

NEWSLETTER

COMPLEMENTARY LAW No. 208/2024

News on Credit Securitization by the Public Authority



SOUZACKAWA
ADVOGADOS

Regulates the assignment of credit rights arising from tax and non-tax credits of federal entities

Resulting from PLP 459/2017, authored by Senator José Serra, Complementary Law No. 208/24 was published to regulate the **onerous assignment** of tax and non-tax credits from federal entities to private legal entities or investment funds regulated by the Securities and Exchange Commission (CVM).

Conditions

- Preserve the nature of the original credit
- Maintain the criteria for updating or adjusting values and the amounts represented by the principal, interest, and penalties, as well as the payment conditions originally agreed upon between the public administration and the debtor
- Ensure the public administration's prerogative of judicial and extrajudicial collection
- Cover only the right to receive the credit, applying solely to the proceeds from credits that have already been established and acknowledged by the debtor
- Securitization must be authorized by specific legislation from the entity, by the head of the Executive Branch

Regulates the assignment of credit rights arising from tax and non-tax credits of federal entities

Limitations

- The law prohibits securitization in the 90 days preceding the end of the term of the head of the Executive Branch
- It is prohibited for a public financial institution controlled by the assigning federal entity to participate directly in the acquisition or negotiation of credits
- The assignment of credit rights arising from administrative installment agreements not registered in active debt is limited to the existing stock of credits up to the date of publication of the respective federal, state, district, or municipal law authorizing the operation
- The revenue from the sale of assets must be allocated at least 50% to expenses associated with the social security system, and the remainder to investments
- The new rules of the new regulation do not apply to prior operations already conducted by the Public Authority



Important Points

Public credit securitization operations have already been carried out by some public entities, including, for example, operations completed in the states of São Paulo, Bahia, Rio Grande do Sul, and Minas Gerais. **The novelty of the legislation is the protection against challenges** to this type of transaction in relation to the LRF (Fiscal Responsibility Law) and Public Law norms.



Possibility of creating a Special Purpose Entity (SPE) by the assignor for credit securitization – the operation becomes more efficient and could, depending on the case, allow for the **absence of a formal bidding process**.



It will be considered a **definitive sale operation** – exempting the assignor from responsibility and excluding the characterization of the operation as a credit transaction or revenue advance.



They are considered activities of tax administration, and the prohibition in Article 167, Section IV, of the Federal Constitution does not apply to credits arising from taxes, which will allow the use of revenues for specific investment projects.



The Complementary Law represents an important step in facilitating and improving resource mobilization for the development and investment of the country, and provides greater opportunities for investors in the financial market.



SOUZAOKAWA
ADVOGADOS

 + 55 (11) 3532-7710

 Av. Brigadeiro Faria Lima, 1663 - 14º andar
Jardim Paulistano - São Paulo - SP, 01452-001

 souza.okawa@souzaokawa.com.br

 souzaokawa.com.br