

## \_ Provisional Measure regarding Declaration of Rights of Economic Freedom was converted into Law

On September 20<sup>th</sup>, 2019, Provisional Measure No. 881/19 (“MP”) was sanctioned by the Brazilian President and converted into Law No. 13.874/19, which establishes the Declaration of Rights of Economic Freedom. This Law establishes rules regarding the protection of free enterprise and the free exercise of economic activity, the actions of the State as normative and regulatory agent and other measures.

Among the changes regarding corporate aspects, we highlight the following: (i) disregard of legal entity; (ii) single-member limited liability company; and (iii) new rules regarding corporate acts’ file before the Boards of Trade.

**Disregard of Legal Entity:** the Brazilian Civil Code was amended to provide the following new requirements for the disregard of a legal entity: distortion of the legal entity purpose, which consists in the fraudulent use of the legal entity for the purpose of harming creditors and for the practice of illegal acts of any nature, or fraude (confusão patrimonial), which is the improper confusion between the companies’ and the partners’ assets. The mere existence of an economic group without the presence of the other requirements does not authorize the disregard of the legal entity. The mere expansion or change in the original

purpose of the legal entity does not represent a distortion of the legal entity purpose. The disregard of legal entity is also applicable to the extension of the obligation of partners or directors to the legal entity.

**Single-member Limited Liability Company:** the Brazilian Civil Code was also amended to allow the constitution of a limited liability company by a single quotaholder, and the single partner’s constitution document shall observe the article of associations’ provisions, when applicable. Unlike EIRELI, it is not required for a Single-Quotaholder Limited Liability Company to have a capital stock equivalent to, at least, one hundred (100) minimum wages and the same individual may have more than one Single-Quotaholder Limited Liability Company.

**New rules regarding corporate acts’ file before the Board of Trade:** Law No. 8.934/34 (Trade Registration Act) was amended to provide the possibility of automatic file of documents and declarations regarding mere register information before the Board of Trade, as well as certain corporate acts which follow DREI’s instruments standards. For other corporate acts, Law No. 13.874/19 provides that the analyses and registration before the Boards of Trade shall take up to five business days, depending on the case.

LAW NO. 13.874/19 CAN BE ACCESSED IN PORTUGUESE AT:

[http://www.planalto.gov.br/ccivil\\_03/\\_ato2019-2022/2019/lei/L13874.htm](http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/lei/L13874.htm)

## \_ Brazilian Senate approves councilors' nomination and CADE's quorum is restored

On October 1<sup>st</sup> and 2<sup>nd</sup>, 2019, the Brazilian Federal Senate ("Senate") approved the appointment of four new members of the Administrative Council of Economic Defense ("CADE").

Indicated by Brazilian President Jair Bolsonaro, the following members were elected as new CADE's councilors: Lenisa Rodrigues Prado, Sérgio Costa Ravagnani, Luiz Augusto Hoffman and Luis Henrique Bertolino Braidó ("New Counselors").

After the publication of his appointment in the Brazilian Official Journal ("DOU"), on October 7th, 2019, Councilor Sérgio Costa Ravagnani took office. As a result, the minimum quorum of four Counselors for the establishment of CADE's Court ("Court") was restored and cases that were suspended since mid-July are being processed again.

The other members elected shall take office within the next days, after the publication of their appointment in the DOU.

MORE INFORMATION REGARDING THE APPOINTMENT OF NEW COUNSELORS CAN BE ACCESSED IN PORTUGUESE AT:

<https://tinyurl.com/yy5mxd5n>

<https://tinyurl.com/y4ocmn5b>

## \_ CVM regulates the electronic publication of corporate acts

On August 5<sup>th</sup>, 2019, Provisional Measure No. 892 (“MP 892”) was issued, which amended article 289 of Law No. 6.404 of December 15<sup>th</sup>, 1976 (“Brazilian Corporation Law”), establishing that publications ordered by the referred law shall be made electronically, provided that (i) publicly-held companies shall follow the regulation issued by the Brazilian Securities and Exchange Commission (“CVM”); and (ii) closely-held companies shall follow the regulation issued by the Ministry of Economy (“ME”).

In accordance with MP 892, on September 30<sup>th</sup>, 2019, CVM’s Resolution No. 829 (“Resolution 829”) and ME’s Ordinance No. 529 (“Ordinance 529”), regarding corporation acts’ electronic publications proceedings, were published in the Brazilian Official Journal (“DOU”, and, jointly with Resolution 829, the “Regulations”).

Regarding publicly-held companies’ publications, Resolution 829 provides that:

- i. publications shall be made on *Empresas.NET* system;
- ii. documents will be considered as published on the date of their disclosure on *Empresas.NET* system;
- iii. in case of Articles 151 and 258 of the Brazilian Corporation Law, regarding publication of a manager’s resignation letter and the notice for public offer to acquire control, as well as in other situations provided for in the Brazilian Corporation Law or in CVM’s Ruling in which the publication is made by third parties, the

publication shall be made by sending the documents to the company, with a copy to the Corporate Relations Superintendence (“SEP”). The company shall immediately make the publication on *Empresas.NET* system.

- iv. publications will be made without previous analyses by CVM and B3 and do not imply their agreement with the content of the documents;
- v. publicly-held companies shall continue to disclose on their website the publications provided by the Brazilian Corporation Law; and
- vi. the obligation for publicly-held companies to file documents before the Boards of Trade is maintained in cases provided by the Brazilian Corporation Law.

Closely-held companies’ publications shall be at the Public Digital Bookkeeping System (“SPED”), pursuant to Ordinance 529. Such publications authenticity will be digitally certified by an authority registered before the Brazilian Public Key Infrastructure (“ICP Brazil”). SPED will also allow the issuance of documents that prove the authenticity, inalterability and the date of publication of corporate acts.

We highlight that Resolution 829 and Ordinance 529 may be amended or revoked if MP 892’s wording is modified during the National Congress decision regarding the conversion of MP 892 into Law until December 3<sup>rd</sup>, 2019.

MORE INFORMATION REGARDING THE REGULATIONS CAN BE ACCESSED IN PORTUGUESE AT:

<http://www.cvm.gov.br/legislacao/deliberacoes/deli0800/Deli829.html>

<https://tinyurl.com/yxv7xb9b>