The potential effects of the ruling proposal for fintech credit on securitization and alternative payment methods in Brazil

14/11/2017 - Rubens Vidigal Neto, Allan Crocci de Souza, Fernanda Mary Sonoki, Rafaella Flores Lellis

The Brazilian Central Bank (BACEN) has recently opened a public consultation for a new ruling that will regulate the fintech credit segment in Brazil (Public Consultation No. 55/2017). The proposal sets two new types of financial institutions, the direct credit company (*Sociedade de Crédito Direto – SCD*) and the peer-to-peer (P2P) lending company (*Sociedade de Empréstimo entre Pessoas – SEP*). Even though the proposed regulation aims at the fintech credit segment, it may also have an impact on the securitization and the alternative payment methods segments.

In recent years, the Brazilian fintech credit market has grown exponentially. This growth can be explained by the improved client experience and the better terms and conditions offered by fintech credit providers to their clients, and also by the fact that such fintech firms aim at consumers that are not usually targeted by conventional financial institutions. Due to strict regulatory framework and legal limits on interest rates that can be charged by lenders that are not financial institutions, most fintech firms work with bank partners that provide loans to the firms' customers. This business model, on one hand, helps fintech firms reduce legal risk; on the other, however, increases costs and creates inefficiencies.

One of BACEN's main goals in proposing the creation of the SCD and the SEP is to allow fintech credit providers to lend money to their clients without a bank as an intermediary. According to the ruling proposal, the SCD, or the direct credit company, would provide loans to borrowers using exclusively the SCD's own capital. Funding models for SCD would be very limited. The SEP, or the peer-to-peer (P2P) lending company, would match prospective borrowers and lenders, assuming no credit risk in the loans. Both SCD and SEP would have restricted scope of activities and should provide services exclusively through electronic platforms. They both would benefit from a simpler registration procedure before BACEN and less severe minimum capital requirements than conventional financial institutions.

The use of loan securitization is a very popular funding option among fintech credit providers. Receivables investment funds (*Fundos de Investimento em Direitos Creditórios – FIDC*) and securitization companies raise funds in the capital market to buy loan receivables originated by fintech firms. The current model, however, is still based on the partnership structure abovementioned, in which all loans are provided by bank partners and not by the fintech firms themselves. Once the new fintech regulation is enacted, this model will have to be adjusted, potentially with some efficiency gains. Other securitization structures may as well be created to contemplate the SCD and the SEP models.

The alternative payment method segment could also benefit from this ruling. Although providing loans is not in the core business of payment services firms, most of them use bank partners to make loans available to their customers. Depending on the final wording of the ruling, such payment services firms may end up using the SCD and the SEP models.

The ruling proposal for fintech credit is part of BACEN's agenda to increase competition and pressure financial institutions to be more efficient, foster credit market growth and lower costs to the final borrowers. This rule could bring important changes to the Brazilian credit market, not only the fintech credit segment. The deadline for participation in the public consultation is November 17, 2017.

Arbitration and Brazilian Courts: Conflicts and Cooperation

14/11/2017 - Luciano de Souza Godoy, Marcela Machado Martiniano

Since the enactment of the Brazilian Arbitration Act (Law No. 9,307/1996), the Brazilian legal framework has undergone remarkable changes that helped improve and strengthen arbitration as an alternative method of dispute resolution.

In 2002, the 1958 New York Convention came into force in Brazil, notably contributing to the development of arbitration in the country, particularly in respect to the recognition and enforcement of foreign arbitral awards.

More recently, the new Brazilian Civil Procedure Code (Law No. 13,105/2015) accommodated the *kompetenz-kompetenz* principle, under which it is up to the arbitrator to determine his or her own competence by examining the validity of the arbitration clause and the agreement in which it is inserted.

A few months later, Law No. 13,129/2015 amended the Arbitration Act, providing for some topics already settled in courts. Moreover, it explained and improved certain aspects of the original text.

Notwithstanding all the achievements towards the autonomy of the arbitral jurisdiction in Brazil so far, the connection between arbitral and judicial litigation is still inevitable and can be very beneficial if properly developed.

