BAKER & McKENZIE

GLOBAL CARTELS HANDBOOK

Leniency: Policy and Procedure

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Global Leniency Policies—Quick Reference Guide

Country	Key Conditions/Criteria	Timing of Application/Decision	Availability for Individuals	Interface with Criminal Sanctions	Interface with Civil Damages
Albania	**Immunity** • first to provide information enabling the authority to begin an investigation; and • first to submit evidence which in the authority's view may enable it to find an infringement of Article 4 of the Law. **Reduction** • up to 50% reduction. Other conditions that apply for both categories: • full and continuous cooperation; and • termination of involvement in the cartel.	Leniency is no longer available where the Commission has already gathered enough information and evidence in order to prove the offence and the leniency applicant is not able to provide information or evidence which would constitute 'added value' to the investigation or the Commission's ability to prove the offence. The Leniency Regulation does not specify the time of the decision, however it provides that a concerned undertaking will be informed in writing, no later than the end of the administrative procedures, on the decision of the Commission of the Competition Authority on reduction of the fines.	The Leniency Regulation entitles 'undertakings' to benefit from leniency. Natural persons performing an economic activity are deemed to be undertakings; therefore, such natural persons may be eligible for leniency. However, there is no express provision in the Regulation permitting individuals, such as employees of an undertaking, to apply for leniency.	There are no criminal sanctions; accordingly, the Leniency Policy only covers the administrative law consequences (fines on undertakings for violation of the Law).	Where an undertaking has been granted leniency under the Leniency Policy, this will have no bearing on any damages claims which may be brought against the infringing undertakings by injured third parties.
Armenia*	The current Law On Protection of Economic Competition does not provide for a leniency programme. However, a draft law to amend the current law currently exists, which makes provision for the introduction of a leniency programme.				
Argentina*	No leniency programme currently exists in Argentina; however, a draft bill amending certain sections of Competition Defence Law Number 25,156 is currently under consideration, allowing for the introduction of a leniency programme. It is advisable to contact local counsel for developments.				

* Jurisdictions which are marked with an asterisk are known or believed to have some provisions for lenient treatment already in place, or pending. Relevant details of these provisions, if known, are included in this table. In the absence of full details, however, we have not dedicated a full chapter in the Handbook to these jurisdictions. Persons wishing to seek leniency in these jurisdictions are advised to consult local counsel for further detail.

Country	Key Conditions/Criteria	Timing of Application/Decision	Availability for Individuals	Interface with Criminal Sanctions	Interface with Civil Damages
Australia	Immunity will be granted to a person where: • the person is the first to apply for immunity in respect of the cartel; • the person admits that it participated, or is participating, in a cartel; • the person has not coerced others to participate in the cartel and was not the clear leader in the cartel; • the person has ceased its involvement, or indicated that it will cease its involvement, in the cartel; • if a corporation, the admissions are a truly corporate act; and • at the time of the application, the ACCC has not received written legal advice that it has sufficient evidence to commence proceedings in relation to at least one contravention of the Act arising from the conduct in respect of the cartel. The person must provide ongoing full disclosure and cooperation to the ACCC (and CDPP where relevant) for conditional immunity to remain in place and to be eligible for final immunity.	To be eligible for immunity, a corporation or individual must be the first to apply for immunity in respect of the cartel. Immunity will be available until such time as the ACCC has received written legal advice that it has sufficient evidence to commence proceedings in relation to at least one contravention of the Act arising from the conduct in respect of the cartel. The ACCC will grant conditional immunity as soon as it is satisfied that the conditions of immunity have been met. Full immunity will be provided once the ACCC's investigation and any proceedings have been concluded.	Immunity is available to both companies and individuals. An individual will be eligible for derivative immunity if the individual is or was a director, officer, or employee of a corporation that has received conditional immunity.	All applications for immunity from criminal prosecution will be received and managed by the ACCC. The ACCC will assess whether the application meets the criteria set out in the ACCC Immunity Policy and make a recommendation to the Commonwealth Director of Public Prosecutions as to whether immunity from criminal prosecution should be granted.	Immunity does not protect a person from civil damages claims.

