction of the new legal framework; and thirdly, the multi-partisanship support developed in both houses of the Congress. Indeed, it is evident that the consolidation process of Law 13.019 and the Legal Framework as an Agenda gained momentum following the election of Dilma Rousseff in 2010 and the designation of key actors to drive the Agenda at the General-Secretariat of the Presidency.

In 2014, the II International Seminar for Civil Society Organisations took place in Brasilia as part of the Social Participation Arena, during which President Rousseff signed three important Decrees. The first Decree instituted the National Policy for Social Participation that aims to institutionalise the participatory mechanisms and platforms previously mentioned in this paper; the second Decree provides support for implementation of Law 12.101/09, which establishes the Certificate for Charitable Social Assistance Entities (CEBAS); and the third one amends Decree

6.170/07, allowing remuneration of CSO public interest workers engaged in projects of partnership with the Federal Government. Interestingly, as already demonstrated, Law 13.019 extends this provision to all levels of public administration.

Before moving to the next section, it is important to highlight the role of international cooperation between the General-Secretariat of the Presidency and the United Nations Development Program (UNDP) in strengthening the Legal Framework Agenda within the Presidency. Between 2011 and 2014, 13 consultants were employed by the General-Secretariat through this partnership, representing approximately 72% of the workforce assigned to this Agenda in 2014 alone.

Although this paper focuses on the changes brought by Law 13.019, it is interesting to briefly address the broader agenda related to the legal framework for civil society organisations in Brazil, as it illustrates the strategy, methodology and structure employed by the General-Secretariat of the Presidency to drive these reforms. Furthermore, the structure presented below may be useful to countries that are considering similar strategies to reform their legal frameworks for CSOs.

3.2 The Normative Agenda: Why does legislation matter?

The Normative Agenda refers to the laws, decrees and other legal instruments that govern CSOs in Brazil. Moreover, it also covers strategies that aim to reinforce the financial sustainability of CSOs through new legislation. Additionally, this agenda also deals with the various certificates granted to some CSOs. The main product related to this agenda is the consolidation of Law 13.019 and other legal instruments like the Presidential Decrees mentioned previously. Currently, the Legal Framework staff from the General Secretariat of the Presidency is facilitating consolidation of another important norm that aims to regulate the creation of endowment funds in Brazil.

3.2.1 Contracting

The contracting pillar received greater attention leading up to the approval of Law 13.019. It deals with the relations of partnership between the public administration and CSOs, focusing on available legal instruments to formalise these contractual relations. The main debate involving this pillar involves the search for greater legal certainty in all phases of contracting between the parties (planning, selection, implementation, monitoring and accountability). Furthermore, it addresses actions that aim to harmonise how different actors, mainly civil servants and CSO officers, understand controversial themes involving the regulations.

3.2.2 Economic Sustainability

The economic sustainability pillar covers issues related to taxes, legal personality, endowment funds, norms for international cooperation, and expansion and diversification of funding resources, amongst others, that affect all organisations, regardless of their relations with the State. This pillar is yet to be further explored in this new phase of the Agenda that begins with the approval of Law 13.019 and re-election of the Rousseff Administration. Key issues to be addressed in the future are the barriers that prevent CSOs from increasing their financial sustainability.

3.2.3 Certification

The certification pillar addresses certifications and accreditations that are awarded by the Federal Government to CSOs. These are some of the main certifications and accreditations conceded by the Federal Government: (i) Civil Society organisation of public interest (OSCIP); (ii) Federal Public Utility (UPF); (iii) Social Organisation (SO); Foreign Organisation (OE); and Certificate of Social Assistance Beneficent Entity (CEBAS). Some of the main issues related to certifications include the excessive formality and bureaucracy often required; the overlap between tax exception and accreditation mechanisms; and the limited scope of the certification that does not recognise the diversity of organisations (eg. social movements without legal personality). Broadly speaking, this part of the

agenda deals with questions related to the recognition of organisations, their roles and the conditions for collaboration with the State.

3.3 The Knowledge Agenda: Why does information matter?

The Knowledge Agenda is related to actions that aim to produce and create incentives for research publications, training activities, and the dissemination of information concerning the universe of CSOs in Brazil. The systematisation of knowledge about the relations of partnership between the public administration and CSOs will contribute towards the continuous improvement of these processes.

The main products related to this agenda include: (i) several publications developed in partnership with research institutes and other ministries; (ii) courses to train civil servants and CSO officials in themes related to the sector; (iii) events such as seminars, round tables, presentation, among others others; (iv) the creation of a national network of researchers studying CSOs; and (v) a “geo-referred” online platform that will map hundreds of thousands of CSOs across the country, serving as a transparency tool while stimulating further research related to the organisations. This approach aims to improve the quality of information available on partnerships and support debate on advancement of the enabling environment for CSOs across Brazil.

3.3.1 Capacity Building, training and development

The successful implementation of Law 13.019 requires a broad and effective effort to raise awareness on its contents. This includes training of civil servants and CSO officials who will deal with Contracts of Collaboration and Contracts of Promotion.

This initiative aims to also increase understanding of the historical, sociological, legal and economic foundations of CSOs. Moreover, it aims to clarify and distinguish the different types of CSOs by producing statistical data demonstrating their presence across the country. In light of some of the

shortcomings already discussed in this paper, it is fundamental to build capacity to plan, implement, monitor and deliver consistent accountability throughout the process. For this reason, the promotion of these courses will be important to strengthen the capacity of both CSO officials and civil servants across the country.

3.3.2 Communication and the dissemination of information

One of the most effective ways to tackle the process of stigmatisation of CSOs is through the dissemination of accurate information that reflects the reality of the organisations. A recent publication of the Brazilian Association of Non-Governmental Organisations (ABONG) addresses the origin of the funds obtained by the sector in Brazil. Conversely to what many people thought, CSOs' funds did not come from the Government. Indeed, only around 3% of the organisations received funds from the Federal Government, suggesting that most organisations are responsible for raising their own funds from other sources. This data allows organisations to develop new lines of argument related to their independence from the State and counter discriminatory claims that they would not exist without the State.

Most importantly, the number of CSOs involved in corruption scandals in Brazil is often exaggerated, which contributes to the stigmatisation of the organisations. In a recent speech, the Minister of office of the Inspector General of the Union (CGU), the main government watchdog in Brazil, reported that only around 3% of Brazilian CSOs have contracts with the State, and less than 1% of this small number were found to have engaged in some illegal practice. Interestingly, the Minister highlighted that many of the cases involving accusations of corruption were traceable to ambiguities and legal uncertainties involving the organisations' contracts with public entities.

3.3.3 Studies and research

Without a broad variety of actors and institutions conducting research related to CSOs, the production and dissemination of information is limited.

During the II International Seminar on the Legal Framework for Civil Society Organisations in May 2014, a network of researchers producing studies related to CSOs in Brazil was launched.²⁸ The idea is to connect researchers who are conducting studies that can contribute towards strengthening the sector in Brazil. The event also served as an opportunity for researchers from 11 countries²⁹ to exchange their experiences.

Also during the same seminar a Hackathon³⁰ for Civil Society Organisations took place. During the event, three projects were selected to be further advanced in conjunction with the General-Secretariat of the Presidency, including the development of an online platform to simplify certification of organisations by the Ministry for Social Development. At the moment, the Ministry has around 8,000 physical files with a thousand pages each, occupying a whole floor of the building. Following the conclusion of this project, the whole system will be organised electronically.

Moreover, the General-Secretariat of the Presidency has been involved in several research projects. For the purpose of this paper it is important to mention the Private Foundations and Non-for-Profit Associations (Fasfil) survey³¹, launched in December 2012, which provided vital data relating to CSOs (project areas,

²⁸ The network is called "*Pensando as Organizações da Sociedade Civil*" (Thinking on Civil Society Organisations). So far, the network has grown from 80 researchers in May 2014 to almost 150 as of the time of writing this paper.

²⁹ Researchers from Argentina, Bolivia, Chile, Colombia, Mexico, Panama and Peru were kindly sponsored by the Lifeline Fund to attend to the event. Other experts from the United States, United Kingdom and Hungary were supported by the European Union.

³⁰ A hackathon (also known as a hack day, hackfest or codefest) is an event in which computer programmers and others involved in software development, including graphic designers, interface designers and project managers, collaborate intensively on software projects.

³¹ Brazilian Institute of Geography and Statistics (IBGE); Institute of Applied Economic Research (IPEA); Group of Institutes, Foundations and Enterprises (Gife) and the Brazilian Association of Non Governmental Organisations (Abong). Private Foundations and Non profit Associations in Brazil (Fasfil). Rio de Janeiro: IBGE, 2012.

regional distribution, volume of resources allocated in each area, among other topics).

A partnership with the Getulio Vargas Foundation (FGV) provided data to help create a mobile web mapping service application, along with technology that will serve to locate hundreds of thousands of CSOs across Brazil. This tool will serve to increase transparency and facilitate access to information regarding the organisations. The device will be launched in December 2014 in partnership with the Applied Economy Research Institute (IPEA).

The General-Secretariat of the Presidency signed an important partnership with the UNDP, which has employed several consultants to develop a wide range of studies involving the identification of good practices in partnerships between the public administration and CSOs, economic sustainability studies, certification related projects, the formulation of training courses and capacity building, among other topics.

3.4. Future Prospects and the institutionalisation of the Agenda

One of the main challenges faced by the Legal Framework for CSOs as a political agenda relates to its limited level of institutionalisation. Despite the fact that the approval of Law 13.019 represents an important milestone for the agenda, it remains highly “personalistic” and dependent upon a few actors within the General-Secretariat of the Presidency. Indeed, temporary UNDP consultants compose 72% of the workforce of the Agenda and their contracts terminate in December 2014. Hence, the challenge now that Law 13.019 is approved is to create a permanent team, either through the establishment of a governmental department within the Ministry or by allocating permanent civil servants to work on the Legal Framework. This entity would allow the Legal Framework to shift from a “political Agenda” towards a permanent government policy.

Indeed, it has been argued in this paper that social participation represents perhaps the most important aspect of the process of construction of Law 13.019.

