



Leniency Agreements & Summary Judgments in Brazil

MATTOS FILHO



Negotiations in administrative sanctioning proceedings (PARs)

Leniency Agreements with the AGU and CGU

Leniency Agreement: a mechanism provided for in the Brazilian Anti-Corruption Law (Law No. 12,846/2013). Legal entities deemed to have committed certain conducts provided for in this law may enter into leniency agreements with the Brazilian Attorney-General's Office (AGU) or Comptroller-General's Office (CGU).

- Requirements: The party must collaborate with relevant investigations, assist in identifying others involved in the infraction(s) and submit information and documents that prove that the infraction(s) occurred;
- Benefits include a reduction (of up to two-thirds) of the fines provided for in the AntiCorruption Law, exemptions from having to publicly disclose convictions and the waiving of temporary bans on receiving incentives, subsidies, grants, donations or loans from public bodies or entities and government-controlled financial institutions.



Key Aspects of Leniency Agreements

Why is the Brazilian state willing to enter into leniency agreements?

- They increase the state's investigative capability (investigative leverage);
- They improve the chance of recovering assets;
- They foster a culture of integrity within the private sector.

What are the advantages of leniency agreements for legal entities?

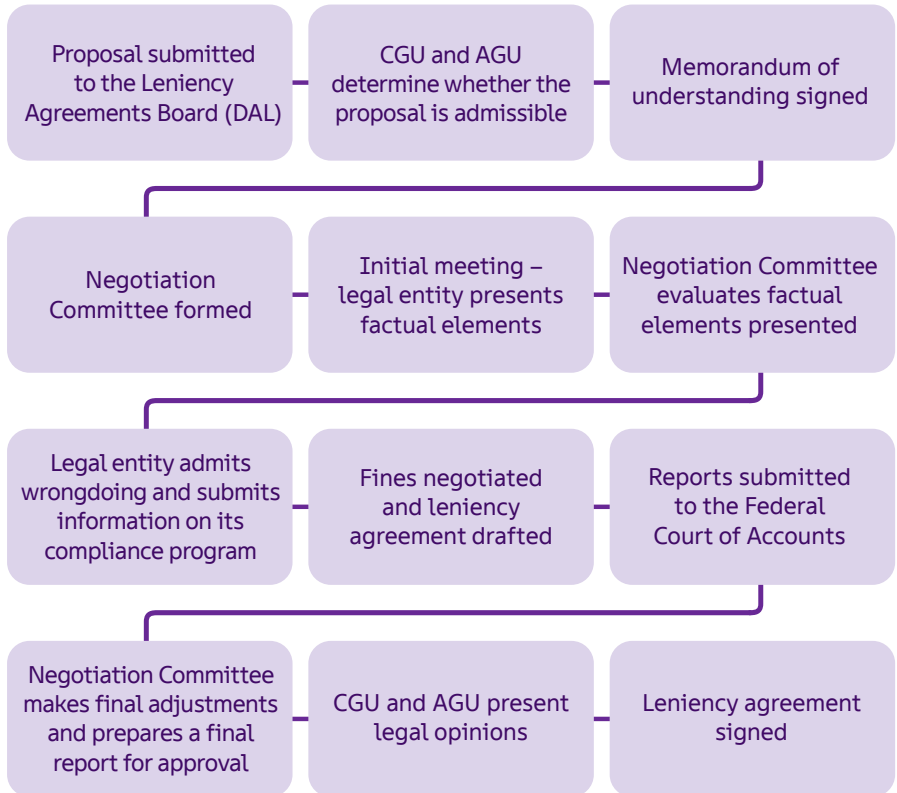
- A discount of up to two-thirds of the fines provided for in the Anti-Corruption Law (as per **CGU AGU Interministerial Ordinance No. 36/2022**);
- Exemptions from having to publicly disclose convictions concerning corruption and from bans on receiving financial resources from Brazil's public administration;
- Exemptions (or the reduced severity) of administrative sanctions provided for in Brazil's Bidding Law (Law No. 14,133/2021);
- They allow lawsuits involving facts within the scope of the leniency agreement to be settled.

What commitments do private entities assume when signing leniency agreements?

- They must comply with any obligations in the **leniency agreement**;
- They must adopt, implement or improve their own compliance programs;
- They must continue to collaborate with the associated investigations.



Leniency Agreements: Procedure





Summary Judgments



Summary judgment: a procedure established by CGU Ordinance No. 19/2022, in which a legal entity admits responsibility for certain conducts provided for in the Brazilian Anti-Corruption Law.

- Benefits include a recalculation of the sanction, resulting in a reduction in fines.
- The reduction of the fine depends on the stage of the administrative sanctioning proceeding at the time the summary judgment is requested, as well as the legal entity's willingness to collaborate with the investigation in identifying existing infractions and preventing new infractions.

Legal entities' requirements to apply for a summary judgment:

- Admit that it committed the investigated conduct(s);
- Reimburse financial sums that correspond to the damage caused;
- Forfeit any advantage gained when such an advantage can be determined;
- Pay the fine provided for in the Anti-Corruption Law;
- Comply with information requests regarding the conduct in question, to the extent the legal entity is aware of it;
- Commit to not filing administrative appeals against the decision to grant the summary judgment application;
- Waive its right to present a defense;
- Withdraw any lawsuits related to the summary judgment.

Prior to the initiation of an administrative proceeding (PAR)

4.5% reduction in fines



Prior to presenting a defense in writing

4% reduction in fines

Prior to the closing arguments

3% reduction in fines

After the closing arguments

2% reduction in fines

How else can legal entities stand to benefit from a summary judgment?

- The fine provided for in the Anti-Corruption Law may be imposed without the obligation to publicly disclose the conviction;
- There is the possibility of avoiding or reducing the severity of sanctions that prevent participation in public bids and being contracted by public authorities;
- They can avoid inclusion on Brazil's National Registry of Punished Companies (CNEP) as soon as they meet the requirements established in their application.



Leniency Agreements and Summary Judgments: Similarities and differences



Similarities

In both **leniency agreements** and **summary judgments**:

- The responsible legal entity must fully reimburse for any financial damage caused to the public treasury;
- A withdrawn or rejected request does not impact the recognition of the occurrence of misconduct;
- Brazilian authorities cannot consider or use any received documents if the proposal is withdrawn or rejected.

Differences

- While **leniency agreements** mainly aim to help the investigation gain leverage via new information, a **summary judgment** is a simple admission of wrongdoing that does not necessarily require legal entities to submit further evidence;
- As a consequence, **leniency agreements** offer legal entities far greater benefits than **summary judgments**;
- In **leniency agreements**, the extent of the admission of wrongdoing results from negotiations with authorities based on new information the collaborator provides. The **summary judgment** is more limited in its scope and is less flexible, as it must correspond to the allegations within the PAR;
- There is no provision for extending the effects of a **summary judgment** to legal entities within the same economic group;
- At the federal level, only the CGU has the power to approve requests for **summary judgments**;
- Legal entities can enter into **leniency agreements** with federal, state and municipal authorities, while a **summary judgment** can only be entered into with the CGU.

MATTOS FILHO

SÃO PAULO | CAMPINAS | RIO DE JANEIRO | BRASÍLIA | NEW YORK | LONDON

mattosfilho.com.br