Austria	Please list here, in a bullet point list, all the key conditions and criteria which must be met in order to qualify for all categories of leniency. See example below: **Immunity** In order to qualify for full immunity from a fine, the applicant has to fulfil the following conditions: • the undertaking ended its involvement in the alleged infringement; • the undertaking informs the FCA of the violation before the authority has any knowledge of it; • the undertaking cooperates fully on a continuous basis and expeditiously from the time it submits its application; and • the undertaking did not coerce others to participate in the infringement. **Reduction up to 50%** • Must provide evidence of significant added value. **All categories of leniency** • full and continuous cooperation;	Please include a basic overview of timing/procedure for submission of applications and timeline of authority decisions. **Immunity** The overall procedure may be summarized as follows: • submission of leniency application; • the timeframe for the provision of all evidence in the possession or available to the applicant may be agreed with the FCA; • the FCA will advise the applicant as soon as possible, following a review of the evidence and information submitted, whether they are eligible for leniency and if so, what percentage reduction will apply assuming the applicant fulfils all conditions. This is a non-binding preliminary assessment; and • the FCA makes an application to the Cartel Court in relation to the alleged violation. The Cartel Court is precluded from imposing a fine in excess of the fine requested by the FCA.	Please indicate here whether: (a) individuals can also benefit from corporate leniency granted to an undertaking; and (b) individuals can apply for leniency on a standalone basis. Please also provide details of key conditions/criteria which must be met in order for individuals to qualify for leniency under (a) or (b). The Policy only applies to undertakings and owners of undertakings. Individuals are not eligible. A leniency programme for certain white-collar crimes (such as fraud, corruption, abuse of authority, and other crimes) was introduced in January 2011. Within the framework of this programme, immunity from sentence may be granted where (a) the	Please indicate the effects of an application for leniency from administrative sanctions on criminal sanctions, where such criminal sanctions exist. Individuals engaged in criminal cartel conduct may be subject to a criminal fine and/or sentenced to imprisonment. Leniency applications from undertakings do not protect individuals from criminal sanctions. A leniency programme for certain white-collar crimes (such as fraud, corruption, abuse of authority, and other crimes) was introduced in January 2011. Within the framework of this programme, immunity from	Please indicate the effects being granted leniency may have on civil damages claims/ follow-on actions. The grant of leniency does not protect an applicant from civil enforcement proceedings.

Country	Key Conditions/Criteria	Timing of Application/Decision	Availability for Individuals	Interface with Criminal Sanctions	Interface with Civil Damages
	• applicant did not take steps to coerce others to participate; and • termination of involvement in the cartel.		cooperation of the leniency applicant constitutes a substantial contribution to solving the crime; and (b) sentencing of the applicant is not required for reasons of general prevention or special prevention.	sentence may be granted where (a) the cooperation of the leniency applicant constitutes a substantial contribution to solving the crime; and (b) sentencing of the applicant is not required for reasons of general prevention or special prevention.	
Belgium	**Immunity** • first to provide information enabling the BCA to begin an investigation; or • first to submit evidence which in the BCA's view may enable it to find an infringement of Article 2 of the Competition Act and, where applicable, of Article 101 TFEU. **Reduction up to 50%** • Must provide evidence of significant added value. **All categories of leniency** • full and continuous cooperation; • no destruction of evidence;	**Immunity** Undertakings or associations of undertakings may choose to apply for a marker or submit a formal immunity application. *Application for a marker* To obtain a marker, applicants must provide the BCA (Competition Prosecutor) with certain requisite details regarding the cartel (see chapter). In addition, applicants must inform the BCA (Competition Prosecutor) of other past or possible future immunity applications to other competition authorities in relation to the same case and justify its request for a marker.	The Competition Act does not provide sanctions (administrative or criminal) for private individuals involved in cartel activity. Consequently, private individuals cannot apply for leniency under the Notice. Only undertakings or associations of undertakings (or their external lawyers) can submit a leniency application.	There are no criminal sanctions for undertakings involved in cartel activity, as the fines which may be imposed on undertakings are administrative in nature. The Competition Act does not provide sanctions (administrative or criminal) for private individuals involved in cartel activity.	The grant of leniency does not protect an applicant from civil enforcement proceedings.

	• applicant did not take steps to coerce others to participate; and • termination of involvement in the cartel.	Once the marker is granted, the Competition Prosecutor will specify a timetable for submission of the complete formal application. *Formal application* There is no specific form that must be used for applications. Applications may only be submitted with the Registry of the BCA, to the attention of the Competition Prosecutor General. Written applications must be submitted by hand (in eight copies). Applications may also be submitted by email, fax, or registered letter (in which case eight copies of the application must be submitted by hand to the Registry on the following working day). Oral applications are also possible. The application will be examined (and further information may be requested) by a Competition Prosecutor. When the examination of the application is completed, the Competition Prosecutor General requests the Competition Council to adopt a leniency declaration. The Competition Council will endeavour to issue a conditional immunity declaration (which grants conditional immunity) within 20 working days following the request by the Competition Prosecutor General.			

