

# NEWSLETTER No. 79

APRIL 2021



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# SUMMARY

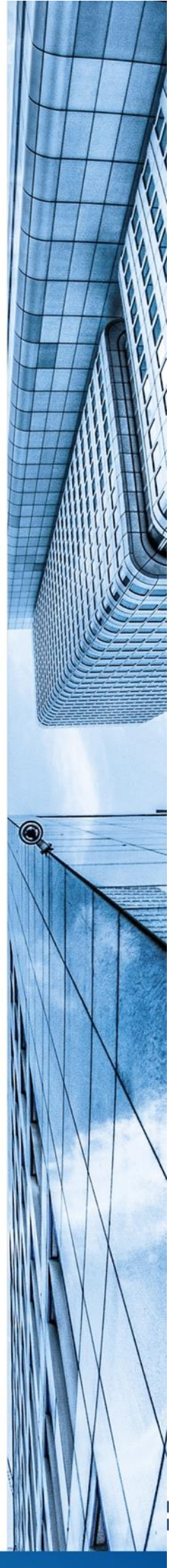
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## PROVISIONAL MEASURE PUBLISHED FOR THE PURPOSE OF IMPROVING THE BUSINESS CLIMATE IN BRAZIL

Provisional Measure (*Medida Provisória*) 1,040/2021 was published on March 30, 2021. Among other matters, it aims to facilitate the establishment of companies in Brazil, improve protection of minority shareholders of listed companies, streamline the foreign trade process, improve the Integrated System for Recovery of Assets, and alter the rules set out in the Civil Code on the time-bar for procedural acts in ongoing litigation (“MP 1,040/2021”).

Below are more details on the alterations promoted by MP 1,040/2021:

- (i) Facilitation of obtaining authorization for companies to operate: Law 11,598/2007 (better known as the “REDESIM Law”) has been modified for: (a) attribution of effectiveness for an indeterminate period to public acts of release related to the operation of business establishments, except in cases of activity with some degree of risk; and (b) automatic issuance of operating permits and licenses for activities whose degree of risk is considered medium, according to acts of the executive branch of the federal, state, Federal District and municipal governments. On this matter, it should be noted that since the enactment of Law 13,874/2019, the activities classified as having low risk can be exercised without the need for any public release acts.
- (ii) Expansion of the protection of minority shareholders of listed companies: MP 1,040/2021 made changes in Law 6,404/1976 (Law of Corporations), applicable exclusively to listed companies, among them: (a) determination of private competence of the general meeting to deliberate on the sale of relevant assets and the conclusion of relevant transactions with related parties, with the Brazilian Securities Commission (CVM) being entrusted with defining the criteria for relevance; (b) increase of the prior notice period for the first summons for general meetings of listed companies to 30 days (previously it was 15 days); (c) prohibition of accumulating the positions of chairperson of the board of directors and chief executive officer of the same company, with the CVM being empowered to grant exceptions to that restriction in cases of companies with low gross revenue; and (d) obligation to have independent directors, with the proportions and terms in office to be defined by the CVM.
- (iii) Streamlining of foreign trade: Besides new rules on the matter, alterations were promoted in Law 12,546/2011 with the objective of facilitating foreign commerce. Among the new provisions are those established in Art. 7 of MP 1,040/2021, which prevent bodies and entities of the direct or indirect federal public administration from: (a) establishing limits to the values of goods or related services involved in import or export

transactions; and (b) refusing to authorize or license import or export transactions because of the amounts involved. Those prohibitions, however, are not applicable to the regulations or procedures involving taxation and/or customs clearance, which remain under the remit of the Federal Revenue Service.

- (iv) Identification and recovery of assets and protection of credits: MP 1,040/2021 authorizes the creation by the federal executive branch of the Integrated System for Recovery of Assets (*Sistema Integrado de Recuperação de Ativos – SIRA*), constituted by a set of instruments, mechanisms and initiatives to gather public listing data and information on the assets of companies and individuals, with the objective of: (a) facilitating the identification and location of assets of debtors; and (b) enabling the constriction of such assets and prevention of their disposal for the purpose of injuring creditors.
- (v) “Procedural prescription”: Art. 206-A was added to the Civil Code, to determine that the time-bar for procedural acts is the same as that for filing civil suits.

Provisional measures take effect immediately with status of ordinary law and remain in effect for 60 days from their publication date, extendable once only for an equal period, during which they are subject to approval/amendment/rejection by Congress on a priority basis. If approved, with or without amendments, they are converted into law. If rejected, they lose their effect retroactively to publication.

More information, as well as the full text of MP 1,040/2021 (in Portuguese), can be found at the website of the Presidency of the Republic (<http://www.planalto.gov.br>).

## **LAW ESTABLISHES INVESTMENT FUNDS IN AGROINDUSTRIAL PRODUCTIVE CHAINS (FIAGROs)**

On March 30, 2021, Law 14,130/2021 was published, which establishes so-called Investment Funds in Agroindustrial Productive Chains (FIAGROs), by altering Law 8,668/1993 (which only covered Real Estate Investment Funds) and Law 11,033/2004.

The FIAGRO is a mutual investment fund established in the form of a special joint ownership arrangement, intended solely for investments, alone or jointly, in:

- (i) Rural real estate;

- (ii) Equity participation in companies engaged in activities of the agroindustrial productive chain;
- (iii) Bonds, credit instruments or other financial assets issued by individuals or companies that integrate the agroindustrial productive chain, pursuant to follow-on regulations to be issued;
- (iv) Credit rights involving agribusiness and securitization instruments issued based on those credit right instruments arising from agribusiness, including: (a) certificates of agribusiness receivables; and (b) shares of investment funds in credit rights or in other investment funds formed to invest in non-standardized credit rights that invest more than 50% of their assets in the referred credit rights;
- (v) Credit rights involving rural real estate and securitization instruments issued based on those credit rights, including: (a) certificates of agribusiness receivables; and (b) shares of investment funds in credit rights or in other investment funds formed to invest in non-standardized credit rights that invest more than 50% of their assets in the referred credit rights; and
- (vi) Shares of investment funds that invest more than 50% of their assets in the credit instruments described above.

Law 14,130/2021 also establishes that in the case of lease of rural property by a FIAGRO, the conditions freely arranged in the respective lease agreement will prevail, except that in cases of failure to pay the amounts owed by the lessee, the deadline set in a judicial order for eviction shall coincide with the end of the harvest of the crop that was growing at the time of the default, when applicable, respecting a minimum period of six months and maximum of one year.

Furthermore, FIAGROs can be established with determined or indeterminate duration, in the form an open or closed mutual ownership fund. Also, categories of FIAGROs can be created according to the investors that subscribe the shares and the nature of the investments to be carried out. The FIAGRO shares can be paid up in assets and rights, including real estate. The rural properties used for this purpose must be appraised in advance by a qualified professional or specialized company).

With respect to the taxation of FIAGROs, Law 14.130/2021 establishes that:

- (i) the earnings and capital gains obtained and distributed by the FIAGRO are subject to income withholding tax of 20% (when distributed by the FIAGRO); and

- (ii) the capital gains obtained on the sale or redemption of the shares of FIAGROs are subject to income tax of 20%: (a) withheld at the source in case of redemption; or (b) subject to the same rules applicable to the net capital gains obtained on the sale of variable-income instruments in other cases.

More information, as well as the full text of Law 14,130/2021 (in Portuguese), can be found at the website of the Presidency of the Republic (<http://www.planalto.gov.br>).

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