

Leniency Agreements in Brazil

Leniency agreements executed with the Federal Public Prosecutor's Office ("MPF")



MPF Leniency Agreements

Grupo Setal:

- The Setal Group was charged for bid rigging and cartel activities under contracts with Petrobras. The leniency agreement was executed on October 22, 2014 and approved by MPF's 5th Chamber of Coordination and Review on December 1, 2014. The Setal Group agreed to pay **BRL 15 million**

Camargo Corrêa:

- Camargo Corrêa was charged for corruption, money laundering and anticompetitive practices under the dispute of public bids promoted by Eletronuclear. The leniency agreement was executed on August 17, 2015 and approved by MPF's 5th Chamber of Coordination and Review on August 24. Camargo Corrêa agreed to pay **BRL 700 million**

Carioca Christiani Nielsen Engenharia S/A:

- Carioca Christiani Nielsen Engenharia S/A was charged for illicit practices involving Petrobras and bid rigging, aimed to obtain civil construction works from the State of Rio de Janeiro. The leniency agreement was approved by MPF's 5th Chamber of Coordination and Review on October, 20, 2015. Carioca Christiani Nielsen Engenharia S/A agreed to pay **BRL 100 million**

MPF Leniency Agreements

Braskem:

- Braskem was charged for illicit acts involving Petrobras. The leniency agreement was executed in December 14, 2016 and approved by MPF's 5th Chamber of Coordination and Review on December 15, 2016. Braskem agreed to pay **BRL 3.1 billion**

Odebrecht:

- Odebrecht was charged for offering bribery payments to political parties, businessmen and government officials from 12 countries to secure engineering and civil construction projects. The leniency agreement was executed in December 1, 2016 and approved by MPF's 5th Chamber of Coordination and Review on December 15, 2016. Odebrecht agreed to pay a global fine of approximately **BRL 3.8 billion** (in which 80% went to Brazil)

Rolls-Royce:

- Rolls-Royce was charged for bribery payment under contracts with Petrobras. The leniency agreement was executed in January 13, 2017 and approved by MPF's 5th Chamber of Coordination and Review on February 16, 2017. Rolls-Royce agreed to pay **BRL 81 million**

MPF Leniency Agreements

J&F:

- J&F was charged for corruption, criminal organization, money laundering and illicit electoral donations. The leniency agreement was executed in June 5, 2017 and approved by MPF's 5th Chamber of Coordination and Review on August 24, 2017. J&F agreed to pay **BRL 10.3 billion**

Embraer:

- Embraer was charged for bribery and irregular practices in deals closed in the Dominican Republic, Saudi Arabia, Mozambique and India. The leniency agreement was executed in October 23, 2016. Embraer agreed to pay **US\$ 206 million** to Brazilian and US authorities

Signus:

- Signus was charged for bribery payments to doctors under the criminal scheme "Mafia of Prostheses" that benefited from the abusive commercialization of orthoses, prostheses and similar overpriced materials. The leniency agreement was executed and approved on November 23, 2016. Signus agreed to pay **BRL 5 million**

MPF Leniency Agreements

Keppel Fels:

- Keppel was charged for the practice of misconducts and bribery payment in connection to contracts executed with Petrobras and Sete Brasil. The leniency agreement was executed in December 19, 2017 and approved by MPF's 5th Chamber of Coordination and Review on April 5, 2018. Keppel agreed to pay approximately **R\$ 1.4 billion**, of which R\$ 692,435,847.20 must be paid to the Brazilian jurisdiction

Andrade Gutierrez

- Andrade Gutierrez was charged for corruption, bid rigging and money laundering in connection to contracts entered with Petrobras and other state-owned companies. The leniency agreement was executed in January 2016 and approved by MPF's 5th Chamber of Coordination and Review on March 30, 2016. Andrade Gutierrez agreed to pay **BRL 1 billion**

SBM:

- SBM was charged for bribery payment in exchange for contracts entered with Petrobras. The leniency agreement, was approved in September 1, 2018 and approved by MPF's 5th Chamber of Coordination and Review on December 18, 2018. SBM agreed to pay **R\$ 200 million**

Confidentiality Clauses

Confidentiality terms usually adopted by MPF

- The proposal to enter into a leniency agreement is the first step of the negotiations and should set the **commencement** of the **confidentiality term**
- Confidentiality clauses provided in leniency agreements usually establish the partial or full disclose of its terms, **for the press or academic studies only**
- Confidentiality clauses usually **(i)** establish the applicable **confidentiality period**, **(ii)** provide which **clauses and annexes may be disclosed** and **(iii)** allows the **transfer of confidential information** with external auditors

