Brazil - Measures taken after the completion of country review report of the first review cycle

With respect to the Note Verbale CU 2016/91/DTA/CEB/CSS (which requires States Parties to provide information on good practices, experiences and relevant measures taken after the completion of their country review reports; and also information related to technical assistance), Brazil would like to provide the information below.

Liability of legal persons (Article 26 of the UNCAC

Regarding the Implementation Review Group's recommendation for Brazil to "enhance the application of the existing administrative/civil liability of legal persons", Brazil has adopted the following measures:

- Enactment of Decree 8,420 of 2015 (regulating Law no. 12.683 of 2013, also known as the Corporate Liability Law)

On 18 March 2015, Brazil enacted the Decree n. 8,420/15, which regulates few aspects of the Corporate Liability Law (CLL).

Additionally, the Office of the Comptroller General (CGU) issued, in April 2015, Ordinance n. 910, which sets forth procedural rules for the administrative adjudication process.

Normative Ruling n. 1, also issued in April 2015, regulates the methodology for the calculation of the gross revenue for determining the fine referred to in the CLL. Normative Ruling n. 2 regulates the provision of data and information to feed those the Registry of Ineligible and Suspended Companies (CEIS) and the National Registry of Punished Companies (CNEP).

It is important to recall that the CLL entered into force on 29 January 2014 and its enforcement has never been conditioned by the enactment of further regulation.

The translations into English of the above-mentioned documents are attached to this note.

- Provision of Access to the National Registry on Sanctioned Companies

The Office of the Comptroller General of Brazil has made the National Registry for Sanctioned Companies (CNEP, in its acronym in Portuguese) available for public consultation. This is a database, published at the Brazilian Transparency Portal, which will consolidate the list of legal persons punished under the Corporate Liability Law (Law no. 12.683 of 2013). CNEP will also make available leniency agreements which are signed under the Corporate Liability Law.

The Law stipulates that public bodies and entities, from all branches of government (Executive, Legislative and Judiciary) from all spheres of government (municipalities, states and the Federal Government) shall keep the registry up to date. This practice was already adopted for the Registry of Ineligible and Suspended Companies (CEIS, in its acronym in Portuguese), which publishes sanctions which lead to the prohibition of participation on public bidding processes or of entering into contracts with the Public Administration. The CGU has developed the Integrated System of Registration into CEIS/CNEP so as to comply with the legal obligation of timely updating these registries.

The first punishment registered in the CNEP was applied by the Secretariat for Control and Transparency of the Espírito Santo state government. This punishment led to a fine and to the extraordinary publication of the condemnatory decision.

It is expected that the number of companies increases in the next couple of months, as more liability proceedings are concluded in the various public bodies and entities.

Mutual Legal Assistance (Article 46 of the UNCAC)

The Executive Summary of the Brazilian review for the first cycle also stated that "Brazil does not have in place specific legislation for the provision of mutual legal assistance", although it mentioned that Brazil "can afford mutual legal assistance on the basis of a relevant treaty (including the Convention) or on the principle of reciprocity"[1]. In this sense, Brazil enacted a new Civil Procedure Code on 16 March 2015, which entered into force one year after its publication. It brought a chapter on international cooperation, stating the principles which should be followed (Article 26). It also states that the Ministry of Justice shall act as the Brazilian central authority if no other body is specifically designated for this task (Article 26, paragraph 4). Article 27 states the objectives of international legal co-operation. Articles 28 to 34 regulate the provision of direct assistance to other countries.

Development of crime statistics

In order to address the recommendation to "continue developing its crime statistics system with a view to producing in a systematic manner consolidated statistical data in the whole anti-corruption criminal justice spectrum and for all stages of the relevant criminal proceedings", the National Strategy Against Corruption and Money Laundering (ENCCLA, in its acronym in Portuguese) has developed a specific action throughout 2015 to elaborate a methodology to systematize permanent data collection from courts on cases related to corruption, money laundering and administrative improbity. The action was presided by the National Council of Justice, with collaboration from the Office of the Comptroller General, the Federal Police, the National Court of Accounts, the Ministry of Planning, the National Council of the Prosecution Service, the Council of Federal Justice, magistrates' associations and the civil polices of two states of the federation.

Technical Assistance

[1] See https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1505820e.pdf, p.11

In 2014, Brazil signed an agreement with UNODC and the Organization of American States to develop the Seized and Forfeited Asset Management Project (BIDAL, in the Spanish acronym). BIDAL is a technical consultancy project for managing and appropriately disposing of assets of illicit origin. It aims to promote good governance and transparency standards in this area, seeking maximum benefit and avoiding diversions. The main contribution of BIDAL is taking advantage of the experience of other countries in order to identify best practices. BIDAL's vast experience accumulated in the past few years contributed to supporting Brazil in improving its tools to seize, confiscate, manage and dispose assets derived from corruption. The implementation of this project in Brazil was concluded in 2016 and resulted in a comprehensive analysis of the Brazilian framework for investigation and management of seized assets, including the identification of its positive aspects and areas that could be improved.

Other relevant measures

The following are some of the actions currently being developed within ENCCLA in 2016.

Action 1 – To assess transparency in the Legislative branch (at the three levels of government), the Judiciary branch (at the federal and state levels), the Public Prosecutor's Office (at the federal and state levels) and the Courts of Audit (at the three levels of government).

Action 2 – To promote social participation through active transparency tools for monitoring the transfer of federal funds.

Action 3 – To create guidelines for the establishment and effective functioning of state and municipal systems of internal control.

Action 4 - To prepare an analysis and proposals for improving the Brazilian framework for protecting and encouraging whistleblowers.

Action 5 – To propose the creation of mechanisms that encourage the adoption of integrity programs in public procurement.

List of annexes – relevant legislation

1. DECREE 8.420/2015, on the civil and administrative liability of legal entities that carry out acts against national or foreign governments;

2. ORDINANCE 910/2015, on the procedures to investigate administrative liability to celebrate the leniency agreement;

3. NORMATIVE RULING 1/2015, on the methodology for calculation of gross income and taxes to be excluded for determining fines;

4. NORMATIVE RULING 2/2015, on the regulation of the information registry in the National Registry of Ineligible and Suspended Companies and in the National Registry of Punished Companies.

DECREE Nº 8.420, OF MARCH 18th, 2015

Regulates Law nº 12.846, of August 1st, 2013 which establishes the rules that discipline the civil and administrative liability of legal entities that carry out acts against national or foreign governments, and lays down other provisions.

THE PRESIDENT OF THE REPUBLIC, using the powers granted to her under article 84, item IV of the Constitution, and taking into account the provisions of Law nº 12.846, August 1st, 2013

DECREES:

Article 1. This Decree regulates objective administrative liability of legal entities for acts committed against national or foreign governments, to which Law no 12.846, of August 1st, 2013 refers to.

CHAPTER I
ADMINISTRATIVE LIABILITY

Article 2. Assessment of the administrative liability of a legal entity, which may lead to the application of sanctions provided for in Article 6 of Law nº 12.846, 2013, will be carried out through a Liability Administrative Proceeding (abbreviated to PAR in Portuguese).

Article 3. The competent authority to the opening and judgment of PAR is the highest authority of the entity against which the act injurious was committed, or the Minister of State, if the act was performed against organs of direct administration.

Sole Paragraph. The competence to which this Article refers to shall be exercised *ex officio* or upon request and may be delegated, while sub-delegation is forbidden.

Article 4. The competent authority for opening the PAR, when becoming aware of the possible occurrence of a wrongful act against the federal public administration, when evaluating if it is admissible and by reasoned order, will decide whether to:

I – open a preliminary investigation;

II – open a PAR; or

III – dismiss the matter.

Paragraph 1. The investigation to which Item I above refers will have confidential and non-punitive character and will be conducted in order to verify evidence

of who may have committed the wrongful act against the federal public administration and its materiality.

Paragraph 2. Preliminary investigation shall be conducted by a commission composed of two or more effective public servants.

Paragraph 3. In federal public administration entities whose staff is not composed by statutory servants, the commission to which Paragraph 2 refers to shall be composed by two or more public employees.

