Annex I

State Measures for Strengthening Business Integrity

In line with a number of resolutions of the Conference of the States Parties to the United Nations Convention against Corruption (UNCAC), including, inter alia, resolutions 5/6, 6/5, 9/6 and 9/8, as well as the commitments made by States parties in the political declaration entitled "Our common commitment to effectively addressing challenges and implementing measures to prevent and combat corruption and strengthen international cooperation", adopted by the General Assembly at its special session against corruption held in 2021, the secretariat is seeking information on good practices, practical examples and lessons learned by States parties on the engagement of the private sector and the use of sanctions and incentives to strengthen business integrity in the last decade. The answers provided by States parties will be used to update the 2013 UNODC publication "A Resource Guide on State Measures for Strengthening Corporate Integrity" (English - Spanish - Russian) and to develop an e-learning tool that will further support States parties' efforts to strengthen business integrity.

The Resource Guide provides a catalogue of measures that States parties can adopt to promote business integrity and the reporting of corruption involving the private sector. The Resource Guide features three chapters: i) The United Nations Convention against Corruption and the private sector, which describes the articles of the Convention that frame State interaction with the private sector; ii) Engaging the private sector, which outlines the business case for countering corruption with an emphasis on governance and other factors that can drive business integrity; and iii) Using sanctions and incentives, which describes the range of sanctions and incentives that have been developed to prevent and address corruption involving the private sector.

The secretariat invites States parties to disseminate this questionnaire among relevant stakeholders, with a view to identifying internal measures adopted by private sector organizations to prevent and counter corruption. Respondents may choose to answer the whole questionnaire or only sections that are applicable and relevant to a State party. The secretariat would especially welcome the provision of illustrative examples.

Respondents' contact details will be kept confidential, but submissions will be made public unless a State party requests otherwise. The secretariat may contact a respondent to seek additional information.

To facilitate the process of providing information, the Government may wish to complete the online questionnaire (English only). Alternatively, the Government may wish to submit the questionnaire to the secretariat by email to florian.lair@un.org and sabrina.dandrea@un.org at its earliest convenience but no later than **31 October 2022**.

Questionnaire

Chapter 1 – The United Nations Convention against Corruption (UNCAC) and the private sector

Background: It is important that States' legislative and other measures contain sufficient detail to inform the private sector of their requirements and scope of application. In line with the principle of legal certainty, it is important to have clear provisions outlining prohibited conducts and consequences to the private sector.

1(a) Please describe (cite or summarize) good practices and/or examples of measures taken by your country to promote business integrity and/or reporting of corruption in the private sector in line with the United Nations Convention against Corruption.

Guidance on 1(a) and 1(b): Measures could, for example, include policies and/or laws and regulations designed to achieve the following:

- Prevent bribery of national public officials, bribery of foreign public officials and officials of public international organizations, and bribery in the private sector
- Promote private sector transparency
- Promote cooperation between law enforcement agencies and private entities
- Promote cooperation between national authorities and private entities
- Prevent trading in influence
- Prevent conflicts of interest
- Prevent embezzlement of property in the private sector
- Promote the development of standards and procedures to safeguard the integrity of companies
- Ensure that companies have sufficient internal auditing and controls to assist in preventing and detecting acts of corruption
- Introduce or strengthen the liability of legal persons
- Promote public-private communication, cooperation and partnership (e.g., with business associations, networks, individual companies, small and medium-sized enterprises)

The Brazilian legal system provides for various types of sanctions to strengthen business integrity and reduce corruption in the private sector. Regarding civil and administrative liability, Brazil has in place two important laws: the Administrative Improbity Law (Law No. 8,429/92) and the Corporate Liability Law (Law No. 12,846/2013).

Law 12,846/2013 came into effect in early 2014. It provides for the administrative and civil liability of legal entities for the practice of acts against the public administration, domestic or foreign, committed by their directors, officers, representatives, employees, or intermediaries. This implies sanctions and penalties for individuals and legal entities. This law also establishes that the entity must implement internal mechanisms and procedures to reduce the risks of corruption, in addition to cooperating in the investigation of infractions that have occurred to reduce any sanctions or penalties that the entity may incur.

Law No. 8,429/92 (Law of Administrative Improbity) establishes civil sanctions for natural and legal persons involved in illicit acts resulting in loss to the public treasury, illicit enrichment and acts against the principles of public administration. Law No. 8,429/92 establishes that the rules set forth therein are applicable, as appropriate, to anyone who, even if not being a public agent, induces or contributes to the commission of the improper act, or benefits from it in any way, directly or indirectly. In this sense, it would be possible to condemn legal entities for acts of improbity.

Details regarding specific developments on the liability of legal persons, such as sanctions, leniency agreements (non-trial resolutions), compliance programs, incentives, calculation of fines, will be explained in the sections below.

1(b) What challenges (if any) did you encounter in developing and/or enforcing such measures?

