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CLIENT ALERT

APRIL/2019

NEW AUTOMATIC CORPORATE REGISTRATION SCHEME FOR THE INCORPORATION OF LIMITED LIABILITY COMPANIES AND LIMITED LIABILITY SOLE PROPRIETORSHIP ENTITIES (*Eirelis*), AS WELL AS FOR THE ENROLLMENT OF SOLE PROPRIETORSHIPS

Provisional Measure 876/2019 ("**PM 876/2019**"), published in the Brazilian Official Gazette on March 14, 2019, amended some provisions of Law n. 8,934/19994 ("**Corporate Registry Law**") (a) to create a special regime for the incorporation of certain corporate entities and registration of sole proprietorships and (b) to provide for document authentication by lawyers and accountants in lieu of a certification by a notary.

A. Automatic registration – Incorporation of Limitadas, EIRELIs *and Sole Proprietorships*

Under the PM 876/2019, Boards of Trade are required to immediately and automatically register applications for the incorporation of Limited Liability Companies (*Sociedades Limitadas*) and Limited Liability Sole Proprietorship Entities (*EIRELIs*), as well as the enrollment of Sole Proprietorships, provided that that applicant meets the following requirements:

1. Prior feasibility check of the corporate name and location for the *sociedade limitada*, *EIRELI* or sole proprietorship; and
2. Adoption of the standard articles of incorporation or incorporation instrument (as applicable) prepared by the Companies Registry Nacional Department – *Departamento Nacional de Registro Empresarial e Integração* ("**DREI**").

Even though PM 876/2019 entered into force as of the date of publication, the automatic registration scheme is still to be implemented. For instance, DREI has adopted standard articles of incorporation for *sociedades limitadas* and the standard incorporation instrument for *EIRELIs* in the past (Normative Instruction n. 32/2015), but it does not seem that such documents will be the base for automatic registration. DREI is expected to initiate a public proceeding within the next weeks to collect contributions to issue a specific normative instruction governing automatic registration and will probably adopt new standard incorporation documents. In

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addition, certain Boards of Trade — for instance, the Minas Gerais ("**JUCEMG**") and the Rio Grande do Sul ("**JucisRs**") Boards of Trade — have published standard documents in their e-filing systems, but it is not clear at this time whether such documents will be adopted for automatic registration.

It remains to be seen how all the Boards of Trade across the country will implement the automatic registration. It is worth highlighting that currently the Boards of Trade of the following States are implementing an e-filing system ("**Junta Digital**"): Acre, Amazonas, Bahia, Ceará, Distrito Federal, Goiás, Mato Grosso, Mato Grosso do Sul, Minas Gerais, Paraná, Pernambuco, Rio de Janeiro, Rio Grande do Norte, Rio Grande do Sul, Roraima e Santa Catarina. Not all Boards of Trade are using the same e-filing system, and therefore the implementation of automatic registration will probably be contingent on the ability of each Board of Trade to adapt its e-filing system.

Once implemented, the new scheme may represent a substantial reduction in the time required for the incorporation of limited liability companies, the most used corporate form in Brazil. With the automatic registration, the applicant will receive on the same day its enrollment with CNPJ (registry of corporate entities with the Brazilian Revenue Service) and, if applicable, its IE (registration with the State revenue service).

An automatic registration may be cancelled if the competent Board of Trade finds, after registration, that the application contains an irreversible inconsistency.

B. Authentication of copies by lawyers and accountants

Another modification introduced by PM 876/20119 is an authorization for the certification by lawyers and accountants of copies of documents presented to the Boards of Trade. Before, applicants were required either to (a) certify such copies with a notary, in exchange for a fee per each page or (b) request certification by an employee of the Board of Trade pursuant to Federal Law n. 13.726/2018.

For further information, as well as for additional clarification, please do not hesitate to contact us.

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