Before the beginning of the arbitration proceeding, courts may be required to enforce precautionary and urgent measures, due to the risk of irreparable damages. The most usual among these measures concern the request for suspension or enforcement of constrictive measures (e.g., the attachment of properties to guarantee a future execution) and the request for early production of evidence.

Judicial cooperation will also be essential before the arbitration proceeding starts if one party refuses to take part in it or if the arbitration clause fails to meet the minimum requirements for its commencement. In this case, Art. 7 of the Arbitration Act provides for a judicial mechanism for the specific performance of arbitration clauses.

On such occasions, there is a risk of undue judicial intervention, since Brazilian courts have allowed the judges to evaluate the validity of the arbitration clause if it is clearly null and void. From our point of view, such control should only happen **after** the arbitral award is issued, in order to comply with the above-mentioned *kompetenz-kompetenz* principle, which prevents the courts from making early intervention in matters that the parties have freely subjected to arbitration.

During the arbitration proceedings, the new Brazilian Civil Procedure Code provides that the courts' cooperation must be done by means of the so-called "arbitral letter". The "arbitral letter" can be used, for example, to enforce a subpoena through a judicial officer or a preliminary or advance relief ordered by the arbitrator, as well as to compel a witness to attend a hearing.

Finally, after the conclusion of the arbitration proceeding, a court decision enforcing the arbitral award may be needed if the losing party fails to comply voluntarily. Besides, if a defect[1] is identified in the arbitral award, an action for the annulment of the award may also be filed with a national court. Lastly, in order to be enforced, foreign awards must be homologated (*exequatur*) by the Brazilian Superior Court of Justice (STJ).

Both the New York Convention and the Brazilian Arbitration Act provide for some presumption that foreign awards are capable of producing effects in Brazil.[2] As a rule, this presumption is only struck down if STJ finds **(i)** that the party's right to be heard and to present its case was violated; **(ii)** that the limits of the arbitral authority's jurisdiction were exceeded; or **(iii)** that the merits of the decision violated public policy.[3]

In fact, not very long ago (in February 2017), STJ denied to homologate a foreign arbitral award rendered by a U.S.-based arbitration court in a dispute between the Spanish company Abengoa Bioenergia and the Brazilian company Adriano Ometto Agrícola. The majority of the STJ justices found that the impartiality requirement had been violated, since the president of the arbitral tribunal was a partner at a law firm which received high fees from the Spanish company during the course of the arbitration proceeding. Despite the fact that such fees were due for work not related to the matter discussed in the arbitration, the STJ decided that the president had an obligation to make proper disclosure to the parties, and did not do so.[4]

Even though the STJ usually recognizes the enforceability of foreign arbitral awards, the definition of public policy remains a controversial issue even among the signatory states of the New York Convention, which, depending on the subject under discussion, increases the risk of undue judicial intervention on the merits of the foreign arbitral award. That is why utmost care is required when choosing arbitration to solve disputes involving, for example, labor law, consumer law, environmental and tax issues, whose effects would need to be enforced in Brazil.

Arbitral jurisdiction and state jurisdiction are constantly intersecting each other, sometimes for the purpose of cooperation, sometimes for the purpose of legality control. Fortunately, the Brazilian legal framework is increasingly adequate and conducive to the development of a balanced relationship between arbitral tribunals and the national courts.

[1] A defect provided on the list of Art. 32 of the Arbitration Act.

[2] In this sense, Gary Born on the Brazilian Arbitration Act (BORN, Gary B. International Commercial Arbitration. Commentary and Materials. 2nd Ed. New York: Transnational Publishers, 2001, p. 157).

[3] DE ARAÚJO, Nádia. Opinion. Questões sobre a Motivação de Laudo Arbitral Estrangeiro e sua Homologação no Brasil: SE 5692/US. In: Revista Brasileira de Arbitragem, ano XII, vol. 45, jan-fev-mar 2015, p. 23.

[4] Brazilian Superior Court of Justice (STJ), Case (SEC) No. 12.493, Special Court, Reporting Justice Maria Thereza de Assis Moura, judged on February 15, 2017.