As practiced developed regarding the application of the Corporate Liability Act by the Office of the Comptroller General (CGU) and the Attorney General's Office (AGU), these agencies realized the need to establish in norms clear and structured procedures incorporating the good practices already applied over the years. The publication of these norms and guidelines were a necessary step for public authorities to publicize, disseminate and raise awareness among the private sector of the legislative requirements, scope of application, sanctions and remedies/mitigation factors available.

1(c) Please describe the steps you took to overcome such challenges (if any).

The recently enacted Decree No. 11,129/2022, which revoked Decree No. 8,420/2015 and regulates Law No. 12,846/2013, provided more transparency for the definitions of uncontroversial damage and disgorgement, the methods to calculate fines and corporate compliance obligations concerning the application of the Corporate Liability Law.

Furthermore, the Decree made it possible for subnational entities in Brazil (States and Municipalities) to delegate jurisdiction to sign non-trial resolution agreements (known as leniency agreements) to CGU and AGU. By doing so, it would be possible to take advantage of federal agencies' expertise in this field and, at the same time, allow a single leniency agreement to be signed between a legal company and the Brazilian Government as a whole, including Federal, State and Local entities.

Chapter 2: Engaging the private sector

Background: Anti-corruption programmes, commonly referred to as compliance programmes, are a primary tool used by companies to advance ethical business practices. They provide a framework for articulating the values, policies and procedures used by a company to educate its employees and to prevent, detect and counter corruption in its business operations.

2(a) Please describe (cite or summarize) good practices and/or examples of measures taken by your country to promote integrity through anti-corruption programmes in the private sector.

Guidance on 2(a) and 2(b): Measures and good practices could, for example, include those designed to:

- Raise awareness of business integrity
- Encourage the private sector to establish anti-corruption policies, procedures and/or programmes
- Promote training and education on anti-corruption in the private sector
- Provide trainings or guidance, or develop model anti-corruption programmes or policies for companies to use and adapt
- Provide appropriate reporting channels
- Encourage public reporting of efforts to prevent and counter corruption in the private sector

The entry into force of the landmark Corporate Liability Law, in 2013, laid the foundations of the private integrity system in Brazil. Now, companies are strongly encouraged to establish integrity programs not only to prevent the occurrence of those unlawful acts but also to reduce the severity of sanctions in case of misconduct. Decree No. 11,129/2022 currently regulates Law No. 12,846/2013 and defines in its Article 56 an Integrity Program as being "the set of internal mechanisms and procedures for integrity, auditing and incentives for reporting irregularities and the effective application of codes of ethics and conduct, policies and guidelines with the objective of preventing, detecting and remedying deviations, fraud, irregularities and unlawful acts committed against the national or a foreign government; and for fostering and maintaining a culture of integrity in the organizational environment". Companies that sign Leniency Agreements with CGU and AGU have their integrity programs systematically evaluated and monitored.

Additionally, incentives for companies to establish a compliance program have increased through the requirement of having a compliance program to be awarded large public contracts (Law No. 14,133/2021, Article 25, Paragraph 4).

CGU has a set of guidelines and booklets focused on the development of compliance programs and the adoption of measures to prevent and detect corruption and bribery on private companies. Those documents are available on the "corporate integrity collection". Among those documents, the guidance "Programa de Integridade: diretrizes para empresas priavadas" (Integrity Program – Guidelines for Legal Entities) stands out (link to the document in English: https://www.gov.br/cgu/pt-br/centrais-de-conteudo/publicacoes/integridade/arquivos/integrity-program.pdf).

In December 2014, CGU and the Brazilian Micro and Small Enterprises Support Service (Sebrae) signed a Cooperation Agreement to combine efforts between the two institutions to promote compliance of Brazilian micro and small companies through the "Empresa Íntegra" Program. The partnership has already yielded the publication of materials such as the booklets: (1) Integrity for Small Businesses and (2) Protect your Company from Corruption. The "Empresa Integra" Infographic, a guide on how to protect the company from corruption; and a video about integrity in small businesses, were also designed under the partnership and are all available for download at the "Empresa Íntegra" web-portal". During the first two years of the cooperation, several training, workshops and lectures were held throughout the country to disseminate the theme to local entrepreneurs.

2(b) Please describe (cite or summarize) good practices and/or examples of measures you have used to encourage transparency, public reporting and/or public participation through your anti-corruption programmes (both for the public and private sectors).

In 2017, the "Empresa Íntegra" National Network was launched further expanding the partnership to state offices of CGU and state Sebrae units to increase the training, guidance and other actions across the country. The Network was created to foster integration, exchange of knowledge and creation of strategies to impact the largest number of small and medium businesses. Lectures and workshops have been utilized to raise awareness of the importance of policies to prevent and combat corruption both in the internal corporate environment and in the relationship with customers and employees. These actions targeted businesspeople throughout the country. The "Empresa Íntegra" portal has since been greatly disseminated. It provides information on the application of the Anti-Corruption Law guidance and best practices on how to keep the enterprise in good standing; and guidance on how to work safely and without risk of violating laws or consumer rights. Information and awareness about the network and its supporting documents and courses are also available at the SEBRAE´s website. An example of this network is the free online course available on the SEBRAE page on Business ethics and integrity in preventing corruption.

