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SUMMARY

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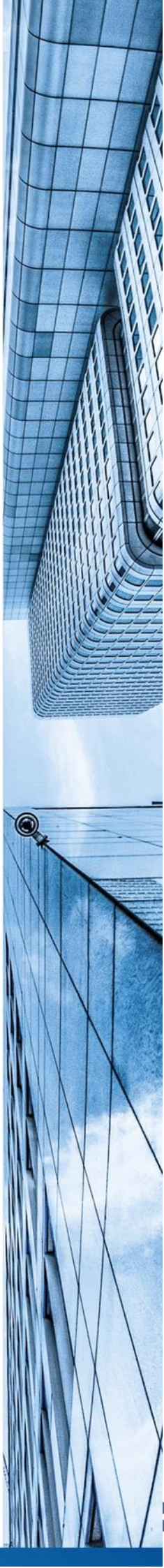

NEW DECREE REGULATING THE BRAZILIAN ANTICORRUPTION LAW TAKES EFFECT

On July 12, 2022, Decree No. 11,129/2022 ("New Decree") was published to regulate Law No. 12,846/2013 with respect to the administrative and civil liability of companies for the commission of acts injurious to the national or foreign public administration ("Anticorruption Law"). The New Decree revoked Decree No. 8,420/2015 ("Revoked Decree"), which formerly regulated the Anticorruption Law.

The New Decree specifies that the Anticorruption Law applies to injurious acts committed: (i) by Brazilian companies against the public administration of a foreign country, even if committed abroad; (ii) completely or partly in Brazil that produce or can produce effect therein; or (iii) abroad, when committed against the Brazilian public administration. According to the Anticorruption Law, companies that have headquarters, a branch or representation office (whether formally constituted or existing de facto) in Brazil can be held liable for injurious acts.

Among the main alterations promoted by the New Decree in comparison with the Revoked Decree, the following stand out:

(i) Percentages and other factors for setting fines:

As was the case under the Revoked Decree, the fine is calculated based on percentages of the gross revenue of the offending company in the fiscal year before the opening of the administrative liability proceeding (PAR) by which the company is found guilty. However, the percentages applicable to each severity factor, as well as the definition of those factors, have been altered by the New Decree.

According to Art. 22 of the New Decree, the applicable fine is now calculated by the sum of the amounts corresponding to the following percentages of the calculation base: (i.1) up to 4% in case of collusion in injurious acts; (i.2) up to 3% in case of tolerance or silence despite awareness of executives or managers of the company (under the Revoked Decree, the percentage was limited to 2.5%); (i.3) up to 4% in case of interruption in the supply of a public service, execution of construction work or delay in the delivery of goods or services deemed essential to the provision of public services, or in the case of failure to comply with regulatory requirements; (i.4) 1% for the economic situation of an offender that has general solvency or general liquidity ratio greater than 1 and net profit in the fiscal year before the commencement of the corresponding PAR; (i.5) 3% in case of repeated offense (under the Revoked Decree, the applicable percentage was 5%); (i.6) 1% to 5%, depending on the value of the contract(s) affected by the injurious acts, ranging from R$ 500,000.00 to R$ 250,000,000.00 (under the Revoked Decree, the contractual values varied from R$ 1,500,000.00 to R$ 1,000,000,000.00).

Besides the factors to increase the fine, pursuant to Art. 23 of the New Decree, the factors for reduction of the fine were altered, as follows: (i.1) reduction of up to 0.5% in case of failure to consummate the infraction (under the Revoked Decree, that

percentage was up to 1%); (i.2) reduction of up to 1% in case of proof of spontaneous repair of the injurious act and refund of the amount gained therefrom, or the absence of proof of the advantage gained and the damages resulting from the injurious act; (i.3) reduction of up to 1.5%, depending on the degree of collaboration of the company with the investigation or measurement of the injurious act, irrespective of a leniency agreement; (i.4) reduction of up to 2% in case of voluntary admission by the company; and (i.5) reduction of up to 5% in case the company has and applies an integrity program.