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PVG practices and attorneys recommended in the latest editions of Chambers Latin America and Legal 500 Latin America

14/11/2017 –

In total, all five partners and six practices of our firm, as well as six associates, were recognized and recommended by the latest editions of Chambers Latin America and Legal 500 Latin America.

Chambers Latin America, in its 2018 edition, nominated PVG in the following three categories: **(a)** Banking and Finance, **(b)** Capital Markets and **(c)** Corporate/M&A. Furthermore, three of our partners were recommended for their work in their respective practices:

- Marcelo Perlman was recommended in both Corporate/M&A and Capital Markets categories.
- Rubens Vidigal Neto was recommended in Capital Markets.
- Luciano de Souza Godoy was recommended in Dispute Resolution.

We are also proud to share that the 2017 edition of Legal 500 Latin America recognized PVG as a leading firm in six practices: **(a)**Banking and Finance, **(b)** Bankruptcy and Restructuring, **(c)** Capital Markets, **(d)** Corporate and M&A, **(e)** Projects and Infrastructure, and **(f)** Tax.

All five partners were recommended in the abovementioned categories as follows:

- Marcelo Perlman was recommended in Corporate/M&A, Capital Markets, Banking and Finance, and Projects and Infrastructure.
- Rubens Vidigal Neto was recommended in Banking and Finance, and Capital Markets.
- Luciano de Souza Godoy was recommended in Bankruptcy and Restructuring, and Projects and Infrastructure.
- Ricardo Zamariola Júnior was recommended in Bankruptcy and Restructuring.
- Matheus Bueno de Oliveira was recommended in Tax.

Additionally, six associates of our firm were also recommended by Legal 500 Latin America:

- Corporate/M&A: Claudio D.D. Gomez, Andrea Coimbra de Oliveira Anger, Vinícius Azambuja de Oliveira, Érico Lopes Tonussi and Mayra Naomi Sakaguti.
- Capital Markets: Alan Crocci de Souza.

Both associates Allan Crocci de Souza and Vinícius Azambuja de Oliveira were nominated by Legal 500 Latin America as Next Generation Lawyers in their relevant practice areas, Capital Markets and Corporate/M&A, respectively.

Brazil's Approach Towards The Exchange of Information

14/11/2017 - Matheus Bueno de Oliveira, Frederico Silva Bastos

The globalization and internationalization of companies are phenomena that must be considered by today's tax administrations. In many situations, such as tax evasion, harmful tax competition and money laundering, domestic statutes seem to be ineffective in a global dimension. To cope with these issues, new forms of regulations have emerged.

In the past, fiscal policies were established in each country solely for domestic troubleshooting. With globalization and the free movement of capital, there has been a push towards the interaction between different tax systems and tax administrations.

Due to this movement, an effort in signing new international treaties, conventions, and agreements seems to be a feasible solution to adopt common and harmonized standards. Considering this scenario, one realizes the importance of supranational bodies in the study and development of tax related exchange of information (EOI) initiatives and the formulation of proposals that can be implemented jointly by the international community.

Brazil is engaged in implementing an international standard of transparency and exchange of information on tax matters through its domestic legislation and institutional framework to support EOI policies, allowing availability and access to reliable information, as well as powers to obtain it under civil, commercial, tax, regulatory, and criminal laws, where necessary[1].

The country continues to expand on its tools for the exchange of information, including specialized networks and infrastructure along with some new international agreements which are in varying stages of negotiation and ratification.

This article examines some relevant topics of Brazil's legal and institutional framework with regards to tax exchange of information, such as the Common Reporting Standards, Country-by-Country Report, the Brazilian Voluntary Disclosure Program, the Multilateral Convention on Mutual Administrative Assistance in Tax Matters and other EOI agreements, as well as Brazilian Supreme Court (STF) rulings regarding bank secrecy and the rights of Brazilian taxpayers vis-à-vis EOI.

Enactment of Common Reporting Standards

The Common Reporting Standard (CRS) requires jurisdictions to obtain information from their local financial institutions and automatically exchange it with other jurisdictions periodically, in standardized data formats.