Paragraph 4. Deadline for the conclusion of preliminary investigation shall not exceed sixty days and may be extended for the same period, upon justified request submitted by the president of the commission to the respective competent authority.

Paragraph 5. At the end of a preliminary investigation, all relevant information obtained shall be submitted to the competent authorities, accompanied by a conclusive report on the existence of evidence of who may have committed the wrongful act against the federal public administration and its materiality, for a decision to open or not a PAR.

Article 5. In the act opening a PAR, the authority shall appoint a commission, composed by two or more stable servants that will assess the known facts and circumstances and will ask the legal entity to submit a written defense and specify any evidence it intends to produce, within a period of thirty days.

Paragraph 1. In public administration entities whose staff is not comprised of statutory servants, the commission to which this Article refers to will be composed by two or more public employees, preferably with at least three years of service time in the entity.

Paragraph 2. If a request to produce new evidence or to gather evidence deemed essential by the commission is approved, the legal entity shall submit closing arguments within ten days from the approval of the request or the from the issuance of the legal notice to gather evidence deemed essential by the commission.

Paragraph 3. Evidence proposed by the legal entity which is illegal, impertinent, unnecessary, dilatory or untimely will be refused, by reasoned decision.

Paragraph 4. If the legal entity provides information or documents related to the existence and operation of an integrity program in its defense, the prosecuting commission must review this evidence in accordance with parameters indicated in Chapter IV to determine the sanctions to be applied.

Article 6. The commission to which Article 5 refers will perform its activities with independence and impartiality, ensuring confidentiality whenever necessary for the elucidation of the facts and for the preservation of image of the parties involved, or when required by the interest of public administration, guaranteed the right to full defense and to an adversarial process.

Article 7. Notifications will be made electronically, by mail or by any other mean to ensure effective receipt by the legal entity being accused, and the term for submission of a defense will be counted from the date of the official notification of legal entity, in accordance with the provisions of Chapter XVI of Law nº 9.784 of January 29th, 1999.

Paragraph 1. If notification referred to in this Article is not successful, a new notification will be made via publication in the official press, in a widely circulated newspaper in the State of the federation where the legal entity has its main office, and on the website of the public agency or entity responsible for the PAR, while the term for submission of a defense will begin on the last date of the publication of the notification in question.

Paragraph 2. In the case of a legal entity which has no office, affiliates or representation in Brazil, if its representation abroad is unknown and the notification to which this Article refers is unsuccessful, a new notification will be made through a notification published in the official press and on the website of the public agency or entity responsible for the PAR, while the term for submission of a defense will begin on the last date of the publication of the notification in question.

Article 8. The legal entity may act in the PAR proceedings through its legal representatives or attorneys-in-fact, ensuring them broad access to the case files.

Sole Paragraph. Removal of the case files from the government offices is forbidden, while copies can be obtained upon request.

Article 9. The term for conclusion of the PAR shall not exceed one hundred eighty days. Such term can be extended through a request submitted by the president of the commission to the respective competent authority, who shall take a reasoned decision.

Paragraph 1. The term established in this Article will begin on the date of the publication of the act opening the PAR.

Paragraph 2. For proper and regular exercise of its duties, the commission may:

I – propose to the respective competent authority the precautionary suspension of effects of the act or process under investigation;

II – request the support of specialists with considerable expertise, from public bodies and entities or other organizations, to provide support in the analysis of the matter under review; and

III – request the necessary measures for the investigation and processing of violations, including search and seizure, in Brazil or abroad, to the judicial representation body or equivalent from the bodies or entities affected.

Paragraph 3. Upon completion of the investigation and analysis work, the commission will draft a report on the facts identified and on the potential administrative

liability of legal entity, in which it will suggest, on a reasoned basis, the sanctions to be applied, the amount of the fine or the dismissal of the proceeding.

Paragraph 4. The final report of the PAR will be delivered to the competent authority for judgment, which will be preceded by a legal brief, drafted by the competent legal assistance office.

Paragraph 5. If it is determined that an offense was committed and that it should be investigated in other instances, the report of the commission will be send by the judging authority:

I – to the Prosecution Service;

II – to the Attorney General´s Office and related bodies, in the case of entities of direct public administration, government agencies and federal public foundations; or

III – to the legal representation office or its equivalent in governmental bodies and entities not covered under item II above.

Paragraph 6. If a decision is contrary to the commission's report, it must be motivated with evidence produced in the PAR.

Article 10. The administrative decision issued by the judging authority at the conclusion of the PAR shall be published in the Federal Official Gazette and on the website of the competent public agency or entity responsible for initiating the PAR.

Article 11. An administrative decision ordering sanctions can be appealed with suspension effect during a period of ten days after the publication of the decision.

Paragraph 1. The legal entity against whom sanctions were imposed in PAR and which does not submit a reconsideration request shall comply with them within a period of thirty days from the deadline for submission of the reconsideration request.

Paragraph 2. The judging authority will have thirty days to decide on the matter alleged in the reconsideration request and publish a new decision.

Paragraph 3. If the original decision is upheld, another period of thirty days will be given to legal entity to comply with the sanctions imposed, counted from the publication of new decision date.

Article 12. The acts established as administrative violations to the Law nº 8.666 of June 21st, 1993, or other rules related to public procurement and contracts which are also specified as wrongful acts in Law nº 12.846 of 2013, will be jointly investigated and judged, applying the procedures established in this Chapter.

Paragraph 1. After the conclusion of the investigation to which this Article refers to, and if there are different authorities with legal competence for judgment, the process will first be sent to the highest level authority to judge within his/her competence, taking precedence judgment by the competent Minister of State.

Paragraph 2. For the purposes of this Article, the head of unit within the agency or entity responsible for management of public procurement processes and contracts must notify the authority from Article 3 about any facts which may constitute wrongful acts as established in Article 5 of Law nº12.846 of 2013.

Article 13. The Office of the Comptroller General, within the Federal Executive Branch, has:

I – concurrent competence to open and conduct a PAR; and

II – exclusive competence to request an initiated proceeding for review, so as to verify its regularity or to correct such proceeding, which includes applying the appropriate administrative sanctions.

Paragraph 1. The Office of the Comptroller General may exercise at any time the competences to which this Article refers to, if any of the following circumstances are present:

I – characterization of omission by the originally competent authority;

II – lack of objective conditions to carry out the proceedings at the agency or entity of origin;

III – complexity, repercussion and relevance of the matter;

IV – value of the contracts held by the legal entity with the affected agency or entity; or

V – investigation which involves acts and facts related to more than one agency or entity of the federal public administration.

Paragraph 2. Bodies and entities of public administration are required to send all the documents and information requested to them, including the original cases of any proceedings that are in progress, to the Office of the Comptroller General.

Article 14. The Office of the Comptroller General has the competence to open, conduct and judge PARs for wrongful acts committed against a foreign public administration, which will follow, where applicable, the procedures provided for in this Chapter.

CHAPTER II
ADMINISTRATIVE SANCTIONS AND JUDICIAL MEASURES

Section I
General Provisions

Article 15. Legal entities are subject to the following administrative sanctions, in the terms of Article 6 of Law nº 12.846 of 2013:

I – fine; and

II – extraordinary publication of the sanctioning administrative decision.

Article 16. If the investigated wrongful acts involve administrative violations to the Law nº 8.666 of 1993, or other rules related to public bidding or government procurement, and if the joint investigations provided for in Article 12 had occurred, the legal entity also will be subject to administrative sanctions that have as effect restriction of the right to participate in bids or to enter into contracts with public administration, to be applied in PAR.

