

## \_ New disclosure rules for final beneficial owners

Normative Instruction No.1.634/2016, issued by the Brazilian Federal Revenue, established new rules regarding the Corporate Taxpayer Registry (“CNPJ”). Among these rules is the mandatory disclosure and submission of the supporting documents to the Brazilian Federal Revenue regarding the direct and indirect shareholders of the Brazilian and foreign corporate entities registered with the CNPJ, up to their respective final beneficial owners, as follows:

\_ Brazilian and foreign entities registered with the CNPJ before July 1st, 2017 must inform the Brazilian Federal Revenue and disclose the final beneficial owner: (i) on date of the first filing of its report with the CNPJ in the case of any changes to the entity registration information (e.g. changes in address or in the management/representatives of the entity, etc.) after July 1, 2017; or (ii) until December 31, 2018, whichever occurs first.

\_ Brazilian and foreign entities registered with the CNPJ after July 1st, 2017 must inform the Brazilian Federal Revenue and disclose the final beneficial owner within 90 days from the date of registration in the CNPJ. This term may be extended for another 90 days, upon request.

In this context, on October 23, 2017, the General Coordination of Records of the Federal Revenue Service of Brazil (COCAD) published the Declaratory Act No. 9, which established that certain entities are not required to provide information on their final beneficial owners as required by the general rule.

This exemption applies to the following entities:

a) **Publicly traded companies incorporated in jurisdictions that require the public disclosure of all shareholders deemed relevant**, provided that the respective jurisdiction is not considered as a tax haven under Brazilian laws;

b) **Non-profit entities** that do not provide fiduciary administration services provided that they are regulated by a competent local authority and are not incorporated in a tax haven, as defined by Brazilian laws;

c) **Multilateral organizations, central banks, government entities or entities related to sovereign wealth funds**;

d) **Social security entities, pension funds and similar entities**, provided that they are regulated by a competent local authority;

e) **Brazilian investment funds** regulated by the Brazilian Exchange Commission (CVM), provided that their quotaholders' Tax ID numbers are disclosed to the Federal Revenue;

f) **Investment funds especially created and solely intended to receive funds from supplementary pension plans or personal insurance plans**, provided that they are regulated by a competent local authority; and

g) **Collective investment vehicles domiciled abroad**, whose quotas or shares representing the equity interest are admitted to trading on an organized market regulated by an entity recognized by the CVM or collective investment vehicles domiciled abroad, subject to the conditions set forth in Declaratory Act No. 9.

We highlight that **in case of non-compliance** with the obligation to disclose information about the final beneficial owner and/or submit documents related to them, **the company shall have its enrollment with the CNPJ suspended, and it will be prevented from carrying on transactions with local banking institutions**, including bank accounts movements, execution of financial investments and loans operation, pursuant to article 9 of Normative Instruction No.1.634/2016.

Normative Instruction No.1.634/2016 and the Declaratory Act No. 9 can be accessed in Portuguese in the links below:

<http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?idAto=73658>

<http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?visao=anotado&idAto=87392>

## \_ New Law allowing BACEN and CVM to enter into leniency agreements comes into force

Law 13,506 was published on November 14, 2017 instituting the punitive administrative proceedings applicable to measures undertaken by the Central Bank of Brazil (“**BACEN**”) and the Brazilian Securities and Exchange Commission (“**CVM**”).

The new law, which replaced the Provisional Measure No. 784/2017, allows BACEN and the CVM to enter into leniency agreements **with companies, individuals and banks to reduce punishment, from 1/3 to 2/3 of the applicable penalty or even the extinction of its punitive action by criminal court**, in exchange for effective collaboration in investigations.

Regarding the applicable penalties, the maximum fine to be applied by the CVM was reduced. In the original text of the bill, the maximum fine was R\$500 million, but it was decreased to R\$ 50 million with the publication of the new Law, replacing the previous limit of R\$500,000. Within the scope of the BACEN, the fines can reach up to R\$ 2 billion, instead of the previous limit of R\$250,000.

Another change is the extension of the definition and scope of application of certain financial crimes, which now includes secondary insider trading and disclosure of confidential information by primary insiders even if they do not directly use the information to trade.

LAW 13,506 CAN BE ACCESSED IN PORTUGUESE IN THE LINK BELOW:

[http://www.planalto.gov.br/ccivil\\_03/\\_Ato2015-2018/2017/Lei/L13506.htm](http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2017/Lei/L13506.htm)

**\_ CVM's decision determines that the casting vote of the president of the CVM Collegiate must be in favor of the accused**

In an unprecedented decision regarding directors' liability, CVM Collegiate decided that **the casting vote given by the president in a event of a tie vote must always be in favor of the accused, in honor of the *in dubio pro reo* principle.**

The decision was taken during the judgment of the Administrative Procedure Sanction nº RJ2014/10556 to determine the potential liability of two shareholders, who also were members of the board of directors of a publicly held company ("Company"), for non-compliance with articles 115, and 159 of Law 6404/76 regarding the abuse of the right to vote and conflict of interest in a corporation.

In the case, one of the accused voted indirectly for the suspension of resolution on the approval of Company's management accounts and for the resolution on the decision to file a civil liability lawsuit against him, for holding a position as member on the board of directors of the Company as well.

Likewise, the other accused was also charged of violating the applicable law by voting for the suspension of the civil liability lawsuit filed against him.

Regarding the exercise of the vote by the director/shareholder in the resolution of the general meeting on approval of its accounts as director, article 115, paragraph 1, of Law S.A. expressly prohibits the director/shareholder from voting, and such understanding is well established in the doctrine.

However, in the case of the vote by the director/shareholder in filing the civil liability lawsuit against him, there is a doctrinal divergence.

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According to the Reporting Director, "IT WOULD NOT BE POSSIBLE FOR ANY PERSON, AS PART OF IT HUMAN NATURE, TO DEMAND THAT A SHAREHOLDER DISPATCHED FROM HIS PROFESSIONAL IMAGE AND SITUATION IN ORDER TO EVALUATE, IN COMPANY'S BEST INTEREST, IF HE COULD DECLARE HIMSELF AS DEFENDANT OF A CIVIL LIABILITY LAWSUIT AND, THEREFORE, THE APPROPRIATE SOLUTION TO THIS SITUATION IS THE SHAREHOLDER TO BE IMPEDED TO VOTE."

In this regard, the Reporting Director voted for the conviction of the two accused and another director followed his understanding. However, two other members of the CVM Collegiate voted for the acquittal.

Due to the tie in the deliberation of the CVM Collegiate, its members recognized the necessity of the casting vote by president of the session, in accordance with the constitutional dictates of due legal process and the principle of presumption of innocence set forth in the Pact of San Jose, Costa Rica.

Accordingly, it was decided that a trial session that does not reach a quorum for the sentenced should result in the accused's declaration of innocence, otherwise the absence of conviction from the competent collegiate body would be substituted by a monocratic judgment of the president of the session.

Thus, the CVM Collegiate decided, with the casting vote of the President, to acquit one of the accused, and, unanimously, to impose penalty of writing warning to the other, for violation of the provisions of article 115, paragraph 1, of Law S.A (abuse of voting rights).

THE CVM DECISION CAN BE ACCESSED IN PORTUGUESE IN THE LINK BELOW:

[http://www.cvm.gov.br/sancionadores/sancionador/2017/RJ\\_201410556\\_Forjas-Taurus.html](http://www.cvm.gov.br/sancionadores/sancionador/2017/RJ_201410556_Forjas-Taurus.html)