Without this participation the process may not have succeeded. Following the sanctioning of the Law, the General-Secretariat of the Presidency began a wide process of public consultation to ensure broad participation from civil society in the process of the implementing the Law. During the consultation process, public meetings have taken place across the country and dialogues have been conducted with civil servants and their respective ministries, along with discussions with states and municipalities. The General-Secretariat solicited public comments on implementation of Law 13.019 and between September 1 and October 13, 2014 alone, 193 written comments were received online from 22 of the 26 states of the Brazilian Federation. Approximately 59% of the comments came from CSOs, 18% from public administrations and 17% from citizens; 96% of the participants classified the initiative as “good” or “excellent.”

Concomitantly to the online consultation, more than 60 seminars were held in 27 cities in more than 11 states and three countries³² between August and October 2014 (almost one event per work day). As of the end of November, more than 10,000 people had taken part in these events. Additionally, several audio-visual materials were produced, including interviews and other publications. This effort will further the goal of institutionalising the agenda, which is critical to the success of the agenda as a whole, beginning with proper implementation of Law 13.019 across the country.

3.5 The National Council for Promotion and Collaboration³³

A recent study from the Applied Economic Research Institute (IPEA) reveals that social participation is a feature of approximately 92,1% of existing national public policy programs and 89,3% of the federal public administration through councils, national conferences and public meetings.³⁴ Article 15 of Law 13.019 establishes:

³² Mexico, USA and South Africa.

³³ The acronym in Portuguese is *Conselho Nacional de Fomento e Colaboração*.

³⁴ PIRES, Roberto; VAZ, Alexander. *Participação social como método de governo? Um mapeamento das interfaces socioestatais no governo federal*. Texto para Discussão 1707. Brasília: Ipea, 2012.

“Within the scope of the Federal Government, a National Council for Promotion and Collaboration may be created; composed equally of government representatives and civil society organisations; with the purpose of disseminating good practices and proposing and supporting policies and actions directed towards the strengthening of relations of promotion and collaborations established in this Law” (Law 13.019/2014).

The National Council for Promotion and Collaboration will be established through a Decree that is being developed at the time of writing this paper. As has been the practice throughout the development and implementation of Law 13.019, the Council is being designed collaboratively with civil society, which will represent 50% of its members.

It is likely that approximately 40 representatives from CSOs and Ministries will form the Council. The organisations will be chosen through an election to be held in 2015 and the organisation will be governed by bylaws to be created by the Council. Overall, the body will serve as a link between the government and the organisations on matters that involve formulation and monitoring of public policies to strengthen CSOs across the country.

4. Conclusion

Partnerships between the State and CSOs enhance public policies, bringing the State closer to the people and their local realities, and helping to address specific social problems in creative and innovative ways. As discussed in this paper, Brazil's old norms were outdated, insufficient, and did not establish clear rules governing the State's partnerships with CSOs. This generated a scenario of legal uncertainty and institutional instability, both for civil servants and for the organisations. Moreover, it has been argued that the incorporation of CSOs in the public policy cycle contributes towards consolidating participatory mechanisms of democracy guaranteed by the Brazilian Constitution.³⁵ Furthermore, it has been argued here that the successful application of the Law will depend on further institutionalisation of the Agenda within the Government and adherence with the other levels of the federation. Indeed, the collaboration between the State and CSOs related to the Legal Framework for Civil Society Agenda is contributing to consensus on new priorities and paths for overcoming complex social challenges³⁶.

³⁵ The Federal Constitution of 1988 recognises and endorses principles for social participation in the public policy cycle.

³⁶ Salgado, Valéria Alpino Bigonha. *Manual de Administração Pública Democrática: conceitos e formas de organização [in Portuguese]*. Saberes Editora. Campinas, 2011, p. 392.

Appendix

Table I: Before and after Law 13.019

Before Law 13.019	After Law 13.019
<p>The main legal instrument used to regulate the relationship between CSOs and the State was the “convênio” that was originally established to regulate the relationship between the Federal Government and states or municipalities. Thus, CSOs were subjected to rules that were designed for public entities notwithstanding their significantly different organisational model.</p>	<p>The new Law establishes the “Promotion Contract” and the “Collaboration Contract”. Both legal instruments were designed to specifically regulate the relations of partnership between public entities and CSOs. These contracts will, ensure more transparency and address the drawbacks identified with the “convênio” model.</p>
<p>The requirements to secure a “convênio” used to vary substantially among different levels of the public sector (federal, state and municipal; and also between ministries and secretariats). This situation generated legal instability and a significant level of bureaucracy for CSOs, with a disproportionately negative impact on smaller organisations.</p>	<p>Law 13.019 proposes good practice standards to be followed by all three levels of government to ensure more clarity on the “rules of the game”. This simplifies the work of civil servants, CSOs and government regulators, while increasing legal stability for all actors involved in these partnerships.</p>

Before Law 13.019**After Law 13.019**

CSOs were regarded as service providers or “arms of the State” to implement policies managed by public entities. This undermined the role of CSOs as civil society representatives and also formulators of innovative experiences and good practices that help shape public policy.

The new legislation recognises CSOs as autonomous organisations instead of mere contractors for the public sector. It allows funding transfers for both implementation of specific projects proposed by the government as well as proposals developed by CSOs themselves.

The lack of clear rules and transparency in the contracting process led to establishment of “dummy CSOs” by corrupt groups that aimed to embezzle public funds.

The new Law institutes various procedures to ensure transparency and control, such as required public tendering, at least three years of experience for CSOs to access public funds, and a “clean record”.

Previously, the rules were restrictive and blocked access to *convênios* for public funding for many important organisations such as those linked to the “solidarity economy” (e.g., cooperatives of waste recyclers).

Law 13.019 brings a significantly broader vision regarding diverse CSO access to public funds, and makes the “solidarity economy” and community organizations eligible for promotion funds for smaller projects.

Before Law 13.019**After Law 13.019**

Only CSOs acting individually could secure a “*convênio*” with a public entity, making it difficult for networks or coalitions of CSOs to carry out projects.

The new legislation features a mechanism for contracting with CSOs networks. The lead CSO must demonstrate that it has both technical and operational capacity to coordinate and directly oversee the performance of other organisations taking part in the project.

The “*convênio*” did not allow CSOs to use public resources to pay their staff. This is because previous legislation was designed to regulate relations between public entities, and precludes states or municipalities from paying civil servants with Federal Government funds.

CSOs may dedicate funding from both the Collaboration Contract and the Promotion Contract to pay employees working on supported projects. Staff payments and other labour costs are permitted once the CSO work plan demonstrates that wages and costs match similar salaries in the market.

It was common in the past for public entities to demand that CSO recipients of *convênios* contribute a percentage of the cost of a project.

Law 13.019 does not allow required CSO cost-sharing. Instead, the Law recognizes the value to the public entity of non-monetary CSO contributions, such as goods, services, and technical capacity.

Before Law 13.019

Prior norms did not define a clear time frame for monitoring CSO accountability. It was common for ministries to analyse the accountability process of CSO projects four or five years after their conclusion. It was not rare for CSOs to be summoned for explanations or to restore public resources with interest and penalties notwithstanding delays in public oversight. According to the office of the Inspector General of the Union (TCU) some ministries would take over 20 years to conclude their accountability monitoring if the framework was not changed.

Norms related to the accountability process used to vary significantly among public entities at the federal, state and municipal levels. Additionally, norms changed frequently and imposed unnecessary levels of bureaucracy and legal instability. Furthermore, the previous legal framework largely ignored the planning, monitoring and evaluation phases of the contract; it reinforced formal rather than substantive oversight.

After Law 13.019

The new Law establishes accountability procedures proportionate to the amount of public resources involved, so the norms are stricter for support above R\$600.000. Public administration will aim to conclude oversight between 90 and 150 days from the date the CSO concludes the partnership. In case of delay, the public entity will not be allowed to charge the CSO interest or penalties.

The new legal framework is results oriented, so both the monitoring and the evaluation processes are designed to strengthen an accountability process that contributes towards this goal. Amongst the mechanisms foreseen is the visit *in locus*.

Before Law 13.019

CSOs in Brazil claimed that the public sector did not have a planned strategy regarding contracts and partnerships with organisations. They contended that this scenario contributed to the legal instability and vulnerability of CSOs in Brazil -- especially those financed with public funds.

After Law 13.019

The new legislation foresees creation of the National Council for Promotion and Collaboration, with parity in representation (50% CSOs and 50% government). The Council aims to propose and support policies for improved relations between CSOs and the public sector, including better organisation and monitoring of public funding of CSOs in Brazil.

The norms applied to “*convênios*” imposed requirements such as public tendering procedures on CSOs that were appropriate for government entities but not for privately run organizations.

Under the new Law, CSOs will have their own procurement and contracting rules that are aligned with principles of legality, morality, good faith, probity, non-favouritism, economy, reasonableness, efficiency and the permanent search for quality and durability.

Law 13.019 of 31st July 2014

The **President of the Republic** acknowledges the National Congress decrees and I sanction the following Law:

Article 1. This Law institutes general norms for the voluntary partnerships, that involve or not financial resource transference, established by the Union, States, the Federal District, Municipalities, and their respective authorities, foundations, public companies, and semi-public companies that provide public services, and their subsidiaries, with civil society organizations, in a regime of mutual cooperation, for the elaboration of public interest objectives; it defines guidelines for the Contract of promotion and the Contract of collaboration policies with the organizations of civil society; and it institutes the Contract of collaboration and the Contract of Promotion.