Confidentiality Clauses

Specific terms of MPF leniency agreements

- **Andrade Gutierrez and SETAL:** The **disclosure or sharing** of the leniency agreement and its annexes **is forbidden**, excepting when authorized by MPF
- **J&F:** The agreement's confidentiality will be partially waived **after it's execution**, for **press release purposes and academic studies only**. Attachments, documents and evidences shall be kept confidential for the period of **6 months**. The confidentiality does not prevent MPF to share information with other authorities that have collaborated with the investigation. In addition, it allows the **transfer of confidentiality** information **with external auditors**
- **Odebrecht S.A.:** The agreement and its annexes shall have **restricted access** until the precautionary measures, complaint and civil actions are presented by MPF and during the period of **6 months after the agreement's execution**. MPF may request judicial authorization to **review** the confidentiality of the agreement and its annexes
- **Camargo Correa:** The agreement, the descriptions of conducts and their annexes shall be of **restricted access** and will not be published. Disclosure or sharing may only be allowed through **judicial order** and the signatories **should be informed** about the disclose requirement **in advance**

Leniency Agreements
executed with the Office
of Comptroller General
("CGU") and the
Federal Attorney General
("AGU")



Memorandum of Understandings (MOU)

- MOU is required to **start negotiations** with CGU and AGU
- The parties must the MOU **confidential** unless **(i)** it is disclosed based on the parties' **express consent** or **(ii)** it is **disclosed by the collaborator** with other Brazilian and foreign authorities, as long as such authorities agrees to keep the information confidential
- The collaborator **shall inform** CGU and AGU about any **third party who is aware of the MOU's provisions**
- If the parties become aware of any **breach to the confidentiality clause**, they should: **(i) notify the other party** and **(ii)** implement **measures** provided by law or **requested by the other party** to remedy the breach or its consequences
- If CGU or AGU are **required to disclose** any confidential document, they must: **(i)** request the authority to **keep the document confidential** and **(ii)** adopt the **safety measures and degree of care** used to protect their own confidential information
- CGU and AGU may work with other public entities to **obtain information** about the collaborator and to **verify the truthfulness** of the reported facts, as long as they do **not offend the confidentiality provisions**

CGU/AGU Leniency Agreements

UTC Engenharia:

- UTC Engenharia was charged for bid rigging and bribery payment under contracts with Petrobras, Constran and Valec. The leniency agreement was executed on July 10, 2017. UTC Engenharia agreed to pay, approximately, **R\$ 574 million**

Bilfinger:

- Bilfinger was charged for negotiating a bribe in the amount of 2 million euros (about BRL 7.5 million) with a public agent. The leniency agreement was executed on August 14, 2017. Bilfinger agreed to pay **R\$ 9.8 million**

Odebrecht:

- Odebrecht was charged for bribery involving political parties, businessmen and government officials from 12 countries to secure engineering and civil construction projects. The agreement was executed on July 9, 2018. The stipulated fine is **BRL 2.7 billion**, which will be offset by the fine of the agreement with the MPF

CGU/AGU Leniency Agreements

SBM:

- SBM was charged for bribery payment in exchange for contracts with Petrobras. The leniency agreement was executed in July 26, 2018. SBM agreed to pay **R\$ 549 million**

Andrade Gutierrez

- Andrade Gutierrez was charged for corruption, bid rigging and money laundering under contracts entered with Petrobras and other state-owned companies. The leniency agreement was executed in December 18, 2018. Andrade Gutierrez may compensate the payment with the amount agreed in the leniency agreement entered with MPF

Mullen Lowe:

- Mullen Lowe was charged for corruption and bribery payment in exchange for contracts' maintenance. The leniency agreement was executed in April 13, 2018. Mullen Lowe agreed to pay **R\$ 50 million**

Confidentiality Clauses

Confidentiality terms usually adopted by CGU/AGU

- The collaborators' identity and the leniency agreements will be publicly accessible **after the execution** of the leniency agreement, such disclosure may hinder investigations or administrative/judicial proceedings
- Information, documents and other evidences classified as **restricted access** by law or that may cause prejudice to investigations or proceedings, shall also be treated by CGU/AGU as of **restricted access**
- **Disclosure** of leniency agreements **is prohibited**, with the exception of the report on the leniency agreements to public authorities authorized by CGU/AGU
- CGU/AGU must **preserve the confidentiality** of the collaborator's commercially sensitive information

Confidentiality Clauses

Specific terms of MPF leniency agreements

- **Mullen Lowe and SBM:** The leniency agreement and its documents can only be shared with third parties when authorized by CGU or AGU
- **Andrade Gutierrez:** The disclosure of the leniency agreement's annexes **depends on the collaborator's prior consent**
- **SBM:** The execution of a **commitment term** by a foreign is a prior condition to the **sharing of information with such authority**
- **SBM:** CGU/AGU shall notify the collaborator if any **country requests** access to information for **criminal investigation** purposes
- **Mullen Lowe:** A copy of the agreement and its documents will be sent by the CGU to the harmed public entities, who **must guarantee the secrecy of its provisions**, for their **knowledge** and the **benefit of internal investigations focused on the assessment of damages**

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