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SUMMARY

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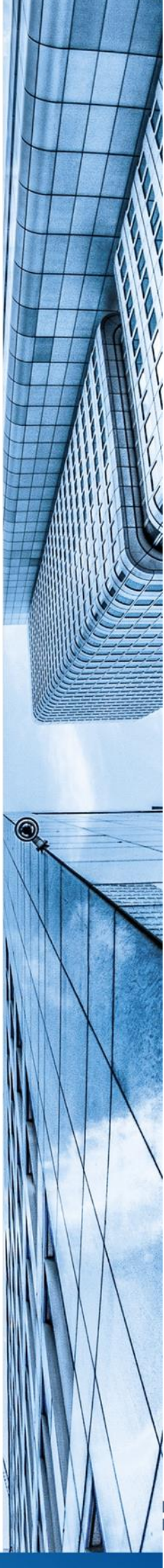

LAW TO IMPROVE THE BUSINESS ENVIRONMENT IN BRAZIL ENACTED

On August 26, 2021, Law 14,195/2021 was published, which among other matters will 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 ("Law 14,195/2021").

Law 14,195/2021 is the result of conversion into law of Provisional Measure 1,040/2021 ("PM 1,040/2021"), whose main aspects were described in our Newsletter 79 (April 2021).

Law 14,195/2021 has promoted a broad reform of various aspects of Brazilian legislation related to the easing of business conduction, substantially modifying the existing legal regime for business activity. Without any pretension to exhaustively comment on the entire content of the new Law, below we present the most relevant modifications, separated by theme.

Opening of companies, obtainment of licenses and authorizations and conduction of business activities

Law 14,195/2021 provides a broad reform of Law 11,598/2007 (known as the "REDESIM Law").

With the entry into force of the new Law, the bodies and entities involved in registration and legalization of business enterprises must make available to users, free of charge, a simplified enrollment form along with data on existing businesses and their owners, and instruments that permit prior searches of locational feasibility, choice of business name, and registration, licensing and enrollment status.

Besides this, the Law provides new wording to Art. 11 of the REDESIM Law, creating a single portal, maintained by the federal government, where procedures prior to and following registration can be accomplished, such as consultations, payments and other services related to the registration and legalization of business enterprises and their owners.

In the same line, operating permits, licenses and other public acts to authorize business activity will be considered valid until cancellation by a subsequent act, which will occur upon confirmation of failure to comply with a previously established requirement or condition. In cases where the risk of the activity is considered moderate, the operating permits and other licenses will be issued automatically, without human analysis (since the enactment of Law 13,874/2019, the same basic framework has applied to companies whose activities are classified as having low risk).

The new Law also determines that state and municipal governments must adapt their systems so that the enrollment number on the National Registry of Legal Entities (CNPJ) will be the only enrollment identifier. The objective is to end the need to mention the municipal and state enrollment numbers, simplifying the identification of businesses.

Additionally, the alterations implemented by PM 1,040/2021 have been confirmed regarding: (i) making it elective to include indication of the type of business activity in company names; (ii) authorizing the business name to correspond to the name registered under the CNPJ number, followed by an identifier of the type of company when required by law; and (iii) authorizing the existence of similar business names, prohibiting only the registration of new companies with names identical to previously existing ones.

With respect to the points mentioned above, Law 14,195/2021 establishes a time limit of 60 days counted from its publication for the competent governmental bodies and entities to adjust to the new rules.

Protection of minority shareholders and multiple voting

Law 14,195/2021 altered various relevant aspects of the legal regime of corporations established in Law 6,404/1976.

The principal alteration in this respect is the possibility of attributing multiple votes to one or more classes of shares. This provision modifies the concept previously set out in Law 6,404/1976, according to which each share, irrespective of type, corresponds to one vote. Now it is possible for a determined class of shares to grant more votes to its holders than the number of shares possessed. This enables holders of this class of shares to strengthen their influence in corporate decisions without having to purchase or subscribe more shares.

