

LEGAL ALERT

APRIL 30, 2025

CGU, AGU, AND MPF SIGN TECHNICAL COOPERATION AGREEMENT FOR INTERINSTITUTIONAL COLLABORATION ON ANTI-CORRUPTION LENIENCY AGREEMENTS

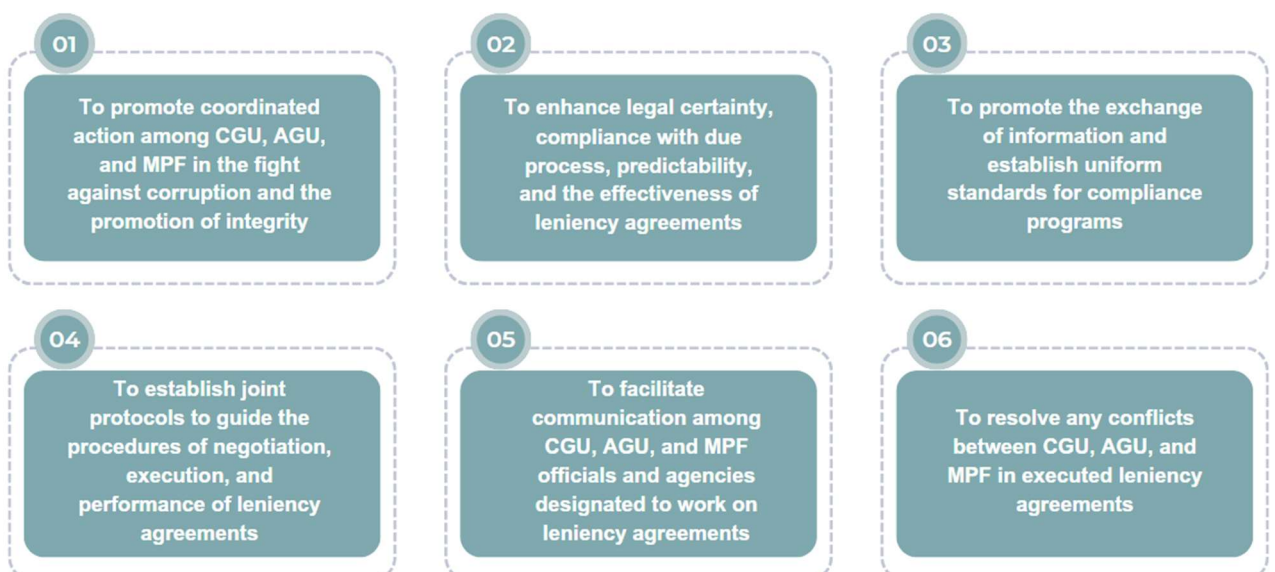
I. INTRODUCTION

On April 25, 2025, a Technical Cooperation Agreement (“TCA”) was signed between the Brazilian Office of the Comptroller General (“CGU”), the Brazilian Office of the Attorney General (“AGU”), and the Federal Prosecution Service (“MPF”) (collectively, the “Signatory Institutions”), with the aim of improving and expanding cooperation, coordination, and integration among the Signatory Institutions in the negotiation, execution, and enforcement of leniency agreements under Federal Law No. 12,846/2013 (“Anti-Corruption Law”).

The TCA operates under a Work Plan, agreed upon by the Signatory Institutions, which is organized around three core lines of action - joint workflow analysis, implementation of necessary adjustments, and knowledge sharing - as well as the necessary actions and their respective deadlines. Pursuant to Subclause Four of Clause One, the Work Plan is an integral part of the TCA, along with all the technical documentation that results from it.

