CMN Resolution 4,661

On May 25th, 2018 the National Monetary Committee ("CMN") issued the Resolution No. 4,661 ("CMN Resolution 4,661") which sets forth new guidelines for the investment of the guaranteeing funds of the plans managed by the closed complementary private pension entities ("EFPC").

The new legislation aims, amongst other aspects, to increase the transparency regarding the investments made and to dictate parameters to improve the management of EFPCs.

We list below the main changes provided by the new Resolution CMN 4,661, which revoked, among others, CMN Resolution 3,972.

- Greater accountability of the agents involved in the decision-making process. Resolution 4.661 included the responsibility for compliance with the norms of the Resolution, by action or omission, of all persons who participate in the process of analysis, assessment and decision making on the application of the resources of the EFPC plans, including members of the statutory councils, proxy holders with management powers, members of the investment committee, consultants and / or professionals who participate in the analysis process, directly or through contracted legal entities;

- Expansion of internal control guidelines. In addition to indicating the Technically Qualified Statutory Officer ("AETQ"), the EFPC shall also designate an administrator or committee responsible for risk management, in accordance with the regulations of the National Complementary Welfare Superintendence ("PREVIC"). In addition, EFPC's shall adopt internal rules, procedures and controls to comply with the limits and requirements of CMN Resolution 4,661, as well as be required to maintain digital records of all documents that support decision making in the application of resources of the plans, whether they are self-managed, exclusive investment funds or an application in which the EFPC has decision-making power;

- Expansion of Risk Assessment and Monitoring. The requirements for risk assessment and monitoring were expanded, which shall include the analysis of the real or fiduciary guarantees, risk assessment and expected return on investments and take into account, whenever possible, aspects related to economic, environmental, social and investment sustainability. It will also be necessary to adopt rules for the selection and monitoring of the management of securities and investment portfolios, as well as evaluation of the sufficiency of segregation of management, administration and custody functions in order to mitigate situations of conflict of interest;

- Adjustments to investment limits. The limit for investments in Structured Operations Certificate (COE) without protected capital shall now be of 10%. On the other hand, the limit of investment in participation investment funds (FIPs) was reduced from 20% to 15% of the assets of each benefit plan. In addition, each FIP manager will be required to participate with at least 3% of the fund's subscribed capital as a way to ensure a greater alignment of interests.

- Restriction for direct application in Real Estate. Resolution CMN 4,661 expressly prohibited the direct acquisition of land and real estate by EFPC´s. However, the limit for the real estate segment went from 8% to 20% of the equity of each EFPC benefit plan. In addition, a period of twelve (12) years has been granted for the EFPCs to sell the inventory of properties belonging to their own portfolio or for the incorporation of Real Estate Investment Funds to house them.

- Restriction for investment abroad. In relation to investments abroad, the percentage limit of 10% was maintained and investment in BDR was limited to BDRs classified as level I and quotas of the funds of the class "Shares - BDR Level I", in accordance with the regulations established by the Brazilian Securities and Exchange Commission. Furthermore, the possibility of investing in shares issued by foreign companies based in the MERCOSUR were removed from the listing of "foreign segment", as initially stated in 3,792.

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