CVM publishes Guidance Opinion on Soccer Corporations (SAF)

On August 21, 2023, CVM published Guidance Opinion 41, which brings the autarchy's understanding regarding the rules applicable to Soccer Corporations ("SAF") that wish to access the capital market to finance their activities.

Undoubtedly, the preparation of the Opinion was encouraged by the advent of Law 14.193/2021 ("SAF Law"), which establishes the incorporation of companies whose main activity is the practice of professional soccer and provides for rules regarding incorporation, governance, means of financing soccer activity, treatment of liabilities of sports entities and specific tax regime.

Among several relevant aspects of the Guidance Opinion, we highlight its purpose to guide investors and market participants on the use of instruments that enable access to the capital market by SAF, anticipating the expected movements of Brazilian clubs. The opinion presents several instruments available in the market with preliminary guidelines on their access by the FAS, namely:

- Initial public offering (IPO)
- Bonds (called "*Debenture Fut*" and provided for in the SAF Law itself)
- Investment crowdfunding
- Investment funds
- Securitization

In this sense, the guidance seeks to harmonize the norms and rules provided for in the SAF Law, in the Brazilian Corporate Law, subsidiarily applied to the SAF, and in the regulatory framework of CVM itself, avoiding interpretative normative doubts and, consequently, providing greater legal certainty to investors.

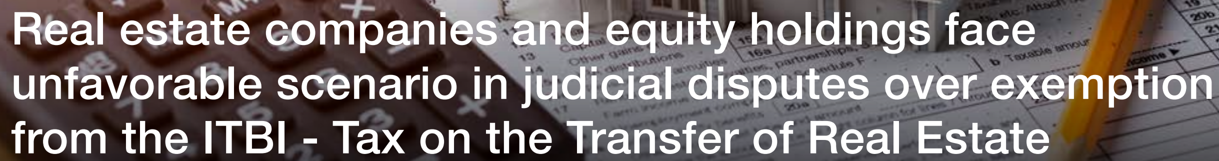
CVM reiterated that the autarchy will continue to monitor the matter in Brazil and other markets in order to intensify its understanding of the matter and, eventually, issue new statements.

The Guidance Opinion can be accessed in Portuguese through the link below:
https://conteudo.cvm.gov.br/legislacao/pareceres-orientacao/pare041.html

carneiro
de oliveira

/carneiro-de-oliveira-advogados/

Rua Dr. Renato Paes de Barros, 778 - 10º andar
Itaim Bibi -São Paulo | SP - Brasil
Tel (+55) 11 5171-8900
www.cdoadv.com.br



Real estate companies and equity holdings face unfavorable scenario in judicial disputes over exemption from the ITBI - Tax on the Transfer of Real Estate

Recently, the interpretation of article 156, paragraph 2, item I of the Federal Constitution, which provides for the exemption from the ITBI (Tax on the Transfer of Real Estate) on the transfer of assets or rights incorporated into the assets of a legal entity in capitalization process and on the transfer of assets or rights arising from merger, spin-off or dissolution of a legal entity, was the subject of discussion by the Federal Supreme Court.

The discussion began under Extraordinary Appeal 796.376/SC. The was about a transaction in which part of the equity was destined to the formation of the capital stock and another part was destined to the capital reserve, the interested party intended for the immunity to be applied to the whole amount, and not only in relation to the part that composed the capital.

By majority vote, the Supreme Court established the thesis **that the exemption from the ITBI does not reach the value of the assets that exceed the limit of the capital stock to be paid, such as those allocated in capital reserve, for example**. The judgment did not clarify, however, whether it would be necessary to meet the requirement of preponderant non-real estate activity in order to benefit from the tax exemption. The vote of Justice Alexandre de Morais even mentions that the restriction to the exemption would apply only to cases of merger, spin-off or dissolution of a legal entity.

