

_ Brazilian Securities and Exchange Commission releases new Normative Ruling regarding supervisory agreements

On June 17th, 2019, the Brazilian Securities and Exchange Commission (“CVM”) issued Normative Ruling No. 607 (“ICVM 607”) which provides, among other matters, the procedures regarding the autarchy’s sanctioning action. ICVM 607 will be effective on September 1st, 2019, and its main innovation is the possibility to execute administrative agreements within the scope of supervisory proceedings (“Supervisory Agreement”).

The Supervisory Agreement may be proposed to CVM by individuals or legal entities to confess a violation of legal and regulatory rules subject to CVM’s supervision for the purposes of (i) identifying other individuals or legal entities involved in such violation, when applicable; and/or (ii) obtaining information and documents that prove such violation.

The ratification of the Supervisory Agreement proposed to CVM may cause (i) the extinction of the public administration’s punitive action, in the event that the Supervisory Agreement proposal is submitted without CVM’s prior knowledge of the reported violation; or (ii) the decrease of 1/3 to 2/3 of the applicable penalties, in case CVM has prior knowledge of the reported violation.

Among the Supervisory Agreement’s innovations, we also highlight the following:

- (i) The proposal may be submitted to CVM until the beginning of the violation judgment by its board;
- (ii) The proposal remains confidential until the Supervisory Agreement is executed.
- (iii) The analysis of the Supervisory Agreement proposal shall be made by the Supervisory Agreement’s Committee (“CAS”), and its composition and operation are subject to a specific regulation to be issued by CVM’s president.
- (iv) The rejection of a Supervisory Agreement proposal does not imply a confession regarding the matter nor recognizes the analyzed practice as illegal.
- (v) Once the Supervisory Agreement is executed, it shall be published within 5 days, in a clear and sufficient way for the comprehension of its clauses on CVM’s web page.
- (vi) The failure to comply with the obligations assumed in the Supervisory Agreement may cause the annulment of the punishment extinction benefits, or penalties reduction mentioned above, by means of a statement issued by CAS or CVM’s board.

ICVM 607 CAN BE ACCESSED IN PORTUGUESE AT:

<http://www.cvm.gov.br/legislacao/instrucoes/inst607.html>

_ Legal validity of digitally signed documents

The pursuit to sign agreements digitally has been frequently requested by the parties involved, but there are still many doubts regarding its legal validity and formalization.

Articles 104 and 107 of the Brazilian Civil Code of 2002 provide that the legal transaction and the declaration of will are not necessarily subject to the form determined by law, except when a special form is not expressly forbidden or stated. Thus, if the digital signature is not forbidden in the applicable regulation, it is possible to use it for the purposes of the validity of legal transactions.

On August 24th, 2001 the Provisional Measure No. 2.200-2 (“MP”) was issued, whereby the Brazilian Public Key Infrastructure – ICP-Brazil (Infra-Estrutura de Chaves Públicas Brasileira) was created to ensure the authenticity, integrity and legal validity of digital documents, supporting applications and applications that use digital certificates, as well as the performance of secure electronic transactions.

In accordance to article 10, paragraph 1, of the MP, the information provided by documents that were digitally signed by its signatories through the certification procedure provided by ICP-Brazil, shall be presumed to be true.

In addition, the validity of digitally signed agreements has already been recognized by Brazilian judicial courts. In 2018, the Brazilian Superior Court of Justice (“STJ”) decided, within the scope of Special Appeal No. 1.495.920 – DF (2014/0295300-9) regarding the execution of extrajudicial enforcement of an electronic loan agreement, which was signed through digital certificate technology, in compliance with the certification procedure provided by ICP-Brazil, without the signature of witnesses.

The reporting judge, justice Paulo de Tarso Sanseverino, understood that the need for two (2) witnesses to sign this type of agreement, in order for it to be considered an execution instrument, would hinder its execution. In addition, since digitally signed agreements are subject to the electronic certification authenticity, duly checked by ICP-Brazil, the reporting judge understood that the witnesses’ signatures were unnecessary.

Finally, considering legal and case law recognition regarding this matter, individuals and legal entities tend to use digital signing to formalize agreements more frequently, due to the facility and promptness involved in this procedure, nevertheless, the use of specialized platforms is always recommended for this purpose.

ADDITIONAL INFORMATION REGARDING THE MP AND SPECIAL APPEAL NO. 1.495.920 – DF (2014/0295300-9) CAN BE ACCESSED IN PORTUGUESE AT:

http://www.planalto.gov.br/ccivil_03/MPV/Antigas_2001/2200-2.htm

<https://tinyurl.com/y6n3g77r>

_ Brazilian Securities and Exchange Commission discloses its Sanctions Activity Report for the first quarter of 2019

On May 30th, 2019, the CVM disclosed its Sanctions Activity Report for the first quarter of 2019, which consolidates the information regarding CVM's punitive action ("Report").

Article 9, items V and VI of Law No. 6.385/76 provides that CVM is responsible for assessing, mainly upon administrative proceeding, illegal acts and unfair practices of directors and officers, members of the audit committee of publicly-held companies, shareholders of publicly-held companies, intermediaries and other market participants.

Among the punitive information regarding the first quarter of 2019, we highlight the following:

- Punitive and investigative procedures: CVM initiated 20 investigative administrative proceedings. 29 administrative proceedings were completed by the technical areas with some kind of prosecution.

- Commitment Agreements: 17 proceedings regarding Commitment Agreements' proposals were assessed, involving R\$14,67 million, from which 13 were approved by CVM's Board, amounting to the sum of R\$14,11 million.
- Fines: CVM's board decided 18 administrative proceedings, which penalized 32 defendants upon the payment of fines, amounting to the sum of R\$183,3 million. The total amount of the fines increased approximately three times in comparison to the same period in 2018, even though the number of penalized defendants in the same period has decreased by half.

ADDITIONAL INFORMATION REGARDING THE REPORT CAN BE ACCESSED IN PORTUGUESE AT:

<https://tinyurl.com/y2mqkfa>