Section II
Fine

Article 17. Calculation of the fine begins with the sum of the values corresponding to the following percentages of gross revenue of the legal entity from the last fiscal year prior to the initiation of PAR proceedings, excluding taxes:

I – one percent to two and a half percent if there was continuity of wrongful acts over time;

II - one percent to two and a half percent for tolerance or awareness by people within the executive or managerial body of the legal entity;

III - one percent to four percent in the case of interruption in the supply of public service or in the execution of contracted work;

IV – one percent for the offender's economic situation based in the presentation of General Solvency (GS) and General Liquidity (GL) index higher than one and of net profits in the last fiscal year prior to the occurrence of the wrongful act;

V – five percent in the case of recidivism, defined as the occurrence of a new violation, regardless of whether or not it is similar to the previous one, established as a wrongful act by Article 5 of Law nº 12.846 of 2013, in less than five years from the publication of the judgment of the preceeding violation; and

VI – in the case of contracts held or sought with the damaged agency or entity, in the date of the occurrence of the wrongful act, the following percentage shall be considered:

a) one percent in contracts above R$ 1.500.000,00 (one million and five hundred thousand reais);

b) two percent in contracts above R$ 10.000.000,00 (ten million reais);

c) three percent in contracts above R$ 50.000.000,00 (fifty million reais);

d) four percent in contracts above of R$ 250.000.000,00 (two hundred fifty million reais); and

e) five percent in contracts above R$ 1.000.000.000,00 (one billion reais).

Article 18. The resulting sum of the factors from Article 17 will be subtracted by the values corresponding to the following percentages of gross revenue of legal entity from the last fiscal year prior to initiation of PAR proceedings, excluding taxes:

I – one percent in the case of non-consummation of the violation;

II – one and a half percent in the case of confirmation of reimbursement of the damage caused by the legal entity.

III – one percent to one and half percent based on the level of cooperation of the legal entity with the investigation or determination of the wrongful act, regardless of a leniency agreement;

IV – two percent in case of spontaneous communication about the occurrence of a wrongful act by the legal entity, before the initiation of a PAR; and

V – one percent to four percent if it is corroborated that the legal entity has and applies an integrity program, pursuant to parameters established in Chapter IV.

Article 19. In the absence of all factors provided in Articles 17 and 18, or if the result of addiction and subtraction operations provides a value less than or equal to zero, the value of the fine will correspond, as appropriate, to:

I – one tenth percent of gross revenue from the last fiscal year prior to the initiation of the PAR, excluding taxes; or

II – R$ 6.000,00 (six thousand reais), if the terms of Article 22 are applicable.

Article 20. The existence and quantification of the factors set forth in Articles 17 and 18 must be determined during the PAR and corroborated in the commission's final report, which will also contain estimation, whenever possible, of the value of the benefit which was obtained and intended.

Paragraph 1. In all cases, the final amount of the fine will have the following limits:

I – minimum, the highest value between the obtained advantage and that established in Article 19; and

II – maximum, the lesser value between:

a) twenty percent of the gross revenues from the last fiscal year prior to the initiation of the PAR, excluding taxes; or
b) three times the value of the obtained or intended advantage.

Paragraph 2. The value of the obtained or intended advantage is equivalent to the obtained or intended gains by the legal entity which would not have occurred without the practice of a wrongful act, adding, when applicable, to the corresponding value any improper advantage promised or given to a public agent or to thirds parties related thereto.

Paragraph 3. For the purposes of calculus of the amount to which Paragraph 2 refers, legitimate costs and expenses will be deducted when they are proven to have been made or which would be owed or expended had the wrongful act not be occurred.

Article 21. The Minister of State Head of the Office of the Comptroller General will establish a methodology to calculate the gross revenues and taxes to be excluded for the purposes of calculating the fine to which Article 6 of the Law nº 12.846 of 2013 refers.

Sole Paragraph. The values to which this Article refers can be calculated, among other ways, through:

I – sharing of tax information, as described in Item II of Paragraph 1 of Article 198 of Law nº 5.172 of October 25th, 1996; and

II – accounting records produced or published by the legal entity accused, in Brazil or abroad.

Article 22. If it is not possible to use the gross revenue of the legal entity from the year prior to initiation of the PAR, the percentage of the factors indicated in Articles 17 and 18 will be applied to:

I – the value of the gross revenue of the legal entity, excluding taxes, in the year during which the wrongful act occurred, if the legal entity had no revenue in the year prior to the opening of the PAR;

II - the total amount of funds received by the non-profit legal entity in the year that the wrongful act occurred; or

III – in all other cases, the estimable annual revenue of legal entity, taking into account any information regarding its economic situation or the status of its business, such as net equity, capital stock, number of employees, contracts, and others.

Sole Paragraph. In the cases provided for in this Article, the value of the fine will be limited to a minimum of R$ 6.000,00 (six thousand reais) and a maximum of R$ 60.000.000,00 (sixty millions reais).

Article 23. When a leniency agreement is signed, the applicable fine will be reduced in accordance with the fraction agreed therein, in line with the limits established by Paragraph 2 of Article 16 of Law nº 12.846 of 2013.

Paragraph 1. The value of the fine foreseen in this Article may be less than the minimum limit provided for in Article 6 of Law nº 12.846 of 2013.

Paragraph 2. If the signatory authority declares non-compliance with the leniency agreement due to infringement attributable to the collaborative legal entity, the full amount determined before the reduction to which this Article refers will be charged in accordance with Section IV, discounting fractions of the fine which may have already been paid.

Section III

Extraordinary Publication of the Sanctioning Administrative Decision

Article 24. The legal entity subjected to administrative sanction for committing wrongful acts against public administration, in the terms of Law nº 12.846 of 2013, will cumulatively publish the sanctioning administrative decision, as excerpt of judgment:

I – in a media outlet widely circulated in the area in which the violation occurred and in which the legal entity operates, or, in the absence of such outlet, in a nationwide publication;

II - in a notice posted at the establishment or offices or in place at which it conducts its activities, in a location that allows it to be visible by the public, for a period of at least thirty days; and

III – on its website, for a period of thirty days, and highlighted on the main page of that site.

Sole Paragraph. The publication to which this Article refers will be made at the expenses of the sanctioned legal entity.

Section IV

Collection of the Fine Applied

Article 25. The fine applied at the end of PAR will be totally collected by the sanctioned legal entity within a period of thirty days, as described in paragraphs 1 and 3 of Article 11.

Paragraph 1. Having made the payment, the sanctioned legal entity will present to the agency or entity which has applied the sanction a document that attests the full payment of the amount of the imposed fine.

Paragraph 2. If the fine has not been paid at the end of the term established in this Article, or if the payment in full is not attested, the agency or entity which has applied it will submit the debt for inclusion in the Federal Tax Delinquency List[1] or of government agencies and federal public foundations.

Paragraph 3. If the entity which has applied the fine does not have a Tax Delinquency List, the value will be collected regardless of prior inclusion.

Section V
Judicial Procedures

Article 26. Judicial measures, in Brazil or abroad, such as the collection of the administrative fine applied in the PAR, action seeking extraordinary publication, prosecution of sanctions under items I to IV of Article 19 of Law nº 12.846 of 2013, full reparation for damages and losses, in addition to any judicial action for finding of facts or guarantee of lawsuit or preservation of lenciency agreement, will be requested to the legal representation body or equivalent of the affected agencies or entities.

Article 27. Within the direct federal public administration, judicial action shall be brought by the Attorney General of the Union[2], with the exception of the collection of the administrative fine applied in the PAR, which will be sought by the Attorney General of the National Treasury[3].

Sole paragraph. Within government agencies and federal public foundations, judicial action shall be brought by the Federal Attorney's Office[4], even in cases of collection of the administrative fine applied in the PAR, while respecting the specific competencies of the Central Bank Attorney General's Office[5].

CHAPTER III
LENIENCY AGREEMENT

Article 28. Leniency agreement will be signed with legal entities responsible for committing wrongful acts as provided for in Law nº 12.846 of 2013, and administrative

[1] *Dívida Ativa da União,* in Portuguese
[2] *Procuradoria-Geral da União*, in Portuguese
[3] *Procuradoria-Geral da Fazenda Nacional*, in Portuguese
[4] *Procuradoria-Geral Federal*, in Portuguese
[5] *Procuradoria-Geral do Banco Central,* in Portuguese.

offenses as provided for in Law nº 8.666, of 1993, and in other rules of public bidding and government procurement, in order to promote exemption or mitigation of the sanctions, provided that they effectively cooperate with investigations and administrative proceedings, and such cooperation resulting in:

I – identification of all persons involved in the administrative offense, if applicable; and

II – expeditious receipt of information and documents which prove the offense under investigation.