Country	Key Conditions/Criteria	Timing of Application/Decision	Availability for Individuals	Interface with Criminal Sanctions	Interface with Civil Damages
		The Competition Council will only grant immunity in the final case decision if the conditions stated in the immunity declaration have been respected. **Partial leniency** *Application for a marker* No marker is available for partial leniency applicants. *Formal application* See under 'Immunity' above. Where an applicant meets the conditions for partial leniency, the Competition Council will adopt a conditional leniency declaration (which it will endeavour to adopt within 20 working days following the request by the Competition Prosecutor General) specifying the reduction bracket which is likely to apply to the applicant (ie 30–50% or 10–30%). The exact reduction will only be determined by the Competition Council in its final decision. Partial leniency will only be granted if the conditions stated in the leniency declaration have been respected.			
Bosnia & Herzegovina	*Immunity from financial penalties*	The 'first-in' principle applies under the Policy, making	The Regulation makes leniency available to	The Policy does not protect successful	The Policy does not protect against

	In order to obtain full immunity under Chapter 1 applicants must: • submit evidence unknown to the Council at the moment of submission; • terminate participation in the prohibited agreement; • not inform other parties to the agreement concerned of its application; and • cooperate fully, on a continuous basis and expeditiously throughout the proceedings and provide all the evidence and information within its possession or under its control. *Reduction of financial penalties* The Policy also allows applicants that do not qualify for immunity to qualify for a reduction up to 50% of the potential fine. In order to qualify for any of the available bands of reduction the applicant must: • provide the Council with information or evidence supporting that already in its possession, which significantly contributes to the establishment of a violation; and • terminate all further participation in the prohibited agreement under investigation, as directed by and on the conditions set by the Council.	immunity available to these applicants only. Under Chapter 1, an undertaking may be granted total immunity from financial penalties if it is the first to provide the Commission with evidence of a cartel, provided certain other conditions are met (see Section 3.1). Note that where the first applicant undertaking fails to meet the requirements for immunity, the next subsequent applicant fulfilling the conditions for immunity shall be taken into consideration for immunity (Article 4, the Regulation). Applicants that are not 'first-in' may still benefit from leniency, and may be eligible for a reduction of up to 50% of the fine. Pursuant to Chapter 3 of the Regulation, applicants who are not the first to come forward may be granted a fine reduction according to the time at which they come forward.	undertakings, defined by Article 2 of the Competition Act as any legal or natural person participating in the trade of goods or services. There is express provision permitting individuals to apply on a standalone basis.	applicants from any criminal sanctions which may be imposed (Article 43 of the Competition Act).	the civil law consequences to which applicant undertakings may be exposed (Article 43).

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	In addition to the above, applicants will only be eligible to a specified percentage reduction according to the time at which it comes forward with information: • **a 30–50% reduction** will be granted to the first undertaking not meeting the conditions for immunity; • **a 20–30% reduction** will be granted to the second undertaking not meeting the conditions for immunity; • **up to 20% reduction** will be granted to all subsequent undertakings not meeting the conditions for immunity, to be determined according to the discretion outlined under 2.11 above.				
Brazil	Immunity (full or partial) is only available to the first company or individual to report the offence. Other conditions that apply: • applicant must not be the cartel leader; • must confess to its participation in the cartel; • must terminate involvement in the cartel; • must provide full cooperation (resulting in the identification of co-conspirators);	The agreement is signed by the SDE at the beginning of the investigation. The agreement is confirmed by CADE at the end of the investigation. If the leniency agreement is signed when the authorities are not aware of the offence, full immunity will be available. However, if the authorities are already investigating the practice but do not have sufficient evidence, only partial leniency is available (reduction in the fine between one- and two-thirds).	Employees and ex-employees may apply for leniency along with the company or after the company signs the leniency agreement.	The Public Prosecutor's Office will not be able to press charges against the individual who signs the leniency application. Once the leniency agreement is confirmed by CADE at the end of the investigation, the individual will	The leniency programme does not cover civil damages potentially arising out of the investigated practice. However, civil lawsuits for damages are still uncommon in Brazil in antitrust cases.

