

**Brazilian Federal Prosecution Service (MPF) enters into leniency agreements
with ODEBRECHT and BRASKEM**

The agreements reveal the biggest international corruption case in history. The compensation to the victims and to the country stands as a world record in monetary figures.

On December 1 2016, the Federal Prosecution Service, through the Car Wash Task Force, together with the Car Wash Working Group, which works under the Brazilian Prosecutor General, have entered into a leniency agreement with ODEBRECHT S.A., an Odebrecht group's holding, which admitted to having committed crimes to benefit companies pertaining their economic group. Brazilian Federal Prosecution Service (which is known in Portuguese as Ministerio Publico Federal or MPF) also entered into a leniency agreement with BRASKEM S.A. to meet the same end on December 14 2016. Such agreements have already been approved by the Anti-Corruption Chamber of the Public Prosecution Service in Brasilia. The agreements are still subject to be considered by the competent Courts, including the 13th Federal Court of Curitiba.

In both agreements, the companies revealed and pledged to reveal crimes committed against and within Petrobras and elsewhere, including crimes involving politicians from Brazilian federal, state, and local government, also from foreign governments. Such offenses had been committed with the support of the Department of Structured Operations, whose illegal activities were investigated by the Car Wash Task Force.

In addition to achieving their main goal (the discovery of the crimes and wrongdoings perpetrated by the corporations), the leniency agreements also serve their purpose in that they are a means for the companies involved not to go bankrupt, which means, as they carry on with their legal activities, they may generate enough money to pay for any future settlements or other compensations while keep their operations and businesses.

Besides that, the leniency agreements also establish mechanisms destined to ensuring that companies comply with the regulations and good practices proposed so as to prevent them from committing other felonies, as well as to provide them the right environment for acting with ethics and transparency.

The corporations provided the Federal Prosecution Service with information and documents in which their own malpractices were depicted. Additionally, they concurred to bringing forward any further information that is found during their own internal investigations. The cooperation of these two companies with ongoing investigations was essential to reveal crimes committed by other legal entities, public officials and politicians, both domestically and abroad.

Not only did they pledge to stop their wrongdoings immediately, but they also agreed to take special measures to avoid those offenses would ever happen again. Thus, these companies have been implementing compliance and integrity programs, which they must constantly improve, in accordance with Sections 41 and 42 of Decree 8,420 of 2015 in regard to best practices, and the

implementation actions, additional measures and initiatives of ethics, integrity and transparency. Furthermore, in an unprecedented way as far as leniency agreements in Brazil are concerned, ODEBRECHT and BRASKEM agreed to be subjected to corporate anti-bribery and anti-corruption (ABAC) monitoring for about two years. Such surveillance shall be carried out by experts, footed by the corporations themselves, and overseen by the Federal Prosecution Service.

Both agreements are part of a broader covenant undersigned by the corporations themselves with Brazilian, Swiss and American authorities. Although the main reason why these leniency agreements are signed in the first place is for obtaining information and documents regarding malpractices (to which end company co-operation makes all the difference), the companies have also committed to paying damages and compensation for victims and to the Brazilian public coffers. BRASKEM agreed to pay as much as BRL 3,131,434,851.37 due to its leniency agreement. Of this amount, approximately BRL 2.3 billion will be due to Brazil for the payment of damages to victims. As for ODEBRECHT, it has agreed to pay BRL 3,828,000,000.00, of which approximately BRL 3 billion will be also allocated to Brazil so as to compensate victims.

The values shall be paid when due, as stipulated on the agreement signed. At the time of payment, monetary adjustment may increment the amounts to be paid to Brazilian authorities. For example, the sum of the installments concerning the agreement signed by ODEBRECHT (after applying the correction rate called SELIC) results in the final payment of BRL 8,512,000,000.00, which corresponds to approximately USD 2.5 billion. If considered together, the amounts paid due to the leniency agreements signed with both ODEBRECHT and BRASKEM constitute the largest leniency agreement ever paid in connection with a corruption and bribery case in the world.

Leniency and plea bargain agreements signed by the Federal Prosecution Service in the last two years have been essential for investigations and for the uncovering of the largest corruption scheme ever investigated in Brazil. They have also allowed for the payment of damages regarding embezzled public assets as never before. Again, these two agreements are amongst the largest in the world in this regard. According to prosecutor Deltan Dallagnol, coordinator of the MPF task force, "These leniency agreements expand the boundaries of the Car Wash investigation and the prosecutors' ability of obtaining evidence on more crimes. This kind of settlement also provide a way for companies who malpractice to assist the authorities, to conduct their business under the law and to invest, which contributes to the maintenance of jobs and to the economy itself".

"Moreover, the commitments undertaken before the Brazilian Federal Prosecution Service foster a new business culture in the construction sector, establishing a new relationship between the public and the private sectors, thus hedging the companies against the influence of cartels and corruption", says Paulo Galvão, a federal prosecutor in Lava Jato case. Under that light, he adds, "the companies who enter leniency agreements are regarded as catalysts of the renewal of practices and the increase of competitiveness in the market. With the strengthening of the market, efficient companies find better conditions to develop and therefore compete in the global market".

Federal Prosecutor Orlando Martello explains that "there are many flaws in the Brazilian legal framework". Mr. Martello believes that "the Brazilian Legislative branch could contribute to this effort by strengthening the companies' compliance systems, approving legislation which makes legal persons accountable for corruption crimes, price-fixing cartels and bid rigging, as is the case in many countries".

Finally, it should be recognized that the agreements are the result of a coordinated investigation work carried out by the Office of the Attorney General of Switzerland, the US Department of Justice and the US Securities and Exchange Commission, as well as by the Brazilian Federal Prosecution Service, with the assistance of two other Brazilian law enforcement agencies, the Federal Revenue Service (Receita Federal) and the Federal Police. Federal prosecutors also thanks to the Federal Courts for its commitment to the rule of law on Brazil. The International Co-operation Unit and the Research and Analysis Unit, both belonging to the structure of the Federal Prosecution Service, have played an important role in achieving those goals. Fighting corruption is a global effort, which makes it extremely important to co-ordinate the prosecution against transnational crimes, thus implementing commitments made by Brazil in international treaties and conventions such as the UN Convention against Corruption and the OECD convention against bribery of foreign public officials.