

MEMORANDUM TO CLIENTS

COMPLIANCE AND CORPORATE ETHICS

January 11, 2016

Provisional Measure No. 703/2015

On December 21, 2015, Provisional Measure No. 703 (“MP 703”) was published to amend certain provisions of Law No. 12.846/2013 (“Anti-Corruption Law”) relating to the negotiation and execution of leniency agreements by corporate entities that may be liable for unlawful acts against the government.

MP 703 seeks to increase efficiency and legal certainty in the process of execution of leniency agreements, and to preserve companies that may become involved in situations contemplated by the laws on corruption and fraud in public bid processes.

Among the changes introduced by MP 703, we highlight the following:

- The execution of leniency agreements is now under the jurisdiction of the internal control agencies within the federal, state, federal district and municipal governments. Public Prosecution Offices and Public Attorneys may be parties to such agreements. Prior to MP 703, only the highest authority of each government agency had jurisdiction to execute such agreements.
- The requirement that a corporate entity involved in an unlawful conduct be “the first one to manifest interest” in executing a leniency agreement was revoked, which ended the controversy on whether more than one entity involved in the same unlawful conduct could execute leniency agreements.

- The admission as to participation in an illicit act is no longer a requirement for the execution of a leniency agreement.
- The first corporate entity to execute a leniency agreement may be fully exempt from applicable penalties. Additional corporate entities that execute leniency agreements after that may receive a reduction of up to two-thirds of the penalty, consistent with what was already set forth in the Anti-Corruption Law.
- All corporate entities that execute leniency agreements may be fully exempt from restrictive sanctions, including, for example, the prohibition from participation in public bids and receiving public financing.
- In the event that Public Attorneys and Public Prosecution Offices are parties to leniency agreements, the authority with jurisdiction to execute the agreement is estopped from filing or proceeding with administrative improbity lawsuits based on Law No. 8.429/1992 ("Law against Improbity in the Government"), court proceedings as contemplated in article 19 of the Anti-Corruption Law or with any other civil lawsuit.
- Administrative proceedings pending before other government agencies that relate to public bids or administrative contracts that are within the scope of a leniency agreement shall be suspended. If the company fully complies with the obligations stipulated in the leniency agreement, these proceedings shall be subsequently terminated.
- Corporate entities may apply for, or execute, a leniency agreement even after the filing of applicable lawsuits.
- Among the conditions for the execution of a leniency agreement, MP 703 requires that corporate entities agree to implement or improve their internal compliance (integrity) mechanisms, audits, incentives for whistleblowing, as well as the effective application of codes of ethics and conduct.

- After a leniency agreement is executed, it must be forwarded to the applicable Court of Audit for calculation of possible losses to the public treasury. Pursuant to MP 703, an administrative proceeding may be initiated against the corporate entity if the Court of Audit finds the agreed amount contemplated in the leniency agreement to be insufficient.
- MP 703 revoked paragraph 1, section 17 of the Law against Improbability in the Government, which prohibited settlements or conciliation in lawsuits based on the provisions of such law.

The MP 703 has been effective since December 21, 2015, and it will lose effectiveness if it is not converted into law within the applicable legal term.

Attorneys of the Compliance and Corporate Ethics Practice

The purpose of this memorandum is to inform our clients about important changes and developments in the area of law. We remain at the reader's disposal for any additional information that may be desired regarding the subject matter herein.

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