CHAPTER I PRELIMINARY DISPOSITIONS

Article 2. For the purposes of this law, it is considered that:

I - civil society organization: a private legal entity without lucrative purposes that does not distribute, between its partners or associates, counsellors, directors, employees or donors, eventual results, remnants, operational surpluses, net or gross, dividends, bonuses, participation or parts of its assets, derived through the exercise of its activities, and that applies them fully in the execution of the respective social object, immediately or by means of the constitution of an endowment or a reserve fund;

II - Public Administration: The Federation, States, Federal District, Municipalities and respective autarchy companies, foundations, public companies, and semi-public companies that provide public services, and their subsidiaries;

III - partnership: whatever form of partnership provided for in this Law, that involves or not voluntary transference of financial resources, between the Public Administration and civil society organizations for actions of reciprocal interest in a regime of mutual cooperation;

IV - director: a person who holds powers of administration, management, or control within a civil society organization;

V - public administrator: a public agent, holding in an agency, autarchy company, foundation, public company or semi-public company the competency to sign an instrument of cooperation with a civil society organization for the attainment of objectives in the public interest;

VI - manager: a public agent responsible for the management of partnerships, designated by a public act published in official means of communication, with powers of control and oversight;

VII - Contract of Collaboration: an instrument by which the partnerships established by the Public Administration with civil society organizations are formalized, selected by means of public tender, for the attainment of objectives in the public interest proposed by the Public Administration, without prejudice to the definitions pertaining to the contract of management and the contract of partnership, respectively, according to Law no 9.637, of the 15th of May 1998, and Law no 9.790, of the 13rd of March 1999;

VIII - Contract of Promotion: the instrument by which are formalized the partnerships established by the Public Administration with civil society organizations, selected by means of public tender, for the elaboration of objectives in the public interest proposed by the civil society organizations, without prejudice to the definitions according to Law number 9.637, of the 15th of May 1998, and Law number 9.790, of the 13rd of March 1999;

IX - council of public policy: a body created by the Public Authority in order to act as an advisory body, in the appropriate field of procedure, in the formulation, implementation, monitoring, and evaluation of public policies;

X - selection committee: a body convened by the Public Administration intended to process and judge public tenders, composed of public agents, designated by an act published in official means of communication, being that at least 2/3 (two thirds) of the server members occupy permanent positions in the personnel framework of the Public Administration fulfilling the public tender;

XI - monitoring and evaluation committee: a body convened by the Public Administration intended to monitor and evaluate the partnerships formed with civil society organizations by the terms of this Law, composed of public agents,

designated by public act in official means of communication, being, at least, 2/3 (two thirds) of the serving members occupying permanent positions in the staff of the Public Administration that fulfils the public tender;

XII - public tender: procedure intended to select civil society organizations to secure partnerships by means of Contracts of collaboration and of promotion, in which is guaranteed the observance of the principles of isonomy, of legality, of impartiality, of morality, of equality, of publicity, of administrative probity, of the convening instrument being binding, of objective judgement and of these being correlated;

XIII - assets remaining: equipment and materials permanently acquired as a result of the partnership, necessary for the achievement of its goal, but that are not incorporated in it;

XIV - accountability: procedure in which the method of execution of the partnership is analysed and assessed, in the areas of legality, legitimacy, economy, efficiency and efficacy, by which it is possible to verify the fulfilment of the partnership's objectives, and the achievement of goals and of intended outcomes, comprising two phases:

a) presentation of accounts under the responsibility of the civil society organization;

b) analysis and conclusive demonstration of the accounts under the responsibility of the Public Administration, without prejudice to the operation of controlling agencies;

XV - additional contract: an instrument that has the objective of modifying the Contract of collaboration or the Contract of promotion as concluded, forbidding the alteration of an approved target.

Article 3. The requirements of this law are not applicable when:

I - the transfer of resources approved by the National Congress or authorized by the Federal Senate in which the provisions of the treaties, agreements and specific international conventions conflict with this Law, if the resources involved have originated entirely from an external source of funding;

II - the voluntary transfers are governed by specific Law, in which there are express provisions to the contrary;

III - the management contracts signed with social organizations are in the form established by Law no 9.637, of the 15th of May 1998.

Article 4. The provisions of this Law are applicable, as appropriate, to the relations of the Public Administration with entities qualified as civil society organizations in the public interest, as treated in Law number 9.790, of the 23rd of March 1999, governed by the contracts of partnership.

CHAPTER II THE AGREEMENT OF CONTRACTS OF COLLABORATION AND OF PROMOTION

Section I General Norms

Article 5. The legal regime that addresses this Law has as its foundation the management of the public democracy, the social participation, the strengthening of civil society and the transparency in the use of public resources, having to obey the principles of legality, legitimacy, of impartiality, of morality, of publicity, of economy, of efficiency and efficacy, in addition to the other constitutional principles which apply and relate to the following:

- I - the recognition of social participation as a right of the citizen;
- II - solidarity, cooperation and respect for diversity for the construction of citizenship values and for social and productive inclusion;
- III - the promotion of local, regional, and national development, inclusive and sustainable;
- IV - the right to information, to transparency, and to social control of public actions;
- V - the integration and mainstreaming of procedures, mechanisms, and instances of social participation;
- VI - the valuing of cultural diversity and education for active citizenship;
- VII - the promotion and defence of human rights;
- VIII - the preservation, the conservation and protection of water resources and of the environment;

IX - the valuing of the rights of indigenous people and traditional communities;

X - the preservation and valuing of the Brazilian cultural legacy, in its material and immaterial aspects;

Article 6. The fundamental guidelines of the legal regime of promotion and collaboration are:

I - the promotion, the institutional strengthening, the training and the incentives to civil society organization for cooperation with the Public Authorities;

II - the prioritizing of the monitoring of the results;

III - the incentives to use updated resources of technology of information and of communication;

IV - the strengthening of the actions of institutional cooperation between federal entities in relations with the civil society organizations;

V - the establishment of mechanisms to improve the management of information, transparency, and publicity;

VI - the integrated action, complementary and decentralized, of resources and actions, between Federal entities, avoiding the overlapping of initiatives and the fragmentation of resources;

VII - the increasing of awareness, the training, the deepening, and the improvement of the work of public officials, in the implementation of activities and projects of public interest and social relevance with civil society organizations;

VIII - the adoption of administrative management practices necessary and sufficient to restrain the individual or collective obtaining, of benefits or undue advantages resulting of participation in the decision-making process or occupation of strategic positions;

IX - the promotion of solutions derived from the application of expertise, from science and technology and from innovation, in order to meet needs and demands of greater quality of life for the population in situation of social inequality.

Section II

Capacity building of Managers, Counsellors and Organized Civil Society

Article 7. The Federation in co-ordination with the States, Federal District, Municipalities and the civil society organizations, will establish training programs for managers, representatives of the civil society organizations and advisers to public policy councils, the participation in the programs referred not to constitute a condition for the exercise of the duty.

Article 8. While deciding on the formation of partnerships provided for in this Law, the public administrator will consider, mandatorily, the operational capacity of the body or entity of the Public Administration to establish selective processes, will evaluate the proposals of partnership with the necessary technical rigidity, will oversee the execution in timely manner and in an efficient way and will consider accountability submitted in the manner and within the period determined in this Law and in the specific legislation.

Unique Paragraph. The Public Administration will adopt the necessary measures, both in the training of people, as in the provision of the material and technological resources necessary, to secure the technical and operational capacity dealt with in the **main clause** of this Article.

Section III

Transparency and Control

Article 9. At the beginning of each calendar year, the Public Administration shall publish, in official means of dissemination, the costs approved in the annual budget law for implementation of programs and actions of the multiannual plan in force, which may be performed by means of partnerships provided for in this Law.

Article 10. The Public Administration must maintain, in its official website on the internet, the list of partnerships concluded, in alphabetical order, by the name of the civil society organization, for a period not less than 5 (five) years, counted from the final submission of the partnership's accounts.

Article 11. The civil society organization should disclose all partnerships formed with the Public Authorities in its website on the Internet, if kept, and in visible

locations at its headquarters and in the establishments in which their actions are exerted.

Unique Paragraph. The information dealt with in this Article and Article 1 should include, at a minimum:

I - the date of signature and identification of the instrument of partnership and the responsible body of Public Administration;

II - the name of the civil society organization and its registration number in the National Registry of Legal Entities (CNPJ) of the Federal Revenue Secretariat of Brazil (RFB);

III - description of the objective of the partnership;

IV - total costs of partnership and funds released;

V - the status of the accounts of the partnership, which should inform the planned date for its presentation, the date on which it was submitted, the deadline for its analysis and the conclusive result.

Article 12. The Public Administration should make available on the internet the means for submission of complaints about the irregular implementation of transferred resources.

Section IV

Strengthening of Social Participation and Disclosure of Actions

Article 13. [VETOED].

Article 14. The Public Authority, according to regulation, will disseminate, through public means of communication by broadcasting sounds and sounds and images, publicity campaigns and programs developed by civil society organizations, in the context of partnerships with the Public Administration, with provision of technological resources and appropriate language for the purpose of being accessible for people with disabilities.

Article 15. Within the scope of the federal Executive Power, the National Council for Promotion and Collaboration may be created, composed equally by government representatives and civil society organizations, with the purpose of disseminating good practices and of proposing and supporting policies and actions

directed towards the strengthening of promotion and collaboration relations provided for in this Law.

§ 1º The composition and functioning of the National Council for Promotion and Collaboration will be treated in a regulation.

§ 2º The other federal entities can also create participative instances, in accordance with this Article.

Section V

Contract of Collaboration and of Promotion

Article 16. The Contract of Collaboration must be adopted by the Public Administration in the cases of voluntary transferences of resources for the attainment of the work plans proposed by the Public Administration, in mutual cooperation with civil society organizations, selected by means of public tender, subject to the exceptions provided for in this Law.

Unique Paragraph. The public policy councils may submit proposals to the Public Administration for the conclusion of the Contract of collaboration with civil society organizations.

Article 17. The Contract of Promotion must be adopted by the Public Administration in the event of voluntary transfers of resources for achieving work plans proposed by civil society organizations, in a regime of mutual cooperation with the Public Administration, selected through public tender, subject to the exceptions provided for in this Law.

Section VI

Procedure of Demonstration of Social Interest

Article 18. The Procedure of Demonstration of Social Interest is established as an instrument through which the civil society organizations, social movements and citizens may submit proposals to the Public Authority to judge the possibility of carrying out a public tender aiming at the formation of partnership.

Article 19. The proposal to be sent to the Public Administration should meet the following requirements:

I - identification of the subscriber of the proposal;

II - indication of the public interest involved;

III - diagnosis of the situation to be modified, improved or developed and, where possible, an indication of the feasibility, costs, benefits and the time limits for implementing the intended action.

Article 20. If the requirements of Article 19 are met, the Public Administration should make public the proposal on its electronic site, and once the convenience and opportunity to perform the Procedure of Manifestation of Social Interest are checked, a hearing of the society on the issue will commence.

Unique Paragraph. The time limits and rules of procedure that this Section treats will comply with regulation of each federal entity, to be approved after the publication of this Law.

Article 21. The completion of the Procedure of Manifestation of Social Interest does not necessarily entail the implementation of public tender, which will happen according to the interests of the administration.

§ 1º The completion of the Procedure of Manifestation of Social Interest does not dispense with calling public tender in order to form partnership.