(ii) Scope of the preliminary investigation:

The New Decree has increased the scope and specified new rules and procedures for preliminary investigations, which are conducted in secrecy, aiming to collect evidence of acts injurious to the federal government, to support the possible commencement of a PAR against the investigated company.

The list of investigatory procedures to elucidate the facts has been expanded, including: (ii.1) proposal for the competent authority to suspend the effects of the act or process targeted by the investigation; (ii.2) request for support from technical or operational specialists, of public entities or other organizations, to assist in the investigation; (ii.3) request for banking information involving the movement of public resources (overriding rules on banking secrecy); (ii.4) request by means of a competent authority, for sharing of tax information of the investigated company, as allowed by the National Tax Code; (ii.5) application to a court of law or equivalent authority of the injured entity, for measures necessary to the investigation and processing of injurious acts, including search and seizure, in Brazil or abroad; or (ii.6) request for documents or information on public or private individuals or companies, national or foreign.

(iii) Presentation of defense and request to produce evidence:

The time limit for presentation of a written defense and request to produce evidence by the investigated company continues to be 30 days counted from official notification of the company, as already specified in the Revoked Decree. However, the New Decree innovates by establishing that the notification act (i) shall expressly allow the company to present information and evidence with bearing on the analysis of the elements that can attenuate the amount of a fine; and (ii) may request the presentation of information and documents, under the terms established by the Office of the Comptroller General, to permit the analysis of the company's integrity program.

(iv) Leniency agreements:

With regard to leniency agreements, the New Decree defines them as negotiated administrative acts resulting from the exercise of the punitive power of the government, aiming to hold companies liable for the commission of acts injurious to the national or foreign public administration. Article 32, sole paragraph, establishes the objectives underpinning leniency agreements, namely: (iv.1) to increase the

investigative capacity of the public administration; (iv.2) to enhance the capacity of the public administration to recover assets; and (iv.3) to foster a culture of integrity in the private sector.

Besides these measures, the New Decree determines that a joint act of the Office of the Comptroller General ("CGU") and the Office of the Solicitor General ("AGU"): (i) shall govern the participation of members of the AGU in the negotiation processes and accompany the compliance with leniency agreements; and (ii) establish procedures for the formalization of leniency agreements by the CGU together with the AGU.

Furthermore, additional duties have been imposed on companies wishing to enter into leniency agreements, such as full reparation of the uncontested portion of the damage or loss caused to the victimized governmental entity, as the case may be, corresponding to the undue increase of net worth or unjust enrichment obtained directly or indirectly due to the infraction.

The proposal for a leniency agreement must be submitted in writing, unlike under the Revoked Decree, which also allowed oral negotiation. The negotiation of the leniency agreement must be concluded within 180 days counted from the data of signing the corresponding memorandum of understanding, extendable for an equal period.

The formalization of a leniency agreement sets the statutory limitation period regarding illicit acts covered by the agreement back to zero (called interruption) and suspends it until the commitments made are satisfied, or until the termination of the agreement.

The provisions of the New Decree apply immediately to proceedings under way, except regarding acts that occurred before it entered force (before July 18th, 2022).

More information, as well as the full content of the New Decree, can be found at the website of the Federal Executive Branch (https://www.gov.br/planalto).

CVM ISSUES NEW RESOLUTIONS ON PUBLIC OFFERINGS FOR DISTRIBUTION OF SECURITIES

On July 13, 2022, the Brazilian Securities Commission ("CVM") issued CVM Resolutions No. 160/2022, 161/2022, 162/2022 and 163/2022 (together, "Resolutions"), applicable to public offerings of securities.

The Resolutions are the result of the discussions promoted by SDM Public Hearing No. 02/2021. Besides this, the theme of public offerings of securities is one of the focus topics of the CVM Regulatory Agenda for 2022. The reform of the regulatory framework of public offerings of securities aims to establish greater predictability, agility and legal certainty regarding those transactions.

