WHITE-COLLAR DEFENSE

CLIENT ALERT

APRIL/2020

NON-COMPLIANCE WITH THE CENTRAL BANK'S NEW ORDINANCE MAY CONSTITUTE FINANCIAL CRIME

On April 6, 2020, the Central Bank of Brazil enacted the ordinance n. 4,797/2020, which imposes restrictions until September 30, 2020 on profit sharing and compensations for financial institutions' administrators, aiming at ensuring the solidity, stability and regular functioning of the national financial system during the COVID-19 pandemic.

Non-compliance therewith may pose serious criminal consequences, leading to investigation of the crimes against the national financial system set forth in the Law n. 7,492/1986.

The article 2, item I, of the ordinance n. 4,797/2020 forestalls the payment of interest on stockholders' equity and of dividends above the statutory minimum set forth in the bylaws on the date the ordinance has become effective or as provided for by law.

Furthermore, the article 2, item IV, of the above-referred ordinance precludes the increase in either fixed or variable compensation, including bonuses, profit sharing, deferred compensation and other performance-related incentives, as to members of the board of directors [i.e., for public companies] or administrators [i.e., for limited liability companies].

Whoever fails to comply therewith and performs the payment of interest on the stockholders' equity or dividends above the legal minimum, or allows an increase in either fixed or variable compensation, creating a greater risk than the allowed by the financial market, or concealing such payments, may be subject to investigation for either crimes of fraudulent management or reckless management, as provided for in article 4 of Law n. 7,492/1986, punishable with imprisonment ranging from 3 to 12 years and 2 to 8 years, respectively, plus fine.

The ordinance also forbids, in article 3, the referred payments from being accelerated, be they based on the results determined on the accrual dates comprised between April 6 and September 30, 2020, or payments to be performed in this term.

PRACTICE AREA
White-Collar Defense

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

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Insofar as the acceleration of payment is considered a credit operation by the Central Bank as per the ordinance n. 4,693/2018, the administrator or board member who performs or authorizes the acceleration thereof, being it incompatible with the market conditions regulated by the Central Bank, may have their conduct investigated for the crime equivalent to prohibited loan, as provided for in article 17, sole paragraph, item I, of Law n. 7,492/1986, which foresees penalties ranging from 2 to 6 years of imprisonment plus fine.

In view of the COVID19 pandemic, it is important to be cautious about the financial institutions' practice, which may incur serious liabilities, even in the criminal remit, for administrators and board members.

The White-Collar Defense Team of Veirano Advogados is fully available for further clarification on the matter.