Article 29. The Office of the Comptroller General is responsible for entering into leniency agreements within the scope of Federal Executive Branch and in the cases of wrongful acts against foreign public administration.

Article 30. The legal entity seeking to enter into a leniency agreement must:

I – be the first to state its interest in cooperating with the investigation of the specific wrongful act, when such circumstance is relevant;

II – have completely ceased its involvement in the wrongful act, from the date of proposal for agreement;

III – admit its participation in administrative offense;

IV – cooperate fully and continuously with investigations and administrative proceedings and attend, at its own expenses and whenever requested, procedural acts, until the conclusion of the proceedings; and

V – provide information, documents and elements that prove the administrative offense.

Paragraph 1. The leniency agreement to which this Article refers will be proposed by the legal entity, through its representatives, in accordance with its articles of association[6] or articles of organization[7], or by an attorney-in-fact with specific authorization to do so, in accordance with Article 26 of Law nº 12.846 of 2013.

Paragraph 2. The proposal of leniency agreement can be made up to the conclusion of the report to be drafted during the PAR.

Article 31. The proposition of a leniency agreement can be made orally or in writing, and will include express declaration by the proponent legal entity that it has been advised about its rights, guarantees and legal duties and that non-compliance with the determinations and requests of the Office of the Comptroller General during the negotiation stage will result in withdrawal of the proposal.

[6] *"estatuto",* in the original text in Portuguese
[7] *"contrato social",* in the original text in Portuguese

Paragraph 1. The presented proposal will receive confidential treatment and access to its content will be restricted to specific public servants assigned by the Office of the Comptroller General to take part in the negotiation of the leniency agreement, while the proponent legal entity may authorize to share or disclose the existence of the proposal or its content, provided that there is consent of the Office of the Comptroller General.

Paragraph 2. A memorandum of understanding may be signed between the proponent legal entity and the Office of the Comptroller General in order to formalize the proposal and define the parameters of the leniency agreement.

Paragraph 3. Once the leniency agreement is proposed, the Office of the Comptroller General can request the files of administrative proceedings underway in other agencies or entities of federal public administration related to the facts to which the agreement refers to.

Article 32. The negotiation concerning leniency agreement must be concluded within a period of one hundred eighty days from the date of submission of the proposal.

Sole Paragraph. At the discretion of the Office of the Comptroller General, the term established in this Article can be extended, if circumstances require.

Article 33. Rejection of the proposal of leniency agreement will have no impact on the recognition of the wrongful act under investigation and no disclosure will be made regarding the rejected proposal, with the exception described in Paragraph 1 of Article 31.

Article 34. The proponent legal entity may withdraw the proposal of leniency agreement at any time prior to its signature.

Article 35. If the agreement it is concluded, the documents presented during the negotiation will be returned, without retaining copies, to the proponent legal entity and their use will be prohibited for liability purposes, except when federal public administration has knowledge of them regardless of submission of proposal for leniency agreement.

Article 36. The leniency agreement will stipulate the conditions to ensure the effectiveness of collaboration and useful outcome of proceedings, including the clauses and obligations that, given the circumstances of the case, are deemed necessary.

Article 37. The leniency agreement will contain, among other provisions, clauses on:

I – the commitment to uphold the requirements established in items II to V of Article 30;

II – the loss of agreed benefits, in case of breach of the agreement;

III – the characterization of the document as an extrajudicial instrument of agreement, in accordance with item II of Article 585 of Law nº 5.869, March 11th, 1973; and

IV – the adoption, implementation or improvement of a integrity program, pursuant to the parameters established in Chapter IV.

Article 38. The Office of the Comptroller General may conduct and judge administrative proceedings to verify the administrative offenses provided for in Law nº 12.846 of 2013, in Law nº 8.666 of 1993, and in other rules of public bidding and government procurement, whose facts have been reported through a leniency agreement.

Article 39. Until the conclusion of the leniency agreement by the Minister of State Head of the Office of the Comptroller General, the identity of the legal entity signatory of the agreement will not be disclosed to the public, with the exceptions contained in Paragraph 1 of Article 31.

Sole Paragraph. The Office of the Comptroller General will restrict access to commercially sensitive documents and information of the legal entity signatory of the leniency agreement.

Article 40. Once the leniency agreement has been fulfilled by the collaborative legal entity, any of the following effects below may be declared in favor of the legal entity, pursuant to the terms stipulated in the agreement:

I – exemption from extraordinary publication of the sanctioning administrative decision;

II – exemption from prohibition on receiving incentives, subsidies, grants, donations or loans from public agencies and entities and of public financial institutions or controlled by the government;

III – reduction in the final value of the applicable fine, in accordance with Article 23; or

IV – exemption from or attenuation of the administrative sanctions established in Article 86 and Article 88 of Law nº 8.666 of 1993, or of other rules of public bidding and government procurement.

Sole Paragraph. The effects of leniency agreement will be extended to legal entities that belong to the same economic group, in a *de facto* and *de jure* manner, provided that they have signed a joint agreement, subject to the conditions laid down in it.

CHAPTER IV
INTEGRITY PROGRAM

Article 41. For the purposes of this Decree, an integrity program is, within the context of a legal entity, the set of internal mechanisms and procedures of integrity, audit and incentivized reporting of irregularities as well as the effective enforcement of codes of ethics and conduct, policies and guidelines aiming to detect and remedy embezzlement, fraud, irregularities and illegal acts practiced against national or foreign public administration.

Sole Paragraph. The integrity program must be structured, applied and updated in accordance with the characteristics and current risks of the activities of each legal entity, which must ensure the constant improvement and adaptation to the referred program, in order to guarantee its effectiveness.

Article 42. For the purposes of the provisions of Paragraph 4 of Article 5, the integrity program will be evaluated concerning as to its existence and enforcement in accordance with the following parameters:

I – commitment by the senior management of the legal entity, including directors, as evidenced by their visible and unequivocal support for the program;

II – standards of conduct, code of ethics, integrity policies and procedures applicable to all employees and administrators, regardless of position and duties;

III - standards of conduct, code of ethics, integrity policies and procedures extended, when necessary, to third parties such as suppliers, service providers, intermediaries and associates;

IV – periodical training on the integrity program;

V – periodical risk assessment to make any necessary adaptations to the integrity program;

VI – accounting records that accurately and fully reflect the transactions of the legal entity;

VII- internal controls that ensure the prompt preparation and reliability of the financial reports and statements of the legal entity;

VIII – specific procedures to prevent fraud and illicit acts within tendering proceedings, execution of administrative contracts or in any interaction with public sector, even if intermediated by third parties, such as in payment of taxes, submission to supervision, or obtainment of authorizations, licenses, permissions and certificates;

IX – independence, structure and authority of the internal body responsible for enforcing the integrity program and monitoring its performance;

X – channels for reporting irregularities which are open and widely disseminated to employees and third parties, and mechanisms for the protection of whistleblowers;

XI – disciplinary measures in cases of violations of the integrity program;

XII – procedures that ensure the prompt interruption of violations or irregularities and the timely reparation of the damage caused;

XIII – due diligence for hiring and, as the case may be, supervising third parties such as suppliers, service providers, intermediaries and associates;

XIV – verification, during mergers, acquisitions and corporate restructuring, of any irregularities or illicit acts or of the existence of vulnerabilities of legal entities involved in such operations;

XV – continuous monitoring of the integrity program, aiming at improving its effectiveness to prevent, detect and combat the occurrence of wrongful acts as provided for in Article 5 of Law nº 12.846 of 2013; and

XVI – transparency of the legal entity regarding donations made to candidates and political parties.

Paragraph 1. In the evaluation of the parameters to which this Article refers, the size and the specific characteristics of the legal entity will be considered, such as:

I – the number of officials, employees and collaborators;

II – the complexity of the internal hierarchy and the number of departments, directorates or sectors;

III – the use of intermediaries as consultants or commercial representatives;

IV – the market sector in which it operates;

V- the countries in which it operates, directly or indirectly;

VI – the level of interaction with the public sector and the importance of government authorizations, licenses and permits in its operations; and

VII – the number and location of legal entities that integrate the economic group; and

VIII – the qualification as microenterprise or small-sized enterprise.

