

_ Brazil's Supreme Court of Justice (STJ) determines that minority shareholders must be indemnified for corporate actions that have diluted their equity interest

In a recent decision, the Brazil's Supreme Court of Justice (STJ) of the 3rd Region unanimously upheld a lower court decision regarding pecuniary damages against the control group of a publicly held corporation ("Companhia") for taking corporate actions that resulted in the dilution of minority shareholders interest.

In this case, the Company's controlling shareholders created a privately held company to develop the same corporate purpose of the Company with cutting edge technology, without offering such commercial opportunity to the Company, which maintained its operations in obsolete plants.

A few years after its incorporation, the new company achieved an economic value equivalent to more than three times the initial amount of capital invested by the controlling shareholder, becoming a competitor of the Company. Thereafter, the new company's shares were incorporated by the Company for its economic value, so that the new company became a wholly-owned subsidiary of the Company.

The aforementioned merger resulted in a significant decrease of minority shareholders' equity from 11.55% to 2.9%, while controlling shareholders increased their equity participation from 88.45% to 97.10%.

Accordingly, the minority shareholders of the Company filed a lawsuit against the controlling shareholders. At the lower court level, the companies involved in the transaction were jointly condemned to pay damages in order to compensate the losses caused to the minority shareholders.

CVM had already ruled on the Company's controlling shareholders and managers behavior and understood that the transaction generated an undue economic benefit to the controlling shareholders, with a clear loss of business opportunity and a breach of loyalty duty that must be observed in the relationship between the controlling shareholder and the company, typifying this practice as an abusive act by the Company's controlling shareholders.

The 3rd Panel of STJ agreed with CVM's understanding and considered that the lack of opportunity for the Company to develop the business combined with the followed merger of shares of the new company by the Company was a practice contrary to good faith. As a result, the Company's controlling shareholders were condemned to pay damages to minority shareholders for losses arising from the merger of shares.

STJ's and CVM's decisions can be accessed in Portuguese in the links below:

https://ww2.stj.jus.br/processo/revista/documento/mediado/?componente=ITA&sequencial=1628303&num_registro=201501774675&data=20170825&formato=PDF

http://www.cvm.gov.br/export/sites/cvm/sancionadores/sancionador/anexos/2009/20090428_PAS_RJ20081815.pdf

_ Brazilian Securities and Exchange Commission and Central Bank of Brazil reach consensus with Federal Prosecutor's Office on Provision Measure Nr. 784/2017

After the approval of Provisional Measure Nr. 784/2017 ("MP 784/2017"), in force since June 8, 2017, which changed, among other matters, the rules regarding the enforcement procedure applicable to measures undertaken by the Brazilian Securities and Exchange Commission ("CVM") and the Central Bank of Brazil ("BACEN"), BACEN and CVM initiated discussions with the Federal Prosecutor's Office ("MPF") regarding several points of the original text of MP 784/2017, specially with regard to leniency and settlement agreements.

According to BACEN and CVM, as a result of these discussions a proposal to improve MP 784/2017 was drafted in order to clarify the subject and scope of the leniency agreements executed by BACEN and CVM, as well as the dynamics of the relationship between these autarchies and the MPF.

The reporting director for MP 784/2017 has already analyzed and accepted the proposals submitted by BACEN and CVM. We highlight below the main points addressed by the proposals:

- The scope of leniency agreements executed by BACEN and CVM is restricted to administrative infractions;
- The execution of the leniency agreement does not exempt BACEN and CVM from immediately disclosing indications of crime arising from the facts subject to administrative leniency or settlement agreements;
- The execution of the leniency agreement does not prevent punitive actions by criminal courts or other administrative and control bodies;
- The granting to MPF of access to information and databases of BACEN and CVM on leniency and settlement agreements executed by these autarchies; and
- Institutionalization of a permanent discussion forum among MPF, BACEN and CVM through a cooperation agreement.

_ Once again, Founding Partner Gyedre Carneiro de Oliveira has been ranked in Chambers Global/2018 and in Chambers Latin America/2018

Founding Partner Gyedre Carneiro de Oliveira has been once again ranked in 2018 edition of the Chambers and Partners Global and Latin America guides. The renowned British publication is one of the most prestigious legal directories which identifies and ranks the most outstanding lawyers in the world and in Latin America based on research and client interviews.

More information regarding the Chambers and Partners can be accessed at: www.chambersandpartners.com

