NEWSLETTER No. 93

JUNE 2022

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SUMMARY

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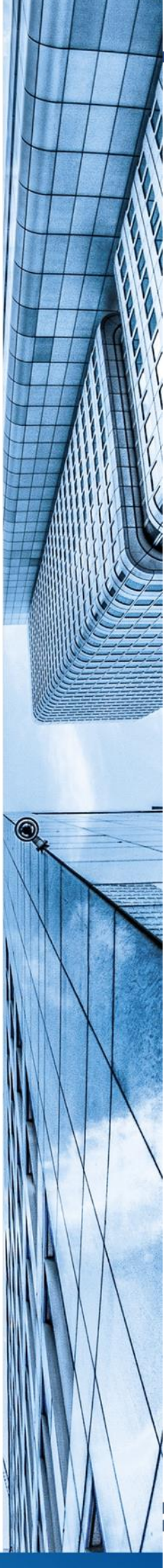

DECREE ESTABLISHES FOUNDATIONS FOR THE BRAZILIAN CARBON CREDIT MARKET

On May 19th, 2022, the Brazilian Federal Decree No. 11,075/2022 was published, establishing the procedures for formulation of so-called "Sectorial Plans for Mitigation of Climate Changes" ("Sectorial Plans"), provided by the sole paragraph of the Article 11 of the Brazilian Federal Law No. 12,187/2009. The Decree also established the National System for Reduction of Greenhouse Gas Emissions ("Sinare"), with the purpose of serving as the sole venue for trading of carbon credits in Brazil.

The Brazilian Federal Law No. 12,187/2009 also established the National Policy on Climate Change, determining that the Executive Branch must establish the Sectorial Plans aiming to consolidate an economy with low carbon consumption in the following sectors:

(i) generation and distribution of electrical energy;

(ii) urban public transportation;

(iii) modal systems of interstate transport of cargo and passengers;

(iv) manufacturing and consumer durables industry;

(v) fine and base chemical industry;

(vi) paper and cellulose industry;

(vii) mining;

(viii) civil construction industry;

(ix) healthcare services; and

(x) agriculture.

In turn, the Brazilian Federal Decree No. 11,075/2022 attributes to the Ministry of the Environment, Ministry of the Economy, and other sectorial ministries (as the case may be), the power to propose the Sectorial Plans, which must be approved by the Interministerial Committee on Climate Change and Green Growth ("CIMV"), created pursuant to the Brazilian Federal Decree No. 10,845/2021 (whose Article 1 determines that the CIMV has the purpose of establishing guidelines, and articulating and coordinating the implementation of Brazilian public actions and policies related to climate change).

The Sectorial Plans will establish gradually more restrictive targets for reduction of greenhouse emissions and their removal via carbon sinks, with observance of the long-term objectives assumed by Brazil as a signatory of the Paris Agreement. These targets will be monitored by means of periodic presentation of inventories by agents belonging to the listed sectors ("Sectorial Agents"), to be defined in the respective Sectorial Plans.

Furthermore, the time frames and rules for updating the Sectorial Plans must be in line with Brazil's commitments assumed under the Paris Agreement. Nevertheless, the Sectorial Plans will be able to establish different timetables for adhesion of the Sectorial Agents that are members of the Sinare and define differentiated treatment to these agents, by considering, among other criteria: (i) the category of the companies and rural properties; (ii) the gross revenue; (iii) the emission levels; (iv) the characteristics of the economic sector; and (v) the region of location.
The Decree establishes also that the Brazilian Market for Reduction of Emissions will constitute an environmental management mechanism and will be the instrument to put the Sectorial Plans into operation, also serving as a tool for implementation of emission reductions through the use of trading of carbon credits that are registered with the Sinare ("Certified Credits").

In this respect, the Sinare will function as a single venue for registration of emissions, removals, reductions and offsets of greenhouse gases and acts for trading, transfer and retirement of Certified Credits.

The Sinare will be operationalized by the Ministry of the Environment, through a digital tool with instruments for (i) the registration of emissions, reduction and removals of greenhouse gases and acts for trading, transfer and retirement of Certified Credits; (ii) the mechanisms for integration with the regulated international market; and (iii) the registration of inventories of emissions and removals of greenhouse gases.

Moreover, the Sinare will also enable, without the need to generate Certified Credits, the registration of (i) carbon footprints of products, processes and activities; (ii) carbon of native vegetation; (iii) carbon in the ground; (iv) blue carbon; and (v) carbon stock units.

