

## \_ Securities and Exchange Commissions judges procedures involving violation of fiduciary duty

On January 30<sup>th</sup>, 2020, the Securities and Exchange Commission (“CVM”) judged the sanctioning administrative procedures No. RJ2014/13977 and No. RJ2016/7961, in which the violation of fiduciary duties by publicly-held company managers was discussed in carrying out certain transactions.

In this case, the company, directly and through a controlled company, executed numerous loan agreements to lend funds to an entity that leased commercial establishments operated by the company in the expansion of its activities. This transaction was justified as the lessor went through an insolvency process, which represented a risk to its assets, including those leased by the company (“Transaction 1”).

Once the insolvency was overcome and due to the lack of interest in the activity explored in the leased establishments, the parties decided to settle the loans by (i) increasing the stock capital of a recently incorporated company (“NewCo”), with the consequent transfer of the leased assets, and (ii) payment in kind with NewCo’s shares, subscribed by the lessor, to the company. Subsequently, the company sold NewCo’s shares to a potential buyer, with payment of the acquisition price in two installments (“Transaction 2”).

Within the scope of Transaction 1, the prosecution assessed that such agreements had not been entered into under fair conditions or in the best interest of the company, since they provided for financial remuneration that was lower than market rates. CVM Reporting Director pointed out that the defendants presented solid arguments that indicated that the loans were on the company’s interest, however, as the company refrained from collecting any financial remuneration, there was no explanation for this behavior, which was why the company’s officer responsible for this transaction should be held responsible for failure to comply with his duty of diligence.

With respect to Transaction 2, on the other hand, the prosecution reported the existence of other agreements which had not been reported to the board of directors, audit council (*conselho fiscal*) or independent auditors, as well as e-mails, which indicated that the value of the second installment of the acquisition price had been included in the agreement only to equalize the sales price to the acquisition cost of said assets, therefore, the amount negotiated was less than the one set forth in the purchase agreement and reported in the company’s financial statements.

## NEWSLETTER

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CVM Council, following CVM Reporting Director Gustavo Gonzales' vote, declared, with respect to Transaction 1, the extinction of the punishment against the officer responsible for this transaction, due to his death. However, regarding Transaction 2, due to the large number of defendants in this process, CVM Reporting Director chose to separate them into 2 groups, the members of group 1 were the defendants

involved in the fraudulent structure of Transaction 2 and the members of group 2 were the defendants involved in the failure to fulfill their duty of diligence. Further, CVM Council decided, by unanimous vote, to apply penalties ranging from the payment of a fine to the temporary disqualification to exercise the position of manager or member of the audit council of publicly-held companies to certain members of group 1.

MORE INFORMATION RELATED TO THESE PROCEDURES CAN BE ACCESSED IN PORTUGUESE AT:

[http://www.cvm.gov.br/noticias/arquivos/2020/20200130-3.html#PAS\\_CVM\\_RJ2014\\_13977](http://www.cvm.gov.br/noticias/arquivos/2020/20200130-3.html#PAS_CVM_RJ2014_13977)

## \_ Ordinary Shareholders' Meetings and quotaholders' annual meetings

In the upcoming months, corporations and 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<sup>st</sup>, 2019.

**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 Shareholders' 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.

**Regarding limited-liability companies, within the first 4 months following the end of the fiscal year, they need to hold a 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.

IT IS IMPORTANT TO HIGHLIGHT THAT COMPANIES, OR GROUP OF COMPANIES UNDER COMMON CONTROL, WHICH, IN THE 2019 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.

## \_ Brazilian Investment Offshore - Deadline for presenting the Annual Declaration of Brazilian Capital Abroad – DCBE 2020 before the Brazilian Central Bank

Between February 15<sup>th</sup>, 2020 and April 5<sup>th</sup>, 2020, all individuals and legal entities resident, domiciled or headquartered in Brazil, which, on December 31<sup>st</sup>, 2019, held assets abroad in an amount equivalent to or higher than US\$100 thousand must submit the annual declaration of Brazilian capital abroad to the Brazilian Central Bank (“Annual Declaration 2020”)

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 Date	Deadline
03.31.2020	04.30 – 06.05.2020
06.30.2020	07.31 – 09.05.2020
09.30.2020	10.31 – 12.05.2020

Late submission of the Annual Declaration 2020 or its submission with false, inaccurate, incomplete or incorrect information may result in fines of up to R\$250 thousand.

## \_ Foreign Investment in Brazil - Deadline for presenting the financial and economic statement before the Brazilian Central Bank before the Brazilian Central Bank

It is mandatory that all Brazilian companies that has received foreign investment, regardless of the amount, inform, until March 31<sup>st</sup>, 2020, the value of their net equity and paid-up stock capital as of December 31<sup>st</sup>, 2019 (“Financial and Economic Statement”).

Please note that Brazilian companies with assets or net equity equal to or higher than R\$250 million must submit 4 Financial and Economic Statements per year, according to the schedule below:

Base Date	Deadline
03.31.2020	until 06.30.2020
06.30.2020	until 09.30.2020
09.30.2020	until 12.31.2020

Late submission of the Financial and Economic Statement or its submission with false, inaccurate, incomplete or incorrect information may result in fines of up to R\$250 thousand.