

## Brazilian Securities and Exchange Commission (CVM) punishes shareholders and Investor Relations Officer (“DRI”) for violating corporate rules

In a recent decision, CVM decided on the Sanctioning and Administrative Procedure No. RJ2014/0591, related to the liability of managers and shareholders of a publicly held corporation for breach of Law Nr. 6.404/1976 (“Corporation Law”) and CVM Instructions.

The procedure was originated by a claim from minority shareholders of a company, who were dissatisfied with a decision taken by a group of shareholders bound by a shareholder’s agreement (“Related Shareholders”).

The first issue was related to the decisions in an Extraordinary Shareholders’ Meeting (“AGE”) regarding the (i) inclusion of a poison pill in the company’s Bylaws demanding the person who acquires or becomes holder of shares representing 40% of the share capital of the company to launch a tender offer; and (ii) designation of the position of chairman of the board of directors to the elected member who is also the eldest shareholder of the company and the concentration in the president of some prerogatives previously shared among the other directors, such as, the direct appointment of the Chief Executive Officer and one of the two Vice-Chief Executive Officers of the Company.

Regarding item (i) above, CVM reporting director, Mr. Roberto Tadeu, understood that, even though

the launching of a tender offer represents an advantage to the Related Shareholders, this would be an indirect advantage which benefits directly and indistinctively all shareholders; therefore, it would not be possible to prevent the Related Shareholders from voting, under penalty of excessive restriction on the voting rights to restrain a potential conflict of interest.

Regarding item (ii), CVM reporting director agreed that the approval of this matter by the Related Shareholders would constitute a conflict of interest with the company, since such provision would bring specific benefits to these shareholders upon the others.

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**CVM REPORTING DIRECTOR STATED THAT THE BRAZILIAN CORPORATION LAW ALLOWS THE ATTRIBUTION OF A LEGAL PARTICULAR BENEFIT, NOT CONTRARY TO THE COMPANY’S INTERESTS, AS LONG AS THE BENEFITED SHAREHOLDER ABSTEINS FROM VOTING IN THIS MATTER, LEAVING THE DECISION ON THE APPROVAL OF SUCH EXCEPTIONAL MATTER TO THE OTHER SHAREHOLDERS.**

Besides, SEP (Superintendência de Relações com Empresas at CVM) also requested that the DRI of the company be held responsible for (i) the lack of a new submission of the Reference Form with the amendment to the shareholder's agreement; and (ii) the disclosure of the management's proposal for the AGE without a description of his and of other managers interests therein.

Also concerning this matter, CVM reporting director accepted SEP's argument, emphasizing the importance of the DRI's work and the value of full disclosure in the dissemination of the necessary information for the proper functioning of the market and the protection of the investors' interests. Finally, CVM reporting director noted that the management's proposal should contain information that the Related Shareholders, for being the eldest shareholders, had special interest on the approval of the new rules at the AGE.

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**ALL OTHER MEMBERS OF CVM BOARD FOLLOWED THE VOTE OF THE REPORTING DIRECTOR, APPLYING AN INDIVIDUAL FINE OF R\$300THOUSAND TO THE SHAREHOLDERS WHO APPROVED THE NEW RULES FOR THE ELECTION OF THE CHAIRMAN OF THE BOARD OF DIRECTORS AND A FINE OF R\$200THOUSAND TO THE DRI DUE TO THE VIOLATIONS IDENTIFIED BY SEP.**

The shareholders and the members of the board of directors were absolved from the accusation regarding the conflict of interest in the inclusion of a poison pill in the Bylaws of the company.

## **\_ Levy of ITCMD on Pension Funds**

The Free Benefit Generating Life Insurance plan ("VGBL") and the Free Generating Benefit Plan ("PGBL") are extensively used in succession plannings in Brazil due to their reduced bureaucracy and the possibility of fast liquidity to the family which receives the resources.

However, recent legislative changes in certain Brazilian States regarding the levy of ITCMD (i.e., tax on causa mortis transfer and donation of any property or rights) on the balance of VGBL and PGBL plans raised uncertainties regarding the effective benefits of such instruments for the purpose of succession planning.

In the State of São Paulo, the understanding is that VGBL is considered a life insurance. As such, it is not part of the assets of the insured and is not considered inheritance. Therefore, is not subject to taxation by ITCMD.

On the other hand, in the States of Rio de Janeiro, Minas Gerais and Paraná, the understanding is that the balances of VGBL and PGBL pension funds should be considered a form of financial investment, which would be subject to ITCMD when the balance is transferred to the beneficiaries.

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**WE HIGHLIGHT THAT SUCCESSION PLANNING SHALL BE ACCOMPANIED BY A DETAILED STUDY OF THE PARTICULARITIES OF EACH CASE, IN ORDER TO DETERMINE THE BEST STRUCTURE, CONSIDERING THE PROS AND CONS OF ALL EXISTING ALTERNATIVES.**