The CRS is aligned with the current international scenario, which seeks to establish efficient mechanisms for fiscal transparency and the exchange of information with the goal of curbing tax evasion, money laundering, and terrorist financing practices.

Recently, the Brazilian Revenue Service (RFB) issued Normative Ruling No. 1,680/2016, which established the CRS in the Brazilian tax regulation framework,

postulating due diligence procedures that must be followed by financial institutions and other reporting entities. Compliance with Normative Ruling No. 1,680/2016 must be done by delivering certain information on financial operations of taxpayers to the Brazilian Revenue Service through the “e-Financeira” statement.

For Brazilian tax purposes, the automatic exchange of information with other jurisdictions under the CRS will take place in 2018, with data referring to year 2017.

Country-by-Country Reporting

Country-by-Country (“CbC”) reporting provides a template for Multinational Enterprises (MNEs) to annually provide Brazilian tax authorities with comprehensive data related to each tax jurisdiction in which they do business via controlled or related enterprises.

Normative Ruling No. 1,681/2016 regulates the CbC report, establishing that large multinational enterprises have to provide an annual filing breaking down key elements of their financial statements by jurisdiction, including information regarding revenue, income, taxes paid and accrued, employment, capital, retained earnings, tangible assets and company activities.

The annual filing will be submitted by completing the Fiscal Accounting Bookkeeping statement (“ECF”) which recently replaced the Brazilian Corporate Income Tax Return. ECF statement submission should be done by accessing the local Public System of Digital Bookkeeping (“Sped”) which replaced companies’ physical accounting books with digital file submission.

During 2017 the Brazilian tax authorities will collect the CbC report information for the 2016 fiscal year. This information will be exchanged with other jurisdictions from 2018 on (base-year 2016).

Brazilian Voluntary Disclosure Program

Brazilian authorities issued Law No. 13,254/2016 and Normative Rulings No. 1,627/2016 and No. 1,704/2017, which provided a special amnesty for the undeclared assets held abroad by Brazilian taxpayers (“RERCT”).

In short, the program aimed to encourage taxpayers to disclose their assets transferred or held abroad that, until that point, were not properly reported to local tax authorities. It was put in place before the country started its exchange of information protocols.

Individuals or legal entities that were residents or domiciled in Brazil on specific dates were able to enroll. Those participating in RERCT were subject to the payment of income taxes and fines in the amounts to be regularized.

Aside from tax and other regulatory penalties, the RERCT introduced an amnesty for crimes related to holding unreported assets abroad (as in tax evasion). Participation in the program was the only way to avoid criminal sanctions.

Multilateral Convention on Mutual Administrative Assistance in Tax Matters and other EOI agreements

Brazil continues to expand its network of tools for the exchange of information, and some new Tax Information Exchange Agreements (TIEA) are in various stages of negotiation and ratification.

Agreements between Brazil and the United States were locally brought into effect by Decree No. 8,003/2013 and by the Intergovernmental Agreement enacted under Decree No. 8,506/2015 in the context of the Foreign Account Tax Compliance Act (FATCA). However, agreements between Brazil and the United Kingdom, Uruguay, Bermuda, Jersey, Guernsey, The Cayman Islands and Switzerland are still pending ratification by the Brazilian Congress.

In addition, Brazilian Decree No. 105/2016 approved the Multilateral Convention on Mutual Administrative Assistance in Tax Matters signed by nations worldwide in November of 2011. The purpose of the convention, includes: **(1)** the exchange of information, such as: (1a) by request; (1b) automatic; (1c) spontaneous; (1d) simultaneous tax audits and (1e) tax audits abroad; **(2)** collection of tax credits, including precautionary measures; and **(3)** document notification.

The ratification of the Multilateral Convention allows Brazil to develop its network of exchange of financial and tax information to over 90 countries and therefore strengthens the fight against tax evasion and aggressive tax planning.

