

## 2.9 Law n. 13.506, of 2017: The Sanctioning Administrative Process of the Central Bank of Brazil

The instruments employed by the Central Bank of Brazil (BCB) against financial institutions that commit irregularities were amplified and updated with the edition of Law n. 13,506, of November 13<sup>th</sup>, 2017, which revised the legal framework of the National Financial System (SFN) providing supervisory actions with greater efficiency and effectiveness.

The maximum fine imposed on supervised institutions increased from BRL 250,000 to BRL 2,000,000,000 significantly strengthening the power of the BCB to deter and curb irregular conducts within the SFN and contributing to its discipline and stability.

The definition of punishable conducts, set forth by law, provides greater legal certainty to the supervised institutions and the BCB.

The application of penalties was improved with, as a rule, the end of the suspensive effect in the disqualification imposed by the BCB, and with the introduction of new penalties: public admonition and prohibition of activities or operations, giving greater effectiveness to the punitive action of the BCB.

The new law also expanded the range of supervisory instruments available to the BCB: term of commitment, provisional measures, comminatory fine and administrative agreement in the process of supervision, ensuring more agility and effectiveness in the use of its corrective and disciplinary power.

The term of commitment is an alternative and consensual solution to the sanctioning process (PAS) of litigious nature, in the same manner adopted by other supervisory authorities of the financial sector in Brazil and abroad. The institution under investigation commits itself to cease and correct the irregularities reported and to fulfill all the undertaken obligations, under penalty of immediate resumption of the administrative proceeding and the incidence of a comminatory fine. The proposal of the term of commitment depends on the initiative of the offender, and its approval or rejection is decided by the BCB. All the terms signed with the BCB are in the public domain and published on the institution's website.

The BCB may also conclude an administrative agreement in the process of supervision with individuals or legal entities that undertake to collaborate effectively in the investigation of infringements. Suspects who contribute to advances in investigative processes may have their sentences at the administrative level reduced or even extinct, but for this they must provide supporting documentation (containing facts unknown to the BCB) regarding the irregularities committed and the persons involved. In case of non-compliance with the agreement, the procedures for the initiation of administrative proceedings will be resumed, and the beneficiary will be prevented from entering into a new administrative agreement for a period of three years.

If the BCB identifies acts that might jeopardize the regular functioning of the SFN or of the SPB, it may adopt coercive and precautionary measures. These are actions that can be taken immediately by the supervisor (without the need to wait for the conclusion of the PAS) when there is a serious risk of damage to the institution. Law n. 13,506, of 2017, prescribes summons of persons to provide clarifications, removal of persons allegedly involved in irregularities, imposition of restrictions on the performance of activities or operations and replacement of the contracted audit entity. Failure to comply with BCB regulations may result in a fine of up to BRL 100,000 per day.

Regarding the progress of the BCB's sanctioning process, its procedural acts are formalized and communicated by electronic means, including the availability of the information on the BCB website. The electronic process provides celerity in the conclusion of the process and agility in the execution of penalties applied.

Lastly, it should be noted that the procedural rules under the law, such as the procedures for summons and subpoena, came into force immediately. With regard to the new penalties, their immediate application will only occur insofar as they are more beneficial to the convict; otherwise, the rule in force at the time of the occurrence of the irregularity remains valid. The terms of commitment, in turn, may also be proposed for ongoing BCB proceedings that have not yet been the subject of a lower court decision.