Multiple voting is now allowed for both unlisted and listed corporations (provided that in the case of listed companies, the establishment of multiple voting must occur before the trading of any shares or other securities convertible into shares in organized securities markets).

According to the new provisions introduced in Law 6,404/1976, the multiple voting regime must observe the following rules: (i) each common share cannot grant the owner the right to cast more than 10 votes per share; (ii) the right of appraisal (withdrawal) shall be granted to shareholders dissenting with the creation of a class of shares with multiple votes, unless the creation of one or more classes of shares with multiple votes was previously set forth or authorized in the bylaws; (iii) the creation of shares with multiple voting rights must be approved by holders of at least half of the votes afforded to the existing common shares, and also by holders of preferred shares, gathered

at a special meeting; and (iv) the multiple voting regime will initially last 7 years, extendable for any period thereafter, upon observance of the formalities for their creation (with exclusion of the votes of the holders of shares with multiple votes).

The new §8 of Art. 110-A of Law 6,404/1976 indicates the personal character of the multiple voting regime, by establishing the loss of this status when: (i) the shares are transferred to another party (except in cases where the seller remains indirectly the sole holder of the shares in question, the acquirer is already the holder of shares with multiple voting rights, or when the transfer is only through a trust deed arrangement, i.e., fiduciary ownership); or (ii) the shareholder or voting agreement involving the owners of shares with and without multiple votes establishes rules for the joint exercise of voting.

The multiple voting regime may not be adopted by companies owned wholly or controlled directly or indirectly by a governmental entity (and the respective subsidiaries).

In complement, rules to enhance protection of minority shareholders have been adopted, such as:

(i) expansion of the matters under the sole competence of the general meeting, including in the case of listed companies, deliberation on engaging in transactions with related parties or disposal or conveyance of relevant assets (i.e., that correspond to more than 50% of the value of the company's total assets according to the most recent approved balance sheet);

(ii) extension of the advance notice period of the first call to hold the general meeting of listed companies from 15 to 21 days (during the effective period of PM 1,040/2021, this period was 30 days);

(iii) alteration of the wording of the provisions on the quorums for holding meetings and the qualified majorities for approval of matters that include the possibility of having classes of shares with multiple votes;

(iv) prohibition of listed companies to combine the figure of chairperson of the board of directors and chief executive officer (although the Securities Commission – CVM can establish exceptions regarding this prohibition for small companies); and

(v) obligation of the participation of independent members on the boards of directors of listed companies (previously only companies listed for trading in determined market segments had to observe this rule, as set forth in the regulations of the trading segments in question).

Election of officers with foreign domicile

Under the previous rules of Law 6,404/1976, only members of the board of directors could have foreign domicile. Now Art. 146 of the Law allows companies to have officers with foreign domicile, as long as they establish a representative domiciled in Brazil with powers, lasting for at least 3 years following the end of their term in office, to receive service of process in lawsuits filed against the officer or summonses issued regarding administrative proceedings conducted by the CVM.

Facilitation of Foreign Trade

With respect to the licenses, authorizations and other administrative requirements for imports or exports, Law 14,195/2021 specifies the creation of a "single electronic channel" through which importers, exporters and other foreign commerce agents can submit documents, data or information to entities of the public administration, with respect to importation or exportation of goods. In this respect, those bodies or entities may not demand the filling out of other forms than that of the "single electronic channel", aside from cases of legal exceptions.

Additionally, Law 14,195/2021 stipulates that the imposition of licenses or authorizations will only be permitted as a requirement for imports or exports due to the characteristics of the goods when such restrictions are specified in a law or normative act issued by a competent body or entity of the federal public administration.

Finally, regarding foreign commerce, alterations were established in Law 12,546/2011, in particular the modernization of the system for verification of the non-preferential rules of origin of products.

Integrated System for Recovery of Assets

With the enactment of Law 14,195/2021, the federal government is authorized to establish, under the governance of the National Revenue Attorney's Office (PGFN), the so-called Integrated System for Recovery of Assets (*Sistema Integrado de Recuperação de Ativos* – SIRA), consisting of a set of instruments, mechanisms and initiatives to facilitate identification of the location of goods and assets of debtors, as well as to restrict disposal of such assets for the purpose of injuring creditors.