Below we summarize the matters regulated by each Resolution:

(i) CVM Resolution No. 160/2022: establishes new rules on primary or secondary public offerings of securities and their subsequent trading in regulated markets, revoking CVM Instructions 400/2003 and 476/2009;

(ii) CVM Resolution No. 161/2022: establishes new rules on the registration of the underwriters for distribution of securities and on the procedures and internal controls to be observed in intermediation of such offerings;

(iii) CVM Resolution No. 162/2022: promotes alterations in various CVM instructions and resolutions in force, to adapt them to the new Resolutions; and

(iv) CVM Resolution No. 163/2022: provides new rules on the public offering for distribution of promissory notes, revoking CVM Instruction 566/2015, formerly dealing with this theme.

Among the main alterations promoted in relation to the previous regime, the following stand out:

(i) CVM Resolution No. 160/2022 establishes the so-called "process for automatic registration of distribution", by which the registration of the offering is no longer subject to the previous analysis of the CVM, so it can be carried out automatically. The aim is to afford greater flexibility and agility to the procedure for registration in specific situations. Due to the creation of the process for automatic registration of distribution, the new regulatory framework no longer indicates the so-called "public offerings with restricted efforts", currently specified in CVM Instruction No. 476/2009, since the main advantages of that type of public offering are included in and expanded by the process for automatic registration of distribution.

(ii) The process for automatic registration of distribution applies to initial public offerings of shares, subscription warrants, bonds convertible into or exchangeable for shares and the certificates of deposit of these securities of issuers in the operational phase when the request for registration is previously analyzed by a self-regulatory entity authorized by the CVM (Art. 26, I, of CVM Resolution No. 160/2022).

(iii) CVM Resolution No. 160/2022 establishes a more precise and restricted meaning of the expression "public offering for distribution", defining it as "the act of communication from the offeror, or issuer when it is not the offeror, or also by any individual or legal entity belonging to the system for distribution of securities acting on behalf of the issuer, offeror or intermediary institution, disseminated by any means or form that permits attaining various receivers, and whose content and context represent an attempt to attract the interest or prospect for investors to make an investment in determined securities [...]" (Art. 3).

(iv) CVM Resolution No. 160/2022 provides specification for prospectus models, categorized according to the type of security offered, including prospectuses for: shares, bonds, closed-end funds, receivables investment funds and securitization funds.

(v) CVM Resolution No. 160/2022 expands the hypotheses in which securitization instruments can benefit from the process for automatic registration of distribution, such as, for example, cases of public offerings for distribution of securitization instruments issued by securitization companies registered with the CVM, targeted exclusively at qualified and professional investors (Art. 26, VIII).

(vi) The concept of "institutional investor" is replaced by "professional investor", a concept already existing in the current regulations (Art. 11 of CVM Resolution 30/2021).

(vii) The percentage of the additional lot of public offerings is increased to 25%, replacing the 20% set forth in CVM Instruction No. 400/2003. Therefore, the quantity of securities to be distributed can, at the discretion of the offeror and without the need for new request or modification of the terms of the offering, be increased by up to 25% of the quantity initially envisioned. The 25% limit is waived in the case of offerings targeted at professional investors, with specification in the offering documents of both the maximum value of the additional lot and the allocation of the additional resources.

(viii) Finally, CVM Resolution No. 160/2022 now also contemplates special purpose companies for corporate acquisition ("SPACs"), defined as issuers in the pre-operational phase constituted exclusively for future participation in the equity of an existing operating company (Art. 2, XXII). The rule specifies the trading in regulated markets of securities issued by SPACs only between qualified investors, a constraint that expires six months after the corporate transaction that results in the combined involvement of the SPAC and operating company (Art. 85).

The Resolutions will take effect on January 1st, 2023, but with the reservation of Art. 100, sole paragraph, of CVM Resolution No. 160/2022, which specifies that the offerings that are in progress on that date will continue to be governed by the rules in force, including with respect to the restrictions on trading in secondary markets of the securities offered: (i) on the date if filing the request for registration; or (ii) on the date reported for start of the offering, in the case of offerings exempt from registration.

More information, including the full texts of the Resolutions, can be found at the website of the CVM (www.gov.br/cvm).