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Brazilian Law for Economic Freedom: understanding the major changes

The Law 13.874/2019 entered into force on 20 September, 2019, bringing important changes to Economic Law, Civil Law and Business Law.

Veto

The Provisional Measure Conversion Bill n. 881/2019, better known as the "PM for Economic Freedom", was sanctioned on 20 September, 2019 by the Brazilian President Jair Bolsonaro after 4 (four) vetoes on the following provisions:

- (i)** Freedom for small entrepreneurs to start low-risk businesses without prior government authorization.
- (ii)** Respect for private business contracts.
- (iii)** Decreased deadlines for storing physical documents.
- (iv)** Changes in commercial establishments inspections.
- (v)** Changes in employee journey control, among others.

General Provisions

Published in April, the measure was proposed to deal with the economic challenges currently facing Brazil, such as high unemployment, economic stagnation, heavy economic regulation and high levels of State corruption.

In short, proposals were put together to reduce bureaucratic obstacles to business activity in the country and to protect free enterprise and economic freedom, such as:

- (i)** Tacit approval for environmental licenses after deadline for the Public Administration's analysis.
- (ii)** Flexibilization of products or services tests with the possibility of tests in humans.
- (iii)** Permission to create taxation regime apart from Tax Law.
- (iv)** 90-day period for entry into force.

The main purpose of the provisional measure is to limit the State's normative and regulatory powers, in order to establish freedom as a rule and allow only exceptionally the regulation of economic activities.

Thus, the norm prioritizes free enterprise and free competition as guiding principles of Economic Law - including Antitrust Law -, Civil Law and Business Law.

Subjected to intense debate, the antitrust community has been seeing the Law for Economic Freedom as positive, especially in light of the lower regulatory barriers that encourage competition.

In an event held by the State of São Paulo Industries Federation (FIESP) on June 17 at São Paulo, the President of the Brazilian Antitrust Watchdog (CADE) Alexandre Barreto said he does not see the measure as a threat to competition but rather as a

law aimed precisely at establishing the constitutional principles of free enterprise and free competition¹.

This view, however, is not unanimous. While recognizing the efforts to reduce bureaucracy for economic activities and the resulting benefits for the Brazilian economy, important scholars² view the Law for Economic Freedom with suspicion, either because of the lack of economic and social inclusion necessary to guarantee everyone's opportunity to free enterprise or by the inconsistency in trying to reduce State's intervention while it is ultimately responsible for guaranteeing and structuring the very existence of markets.

It is early to draw any conclusions and the concrete effects are yet to be felt. However, companies must be aware of the changes brought about by the new law.

Competitive Aspects of the Provisional Measure

From an antitrust point of view, the effects are diverse and tend to promote competitiveness in the country - especially because of the high value given to free enterprise and free competition in the final text.

The main competitive impacts of the measure are:

- Expected increase in competitiveness due to reduced bureaucracy and regulatory entry barriers for new players;
- Reinforcing products and services free pricing by private agents without creating, however, antitrust exemption for price abuse;
- Strengthening clearance of mergers with low potential to harm competition;
- In competition advocacy, authorization to suggest changes in laws and regulations - making the affected markets more conducive to competition - and to suggest better market structures in regulated sectors.

¹ See more at: <https://bit.ly/2XzuiiX>.

² Ana Frazão (CADE's ex-Commissioner, lawyer and professor at Universidade de Brasília - UnB) and Diogo Coutinho (Economic Law Professor at Universidade de São Paulo - USP) exposed their critics in recently published articles that can be read at: <https://bit.ly/2yXUdD1> and <https://bit.ly/2KbCui7>.

REDUCTION OF BUREAUCRACY

- End of prior authorization for low risk activities;
- Bureaucratic immunity to innovation;
- Tacit approval after deadline for the Public Administration to decide on authorization requests;
- End of paper usage and implementation of the program Brasil Digital.

REGULATION

- Regulatory abuse is prohibited and the State should only regulate an economic activity exceptionally and with proper justification;
- Rejection of outdated rules effects;
- Mandatory Regulatory Impact Assessment (RIA) before elaborating regulation;
- Administrative rulings binding effect;
- Market free pricing of products and services.

PROVISIONAL MEASURE FOR ECONOMIC LIBERTY

WORK CONTRACTS

- Employee work control (journey) mandatory only for companies with more than 20 employees - the company may choose to register only overtime work, absences and vacation (exceptional employee time control);
- Simplification in e-Social (employee information record system);
- Digital work card.

CONTRACTS AND BUSINESSES

- Creation of sole proprietorship businesses;
- Principles of good faith and liberty as priorities for Civil Law, Business Law, Economic Law and Urban Law;
- Respect to private business agreements;
- Disregard of the legal entity only admissible in case of business purpose deviation, confusion of assets or fraude.

INSPECTION AND CONTROL (LOW RISK ACTIVITIES)

- Inspecting officers should not impose fines on the first inspection but only point out the necessary changes. Exceptions: recurrence, forced or child labor, lack of employee record;
- Of the changes are not implemented, inspecting officers can impose fines and fill out the infringement form.

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