

NEWSLETTER No. 77

FEBRUARY, 2021



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CVM PROPOSES NEW RULE ON DISCLOSURE OF CORPORATE LITIGATION BY COMPANIES

On February 12, 2021, the Brazilian Securities Commission (CVM) submitted to public hearing, by means of Public Hearing Announcement SDM 01/21 (“[Public Hearing Announcement](#)”), the draft of a resolution proposing alterations in CVM Instruction 480/2009 (“[CVMI 480/2009](#)”), which covers the registration of issuers of securities (“[Draft](#)”).

The objective of the change proposed in the Draft is to establish the obligation for disclosure of new information in relation to what was previously required, through the “communication of corporate demands”. With this alteration, the CVM aims to give greater visibility regarding judicial and arbitral proceedings of a corporate nature able to affect, directly or indirectly, the rights of the shareholders of companies involved in litigation.

The Draft is the result of the joint action of the working group formed by the CVM and the Ministry of the Economy, with financial support from the Prosperity Fund and technical assistance from the Corporate Governance Committee of the Organization for Economic Cooperation and Development (OECD). The Draft is in particular based on the recommendations of the OECD in its recent report entitled “Private Enforcement of Shareholder Rights: a Comparison of Selected Jurisdictions and Policy Alternatives for Brazil.”

The expression “corporate demands”, as defined in the Draft, means any judicial or arbitral proceeding related to a matter set out in legislation on corporations and the securities market, or in the rules issued by the CVM, that directly or indirectly involve issuers, their shareholders or administrators (directors or officers).

However, aware that the referred definition would be too broad, the CVM intends to limit the scope of the new disclosure obligation only to corporate demands in which the issuer, its controlling shareholders or administrators are parties and: (i) that involve diffuse, collective or homogeneous individual rights; or (ii) in which the decision could negatively affect the legal sphere of the issuer or other holders of securities issued by the company that are not parties to the case.

The Draft also stipulates that the new obligation cannot be waived by arbitration agreements/clauses, rules of arbitration chambers, or any other type of arrangement, only being limited by situations of secrecy specified in law. According to the Public Hearing Announcement, the CVM believes that the stipulations for secrecy contained in the rules of many arbitration chambers are incompatible with resolution of market disputes.

In this scenario, the issuer will have to disclose: (i) news, within 3 business days counted from the date of filing a lawsuit or receiving service of process, or from the date of presenting or receiving a request for arbitration, identifying the parties, amounts involved or rights in dispute, the main facts and the pleadings; (ii) any provisional decisions and results of verdicts/awards on the merit, within 3 business days of learning of the decision; and (iii) settlement proposals or agreements, within 3 business days counted from presentation or formalization of the settlement.

Suggestions and comments regarding the Draft must be sent in writing by April 12, 2021 to the Superintendency of Market Development (*Superintendência de Desenvolvimento de Mercado - SDM*), at the e-mail address “audpublicaSDM0121@cvm.gov.br”.

More information, as well as the full text of the Draft and the Public Hearing Announcement, can be found at the website of the CVM (<https://www.gov.br/cvm/pt-br>).

ITBI CAN ONLY BE ASSESSED AFTER REGISTRATION OF TRANSFER OF OWNERSHIP OF REAL PROPERTIES

On February 19, 2021 a decision was published by the Supreme Court in the matter of Appeal for Certiorari in Extraordinary Appeal no. 1.294.969/SP, which held that the assessment of the Tax on Transfer of Real Estate by *Inter Vivos* Act (ITBI) before registration of the transfer of ownership is illegal.

In his guiding opinion, Luiz Fux, chief justice of the Supreme Court and the reporting judge assigned to the case, held that the decision rendered in this sense by the São Paulo State Court of Appeals was in accordance with the position of the Supreme Court.

The decision also established the following position for the effect of general repercussion, for the purpose of reaffirming the jurisprudence from the Supreme Court:

The generating event of the tax on *inter vivos* transmission of real estate (ITBI) only occurs upon the effective transfer of ownership of the property, by means of registration.

More information, along with the full text of the Supreme Court decision can be found at the Court’s website (<http://portal.stf.jus.br/>).