Provisional Measure no. 1040 aims to modernize the business environment in Brazil

01.04.2021 4 min read

Related areas

Corporate and M&A

Topics

Government Relations

Provisional Measure business

Federal Government

Last week (March 29th 2021) the Brazilian Federal Government issued Provisional Measure no. 1040 ("MP") aiming to modernize the business environment in Brazil. The government's announced goal is to facilitate the set-up of companies as well as to create a friendlier environment for Brazilian and foreign investors by loosening foreign trade requirements and incorporating into the law certain corporate governance practices adopted internationally.

The Ministry of Economy believes that with the MP *"in the short term Brazil can make its way for the first time among the 100 best economies to do business and the goal is to reach the Top 50"*. Currently Brazil ranks 124th among 191 countries covered by the World Bank's *Doing Business* report which assesses the business framework in different jurisdictions. The changes brought by the MP aim to address specific items measured by such report.

The MP focuses on certain matters among which, more importantly, set up of companies, protection of minority shareholders and foreign trade.

Expedited Procedures for Incorporating Companies and Corporate Name Checking

The approved measure makes the process for incorporating a company more efficient by (a) unifying federal, state and municipal tax registrations before the CNPJ (the Brazilian Taxpayers' Enrolment), (b) eliminating feasibility analysis regarding the address selected for the company's headquarters and (c) automating corporate name checking.

Modifications in the Brazilian Corporation Law

Under the motto "protection of minority shareholders", the MP changes the Brazilian Corporation Law (Law No. 6,404 / 1976) in some aspects applicable to publicly-held companies, increasing the timeframes and powers of the General Shareholders' Meeting and incorporating into law certain practices already adopted by companies that comprise B3's (the Brazilian stock exchange) highest corporate governance listing segments. In particular, the MP:

- Grants to the General Shareholders' Meeting exclusive competence to decide on the execution of transactions with related parties that meet the criteria to be defined by *Comissão de Valores Mobiliários* (CVM), the Brazilian Securities and Exchange Commission, as well as to approve the sale or contribution (*drop down*) of assets that represent more than 50%

of the value of the company's total assets, according to the last approved balance sheet;

- Increases the period for the first call notice to hold a General Shareholders' Meetings from 15 to 30 days, allowing CVM to postpone the date of the meeting for up to 30 days if the relevant documents are not timely disclosed to the shareholders; It is important to note that, one day after the MP was issued, CVM issued Resolution No 25, a transitional rule, which establishes that the legal term of 30 days will only apply to meetings summoned after May 1st 2021;
- Prohibits the same person to be the Chief Executive Officer and the Chairman of the Board of Directors (this prohibition will only take effect one year after the MP); and

- Requires companies to have independent directors in their Boards, pursuant to criteria and deadlines to be defined by CVM.

Other Matters

The MP also brought innovations and modifications in other unrelated areas with emphasis on: (i) **facilitating foreign trade procedures**, by making available to operators a single electronic bureau and reducing import and export licensing requirements; (ii) **modernizing the professional translators legislation**, by allowing them to work nationwide regardless of the location where they are licensed; (iii) **instituting the Integrated Asset Recovery System (*SIRA*)**, which will gather certain data regarding individuals and legal entities, including their assets, with a view to speed up debt collections and boost the granting of credit; and (iv) **fastening the obtaining of electric energy**, by setting a legal timeframe for the Government to authorize the execution of extension works of energy distribution networks on public roads and consequently the time that usually takes for new ventures to start operating.

Interim Statute of limitations and Repeal of Laws

Finally, the MP changes the Civil Code to establish that the interim statute of limitations in legal proceedings will follow the same legal period as for filing the claim itself, in line with a long-standing position adopted by the Brazilian Federal Supreme Court. The measure also revokes dozens of laws, decrees and legal provisions related to the MP matters.

Effectiveness

The MP takes as of the date of its publication (i.e. March 30th, 2021), except for the provisions related to foreign trade, which for the most part take effect in 90 days from the publication date, and the prohibition to cumulate the positions of CEO and Chairman in publicly-held companies, which becomes effective one year after the MP.

Although the instrument of a provisional measure is not the most suitable way to debate and introduce changes in our corporate legislation, the initiative to try to improve the business environment in Brazil is praiseworthy.

We hope that the MP is followed by other more structural changes further ahead, mainly in the tax system. There are certain aspects of the MP - especially as regards the Brazilian Corporation Law amendments - which cause some apprehension pending CVM regulation as they may materially impact companies depending on their particular profile and governance. As such, several entities and market participants are already debating the new MP and possible amendments thereto to be considered during the process for its conversion into law in Congress.