GOVERNMENT & REGULATORY

CLIENT ALERT

APRIL/2020

FEDERAL GOVERNMENT AUTHORIZED TO ACCEPT PURPOSE-BOUND DONATIONS OF GOODS AND SERVICES MADE BY PRIVATE PARTIES

Donations may be bound to specific obligations to do or not to do.

- *Donations of goods and services to the Federal Government had already been regulated in 2019 but they couldn't be conditions upon the imposition of specific obligations to the Government.*
- *At the beginning of April, a decree issued by President Bolsonaro allowed the Federal Government to accept purpose-bound donations. In case such purpose is not achieved, the donation may be canceled.*

By means of Federal Decree No 10,314, of April 6th, 2020, the Federal Government was authorized to accept donations of goods and services that are bound to specific purposes.

The donation of goods and services by individuals and private legal entities had already been allowed in April, when such topic was regulated by Federal Decree No 9,764. Nevertheless, such donations could not be conditioned upon the so-called "*burdens or charges*" — defined as "*restrictions imposed to the transferred good or service*" or "*obligations to do or not to do, in favor of the donor, the donee, third parties or the public interest*". With the enactment of Decree No. 10,314, donations to the Federal Administration, as well as to its agencies and foundations, shall be accompanied by these special conditions. Should these conditions be violated, the donation may be canceled.

Private parties who choose to make donations that are not bound by such restrictions may benefit from the inclusion of an "*informative reference on the donor's website*" as well as of a reference to the name of the "*donor, by the donee, by means of its website*".

PRACTICE AREA
Government & Regulatory

COORDINATION
Mauro Hiane de Moura

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

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Private individuals and legal entities will be able to express their interest in donating goods or services with or without special conditions by means of the website reuse.gov.br. Once they are made, donation offers will be available online for 10 (ten) days. During this time, the public entities appointed by the donor may accept the donation – or, in case no potential donees were specified, other public entities will be able to express their interest in receiving it.

Such 10-day deadline may be "*reduced or suppressed in the case of an emergency or public calamity*". In any hypotheses, though, the prohibitions established in Decree No 9,764/2019 shall apply — prohibiting donations when, among other cases, there is a conflict of interest or when the potential donor has been convicted for the practice of administrative misconduct or for having breached the Anti-Corruption Law (Federal Law No. 12,846/2013). Scenario of conflict of interest were regulated further detail by means of Normative Order No. 05, issued by the Special Office of Debureaucratization, Management and Digital Government of the Ministry of Economy on August 12, 2019.

Decrees No. 9,764/2019 and No. 10,314/2020 are only applicable to donations made by private parties to the Federal Government and its agencies and foundations. The States, the Federal District and the Municipalities of Brazil may enact their own decrees, with similar rules and principles, to regulate the donations they receive.

An updated version of Decree No. 9,764/2019, with the changes introduced by Decree No. 10,314/2020 is available at this link.

For more information, please contact the signatories of this alert.

Mauro Hiane de Moura
mauro.moura@veirano.com.br

Gabriela Reis Paiva Monteiro
gabriela.monteiro@veirano.com.br