

NEW RULES FOR CONVERSION OF ENVIRONMENTAL FINES

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The Ministry of Environment (MMA), the Brazilian Institute of Environment and Renewable Natural Resources (Ibama), and Chico Mendes Institute for Biodiversity Conservation (ICMBio) regulated in January this year, by means of the joint normative rulings Nos. 1 and 3, direct and indirect modalities for conversion of environmental fines.

Provided for in the Federal Decree No. 6,514/08 (amended by Decrees No. 9,179/17 and No. 9,760/19), the conversion allows the agencies and entities that compose the National Environmental System (Sisnama) to convert simple environmental fines into services related to the preservation, improvement, and recovery of environmental quality, with the exception of fines arising from environmental violations that result in human deaths.

Although the new joint normative rulings do not change the procedure for the implementation of the conversion of environmental fines, they regulate some details that are relevant to the operation of the Fine Conversion Program.

Joint Normative Ruling No. 1, -responsible for regulating the direct modality of conversion of environmental fines, establishes that the defendant must implement by its own means the project for the provision of services related to the preservation, improvement and recovery of environmental quality. The Federal Environmental Public Administration will offer to the defendants the assessed project or project quota to be implemented, and may even indicate the adhesion to the indirect modality.

Projects submitted under the Administrative Procedure for Project Selection (PASP) or under a specific internal procedure, and approved by the institution responsible for organizing the selection, will only be part of the conversion projects portfolio after approval by the president of the agency or any other designated public agent. With such approval, the competent environmental authority will then indicate to the defendant the project which it considers to be compatible with the amount of the set fine.

In the direct modality, the defendant will be responsible for monitoring the environmental project and for bearing any related environmental costs. Implementation and monitoring reports must be periodically submitted to the competent environmental agency in order to verify the progress of project implementation and the achievement of the proposed results. After the request for direct conversion has been approved, the defendant must sign a commitment term in which will be established the conditions to be met.

Regulated by Joint Normative Ruling No. 3, the indirect modality of conversion of environmental fines provides, in its turn, that the defendant must contribute to the Environmental Fine Conversion Fund (FCMA) with the amount resulting from the fine, after application of the discount. The contribution will be allocated to cover the costs for the provision of services related to the preservation, improvement, and recovery of environmental quality. The defendant, in this case, is not directly involved in the implementation of environment's beneficial measures.

When requesting the indirect conversion of environmental fines, the defendant must sign two different documents. The first is a commitment term, undertaking to pay to the FCMA the amounts involved in the conversion of the fine. The contribution to the FCMA must follow schedules that will be individually established with the competent environmental agency. The defendant that chooses this type of conversion must also sign an Instrument of Adhesion to the Fine Conversion (TACM), which will establish the conditions for the fulfillment of its obligations, with no responsibilities related to the monitoring or execution of the project.

As set forth in the two joint normative rulings, the conversion of environmental fines may be requested at three different moments, regardless of the chosen modality: (i) to the Environmental Conciliation Center, by the time of the environmental conciliation hearing, in which case a discount of 60% from the consolidated fine will be granted; (ii) to the judging authority, until the first instance decision, in which case a discount of 50% from the consolidated fine will be granted; and (iii) to the higher authority, until the judgment of the appeal, in which case a discount of 40% from the consolidated fine will be granted. Thus, the discount will not be based on the conversion arrangement chosen, but on the time when interest in conversion is expressed.

Another relevant aspect regulated by the joint normative rulings relates to the updating of the time frame provided for in Decree No. 10,198/20, published on January 3. The Decree postponed the date for the defendants

who have already pleaded the conversion under Decree No. 9,179/17 to (i) withdraw the request submitted; or (ii) to submit a petition requesting the adjustment of its plea, in order to guarantee the application of a 60% discount from the amount of the consolidated fine (in this case, it will also be allowed to change the initially chosen modality of conversion of the environmental fine).

The original deadline was January 6, 2020, but it was extended to July 6. In case the defendant does not manifest an opinion on the new aspects of the regulation, tacit withdrawal of the request will occur. This will allow the authority that established the fine to continue with the environmental administrative proceeding.

The regulation on the conversion of environmental fines facilitates the resolution of administrative proceedings. However, notwithstanding the benefits herein indicated, it is important to remember that signing the respective commitment terms related to the conversion of environmental fines implies withdrawal of judicial and administrative challenges to the imposed fines and assumption of obligations that require time and investments.