Paragraph 2. The effectiveness of integrity program regarding the wrongful act under investigation will be considered for the purposes of evaluation to which this Article refers.

Paragraph 3. In the evaluation of microenterprises and small-sized enterprises the formalities of the parameters in this Article will be reduced, and the Items III, V, IX, X, XIII, XIV and XV of this Article will not be specifically applied.

Paragraph 4. The Minister of State Head of the Office of the Comptroller General is responsible for issuing supplementary guidelines, rules and procedures related to the evaluation of integrity program to which this Chapter refers.

Paragraph 5. The reduction in evaluation parameters for microenterprises and small-sized enterprises described in Paragraph 3 may be subject to joint regulation by the Minister of State of the Secretariat of Micro and Small-Sized Enterprise and the Minister of State Head of Office of the Comptroller General.

CHAPTER V
NATIONAL REGISTRY OF INAPT AND SUSPENDED COMPANIES AND THE NATIONAL REGISTRY OF PUNISHED COMPANIES

Article 43. The National Registry of Inapt and Suspended Companies (CEIS, in its acronym in Portuguese) will contain information on the administrative sanctions applied to individuals or legal entities which imply restriction to the right to participate in public bidding processes and to enter into contracts with public administration in any federative sphere, including:

I – temporary suspension from participation in public bidding process and prohibition of entering into contracts with the public administration, as described in Item III of Article 87 of Law nº 8.666 of 1993;

II – declaration of inaptitude to take part in public bidding processes and entering into contracts with public administration, as described in Item IV of Article 87 of Law nº 8.666 of 1993;

III – prohibition to take part in public bidding processes and enter into contracts with the Union, the States, the Federal District or Municipalities, as described in Article 7 of Law nº 10.520 of July 17th, 2002;

IV - prohibition to take part in public bidding processes and enter into contracts with the Union, the States, the Federal District or Municipalities, as it is described in Article 47 of Law nº 12.462 of August 4th, 2011;

V - temporary suspension from participation in public bidding process and prohibition of entering into contracts with the public administration, as described in Item IV of Article 33 of Law nº 12.527 of November 18th, 2011; and

VI - declaration of inaptitude to take part in public bidding processes and entering into contracts with public administration, as described in Item V of Article 33 of Law nº 12.527 of 2011.

Article 44. Other sanctions that imply restriction to the right to participate in public bidding processes or enter into contracts with public administration may be registered in the CEIS, even when they are not of administrative nature.

Article 45. The National Registry of Punished Companies (CNEP, in its acronym in Portuguese) will contain information on:

I – the sanctions imposed on the basis of Law nº 12.846 of 2013; and

II – any breach of a leniency agreement signed within the scope of Law nº 12.846 of 2013.

Sole Paragraph. Information about the leniency agreements signed within the scope of Law nº 12.846 of 2013, will be registered in CNEP after the conclusion of the agreement, unless it causes any damage to investigations or administrative proceedings.

Article 46. CEIS and CNEP will contain, without prejudice to others registries established by the Office of the Comptroller General, data and information about:

I – name or corporate name of the individual or legal entity sanctioned, respectively;

II – registry number of the legal entity in National Registry of Legal Entities (CNPJ, in its acronym in Portuguese) or of the individual in Registry of Individuals (CPF, in its acronym in Portuguese).

III – type of sanction;

IV – legal basis of the sanction;

V – number of the proceeding whereby the sanction was imposed;

VI –date in which the limiting or impeditive effect of the sanction has started, or the date of application of the sanction;

VII – expiry date of the limiting or impeditive effect of the sanction, if applicable;

VIII – name of the sanctioning agency or entity; and

IX – amount of the fine, when applicable.

Article 47. Removal of data and information contained in CEIS or CNEP will occur:

I – upon expiration of the limiting or impeditive effect of the sanction; or

II – through a request of the interested legal entity, after the following requirements are met, when applicable:

a) publication of the decision for rehabilitation of the legal entity sanctioned, in as provided for in Items II and VI of Article 43;
b) full implementation of leniency agreement;
c) reparation of damage caused; or
d) payment of the fine applied.

Article 48. The supply of data and information to which Articles 43 to 46 refer, by agencies and entities of Executive, Legislative and Judiciary Branches of each spheres of government, will be disciplined by the Office of the Comptroller General.

CHAPTER VI
FINAL PROVISIONS

Article 49. Information related to a PAR initiated within agencies and entities of the Federal Executive Branch will be registered in electronic management system for sanctioning administrative proceedings maintained by the Office of the Comptroller General, pursuant to an act of the Minister of State Head of the Office of the Comptroller General.

Article 50. Agencies and entities of the public administration, in performing their regulatory authorities, will provide for the effects of the Law nº 12.846 of 2013, within regulated activities, including in the proposition and execution of the leniency agreement.

Article 51. Processing a PAR does not interfere in the regular path of any specific administrative proceedings to verify the occurrence of damages and losses to the federal public administration resulting from a wrongful act committed by a legal entity, with or without the participation of a public agent.

Article 52. The Minister of State Head of the Office of the Comptroller General is responsible for issuing supplementary guidelines and procedures for the enforcement of this Decree.

Article 53. This Decree enters into force on the date of its publication.

Brasilia, March 18th, 2015; 194th year of Independence and 127th year of the Republic.
DILMA ROUSSEFF
José Eduardo Cardozo
Luís Inácio Lucena Adams
Valdir Moysés Simão

ORDINANCE Nº 910 OF 7TH APRIL 2015

Defines the procedures to investigate administrative liability to celebrate the leniency agreement referred in Law nº 12.846 of 1st August 2013.

THE MINISTER OF THE OFFICE OF THE COMPTROLLER GENERAL in the use of its powers conferred by item II of article 87 sole paragraph of Brazil's Federal Constitution and taking into account the described in paragraph 2 of article 8, and article 9 and in paragraph 10 of article 16 of Law nº 12.846 of 1st August 2013, and in the article 52 of the Decree nº 8.420 of 18th March 2015,

DECIDES:

Article 1. The administrative process to investigate the administrative liability of legal entity and the procedures to celebrate the leniency agreement referred in Law nº 12.846 of 1st August 2013, regulated by the Decree nº 8.420 of 18th March 2015, will follow the precedent in this Ordinance.

CHAPTER I

GENERAL PROVISIONS

Article 2. The investigation of the legal entity administrative liability that can result in applications of sanctions provided in article 6 of Law nº 12.846 of 2013 will be made through the Liability Administrative Process – PAR, observing the described in Decree nº 8.420 of 18th March 2015 and in this ordinance.

Paragraph 1. The acts provided as administrative infractions to the Law nº 8.666 of 21st June 1993, or to other rules of bids and public administration contracts that also be categorized as wrongdoing in Law nº 12.846 of 2013, they will be investigated and judged according article 12 of Decree nº 8.420 of 2015, applying the procedure described in this ordinance.

Paragraph 2. In the absence of enough authorship and materiality evidences to subsidize PAR introduction, a preliminary investigation, confidential and non-punitive can be established, in accordance with paragraphs 1 to 5 of article 4 of Decree nº 8.420 of 2015.

CHAPTER II

THE COMPETENCE TO ESTABLISH, ADVOCATE AND JUDGE

Article 3. The Office of the Comptroller General – CGU has, in relation to wrongdoing practice against national public administration, within the Federal Executive Branch, competence:

I – a competitor to establish and judge PAR; and

II – exclusively to advocate the PAR established to examine its regularity or to correct its follow up, promoting the application of the appropriate administrative penalty.

Paragraph 1. The competence provided in item I of the article 3 will be exercised because of one of the following reasons:

I – when detected omission of the originally competent authority;

II – when there is no objective conditions to its execution in its soured agencies and entities;

III – issue's complexity, repercussion and relevance;

IV – amount of contracts kept by the legal entity with the injured agency or entity;

V – investigation that involves acts and facts related to more than one agency or entity of federal public administration.