Brazilian Supreme Court Decision on Bank Secrecy

In early 2016, the STF overturned its historical position on the matter and ruled in favor of the constitutionality of the RFB rights to access taxpayers' bank information without a judicial order. The decision, with binding effects for all local courts, was granted in favor of RFB and is expected to have major impacts on related tax issues, such as compliance with international tax agreements, the rules regarding the regularization of undeclared assets held abroad, the "e-Financeira" statement and the potential disclosure of banking information for states and municipalities.

As per the court's decision, for banking information access to be granted, the following requirements must be present: **(1)** the adoption of system security certificates and access logs to prevent data tampering, and **(2)** the existence of a prior administrative proceeding that respects the due process of law.

1. International Tax Agreements: Brazil is entering into international agreements and adopting policies to develop its tax transparency network. The country has already entered into agreements for the exchange of information. The Supreme Court's decision will make it possible for Brazil to honor these international obligations. However, it is important to note that Brazil needs to reconcile compliance with these international duties regarding Brazilian taxpayers' Constitutional rights and within the grounds presented in the Supreme Court ruling;

2. e-Financeira: The Brazilian tax administration issued the Normative Ruling No. 1,571/2015, which established a mandatory bi-annual reporting obligation, under

which financial institutions must deliver certain information on financial operations to the RFB by presenting the *e-Financeira* statement. This regulation assumes the automatic disclosure of banking information from taxpayers to the RFB and it will be the means by which the Brazilian tax administration will report information to the tax authorities of other countries. However, as mentioned above, the recent Supreme Court decision postulates the need of a prior administrative proceeding including the due process of law, in order to allow the disclosure of banking information from taxpayers. In this sense, it is possible that the Supreme Court's grounds hinders compliance with this new obligation;

3. Brazilian Voluntary Disclosure Program: The program is important for taxpayers enrolled in the disclosure program since the legislation does not prevent the exchange of information with other countries. In other words, there is no obstacle for the information provided by the taxpayer under the RERCT to be forwarded to other countries;

4. Disclosure of Banking Information to States and Municipalities: The ruling issued by the Supreme Court could also be applied to states and municipalities in order to access taxpayers banking information. In light of this possibility, the Supreme Court decision emphasized that states and municipalities should establish specific regulations for this purpose, as the federal government did in Decree No. 3.724/2001; and

5. Public Agent Liability: The Supreme Court`s decision makes it clear that the possibility of the direct access by the RFB to taxpayers' banking records does not exempt tax authorities from complying with any other applicable legal requirements and conditions to access such data. The duty of protecting the confidentiality of tax taxpayers' information is provided for in the CTN and non-compliance with this obligation is considered a violation of privacy, as defined by the Criminal Code of Brazil and which then allows for civil liability directed towards the offending public official. In addition, LC 105 imposes personal penalties for data mismanagement when proven that the official acted contrary to official guidance. Thus, actions by tax authorities that are taken in violation of the conditions imposed by law regarding access to banking records which are provided by financial institutions can be challenged in court.

[1] Decree-Law n. 486/69, article 4; National Tax Code, articles 173, 174, 195, and 197; Complementary Law n. 123/06, article 26, II; Normative Instruction RFB n. 983/09, article 27; Law n. 9.613/98.

Changes to the special listing segment Novo Mercado approved after public consultation procedure

14/11/2017 - Marcelo Perlman, Claudio D.D. Gomez, Nicholas Fernandes de Oliveira Versignassi

In 2000, local stock exchange BM&FBovespa (currently named B3) created different special listing segments, under the premise that the adoption of high standards of corporate governance would positively affect the value and liquidity of traded stock. More recently, however, general perception had become that such listing segments, whose rules had not been updated since 2011, were obsolete in comparison with internationally recommended practices.

Hence, in March 2016, B3 initiated a broad discussion with participants of the Brazilian capital markets, aiming at improving the rules for both 'Nivel 2' and 'Novo Mercado', the two main special listing segments[1]. The matter was submitted to public consultation and private hearings and, in July 2017, the corporations whose stock were listed on each of the segments voted on the relevant proposals[2].