In this scenario, real estate companies and equity *holdings* have been facing an unfavorable scenario in the judiciary, in which the lower courts have maintained the understanding that the predominance of non-real estate activities is still a condition for the exemption from the ITBI when contributing real estate in the capital stock of a company.

However, a recent decision handed down unanimously by the Court of Justice of the Federal District (TJDF) (case no. 0705115-03.2021.8.07.0018) agreed with the understanding of the taxpayers, in the sense that there would be no incidence of ITBI in the contribution of real estate in the capital stock of companies, including real estate holdings.

The theme has great relevance and its development before the courts deserves attention, especially to ensure adequate corporate, succession and patrimonial planning.

The Extraordinary Appeal 796.376 of the Federal Supreme Court can be accessed in Portuguese through the link below:
https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=753582490

carneiro de oliveira

/carneiro-de-oliveira-advogados/

Rua Dr. Renato Paes de Barros, 778 - 10º andar
Itaim Bibi -São Paulo | SP - Brasil
Tel (+55) 11 5171-8900
www.cdoadv.com.br

B3 launches new Issuers Regulation

On August 19, 2023, the new Issuers Regulation launched by B3 entered into force, which replaced, consolidated and improved the rules provided for (i) in the Regulation for Listing of Issuers and Admission to Trading of Securities, and (ii) in the Issuer's Manual and its respective annexes.

Annex B of the new Regulation brought three relevant changes related to ESG measures – Environmental, Social and Governance that must be met, in the "practice or explain" model, by companies already listed in B3. They are:

- Measure ESG 1: Elect as a full member of the board of directors or of the statutory board of directors, at least: (a) 1 woman, and (b) 1 member of an underrepresented community (this being any person who is: "black", "brown" or "indigenous", according to the classification presented by the IBGE; member of the LGBTQIA+ community; or person with disabilities, under the terms of Law 13.146/2015). The deadline for adoption for companies already listed will be the mandatory annual update deadline of the reference form (Formulário de Referência) of the year 2025 for one of the criteria and the year 2026 for both criteria.
- ESG Measure 2: Establish ESG requirements for the appointment of members of the board of directors and the statutory board of directors in the bylaws or in the Nomination Policy considering, at least: (a) complementarity of experiences, and (b) diversity in matters of gender, sexual orientation, color or race, age group and inclusion of persons with disabilities.
- ESG Measure 3: Establish, in the remuneration policy or practice, performance indicators linked to ESG themes or targets, when there is variable remuneration of the managers. The deadline for adoption for companies already listed of ESG measures 2 and 3 will be the mandatory annual update deadline of the reference form (Formulário de Referência) for the year 2025.

The following companies are released from complying with the ESG measures above: (i) registered as category B before CVM; (ii) small sized companies, pursuant to Article 294-B of the Brazilian Corporate Law; (iii) beneficiaries of funds from tax incentives, pursuant to CVM Resolution No. 10; and (iv) Sponsored BDR issuers.

Rua Dr. Renato Paes de Barros, 778 - 10º andar
Itaim Bibi -São Paulo | SP - Brasil
Tel (+55) 11 5171-8900
www.cdoadv.com.br

B3 launches new Issuers Regulation

In addition, pursuant to article 64, sole paragraph, of the new Regulation, the instruments of investiture of managers shall expressly indicate their subjection to the provisions of the new Regulation.

The new Issuers Regulation can be accessed in Portuguese through the following link:
https://www.b3.com.br/data/files/3B/31/0A/CF/394798101DBF7498AC094EA8/Regulamento%20de%20Emissores%20_20.07.2023_.pdf

Rua Dr. Renato Paes de Barros, 778 - 10º andar
Itaim Bibi -São Paulo | SP - Brasil
Tel (+55) 11 5171-8900
www.cdoadv.com.br

Celerity of corporate courts

A study points out that the average time of processing business lawsuits in specialized courts of the Court of Justice of the State of São Paulo (TJSP) is almost half the time of processing in generalist courts.