§ 2º The proposition or the participation in the Procedure of Manifestation of Social Interest does not impede the civil society organization from participating in any subsequent public tender.

Section VII

Plan of Work

Article 22. The work plan should include, without prejudice to the form of partnership adopted:

I - diagnosis of the situation that will be the target of the partnership's activities, having to demonstrate the link between this situation and the activities or goals to be achieved;

II - detailed description of quantitative and measurable goals to be achieved and activities to be carried out, that should State with clarity, precision and details,

what is intended to be made or obtained, as well as what will be the means used for such;

III - deadline for the implementation of the activities and the achievement of the targets;

IV - definition of indicators, qualitative and quantitative, to be used for the measurement of the achievement of the targets;

V - elements that demonstrate the compatibility of the costs with the market prices or with other partnerships of the same nature, including indicative elements of measuring these costs, such as: quotations, price lists of professional associations, specialized publications or any other sources of information available to the public;

VI - plan for applying the resources to be spent by the Public Administration;

VII - estimate of funds to be collected for payment of labour and social security charges of the people directly involved in the achievement of the objective during the proposed period of operation;

VIII - funds to be transferred through a schedule of disbursement compatible with the spending of the stages linked to the goals of the physical timetable;

IX - type and frequency of account instalments, compatible with the period of implementing stages linked to the goals and with the period of the partnership's operation, not admitting frequency higher than 1 (one) year or that would impede physical verification of compliance with the objective;

X - deadlines for analysis of accountability by the Public Administration responsible for the partnership.

Unique Paragraph. Each federal entity shall establish, in accordance with its circumstances, the maximum value that can be transferred in a single payment for the implementation of the partnership, which should be justified by a public administrator in the work plan.

Section VIII

Public Tender

Article 23. The Public Administration must adopt clear, objective, simplified and, whenever possible, standardized procedures, that guide the interested parties and facilitate direct access to the organs of the Public Administration, regardless of the form of partnership provided for in this Law.

Unique Paragraph. Whenever possible, the Public Administration shall establish criteria and standard indicators to be followed, especially for the following factors:

- I- objects;
- II- goals;
- III - methods;
- IV- costs;
- V- work plan;
- VI - indicators, quantitative and qualitative, for the evaluation of results.

Article 24. For the formation of partnerships envisaged in this Law, the Public Administration must call for public tender to select civil society organizations to make more effective the implementation of the objective.

§ 1º The announcement of the public tender shall specify at least:

- I - the programming budget that authorizes and justifies the conclusion of the partnership;
- II- the kind of partnership to be formed;
- III - the objective of the partnership;
- IV - the dates, the deadlines, the conditions, the location and the form of presentation of the proposals;
- V - the dates and the objective criteria of selection and trial of the proposals, including what pertains to the methodology of scoring, and the weight assigned to each of the criteria, as applicable;
- VI - the costs incurred in order to implement the objective;
- VII - the requirement that the civil society organization has:

a) at least 3 (three) years of existence, with active registration, proven by means of documentation issued by the Federal Revenue Secretariat of Brazil, on the basis of the National Register of Legal Entity (CNPJ);

b) prior experience in implementing, with effectiveness, the objectives of the partnership or of a similar nature;

c) technical and operational capability for the development of activities and compliance with the targets set.

§ 2º It is prohibited to admit, predict, include or tolerate, in the acts of calling, terms or conditions that compromise, restrict or frustrate its competitive character and establish preferences or distinctions on the grounds of nationality, of headquarters or domicile of competitors or any other circumstance impertinent or irrelevant to the specific objective of the partnership.

Article 25. It is permitted to work in a network for the implementation of initiatives that connect small-scale projects, for 2 (two) or more of the civil society organizations, to maintain the full responsibility of the organizations that form the Contract of promotion or collaboration, provided that:

I- this possibility is authorized in the announcement of the public tender and the form of action is provided for in the plan of work;

II - the civil society organization responsible for the Contract of promotion and/or collaboration possesses:

a) more than 5 (five) years of enrolment in the CNPJ;

b) more than 3 (three) years of experience of working in a network, proven in the form provided for in the notice;

c) technical and operational capability to oversee and guide directly the activities of the organization with which it is acting in network;

III - the limit of minimum actions, laid down in the official announcement regarding the implementation of the work plan that fits the civil society organization implementing the Contract of promotion and collaboration, is observed;

IV - the civil society organization that is implementing and not forming the Contract of promotion or of collaboration proves it possesses legal and tax regularity, in accordance with regulation;

V - the Public Administration be informed, in the act of formation of the Contract of promotion or of collaboration, the relationship of civil society

organizations that are implementing and not forming the of Contract of promotion or collaboration.

Unique Paragraph. The relationship of civil society organizations that are acting and not forming the Contract of promotion or collaboration that is treated on the subsection V of the **main clause** may not be altered without the prior consent of the Public Administration, and eventual changes cannot circumvent the requirements of this Article.

Article 26. The notice should be widely available in the page of the official website of the agency or entity on the Internet.

Unique Paragraph. The legal entities governed by internal public law and those that are customized by the Administration may create a single portal on the Internet that gathers information on all partnerships concluded by them, as well as the notices published.

Article 27. The degree of appropriateness of the proposal to the specific objectives of the program or action in which the type of partnership is entered and the reference value of the public tender is a required criterion of judgment.

§ 1º Proposals will be judged by a selection committee previously designated, in accordance with this Law.

§ 2º a person will be impeded from participating in the selection committee who, in the last 5 (five) years, has maintained legal relationship with, at least, 1 (one) of the entities in dispute.

§ 3º if the impediment of § 2º occurs, there should be appointed a substitute deputy who has equivalent qualification to the replaced one.

§ 4º The Public Administration shall approve and disseminate the results of the judgment in the page of the official site of the Public Administration on the Internet or equivalent official electronic site.

Article 28. Only after the competitive stage is finished and proposals are ordered, the Public Administration shall verify the documents that prove compliance, by the selected civil society organization, with the requirements set out in subsection VII of § 1º of Article 24.

§ 1º In the event of the selected civil society organization not meeting the requirements set out in subsection VII of § 1º in Article 24, that which is next highest

rated will be invited to accept the formation of partnership on the same terms offered by the disqualified competitor.

§ 2^o if the civil society organization invited in accordance with § 1^o of this Article accepts the formation of partnership, the verification of the documents that prove fulfilment off the requirements laid down in subsection VII of § 1^o of Article 24 will be proceeded to.

§ 3^o the procedure of § 1^o and 2^o will be followed successively until the selection provided for in the notice is complete.

Article 29. Except in the cases expressly provided for in this Law, a public tender will precede the conclusion of any form of partnership.

Article 30. The Public Administration will be able to exempt the holding of a public tender:

I - in the case of urgency due to downtime or imminence of downtime of activities of relevant public interest carried out within the framework of partnership already formed, the duration of the new partnership is limited to the end date of the original term, if the order of compliance with the conditions of the public tender are met, maintained and accepted on the same terms offered by the civil society organization winning the event;

II - in cases of war or serious disturbance of public order, to partner with civil society organizations that develop activities of continued nature in the areas of social care, health or education, which provide direct services to the public and that have certification as a charitable entity of social assistance, in accordance with the Law number 12.101, of 27 November 2009;

III - when it comes to the implementation of programs of protection to threatened persons or in a situation that might compromise their safety;

IV - [VETOED].

Article 31. The public tender will be considered unenforceable in the event of competition between civil society organizations being unviable, by reason of the singular nature of the object of the work plan or when goals can only be achieved by a specific entity.

Article 32. In the hypotheses of Articles 30 and 31 of this Law, the public administrator will justify the absence of selective processes in detail.

§ 1º Under penalty of the formalization of the partnership act already seen in this Law being nullified, the justification Statement already seen in the main section of this article should be published, at least, 5 (five) days before this formalization, in a page of the official site of the Public Administration on the Internet, and eventually, under the criteria of the public administrator, also on the official means of publicity of the Public Administration, in order to guarantee ample and effective transparency.

§ 2º Opposition to the justification is admissible, if presented before the formation of the partnership, of which the contents have to be analysed by the responsible public administrator.

§ 3º If the opposition has foundations, the act that declared the public tender dispensed with or considered unenforceable will be revoked, and the procedure for the public tender will be immediately initiated, in conformity with the case.

Section IX

Requirements for the Conclusion of the Contract of Collaboration and the Contract of Promotion

Article 33. To be able to form the partnerships provided for in this Law, the civil society organizations should be governed by statutes whose norms have, specifically, the following:

I - objectives focused on the promotion of activities and purposes of public and social relevance;

II - the constitution of an audit committee or equivalent body, endowed with the assignment of opining on the reporting of financial performance and accounting and on the property operations carried out.

III - the anticipation that, in the event of dissolution of the entity, its net worth is transferred to another legal entity of equal nature, which meets the requirements of this, Law and whose social object is, preferably, the same as the one the extinguished entity possessed;

IV - norms for the provision of social accounts to be observed by the entity, which shall, at a minimum, determine:

a) compliance with the fundamental principles of accounting and of Brazilian Standards of Accounting;

b) that there is publicized, by any effective means, by the end of the fiscal year, a report upon the activities and financial Statements of the entity, including the certificates of negative debits owed to Social Security and the Guarantee Fund of Service Duration (FGTS), making them available for examination by any citizen.

Unique Paragraph. Autonomous social services that are the recipients of employers' contributions on the payroll will be exempt from compliance with the provisions in subsection III of the **main clause**.

Article 34. In order to form the partnerships described in this law, the civil society organizations need to present:

I - proof of ownership or legitimate possession of property, in case it will be necessary to fulfil the agreed objective;

II - fiscal, pension plan, tax, contribution, and active debt certificates of regularity, in accordance with the applicable legislation of each federal entity;

III - certification of legal existence, issued by the office of civil registry [*cartório de registro civil*], or copy of the registered statute, and eventual alterations;

IV - documentation that evidences the initial State and material condition of the entity, when this State and condition are necessary to fulfil the agreed objective;

V - copy of the act of election for the present board of directors;

VI - current list containing the names of the directors of the entity, with for each of them their address, number and issuing office of identity cards, and registration number on the Registry of Individual Persons (CPF) of the Secretariat of Federal Records of Brazil (RFB);

VII - copy of documentation that proves that the civil society organization operates from the address registered on the National Registry of Legal Entities (CNPJ) of the Secretariat of Federal Records of Brazil (RFB);

VIII - regulation of purchases and contracts, for itself or a third party, approved by the Public Administration responsible, in which is established, at minimum, the observance of the principles of legality, of morality, of good faith, of probity, of impartiality, of economy, of efficiency, of isonomy, of publicity, of reasonableness and of objective judgment and the on-going search for quality and durability.