Sebrae has been part of the Management Committee of the "Empresa Pró-Ética" since the launch of the program, in 2010. This program is an effort from public and private sectors to foster compliance and integrity programs, granting an award and the rights to use the information for companies that successfully implement an effective compliance program. The Program consists of the evaluation of companies that voluntarily submit information for analysis, by completing the Profile Analysis form and the Evaluation Questionnaire. All companies that meet the admissibility requirements provided for in the Pro-Ethics regulation will be evaluated by the Executive Secretariat of Pro-Ethics, in charge of CGU.

Transparency is a basic component of compliance programs, in addition to being one of the pillars of corporate governance, and that is reflected in all of CGU´s guidance and manuals on the topic and is a key element of the "Pró-Ética" program. In this sense, there is a specific area in the program evaluation questionnaire about transparency and social responsibility that questions whether the company publishes on the internet periodic reports with information regarding the compliance program (either in the sustainability report, or compliance report, or integrated report or annual report). The Evaluation Questionnaire consists of questions related to six areas: Top Management Commitment; Policies and

Procedures; Communication and Training; Whistleblowing and Remediation Channels; Risk Analysis and Monitoring; Transparency and Social Responsibility.

At each edition, an event is held to announce the annual list and deliver the "Pró-Ética" seal to companies. The best integrity practices presented in the year will also be valued and publicized, to increase publicity around qualified companies. Thus, the company receives a notable gain in reputational image by making the list, achieving public recognition for its commitment to preventing and fighting corruption. In addition, all participating companies receive a detailed assessment of their integrity program, with suggested measures for improvement.

As part of the partnership with organizations from the private sector, CGU participated in the event Conference 360º Ethos in 2020 that address the "10 years of 'Pró-Ética' - the trajectory and the stimulus to good integrity practices".

Other examples of awards include: "Selo + Integridade", which is a Ministry of Agriculture and Livestock (MAPA) program focused on Brazilian agribusiness that recognizes companies and cooperatives in the sector that adopt practices of integrity, ethics and transparency in their activities. The "Selo de Fomento Infra+ Integridade", an initiative of the Ministry of Infrastructure that seeks to encourage the voluntary adoption of integrity measures by companies, recognizing companies in the sector of infrastructure for road transportation, which, admittedly, develop good governance practices, including integrity, ethics, transparency, compliance, social responsibility, sustainability and fraud and corruption prevention. The Seal of Integrity from CRECI -DF is a certification granted by the Regional Council of Realtors (CRECI-DF) to real estate agents that have proven the adoption of anti-corruption practices and ethical conduct, pledging to continue improving its Compliance Program, through management, social responsibility and sustainability.

2(c) What was the impact of the measures described above (2a and 2b)?

"Pró-Ética" also aims at small and medium-sized enterprises (SMEs), as demonstrated by the awards granted in its 2020-2021 edition, where 30% and 18% of the companies approved were small and medium-sized enterprises, respectively. This trend has continued since the first editions of the program. The program has special methodology and requirements adapted to the reality of these businesses, rendering an evaluation more adequate to the SMEs.

"Pró-Ética" was considered as good practice by several international organizations, such as the OAS, OECD, UNODC and Global Compact; it was the subject of research and academic dissertations; material for specialized media and inspiration for the creation of similar projects in Brazil (MAPA, Minfra and CRECI-DF Seals) and abroad – the most recent example, "Sello Integridad", launched in 2022 in Paraguay. CGU participated in the development of the "Sello Integridad", conducted within the project "Strengthening integrity to overcome times of crisis", in a trilateral cooperation between Germany, Brazil and Paraguay. However, the main recognition comes from the Brazilian market itself.

2(d) What challenges (if any) did you encounter in implementing the measures above (2a and 2b)?

The development of "Pró-Ética" was based on benchmarks of international experiences in promoting integrity in the private sector, with its methodology evolving over the years and based on lessons learned.

At the end of each edition, a follow-up report is prepared with the results of the Program. With lessons learned, in 2014, a process of restructuring "Pró-Ética" began, with the objective of adapting it to the changes brought about by the Anti-Corruption Law, also to increase the number of participants and increase publicity around the companies with positive evaluations. This restructuring ended in 2015, with the creation of a new evaluation methodology and a new way of publicizing "Pró-Ética" companies.

In fact, over these years, there has been a continuous process of improving and valuing "Pró-Ética". This process will be continuously conducted to increasingly integrate this initiative into the annual

calendar of the Brazilian business sector and permanently consolidate it as a reference for those who want to build and participate in a society in which business relationships, especially those with the public sector, are based on integrity, ethics, competence and respect for free competition.

Some lessons learned include, for example, extending the validity period of the Program to biannual lists (instead of annual). This is because CGU observed that companies need time to implement the improvement measures suggested in the evaluation reports. It was also observed the need for constant adaptation of the evaluation questionnaire to incorporate changes in the business environment in Brazil. All documents and further information on the "Pró-Ética" program are available at: https://www.gov.br/cgu/pt-br/assuntos/integridade-privada/avaliacao-e-promocao-da-integridade-privada/empresa-pro-etica.

