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NEWSLETTER
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_ Brazilian Superior Court of Justice decides on abuse of power by controlling shareholders in company's capital increases

On November 27th, 2018, the Third Panel of the Superior Court of Justice decided, by unanimous vote, **that there is no abuse of power in the resolution taken by the controlling shareholder to increase the capital stock of a company, with the consequent dilution of the equity held by the minority shareholders, in case such capital increase is essential for the company survival and the preemptive rights of the minority shareholders are guaranteed.**

This proceeding was originated within the scope of an indemnification action filed by minority shareholders against the controlling shareholder of a company, grounded on Articles 16 and 117 of the Brazilian corporate legislation, which rules over the use of the controlling power by shareholders and lists hypothesis of abuse of such power.

The minority shareholders argued that, after the company had acquired another company with expressive debts, the controlling shareholder began to call continuous capital increases which caused the unreasonable reduction of the equity held by such minority shareholders in the company.

In its favor, the controlling shareholder claimed that the purchase of the asset, even though it was distressed, was essential to grant higher standards of competitiveness to the acquiror.

IN THIS RESPECT, THE REPORTING JUDGE HIGHLIGHTED THAT IT IS NOT WITHIN THE SCOPE OF THE JUDICIARY TO JUDGE THE AFOREMENTIONED ACQUISITION "ONCE THE PURCHASE MADE BY THE COMPANY WAS A CORPORATE MATTER THAT ONLY THE CONTROLLING SHAREHOLDER AND MANAGERS OF THE COMPANY SHOULD BE ABLE TO EVALUATE". **IT IS THE SO-CALLED BUSINESS JUDGEMENT RULE**. ACCORDING TO THE REFERRED RULE, ONCE REASONS OF ECONOMIC OR FINANCIAL SORT JUSTIFIES THE PROPOSAL OF THE COMPANY CAPITAL INCREASE, IN SPECIAL WHEN THE MEASURE IS NECESSARY FOR THE COMPANY SURVIVAL, THE DILLUCTION OF THE EQUITY HELD BY MINORITY SHAREHOLDERS IS JUSTIFIED, PROVIDED THAT THEIR PREEMPTIVE RIGHTS WERE GUARANTEED, PURSUANT TO ARTICLE 170, PARAGRAPH 1ST OF THE BRAZILIAN CORPORATE LEGISLATION.

In conclusion, the reporting judge sustained that all capital increases performed by the company were crucial to its activities, reason why the alleged abuse of the controlling power was dismissed. The other members of the panel have accompanied the vote given by the reporting judge.

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

https://ww2.stj.jus.br/processo/revista/documento/mediado/?componente=ITA&sequencial=1772552&num_registro=201201616593&data=20181207&formato=PDF

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_ Ordinary Shareholders' Meetings and quotaholders' annual meetings

In the upcoming months, the corporations and the limited liability companies shall disclose their financial statements and call their Ordinary Shareholders' Meetings or quotaholders' annual meetings, as appropriate, regarding the financial year ended on December 31, 2018.

All corporations, publicly-held and closely-held ones, need to hold, within the first 4 months following the end of the fiscal year, an Ordinary Shaholders' Meeting: (i) to examine the management accounts, analyze, discuss and vote the financial statements; (ii) to deliberate on the destination of the net profit of the relevant financial year and on the distribution of dividends; and (iii) to appoint management and the members of the Audit Council (Conselho Fiscal), as necessary.

PLEASE NOTE THAT THE SHAREHOLDER WHO IS ALSO A MEMBER OF THE MANAGEMENT OF A CORPORATION SHALL NOT APPROVE THE MANAGEMENT ACCOUNTS ON THE ORDINARY SHAREHOLDERS' MEETING.

One month prior to the date of the Ordinary Shareholders' Meeting, corporations shall publish **a notice to shareholders informing the documents required by the Brazilian Corporation Law are available to the shareholders at its headquarters**, including, among others, the management report on the corporation's business, the main administrative facts of year 2017 and a copy of the financial statements for such financial year. **Alternatively, the corporations may publish a complete set of all of these documents 1 month prior to the Ordinary Shareholders' Meeting.**

Publicly-held corporations shall also disclose, through the Empresas.Net system of the Brazilian Securities and Exchange Commission ("CVM"), information and additional documents regarding the Ordinary Shareholders' Meeting, with emphasis on **the management proposal**, document which contains detailed information on the matters that will be discussed at the Meeting, and the distance voting bulletin through which the shareholders may participate in the Meeting and exercise their voting rights. The Ordinary Shareholders' Meeting shall be called with at least (i) 15 days prior to the Meeting, in case of publicly-held corporations that are not part of any Depositary Receipt Program; (ii) 30 days prior to the Meeting, in case of publicly-held corporations that are part of a Depositary Receipt Program; and (iii) 8 days, in case of closely-held companies.

We remind that the publicly-held companies shall observe the new set of rules and deadlines regarding the distance voting procedures, pursuant to CVM Instruction 481/09, as amended.