Unique paragraph. [VETOED].

I - [VETOED].

II - [VETOED].

III - [VETOED].

Article 35. The forming and the formalization of the Contract of collaboration and the Contract of promotion depend on the adoption of the following provisions by the Public Administration:

I - the completion of public tender, except as in the provisions envisaged by this Law;

II - the express indication of the existence of prior budget allocated for the creation of the partnership;

III - demonstration that the objectives and institutional goals and the technical and operational capability of the civil society organization have been evaluated and are compatible with the object;

IV - approval of the work plan, to be presented in the terms of this Law;

V - the issuance of opinion from the Public Administration's technical organ, which should rule expressly with respect to:

a) the merits of the proposal, in accordance with the form of partnership adopted;

b) the identity and reciprocity of the parties' interests in achieving, in mutual cooperation, the partnership envisaged by this Law;

c) the viability of its objectives, inclusive of the estimated costs, which need to be compatible with the prevailing market prices;

d) the verification of the timetable of disbursement envisaged in the work plan, and whether it is adequate and permits its effective oversight;

e) description of the means available that will be used to oversee the implementation of the partnership, so that the procedures that should be adopted for the evaluation of physical and financial performance achieve their goals and objectives;

f) description of the minimum requirements of confidence and of evidence that will be accepted by the Public Administration in the accountability process;

g) designation of the manager of the partnership;

h) designation of the committee to monitor and evaluate the partnership;

i) the approval of the regulation of purchases and contracts presented by the civil society organization, demonstrating compatibility between the chosen option

and the nature and value of the partnership's objectives; the nature and the value of the services; and the purchases likely to be contracted, as approved in the work plan;

VI - the issuance of legal advice from the advisory or consultative legal body of the Public Administration with regard to the possibility of forming the partnership, with observance to the norms of this Law and the specific legislation.

§ 1º There will be no financial cost-sharing required as a prerequisite for partnership formation, providing that the compensating requirement in goods and services is economically measurable.

§ 2º In the case that technical or legal opinion as are treated, respectively, in subsections V and VI of the **main clause** of this Article conclude with reservations that the partnership may be formed, the Public Administrator should comply with reservations made or, by means of a formal act, justify the reasons for failing to do so.

§ 3º In the event of the manager of the partnership ceasing to be a public agent or being preoccupied with another body or entity, the Public Administrator shall designate a new manager, assuming, while this is pending, all the obligations of the manager, with the respective responsibilities.

§ 4º It must show, expressly, in the instrument of partnership itself, or its annex, that the civil society organization meets the requirements contained in subsection VII of § 1º of Article 24 of this Law.

§ 5º In the case that the civil society organization acquires permanent equipment or materials from resources proceeding from the conclusion of the partnership, the goods will be recorded with an inalienability clause, and a promise shall be formalized to transfer the property to the Public Administration, in the event of its dissolution.

§ 6º Persons who, in the last 5 (five) years, have maintained a legal relationship, with, at least, 1 (one) of the civil society organizations, will be prohibited from participating as partnership manager or as a member of the monitoring and evaluation committee.

§ 7º If the impediment of § 6º applies, a substitute manager or member shall be designated, who possesses technical qualifications equivalent to those they substitute for.

Article 36. It will be mandatory to stipulate the final destination of the goods remaining to the partnership.

Unique paragraph. The remaining goods acquired with transferred resources may, at the Public Administrator's discretion, be donated when, after the achievement of the objective, they are not necessary to assure the continuance of the agreed objective, observing the provisions of the respective term and current legislation.

Article 37. The civil society organization will designate at least 1 (one) director who will have sole responsibility, with joint liability, for implementing the activities and complying with the agreed goals of the partnership, this designation must be shown on the instrument of partnership.

Article 38. The Contract of Promotion and the Contract of Collaboration will only produce legal effects after the publication of the respective extracts in the official means of publicity of the Public Administration.

Section X Prohibitions

Article 39. A civil society organization shall be barred from forming any kind of partnership envisaged in these laws if they:

I - are not duly constituted, or if foreign, are not authorized to function within the national territory;

II - have not fulfilled the obligation to submit the accounts of previously formed partnerships;

III - have as director an agent of political power or Public Prosecutor, a director of a body or entity of the Public Administration of any governmental sphere, or their respective spouse or companion, in addition to relatives lineal or collateral, or of affinity up to the second degree;

IV - have had their accounts rejected by the Public Administration within the last 5 (five) years, while they are not remedying the irregularity that caused the rejection or free of the debts with which they were eventually charged, or are being reconsidered or awaiting a decision upon the rejection;

V - Have been punished with one of the following sanctions, for the period that the penalty lasts:

a) suspended from participating in bidding, and prohibited from contracting with the Administration;

b) declared unsuitable to bid or contract with the Public Administration;

c) as Stated in subsection II of Article 73 of this Law;

d) as Stated in subsection III of Article 73 of this Law;

VI - Have had the accounts of the partnership judged irregular or rejected by the Court or Council of Accounts of any part of the Federation, in an irrevocable decision, in the last 8 (eight) years;

VII - Have among their directors' people:

a) whose accounts relating to partnerships have been judged irregular by the Tribunal or Council of Accounts of any part of the Federation, in an irrevocable decision, in the last 8 (eight) years;

b) judged responsible for grave failing and disqualified from exercising a role in committee or holding a position of trust, while the disqualification is in effect;

c) considered responsible for acts of dishonesty, while within the time limits established in subsections I, II, and III of Article 12 of Law number 8.429, of the 2nd of June 1992.

§ 1º In the provisions of this Article, it is equally forbidden to transfer new resources into the ambit of active partnerships, except in those cases where essential services cannot be postponed under the penalty of loss to the treasury or to the population, provided this is preceded by express and justified authorization from the senior director of a body or entity of the Public Administration, under the penalty of joint liability.

§ 2º In any of the cases provided for in the **main clause**, an impediment to entering into partnership persists while there is no compensation for the loss to the treasury, for which a civil society organization or its director are responsible.

§ 3º The prohibition in subsection III in the **main clause** of this Article, which relate to having as director an agent of political Power, is not applicable to the autonomous social services in receipt of the contributions levied on the payrolls of employees.

Article 40. It is forbidden to form partnerships provided for in this Law that have for their objective, involving or including, directly or indirectly:

I - the delegation of the functions of regulation, of oversight, of the exercise of police power or the other activities exclusive to the State;

II - the provision of services or of activities whose recipient is the administrative apparatus of the State;

Unique Paragraph. It is also forbidden for the objective of partnership to be:

I - the procurement of consultancy services, with or without a definite product;

II - administrative support, with or without staff provision, for supplying consumable materials or other goods.

Article 41. It is forbidden to create other types of partnership or a combination of those provided for in this Law.

Unique Paragraph. The provision in the **main clause** is without prejudice to the contracts of management and terms of partnership regulated, respectively, by Law number 9.637, of the 15th of May 1998, and by Law number 9.790, of the 23rd of March 1999.

CHAPTER III

ON FORMALIZATION AND IMPLEMENTATION

Section I

Preliminary Dispositions

Article 42. The partnerships will be formalized through the conclusion of the Contract of collaboration and the Contract of promotion, as appropriate that will have as essential conditions:

I - a description of the agreed objective;

II - the obligations of the parties;

III - the total value of the transfer and the timetable of disbursement;

IV - the classification of the budgeted expenditure, detailing the number, the date of the notice of commitment and a declaration which, additionally, will indicate the credits and commitments that it covers, for each instalment of the expenditure to be transferred in following financial years.

V - the repayment, as applicable, and the form of its acquisition in goods and/or services necessary to the implementation of the objective;

VI - the duration and the instances of prorogation;

VII - accountability with definition of form and deadlines;

VIII - the form of monitoring and evaluation, with indication of the human and technological resources to be employed in the activity or, as applicable, indication of the involvement of technical support in accordance with the provisions laid down in § 1º of Article 58 of this Law;

IX- the obligation to refund resources, in the cases provided for in this Law;

X - the definition, as applicable, of the ownership of property and rights remaining at the date of the completion or termination of the partnership and that, because of this, have been acquired, produced or processed with resources transferred by the Public Administration;

XI - the estimate of financial application and the means of allocation of resources applied;

XII - the prerogative of the body or entity transferring financial resources to assume or transfer responsibility for the implementation of the objective, in case of downtime or the occurrence of relevant events, so as to avoid its discontinuity;

XIII - the provision that, in the event that the payment of remainders is cancelled, the amount can be reduced to the stage to of enabling functionality;

XIV - the obligation of the civil society organization to maintain and move the resources in a bank account specific to the partnership in a financial institution indicated by the Public Administration;

XV - the free access of the servers of the bodies or of the public entities that transfer resources, of internal control and of the Court of Auditors corresponding to processes, to documents, to information relating to instruments of transfers regulated by this Law, as well as to localities of implementation of the objective;

XVI - the capability of the participants to rescind the instrument, at any time, with the respective conditions, sanctions and clear delimitation of responsibilities, besides the stipulation of a minimum term of notice for the advertising of this intention, which may not be less than 60 (sixty) days;

XVII - an indication of the forum for settling the doubts arising from the execution of the partnership, establishing that prior attempts of administrative

solution with the participation of the Attorney-General of the Union be mandatory, in case the participants are from the federal sphere, direct or indirect administration, in terms of article 11 of Provisional Measure number 2.180-35, of the 24th of August, 2001;

XVIII - the obligation of the civil society organization to insert a clause in the contract made with the supplier of goods or services, with the end of implementing the partnership's objective, which allows free access of the servants or employees of bodies or of the public entities which transfer public resources, as well as of bodies of control, to the documents and account registers of the contracted enterprise, in the terms of this Law, save when the contract obeys uniform standards for all and any contractor;

XIX - the exclusive responsibility of the civil society organization for the management and administration of financial resources received, including with regard to the current expenditures, investment and personnel;

XX - the exclusive responsibility of the civil society organization for payment of labour taxes, social security, tax and trade relating to the operation of the institution and compliance with the Contract of collaboration or promotion, not implying joint or subsidiary liability of the Public Administration by their payments, any encumbrance to the partnership's objectives, or restriction of their implementation.

