

NEWSLETTER No. 106

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SUMMARY

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PUBLISHING OF THE BOOK *ESG, INTERESSE SOCIAL E RESPONSABILIDADE DOS ADMINISTRADORES DE COMPANHIA*

As a result of the research carried out for the preparation of the Doctor of Law thesis of our partner Carlos Martins Neto, the book *ESG, interesse social e responsabilidade dos administradores de companhia* (“ESG, social interest and liability of company directors”) was published by the renowned publisher Revista dos Tribunais/Thomson Reuters.

The work, which examines the impacts of voluntary adherence to ESG practices on the social interest and the liability regime of Brazilian company directors, is available in two versions: the traditional printed version and an interactive version which has visual law and storytelling features and has a preface by Prof. Ana Frazão.



The book stands out for containing:

- Legal approach to the ESG theme;
- Proposal of a legal framework for ESG practices adopted by companies;
- Empirical research on how companies listed on B3's *Novo Mercado* have approached the ESG theme in practice;
- Proposal of a criteria for redefinition of the social interest of companies that voluntarily adopt ESG practices;
- Analysis of the impacts of redefinition of the social interest of companies on the liability regime of directors

The book is already available for sale and can be purchased through the following link: https://www.livrariart.com.br/esg?_q=Esg&map=ft. Information on in-person launch events will be released soon.

CVM RELEASES CIRCULAR LETTER CONTAINING CLARIFICATIONS ABOUT RECEIVABLE TOKENS AND FIXED-INCOME TOKENS

On July 5th, 2023, the Superintendency for Supervision of Securitization (SSE) of the Brazilian Securities Commission (CVM) disclosed Circular Letter CVM/SSE 6/2023 (“[Circular Letter 6/2023](#)”),

to complement the manifestations contained in Circular Letter 4/2023 (“[Circular Letter 4/2023](#)”) with regard to receivable tokens and fixed-income tokens (“[tokens](#)”).

Both Circular Letter 6/2023 and Circular Letter 4/2023 clarify the interpretation of the SSE regarding the possibilities of classifying tokens as securities. As such, the two circular letters are not standards issued by the CVM.

In this context, Circular Letter 6/2023 mainly aims to clarify the previous manifestations of the SSE formalized in Circular Letter 4/2023, as follows:

- (i) The purpose of Circular Letter 4/2023 was not to debate the technology used in the issuance of tokens, but rather to clarify that determined modalities of investment in credit rights can be characterized as securities when offered to the public;
- (ii) Circular Letter 4/2023 did not have the objective of detailing all the possible uses of tokens, instead only disclosing some essential characteristics for possible classification of certain modalities of tokens as securities;
- (iii) Although Circular Letter 4/2023 expresses the interpretation of the SSE about tokens, the document is based on the general guidance expressed by the CVM Board and specified in CVM Orientation Opinion 40/2022, which stated that “a token referenced to an asset may or may not be a security, so its characterization will depend on the economic essence of the rights afforded to its holder, and can also depend on the function assumed during the performance of the project related thereto”;
- (iv) Circular Letter 4/2023 does not specify when the public offering of tokens is characterized as a securitization transaction, collective investment agreement, or both; and
- (v) The interpretation expressed in Circular Letter 4/2023 does not apply to public offerings of Bank Credit Notes, Bank Credit Note Certificates or Real Estate Credit Notes, when satisfying the requirements of art. 45-A of Law 10,931/2004.

Furthermore, the following clarifications were indicated by the SSE:

- (i) Tokenization must be understood as a process of digitally representing an asset or ownership of an asset, to facilitate distribution to investors. Therefore, when a token is publicly offered that represents a collective investment agreement in receivables, it can be considered a security supported by a credit right;
- (ii) Even when tokens are classified as securities, some issues may not be characterized as securitization transactions; and
- (iii) The set composed of the asset (credit right), the public offering for distribution (as a token or through another means) and by the expectation of a gain (remuneration) to the investor,

can be characterized as a public offering for collective investment even if the conditions for characterization as a securitization transaction are not present.

More information, including the full texts Circular Letter 4/2023 and Circular Letter 6/2023 can be found at the website of the CVM (www.gov.br/cvm/).

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