The SIRA has the objectives, among others, of giving greater effectiveness to judicial decisions regarding satisfaction of obligations of any nature, with nationwide scope, including collection of information in public databases on the assets of persons for the purpose recovering public or private credits. The overall aim is to strengthen the effectiveness and improve the efficiency of actions to recover assets.

The implementation of the SIRA will depend on issuance of follow-on regulations by the federal executive branch. This can include the establishment of a Positive Fiscal List, to optimize the information about taxpayers and solution of possible conflicts. After its establishment, the Positive Fiscal List will be further regulated by the PGFN.

Additionally in this respect, the new Law establishes the modernization of the rules on ineligibility of companies, by making the rules more objective. For this purpose, alterations of Law 9,430/1996 have been established to specify the situations of suspension, declaration of ineligibility and cancellation of enrollment on the CNPJ of companies.

Professional Councils and Commercial Translators and Interpreters

Law 12,514/2011 has been altered regarding professional councils. The main change is the prohibition of default or delay in payment of the dues by the professionals belonging to the respective councils causing suspension of registration or impediment to exercise the profession.

In addition, Law 14,195/2021 modernizes the activities exercised by public commercial translators and interpreters, previously regulated by the outdated Decree 13,609/1943. In this respect, these professionals are now authorized to work throughout the country and by electronic means.

Extinction of the "EIRELI" business type

Law 14,195/2021 revoked the provisions of the Civil Code on sole proprietorships with limited liability (EIRELIs), extinguishing this type of business enterprise. The reasoning is that the EIRELI figure lost its reason for being after the alteration of the legislation, which allows limited liability companies to be composed of only one partner.

Further, according to the Law, the EIRELIs existing on the date it takes effect will be automatically transformed into unipersonal limited liability companies, without the need for any alteration of the constitutive act.

Alterations of the Civil Code

Article 206-A was added to the Civil Code, regarding the so-called "civil procedural prescription" (the time-bar for procedural acts in ongoing litigation), which henceforth shall have the same limitation period as that applicable to the filing of lawsuits, with observance of the causes for

impediment, suspension and interruption (setting back to zero) of the time-bar period set forth in the Code.

Besides this, paragraphs were inserted in Art. 1142 of the Civil Code, defining the concept of business establishment. According to the new rules, the establishment shall not be confused with the place where the business activity is exercised, which can be physical or virtual. In cases of virtual exercise of activities, the address reported for the purpose of registering the business enterprise can be that of the sole owner or one of the partners of the company.

Alterations of the Civil Procedure Code

The provisions on service of process stated in the Civil Procedure Code (CPC) have been modified by Law 14,195/2021. In this sense, the possibility is now detailed of summoning the defendant by electronic means, which now becomes the preferable form of citation. Besides this, the CPC now specifies that service of process must be accomplished within 45 days of filing the suit.

In this same sense, the new rules specify the penalties applicable to defendants that fail to confirm receipt of summons sent electronically, including a fine of up to 5% of the value attributed to the cause.

Vetoes

Among the items of Law 14,195/2021 vetoed by the President, the following are most relevant:

(i) Expansion of the competencies of the DREI: provisions were vetoed that attributed to the National Department of Business Registration and Integration (DREI) the role of specifying information systems, proposing the necessary rules and carrying out training related to integration for registration and legalization of business entities and entrepreneurs. In the President's opinion, currently those attributions are adequately exercised by various entities, such as state commercial registry boards and the Federal Revenue Service;

(ii) Extinction of professional partnerships: the wording of Law 14,195/2021 submitted for presidential signing would have ended the establishment of professional partnerships by revoking the provisions of the Civil Code applicable to this type of organization. The veto was justified that the extinction would have a negative effect on a significant portion of the economically active population, especially in relation to taxation; and

(iii) Alteration of the nomenclature applicable to the profession of freelance investment agent: the intention was vetoed to alter the nomenclature of today's "autonomous investment agent" to "investment advisor", chiefly based on the justification that the current expression has become a standard in the market.

