

## \_ Brazilian Chamber of Representatives approves Legal Landmark for Startups

The Brazilian Chamber of Representatives approved on December 14th, 2020 the Supplementary Bill n. 146/2019 (Projeto de Lei Complementar 146/2019) (“PLP 146/2019”), also known as the “Legal Landmark for Startups” (Marco Legal das Startups). Pursuant to the approved project, startups shall be considered entrepreneurial or corporate organizations, recently incorporated or in recent operation, whose performance is characterized by innovation applied to its business model or products or services offered, with (i) gross revenue of up to BRL 16,000,000.00 (sixteen million Reais) and (ii) up to 10 years of registration before the National Registry of Legal Entities (“CNPJ”). In addition, such entities shall declare in their by-laws or articles of incorporation that they use innovative business models for the generation of products or services, or yet be framed in the special tax regime of “Inova Simples”. The Supplementary Bill states that the investor which makes a capital contribution to a startup shall not be considered as a partner or shareholder of such, nor will he be liable for any debt of the company, with express prohibition in the legal text of extending to him the disregard of the legal personality.

PLP 146/2019 also brought legislative innovations to other areas of the Brazilian corporate law. The main highlights of the project approved by the Brazilian Chamber of Representatives are:

- Administration of companies: PLP 146/2019 proposes the reduction of the minimum number of officers in companies from 2 (two) to 1 (one) officer;
- Mandatory publications: closely-held companies with less than 30 shareholders and with annual gross income of up to BRL 78,000,000.00 (seventy eight million Reais) shall be allowed to make their mandatory publications in electronic form and replace the mandatory corporate books by mechanized or electronic registry;
- Regulation of the capital market: the Brazilian Securities and Exchange Commission (“CVM”) shall regulate favorable conditions for smaller companies (i.e., companies whose annual gross revenue is less than BRL 500,000,000.00 (five hundred million Reais)) to access the capital market, whether by dispensing or modulating (i) the obligation of installing an audit committee (Conselho Fiscal) at the request of shareholders, (ii) the obligation of intermediation by a financial institution in public distributions of securities, (iii) the distribution of the mandatory dividend, (iv) the form of publications ordered by law and (v) the form of determining the fair price and its revision;
- Stock Options Regulation: the supplementary bill regulates the granting of stock options, which shall be considered as part of the employee and of the individual taxpayer compensation, which shall be considered paid, due or credited at the moment of its exercise.

CURRENTLY, PLP 146/2019 IS IN PROGRESS IN THE FEDERAL SENATE. MORE INFORMATION ABOUT PLP 146/2019 CAN BE ACCESSED THROUGH THE LINK BELOW (IN PORTUGUESE ONLY):

<https://www25.senado.leg.br/web/atividade/materias/-/materia/146040>

## \_ Brazilian Securities and Exchange Commission accepts term of commitment with Company's Investor Relations Officer after inadequate disclosure of information

The Administrative Proceeding CVM SEI 19957.010395/2019-04, was initiated by CVM's Superintendence of Relations with Companies (*Superintendência de Relações com Empresas*) ("SEP"), in order to determine the inadequate disclosure of relevant information about a publicly-held company's businesses, considered an infraction of the duty to inform, provided in article 157, §4, of Law 6,404/76 ("Brazilian Corporation Law") and articles 3rd and 6th, sole paragraph, of CVM Instruction No. 358/02 ("ICVM 358").

The case was originated when SEP analyzed an article, published on a website of a widely spread newspaper, which mentioned some information related to the Company's Quarterly Information Form ("ITR"), regarding: (i) the company's expectations of an EBITDA growth of 30% in the following year; and (ii) the company's expectation to have a debt twice as high as its EBITDA in the next years.

When requested by B3 S.A. - Brasil Bolsa Balcão ("B3"), the Company clarified that the statements made on the presentation of the result of the ITR, which took place at the day before the publication of the article, were mere expectations, not constituting guidance (*Projeções*).

Afterwards, once again the company inappropriately disclosed relevant information related to its business, and on such occasion the Investor Relations Officer did not adopt the necessary measures for its wide dissemination. Likewise, when questioned, the company clarified that such information were mere expectations for the future and proposed a term of commitment to end the process.

Finally, the Commitment Term Committee decided that it was possible to end the case by entering into a term of commitment, with the assumption of a pecuniary obligation, in the amount of R\$510,000.00 (five hundred and ten thousand reais).