Paragraph 2. The competence referred in item I of the article can be exercised by the Office of the Comptroller General – CGU at the request of the injured agency or entity, in the hypothesis provided in items II to V of paragraph 1.

Paragraph 3. The exclusively competence to advocate PAR provided in article II of this article by the Minister of the Office of the Comptroller General.

Article 4. CGU has private competence to investigate wrongful acts practiced against it.

Article 5. The competence to judge an established or advocated PAR by CGU it is a competence of CGU's minister.

Sole Paragraph. The following competences are delegated in accordance with paragraphs I and II of articles 8 and 9 of Law nº 12.846 of 2013 and of the article 4 of the Decree nº 8.420 of 2015:

I – to the General Inspector of the Union to:

a) establish a preliminary investigation; and
b) decide by the filing of the complaint, unfounded representation or preliminary investigation, in case of lack of authorship and materiality evidences; and

II - to the Executive Secretary to establish PAR.

Article 6. Within CGU, the General Inspector of the Union – CRG will provide technical and administrative support to the preliminary investigation process and to PAR

Article 7. The advocated PAR will continue from the phase when it is and a new commission can be designated.

Paragraph 1. It will be used all the proofs already attached to the proceedings, except those impregnated with absolute nullity.

Paragraph 2. It is a competence of the General Inspector of the Union to establish a disciplinary procedure or, as the case may be, propose to CGU's minister that he represents the President of Republic to investigate silent authority liability related to PAR.

Article 8. It is a competence of CGU to establish PAR by wrongdoing practice against foreign public administration.

CHAPTER III
PRELIMINARY INVESTIGATION

The preliminary investigation constitutes a preparatory procedure that aims to collect evidences of authorship and materiality to verify the necessity of PAR establishment.

Paragraph 1. The preliminary investigation will be unnecessary if the present authorship and materiality evidences be enough to establish PAR.

Paragraph 2. In case of unidentified denounce that contains minimum elements of authorship and materiality will be established, ex officio, a preliminary investigation to verify the verisimilitude of the denounced facts.

Paragraph 3. The preliminary investigation will be conducted by a commission composed by, at least, two effective civil servants, that will exercise its functions with independence and impartiality, and using of all admitted probative means in law to elucidate the facts.

Paragraph 4. The preliminary investigation process can be established through a dispatch that will indicate, among the commission members, that one who will perform the president function.

Paragraph 5. The deadline for preliminary investigation conclusion will not exceed sixty days and be extended for the same period, by a justified request of the commission's president to the established authority.

Paragraph 6. The preliminary investigation commission must elaborate a conclusive report about the existence or not of authorship and materiality related to the legal entity administrative liability by the practice of wrongdoing against public administration, and should recommend PAR establishment or the issue filing, depending on the case.

Paragraph 7. Concluded the activities of the preliminary investigation commission, the case will be sent to the established authority, that can determine the realization of new diligences, the issue filing or the PAR establishment.

CHAPTER IV
ESTABLISHMENT AND TRIAL OF PAR

Article 10. At the moment of PAR establishment, the competent authority will appoint a commission composed by two or more permanent civil servants.

Paragraph 1. PAR establishment will be made by an ordinance published in the Official Gazette (DOU), which will contain:

I – the name, position and enrollment number of commission members;

II – the indication of the member who will preside the commission;

III – the number of the administrative process where are described the facts to investigated; and

IV – the deadline for process' conclusion.

Paragraph 2. The members of PAR commission must observe the deterrent hypothesis and suspicion provided in articles 18 to 20 of Law nº 9.784 of 29th January of 1999, and the duty provided in article 4 of Law nº 12.813 of 2013.

Paragraph 3. The deadline for PAR conclusion will not exceed one hundred eighty days, allowed extension by a request of the commission president to the established authority that will decide in a reasoned manner.

Article 11. The commission will exercise its activities with independence and impartiality.

Sole Paragraph. The secrecy will be ensured, always when it is necessary to facts elucidation and image preservation of those involved or when demanded by public administration interest, ensuring the right to wide defense and to the contradictory.

Article 12. The subpoenas will be made by web, mail or by any other mean that ensures the knowing of the accused legal entity.

Paragraph 1. The deadlines will be counted from the official date of notification, observed the described in Chapter XVI of Law nº 9.784 of 29th January 1999.

Paragraph 2. If the subpoena referred in this article does not be successful, anew subpoena will be made by a notice published in the official press, in a major newspaper of the state in which the legal entity has its head office, and in the website of the agency or entity, counting the deadline from the last publication date of the notice.

Paragraph 3. Concerning the legal entity which does not has a head office, headquarters or a representation in the country and being unknown its representation abroad, frustrated the subpoena in accordance with the article, it will be made by a published notice in the official press and in the website of the agency or entity, counting the deadline from the last publication date of the notice.

Article 13. Established the commission, the legal entity will be notified of PAR establishment to follow-up all the instructor acts.

Article 14. The commission will establish the PAR and can use all the probative means admitted in law, as well as, to do any necessary diligence to elucidate the facts.

Sole Paragraph. The proceeding acts can be done by a videoconference or another technological device which transmits sound and images in real time, ensuring the right to contradictory and wide defense in the way described in CGU's Normative Ruling nº 12 of 1st November 2011.

Article 15. The commission, to the right and regular exercise of its functions, can:

I – Propose to the established authority the precautionary suspension of the investigation target act or procedure effects;

II – request the performance of experts with outstanding knowledge of public agencies and entities or other organizations, to help in the analysis of the investigated case.

III – request, by the established authority, to the legal representation agency or equivalent of the injured agencies or entities that require the necessary measures to the investigation and the infractions processing, including search and seizure in the country or abroad.

Article 16. Typifying the wrongdoing, with facts and proofs specification, the commission will enjoin the legal entity to, in the period of thirty days, present a written defense and specify any proofs that it intends to produce.

Sole Paragraph. In case of a new proofs' collection by the commission, the legal entity can present written allegations concerned to them, in the period of ten days, counting from the proof's collection subpoena.

Article 17. Concluded the investigation works and the written defense analysis, the commission will produce the final report about the facts investigated and the possible administrative liability of the legal entity, in which will follow in a reasoned way the sanctions applied, showing the penalty amount or the case filing.

Sole Paragraph. Elapsed the defense period referred in article 16 without any manifestation from the legal entity, the commission will produce a final report based exclusively on proofs collected and produced in PAR process.

Article 18. Concluded the final report, the commission will cite the legal entity to manifest itself in the period of three days.

Article 19. The commission by the established authority, before the administrative process conclusion will notify Public Ministry in order to investigate the possible offenses.

Article 20. Before the conclusion of commission works, PAR will be sent to legal manifestation produced by Public Attorney, the legal support agency or equivalent, previously to the trial by the competent authority.

Article 21. The administrative decision pronounced by the competent authority at the end of PAR will be published in the Official Gazette and in the website of the agency or entity.

Sole Paragraph. The penalties applied will be included in National Registry of Punished Companies – CNEP and in the National Registry of Inapt and Suspended Companies – CEIS, depending on the case.

Article 22. Verified the occurrence of possible illicits to be investigated in other spheres, without damage to the communication provided in article 19 of this ordinance, PAR will be sent to:

I – to Federal Public Attorney's Office and its linked agencies or to equivalent legal representation agency;

II – to the rest of the competent agencies, depending on the case.

Article 23. Of the sanctioned administrative decision can be made a reconsideration request with suspensory effect, in the period of ten days , counting from decision’s publication.

Paragraph 1. The legal entity against which was imposed sanctions in PAR and that does not present a reconsideration request must accomplished them in thirty days, counting from the end of the deadline for reconsideration request interposition.

Paragraph 2. The competent authority will have the period of thirty days to decide about the matter alleged in reconsideration request and to publish a new decision.

Paragraph 3. Kept the sanctioned administrative decision, it will be granted to the legal entity, a new thirty days period to accomplish the sanctions which were imposed to it, counting from the publication date of the new decision.

Paragraph 4. Once the penalty amount has been collected, in the way described in the decision, the sanctioned legal entity will present a document testifying its full payment.