Regarding limited-liability companies, within the first 4 months following the end of the fiscal year, they need to hold a general meeting in order: (i) to examine the management accounts, analyze, discuss and vote the financial statements; (ii) to appoint management, as necessary. The meeting is not necessary in case all of the shareholders decide, in writing, on the aforementioned matters.

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IT IS IMPORTANT TO HIGHLIGHT THAT COMPANIES, OR GROUP OF COMPANIES UNDER COMMON CONTROL, WHICH, IN THE 2018 FISCAL YEAR, RECORDED ASSETS IN AN AMOUNT HIGHER THAN R$240 MILLION OR ANNUAL GROSS REVENUE IN AN AMOUNT HIGHER THAN R$ 300 MILLION SHALL: (A) PREPARE THEIR FINANCIAL STATEMENTS IN AGREEMENT WITH THE APPLICABLE RUKLES SET FORTH IN THE BRASILIAN CORPORATIONS LAW; (B) SUBMIT THE FINANCIAL STATEMENTS TO THE APPRECIATION OF AN INDEPENDENT AUDITOR REGISTERED AT CVM, AND (C) PUBLISH THE FINANCIAL STATEMENTS PRIOR TO THE DATE OF THE GENERAL ANNUAL MEETING.

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_ State of São Paulo Court of Justice suspends the charge of ITBI tax in cases of assets apportionment involving real estates

In recent decisions, São Paulo Court of Justice ("TJSP") has suspended the charge of the Brazilian tax on real estate transfer - Imposto sobre a Transmissão de Bens Imóveis ("ITBI") in cases of inventory proceedings and divorces with assets apportionment involving real estates.

The local legislation of determined Brazilian cities establishes that ITBI is due when:

(i) real state and assets of different kind comprising the same legacy are divided between the beneficiaries in an unequal way. An example would be the apportionment of a legacy of R$2 million among two beneficiaries in a way that one receives a real estate property in the total amount of R$1 million and the other receives financial assets in the total amount of R$1 million; and

(ii) the portion of the legacy destined to the surviving spouse exceeds the amount due pursuant to the applicable legislation, or the assets are distributed disproportionately between the beneficiaries, regardless of the proper payment of the Brazilian tax on causa mortis - Imposto de Transmissão Causa Mortis e Doação ("ITCMD"). For example, one of the beneficiaries receives a real estate property in the total amount of R$700 thousand and financial assets in the total amount of R$300 thousand and the other beneficiary only receives financial assets in the total amount of R$300 thousand, with the respective payment of the ITCMD tax due over the difference of R$600 thousand.

IN THE JUDGEMENT OF FISCAL ACTIONS OVER THE CHARGE OF ITBI TAX IN SUCH CASES, **TJSP HAS DECIDED THAT THE AFOREMENTIONED TAX IS NOT DUE, IN SPECIAL BECAUSE THE MAIN ASPECTS OF THE TAXABLE EVENT, I. E., THE ONEROSITY AND THE COMMUTATIVITY, WERE NOT VERIFIED.**

In Appeal No. 1014237-15.2016.8.26.0114 ("Appeal"), the 14th Chamber of TJSP sustained that "the apportionment of assets is not a not onerous act, and it represents a mere division of the existing assets jointly held by the parties, therefore there is no hypothesis of sale and transfer of real estate to be verified and the charge of the ITBI tax supposedly due is not legal".

ADDITIONAL INFORMATION CAN BE ACCESSED IN PORTUGUESE AT:
https://esaj.tjsp.jus.br/cjsg/getArquivo.do?cdAcordao=11604869&cdForo=0

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_ Annual Declaration of Brazilian Capital Abroad – DCBE 2019

Between February 15th, 2019 and April 5th, 2019, all individuals and legal entities resident, domiciled or headquartered in Brazil, which, on December 31st, 2018, held assets abroad in an amount equivalent to or higher than US$100,000.00 must submit the Annual Declaration of Brazilian Capital Abroad to the Brazilian Central Bank ("Annual Declaration 2019")

Besides the Annual Declaration, it is mandatory to quarterly submit the Declaration of Brazilian Capital Abroad if the amount of goods and rights held abroad is equivalent to or higher than US$100 million based on the following schedule:

Base Data	Deadline
03.31.2019	04.30 – 06.05.2019
06.30.2019	07.31 – 09.05.2019
09.30.2019	10.31 – 12.05.2019

We highlight that the Annual Declaration 2019 is made by means of an electronic system kept by the Brazilian Central Bank called "Sistema de Declaração CBE". The access to the aforementioned system depends of previous enrollment.

Late submission of the Annual Declaration or its submission with false, inaccurate, incomplete or incorrect information may result in fines of up to R$250,000.00.

ADDITIONAL INFORMATION CAN BE ACCESSED IN PORTUGUESE AT:
https://www.bcb.gov.br/estabilidadefinanceira/cbe