There are four specialized courts in the State of São Paulo and according to the study, the lawsuits in progress are divided into the following demands:

- 37% are about corporate issues;
- 23% are related to intellectual property and data protection;
- 20% correspond to cases of recovery and bankruptcy;
- 16% are related to contractual disagreements;
- 3% are arbitration-related topics; and
- 1% deal with other topics.

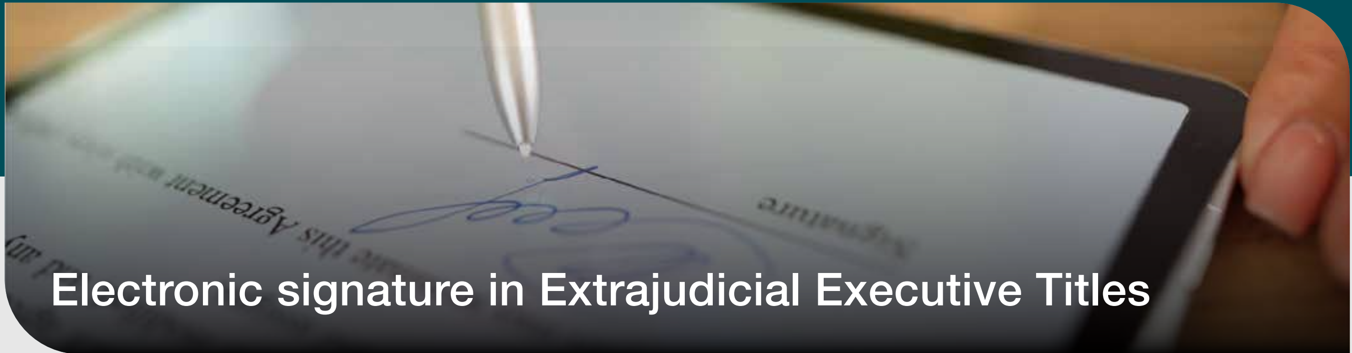
The central idea of the study was to evaluate whether the main objectives for the creation of such courts are being met, namely: celerity, quality, and predictability. The relevance of this issue lies in the billions of Brazilian Reais involved in the lawsuits and in ensuring legal certainty for investors, since without the business courts, cases of this nature would be distributed to the civil courts, which carry demands of the most varied natures.

More information about the study can be accessed in Portuguese through the link below:
https://valor.globo.com/legislacao/noticia/2023/08/01/varas-judiciais-empresariais-sao-mais-celeres.ghtml

carneiro
de oliveira

/carneiro-de-oliveira-advogados/

Rua Dr. Renato Paes de Barros, 778 - 10º andar
Itaim Bibi -São Paulo | SP - Brasil
Tel (+55) 11 5171-8900
www.cdoadv.com.br



Electronic signature in Extrajudicial Executive Titles

On July 14, 2023, Law No. 14,620 entered into force, which included paragraph 4 to article 784 of the Code of Civil Procedure (CPC), thus considering that in extrajudicial executive titles constituted or attested by electronic means, any type of electronic signature is allowed according to current legislation, and the signature of witnesses to validate these documents is also waived when their integrity is confirmed by a signature provider.

Before Law No. 14,620/2023 entered into force, the formalization of contracts, whether in physical or electronic format, required, for the contract to be considered an extrajudicial enforceable title, the signature of the parties, accompanied by two witnesses.

In addition, there was a discussion about the possible loss of executive effectiveness of documents signed electronically by a certifying entity not accredited by ICP Brasil. Due to the new wording, the electronic signature of documents through entities not accredited in the Brazilian Public Key Infrastructure - ICP Brasil is now fully valid.

Law No. 14,620/2023 can be accessed In Portuguese through the link below:

https://www.planalto.gov.br/ccivil_03/_Ato2023-2026/2023/Lei/L14620.htm