Unique Paragraph. There shall be included as annexes to the instrument of partnership:

I - the work plan, that is an integral and inseparable part of it;

II - the regulation of purchases and contracts adopted by the civil society organization, duly approved by the Public Administration partner.

Section II

Procurement carried out by Civil Society Organizations

Article 43. The procurement of goods and services by civil society organizations, which were made with the use of resources transferred by the Public Administration, should comply with the principles of legality, morality, good faith,

probity, impersonality, economy, efficiency, isonomy, publicity, reasonableness and objective judgment and the on-going quest for quality and durability, according to the regulation of purchases and contracts approved for the attainment of the object of the partnership.

§ 1º The processing of purchases and contracts can be performed by means of an electronic system provided by the Public Administration to civil society organizations, which is open to the public via the internet, which allows interested parties to formulate proposals.

§ 2º The electronic system that is treated in § 1º contains the tools for notifying suppliers in the field of procurement that are included in the register of Article 34 of Law number 8,666, of June 21, 1993.

Article 44. The administrative management and financial resources received are the sole responsibility of the civil society organization, including what pertains to expenditures, investment and personnel.

§ 1º [VETOED].

§ 2º The labour, social security, tax and trade fees relating to the operation of the institution and the compliance with the Contracts of collaboration or promotion are the sole responsibility of the civil society organizations, not implying joint or subsidiary liability of the Public Administration by their payments, any encumbrance to the partnership's objectives, or restriction of their implementation.

Section III Expenditures

Article 45. Partnerships should be carried out with strict observance of the terms negotiated, being prohibited:

- I - to perform expenditure under administration, management or similar fees;
- II - to pay, for any reason, a servant or public employee with resources linked to the partnership, except in the cases provided for in specific law and the budget guidelines law;
- III - to modify the objective, except in the case of extension of targets, provided that it is previously approved the adequacy of the plan of work by the Public Administration;

IV- to change the manner of implementing the objective.

V - to use, even in an emergency, resources for a purpose different from that established in the work plan;

VI - to hold expenses at a date prior to the partnership being in effect;

VII - to make payment at a later date than the partnership is in effect, unless expressly authorized by the competent authority of the Public Administration;

VIII - to transfer resources for clubs, associations of servants, political parties or any similar entities;

IX - to expend funds on:

a) fines, interest rates or inflation adjustment, including in relation to payments or deposits outside the time limits, unless arising from delays in the Public Administration in the release of financial resources;

b) educative, informative or socially oriented publicity, except that provided for in the plan of work and directly linked to the objectives of the partnership, which does not contain names, symbols or images that constitute personal promotion;

c) payment of staff employed by the civil society organization that does not meet the requirements of Article 46;

d) works that constitute the expansion of built-up areas or the settlement of new physical structures.

Article 46. Payments can be made with resources linked to the partnership, provided that they are approved in the work plan, with:

I - remuneration of staff scaled in the work plan, including staff of the civil society organization, for the duration of the partnership, and may satisfy the expenditure with payments of taxes, social security contributions, Service Duration Guarantee Funds (FGTS), vacation, thirteenth month's salary, proportionate wages, severance costs associated with funding and other social costs, provided that such values:

a) correspond to the activities planned for the achievement of the objective and the technical skills required to perform the implementation of the role;

b) be compatible with the market value of the region where it operates and not higher than the wage ceiling of the Executive Power;

c) are proportional to the duration of effective work and are exclusively dedicated to the partnership concluded;

II - daily fees related to travel, lodging and meals in cases in which the implementation of the partnership's objectives requires this;

III - fines and costs linked to the delay in the fulfilment of obligations provided for in the plans of work and financial implementation, as a result of the non-fulfilment of the Public Administration in the release, promptly, of the instalments agreed upon;

IV - acquisition of equipment and permanent materials essential to the achievement of the objective and services to make adequate the physical space, provided that they are necessary for the setup of said equipment and materials.

§ 1º The remuneration of the work team with resources transferred by the Public Administration does not generate a labour relationship with the transferring entity.

§ 2º The default of the civil society organization in relation to labour charges does not transfer to the Union the responsibility for its payment.

§ 3º The values of taxes, social contributions, Service Duration Guarantee Funds (FGTS), vacation, thirteenth month's salary, proportionate wages, severance costs associated with funding and other social security contributions incident on the activities planned for the implementation of the objective, will be detailed in the work plan. They are of responsibility of the entity, to be paid with the resources transferred through the partnership, while it is in effect.

§ 4º There are not included in the provisions of § 3º the taxes of direct and personal nature that encumber the entity.

§ 5º [VETOED].

Article 47. The work plan may include the payment of indirect costs necessary for the implementation of the objective, in a proportion not exceeding 15% (fifteen per cent) of the total value of the partnership, provided that such costs are incurred exclusively for their achievement and that:

I - they are necessary and proportionate to the fulfilment of the objective;

II - the link between the implementation of the objective and the additional costs paid, as well as the proportionality between the amount paid and the percentage of approved cost for the implementation of the objective, are demonstrated, in the plan of work;

III - such proportional costs are not paid by any other instrument of partnership.

§ 1º The indirect costs proportionate to this Article may include internet, transportation, rent and telephone expenditures, as well as remuneration for accounting services and legal advisory referred to in the **main clause**, when the objective of the work plan was agreed upon with the Public Administration.

§ 2º Expenditure on external audit commissioned by the civil society organization, even if related to the implementation of the Contract of promotion and/or of promotion, may not be included in indirect costs that are mentioned in the **main clause** of this Article.

§ 3º The selection and hiring, by the civil society organization, of the staff involved in the implementation of the Contract of promotion and/or of promotion should observe the principles of the Public Administration provided for in the **main clause** of Article 37 of the Federal Constitution.

§ 4º The civil society organization should give ample transparency to amounts paid as remuneration for its staff linked to the implementation of the Contract of promotion and/or of promotion.

§ 5º Individuals may not receive the remuneration referred to in this Article if they have been convicted of crimes:

I - against the Public Administration or the public heritage;

II – that are electoral, for which the law has as possible penalty the deprivation of liberty;

III - of laundering or concealment of assets, rights and funds.

§ 6º The payment of staff hired by the civil society organization with resources allocated by the Public Administration does not generate a labour relationship with the Public Authorities.

§ 7º The default of the civil society organization in relation to labour, tax and trade charges does not transfer the responsibility to the Public Administration for its payment, nor can it encumber the objective of the Contract of promotion or of promotion or restrict its implementation.

§ 8º When the indirect costs are also paid by other sources, the civil society organization must submit the calculation of apportionment of expenditure, it is

forbidden to duplicate or overlay of sources of funds in the payment of the same instalment of indirect costs.

Section IV

Release of Resources

Article 48. The instalments of the resources transferred within the framework of the partnership will be released in strict accordance with the schedule of disbursement approved, except in the following cases, in which they will be withheld until the remediation of improprieties:

I - when there is substantiated evidence that good and regular application of the portion previously received has not occurred, in accordance with the applicable legislation, including when measured in local monitoring procedures, performed periodically by the entity or body that transfers resources and by bodies of internal and external control of the Public Administration;

II - when misuse occurs in the application of resources, unjustified delays in completion of the steps or phases programmed, practices which violate the fundamental principles of the Public Administration in procurement and other acts in the implementation of the partnership or the non-fulfilment of the civil society organization with respect to other basic clauses;

III - when the civil society organization fails to adopt the remediation measures identified by the Administration, or by internal or external control bodies.

Article 49. In the case that the work plan and the schedule of disbursement provide for more than 1 (one) share of transfer of resources, for receipt of each portion, the civil society organization should:

I - have completed the requirements demanded by this Law for the conclusion of the partnership;

II - present the accountability of the previous instalment;

III- be in regular compliance with the implementation of the work plan.

Article 50. The Public Administration should facilitate monitoring by the internet of the processes of resource release relating to partnerships concluded under this Law.

Section V

Handling and Financial Application of Resources

Article 51. The funds received as a result of the partnership shall be deposited and managed in a specific bank account in a public financial institution indicated by the Public Administration, and while not employed in their purpose, must be invested in savings accounts, if the forecast of their use is equal to or greater than 1 (one) month, or in the fund for the implementation of short-term financial or open market operation that depends on public debt securities, when the deadline for their use is equal to or less than 1 (one) month.

Unique Paragraph. The income from financial investments, when authorized in accordance with Article 57, shall be applied to the objectives of the partnership, being subject to the same conditions of accountability required for the transferred resources.

Article 52. When there is completion, termination, cancellation or dissolution of the partnership, the financial balances remaining, including those from the revenue obtained from financial investments, shall be returned to the entity or body that transfers resources within a non-extendible period of 30 (thirty) days of the event, under penalty of immediate special accountability submission of the responsible party, provided by the competent authority of the body or entity that holds the resources.

Article 53. All the movement of resources within the framework of the partnership will be performed through electronic transfer subject to the identification of the final beneficiary and the obligation to deposit in their bank account.

Unique Paragraph. Payments should be made by crediting the bank accounts held by suppliers and service providers.

Article 54. In exceptional cases, provided that the physical impossibility of payment by electronic transfer is demonstrated in the work plan, according to the peculiarities of the objective of the partnership, of the region where they will develop activities, and services to be provided, the Contract of promotion or of promotion

may admit the transaction of payments in kind, observing all the following prerequisites:

I - the payments in kind will be restricted, in any case, to the individual limit of R\$ 800.00 (eight hundred Reals) per beneficiary and the overall limit of 10% (ten per cent) of the total value of the partnership, both calculated taking into account the duration of the partnership;

II - the payments in kind should be provided for in the work plan, which shall specify the items of expenditure which may be of this type of financial transaction, the nature of the beneficiaries to be paid under these conditions and the schedule of withdrawals and payments, with individual limits and total observing the provisions of subsection I;

III - the payments which are the subject of the present article shall be carried out by means of withdrawals made from the account of the Contract of collaboration or of promotion, the responsible individuals that carry it out being committed to provide:

a) submission of their balance to the civil society organization of the total value received, in up to 30 (thirty) days from the date of the last withdrawal made, through the organized presentation of fiscal notes or receipts showing payments and that record the identity of the final beneficiary of each payment;

b) return to the account of the Contract of collaboration or of promotion, through bank deposit, the totality of values received and not applied by the date referred to in point "a" of this subsection.

