

Overview of Supplementary Bill 146/2019



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Mirella da Costa Andreola and Maria Eliana Pereira of Machado Associados comment the Supplementary Bill 146/2019 (PLP 146/2019).

Startups have been globally recognized as an important tool to promote innovation, create jobs, new services and new products. They are also an important instrument to deal with emerging problems through innovative solutions.

Due to their specific characteristics, promoting startups business depends on entrepreneurial policies that support their growth, creating a favorable business environment, mainly because such businesses usually involve high-risks.

In the past few years, Brazil has adopted some measures to promote small businesses, such as the legislative amendments provided by Law 13243/2016 and Supplementary Law 155/2016. Notwithstanding the implementation of these measures, there is no legal framework related to startups in particular.

In this context, Supplementary Bill 146/2019 (PLP 146/2019), called Civil Framework for Startups, aims to create an environment that promotes and stimulates the growth of startups. This project has a broad scope and intends to implement legislative amendments in several areas, including corporate, tax, civil and labor law.

In the corporate area, it is important to mention the proposal to create a special regime for a stock corporation called 'Simplified Stock Corporation' (*Sociedade Anônima Simplificada*), which is also subject matter of other bills of law. In addition, PLP 146/2019 authorizes stock corporations to adopt the Brazilian Simplified Taxation System (*Simples Nacional*), which is a favorable taxation regime that allows the payment of several taxes established by the Brazilian legislation by means of a single revenue payment form and usually offers taxation rates lower than other tax regimes, in addition to other legal simplicities.

If these provisions are approved, stock corporations classified as simplified may publish the documents and information required by the Brazilian Corporate Law online. Currently, stock corporations are not authorized to adopt the *Simples Nacional* and are under the obligation to publish certain documents and information in two official journals (the official gazette and a widely circulated newspaper), which is expensive.

Therefore, if approved, this proposal will reduce costs and bureaucracy related to the incorporation of startups as stock corporations, stimulating the adoption of this corporate type. It is important to mention that corporations are more complex structures, which grant more options for their governance, and are usually preferred by certain investors.

Furthermore, PLP 146/2019 aims to clarify the acts that can be practiced by angel investors, proposing that advising and supervising a company that receives investments does not characterize as management. Currently, an angel investor cannot be a partner or member of the administrative body of the invested company, and the advice of such angel investor is, as a rule, as beneficial to the company as the investment in capital.

PLP 146/2019 also intends to overcome the discussion of whether only the disregard of the corporate entity sets forth in the Civil Code would apply to startups' investors, as provided for by Article 61-A of Supplementary Law 123/2016. In this sense, PL 146/2019 proposes that any disregard of the corporate entity existing in the Brazilian legislation will not apply to startups' investors. Such risk is one of the major risks appointed by investors; therefore, this express exemption would probably benefit investments in startups.

With regard to labor issues, PLP 146/2019 proposes the implementation of some exceptions to startups, in order to allow them, for instance, to hire employees for definite term of 4 years, and probation contract for a maximum duration of 180 days, which are twice the length of time currently in force. In addition, PLP 146/2019 intends to authorize startups to pay their employees based on variable remuneration, including stock options.

In what refers to variable remuneration, PLP 146/2019 seems to intend to overcome an existing controversy in Brazil regarding the treatment of stock options, especially for tax purposes. Such controversy involves the discussion of whether the gains obtained based on stock option agreements arise from work or not, as the taxation is different for each case. Regarding tax incentives, one of the main implementations proposed by PL 146/2019 is the taxation of the gain arising from investments in startups based on a regressive tax rate of 12.5% to 0%, according to the investment term. In the same sense, PLP 146/2019 proposes the deductibility of sponsorship and donation made to startups, by an individual or companies, subject to certain conditions. Additionally, PLP 146/2019 proposes that startups that adopt the estimated profit regime may exclude 60% of their expenses on technological research and development of technological innovation from the net profit.

In terms of financial support, PLP 146/2019 establishes the obligation for certain banks, including public ones, to maintain credit facilities and interest rate to small companies and startups.

In conclusion, we understand that PLP 146/2019, in general, proposes important and innovative measures to create an environment favorable to startups, promoting and encouraging their growth. On the other hand, there are important matters that were not included in the bill, especially regarding bureaucracy and simplification of procedures to obtain licenses and registrations.

Regarding tax-related proposals, it should be highlighted that, in addition to the implementations proposed by PLP 146/2019, an environment conducive to the growth of startups depends on the simplification of the tax system and tax reform, as recommended by Global Entrepreneurship Monitor Global Report 2019/2020.

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