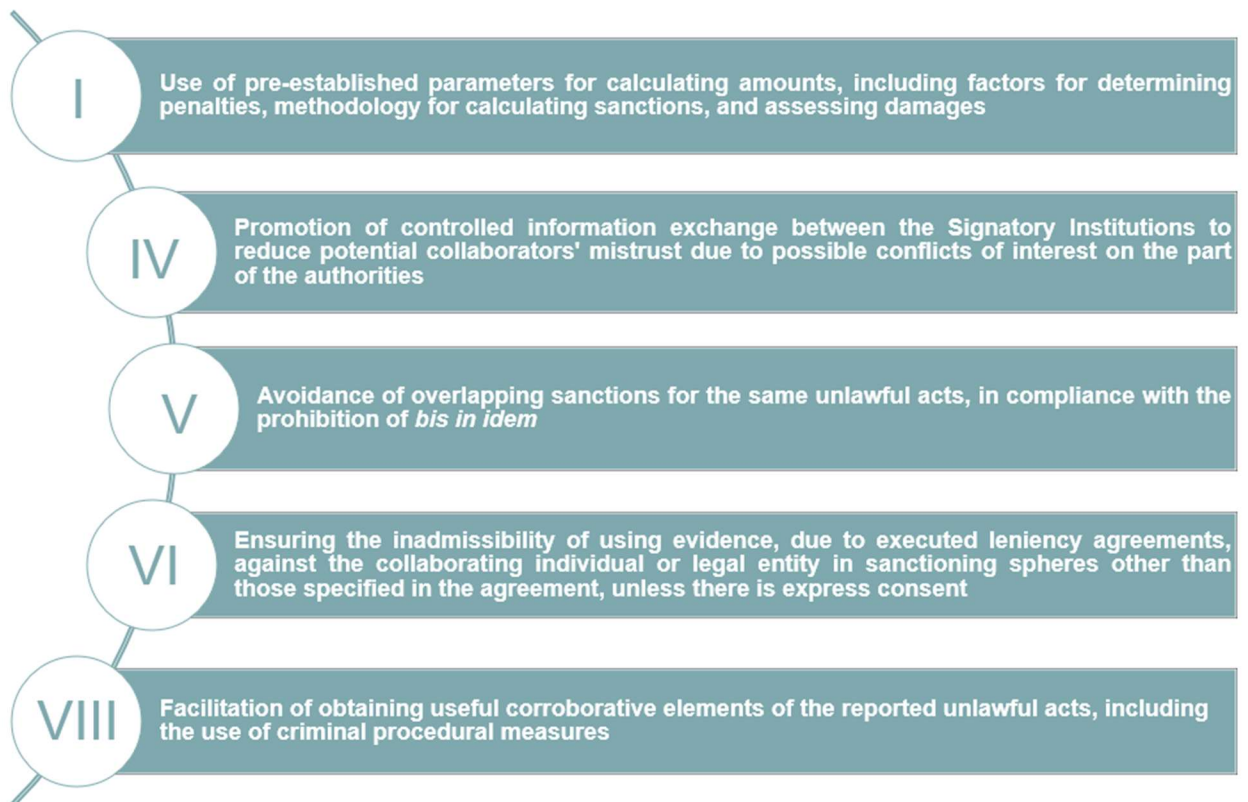
The following sections will explore the main provisions of the TCA and its corresponding Work Plan in greater detail.

II. OBJECTIVES OF THE INTERINSTITUTIONAL COOPERATION (CLAUSE TWO)



III. DISPUTE RESOLUTION (CLAUSE THREE)

To resolve potential conflicts between the Signatory Institutions and cooperating legal entities, key parameters were established to standardize the negotiation of leniency agreements, as set forth in items I to X of Clause Three. The main points are highlighted below, except for matters related to whistleblower protection (items VII and IX), which will be addressed in a separate section.



IV. DESIGNATION OF RESPONSIBLE DEPARTMENTS WITHIN EACH OF THE TCA'S SIGNATORY INSTITUTIONS (CLAUSE FOUR)

Clause Four of the TCA formally assigns the departments within each Signatory Institutions responsible for joint action on anti-corruption leniency agreements: the Directorate of Leniency Agreements of the National Secretariat of Private Sector Integrity (CGU), the National Public Asset and Integrity Department (AGU), and the 5th Chamber for Coordination and Review of the MPF. This is not a new development introduced by the TCA, but rather a formal recognition - for the purposes of the agreement - of the departments that were already leading the matter within each institution.