Finally, the Brazilian Federal Decree No. 11,075/2022 specifies that the sectors subject to the Sectorial Plans will have 180 days counted from its publication date (extendable for an equal period) to present their proposals to establish reductions, considering the long-term goal of carbon neutrality assumed by Brazil according to the Paris Agreement.

More information, as well as the full text of the Brazilian Federal Decree No. 11,075/2022, can be found at the "Planalto" portal of the website of the Brazilian government (www.gov.br/planalto).

CVM BOARD RECONSIDERS DECISION ON THE ACCOUNTING TREATMENT OF DISTRIBUTION OF AMOUNTS TO INVESTORS OF REAL ESTATE INVESTMENT FUNDS WHEN THEY EXCEED THE PROFIT DETERMINED BY THE ACCRUAL REGIME

According to the minutes of the Board of the Brazilian Securities Comission (CVM) meeting, which were published on May 17, 2022, the CVM Board ruled the request for reconsideration of its previous December 21, 2021 ruling ("Appealed Ruling"), that was presented by BTG Pactual Serviços Financeiros S.A. DTVM ("BTG" or "Appellant"), as the administrator of Maxi Renda Fundo de Investimento Imobiliário. ("Fund").

The Appealed Ruling had partially granted an appeal submitted by BTG against the interpretation of the Superintendency for Supervision of Securitization (SSE) that the earnings of the Fund could only be distributed to the investors upon the existence of accounting profits (in the same year or accrued from past years) (SEI Proceeding no. 19957.006102/2020-10).

In this respect, the Appellant, based on Art. 10, sole paragraph, of Law 8,668/1993, had been distributing to the investors, as earnings, amounts calculated based on the cash accounting basis, even when such amounts exceeded those recognized for accounting purposes as profits for the year and/or accrued from past years. As a result, the "excess amount" distributed increased the cumulative losses of the Fund in recurring form.

Through the Appealed Ruling, the CVM Board established that the Appellant could distribute those amounts to the Fund's investors. However, it also determined that the distribution of income greater than the accounting amounts ascertained for the year or accrued from past years could not be classified in the financial statements as "earnings", but instead as "amortization of shares" or "return of capital to the investors".

In this context, on January 27, 2022, the CVM disclosed a note stating that the Appealed Ruling "involved a specific case, but the interpretation expressed therein can apply to the other real estate investment funds that have similar characteristics to those in the case analyzed."

In its request for reconsideration, the Appellant indicated that the new accounting classification determined in the Appealed Ruling "brings not only legal risks, but also operational, financial, governance, liquidity management, and even tax implications, in the context of a distribution of earnings/equity".

In analyzing the request for reconsideration formulated by the Appellant, the CVM Board unanimously reconsidered the Appealed Ruling, recognizing the regularity of classifying the distribution of "excess cash profits" as "accrued losses/profits", rather than amortization of paid-up shares or return of capital.

The CVM President Marcelo Barbosa and Director Flávia Perlingeiro pointed out that the core of the controversy is the gap in the sole paragraph of Article 10 of Law 8,668/1993, which "employs imprecise terminology, with potential to generate significantly distinct treatments" when referring to "profits generated, as ascertained according to the cash accounting regime, based on a balance sheet or semi-annual trial balance sheet," without clearly indicating how the distribution of these "cash profits" should be treated for accounting purposes.

Additionally, the CVM Board also advised the Appellant to present more information in the Fund's financial statements, to clarify to investors that the portion of the distribution of "excess cash profits" can be greater than the accounting profits in some cases.

The CVM Board indicated that the information improvement could be accomplished by creating sub-accounts in the net equity line related to "accrued profits/losses", segregating the distribution of profits that corresponded to accounting profits distributed and the distribution of "excess cash

profits" (if any) based on Law 8,668/1993, with a corresponding explanatory note regarding those amounts.

Furthermore, the CVM Board reported that the administrator of the Fund must provide more details in this respect in the bulletins or reports sent to the investors, including clarifications about the risks involved.

Finally, the CVM Board members expressed the position that this information question should be placed on the Commission's regulatory agenda for the purpose of standardizing and improving the rules applicable to investment funds, as part of the general revision of CVM Instruction 516/2011.

More information, as well as the full texts of the decisions by the CVM Board in SEI Proceeding no. 19957.006102/2020-10, can be found at the CVM's website (www.gov.br/cvm).

STJ DEFINES PARAMETERS ON THE CONTINUATION OF INDIVIDUAL DEBT ENFORCEMENT AFTER THE CLOSING OF COURT-SUPERVISED REORGANIZATION

On April 27, 2022, the Second Section of the Superior Court of Justice (STJ, the highest court for non-constitutional matters) granted Special Appeal no. 1.655.705/SP ("Special Appeal"), filed by a company undergoing court-supervised reorganization against a decision of the 31st Private Law Chamber of the São Paulo State Court of Appeals (TJSP) that upheld the lower court ruling that rejected a pre-execution objection motion filed by the appellant.