Law 14,195/2021 took effect on the day of its publication, although it will be necessary to observe specific rules for the entry into force of each of its provisions.

More information, as well as the full text of Law 14,195/2021 (in Portuguese), can be found at the website of the Presidency of the Republic (www.planalto.gov.br).

CVM ISSUES NEW RESOLUTION ON DISCLOSURE OF MATERIAL ACTS AND FACTS AND ON INSIDER TRADING

On August 23, 2021, the Brazilian Securities Commission (CVM) issued Resolution 44, which updates the provisions on disclosure of information regarding material acts or facts, trading of securities pending announcement of a material act or fact and disclosure of information on securities trading, as well as revokes CVM Instruction 358/2002 ("ICVM 358" and "Resolution").

The Resolution, besides emerging from the process of revising and consolidating the CVM's normative acts (progressively accomplished in line with Decree 10,139/2019), also involves significant alterations in comparison with ICVM 358.

Among these alterations is the inclusion of a new chapter, exclusively to deal with improper use of privileged information (insider trading). Art. 13, § 1, of the Resolution (part of that chapter) contains an objective list of the situations where improper use of inside information in trading will be presumed, including the following:

(i) a person uses knowledge of material information not yet disclosed to the market to trade in securities;

(ii) the controlling shareholder (direct or indirect), the administrators (directors or officers), members of the oversight board and the company itself (in relation to its own securities issued), engage in trading based on material information not yet disclosed;

(iii) the individuals listed in item "(ii)", as well as those who have a comercial, professional os trusting relationship with the company and access material information which has not yet been disclosed, are aware that said information is considered relevant (material); and

(iv) information will be considered relevant (material) as of the moment studies or analyses are initiated regarding: (a) corporate restructuring (spin-off, merger, amalgamation or transformation of company type); (b) change in control of the company; (c) decision to delist the company; or (d) decision to change the trading venue or trading segment of the securities issued by the company.

All the presumptions contained in the referred list are relative, so that they must be analyzed together with other elements indicating whether or not there was any illicit trading. Furthermore, according to Art. 13, § 2, of the Resolution, the referred presumptions can be utilized together.

On the other hand, Art. 13, § 3, of the Resolution determines the situations where the presumptions do not apply:

(i) cases of acquisition through private trading of shares held in treasury resulting from the exercise of purchase options according to stock option plans granted to executives, employees or outsourced service providers as part of remuneration previously approved by a general meeting; and

(ii) trading of fixed-income securities through repo transactions (combined commitments for repurchase by sellers and resale by buyers), for settlement on a pre-established date, prior to or on the maturity date of the instrument in question, with predefined yield or other parameters.

The Resolution maintains the prohibition contained in Art. 13, § 4, of ICVM 358, which forbids the trading of securities by the company itself, its controlling shareholders, officers, directors and members of the oversight board in the 15 days before the disclosure of quarterly accounting information and the annual financial statements.

Among the innovations introduced by the Resolution on this theme, Art. 14, § 1, determines that the referred blackout period applies regardless of the existence of material information pending disclosure or the intention of the trading. Furthermore, § 2 clarifies the form of counting the period specified in Art. 14: it excludes the announcement day, but only allows trading on that date after the accounting information is disclosed to the market.

Finally, according to Art. 17 of the Resolution, the adoption of a policy on disclosure of material acts or facts – previously mandatory for all listed companies by force of Art. 16 of ICVM 358 – is now mandatory only for companies that cumulatively: (i) are registered in category A; (ii) have been authorized by a market administration entity to trade shares in a securities exchange; and (iii) have

shares in circulation (i.e., shares not owned by the controller, parties related to it, or administrators, and shares held in treasury).

The Resolution will take effect on September 1, 2021.

More information, as well as the full text of the Resolution (in Portuguese) can be found at the website of the CVM (www.gov.br/cvm).