

## \_ Recently published law modifies the quorum to remove managers of limited liability companies and eliminates the necessity of holding special quotaholders meetings in order to vote partners out in some cases

On January 4th, 2019, Law No. 13.792/2019 (“Law”) was published in the Brazilian Federal Official Press, altering the quorum to remove managers of limited liability companies and eliminating the necessity of calling a special quotaholders meeting to vote the exclusion of a partner when the company only has two quotaholders.

Before the innovation brought about by the Law, the removal of partners elected as managers from the company management depended on the approval of quotaholders representing, at least, two-thirds of the company capital stock, except if otherwise provided in the company’s articles of association.

Under the provisions of the new Law, the removal of partners elected as managers only depends on the

approval of quotaholders representing the majority of the capital stock, as general rule.

Moreover, the new Law also establishes that the former provision according to which partners could only be voted out in the scope of meetings or assemblies specifically called for this purpose is no longer applicable for companies that only has two quotaholders.

In such cases, according to the provisions of Article 1085 of the Brazilian Civil Code, the resolution may be approved by the majority partner by means of a simple amendment of the company’s articles of association, in case the referred corporate document expressly provides the exclusion of partners for gross misconduct.

ADDITIONAL INFORMATION ON THE LAW CAN BE ACCESSED IN PORTUGUESE AT:

[http://www.planalto.gov.br/ccivil\\_03/\\_Ato2019-2022/2019/Lei/L13792.htm](http://www.planalto.gov.br/ccivil_03/_Ato2019-2022/2019/Lei/L13792.htm)

## \_ Recently issued provisional measure creates the Brazilian Data Protection Authority

On December 27th, 2018, the Brazilian President issued the Provisional Measure No. 869 (“MP 869”), which creates the National Data Protection Authority (“ANPD”) and modifies provisions of the Brazilian Personal Data Protection Law (Law No. 13.709, from August 14th, 2018) (“LGPD”).

The ANPD, previously foreseen in LGPD’s bill of law and vetoed by the Brazilian President when it sanctioned LGPD, due to the understanding that the proposal to create such agency was reserved to the executive power, was created by MP 869 under a different structure.

Among the innovations introduced by MP 869, we highlight that:

(i) ANPD will be composed of: (a) an Executive Board comprised of 5 directors appointed by the Brazilian President; (b) a National Board of Personal Data Protection and Privacy comprised of 23 members representing the public and private sectors, appointed by the Brazilian President; (c) a branch for internal affairs; (d) a branch for ombudsman; (e) a branch for legal advisory, and (f) executive and specialized branches liable for the enforcement of LGPD.

(ii) ANPD has powers to, among other attributions: (a) edit rules and proceedings to protect personal data; (b) decide, in the scope of its executive boards, about the interpretation of LGPD; (c) supervise and apply sanctions; (d) stimulate the adoption of standards for services and products which simplify the controlling and protection over personal data; (e) launch public hearings to gather suggestions over themes of relevant public interest; and (f) cooperate with other public authorities in order to perform its attributions in the scope of economic and governmental sectors subject to specific regulation.

(iii) The term upon which LGPD comes into force was extended for 6 months and shall begin in August, 2020.

(iv) The position of Data Protection Officer may be occupied by individuals (original provision of LGPD) as well as by legal entities.

MP 869 is in full force and effect and its provisions shall remain enforceable for 60 days, renewable for the same period, after which MP 869 shall be converted into law by the Brazilian Congress.

ADDITIONAL INFORMATION ON MP 869 CAN BE ACCESSED IN PORTUGUESE AT:

[http://www.planalto.gov.br/ccivil\\_03/\\_ato2015-2018/2018/Mpv/mpv869.htm](http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/Mpv/mpv869.htm)

## \_ Brazilian Securities and Exchange Commission's Board deems managers guilty for receiving excessive remuneration

On December 11th, 2018, the board of the Brazilian Securities and Exchange Commission decided on the Administrative Proceeding No. SEI 19957.002325/2016-21 ("Proceeding"), which was originated on the accusation report presented by the Company Relations Superintendence ("SEP") against the majority shareholders and managers of a Brazilian publicly-held company.

In the scope of the accusation report, SEP sustained that the remuneration – in special the variable portion of it – payed by the company to its managers between 2010 and 2014 (i) exceeded the global limit imposed by the company's General Shareholders Meeting and (ii) had its distribution decided by the company's Board of Directors regardless of the criteria provided by the Brazilian corporate legislation.

In their counterarguments, the defendants appointed that:

(i) by approving a global limit for the company's managers remuneration, the shareholders do not approve the criteria for payment of the variable remuneration – i. e. percentages of the net profit, accomplishment of EBITDA projections, among others – described in the documents disclosed by the company to guide the resolutions of the shareholders, such as the management proposal and the information required by item 13 of the reference form, both required by the Brazilian regulation, but an isolated amount, dissociated of the aforementioned documents, deemed compatible with the Company's interests by the shareholders;

(ii) the remuneration of the company's managers could not be compared to others, received by board members of other companies, once they had to overcome

and perform more activities than regularly expected for such occupation; and

(iii) according to CVM precedents, it is not within the commission attributions the revision of the remuneration payed to the Company's managers.

The Reporting Director's vote, accompanied by the unanimity of CVM board members, sustained that:

(i) indeed, the shareholders had only approved the global limit of the managers remuneration and not the criteria applied for its distribution and/or payment, reason why it is not possible to argue that the managers were payed beyond such global limit simply because the distribution of the remuneration did not complied with the criteria the company declared to apply in the corporate documents disclosed to stakeholders;

(ii) the execution of additional activities – i. e. out of the normal course of the board members' duties – not only reveals an irregularity, but is also insufficient to justify the distribution of remuneration above market standards;

(iii) the payment of excessive remuneration to managers who are also shareholders of the company may be interpreted as irregular profit distribution; and

(iv) in the scope of the Proceedings, CVM did not intend to assess the decision taken upon the distribution of the Company's managers remuneration, but to verify if the resolution about the distribution of such remuneration was taken on a regular basis, analysis compatible with the duties attributed to CVM.

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As a result, pursuant to the Reporting Director's vote, CVM's board: (i) discharged the defendants accused in the quality of majority shareholders of the company in view of the lack of grounds to condemn them in the Proceedings; and (ii) condemned the defendants accused in the quality of members of the company's board of directors in view of

the violation of Article 152 of the Brazilian Corporate Law, due to the distribution of excessive remuneration to the company's managers, once the referred resolution was taken regardless of the criteria provided by the Brazilian legislation.

ADDITIONAL INFORMATION ON THE PROCEEDING CAN BE ACCESSED IN PORTUGUESE AT:  
<http://www.cvm.gov.br/noticias/arquivos/2018/20181211-2.html>

## \_ Brazilian Federal Revenue extends the deadline for the appointment of the final beneficial owners of legal entities enrolled before the Brazilian Taxpayer's Registry

On December 28th, 2018, Normative Ruling No. 1863/2018, issued by the Brazilian Federal Revenue, was published in the Brazilian Federal Official Press, extending, for additional 180 days, the deadline for the appointment of the final beneficial owners of legal entities enrolled before the Brazilian Taxpayer's Registry.

Under the provisions of this new normative ruling, the final term to appoint the final beneficial owner of legal entities ends on June 06th, 2019.

ADDITIONAL INFORMATION CAN BE ACCESSED IN PORTUGUESE AT:

<http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?visao=anotado&idAto=97729>