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New Brazilian Regulatory Agencies Law

After a decade of discussions, finally a new Regulatory Agencies Law¹ was enacted. It applies to the most important Brazilian federal agencies². It deals with management, organization, decision-making process and relationship of Brazilian regulatory agencies and will come into force within 90 days following approval by the Brazilian President on 25 June 2019.

This is an important milestone for the modernization of regulatory agencies in Brazil. The new law is a huge progress for the structure, governance and operation of Brazilian federal agencies.

Highlights

The following key changes of the new Regulatory Agencies Law stand out:

Effective Autonomy

Guarantee of (effective) functional, decision-making, administrative and financial autonomy.

Standardization of management, organization, governance, decision-making and relationship

As from now on, all regulatory agencies follow the same rules, which will reduce existing differences among the agencies, ensuring and enhancing therefore greater certainty, predictability and legal safety.

Greater interaction between agencies in particular, among competition, consumer, environmental and other regulating authorities.

¹ Law No. 13,848/2019.

² **ANATEL** National Telecommunication Agency (*Agência Nacional de Telecomunicações*),
ANEEL National Electric Power Agency (*Agência Nacional de Energia Elétrica*),
ANP National Oil Agency (*Agência Nacional do Petróleo*),
ANVISA National Health Inspection Agency (*Agência Nacional de Vigilância Sanitária*),
ANTT National Agency of Land Transportation (*Agência Nacional de Transportes Terrestres*),
ANAC National Agency of Civil Aviation (*Agência Nacional de Aviação Civil*),
ANS National Supplementary Health Agency (*Agência Nacional de Saúde Suplementar*),
ANA Brazilian Water Agency (*Agência Nacional de Águas*),
ANTAQ National Agency of Water Transportation (*Agência Nacional de Transportes Aquaviários*),
ANCINE National Film Agency (*Agência Nacional do Cinema*), and
ANM National Mining Agency (*Agência Nacional de Mineração*).

Improvement of decision-making process

As from now on all agencies have to prepare regulatory impact studies (*Análise de Impacto Regulatório – AIR*) before issuing any new rules or amending old ones. These studies must review and determine the impact of any new rule. We believe that these regulatory impact studies will be quite challenging and time consuming. Also, agencies must organize consultations and public hearings, as a way to include society and regulated sectors in the decision making process. As a way to avoid bias and legal uncertainty, the new Regulatory Agencies Law requires an absolute majority in board decisions. These two requirements are perhaps the most important changes the new Law brings about. They will greatly influence the efficient performance of agencies.

Transparency

The law implements new mechanisms that will increase transparency and relationship between agencies, which includes the recording of meetings and deliberation sessions so that these are available to the public. Also, ombudsmen's offices will be created and other mechanisms for access to information will be available.

Prohibition for operational interaction between federal agencies and state, district and municipal agencies or regulatory bodies: This includes the prohibition of: (i) delegating power to issue rules (*competência normativa*) to another agency; and (ii) imposing any additional obligation which had not previously been foreseen in the contract for concessionaires and permit holders.

Prevention of Corruption

Regulatory agencies must create integrity programs and adopt risk management and internal controls to prevent corruption.

Strategic planning instruments

Agencies are now required to implement long-term planning tools to control efficiency and performance (based on annual activity reports, strategic plans, annual management plans and regulatory agenda). The institutional benefits with such mechanisms is evident, and has a knock-in effect on other areas of the Brazilian public administration.

Vetoos

Although the President approved the new Regulatory Agencies Law, he vetoed 5 provisions that will have to be approved again in the Brazilian Congress:

- mandatory accountability annual hearings of agencies' directors in the Senate;
- prohibition of reinstatement of current directors - on the grounds that this would create inequality in relation to directors appointed after the law passes;
- 12-month quarantine for the appointment of directors who have held shares in companies that operate activities regulated by the agency responsible for the same industry/sector; and
- The recruitment process for agencies directors' appointees by the agencies. The President understood that this measure restricts the constitutional power of the president to nominate directors.

Please do not hesitate to contact us if you need any further clarification on this matter.

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