The results of the voting process became public on July 23, 2017: **(i)** for the 'Novo Mercado', which is the main special listing segment, where no preferred shares are allowed (common shares only), a new main regulation was approved, as well as a specific rule on management evaluation; other specific proposals for the segment were rejected; and **(ii)** for the 'Nível 2', all proposed changes were rejected.

Given the mentioned partial approval of the relevant proposals, the 'Novo Mercado' listing segment will adopt the following new characteristics:

1. Outstanding shares. Corporations shall trade a minimum percentage of **(i)**25% (twenty-five per cent) of their share capital; or **(ii)** provided that the average daily trading value of the corporations' shares is, at least, of R$ 25 million, 15% (fifteen per cent) of their share capital. There will be an 18-month term for the corporation to reestablish the minimum percentage of outstanding shares in certain specific situations provided for in the regulation.

2. Minimum outstanding shares. The rules referring to minimum outstanding shares will not be applicable in the case of public equity placements subject to offering restrictions, as defined in the applicable law.

3. Pre-operational corporations. The trading of stock issued by non-operational corporations between non-qualified investors can only take place after the presentation of financial statements indicating operational revenue.

4. Management. **(i)** The Board of Directors will be composed by at least two independent members or by independent members representing at least 20% of the total board membership, whichever is greater; **(ii)**the maximum, average and minimum compensation of the members of the Board of Officers, Board of Directors and Fiscal Board shall be disclosed to the public in the corporation's reference form as regulated by the Brazilian securities and exchange commission ("**CVM**"); and **(iii)** the corporation shall structure and

make public an evaluation process of the Board of Directors, its committees and the Board of Officers.

5. Supervision and control. The corporations shall set up an Audit Committee, provided in the bylaws or not. The participation in such committee of officers of the corporation, its controlling companies, companies under its control or under common control is expressly forbidden. The corporation shall **(i)** have an internal audit department or hire a registered independent auditor to perform this activity, and **(ii)** implement compliance, internal controls and corporate risk management functions.

6. Delisting. The voluntary withdrawal from the 'Novo Mercado' shall be preceded by a public tender offer at stock fair market value. For the withdrawal to move forward, shareholders owning more than one third of the outstanding shares shall need to accept to tender their shares or, at least, explicitly agree with the delisting, unless a higher threshold is established in the corporation's bylaws.

The described new rules represent an important evolution of the 'Novo Mercado'. The approved changes meet different demands of agents of the Brazilian capital markets, and are consistent with the original purpose of the special listing segments, *i.e.*, to reduce information asymmetry and increase shareholders' rights as a means to attribute value and liquidity to traded stock.

Nevertheless, it is interesting to note that three proposed items were rejected by more than one third of the corporations with stock listed on the 'Novo Mercado' segment: **(i)** disclosure of socio-environmental report; **(ii)** mandatory public tender offer in case of shareholder acquisition of a certain relevant equity stake in the corporation (where the proposal had been that such stake represented 20% to 30% of the corporation's shares); and **(iii)** minimum shareholder support of 50% of the capital stock to allow withdrawal from the 'Novo Mercado' (exceeding of the one third threshold effectively approved in the new regulation, as per above).

The voting process also resulted in a wider distance between the 'Novo Mercado' and the 'Nível 2' listing segments, which, at the outset, had diverged solely regarding the structure of the capital stock, given that the corporations in the 'Nível 2' may issue preferred shares. Due to the rejection of the new rules proposed to 'Nível 2', this segment will not count with the above-detailed innovations and the reactions of the market to such discrepancy are still to be seen.

The final version of the new regulation of 'Novo Mercado' was approved by CVM and will come into force in January 2nd, 2018. As of such date, the entry of corporations into the 'Novo Mercado' will be subject to the compliance with all provisions of the new regulation. For corporations already listed in 'Novo Mercado', an adaptation period was granted: although they have to observe some of the new rules as from January 2nd, 2018 (including those related to outstanding shares and delisting, as described above), the compliance with the rules regarding management, supervision and control (as per items 4 and 5 above) will only be required after the 2021 Annual General Shareholders' Meeting.