Paragraph 5. If the penalty payment it is no made or in case of partial payment , the established authority, in accordance with article 25 of the Decree nº 8.420 of 2015, will send the debt to:

I – Inscription in the Federal Active Debt of the Union, public foundations or autarchies; or

II – implementation of the applicable measures for debit collection.

Article 24. The established PAR to investigate wrongdoing against foreign public administration will follow the procedure described in this chapter.

CHAPTER V
SUPERVISIONS INVESTIGATION OF THE LEGAL ENTITY LIABILITY IN THE FEDERAL EXECUTIVE BRANCH

Article 25. It is a competence of the General Inspector of the Union – CRG to follow-up and supervise the procedure of legal entity administrative liability exercised by the agencies and entities of Federal Executive Branch.

Sole Paragraph. The CRG can make technical visits and inspections in agencies and entities over its supervision and aiming to guide and evaluate the legal entities liability procedure.

Article 26. The agencies and entities of Federal Executive Branch must:

I – Meet, as soon as possible, the CRG information requests, sending copies of the preliminary original investigation procedures and of legal entity administrative liability, concluded or in progress;

II – to keep updated the information concerning to the preliminary investigation proceedings and of legal entity administrative liability, in accordance with which is defined by CGU.

CHAPTER VI
LENIENCY AGREEMENT

Article 27. The leniency agreement will be celebrated with the legal entity responsible to the practice of wrongdoing provided in Law nº 12.846 of 2013 and of the administrative illicits provided in Law nº 8.666 of 1993 and in other bids and contracts rules, in order to exempt and reduce the sanctions, since they effectively collaborate with the investigations and the administrative proceeding, off this collaboration, must result:

I – the identification of others involved in administrative infraction, when it is the case; and

II – quickly achievement of documents and information which proof the infraction under investigation.

Article 28. Leniency agreement proposal presented in accordance with article 31 of Decree nº 8.420 of 2015, it will be run by CGU's Executive Secretariat.

Paragraph 1. The proponent legal entity will expressly declare that it was guided about its rights, guarantees, legal duties and warning it that if CGU's requests and determinations are not met during the negotiation phase, it will result in proposal abandonment.

Paragraph 2. The leniency agreement process will receive secret treatment and the access to its content will be restricted to the commission members referred in item I of article 29 and to other civil servants designated as technical assistants, except if there is the possibility of the proponent legal entity to allow the disclosure or sharing of proposal existence or its content, since there is a consent from CGU.

Article 29. Once presented the leniency agreement proposal, the Executive Secretary of CGU will:

I – appoint by order, a commission responsible to lead the agreement negotiations, composed by a minimum of two effective and permanent civil servants;

II – supervise the works related to the leniency agreement negotiations, and also can participate in the meetings concerning negotiations activities;

III – it can request the files of liability administrative proceedings in progress in CGU or in other agencies or entities of federal public administration, related to the object of the agreement; and

IV – adopt the necessary steps to accomplish the rules established by the Federal Court of Accounts of Brazil - TCU

Sole Paragraph. The Executive Secretary of CGU may request the appointment of an agency or entity's injured civil servant or employee to integrate the commission referred in item I of this chapter.

Article 30. It is on the competence of the commission responsible to lead the negotiations of the leniency agreement:

I – clarify to the proponent legal entity the necessary legal requirements to celebrate the leniency agreement;

II – evaluate the elements brought by the proponent legal entity, these elements must demonstrate:

a) be the first to manifest interest in cooperate with the investigations of the specific wrongdoing, when this circumstance will be relevant;
b) admission of its participation in the administrative infraction;
c) the commitment to finish completely its involvement in the wrongdoing; and
d) the effectiveness of cooperation offered by the proponent to the investigations and to the administrative process;

III – propose the signature of a memorandum of understanding;

IV – to evaluate the integrity program, if there is one, in accordance with the specific CGU regulation;

V – to propose clauses and obligations to leniency agreement which in face of the circumstances of the case, be necessary to ensure:

a) the effectiveness of the collaboration and the process useful result;
b) Legal entity commitment in promote changes in its governance that reduce the risk of new wrongdoing occurrence;
c) Legal entity obligation in adopt, enforce and improve the integrity program; and
d) Effective commitments monitoring signed in the leniency agreement;

VI – submit the CGU Executive Secretary a conclusive report about the negotiations, suggesting, when it is the case the enforcement of the effects provided by the article 40 of Decree nº 8.420 of 2015 and the applicable penalty amount.

Paragraph 1. The commission responsible to lead the negotiations can request to the Secretariat of Transparency and Prevention against Corruption – STPC a manifestation about the adoption, enforcement, improvement and evaluation of the integrity program referred in items IV and V, letter c, article 30.

Paragraph 2. The integrity program evaluation referred in item IV of article 30 can use the evaluation previously initiated or concluded in head office of PAR.

Article 31. After the legal entity express interest in collaborate with the investigation of the wrongdoing provided in Law nº 12.846 of 2013, a memorandum of understanding can be signed with CGU to formalize the proposal and define the leniency agreement parameters.

Article 32. At any moment which precedes the leniency agreement celebration, the proponent legal entity can give up on the proposal or CGU can reject it.

Article 33. The leniency agreement will contain, among other provisions, clauses about:

I – the delimitation of acts and facts by covered by it;

II – the commitment to fulfill the requirements provided in items II to V of article 30 of Decree nº 8.420 of 2015;

III – the loss of agreed benefits, in case of agreement non-fulfillment;

IV – the nature of the extrajudicial executive title of agreement instrument, in accordance with Civil Process Code; and

V – the adoption, enforcement or improvement of the integrity program.

Paragraph 1. The leniency agreement will establish the deadline and how CGU is going to monitoring it in the fulfillment of the conditions established in it.

Paragraph 2. The leniency agreement celebration does not exclude, in any hypothesis, the obligation full atonement of the caused damage.

Article 34. The CRG must keep updated in CNEP the information about the celebrated leniency agreement, except if this procedure causes any damage to the investigations and administrative process.

Article 35. The leniency agreement celebration:

I – exempt the legal entity of sanctions provided in item II of article 6 and item IV of article 19 of Law nº 12.846 of 2013; and

II – reduce in at least 2/3 (two thirds), in accordance with the agreement, the amount of the applicable penalty, provided in item I of article 6 of Law nº 12.846 of 2013; and

III – it will exempt or attenuate), in accordance with the agreement, and the administrative sanctions provided in articles 86 to 88of Law nº 8.666 of 1993 or other rules of contracts and bids.

Paragraph 1. The benefits provided in this article are conditioned to the agreement fulfillment.

Paragraph 2. The benefits of leniency agreement will be extended to legal entities that compose the same economic group, since they have signed the agreement together, respected the established conditions in it.

Article 36. In case of leniency agreement non-fulfillment:

I – the legal entity will lose the agreed benefits and will be prohibited to celebrate a new agreement by the period of 3 (three) days, counted from the non-fulfillment knowing by public administration;

II – the PAR referred in acts and facts included in the agreement will be resumed; and

III – The full penalty amount will be charged, discounting the settlements already paid.

Sole Paragraph. The leniency agreement non-fulfillment will be registered in CNEP.

Article 37. Concluded the follow-up treated in article's 33 sole paragraph, the leniency agreement will be definitely considered fulfilled by the act of the Minister of CGU, who will declare:

I – the exemption of the provided sanction in items I and III of article 35;

II – the non-fulfillment of the sanction provided in item II of article 35; and

III – to meet, fully and satisfactorily, the commitments assumed referred in items I and IV of article 37 of Decree nº 8.420 of 2015.

CHAPTER VII

FINAL PROVISIONS

Article 38. If the legal entity present in its PAR defense, established by CGU, informations and documents referred to the existence and enforcement of the integrity program, the suing commission can request the matter evaluation by Secretariat of Transparency and Prevention against Corruption.

Article 39. Within CGU, if the penalty was not paid or in case of partial payment, CGR will send the debit to subscription in the Active Debt of the Union or to the injured entity for adoption of provided measures in article 25 of Decree nº 8.420 of 2015.