	• must provide information and evidence in order to prove the reported offence.			receive immunity treatment from criminal sanctions that would be applicable to the offence.	
Bulgaria	**Immunity** • first to provide evidence which constitutes sufficient grounds for instituting proceedings; **Reduction up to 50%** • voluntarily provide evidence that helps establish infringement; and • termination of involvement in the cartel. **All categories of leniency** • full and continuous cooperation; and • termination of involvement in the cartel.	**Immunity** Undertakings may choose to apply for a marker or submit a formal immunity application. *Application for a marker* To obtain a marker, applicants must provide the Authority with certain requisite details regarding the cartel (see chapter 5.2). In addition, applicants must inform the Authority of other past or possible future immunity applications to other competition authorities in relation to the same case and justify its request for a marker. *Formal application* Applications must be submitted on the specified form. Applications may only be submitted in person to the designated leniency address or by fax. Oral applications may also be accepted. In addition, the Bulgarian Competition Authority has identified specific contact persons (see section 6.1). The CPC grants **conditional immunity** by order issued by the chairman.	**Individuals may not benefit from corporate immunity** Only undertakings are eligible for leniency. Individuals cannot apply for leniency.	There are no criminal sanctions for undertakings involved in cartel activity, as the fines which may be imposed on undertakings are administrative in nature. Individuals engaged in cartel conduct are not subject to criminal sanctions. However, they may be charged for general criminal offences under the Penal Code, such as fraud. Nevertheless, individuals who have assisted in the infringement of the law, and where this infringement does not constitute a criminal offence, are subject to a fine of up to BGN 50,000 under the LPC.	The grant of leniency does not protect an applicant from civil enforcement proceedings.

Country	Key Conditions/Criteria	Timing of Application/Decision	Availability for Individuals	Interface with Criminal Sanctions	Interface with Civil Damages
		Immunity will only be granted in the final case decision. **Partial leniency** No marker is available for partial leniency applicants. A formal application must be submitted on the specified form. Applications may only be submitted in person to the designated leniency address or by fax. Oral applications may also be accepted. In addition, the Bulgarian Competition Authority has identified specific contact persons (see section 6.1). Where an applicant meets the conditions for partial leniency, the Authority grants **conditional reduction** by order issued by the chairman. The exact reduction to be granted to a successful applicant will only be determined by the Authority in its final decision.			
Canada	**Immunity** • first in where Bureau is unaware of the offence; or • first to provide information that warrants a referral to the Director for Public	• The authority will only discuss whether leniency is available to a particular applicant after a marker has been sought. • Where immunity is unavailable, the Senior Deputy	Where the first leniency applicant is a business organization, the Bureau will typically recommend that no separate charges be laid	All cartel offences are criminalized under the Act. Sanctions for participation in cartel offences	There is no direct interface between leniency and civil damages under Canadian law.

	Prosecutions (DPP). DPP has exclusive authority to grant immunity. **General conditions** The Bureau will make a recommendation for leniency in sentencing to the PPSC when the individual or business organization applicant: (a) has terminated its participation in the cartel; (b) agrees to cooperate fully and in a timely manner, at its own expense, with the Bureau's investigation and any subsequent prosecution of the other cartel participants by the PPSC; and (c) agrees to plead guilty.	Commissioner of Competition (SDC) will advise the party of the Bureau's Leniency Policy and of the party's place in line should it choose to apply for lenient treatment. The SDC will inquire as to whether the party wishes to participate in the programme and give the applicant four business days to make that determination. The Bureau will consider the information provided and make a recommendation to the Public Prosecution Service of Canada (PPSC) regarding leniency. The PPSC will then engage in plea negotiations with the applicant which are intended to result in a guilty plea by the applicant coupled with an agreement as to lenient treatment in exchange for the information disclosed.	against the applicant's current directors, officers, or employees, provided that such individuals cooperate with the Bureau's investigation in a full, frank, timely, and truthful fashion.	include a criminal fine and/or imprisonment. Under the Policy, leniency may be granted to undertakings and individuals from both criminal fines and imprisonment.	It should be noted that a guilty plea as required by a leniency application will open the company up to civil litigation.
Chile	**Total exemption from monetary fines** • first to provide the Authority with sufficient, precise, and truthful evidence to file a complaint against the participants in the collusion; keep the leniency application confidential; and end participation in the collusion. **Reduction up to 50%** • Must provide additional evidence than that provided by the first-in applicant.	**Leniency proceedings** In order to apply for leniency, whether total or partial, the applicant must use the electronic application form available on the Authority's website. The FNE will review the application within three business days and then it will ask the applicant to attend a 'planning meeting'. At this meeting the FNE shall notify the applicant of its marker and it will set another	**Individuals benefiting from corporate immunity** Companies and individuals are both eligible for leniency. In the case of a company, the leniency includes all its directors, executive officers, and employees mentioned in the formal application for leniency.	There are no criminal sanctions for antitrust violations in Chile. However, it has been argued that cartel activities affecting prices may qualify as a criminal offence under the Criminal Code, which contemplates imprisonment up to	The grant of leniency does not protect an applicant from civil damages actions.