MORE INFORMATION ABOUT THE TERM OF COMMITMENT CAN BE ACCESSED IN PORTUGUESE THROUGH THE LINK BELOW:

<https://tinyurl.com/y27qltmp>

## \_ Brazilian Securities and Exchange Commission decides on the concept of management compensation for corporate purposes and the disclosure of related information

On December 8<sup>th</sup>, 2020, CVM's Board decided in Administrative Proceeding CVM SEI No. 19957.007457/2018-10 on the information to be provided in item 13 of the Reference Form ("FRE"), the inclusion of amounts paid as social contributions burdened by the employer, in the overall amount of the management compensation to be submitted for approval by the general shareholders meeting, pursuant to art. 152 of Brazilian Corporation Law, and the compatibility of the information presented as share-based compensation with the company's financial statements.

The case was based on the request from SEP regarding certain adjustments in the FRE and in the compensation proposal for the management of a publicly-held company, so that the social contributions paid by the employer (item 13.1.b.ii) and the amounts related to the management compensation presented in the FRE as share-based compensation for the last three fiscal years would be compatible with those disclosed in the company's financial statements (item 13.2.d.v). Furthermore, SEP requested the company to indicate in the next management compensation proposal that until that moment the company was not considering the social contributions in the overall amount.

The company re-submitted the adjusted FRE as requested by SEP, however, as they did not agree with SEP's

understanding, they also filed a request for reconsideration, in which they argued that (i) the methodology for preparing item 13 of the FRE differs from the methodology used for recognizing expenses in the financial statements, and as the company presents in its compensation proposal the total amount of the stock options carried out that year, they choose to report the information in the FRE in the same manner; (ii) the social contributions paid by the company stem from a legal imperative and cannot be considered a benefit, not being subject to the shareholders' approval nor subject to the provisions of accounting pronouncement CPC 33 (R1), as they are not a benefit; (iii) as there are variables in the compensation of the management, it would be difficult for the amount paid by the company to be identical to the amount approved in previous years, and the need to ratify the amounts approved by the general shareholders meeting would generate legal insecurity for the company and its management, with the risk of non-fulfillment of obligations in the event of nonratification.

REPORTING DIRECTOR, MRS. FLÁVIA PERLINGEIRO, DECIDED TO PARTIALLY GRANT THE APPEAL, SINCE SHE UNDERSTOOD THAT (I) THE WORDING OF ITEM 13.2.D.V OF THE FRE IS CLEAR IN POINTING OUT THAT THE AMOUNTS TO BE INFORMED THERE FOR THE LAST THREE FISCAL YEARS ARE THOSE REFLECTED IN THE RESULTS OF THE RESPECTIVE FISCAL YEARS, I.E. THEY REFLECT THE ACCOUNTING TREATMENT

APPLICABLE TO THE FINANCIAL STATEMENTS, WITHOUT PREJUDICE TO DISCLOSURE, IN ITEM 13.16, AS COMPLEMENTARY INFORMATION, OF THE AMOUNTS THAT REFLECT THE COMPANY'S OWN METHODOLOGY; AND (II) **SOCIAL CONTRIBUTIONS CANNOT BE CONSIDERED AS "BENEFITS OF ANY NATURE" FOR THE PURPOSES OF ARTICLE 152 OF THE BRAZILIAN CORPORATION LAW**, AS THE SOCIAL

SECURITY CONTRIBUTION PAID BY THE COMPANY IS NOT EVEN DIRECTLY RELATED TO THE AMOUNT OF THE SOCIAL SECURITY BENEFIT THAT THE MANAGER, IN THE FUTURE, IF ELIGIBLE, MAY RECEIVE FROM THE BRAZILIAN SOCIAL SECURITY INSTITUTE ("INSS"). THE BOARD UNANIMOUSLY FOLLOWED THE VOTE OF THE REPORTING DIRECTOR.

THE REPORTING DIRECTOR'S VOTE CAN BE FOUND IN FULL IN THE LINK BELOW (IN PORTUGUESE ONLY):

[http://conteudo.cvm.gov.br/export/sites/cvm/decisooes/anexos/2020/20201208/1361\\_19\\_Voto\\_da\\_Relatora.pdf](http://conteudo.cvm.gov.br/export/sites/cvm/decisooes/anexos/2020/20201208/1361_19_Voto_da_Relatora.pdf)