

# The Payment of Corporate Capital with Cryptocurrencies



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As per the Brazilian Civil Code (Law 10406/2002) and the Corporation Law (Law 6404/1976), the corporate capital of Brazilian companies can be formed with contributions in cash or in any kind of assets that can be evaluate in cash.

Notwithstanding the existence of express rules regarding the payment of corporate capital with assets, the Commercial Registry of the State of São Paulo (JUCESP) consulted the National Department of Business Registration and Integration (DREI) about the possibility to use cryptocurrencies for the payment of corporate capital. The consultation made by JUCESP resulted in the issuance of Directive Release No. 4081/2020 (Directive Release 4081) by DREI on the first day of December 2020. The understanding set forth in the Directive Release applies to every Commercial Registry in the Country.

Cryptocurrencies are not subject to specific rules in Brazil, except for Normative Instruction 1888/2019 of the Brazilian Federal Revenue (BFR), which establishes the obligation to inform transactions involving cryptocurrencies to the BFR. The first question addressed by the DREI in Directive Release 4081 refers to the nature of the cryptocurrencies, which is understood an asset. In this regard, the DREI stated that the Central Bank of Brazil issued public releases in the sense that cryptocurrencies are not virtual currencies<sup>1</sup>; the Brazilian Securities Commission declared that such assets could be considered as a security<sup>2</sup>; and the BFR already recognizes cryptocurrencies as liquid assets, which can be used as investment, instrument for the transfer of amounts, and access to services.

After the explanation about the nature of cryptocurrencies, the DREI assured that there is no express prohibition for the payment of the corporate capital with cryptocurrencies and, as such, the provisions of the Law of Economic Freedom (Law 13874/2019) should apply. Such law is very important for business development in Brazil. Article 3 of Law 13874/2019 sets forth that it is a right of each person or legal entity that any doubt related to civil and commercial law be interpreted as to preserve the autonomy of the parties; consequently, if the partners accepted the payment of corporate capital with cryptocurrencies, this decision should be respected.

Finally, in Directive Release 4081, the DREI stated that there are no particular formalities that should be observed by the Commercial Registries to operationalize the registration of any corporate act that involves the use and transfer of cryptocurrencies. Thus, the same rules regarding the payment of corporate capital with movable assets must be observed.

Having clarified that the transfer of cryptocurrencies for the payment of corporate capital is possible, and that there is no special rule applicable for the registration of such corporate act, it is important to remember the implication of the payment of capital with assets. According to the Brazilian Civil Code, partners of a limited liability company are jointly liable for the exact estimation of assets used for the payment of the corporate capital. In case of corporations, the law requires that the assets to be transferred as payment of corporate capital must be evaluated by three experts or by a specialized firm, which must prepare a reasoned report indicating the assessment criteria and the elements of comparison adopted.

Along these lines, it is more difficult to evaluate the partners' risks and responsibilities in case cryptocurrencies are used for the payment of limited liability companies' capital, as an independent evaluation of the assets is not mandatory. In addition, the characteristics of the cryptocurrencies market make this procedure even more difficult. However, to protect the partners of a limited liability company, it is possible to hire an expert to evaluate the cryptocurrencies to be used for the payment of corporate capital, as the existence of an independent evaluation would increase the suitability of the value ascribed by the partners.

Such difficulties could impact the valuation of a company in the market and the obtainment of funds or investments from more conservative investors. However, it is not possible to deny that cryptocurrencies are more popular each day. The current price of bitcoin (around USD 50,000) and the investment of USD 1,5 billion made by Tesla in January are proof of the growing credibility of cryptocurrencies.

Nevertheless, in our understanding, there is no doubt that cryptocurrencies can be used to pay corporate capital. The issuance of a Directive Release by DREI, applicable to all commercial registries, grants more confidence to investors and removes the risk of discussion for registration of corporate acts involving the payment of capital with this type of asset. Only time will tell if cryptocurrencies will continue to have an expressive value, as some of them currently have.

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