



FEDERAL PROSECUTION SERVICE
5th Chamber of Coordination and Review – Anti Corruption

5th Chamber of Coordination and Review

ORIENTATION NO. 07/2017

LENIENCY AGREEMENT

The 5th Chamber of Coordination and Review of the Federal Prosecution Service,

WHEREAS it is for the Chambers of Coordination and Review to promote the integration and coordination of the institutional bodies that act on offices related to the sectors of their jurisdiction, sending them technical-juridical information, observed the principle of the functional independence (Law NO. 75/93, article 62, I and III); and

CONSIDERING, also, the necessity of divulging the parameters that have been required for the approval of leniency agreements executed with FEDERAL PROSECUTION SERVICE, as well as the improvements recognized by this Chamber;

GIVEN its good practices developed in the agreements already approved by this Chamber and, finally, that these remain entirely valid and effective, this norm being served as orientation for new agreements,

has decided to issue the following ORIENTATION, subdivided into 18 items, to be complied on the execution and signature of leniency agreements.

- 1). Bargains, negotiations and executions of leniency agreements shall be carried out by a member of MPF (Federal Prosecution Service) holding the attribution of filing the action of official misconduct or of the civil action in the public interest provided in the Law 12.846/2013.
- 2). In the event that there is natural persons' interest in the execution of the agreement of plea bargain or state's evidence, the beginning of the negotiation of the leniency agreement shall occur concurrently or further to the negotiation of the agreement of plea bargain or state's evidence, in the criminal ambit.
- 3). After the initial conversation with the organization about the facts and evidence to be exhibited, and the necessity and opportunity for the agreement of investigations having been established, the commencement of the negotiations of the clauses of the agreement shall be preceded by the signature of the "Confidentiality Agreement, which shall be recorded separately as "Administrative





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Proceeding”, as subject/topic “Leniency Agreement”, and related case designation to the civil investigation or another proceeding that has been filed previously to find the facts, if so. The Administrative Proceeding shall be kept in camera proceedings during the whole stage of negotiation and, after the signature, until the moment fixed in the agreement as appropriate for release of the secrecy.

4).. The signature of the agreement of confidentiality shall be communicated to the 5th CCR (Chamber of Coordination and Review), by memorandum, through which the natural prosecutor must request for assistance of the Permanent Advisory Committee for Leniency and Plea Bargain Agreements.

5). The negotiations shall be rather conducted by more than one member of the Federal Prosecution Service, of both areas of action (criminal and official misconduct ones).

5.1.-In case the negotiations are made jointly with other agencies, such as the Ministry of Transparency, Supervision and Control, Federal-General Counsel Office, CADE (Administrative Council for Economic Defense), Federal Court of Accounts, the agreements must be executed by independent instruments, in order to make their notice to the respective agencies of control viable.

6). The holding of all the meetings shall be recorded in the record of the Administrative Proceeding of Leniency, with information about date, place, participants and brief of the subjects dealt with.

7). The leniency agreement shall contain clauses that deal, at least, with the following topics:

7.1. - LEGAL BASIS (129, item I, of the Federal Constitution: art.5, parag.6, of Law 7.347/8; art. 26 of Palermo Convention; art. 37 of Merida Convention, articles 3, parag. 3, of the Code of Civil Procedure, articles 840 and 932, III, of the Civil Code, articles 16 to 21 of the Law NO. 12.846/2013; Law 13.140/201).

7.2.- DESCRIPTION OF PARTIES

- in case of a group of companies, an attachment identifying each one of them is required
- if it is the case, prevision of the possibility of adhesion to the agreement, during the specific term, on the part of the companies of the group, directors, employees and agents of the company involved in the practices object of the leniency agreement, through signature of the respective instruments and





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further acceptance by the notifying member.

7.3.- DEMONSTRATION OF PUBLIC INTEREST (opportunity, effectiveness and utility), that is:

- opportunity: the circumstance of being the first company to reveal the facts unknown to the investigation;
- effectiveness and utility: collaborator's real capacity of contribution to the investigation, by means of the provision of material elements that can constitute evidence, it being required that the illicit facts and persons involved and their quantity be explicated, which are not known to the Federal Prosecution Service yet, as well the means by which the respective evidence will be given.

7.4.-OBJECT OF THE AGREEMENT (generic description of the facts that will be revealed and by whom; the specific description shall be made in attachments, there being one for each fact, the probative sources included):

- The relevance and importance of the information have to be demonstrated; the admission of the facts and evidence being recent does not suffice, they have to be apt to reveal and to dismantle the criminal organization.
- Prevision about the form of procedure in case of revelation of new facts, after the agreement is executed (possible acceleration of the agreement, with prevision of the consequences of the amendment).
- In case the object of the leniency agreement involves more than one illicit fact and/or more than one person involved, and the necessity of maintenance of secrecy on some of the illicit facts arises, the explicitness of such facts and persons must be made in brief to the leniency agreement, with relegation of each of the facts to specific attachments which allow the release of the secrecy in separate moments.

7.5.-COLLABORATORS' OBLIGATIONS (minimum)

- concerning the relevant information and evidence (forms, terms, places, etc.);
- promise to stop the illicit conducts;
- promise to implement programs of compliance (compliance or integrity) or equivalent and to subject to external audit, at its expenses, if it the case;
- promise of, during the whole effect of the leniency agreement, cooperating in full manner, without any reservation, with the





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- investigations, always behaving with honesty, loyalty and good faith;
- payment of value as regards the acceleration recovery of damages, without prejudice to the right of other agencies, institutions, entities or persons that seek the recovery which they understand is due to them (see item 10);
 - payment of fine (of the LIA or of the LAC, as it is the case) (v. items 8 and 9);
 - posting bond (bail) related to payment of the fine and of the acceleration of the recovery of damages;
 - to declare that the information given is true and exact, under penalty of rescission).