In its pre-execution objection motion, the company undergoing court-supervised reorganization sought extinction of a debt collection suit filed by the appellee, based on the allegation that the credit in question was classified as pre-petition and thus subject to the effects of the reorganization proceeding.

According to the decision rendered by the 31st Private Law Chamber of the TJSP, the credit detained by the appellee was classified as post-petition, because the final decision of the underlying debt collection suit occurred after the granting of the reorganization petition. Hence, the credit in question was not subject to the reorganization proceeding.

In the special appeal, the creditor pointed out that its credit was constituted by a verdict rendered in 2008, therefore before the filing of the petition for court-supervised reorganization, which was granted on August 29, 2014. In this respect, it contends that the credit was born with the generating event, not the moment of the final judicial decision. Therefore, although the decision recognizing the existence of the debt was declared final (res judicata) after the filing for reorganization, its "constitutive cause" happened beforehand.

According to the leading opinion of the reporting justice, Ricardo Villas Bôas Cueva ("Reporting Justice"), the interpretation of the appellate court below regarding the post-petition nature of the credit conflicted with the jurisprudence from the STJ, settled according to the repetitive appeal

regime, that consolidated the position that the existence of a credit starts on the date of its generating event (see STJ, Special Appeal 1.840.531/RS, 2nd Panel, Reporting Justice Ricardo Villas Bôas Cueva, judged on December 9, 2020, published on December 17, 2020).

After recognizing the pre-petition nature of the credit, the Reporting Justice analyzed whether the enforcement phase of the debt collection suit should be extinguished.

Regarding the argument of the appellant that the creditor is required to obtain the allowance of its credit by the reorganization court, the Reporting Justice held that the law does not require the creditor to seek allowance of the credit, since this is only an option of the creditor.

On the other hand, the creditor cannot proceed with the individual enforcement of its credit during the reorganization process, since this would undermine the debt reorganization system, harming creditors whose credits have been allowed by the court.

Specifically, regarding the possibility of pursuing the individual enforcement by the creditor after the end of the court-supervised reorganization, the Reporting Justice stressed that the argument that the creditor can pursue integral satisfaction of its credit after the conclusion of the reorganization proceeding defies Art. 49 of Law 11,101/2005.

In turn, with respect to the voluntary exclusion of the credit from the scope of the reorganization proceeding by the debtor, the Reporting Justice held that the possibility of voluntary exclusion must be circumscribed to a class or sub-class of creditors, who receive their credits in the form originally stipulated. Possible creditors singularly excluded from the reorganization proceeding, but that belong to the class subject to the reorganization plan, must obtain allowance of their credits pursuant to Law 11,101/2005.

Originally, the opinion of the Reporting Justice had stated that in cases where the decision to recognize the subjection of the credit to the effects of the court-supervised reorganization proceeding after the final decision concluding that proceeding, the enforcement should proceed according to the original value of the credit, because in that situation there would be no novation by the plan.

However, after considering the manifestations of the other justices of the panel, Marco Aurélio Bellizze and Luis Felipe Salomão, the Reporting Justice altered his reasoning on this aspect.

According to the Reporting Justice, regardless of whether one understands that the conclusion of the reorganization proceeding coincides with the end of the judicial phase (Art. 61 of Law 11,101/2005) or that the reorganization only ends with the payment in full of all the obligations set forth in the reorganization plan, the simple continuation of the original enforcement action after the conclusion of the reorganization is unfeasible.

Therefore, while a creditor not listed in the initial list of creditors is not obliged to obtain allowance of its credits from the court, it must submit to the conditions of the plan approved by the creditors. The subsequent recognition of the pre-petition nature of the credit, whether before or after the

closing of the reorganization proceeding, does not make the credit in question immune to the effects of the reorganization plan.

In the case under discussion, the Reporting Justice concluded that the pre-execution objection motion presented by the appellant should be accepted, with extinction of the enforcement of the debt, with the appellee having the option of: (i) seeking allowance of its credit in the reorganization proceeding; or (ii) presenting a new claim to enforce the credit after the end of the reorganization proceeding, taking into consideration that in this case its credit will be subject to the effects of the approved judicial recovery plan.

More information, including the full text of the decision in Special Appeal no. 1.655.705/SP, can be obtained as the website of the STJ (www.stj.jus.br).