



## Rules Announced for the Tender of Securities of Small- and Medium-Sized Enterprises

By Tinoco Travieso Planchart & Nuñez

The National Superintendence of Securities (SUNAVAL) on July 2, 2020, published in *Official Gazette* No. 41,913, Providence No. 054, the rules related to the tender of securities of small- and medium-sized companies (SMEs). The purpose of these regulations is to guarantee adequate transparency and security conditions through the stock market for their financing, and to promote the economic reactivation of this sector.

The regulatory provisions are aimed at all small- and medium-sized companies issuing securities that are subject to a tender. According to the regulations, the debt securities that can be issued by SMEs are constituted by equity shares and stock exchange promissory notes. These securities may be issued once authorized by SUNAVAL. To obtain the respective authorization, SMEs must comply with the following requirements:

1. Submit a simplified prospectus, the format of which will be made available by the SUNAVAL to SMEs, and will be published on its website.
2. Submit in its prospectus a Comprehensive Financial Assessment drafted by the National Society of Reciprocal Guarantees for Medium and Small Industry (SOGAMPI), or by another national guarantee company, previously qualified by SUNAVAL.
3. Attach financial statements of the last two years, drafted by an accounting firm that does not require registry in the National Securities Registry.

The rules establish different types of guarantees applicable to the issuance of securities. Issuance of securities may be warranted by a person other than SMEs, who will be jointly and severally liable in the event of a default of these securities. The SUNAVAL may authorize any other coverage mechanism as a compliance guarantee or endorsement with the payment of the tender of promissory notes and equity shares.

The above-mentioned regulations were enforced as soon as they were published on July 2, 2020, in the *Official Gazette*.

### **90-day Suspension of Enforcement of any Regulatory Instrument, State or Municipal, that Establishes any Type of Tax Rate or Contribution**

On July 7, 2020, the Constitutional Chamber of the Supreme Court of Justice, through judgment No. 0078, ruled:

1. The application of any regulatory instrument issued by the municipal and legislative councils of the states that establish any type of tax rate or contribution, as well as any decree or administrative act of general effect issued with the same purpose, by the mayors or governors, will be suspended for a period of 90 days.



2. The sectorial vice president of the Economic Department and the minister of the Ministry of People's Power for Industry ordered together with the governors, mayors and the head of government of the Capital District, to create a technical committee to coordinate the parameters within which they will exercise their tax authority, in particular, to harmonize tax rates and tax aliquots.

The Constitutional Chamber warranted the measure – decreed in a process that was not linked to state and municipal taxation – in the jurisdiction conferred by the Constitution to the National Government to issue regulations to guarantee the coordination and harmonization of tax powers assigned to different territorial political entities. The ruling indicates that taxes, rates or contributions created by the states and municipalities can affect the harmonious progression of the country's economy, by creating encumbrances not authorized by the Constitution or the law, or by establishing excessive rates, which create confiscatory effects, that may affect the national productive sector.

On the other hand, the Constitutional Chamber noted that the National Legislative Branch has not yet passed legislation on tax coordination and harmonization.

The ruling has been questioned by various academic institutions, as they consider that it constitutes a violation of the tax powers conferred to the states and municipalities by the Constitution. It is also argued that the ruling is confusing because it does not refer to taxes (a category that includes taxes, fees and contributions), but rather refers to only fees and contributions.

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