CLIENT ALERT

JUNE/2019

NEW REGULATORY AGENCIES ACT IS ENACTED

Federal Law # 13,848, which contains rules on the management, organization, decision-making processes and social control of Regulatory Agencies, was enacted yesterday (06.26.2019). The result of a bill proposed at the Federal Senate in 2013, the new statute aims at enhancing the independence of Regulatory Agencies, the transparency and efficiency of their processes and the technical quality of their decisions.

Among the modifications and innovations contained in the new statute, the following are to be emphasized:

1.) Technical qualifications for Board positions — the new statute established more demanding requirements for Board positions. In addition to "*notorious expertise*", "*academic education compatible with the position*" and "*untarnished reputation*", one of the following conditions must be met:

I. 10-year experience:

1.) In a "*superior management position*", in the public or private sectors, in the field of activity of the Regulatory Agency — or in a related field of activity; or

2.) As a liberal professional working within the field of activity of the Regulatory Agency, or in a related field of activity.

II. 4-year experience:

1.) As a top-level manager, within the two highest levels of a private company, within the field of activity of the Regulatory Agency; or

2.) As a political appointee ("*cargo de confiança*"), or as a civil servant holding a temporary commission ("*função de confiança*") of a certain rank, in the public sector; or

3) As a professor or researcher within the field of activity of the Regulatory Agency, or in a related field of activity.

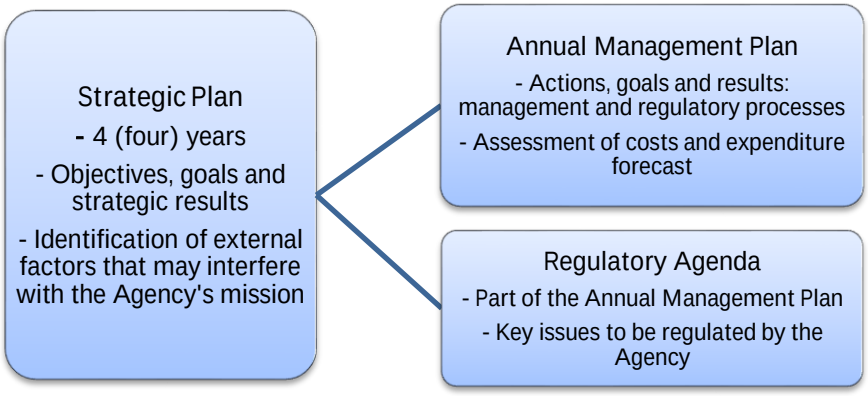
For further information, please send a message to news@veirano.com.br

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2.) The "Strategic Plan" and the "Regulatory Agenda" — Regulatory Agencies will be required to determine, in advance, their short and medium-term objectives. Accordingly, they will have to issue (a.) "*Strategic Plans*" encompassing 4-year periods; and (b.) "*Annual Management Plans*", setting forth their goals for each year and a "*Regulatory Agenda*" indicating the main issues to be regulated within it.



3.) Regulatory Impact Analyses and Public Hearings — in the same direction established by recent amendments to the "*Law of Introduction to Brazilian Legal Rules*" ("LINDB") and by article 5 of the Provisional Measure #881/2019 (the "*Economic Freedom Act*"), Regulatory Agencies will have to promote "*Regulatory Impact Analyses*" when drafting rules of "*general interest of economic agents, consumers or users*" of public services. Such analyses will contain information on the possible effects of the rule the Agency intends to enact – and shall be made available to the public, for comments, through public consultations or public hearings.

The President shall remain responsible for the appointment of Agencies' Board Members — who may only take office after approved by the Federal Senate. President Jair Bolsonaro vetoed, on constitutional grounds, articles of the bill that allowed the Federal Senate to prepare a "*shortlist*" of three candidates from which presidential appointments should be made. The National Congress will now decide whether Mr. Bolsonaro's vetoes will be overridden or not. If Congress decides to grant the Federal Senate powers to prepare such shortlist, the Supreme Federal Court may be called upon to evaluate its constitutionality.

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