

## \_ Ordinary Shareholders' Meetings and quotaholders' annual meetings

In the upcoming months, the corporations and the limited liability companies shall disclose their financial statements and call their Ordinary Shareholders' Meetings and quotaholders' annual meetings, as appropriate, regarding the financial year ended on December 31, 2016.

All corporations, publicly-held and closely-held ones, need to hold, within the first 4 months following the end of the fiscal year, an Ordinary Shareholders' Meeting: (i) to examine the management accounts, analyze, discuss and vote the financial statements; (ii) to deliberate on the destination of the net profit of the relevant financial year and on the distribution of dividends; and (iii) to appoint management and the members of the Audit Council (Conselho Fiscal), as necessary.

**PLEASE NOTE THAT THE SHAREHOLDER WHO IS ALSO A MEMBER OF THE MANAGEMENT OF A CORPORATION SHALL NOT APPROVE THE MANAGEMENT ACCOUNTS ON THE ORDINARY SHAREHOLDERS' MEETING.**

One month prior to the date of the Ordinary Shareholders' Meeting, corporations shall publish a notice to shareholders informing the documents required by the Brazilian Corporation Law are available to the shareholders at its headquarters, including, among others, the management report on the corporation's business, the main administrative facts of year 2016 and a copy of the financial statements for such financial year. Alternatively, the corporations may publish a complete set of all of these documents 1 month prior to the Ordinary Shareholders' Meeting.

Publicly-held corporations shall also disclose, through the Empresas.Net system of the Brazilian Securities and Exchange Commission ("CVM"), information and additional

documents regarding the Ordinary Shareholders' Meeting, with emphasis on the **management proposal**, document which contains detailed information on the matters that will be discussed at the Meeting. The Ordinary Shareholders' Meeting shall be called with at least (i) 15 days prior to the Meeting, in case of publicly-held corporations that are not part of any Depositary Receipt Program; (ii) 30 days prior to the Meeting, in case of publicly-held corporations that are part of a Depositary Receipt Program; and (iii) 8 days, in case of closely-held companies.

We remind that the publicly-held companies who adopt the distance voting procedure in 2017 shall observe the new applicable deadlines, pursuant to CVM Instruction 561.

Regarding limited-liability companies, within the first 4 months following the end of the fiscal year, they need to hold a general meeting in order: (i) to examine the management accounts, analyze, discuss and vote the financial statements; (ii) to appoint management, as necessary. The meeting is not necessary in case all of the shareholders decide, in writing, on the aforementioned matters.

**IT IS IMPORTANT TO HIGHLIGHT THAT COMPANIES, OR GROUP OF COMPANIES UNDER COMMON CONTROL, WHICH, IN THE 2016 FISCAL YEAR, RECORDED ASSETS IN AN AMOUNT HIGHER THAN R\$240 MILLION OR ANNUAL GROSS REVENUE IN AN AMOUNT HIGHER THAN R\$300 MILLION SHALL: (A) PREPARE THEIR FINANCIAL STATEMENTS IN AGREEMENT WITH THE APPLICABLE RUKLES SET FORTH IN THE BRASILIAN CORPORATIONS LAW; (B) SUBMIT THE FINANCIAL STATEMENTS TO THE APPRECIATION OF AN INDEPENDENT AUDITOR REGISTERED AT CVM, AND (C) PUBLISH THE FINANCIAL STATEMENTS PRIOR TO THE DATE OF THE GENERAL ANNUAL MEETING.**

CVM INSTRUCTION 561, WHICH REGULATED THE DISTANCE VOTING PROCEDURE, MAY BE ACCESSED THROUGH THE FOLLOWING LINK:

<http://www.cvm.gov.br/legislacao/inst/inst561.html>

## \_ CVM approves Term of Commitment in a Claim Involving Irregular Destination of Profits

In December 13, 2016, CVM's Board approved the proposal to execute a Term of Commitment presented by the managers and controlling shareholders of a publicly-held company, within the scope of the Punitive Administrative Procedure CVM No. RJ2015/10671, started by the Superintendence of Companies Relations.

The procedure started with shareholders' claims regarding the following irregularities: (i) destination of the totality of the net profit of the fiscal years of 2009 to 2014 to the profit reserves, in detriment of the distribution of the mandatory minimum dividend; (ii) establishment and irregular use of the statutory reserve; and (iii) execution of acts which were alien to the company's business and purposes.