Chapter 3: Using sanctions and incentives

Background: While effective sanctions for corruption offences are required under the United Nations Convention against Corruption, the Convention also recognizes the essential role of incentives that encourage and reward corporate self-reporting and preventive efforts.

Part A - Sanctions

3(a) Please describe (cite or summarize) good practices and/or examples of sanctions used to strengthen business integrity and/or reduce corruption in the private sector in your country.

Guidance on 3(a): Sanctions could, for example, include any of the following:

- Monetary sanctions for legal persons (companies) liable for the participation in an offence of corruption
- Incarceration or other criminal sanction of natural persons (individuals) who have committed an offence of corruption acting on behalf of a company
- Confiscation of proceeds of corruption for both companies and individuals who acted on their behalf
- Contract remedies and other means to communicate and enforce anti-corruption contractual provisions
- Suspension and/or debarment of contractual partners from government processes
- Denial of government benefits (fiscal or otherwise)
- Liability for damages and compensation of victims of corruption
- Reputational damages to hold wrongdoers publicly accountable
- Any other type of sanctions not listed above

The Brazilian Corporate Liability Law (CLL) established a strict liability regime, meaning that a legal person may face sanctions whenever an act of corruption has been committed in its benefit. Administrative sanctions consist of a fine in the amount of 0.1% to 20% of the gross revenue of the legal entity and the publication of the condemnatory decision. Civil sanctions provided by the Law include loss of the assets, rights or valuables representing, directly or indirectly, the advantage or benefit gained from the infringement; partial suspension or interdiction of its activities; compulsory dissolution of the legal entity; and prohibition to receive incentives, subsidies, grants, donations or loans from public agencies or entities and from public financial institutions or institutions controlled by the government, from one to five years. Moreover, the CLL can be applied in conjunction with the Public Procurement Law, making it possible to debar legal persons involved in domestic and foreign corruption from public tenders. The sanctions may be applied in an isolated or cumulative manner.

Under Law No. 8,429/92 (Law of Administrative Improbity), besides full compensation for the damage, the penalties applicable to legal entities can be the loss of assets or values unlawfully gained, payment of a civil fine and the prohibition of contracting with the Government or receiving tax or credit benefits or incentives. For all cases of acts of improbity (arts. 9, 10, 10-A, and 11), Law No. 8,429/92, provides for the prohibition of contracting with the public sector as a sanction applicable to private entities, alone or cumulatively with other civil and administrative penalties. The liability of legal entities, based on the Administrative Improbity Law, is only processed through the judicial process.

Under the *Administrative Improbity Law*, a judicial lawsuit can be filed by the Attorney General's Office (AGU) due to act contrary to the basic principles of the Public Administration, committed by a public agent and all those who exercise, even if temporarily or without remuneration, byelection, appointment, designation, contracting or any other form of investiture or relationship, a mandate, position, job or function in the Executive, Legislative and Judiciary Branches, as well as the direct and indirect administration, within the scope of the Union, the States, the Municipalities and the Federal District.

In this sense, CGU maintains the National Register of Ineligible and Suspended Companies from Public Procurement (CEIS) and the National Registry of Punished Companies (CNEP). The purpose of CEIS is to consolidate a list of companies and individuals that have suffered sanctions that restrict their participation in public biddings or their entering into contracts with the public administration. CNEP, on the other hand, seeks to consolidate sanctions that were applied to legal entities for the practice of wrongful acts under Law 12,846 of 2013

CGU also has an online public service for the issuance of certificates stating whether the company is registered under CEIS and CNEP or is currently facing an administrative liability procedure.

Another instrument, the Anti-corruption Law, established by law n.12.846 /2013 and Decree n. 8.420/2015, is the first corporate liability regime for wrongful acts committed against the public administration in Brazil. It has met several international commitments assumed by Brazil and addresses certain issues in the legislation which further development in connection with the fight against corruption.

This Law provides for the strict civil and administrative liability of legal persons for acts committed against national or foreign public administration. The private sector, especially the large companies, were encouraged by this Law to establish compliance committees.

The sanctions set forth in the Anti-corruption Law include administrative and civil ("judicial") sanctions (Arts. 6 and 19, respectively). While administrative sanctions for transnational bribery can be imposed by the Office of the Comptroller General (CGU), judicial sanctions require the decision of a court. The level of sanction scan be reduced based on the factors detailed below; especially for legal persons that cooperate with prosecutions and where good internal controls and integrity programmes are in place. Specific circumstances, such as the initiation of proceedings against successor companies or where there is shared responsibility, are also taken into account by the law, allowing for the imposition of a lower range of sanctions.

The administrative sanctions are a fine in the amount of 0.1% to 20% of the gross turnover of the legal entity and extraordinary publication of the condemnatory decision (Art. 6, items I and II, of the Anti-corruption Law). The fine "shall never be less than the advantage gained, when it is possible to estimate it". However, if it is not possible to use the criterion of the gross turnover of the legal person, the amount of the fine may vary between R$ 6 thousand and R$ 60 million (Art. 6, paragraph 4, of the Anti-corruption Law).