IV - the responsibility before the Public Administration for good and regular application of funds expended in accordance with the provisions of this Article remains with the civil society organization and with the respective responsible persons bound by the Contract of collaboration or of promotion; they can act retrospectively in relation to the person who, in any way, gave cause to irregularity in the implementation of these resources;

V - the regulations may replace the withdrawal to the account of the Contract of collaboration or of promotion for the credit of the fund to be drawn into an account designated by the entity, in which case the responsibility for the performance of the tasks provided for in subsection III of this Article will be borne entirely by those persons responsible for the civil society organization bound by the Contract of

collaboration or of promotion, maintaining all the other conditions laid down in this Article;

VI - in accordance with the provisions of this Article, any payment of unauthorized expenditures in the work plan of expenditure in which the final beneficiary is not identified or for expenses incurred in discord with any of the conditions or limitations set forth in this Article, will be considered irregular, will constitute diversion of resources and should be returned to public coffers.

Section VI Amendments

Article 55. The duration of the partnership may be amended at the request of the civil society organization, duly formalized and justified, to be presented to the Public Administration at least 30 (thirty) days prior to the end of its duration.

Unique Paragraph. The automatic extension of the duration of the instrument must be made by the Public Administration, before its end, when it gives cause to delay in the release of resources, limited to the exact period of the delay.

Article 56. The Public Administration can authorize the reallocation of resources of the implementation plan, for the duration of the partnership, to achieve the objective agreed upon, so that, separately for each category of cost expenditure (current or capital), the civil society organization may redistribute, among themselves, the funds designated for the items of expenditure, provided that, individually, the increases or decreases do not exceed 25% (twenty-five per cent) of the originally approved work plan for each item.

Unique Paragraph. The reallocation of resources mentioned in the **main clause** will only occur upon prior request, with justification presented by the civil society organization and approved by the Public Administration that is responsible for the partnership.

Article 57. If there is relevance to the public interest and through the approval by the Public Administration of the change in the work plan, the income from financial investments and any remaining balances may be applied by the civil society organization to the further goals of the objective of the partnership, provided that it is still current.

Unique Paragraph. The amendments provided for in the **main clause** do not require approval of a new work plan by the Public Administration, but requires previous legal analysis provided of the draft of the additive term of the partnership and the publication of the extract of the additive term in official means of dissemination.

Section VII

Monitoring and Evaluation

Article 58. The Public Administration is responsible for carrying out monitoring procedures of partnerships concluded before the end of its duration, including through **on-site** visits, for purposes of monitoring and evaluation of the implementation of the objective, by means of the regulations.

§ 1º For the implementation of the provisions in the **main clause**, the body may avail itself of technical support from third parties, delegate competence or enter into partnerships with bodies or entities that are near the locality where resources are applied.

§ 2º In partnerships with duration greater than 1 (one) year, the Public Administration will, whenever possible, conduct a survey of satisfaction with the beneficiaries of the work plan and will use the results as an aid in evaluating the partnership concluded and the achievement of the goals agreed upon, as well as in the reorientation and adjustment of goals and activities defined.

§ 3º For the implementation of the provisions in § 2º, the Public Administration can avail themselves of technical support from third parties, delegate competence or enter into partnerships with bodies or entities that are located near to the site of application of resources.

Article 59. The Public Administration shall deliver a technical report of the monitoring and evaluation of the partnership and shall submit it to the commission for monitoring and evaluation, which will approve it, regardless of mandatory submission of accountability due by the civil society organization.

Unique Paragraph. The technical report of the monitoring and evaluation of the partnership, without prejudice to other elements, should contain:

I - a brief description of the activities and goals established;

II - analysis of the activities carried out, the achievement of the targets and the impact of social benefits obtained as a result of the implementation of the objective until **that time**, on the basis of indicators established and approved in the work plan;

III - funds effectively transferred by Public Administration and funds proven to be used;

IV - where applicable, the amounts paid in accordance with Article 54, indirect costs, the relocation performed, the leftovers of financial resources, including financial applications, and any values returned to State coffers;

V - analysis of documents proving the costs presented by the civil society organization in the submission of accounts;

VI - analysis of audits carried out by internal and external controls, in the context of preventive oversight, as well as its conclusions and the measures that they have taken as a result of these audits.

Article 60. Without prejudice to the supervision by the Public Administration and by control bodies, the implementation of the partnership can be monitored and overseen by the public policy councils of corresponding areas of expertise existing in each level of government.

Unique Paragraph. The partnerships of which this Law treats will be also subject to the mechanisms of social control provided for in the legislation.

Section VIII

Obligations of the Manager

Article 61. These are the obligations of the manager:

I - to monitor and oversee the implementation of the partnership;

II - to inform his immediate superior of the existence of facts that compromise or could endanger the activities or goals of the partnership and of evidence of irregularities in the management of resources, as well as the measures taken or to be taken to remedy the problems identified;

III - [VETOED].

IV - to issue opinion on conclusive technical analysis of final accounts submitted, on the basis of the technical report of monitoring and evaluation mentioned in Article 59 of this Law;

V - to provide the material and technological equipment necessary for the activities of monitoring and evaluation.

Article 62. In the event of non-performance or improper performance of current partnership or non-renewal of partnership, purely to ensure the fulfilment of services that are essential to the population, the Public Administration can, by their own act and regardless of judicial authorization, in order to achieve or maintain the implementation of agreed goals or activities:

I - reclaim the public goods in the possession of the civil society organization partner, independently of the modality or title that granted rights to use such goods;

II - take responsibility for the implementation of the remainder of the objective specified in the work plan, in the case of downtime or the occurrence of a relevant fact, in order to avoid its discontinuity, and that which was executed by the organization of civil society until the moment at which the Administration has assumed these responsibilities should be considered in the provision of accounts.

Unique Paragraph. The situations provided for in the **main clause** must be notified by the manager to the public administrator.

CHAPTER IV ACCOUNTABILITY

Section I General Rules

Article 63. The accountability should be made within the rules laid down in this Law, in addition to deadlines and rules for elaboration contained in the instrument of partnership and the work plan.

§ 1º The Public Administration will provide specific manuals to the civil society organizations when the conclusions of the partnerships occur.

§ 2º Any changes to the content of the manuals referred to in § 1º of this Article shall be informed, before they are made, to the civil society organization and published in official means of communication.

§ 3º The regulation may, on the basis of the complexity of the objective, establish differentiated procedures for accountability, provided that the value of the partnership is not equal to or greater than R\$ 600,000.00 (six hundred thousand Reais).

Article 64. The rendering of accounts submitted by the civil society organization must contain elements that allow the partnership manager to evaluate the progress or conclude that its objective was implemented as agreed, with detailed description of activities carried out and proof of attainment of goals and expected results, until the end of the period treated in the submitted accounts.

§ 1º In the submitting of accounts the figures will be disallowed that do not meet the provisions set forth in the **main clause** of this article and in Articles 53 and 54.

§ 2º The financial data will be analysed with the intent of establishing a causal link between income and incurred expenditure, its conformity and compliance with the relevant norms.

§ 3º The analysis of submitted accounts should consider the actual facts and results achieved.

§ 4º The rendering of the partnership's accounts will observe specific rules in accordance with the amount of public funds involved, in terms of the dispositions and procedures established according to the provisions of the plan of work and the Contract of collaboration or of promotion.

Article 65. The accountability and all the acts resulting from it will take place, whenever possible, on an electronic platform, allowing viewing by any interested party.

Article 66. The accountability to the implementation of the Contract of collaboration or of promotion will take place during the analysis of the documents provided in the work plan, in the terms of subsection IX of Article 22, in addition to the following reports:

I - Report on Implementation of the Objective, prepared by the civil society organization, signed by its legal representative, containing the activities undertaken

for compliance with the objective and comparing goals proposed with the results achieved, in accordance with the agreed schedule, attaching to this documents attesting to the completion of the actions, such as lists of attendance, photos and videos, as appropriate;

II - Report on Financial Implementation, signed by the legal representative and the responsible accountant, which accounts for expenditure and actual revenue received.

Unique paragraph. The public body signatory to the Contract of collaboration or of promotion should also consider in their analysis the following internally prepared reports:

I - report of a technical **spot-check** visit performed during the implementation of the partnership, in the terms of Article 58;

II - technical report of monitoring and evaluation, approved by the designed committee on monitoring and evaluation, upon conformity with the fulfilment off the objective and the results achieved during the implementation of the Contract of collaboration or of promotion.

Article 67. The manager will issue a technical analysis of accountability for the partnership entered.

§ 1^o In the case of a single instalment, the manager will issue a conclusive technical opinion for the purpose of evaluating the fulfilment of the objective.

§ 2^o In the case of more than 1 (one) instalment being made, the civil society organization should present partial accounts for the purpose of monitoring the achievement of goals related to the instalment released.

§ 3^o An analysis of the accountability referred to in § 2^o must be made within the timescale defined in the approved work plan.

§ 4^o For the purpose of evaluating the efficacy and effectiveness of the actions in progress or those that have been completed, the technical opinions referred to in the main clause and § 1^o of this article must necessarily mention:

I - the results already achieved and their benefits;

II - the social or economic impacts;

III - the extent to which the target audience is satisfied;

IV - the likelihood that the actions are sustainable after the completion of the agreed objective.

Article 68. The documents provided by the entity on an electronic platform specified by Article 65, provided they possess a guarantee of origin and of its signatory through a digital certificate, will be considered original documents for the purpose of accountability.

Unique paragraph. During a period of 10 (ten) years, from the working day after that of the rendering of accounts, the entity should maintain in its archives the original documents that comprise the accounts rendered.

Section II

Deadlines

Article 69. The civil society organization is obliged to render final accounts of good and regular use of the resources received within the term of 90 (ninety) days from the termination of the operation of the partnership, as established in the respective instrument.

§ 1º The definition of the term for final presentation of accounts will be established, fundamentally, in accordance with the complexity of the partnership objectives and integrates the phase of technical analysis of the proposition and the conclusion of the instrument.

§ 2º The disposition in the **main clause** does not prevent the instrument of partnership establishing instalments off partial accounts, periodic, or payable after the conclusion of steps related to the targets of the objective.

