

NEWSLETTER No. 99

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SUMMARY

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**DREI ADVISES COMMERCIAL REGISTRY BOARDS TO
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DREI ADVISES COMMERCIAL REGISTRY BOARDS TO RECOGNIZE THE PUBLISHING OF FINANCIAL STATEMENTS BY LARGE LIMITED LIABILITY COMPANIES AS AN OPTION

On November 25th, 2022, the National Department of Business Registration and Integration (DREI) issued SEI Official Circular Letter 4,742/2022/ME, by means of which it announced that “large-sized” limited liability companies are no longer required to publish their financial statements in the Official Gazette (*Diário Oficial*) and in newspapers with large circulations.

This position is in accordance with the recent decision rendered by the 1st Panel of the Federal Court of Appeals for the 3rd Region (TRF-3), published on November 3rd, 2022 (in the matter of Proceeding no. 0030305-97.2008.4.03.6100, filed by the Brazilian Association of Official Gazettes against the Federal Government), recognizing the legality of item 7 of the Official Circular Letter 099/2008 from the DREI.

The mentioned Official Circular Letter 099/2008 from DREI establishes the option (as opposed to the obligation) for “large-sized” limited liability companies to publish their financial statements in the relevant Official Gazette and in a newspaper with large circulation for the purpose of filing company acts for subsequent approval by the respective Commercial Registry Board.

In the referred lawsuit, the lower court’s verdict declared the nullity of item 7 of Official Circular Letter 099/2008, thus making it mandatory for “large-sized” limited liability companies to publish their financial statements. However, this decision was overturned by the 1st Panel of the TRF-3 in judging the appeal filed by the Federal Government.

In this scenario, the Commercial Registry Boards are now obliged to obey the position that publication of the financial statements of large limited liability companies is merely optional. With this, the relevant Commercial Registry Boards may not formulate requirements, much less reject, applications to file company acts, under the allegation that the company in question has failed to prove the mentioned publications.

More information, as well as the full text of Official Circular Letter 4,742/2022, can be found at the website of the Ministry of the Economy (www.gov.br/economia).

SMALL UNLISTED CORPORATIONS DO NOT NEED TO PERFORM OBLIGATORY PUBLICATIONS AT THEIR OWN WEBSITES

On November 24th, 2022, the Ministry of Economy issued ME Edict 10,031/2022, which revoked the obligation for unlisted corporations with gross revenue of at most R\$ 78 million (classified as small unlisted corporations) to carry out their publications and other disclosures at their own website.

According to art. 1, § 2, of ME Edict 12,071/2021, small unlisted corporations, instead of carrying out their obligatory publications as specified in the Law of Corporations (Law 6,404/1976) in a newspaper

with large circulation, can do so via the Balance Sheet Center of the Public System for Digital Bookkeeping (SPED), as well as at their own site, but only if they wish in the latter case.

With the change introduced by ME Edict 10,031/2022, the publications of small unlisted corporations can be carried out exclusively via the Balance Sheet Center of the SPED, with exclusion of the obligation to use their own websites for this purpose.

ME Edict 10,031/2022 took effect on December 1, 2022.

More information, as well as the full text of, as well as the full text of ME Edict 10,031/2022, can be found at the website of the Ministry of the Economy (www.gov.br/economia).

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