If a company is found liable for the crime of transnational bribery, in addition to the fine, it must be subject to extraordinary publication of the condemnatory decision, which is responsible for making the decision widely known (Art. 6 II). This suggests that such publication is not optional and must be

systematically imposed at the time the legal entity is found liable for the wrongful act, except when a leniency agreement is entered into (Art. 16, §2). This sanction, along with other effective, proportionate and dissuasive sanctions, should constitute a serious deterrent to transnational bribery, while also raising awareness of the wrongful act and the liability of legal persons for committing it.

Under the Article 19, item I, of the Anti-corruption Law the civil penalties provided in are the following: (i) forfeiture of assets, rights or amounts that represent advantage or profit directly or indirectly obtained from the violation, subject to the right of the injured party or third party in good faith; (ii) suspension or partial interdiction of its activities; (iii) compulsory dissolution of the legal entity; and (iv) prohibition to receive incentives, subsidies, grants, donations or loans from public agencies or entities and public financial institutions or those controlled by the public power, for a minimum period of 1 (one) and a maximum of 5 (five) years.

The sanctions may be applied "separately or cumulatively". The sanction provided for in item I is analyzed in section 4, which refers to confiscation.

Pursuant to Law No. 6,385/76 and related regulations, the Securities and Exchange Commission of Brazil (CVM), in its supervision and inspection activities of the capital market, upon detecting signs of irregularities in the preparation of financial statements published to the market, adopts specific procedures for the investigation and liability of natural persons or legal entities involved. The investigations may give rise to the initiation of inquiries or sanctioning administrative proceedings (including through a Term of indictment) for eventual administrative liability of the agents involved (natural or legal), under the terms of Law No. 6,385/76.

3(b) What were the main challenges (if any) your country faced in enforcing these sanctions?

One of the main challenges in the implementation of the Anti-corruption Law arose from the existence of several public agencies with authority to hold legal persons accountable in different spheres, making it particularly challenging to define the limits of each of these acts for the resolution of corporate corruption cases, especially for the conclusion of leniency agreements.

The existence of liability systems provided for in the Anti-corruption law and the Administrative improbity law also made it difficult to coordinate the resolution of the issue in both spheres, since an agreement entered into on the basis of the Anti-corruption law would not prevent the filing of a lawsuit on the basis of the latter by another party that had standing to bring the claim. Furthermore, the administrative improbity law expressly prohibited settlements, which made it difficult to reach a definitive resolution of the dispute.

Lastly, in this matter, international cooperation represents a great challenge. The judicial lawsuit based in the *Administrative Improbity Law* is an anti-corruption instrument with a non-criminal status, experiencing some degree of resistance in the implementation of measures by foreign authorities under requests for international cooperation. Despite some progress on the topic over the last few years, there remains a great amount to be improved.

3(c) What steps did you take to overcome those challenges (if any)?

One of the solutions to the problem of interinstitutional coordination in the Anti-corruption Law was the conclusion of a technical cooperation agreement between the Federal Audit Court, the Office of the Comptroller General, the Attorney General's Office and the Ministry of Justice and Public Security. The agreement recognized the general principles applicable to state Anti-corruption policies and actions and delimited the role of each institution in the processes of concluding leniency agreements. With this, there was greater legal security for the public agents involved and for the companies that decide to cooperate with the public authorities.

The solution to the issue of the two spheres was found in the legislative branch of government, with amendments to the Administrative Improbity Law, which recognized the impossibility of a sanction

applied on the basis of this law in the case of a punishment already applied on the basis of the Anti-corruption Law and allowed the signing of agreements.

In the international level, Brazil has sought to raise awareness in international forums regarding the importance of strengthening all the instruments available for the States to combat corruption, whether criminal or non-criminal. This includes the need for greater effectiveness in international cooperation across the different dimensions of the fight against corruption.

Some measures were also taken to make clearer the basis and method of calculation of the proceeds of the bribe and to improve the coordination between different organizations.
First, resolved and closed cases are accessible to the public for further scrutiny by the general population, press, or organized civil society, as required by law (Law No. 12,527/2011 - Access to Information Law).

CGU has published several manuals on how to apply fines, the most consulted one being the "Practical Manual for Calculating Fines" in its 2020 version, published on the agency's website, seeking to continuously improve its standards for financial sanctions, with the establishment of objective parameters for the quantification of the fine. This document explains each step for an agent responsible for an administrative liability proceeding to calculate the amount of the fine in a proportionate manner. In 2023, CGU launched an electronic calculator of sanctions to aid law enforcement officials in setting CLL fines.

Moreover, the following regulations were issued:

1) Normative Ordinance 2, 2018;
2) Article, 26, Decree 11129, 2022.

In this context, CGU and the Attorney General's Office (AGU) have been signing leniency agreements jointly, based on Interministerial Instruction CGU/AGU No. 04/2019 and Decree No. 11,129/2022. This coordinated effort has been amplified by an inter-agency Technical Cooperation Agreement (TCA), supervised by Brazil's Supreme Court (STF), in which AGU, CGU, the Federal Police (PF) and the Federal Court of Accounts (TCU) agreed upon terms of cooperation to share information and jointly analyze leniency agreements. Thus, CGU shares all relevant information and evidence obtained via leniency agreements with both TCU and PF to assist in their investigations. CGU, AGU and PF have also signed the Executive Protocol 01/2020 to foster and facilitate the exchange of documents and information during and after the execution of Leniency Agreements.