Country	Key Conditions/Criteria	Timing of Application/Decision	Availability for Individuals	Interface with Criminal Sanctions	Interface with Civil Damages
	All categories of leniency • provide the Authority with sufficient, precise, and truthful evidence to file a complaint against the participants in the collusion; • keep confidential the cooperation with the Authority; • terminate its participation in the collusion; and • applicant cannot be the ringleader of the collusion coercing others to participate.	meeting in which the applicant shall deliver the evidence offered in the application. This meeting must be carried out within 90 calendar days from the date of the 'planning meeting'. Once the evidence has been delivered, the FNE shall have ten business days to review whether the evidence fulfils the legislative requirements discussed above. If the evidence fulfils all the requirements, the FNE will issue a Resolution of Approval, granting the specific benefit. If the evidence is insufficient, the FNE may grant an additional 30 calendar days to allow the applicant to provide the additional information. Once the applicant provides the additional information, the committee will review it within ten business days and if the application is successful, the FNE will issue a Resolution of Approval. The exemption or reduction to be granted will be informed to the applicant in the Resolution of Approval. Nonetheless, the FNE will formally grant the benefit when filing its complaint against the individuals or companies involved in the collusion.	Notwithstanding the Company's leniency, individuals may also apply for leniency on a standalone basis. The procedure and requirements, however, are the same.	three years, for 'fraudulent adulteration of prices'.	

China	**Immunity** There are no detailed specific guidelines about conditions for leniency, apart from the fact that: • confessions must be made voluntarily; and • applicants must provide 'important evidence' of price fixing.	Only the NDRC, not the SAIC, has prescribed the percentage reductions from penalties available to cartel members coming forward to self-report. The first-to-confess may be entitled to receive 100% immunity, the second to do so, possibly more than a 50% reduction, with subsequent companies potentially receiving a reduction of up to 50% (though precise percentages not specified).	Leniency is available to both companies and individual sole traders or partners participating in cartels. Individuals, as employees of a company, are not currently liable for anti-monopoly violations.	There are no criminal sanctions for participating in cartels in China.	The current law is silent on this issue.
Colombia	Applications for full leniency (ie the total waiver of the possible fine to be imposed) are subject to the following conditions: (a) The applicant must be the first to come forward and qualify for immunity with respect to the activity; (b) The applicant must confess its wrongdoing; (c) The applicant must provide effective information on the activity, including: (i) the activity's objectives, (ii) mechanism of the activity; (iii) name and domicile of all the parties involved; (iv) role of each participant; (v) products or services affected by the activity; (vi) geographical scope of the activity; and	Only the first applicant will be granted full immunity. After an application for leniency is made, the SIC will draft leniency minutes, including the time and date of the application and specific reference to each of the conditions. The minutes will also include the agreed deadline for the applicant to gather and provide the evidence and information on the infringement. At the agreed deadline, if the applicant provides all the information required and the SIC deems the application complete, a leniency agreement will be entered into between the SIC and the applicant specifying: (i) the general description of the evidence and information submitted by the applicant;	Any individual or may apply for leniency. Individuals may apply on their own behalf, as representatives of their companies, or both.	Colombian competition legislation does not impose criminal sanctions for anti-competitive conduct.	A decision to grant leniency does not protect the applicant from any adverse consequences that may arise under tort laws as a result of the violation of competition laws by the undertakings concerned.

Country	Key Conditions/Criteria	Timing of Application/Decision	Availability for Individuals	Interface with Criminal Sanctions	Interface with Civil Damages
	(vii) an estimate of the duration of the infringement, and how much time it was expected to last, and (d) The applicant must provide all evidence available to support its statements, within the date to be agreed with the antitrust division of the SIC. In addition to the above, full leniency will be available only if the applicant is not 'the entity that encouraged or coerced others to participate in the illegal activity, was the leader in, or originator of, the illegal activity'. **Partial leniency** The main difference between applications for full leniency and partial leniency is that applicants for partial leniency do not need to be first in. In this sense, the second applicant can obtain a partial waiver of the possible sanction for engaging in the illegal activity provided it complies with the following conditions: (a) The applicant must confess its wrongdoing; and	(ii) an indication of the applicant's marker position; and (iii) the total or partial reduction of the sanction to be imposed for the corresponding infringement the subject of the agreement. In the event that the applicant does not comply with the conditions, or the SIC deems that the evidence provided is not sufficient to assist its investigation – and therefore to grant leniency – it will inform the applicant and the next marker applicant will be treated as first, and the failing first applicant will pass to the end of the line. Leniency is available only before the SIC has issued an official internal conclusion report on the investigation the subject of leniency.			