§ 3º The duty of accountability arises at the moment when the first instalment off financial resources is paid.

§ 4º The term referred to in the **main clause** can be prorogued for up to 30 (thirty) days, if there is due justification.

§ 5º The conclusive demonstration of the rendering of accounts by the Public Administrator will observe the terms provided in the approved work plan and the Contract of collaboration or of promotion, needing to provide for:

I - approval of accountability;

II - approval of accountability with reservations, when there is evidence of impropriety or any other fault of a formal nature that does not result in loss to the treasury, or;

III - rejection of the accountability and the determination of an immediate establishment of a special submission of accounts.

§ 6º The improprieties that gave cause to reservations or to rejection of accountability will be recorded on an electronic platform accessible to the public, needing to be taken into consideration when future partnerships are signed with the Public Administration, as defined in regulations.

Article 70. On the detection of irregularity or omissions in accountability, a period will be granted for the civil society organization to remedy the irregularity or fulfil obligations.

§ 1º The period instanced in the **main clause** is limited to 45 (forty five) days from notification, extendable at most for an equal period, within which period Public Administration has to analyse and decide on accountability and evidence of results.

§ 2º After the deadline for remedying the irregularity or omission, these having not been remedied, the competent administrative authority, under penalty of joint liability, should make arrangements for investigating the facts. identifying those responsible, quantifying the damage, and obtaining compensation, in accordance with current legislation.

Article 71. The Public Administrator will have the goal of assessing the final performance of rendered accounts, in the period of 90 (ninety) to 150 (one hundred fifty) days, after they have received the data, as established in the instrument of partnership.

§ 1º The definition of the period for the assessment of the final performance of rendered accounts will be established, fundamentally, in accordance with the complexity of the partnership objectives and integrates the phase of technical analysis of the proposition and conclusion of the instrument.

§ 2º The period for assessment of the final accountability can be extended, at most, for an equal period, where there is due justification.

§ 3º In the event of noncompliance with the time limit defined in the terms of the **main clause** and § 1º and 2º, within 15 (fifteen) days of its elapsing, the unit responsible for the assessment of the final rendering of accounts will report the reasons to the State Ministry or the State or Municipal Secretary, as appropriate, in addition to the council of public policies and the corresponding body of internal control.

§ 4º The elapsing of the period defined in the terms of the **main clause** and of § 1º without accounts having been assessed:

I - does not mean impossibility of assessment at a later date or prohibition on adopting remedial measures, punitive or intended to compensate damage that may have been caused to public coffers;

II - in cases in which guilt was not found in the partner civil society organization or its employees, without prejudice to inflation, prevents the incurrence of interest rates on debts eventually calculated, in the period between the end of the period referred to in the **main clause** of this paragraph and the date on which the assessment was finalized by the Public Administration.

Article 72. The rendering of accounts will be assessed:

I - as regular, when they express, in a clear and objective manner, the accuracy of the financial statements, the legality, the legitimacy and the economics of the acts of managerial responsibility;

II - as regular with reservation, when they show any impropriety or any other fault of formal nature that does not result in loss to the treasury;

III - as irregular, when demonstrating any of the following occurrences:

a) omission of the duty to render accounts;

b) practice of an illegal, illegitimate, or uneconomical management act, or infraction of legal norms or regulatory norms of accounting, financial, pricing/budgetary, operational, or of equity;

c) damage to the treasury arising from illegitimate or uneconomical management acts;

d) embezzlement or misuse of money, goods, or public funds.

Unique paragraph. The authority competent to sign the Contract of collaboration or of promotion is responsible for the decision on the approval of accountability, based upon their technical and financial opinions, being permitted to delegate to directly subordinate authorities, forbidden to sub delegate.

CHAPTER V
THE LIABILITY AND PENALTIES

Section 1
Administrative Sanctions to the Entity

Article 73. Where the partnership is implemented contrary to the work plan and the rules of this Law and of specific legislation, the Administration may, despite the guarantee of prior defence, apply to the civil society organization partner the following sanctions:

I - warning;

II - temporary suspension of participation in public tender and impediment from concluding the Contract of collaboration or of promotion and contracts with entities and organs of the government sphere of Public Administration that applied the penalties, for a period not to exceed 2 (two) years;

III - statement of good conduct to allow participation in public tender or to form Contract of collaboration or of promotion and contracts with agencies and entities of all spheres of government, as long as the reasons for punishment last or until rehabilitation is applied by the authority that imposed the penalty, which will be granted where the civil society organization reimburses the Administration for the losses occurred and after the expiry of the term of the penalty imposed on the basis of subsection II of this Article.

Unique Paragraph. The penalty established in subsection III of the **main clause** of this Article is exclusively the competence of the Minister of State or the Municipal or State Secretary, or as the case may be, permitting the defence of the interested party concerned in the process, within 10 (ten) days before the opening of views, and the rehabilitation can be requested after 2 (two) years of their application.

Section II
Responsibility for the Implementation and for the Issuing of Technical Opinions

Article 74. [VETOED].

Article 75. The person responsible for the technical opinion that wrongly concludes regarding the operational capacity and technical organization of the civil society for the implementation of certain partnership will respond in the administrative, criminal and civil courts in case he has acted maliciously or with guilt, by restitution of funds passed to the public coffers, without harm to the responsibility of the public administrator, the manager, the organization of civil society and its leaders.

Article 76. The person that attests to or the person responsible for technical opinion that concludes in favour of the completion of certain activities or for the compliance with established goals will respond to administrative, criminal and civil liability by restitution public coffers of the amounts prescribed, if it is found that the activities were not carried out as Stated in the report or that the targets were not fully met.

Section III
Acts of Administrative Misconduct

Article 77. The Article 10 of Law number 8,429, of June 2, 1992, takes effect plus the following subsections:

"Art. 1

VIII - frustrates the lawfulness of bidding processes or selection processes for conclusion of partnerships with non-profit organizations, or exempts them unduly;

XVI - facilitates or competes in any way, for the incorporation, the heritage of particular individual or legal entity, of goods, rent, money or public funds transferred by the Public Administration to private entities through conclusion of partnerships, without the observance of legal formalities or regulations applicable to the situation;

XVII - allows or concurs with an individual or legal entity to use private property, rent, money or public values transferred by the Government to private entity upon conclusion of partnerships, without compliance with the legal requirements or regulations applicable to the situation;

XVIII - concludes partnerships of the Public Administration with private entities without the observance of legal procedures or regulations applicable to the situation;

XIX - frustrates the lawfulness of selective process for conclusion of partnerships of the Public Administration with private entities, or waive it unduly;

XX - acts negligently in conclusion, overseeing and analysis of the benefits of accountability of partnerships established by the Public Administration with private entities;

XXI - releases resources for partnerships established by the Public Administration with private entities without strict compliance with the relevant standards or without influencing in any way their irregular application." (NR)

Article 78. The Article 11 of Law number 8,429, of June 2, 1992, enters into force plus the following subsection VIII:

"Article 11.

VIII - circumvents the rules on the conclusion, overseeing and approval of the accounts of partnerships established by Public Administration with private entities." (NR)

CHAPTER VI FINAL PROVISIONS

Article 79. [VETOED].

Article 80. The Registration System of Unified Suppliers (Sicaf), maintained by the Union, is made available to other federal entities, for the purposes of the provisions in § 2º of Article 43 of this Law, without prejudice to the use of their own systems.

Article 81. With the consent of the Union, the States, the Municipalities and the Federal District, it is possible to join the System of Management of Agreements and Contracts of Transfers (Siconv) to use its features in compliance with this Law.

Article 82. [VETOED].

Article 83. The existing partnerships, when this Law is in force, will remain governed by the legislation in force at the time of their conclusion, without prejudice to the subsidiary application of this Law, insofar as it is reasonable, provided that there is benefit to the achievement of the partnership objectives.

§ 1º The exception in the **main clause** does not apply to extensions of partnerships formed after the promulgation of this Law, except in the case of automatic extension provided for by law or regulation, exclusively for the cases of delay in the release of resources by the Public Administration.

§ 2º For any partnership referred to in the **main clause** eventually settled for an indefinite deadline before the promulgation of this Law, the Public Administration will promote, within a period of no more than 1 (one) year, under penalty of accountability, the renegotiation to adapt its terms to this Law or its respective termination.

Article 84. Except in the cases expressly mentioned, the provisions on Law number 8,666, from the 21st of June 1993, and in the laws referring to arrangements, that will be restricted to partnerships fixed between the federal entities, are not applied to the relations of collaboration or of promotion governed by this Law.

Unique Paragraph. The treaties and similar agreements existing among the civil society organizations and the Public Administration on the date of entry into force of this Law shall be carried out until the end of the term of the agreement, subject to the provisions of the Article 83.

Article 85. The provisions of Article 1º of the Law number 9,790, dated 23 March 1999, will come into force with the following wording:

"Article 1º The legal entities of private law non-profit organizations that have been formed and have been in regular operation for at least 3 (three) years, provided that their social objectives and statutory standards meet the requirements imposed by this Law, may qualify as Civil Society Organizations in the Public Interest." (NR)

Article 86. Law number 9,790, of 1999, enters into force plus the following Articles 15-A and 15-B:

"Article 15-A. [VETOED].

"Article 15-B. The rendering of accounts relating to the implementation of the Term of Partnership before the body of the State entity in the partnership refers to the correct application of public resources received and the due performance of the objective of the Term of Partnership, upon presentation of the following documents:

I - annual report of implementation of activities, containing specifically a report on the implementation of the objective of the Term of Partnership, as well as a comparison between the proposed targets and the results achieved;

II - Statement of revenue and expenditure incurred in the implementation;

III - Statement of physical and financial performance;

IV - demonstration of results of the exercise;

V - balance sheet;

VI - Statement of sources and applications of funds;

VII - Statement of changes in social benefits;

VIII - explanatory notes to the financial Statements, if necessary;

IX - opinion and audit report, as applicable."

Article 87. The requirements of transparency and publicity provided for in all the steps that involve the Contract of collaboration or of promotion, from the preparatory phase to the end of accountability, will, in what is necessary, be exempted when dealing with the program of protection to persons threatened or in a situation which is likely to compromise their security, according to regulation.

Article 88. This Law shall enter into force after 90 (ninety) days of its official publication.

Brasília, 31st July 2014; 193^o of the independence and 126^o of the Republic.

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