Part B - Incentives

3(d) Please describe (cite or summarize) good practices and/or examples of incentives used to strengthen business integrity and/or reduce corruption in the private sector in your country.

Guidance on 3(d): Incentives could, for example, include any of the following:

- Penalty mitigation – encourages self-reporting of offences, credits companies' preventive efforts
- Procurement preference – rewards good practice through procurement preference
- Preferential access to benefits – rewards good practice with preferential access to government benefits and/or services
- Reputational benefits – encourages good practice through public recognition
- Whistle-blower protection and awards – encourages reporting of potential violations by individuals
- Any other types of incentives not listed above

Under Brazilian legislation, there are provisions that encourage self-reporting and voluntary disclosure by companies. Law 12,846/2013 provides for the mitigation of the fines in cases of cooperation with the authorities (Article 7, item VII), and Article 23, item IV of its regulatory Decree 11,129/2022 stipulates that cooperating factors such as self-reporting / voluntary disclosure may reduce up to 2% the percentage of the fine imposed (maximum fine is 20% of gross income). Additionally, full cooperation with authorities during the administrative liability procedure can reduce the fine by up to 1,5% (maximum fine is 20%). These mitigating factors are cumulative and serve as incentives for companies to self-report and cooperate.

Additionally, if the company concludes a Leniency Agreement (non-trial resolution), the fine can be reduced to up to 2/3 of its original calculation and other sanctions can be exempted (article 16, paragraph 2 of Law 12,846/2013). Decree No. 11,129/2022, article 47, provides for three elements for the company to reach this reduction in fine: the immediate self-disclosure and its novelty; the effectiveness of the cooperation and the assumption of obligations relevant to the resolution of the case. Thus, companies have incentives to self-report and fully cooperate in concluding a Leniency Agreement to receive the maximum reduction of fines and exemption of some non-financial sanctions (article 16, paragraph 2 of Law No. 12,846/2013).

Ordinance CGU/AGU No. 36/2022 provides more guidance regarding the reduction of up to 2/3 in the case of a leniency agreement being concluded. Self-reporting and voluntary disclosure, alongside cooperation with authorities (article 2), are key elements, as already mentioned. The main elements to consider in self-reporting are if the company came forward quickly, if it performed an internal investigation to support the self-reporting and if the company is reporting facts, information or documents that are not yet known by law enforcement officials (article 3). The Ordinance is a normative instrument publicly available, acting as guidance for law enforcement officials and making more transparent the methodology that is used to calculate the reductions in fines, and was designed with the specific purpose of incentivizing self-reporting and cooperation with investigations.

To further incentivize this behavior, the Office of the Comptroller General (CGU) instituted a procedure for companies to request the anticipated adjudication of the Administrative Liability Proceedings (PARs) through Ordinance CGU No. 19/22. It is a form of "early judgment", and it can be applied where the elements for concluding a Leniency Agreement are not present. In sum, a company can request to have its case adjudicated accepting the sanctions that are to be imposed (as a form of guilty plea). With that cooperation (guilty plea), the company will receive the statutory reduction on the percentages of the fine for cooperation (up to 1,5%), self-reporting (up to 2%) and voluntary damage compensation (up to 1%), according with article 5 of the Ordinance. The only alternative to receiving the maximum reduction percentages is if a company self-reports and requests an early judgment before the beginning of the PAR (article 5, paragraph 1, item I).

Considering the alternatives a legal entity has, in the first scenario, it would reach the highest reduction in fine with a leniency agreement and that percentage will only reach its maximum if, among other elements, the company self-reports and cooperates. In a second scenario, if there are no grounds for a leniency agreement, a company can file for an early judgment and receive some reduction in fine (not the maximum possible with leniency agreements). In a third scenario, if a company, even without requesting the early judgment, self-reports, the statute allows the reduction of the fine as already mentioned. In a fourth scenario, if a company does not self-report or cooperate, it will receive higher sanctions.

This is also explicit in the methodology for the evaluation of integrity programs contained in the Practical Manual of Evaluation of Integrity Programs in PAR. Moreover, the existence of internal controls, ethics and compliance programs is a circumstance to be considered in the application of sanctions, being a mitigating factor. According to the methodology, when the integrity program is prior to the occurrence of the harmful act, programs will receive a better appraisal if the company has communicated the fact to the competent authorities prior to the beginning of the PAR or the negotiation of a leniency agreement (question 14.2 of the spreadsheet from the Practical Manual: "Has the legal entity reported the fact to competent authorities prior to the establishment of PAR?"). The appraisal of

the compliance program can grant a reduction of up to 5% of the percentage of the fine. Therefore, self-reporting can also positively impact the calculation of the percentage reducing the fine when evaluating compliance programs.

