

October 7, 2021

CORPORATE FOOTBALL CLUBS LAW REPUBLISHED

The final wording of the Law, reflecting the analysis of the presidential vetoes by the Brazilian Congress, was republished on October 6, 2021

1. Following its enactment (with a number of vetoes by the Brazilian President, including to the special tax regime, ultimately reinstated) on August 6, 2021 as Law Nr. 14.193, and the review of the presidential vetoes by the Brazilian Congress on September 28, 2021, the Corporate Clubs Law was republished with its final wording on October 6, 2021.

2. In short, the Corporate Clubs Law creates a specific type of corporate entity privy to – but not mandatory for – professional football clubs: the Football Corporation (*Sociedade Anônima do Futebol – “SAF”*). Further to the general corporate rules applicable to Brazilian corporations by Law Nr. 6.404/1976, and the sports-related provisions of Pelé Law (Law Nr. 9.615/1998), both as amended, the SAF shall be governed by the specific provisions of Law Nr. 14.193/2021 in respect of:

- (i) governance, control and compliance;
- (ii) taxation;
- (iii) financing mechanisms; and
- (iv) liabilities.

3. The main aspects of the Corporate Clubs Law are outlined below.

I) Corporate Structure and Governance

4. As previously mentioned, Law Nr. 14.193/2021 establishes the possibility of professional football entities being organized as SAFs. The SAF is basically a joint-stock corporation exclusively conceived for football clubs originally incorporated as, spun-off or transformed into SAFs.

5. Being a corporation, the SAF will have a corporate capital divided into shares held by shareholders, allowing *e.g.* for equity investments and issuance of debentures. In terms of governance, the following rules shall apply to the SAF:

(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 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 corporate documents, members of governance bodies and management reports in its website.

II) Special Liability and Debt Reorganization Regimes

6. The Corporate Clubs Law 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 Law 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 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. Law Nr. 14.193/2021 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. The Corporate Clubs Law 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 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 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 Law 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). The original terms of the Law contemplated a more favorable tax treatment to the *debenture-fut* when compared to standard debentures, but this was vetoed by the Brazilian President, and the veto was maintained by the Congress, so that this tax benefit no longer applies.

11. Law Nr. 14.193/2021 also creates an Educational and Social Development Program ("PDE"), establishing rules for the development by the SAF, jointly with public educational entities, of socially relevant activities that may benefit from tax incentives.

IV) Taxation of the SAF

12. One of the most significant provisions of the Corporate Clubs Law is the creation of the so-called Specific Football Taxation Regime (“TEF”), applicable exclusively to the SAFs. It allows for the unified collection of corporate income tax, PIS, CSLL, COFINS and social security contributions at reduced rates, which are far less burdensome as the tax burden on corporations in general, and virtually equivalent to the tax burden on non-profit civil associations. The below table compares the three tax regimes:

Tax	Non-SAF Corporate Clubs	Civil Associations	SAFs
PIS on the payroll	0%	1%	<ul style="list-style-type: none"> In the first five years as from incorporation of the SAF, the total tax rate shall be of 5% (five percent) over the total monthly revenues of the SAF (with the exception of revenues arising from the assignment of athlete’s rights); and from the sixth years as from incorporation of the SAF, the tax rate referred to above shall be of 4% (four percent) over the total monthly revenues of the SAF (with the inclusion of revenues arising from the assignment of athletes’ rights).
PIS/COFINS on the gross revenue	9.25%	0%	
Services tax levied on top of revenues earned from (i) any form of sponsorship; (ii) licensing of trademarks and logos; (iii) publicity and advertising; (iv) broadcasting of sports events and (v) ticketing	5%	0%	
Social contribution to the social security system (INSS) replacing the 20% on the payroll – levied on top of revenues earned from: (i) any form of sponsorship; (ii) licensing of trademarks and logos; (iii) publicity and advertising; (iv) broadcasting of sports events and (v) ticketing	5%	5%	
Corporate Income Tax / Social Contribution on Profits IRPJ/CSL	34%	0%	
Third-party social contributions	4.5%	4.5%	

13. The changes to the legal and economic frameworks of the Brazilian football market introduced by the (long overdue) Corporate Clubs Law is expected to cause a very positive impact in the sector, particularly by increasing access to equity and debt financing to those Clubs which decide to adopt the SAF.

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