Article 40. The decision about establishment, leading and closing of PAR and leniency agreement preliminary investigation, will not in accordance with the article 5 of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, enacted by Decree nº 3.678 of 30th November 2000, be influenced by:

I – by considerations of national economic interest;

II – by the potential effect in Brazil affairs with other countries; or

III – by the identity of involved individuals or legal entities .

Article 41. It is enforced only within CGU the chapters II and V and the articles 38 and 39.

Article 42. This Ordinance comes into effect on the date of its publication.

NORMATIVE RULING No. 1, OF APRIL 7, 2015.

Establishes the methodology for calculation of gross income and taxes to be excluded for determining the fine referred to in art. 6 of Law No. 12,846, of August 1, 2013.

THE MINISTER OF STATE AND CHIEF OFFICER OF THE OFFICE OF THE COMPTROLLER GENERAL, in the use of the attributions conferred to him by items I and II of the sole paragraph of art. 87 of the Constitution of the Federative Republic of Brazil and art. 21 of Decree No. 8,420, of March 18, 2015,

R E S O L V E S:

Art. 1 For the purpose of determining the fine referred to in item I of art. 6 of Law No. 12,846, of 2013, gross revenue comprises the gross income referred to in art. 12 of Decree-Law No. 1,598, of December 26, 1977.

Art. 2 For taxpayers choosing to adopt the Special Unified Regime for the Collection of Taxes and Contributions from Microenterprises and Small Businesses - *Simples Nacional*, gross revenue comprises the gross income referred to in para. 1 of art. 3 of Complementary Law No. 123, of December 14, 2006.

Art. 3 The taxes referred to in item III of para. 1 of art. 12 of Decree-Law No. 1,598/77 are excluded from the gross revenue.

Art. 4 The values referred to in arts. 1 to 3 may be calculated in other ways, by means of:

I- Tax information sharing, in the manner provided for in item II of para. 1 of art. 198 of Law No. 5,172, of October 25, 1966; and

II- Accounting records prepared and published by the accused legal person, in Brazil or overseas.

Art. 5 This Normative Ruling comes into effect on the date of its publication.

VALDIR MOYSÉS SIMÃO

Normative Ruling Nº 2DN OF 7TH APRIL 2015

Regulates the information registry in the National Registry of Ineligible and Suspended Companies – CEIS and in the National Registry of Punished Companies – CNEP

The Minister of the Office of the Comptroller General in the use of its powers conferred by article 48 of Decree nº 8,420 of 18th March 2015 and considering the articles 22 and 23 of Law nº 12,846 of 1st August 2013,

DECIDES:

Article 1. Information record in the National Registry of Ineligible and Suspended Companies – CEIS and in the National Registry of Punished Companies – CNEP, referred in Law nº 12,846 of 1st August 2013 regulated by the Decree nº 8,420 of 18th March of 2015, will follow the established in this Normative Ruling.

CHAPTER I

GENERAL PROVISIONS

Article 2. The information to be registered and updated in CEIS and CNEP must be provided to the Office of the Comptroller General – CGU through the Integrated System of CEIS/CNEP, available in the website "www.ceiscadastro.cgu.gov.br".

Article 3. The agencies and entities of the Executive, Legislative and Judiciary Branches of all government spheres can register themselves in the Integrated System of CEIS/CNEP upon request made by the website informed in article 2.

Article 4. It is competence of the Office of the Inspector General of the Union – CGR to manage and define the operating procedures and the using policy of CEIS, CNEP and of the Integrated System of CEIS/CNEP.

Article 5. The constant information in CEIS and CNEP database will be disclosed at the Federal Government Transparency Portal, available in the website www.portaldatransparencia.gov.br.

CHAPTER II

NATIONAL REGISTRY OF INELIGIBLE AND SUSPENDED COMPANIES – CEIS

Article 6. For the pursposes of what is described in article 23 of Law nº 12,846 of 2013 the agencies and entities of the Executive, Legislative and Judiciary Branches of all government spheres will register themselves and keep information updated in CEIS concerning all administrative sanctions imposed by them to individuals and legal entities that results in restriction in the right to participate in bids or to celebrate contracts with Public Administration, for instance:

I – temporary suspension of the right to participate in bids and restriction to celebrate contracts with Public Administration, as stipulated in article 87, item III of Law nº 8,666 of 1993;

II – declaration of company's ineligibility to bid or celebrate contracts with Public Administration, as provided in article 87, item IV of Law nº 8,666 of 1993;

III – prohibition to bid and celebrate contracts with the Union, the States, the Federal District or Municipalities, as stipulated in article 7 of Law 10,520 of 2002;

IV - prohibition to bid and celebrate contracts with the Union, the States, the Federal District or Municipalities, in accordance with article 47 of Law nº 12,462 of 2011;

V –declaration of ineligibility to bid and celebrate contracts with Public Administration, in accordance with article 33, item V of Law nº 12,527 of 2011; and

VI – temporary suspension of participation in bids and prohibition to celebrate contracts with Public Administration, in accordance with article 33, item IV of Law nº 12,527 of 2011.

Sole Paragraph. It can also be registered in CEIS sanctions:

I – resulting in restriction to the right to participate in bids or celebrate contracts with Public Administration, even if they are not administrative; and

II – applied by international organizations, official foreign cooperation agencies or multilateral financial organizations of which Brazil is a part, that limit the right to individuals and legal entities to celebrate contracts financed with resources of those organizations, in accordance with agreements, protocols, conventions or international treaties approved by National Congress.

CHAPTER III

NATIONAL REGISTRY OF PUNISHED COMPANIES – CNEP

Article 7. The agencies and entities of Executive, Legislative and Judiciary Branches of each government sphere will register and keep updated in CNEP information concerning leniency agreements and sanctions applied by them based on Law nº 12,846 of 2013.

Paragraph 1. Information about leniency agreements will be registered in CNEP after the contract celebration, except if registration may cause damage to investigations or to the administrative process.

Paragraph 2. The non-fulfillment of leniency agreements will be registered in CNEP, and the information will remain registered for three years, in accordance with article 1, paragraph 8 of Law nº 12,846 of 2013.

CHAPTER IV

INFORMATION REGISTRIES

Article 8. CEIS and CNEP will contain, depending on the case, the following information:

I – individual or legal entity's name or business name;

II – inscription number in Individual Taxpayer Registry (CPF) or in Corporate Taxpayer Registry (CNPJ);

III – applied sanction, leniency agreement celebration or its non-fulfillment;

IV – decision legal basis

V – number of the process in which the decision was based;

VI – starting date of the decision´s limitating or deterrent effect, or date of the sanction's application or date of the leniency agreement celebration or date of the decision's non-fulfillment;

VII – final date of decision's limitating or deterrent effect;

VIII – name of the agency or entity which sanctioned or which celebrated the leniency agreement; and

IX – the amount of the fine

Sole Paragraph. Leniency agreement registries must contain information concerning its effects.

Article 9. The penalty registration that contains the final date of the decision's limitating or deterrent effect will be automatically removed from CEIS or CNEP in the indicated date.

Sole Paragraph. Individuals and legal entities which had punishments registered in CEIS based on article 87, item IV of Law nº 8,666 of 1993, or on article 33, item V of Law nº 12,527 of 2011, or on any other rules that demand rehabilitation, should plead it directly with the agency or entity which applied the sanction, being the agency's or entity's responsibility to keep the Register Integrated System of CEIS/CNEP updated.

Article 10. The information related to leniency agreement will remain in CNEP until the date of its accomplishment declaration by the competent authority.

CHAPTER V

FINAL PROVISIONS

Article 11. The registration and content of information available in CEIS and CNEP are responsibility of the agencies and entities authorized in the Register Integrated System of CEIS and CNEP.

Article 12. The Office of the Comptroller General (CGU) can update CEIS and CNEP with information that it becomes aware by other official means such as legal decisions and publications in official gazettes.

Article 13. This Normative Ruling comes into effect on the date of its publication.

VALDIR MOYSÉS SIMÃO

Minister of the Office of the Comptroller General