The evaluation of the Company's Integrity Program is carried out in the negotiation phase of the Leniency Agreement, in which integrity commitments are stipulated. The evaluation was carried out according to the parameters of Article 57 of Decree No. 11,129/22. The evaluation aims to verify the existence, application and effectiveness of integrity mechanisms presented by the company, and when there are gaps in the implementation of the program, integrity commitments are stipulated.

The types of compliance enhancements typically recommended are related to: 1) governance structure of the company; 2) disclosure of the commitment of senior management and supervision of the program by senior management; 3) structure of the area responsible for the program; 4) adaptation of policies and procedures to national anti-corruption legislation and implementation of integrity policies and procedures; 5) realization of communication and periodic training on the program; 6) conducting integrity risk analysis; 7) conducting due diligence of third parties and business partners; 8) structure of internal controls and audit; 9) existence and application of reporting channels and remediation mechanisms; and 10) monitoring of the integrity program. Commitments to improve the Integrity Program of the companies that signed Leniency Agreements are publicly disclosed in the Register of Punished Companies (CNEP).

Monitoring begins with the receipt of the improvement plan and its approval by the CGU monitoring team. After that, the company must forward semi-annually reports with information and documents proving compliance with integrity commitments, according to pre-stipulated period between 18 and 36 months. At the end of the deadline, if the company proves compliance with all commitments related to the compliance program determined in the Agreement, as well as the fulfilment of all deadlines and requests made during the monitoring period, in addition to full compliance with the improvement plan, CGU informs the end of ostensive monitoring. The ostensive monitoring process ends with the preparation of a Final Monitoring Report, which will summarize the main acts of the process and the fulfilment of the integrity commitments set forth in the Agreement.

Monitoring may be extended if there is a need for its continuity due to non-compliance, partial or unsatisfactory compliance with the commitments related to the Compliance Program determined by the Agreement and throughout the Monitoring. This extension will be stipulated by the CGU within a reasonable and sufficient period for the Company to fill all identified gaps, which made it impossible to complete the monitoring within the period initially established. Throughout the monitoring, the company should demonstrate the continuity of all other commitments made and not only the commitments pending completion, and only then will the company be able to reach the end of ostensive monitoring.

It should be highlighted that, after the end of the ostensive monitoring, the *ad hoc* monitoring takes place, in which the company must make available, whenever requested by CGU, all the documentation related to its Compliance Program, including documents, studies, surveys related to risk analysis, among others, and CGU may summon the Company’s representatives to clarify, in person, points of interest of its Program, throughout the entire term of validity the Agreement.

Regarding whistleblowers, since 2014, Brazil has been going through a process of strengthening the channels for receiving complaints, as well as mechanisms to protect whistleblowers. Initiated through CGU Normative Instruction 1/2014, which provided for the protection of identity and the receipt of anonymous complaints, this process now includes a national computerized system for receiving complaints (Fala.BR Platform), with identity protection mechanisms incorporated in the design of the tool by default, as well as standards that establish the centralization of channels for receiving complaints through public ombudsperson offices (all organized in an interoperable system with a single repository of information), guarantees against retaliation, and mechanisms for redress and incentives for whistleblowers (Laws No. 13.460/2017 and 13.608/2018). These mechanisms are general, ranging from whistleblowers who report cases of minor corruption to cases of fraud and major corruption.

In 2019, as a result of a specific action developed within the National Strategy on Combating Corruption and Money Laundering to increase detection of foreign bribery, Fala.BR platform was adapted to identify reports of foreign bribery made by citizens and redirect such reports to the CGU.

3(e) What is the main impact of such incentives?

Since 2017, CGU and AGU have signed 25 leniency agreements, imposing sanctions totaling more than BRL 18 billion (USD 3.5 billion). The Brazilian government has been improving the transparency of the agreements, by publishing its terms and launching a publicly available business intelligence panel, displaying several details of the agreements.

Following the recent publication of Decree No. 11,129/2022, the percentages of mitigating circumstances in the calculation of fines were readjusted and increased in the case of voluntary admission of guilt and existence of a corporate integrity program (Article 23). As of February 2023, there were 24 ongoing proposals of leniency agreement being analyzed by CGU and AGU. Such number of concluded and opened leniency agreements negotiations illustrates the success of the mechanism in encouraging self-reporting by companies. 12

Another measure recently adopted by CGU that has already shown a positive effect as a new non-trial resolution option is the Early Judgment procedure, regulated by CGU Ordinance No. 19, of July 22, 2022. In this procedure, the legal entity, during the administrative liability proceeding (or even during the preliminary investigation), can decide to plead guilty, before the conclusion of the sanctioning proceeding.

In the 8 months following its enactment, the adoption of the Early Judgment has shown positive results: 11 cases have already been concluded through early judgement and other 22 requests for early judgement have been filed, totalizing 33 cases.

Part C - Additional measures

3(f) Please describe (cite or summarize) good practices and/or examples of any other additional measures used to strengthen business integrity and/or reduce corruption in the private sector in your country.