Simultaneously to the defenses, the accused presented proposals to execute Terms of Commitment. After the examination of the proposals, the Specialized Federal General Attorney (Procuradoria Federal Especializada) along with CVM and the Term of Commitment's Committee ("Committee") deliberated by the rejection of the proposals, because of the legal impediment due to the lack of payment of the mandatory minimum dividends, as well as the severity of the conduct of the accused.

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ACCORDING TO THE COMMITTEE, THE MANAGERS OF THE COMPANY HAD TAKEN DECISIONS THAT HARMED THE PAYMENT OF THE DIVIDENDS, CREATING, A STATUTORY RESERVE WITH A POORLY DEFINED PURPOSE WITHOUT THE OBSERVATION OF THE MAXIMUM LIMIT ESTABLISHED BY LAW, WHICH OBSTRUCTED THE PARTICIPATION OF THE SHAREHOLDERS IN THE COMPANY'S PROFITS, VIOLATING THEIR ESSENTIAL RIGHT FORESEEN IN LAW NO. 6.404/1976.

Afterwards, the accused submitted a new proposal of a Term of Commitment, in which they stated their intention to pay the retained dividends and accepted: (i) the amount of R\$2 million as pecuniary obligation; (ii) partial reclassification of the statutory reserve's balance and (iii) the approval of the amendment of the company's by-laws regarding the statutory reserve.

The Board deliberated by the approval of the new proposal of Term of Commitment under the terms negotiated above.

THE DECISION MAY BE ACCESSED THROUGH THE LINK BELOW:

[http://www.cvm.gov.br/decisoes/2016/20161213\\_R1/20161213\\_D0473.html](http://www.cvm.gov.br/decisoes/2016/20161213_R1/20161213_D0473.html)

## \_ Federal Government was discharged of the accusation of power abuse of controlling shareholder

In February 07, 2017, the Brazilian Securities and Exchange Commission (“CVM”) judged the Punitive Administrative Procedure CVM No.RJ2015/10677, started by the Superintendence of Companies Relations (“SEP”) to verify the liability of the Federal Government, as direct controlling shareholder of a petrochemical company, to whom it may have imposed the cost to fund the electric energy generation in the north of the country by another subsidiary, due to the Federal Government’s omission regarding the breach of the electric company and later novation of the debt resulting from such breach, in adverse terms for the petrochemical company.

According to SEP, the Federal Government should be liable for violating the provisions of article 116 of the Law No. 6.404/1976, as controlling shareholder of the petrochemical company, due to participating directly in the novation of the debt, obtaining benefits: (i) by the transference of values by the petrochemical company (its direct subsidiary) to the electric company (its indirect subsidiary, in which it held greater corporate interest); and (ii) on account of not needing to provide immediately the funds to the Sector Funds of the Brazilian electric sector, which would be used to the payment of the original debt.

Pursuant to CVM’s technical area, the debt’s novation was financially disadvantageous to the petrochemical company, having lower net value than the replaced debt.

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THE REPORTING DIRECTOR HENRIQUE MACHADO REGISTERED THAT THE PERFORMANCE OF CONTROLLING SHAREHOLDERS OF MIXED-CAPITAL COMPANIES HAS BEEN RECEIVING GREAT ATTENTION OF CVM, HIGHLIGHTING THAT ONLY WITH THE PERCEPTION THAT THERE ARE LIMITS FOR THE PERFORMANCE OF THE CONTROLLING SHAREHOLDERS, MAY MIXED-CAPITAL COMPANIES RECOVER THE CONFIDENCE OF THE MARKET. HE ALSO EMPHASIZED THE RECOMMENDATIONS OF THE BRAZILLIAN CODE OF CORPORATE GOVERNANCE – PUBLICLY-HELD COMPANIES REGARDING MIXED-CAPITAL COMPANIES.

Notwithstanding, the Reporting Director understood that the accusation did not gather elements to prove the liability of the Federal Government in this case. He clarified that the conduction of transactions with third parties on behalf of the company is a matter for the management and, if failures are identified in this process, the managers shall be liable for such failures.

Regarding the allegation that the new debt was financially disadvantageous to the petrochemical company, the Reporting Director understood that the managers were trying to recover the company’s resources by negotiating the debt and not assessing investment options, and the analysis of the net present value of the debt by CVM was outside its limits of action, in line with the business judgment rule

Based on the above considerations, CVM’s Board decided, by unanimity, to discharge the Federal Government.

THE DECISION MAY BE ACCESSED THROUGH THE FOLLOWING LINK:

<http://www.cvm.gov.br/noticias/arquivos/2017/20170208-2.html#moore>