

_ Brazilian National Department of Business Registration issues Circular Letter regarding electronic signatures

On August 11th, 2020, the Brazilian National Department of Business Registration and Integration (Departamento Nacional de Registro Empresarial e Integração - DREI) issued the Circular Letter SEI No. 2563/2020/ME, which establishes the department's understanding regarding electronic signatures, which must be followed by all Boards of Trade of the country. This matter was addressed by DREI after entities operating in the area questioned the department about the divergence of understanding on the specificities that should be followed for electronic signature of documents by Boards of Trade throughout the country.

Initially, DREI pointed out that Provisional Measure No. 2200-2 of 2001, which created the Brazilian Public Key Infrastructure (Infraestrutura de Chaves Públicas Brasileira - ICP-Brasil), does not prevent the use of other means of proof of authorship and integrity of documents in electronic form other than those of ICP-Brasil. Moreover, with the publication of Provisional Measure No. 983 in June 2020, which regulates, among other matters, electronic signatures in communications with public entities, electronic signatures were categorized as follows:

- **simple**: allows the identification of the signatory and attaches or associates data with other data in electronic format.
- **advanced**: is uniquely associated with the signatory, uses data to create an electronic signature whose

signatory can, with a high level of certainty, operate under its exclusive control, and is related to the data associated with it in such a way that any subsequent modification is detectable.

- **qualified**: uses a digital certificate, pursuant to Provisional Measure No. 2200-2.

Furthermore, article 3 of Provisional Measure No. 983 expressly provides for the possibility of using the advanced electronic signature in the registration of acts before Boards of Trade, aside from, of course, the qualified electronic signature.

THUS, THERE BEING NO OBSTACLE FOR THE ACCEPTANCE OF **ADVANCED** AND **QUALIFIED** ELECTRONIC SIGNATURES BY BOARDS OF TRADE, THE AUTHENTICITY AND INTEGRITY OF THE DOCUMENTS IS GUARANTEED, SO THERE IS NO NEED TO CHECK ALL DOCUMENTS, BECAUSE THE VERACITY AND CONFIRMATION OF INFORMATION IS THE SIGNATORY'S SOLE RESPONSIBILITY.

Finally, **in case of printing digital documents, the authenticity of the document may occur by means of authentication by the lawyer, accountant or accounting technician of the interested party**, as the printed document becomes a simple copy.

MORE INFORMATION MAY BE ACCESSED IN PORTUGUESE THROUGH THE LINK BELOW:

<https://tinyurl.com/y3c77qwp>

_ Bill proposes issuance of debentures by limited liability companies and cooperatives

In June 2020, Senator Flávio Bolsonaro presented Bill No. 3324/2020 (“PL 3324/20”), which allows the issuance of debentures by limited liability companies and cooperatives. The explanation presented to the Brazilian Federal Senate points out the need to expand the forms of fundraising by these corporate types as a result of the COVID-19 pandemic.

ALTHOUGH THERE IS NO LEGAL PROHIBITION FOR THE ISSUANCE OF DEBENTURES BY SUCH CORPORATE TYPES UNDER BRAZILIAN LAW, SOME LOCAL BOARDS OF TRADE DO NOT ACCEPT THE FILING OF THESE SECURITIES, WHICH MAKES THEIR ISSUANCE IMPOSSIBLE. IN THIS SENSE, THE EXISTENCE OF A SPECIFIC LAW ON THE MATTER WILL FACILITATE THE ACCESS OF SMALL AND MEDIUM COMPANIES TO CREDIT AT A NATIONAL LEVEL.

There are other bills in progress in the Legislative on the same matter, such as Bill No. 6322/2013, proposed by Federal Congressman Carlos Bezerra, and Senate Bill No. 11/2018, proposed by the Joint Commission of Debureaucratization of the Brazilian National Congress. The matter is also dealt with by the two projects of a New Brazilian Commercial Code. However, there is a certain expectation that this matter will be treated by Congress with greater vehemence given the health and economic crisis in which the country finds itself, as it is an additional way of financing the local business activities.

It is ought to be said that, currently, debentures have great relevance in the national capital market, being a consolidated debt security in the country. The formal possibility to issue debentures by limited liability companies, which is the legal structure most Brazilian companies have, would provide considerable legal security for the issuer and debenture holder.

BILL NO. 3324/20 IS CURRENTLY IN PROGRESS IN THE FEDERAL SENATE. MORE INFORMATION CAN BE ACCESSED IN PORTUGUESE THROUGH THE LINK BELOW:

<https://www25.senado.leg.br/web/atividade/materias/-/materia/142510>

_ STF decides to maintain ITBI assessment on real estate's contributions regarding the amount exceeding the capital to be paid up

On August 5, 2020, the Superior Federal Court (“**STF**”) judged Extraordinary Appeal No. 796376 and decided, by majority of votes, to maintain the assessment of the Real Estate Transfer Tax (*Imposto de Transmissão de Bens Imóveis - ITBI*) on real estate's contributions to capital stock in the amount that exceeds the capital to be paid up.

Pursuant to article 156, item II, of the Federal Constitution, the municipalities may impose taxes on the transmission “*inter vivos*”, under any title, by onerous act, of real estate and real rights over real estate, except for guarantee, as well as assignment of rights to its acquisition. However, paragraph 2, item I of the aforementioned article, provides immunity for the transfer of assets or rights contributed to a society by means of payment of the capital, as well as for the transfer of assets or rights resulting from a merger, incorporation, spin-off or extinction of any legal entity, unless, in such cases, the acquirer's predominant activity is the purchase and sale of these assets or rights, lease of real estate or leasing.

The case judged by STF arises from a capital increase of a company with the subsequent use of real estates to pay up the subscribed capital stock. However, the total value of the real estates

exceeded the pending capital payment amount, so the excess amount was allocated to the company's capital reserve. When trying to issue the document for payment of the ITBI with full immunity, the company was surprised with the understanding of the secretary of the municipal finance that the ITBI should be paid on the amount allocated to the capital reserve (which exceeded the pending capital payment amount).

The plaintiff filed a writ of mandamus against such act issued by the secretary of finance of São João Batista, in the State of Santa Catarina, who denied the immunity aforementioned, stating that the total amount of the properties would greatly exceed the paid-in capital. Subsequently, the first-degree court recognized the immunity and waived the ITBI charge. However, the Santa Catarina Court of Justice granted an appeal filed by the municipality alleging that the immunity is restricted to the amount which is destined to the company's capital stock.

In the STF, the appellant stated that no tax is levied on the transfer of assets incorporated into the equity of a legal entity, since there are no limitations regarding the ITBI's immunity in the realization of capital. However, by majority, the STF ministers voted to maintain the incidence of ITBI on the amount that exceeded the

value allocated to the capital stock, claiming that it cannot be admitted that, under the pretext of creating a capital reserve, it could be granted immunity over the value of properties in excess to the subscribed quotas, which is contrary to the constitutional norm and to the detriment of the municipal tax authorities.

Finally, the general repercussion thesis was set as follows: The immunity in relation to ITBI, provided for in item I of paragraph 2 of article 156 of the Federal Constitution, does not reach the value of the assets which exceeds the limit of the capital stock to be paid in.

MORE INFORMATION REGARDING RE 796376 CAN BE ACCESSED, IN PORTUGUESE, AT THE LINK BELOW:

<http://portal.stf.jus.br/processos/detalhe.asp?incidente=4529914>