V. LENIENCY AGREEMENT PROPOSAL (CLAUSE FIVE)

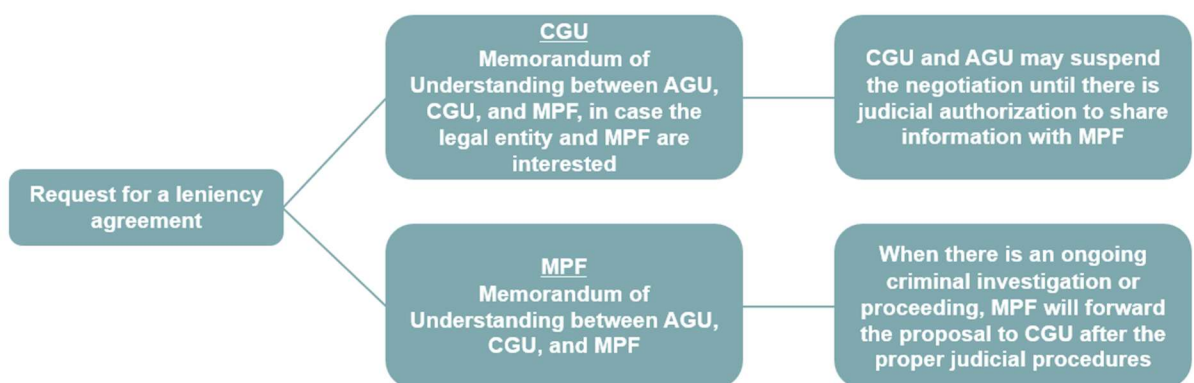
A legal entity interested in entering into a leniency agreement may submit a request to either CGU or MPF, individually or jointly. These institutions will assess the possibility of coordinated action. Both institutions are required to share information with each other regarding leniency agreement proposals received, while observing confidentiality obligations.

Through this communication, the Signatory Institutions may decide to suspend ongoing administrative proceedings related to the same unlawful acts that are the subject of the cooperation. It is worth noting that the TCA does not mention any ongoing judicial proceedings related to the same facts.

VI. COORDINATED NEGOTIATION OF LENIENCY AGREEMENTS (CLAUSE SIX)

The coordinated negotiation procedure for leniency agreements, as established in the TCA, follows a specific workflow that considers the particularities of each institution. Pursuant to Subclause Seven of Clause Six, CGU is responsible for assessing compliance programs and monitoring them on an ongoing basis, a role that aligns with its jurisdiction to establish guidelines for private companies and promote a culture of integrity, in accordance with the technical expertise of its staff.

Depending on which Signatory Institution receives the leniency request, a specific procedure will apply, as illustrated in the chart below.



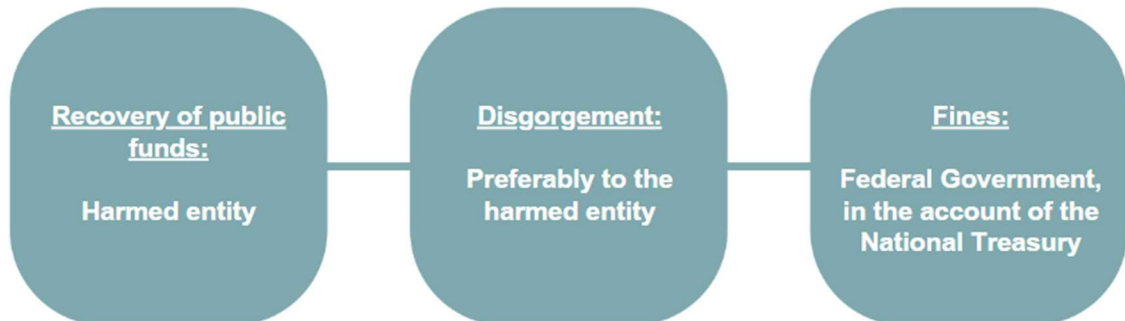
VII. LENIENCY AGREEMENT INDEPENDENTLY EXECUTED BY THE MPF (CLAUSE SEVEN)

The TCA provides for the possibility that, in coordinated actions with the CGU and AGU, the MPF may use an autonomous leniency agreement, provided that the obligations, rights, and responsibilities of the cooperating legal entities are aligned in terms of objectives and criteria.

VIII. AMOUNTS TO BE CONSIDERED AND METHODOLOGY FOR CALCULATION (CLAUSE EIGHT)

An important aspect introduced by the TCA is the provision that the departments responsible for coordinated negotiations within each of the Signatory Institutions shall make efforts to develop a common methodology for the assessment and calculation of amounts owed under leniency agreements, including fines, disgorgement of ill-gotten gains, compensation for damages, asset forfeiture. This methodology should be broadly disclosed by the Institutions. According to the action plan set out in the Work Plan, the Signatory Institutions are expected to implement the common methodology for calculating amounts under leniency agreements within 24 months of the execution of the TCA.

The TCA also formalizes what has already become standard practice, based on the internal regulations of the signatory institutions, regarding the specific allocation of each category of payment negotiated, as illustrated in the chart below.



