

Doing Business in Brazil: new rules to foreigner, legal entities and natural persons, be party of Brazilian corporate vehicles (Normative Ruling DREI n. 34, from 03th March 2017)

The new rules, enacted by the Federal Public Entity (“DREI - Departamento de Registro Empresarial e Integração”) that regulates the Public Commercial Registries in each Federative States, are about the necessary corporate records of foreigners doing business in Brazil.

If you are a foreign company, if you a foreign manager of a Brazilian company, or even if you are a sole foreign entrepreneur in Brazil, the following informations will be important for your guidance in Brazilian jurisdiction.

The Article First, of the new norm DREI n. 34/2017, establishes rules on the foreign person, living in Brazil, that is mentioned in a corporate act intended to be recorded in the Public Commercial Registry (“Junta Comercial”).

In this case, it is necessary the Brazilian ID Document for Foreigners (“RNE – Registro Nacional de Estrangeiro”).

And if the foreign person intended to be an Individual Businessman (“Empresário Individual”), or an administrator, a manager, of a Business’s Legal Entity (“Sociedade Empresária”), or of an Individual Company of Limited Liability (“EIRELI - Empresa Individual de Responsabilidade Limitada”), or of a Cooperative (“Cooperativa”), well, then this person shall have and show to the Commercial Authorities a Permanent Visa.

The Second Article of the norm is about the foreign natural person, and foreign legal entity, that is living, and have headquarter, in a not Brazilian jurisdiction. To legally do business in Brazil, and to record in the Public Commercial Registry a corporate act that mentions a person (natural or legal) that lives abroad, it is necessary an agent that lives in Brazil.

The agent shall be constituted by a Power of Attorney (“Procuração”) in which the minimum power granted is the power to receive judicial communication of Brazilian Courts about lawsuits, against the grantor, that is related to the business.

If the grantor was a natural person, the Public Commercial Registry will requerer the foreign ID and the record of this person in the Brazilian Feredal Registry of Taxpayer’s that are Natural Persons (“CPF – Cadastro de Pessoa Física do Ministério da Fazenda”).

If the grantor was a legal entity, then the Public Commercial Registry will requerer the prove of the legal existance of this entity, what is done by the Articles of Association, with last amendments, issued by the foreign Commercial Registry. Also, in the PoA it is need a declaration that the law of the foreign country was observed.

Concerning the foreign documents to be used in Brazil, including the PoA, they shall to be legalized if the abroad jurisdiction did not signed the Haia Convention. If the foreign country, from where came the documents, adopted this international convention, then will be needed the appostile as first step for the document has legal enforcement in Brazilian jurisdiction. The second step is the sworn translation, by a translator in Brazil, of any content that is not in Portuguese, being the third step the record of this document in the Brazilian Public Registry for Titles and Documents (“Cartório de Registro de Títulos e Documentos”). After these three steps then the foreign

document, in foreign language, can be recorded in the Public Commercial Registry. All this process is established in the Article 6, of the analysed norm.

The above points, in matter of fact, already were procedures adopted by the Commercial Boards in practice because they are based on the good corporate law practice, e.g., it is necessary, for legal secure of the Economy, that whom are agent of the foreign company, or a Brazilian company, has the necessary power to it, as well as it is necessary the public authorities know whom they need to contact in case of a lawsuit against a foreign company operating in Brazil. But now there is a norm that especify exacly what is need to be done – and this is very important in a country where bureocracy has a high level. By other hand, this new Normative Ruling 34/2017 came to give more protection against State's abuse, protecting entrepreuners and investors.

Other interesting point of this norm is the Article Nine, by which one it is possible the Commercial Registry of each Federative Estate accept all the necessary documents, above mentioned, in an eletronic form, since they were signed digitally by a valid certificate acording the Brazilian Law (A1, A3). But, in practice, this is something for the future.

This new Normative Ruling 34/2017 will get enforcement in the Brazilian legal framework on June 01th, 2017.

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