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BRAZILIAN CONGRESS APPROVES THE CORPORATE FOOTBALL CLUBS BILL

Conversion of the Bill into Federal Law is still contingent upon enactment by the President of the Republic.

1. Following its approval by the Brazilian Senate on June 10, 2021, the Corporate Football Clubs Bill (PL 5.516/2019), which aims at incentivizing professional football clubs organized as non-profit civil associations to become corporate entities, thus having access to new debt and equity financing mechanisms and attracting new investors, was approved by the Brazilian House of Representatives on July 15, 2021. The Bill awaits enactment by the Brazilian President in order to enter into force (unless the President vetoes any provisions, in which case the Bill returns to the Brazilian Congress for review and final decision on upholding or rejecting the vetoes).

2. If approved as is, the Corporate Clubs Law shall bring a series of changes to the legal and economic frameworks of the Brazilian football market, mainly by creating a specific type of corporate entity privy to – but not mandatory for – professional football clubs, i.e. the Football Corporation (*Sociedade Anônima do Futebol – “SAF”*), and establishing specific rules applicable to said entity, namely:

- (i) governance, control, and compliance provisions;
- (ii) a special temporary tax regime;
- (iii) financing mechanisms; and
- (iv) a special treatment of these entities' liabilities.

3. In the following paragraphs we provide a summary of the main points of PL 5.516/2019, organized by topic.

I) Corporate Structure and Governance

4. As previously mentioned, PL 5.516/2019 establishes the possibility of professional football entities, most of which are currently incorporated as non-profit civil associations, becoming SAFs. The SAF is basically a joint-stock corporation exclusively conceived for football clubs, and hence with specific rules applicable only to those clubs incorporated as, or trans-

formed into, SAFs – and, as such, the SAF will have a corporate capital divided in shares held by shareholders, allowing *e.g.* for equity investments and issuance of debentures (what is not possible for civil associations). The SAF shall be subsidiarily governed by the Brazilian Corporations Law (Law 6.404/76) and by Pelé Law (Law 9.615/98), both as amended.

5. Further to the above, the Bill also provides for specific governance provisions such as:

(i) minority rights and golden-share-like provisions in favor of the original football club which is converted or spun-off into a SAF, to ensure protection to / survival of, *i.a.*, the original club's name, colors, signs, crest, intellectual property rights and real estate;

(ii) prohibition of the controlling shareholder of the SAF directly or indirectly holding an equity interest in another SAF;

(iii) prohibition of an individual being simultaneously a member of any governance body of a SAF and: (a) a member of any governance body of another SAF; (b) a member of the governance entity of any other football club, however organized; (c) a member of any football administration entity (federation, confederation, league, etc.); (d) a professional football player with a work contract with a club in force; (e) a professional coach with a work contract with a club in force; or (f) a football referee in activity;

(iv) prohibition of an employee or member of any governance body of a shareholder of a SAF also being a member of the Fiscal Board or of the Board of Officers of the SAF;

(v) mandatory and permanent Board of Directors and Fiscal Board;

(vi) any shareholder holding an equity interest of 5% or more in a SAF and any investor in funds holding equity in a SAF which quotas correspond to 10% or more of the net worth of the SAF must disclose its ultimate beneficial owner to the SAF and to the relevant football administration entity to which the SAF is subordinated; and

(vii) mandatory disclosure of the SAF's shareholding structure, corporate documents, members of governance bodies, management reports and financial statements in its website.

II) Special Liability and Debt Reorganization Regimes

6. The Corporate Clubs Bill provides for a series of rules dealing with succession and transfer of liabilities from the original football club converted into / spun-off into a SAF and the SAF itself. The underlying rationale is to limit the liability of the SAF to those preexisting debts that are connected to the football activities and to the assets and rights transferred to it by the original football club.

7. Additionally, the Bill also establishes a mandatory mechanism of destination of specific revenues of the original football club (including revenues received from the SAF as dividends)

and of the SAF (in those cases where the SAF is wholly owned by the original football club) for payment of the original football club's creditors, ensuring protection of the SAF's assets, revenues and rights provided that such rules are complied with, and imposing personal liability on the entities' officers in case of violation of said rules.

8. The Corporate Clubs Bill further allows for the original football club to settle its indebtedness (i) directly with its creditors, (ii) via a centralized judicial debt settlement regime governed by Section V, Subsection I, of the Bill (to be further regulated by a provision of the Judiciary Branch), or (iii) by means of judicial or extrajudicial reorganization proceedings pursuant to the Brazilian Reorganization and Insolvency Law (Law 11.101/2005, as amended).

9. PL 5.516/2019 also regulates certain debt renegotiation and settlement procedures which are currently already widely adopted and accepted by Labor Courts, such as:

(i) Haircut: holders of labor credits are authorized to accept a debt reduction in their negotiations with the debtor;

(ii) Assignment of the credit to a third party: allows the holder of a credit who does not agree with the discount being requested by the debtor, to assign its credit to third parties, which shall be awarded the same level of seniority of the original creditor in the line of creditors of the club;

(iii) Conversion of the debt into equity in the SAF: allows the conversion of all or part of the debt into shares of the SAF, provided that the conversion is authorized in the by-laws of the SAF.

III) Financing of the SAF and PDE

10. In addition to the SAF having access to equity-based financing, issuance of bonds and other sources of revenue available to privately-held corporations in general, the Corporate Football Clubs Bill creates a specific type of debenture issuable by the SAF ("debenture-fut"), subject to certain particular restrictions (including use of proceeds in the football activities) and a more favorable tax treatment.

11. The Bill also creates an Educational and Social Development Program ("PDE"), establishing rules for the development by the SAF, jointly with public educational entities, of social-relevant activities that may benefit from tax incentives.

IV) Taxation of the SAF

12. Perhaps one of the most significant provisions of the Corporate Clubs Bill is the creation of the so-called Specific Football Taxation Regime ("TEF"), applicable exclusively to the SAFs.

13. The TEF is quite advantageous when compared to the tax regime applicable to corpo-

rations in general, and virtually as advantageous as the tax regime applicable to non-profit civil associations. It allows for the unified collection of corporate income tax, PIS, CSLL, COFINS and social security contributions at reduced rates, as follows:

(i) in the first five years as from incorporation of the SAF, the total tax rate for the aforementioned taxes shall be of 5% (five percent) over the total monthly revenues of the SAF (with the exception of revenues arising from the assignment of athletes' rights); and

(ii) from the sixth year as from incorporation of the SAF, the tax rate referred to in item (i) above shall be of 4% (four percent).

14. The TEF shall require further regulation, *i.a.* by the Ministry of Economy.

15. We shall continue monitoring the status of the Corporate Football Clubs Law, keeping you posted of any developments.

CSMV Advogados (www.csmv.com.br) is a Brazilian full-service law firm with a leading practice in Corporate Sports Law matters. Please feel free to contact partners André Sica (asica@csmv.com.br) and Graciema Almeida (galmeida@csmv.com.br) should you require any further information or clarification with respect to this matter.