[1] Depending on the degree of corporate governance commitment undertaken by a certain corporation, its issued stock may be listed in ‘Bovespa Mais’, ‘Bovespa Mais Nível 2’, ‘Nível 1’, ‘Nível 2’ or ‘Novo Mercado’.

[2] With respect to the ‘Novo Mercado’ regulation, the corporations voted on the following proposals: **(i)** new main regulation; **(ii)**specific rule regarding management evaluation; **(iii)** specific rule regarding disclosure of socio-environmental report; **(iv)** specific rule to increase the minimum threshold of shareholder support for a public tender offer intended to withdraw from a special listing segment; and **(v)** specific rule to trigger a mandatory public tender offer in case of shareholder acquisition of a certain relevant equity stake in the corporation. Regarding the ‘Nível 2’ regulation, the voting dynamics were similar: the corporations voted on proposals for a new main regulation and three specific rules (similar to those aforementioned in “**(ii)**”, “**(iii)**” and “**(iv)**”). The approval of each matter depended on a non-rejection by more than one third of the corporations with stock listed in each respective segment.

Potential new alternatives for foreign investment into Brazil resulting from changes to EIRELI (Wholly-Owned Legal Entity) regulations

14/11/2017 - Marcelo Perlman, Claudio D.D. Gomez, Allan Crocci de Souza

The Wholly-Owned Limited Liability Entity (EIRELI) is a legal entity provided for in Brazilian law in which a single person holds the entirety of the capital stock, as opposed to other Brazilian legal entities where at least two such holders are required. The referred corporate vehicle allows for individual entrepreneurial activity, with limitation of equity holder's liability to up to the amount corresponding to that of the capital stock.

Although the EIRELI was created in 2011, until recently there was no consensus between market agents and authorities regarding the possibility of its incorporation and equity holding by other legal entities, rather than individuals. On May 2nd 2017, Normative Instruction no. 38 of the Brazilian Department of Business Registration and Integration (DREI) expressly authorized legal entities (regardless of their being established in Brazil or not) to hold the capital stock of an EIRELI.

Based on the regulation above, there are now new possibilities for the usage of EIRELI as a vehicle for foreign investments into Brazil. Such possibilities now only depend from a practical standpoint on conclusion of certain internal system adaptations to the new regulation by the relevant Commercial Registries and the Brazilian Federal Revenue.

Remote voting becomes mandatory for listed corporations in 2018

14/11/2017 - Marcelo Perlman, Claudio D.D. Gomez, Nicholas Fernandes de Oliveira Versignassi

In 2017, for the first time in Brazil, corporations whose stock are listed on IBOVESPA and IBrX-100 trading indices were obliged to offer to shareholders a remote voting system for their Annual General Shareholders' Meetings. As of January 1st, 2018, all corporations authorized to trade shares on the Brazilian capital markets must offer a remote voting system to shareholders for their Annual General Shareholders' Meetings and their Extraordinary Shareholders' Meetings for the appointment of members of their Fiscal Boards and Boards of Directors.

Apart from allowing remote voting in Shareholders' Meetings, the referred system shall enable shareholders holding a certain minimum percentage of capital stock to include proposals for deliberation, as well as to nominate candidates to the Fiscal Board and the Board of Directors. Remote voting content shall be communicated to the relevant corporation by the shareholder, directly, or through an intermediary agent (custody or bookkeeping agent).

Adoption of remote corporate voting in Brazil is intended to facilitate minority and foreign shareholder inclusion in corporations' decision-making processes. Remote voting will also not preclude personal attendance to Shareholders' Meetings by those wishing to be present; a shareholder voting remotely may still attend the meetings in person or appoint an attorney-in-fact to do so.

By assessing the 2017 Annual General Shareholders' Meetings of the corporations that are part of the IBrX-100 and IBOVESPA, the Securities and Exchange Commission of Brazil ("**CVM**") concluded that minor adjustments on the remote voting system were needed before it being mandatory for all listed corporations. As result of such analysis, on October 2nd, CVM's Market Regulation Department submitted to a public hearing its reform proposal aiming at improving the remote voting system; the term for submitting contributions ended on November 1st