Guidance on 3(f): Additional measures could, for example, include any of the following:

- Integrity pacts – written agreements between government agencies and companies to strengthen integrity in public procurement, usually overseen by an independent monitor
- Collective action – collaborative initiatives that bring companies and other relevant stakeholders together to prevent and counter corruption and raise standards of business integrity
- Public sector reform – civil service and/or regulatory reforms that reduce the opportunities for corruption
- Public education – activities that raise public awareness of corruption and its harmful effects

Since 2018, as part of the strategy for combating corruption, the Brazilian government has adopted several measures aimed at improving the effectiveness of the integrity environment among Brazilian companies. This effort resulted in the adoption of the different actions, outlined below:

1) In January 2019, the Office of the Comptroller General (CGU)'s sector responsible for investigations and administrative liability proceedings under CLL was elevated to the status of a Directorate within CGU's internal structure, through alterations introduced by Decree 9681/2019. It was thus created the Directorate of Liability of Legal Entities (DIREP) to conduct liability proceedings. The Coordination for the Investigation and Judgement of Legal Entities, a new sector under DIREP, acted in investigative proceedings (preliminary investigations); and a separate sector,

also subordinated to DIREP, was responsible for conducting sanctioning proceedings: the Coordination for the Liability of Legal Entities;

2) Soon after those institutional changes, a significant improvement in the body's work was reported: in the first semester of 2020, the CGU initiated a record number of 33 Administrative Liability Proceedings (PAR). Previously, in 2019, 23 PARs had been initiated. The number represented a 40% increase in the total number of proceeding initiations in the same period. In total 78 cases were initiated that year. In 2021, 47 PARs were initiated, and in 2022, 55;

3) In 2019, the National Strategy on Combating Corruption and Money Laundering (ENCCLA) addressed a specific action to improve the communications between different public bodies related to foreign bribery (Action 02/2019). The initiative provided a multi-agency forum to discuss the topic and propose actions to improve the detection of cases of foreign bribery. In result, the action proposed several regulations that were later incorporated into Decree No. 11,129/2022 as well as the development of training courses;

4) In 2022, CGU enacted Ordinance No. 19, of July 22, 2022, which instituted the Early Judgement procedure. Despite its name, this instrument consists of an alternative method of dispute resolution applicable to administrative corruption cases, which will not be subject to a

judgement, but rather to a summary decision on the merits. This procedure implies that a company admits its strict responsibility for the practice of the wrongful act and, consequently, is subject to sanctions that are mitigated in accordance with the stipulated normative parameters, without the need for a formal judgment. Notwithstanding the novelty of this institute, many companies involved in administrative misconduct have already submitted a request for early judgment. As of March 2023, 11 cases have been finalized through early judgment and 22 other requests are pending evaluation, totalizing 33 cases. Benefits to the liability of legal entities have already been identified, such as greater celerity and lesser expenditure of institutional efforts, thus enabling a company to solve issues with the Public Administration in a faster and less expensive manner;

5) In the beginning of 2023, CGU promoted a new change in its structure, providing even further celerity and effectiveness to the promotion of private integrity. A new secretariat was created – Secretariat for Private Integrity (SIPRI) – which merged the sectors responsible for the liability of legal entities (DIREP) and for leniency agreements into a single Secretariat. Moreover, the Integrity Promotion and Assessment Directorate was also integrated into the new Secretariat, bringing together activities that were previously carried out in other Secretariats within CGU's structure. This new institutional design is expected to improve the efficiency of dialogue between areas and to provide a better framework for decisions that affect multisectoral aspects of private integrity, allowing for a joint reflection on the positive and negative impacts to all the areas involved;

6) Also, the number of CGU officials dedicated to private integrity has substantially increased. Currently, there are 102 civil servants at SIPRI, all devoted to the joint and integrated work aimed at promoting a more ethical environment for Brazilian legal entities conducting business in the country as well as abroad;

7) Brazil is part of various initiatives to engage companies, for instance the Alliance for Integrity (AfIn), which consists of a global collective actions initiative that brings together stakeholders from the private and public sectors and civil society in a joint effort to build and promote solutions to strengthen transparency and integrity in the economic system. The alliance is headed by the German Development Cooperation (GIZ, in its German acronym), a government agency structured as a private but non-profit company. The initiative currently operates in regional centers in Germany, Brazil, Ghana, India and Indonesia and the compliance training program is carry out in different countries in Latin American. Integrating AfIn, CGU is part of the alliance advisory board and has engaged in several activities such as participating in working groups to promote integrity in the n small and medium-sized businesses (SMEs). One of AfIn's actions is DEPE, which is a face-to-face Corruption Prevention Training "From Companies to Companies", which takes place in several states, whose objective is to provide representatives of SMEs with subsidies and practical tools to deal with the challenges related to Integrity and help them make their undertakings more transparent and competitive. In addition, there is the promotion of seminars and face-to-face

debates and webinars that address integrity issues throughout Brazil. An example was the Week of Integrity – Promoting Cooperation in Latin America, which occurred in May 2018, in São Paulo, Brazil, in which CGU members were attended.

Additional information

Is there any other information that you wish to share which has not been addressed by the previous questions?