

MEMORANDUM TO CLIENTS

COMPLIANCE AND CORPORATE ETHICS

December 22, 2015

Political donations by legal entities¹

On September 17, 2015, the Plenary of the Federal Supreme Court (“STF”), in a judgment on the Direct Action for Declaration of Unconstitutionality No. 4,650, determined the unconstitutionality of rules that permit donation to political parties and electoral campaigns by legal entities. The Direct Action was filed by the Federal Board of the Brazilian Bar Association against provisions of Law No. 9,504/1997 (“Election Law”) and Law No. 9,096/1995. Although the publication of the Court’s decision is still pending, the unconstitutionality of such rules is effective as of the day the decision was issued, which occurred on September 17, 2015.

The reporting Justice, Luiz Fux, reasoned that legal entities do not have the status of private citizens and therefore cannot exercise political rights; he argued that to permit otherwise would be contrary to democratic principles.

After the ruling on the unconstitutionality of political donations by legal entities, the STF Justices considered a possible future date on which the decision should become effective. As the minimum quorum required for postponing the effects of such decision was not achieved, the declaration of unconstitutionality of rules permitting donation to political parties and electoral campaigns by legal entities therefore became fully effective and binding on all branches of the government, the Executive, Legislative and Judiciary, as of the date it was issued. It is applicable to the 2016 elections and subsequent elections.

¹ For the purposes of this Memo, “legal entity” shall be deemed to mean any corporate entity, association, partnership or any other collective entity or organization (as opposed to an individual person).

Law No. 13,165/2015 (“Political Reform Law”), which came into force on November 25, 2015, revoked the Election Law with respect to campaign donations by legal entities and proposed a new regime for such donations. However, the President has vetoed such regime and currently there is no law which provides for political donations by legal entities. The Presidential veto, which expressly mentions the STF decision rendered on the Direct Action for Declaration of Unconstitutionality No. 4,650, was upheld by Congress during a session on November 18, 2015. As at present, there has not been any amendment to the rules for political donations by individuals.

The Superior Electoral Court is expected to amend Resolution No. 23,432, which regulates the accountability of political parties in order to adapt it to the STF’s decision and to the Political Reform Law. A draft of the new resolution has been submitted to public hearing by the Superior Electoral Court. The Portuguese version of the draft and can be accessed by clicking [here \(in Portuguese\)](#).

Attorneys in the Compliance and Corporate Ethics practice

The purpose of this memorandum is to inform our clients about important changes and developments in the area of law. We remain at the reader’s disposal for any additional information that may be desired regarding the subject matter herein.

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