7.6.- PROMISES OF THE FEDERAL PROSECUTION SERVICE:

- to act upon other authorities and public entities seeking their adhesion to the Leniency Agreement or formalization of their own agreements, provided they are compatible with those of the Federal Prosecution Service;
- to stipulate benefits and, if it is the case, to not file any action of civil or sanctioning nature, including action against official misconduct, for the facts or conducts revealed arising out of a Leniency Agreement, against the COLLABORATOR, while the clauses established in the Agreement are fully performed;
- among the benefits, if it the case, to request stay of actions which have already been filed or to request rendering of the decision with effects merely declaratory;
- to defend before third parties the validity and effectiveness of all the terms and conditions of the agreement

7.7 – ADHESION AND SHARE OF EVIDENCE (Prevision of the possibility of the possibility of adhesion to the agreement, on the part of other agencies of the Federal Prosecution Service, of other Public Ministries or other bodies and public institutions through affirmation to respect the terms of the agreement to which they are adhering, making possible., only then, the share of the evidence and information obtained by means of the agreement).

7.8.-COOPERATION WITH FOREIGN AUTHORITIES (see item 13)

7.9.-PROVISIONS ON ALIENATION OF ASSETS (authorization for the collaborator to made the alienation, provided its necessity is proved, for performance of the





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agreement.

7.10.- SECRECY (who is obliged to secrecy and its duration)

7.11.-WAIVER OF THE EXERCISE OF PROTECTION AGAINST THE AUTODISCRIMINATION AND OF THE RIGHT TO REMAIN SILENT

7.12.- TERMINATION: HYPOTHESES AND CONSEQUENCES

7.13.- REVIEW OF HOMOLOGATION BY THE 5TH CHAMBER OF COORDINATION AND REVIEW

8). The fine and other sanctions, as well as the value paid by way of acceleration of recovery of damages shall be established with strict observance to the principle of proportionality, due to reason why the equilibrium between the profit brought to the investigation and the benefit granted to the collaborator..

8.1.-The fine may be calculated based on the criteria provide in article 12 of the Law 8.429/92 and/or in the art. 6 and 16, parag. 2 of the Law 12.846/13,and articles 17 to 20 of the Decree 8420/15;

9) Any value collected by means of the leniency agreement, by any way, the rules of tax liability must have taken into account and prevision of investment in the bodies of the public administration must not exist, the possible moral risk in the negotiations being so avoided.

10) No acquittance shall be given for damages or loss, the value paid by this way having to be always considered as acceleration of payments.

11) An index with a brief description of the content of each probative attachment must be made.

12) The Prosecutors must refuse the negotiator and as for the indication of another, in case of moral hazard or if they feel uncomfortable with the negotiator indicated by the organization to the collaborator, since it is about negotiation inspired on good faith, honesty and by the constitutional principle of morality.

13) The negotiation must, whenever possible, comprise negotiations about practice of transnational corruption, with attention to the obligations undertaken by Brazil as signatory of the International Conventions on the Fight Against Corruption of OCDE (Organization for Cooperation and Economic Development), OEA (Organization of American States) and ONU (Organization of





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American States), the double penalization being avoided (bis in idem).

14) Once the agreement is signed, the administrative proceeding to which it has been attached shall be sent to the 5th Chamber of Coordination and Review for approval, through the Unique System, with guarantee of the necessary confidentiality.

14.1.- The attachments shall only be sent if the Chamber requests them, on the occasion for execution of the agreement.

14.2.- On the occasion of the sending of the record to the 5th Chamber of Coordination and Review of Federal Prosecution Service, the explanations Considered necessary on the terms of the agreement must be include in the record. Inclusively about the way of calculation of the values and fines agreed.

15) The proceeding shall be assigned to one of the members of the Chamber, having the examination of the agreement, for the purpose of confirmation by court, to be held in session of coordination (cf. Deliberation of the Institutional Council, in the record of PA 1.30.001.001111/2014-42, in the 10th Ordinary Session, of 12.14.2016).

16) There being the necessity of new explanations or other searches, the record shall be returned to the origin, for such purpose. Same being in order, the agreement shall be approved, the respective opinions, the deliberation and its statement being entered in the record.

17) Once the is liberation closed and the agreement having been approved, the statement of the deliberation of the Chamber shall be published and divulged, the confidentiality of the proceeding being preserve, if it is the case. The record shall be returned to the origin, being kept in the Chamber, in specific file, copy of the record and respective deliberation.

17.1.-The record returned to the origin, the prosecution of the administrative proceeding of handling shall follow until l the termination of the payments agreed or of the civil actions where the information resulted of the leniency agreement were used, time when the dismissal shall submitted to the 5th Chamber of Coordination and Review.

18) Doubts shall be settled by the 5th Chamber of Coordination and Review of Federal Prosecution Service.

Brasilia DF, August 24, 2017





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Associate Federal Prosecutor General of the Republic
Coordinator

MARIA HILD MARSIAJ PINTO
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Signature/Certification of the document: **PGR-00317050/2017 DOCUMENTO DIVERSO**

Signatory: **MARIA HILDA MARSIJ PINTO**
Date and Time: **08/30/2017 18:41:04**
Signed with login and password

Signatory: **MARCELO ANTONIO MUSCOGLIATI**
Date and Time: **08/30/2017 15:56:28**
Signed with digital certificate

Signatory: **MÔNICA NICIDA GARCIA**
Date and Time: **08/30/2017 15:51:25**
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