IX. WHISTLEBLOWER PROTECTION (CLAUSES THREE AND TEN)

Clauses Three and Ten of the TCA establish provisions for the protection of whistleblowers through measures aimed at: (i) implementing and ensuring legal benefits for individuals who provide supporting evidence of the unlawful acts reported by cooperating legal entities; and (ii) adopting uniform standards for the protection of individuals who report acts of corruption, in accordance with Brazil’s commitments under international conventions.

Leniency agreements must include specific clauses that prevent the use of information and evidence against the legal entity that entered into an agreement with the MPF, CGU, or AGU for the imposition of sanctions not provided for in the respective agreements—except for the legal obligation to fully compensate for damages.

This protection, however, does not prevent the use of criminal collaboration elements provided by an individual against a legal entity that has not entered into an agreement. Furthermore, if the facts presented by the cooperating legal entity involve the commission of a crime, CGU and AGU must notify the MPF, which will be responsible for taking the appropriate criminal measures.

X. TERM (CLAUSE FOURTEEN)

According to Clause Fourteen, the TCA will be effective for sixty months, starting from the date of publication of its summary in the Official Gazette, and may be extended through the execution of an amendment.

XI. FINAL CONSIDERATIONS: WHAT DOES THE TCA REPRESENTS FOR ANTI-CORRUPTION LENIENCY AND WHAT TO EXPECT MOVING FORWARD?

In general terms, the execution of the TCA represents a step towards joint and coordinated action of the Signatory Institutions, particularly regarding the intention to promote legal certainty and enhance the reliability of consensual solutions in anti-corruption matters.

Considering the MPF's jurisdiction over criminal matters, its involvement in the TCA also provides greater legal certainty for the coordination of leniency agreements with legal entities and plea-bargaining agreements with individuals related to the same facts.

However, some provisions warrant observation. For example, Clause One, which defines the purpose of the TCA, allows for situations where actions may not be coordinated or conducted jointly: in cases where

there is no coordination, leniency agreements may be entered into with the Signatory Institutions individually, preserving the autonomy of MPF, CGU, and AGU. This resembles an exceptional solution for situations where it is difficult to implement the coordinated action that the TCA aims to establish. In this regard, and due to laws and other regulations that already address the institutional autonomy of MPF, CGU, and AGU, there still seems to be room for defining legal consequences and preserving the rights of collaborators with the institutions when coordinated action is not undertaken.

The TCA establishes that the Signatory Institutions commit to the *"avoidance of overlapping sanctions"* against individuals and legal entities for the same facts, *"in accordance with the prohibition of bis in idem"*, a principle that is already mandatory and should guide state-sanctioning actions across all levels, in compliance with fundamental rights and guarantees.

There is no explicit provision on how the TCA will apply to agreements currently under negotiation within the Signatory Institutions, although the Work Plan states that the monitoring of the execution of existing agreements will take place throughout the duration of the TCA.

It is important to emphasize that the TCA does not resolve all the practical issues of anti-corruption leniency. Nor could it. It is an instrument that consolidates programmatic commitments between CGU, AGU, and MPF. The TCA will be in effect for sixty months, but the expectation is that the benefits of this agreement will be realized during and after its implementation. With the publication of the TCA, the expectation now is that the Signatory Institutions will issue technical regulations clearly defining the workflows and procedures for their actions, including establishing parameters for cases where the leniency agreements are not concluded according to the general rule set by the TCA, i.e., when the agreements are not entered into in a joint and coordinated manner.

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Bruno Maeda

+55 11 3578-6665 / 95029-9005

bruno.maeda@maedaayres.com

Erica Sarubbi

+55 11 3578-6665 / 95784-1202

erica.sarubbi@maedaayres.com

Beatrice Yokota

+55 11 3578-6665 / 98152-6025

beatrice.yokota@maedaayres.com

Renata Politanski

+55 11 3578-6665 / 93800-8478

renata.politanski@maedaayres.com

Carlos Ayres

+55 11 3578-6665 / 98711-0591

carlos.ayres@maedaayres.com

Fernanda Bidlovsky

+55 11 3578-6665 / 95304-7744

fernanda.bidlovsky@maedaayres.com

Renato Machado

+55 11 3578-6665 / 61 99292-9090

renato.machado@maedaayres.com

Mariana Cunha

+55 11 3578-6665 / 93800-5261

mariana.cunha@maedaayres.com

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