

## \_ CVM turns the application of the distance voting bulletins optional in 2016

CVM has edited in the last month CVM Instruction 570, turning the application of CVM Instruction 561 optional. CVM Instruction 561 is about the attendance and distance voting in general meetings. Hence, CVM Instruction 561 shall be mandatory from the following dates:

January 1st, 2017: Publicly-held corporations which, on April 9, 2015 (date of publishing of CVM Instruction 561), had at least one type or class of shares listed in IBrX-100 or IBOVESPA indexes.

January 1st, 2018: Remaining publicly-held corporations registered in A category of CVM and with shares negotiated in stock exchange markets.

Additionally, CVM has enacted CVM Deliberation 741, which has the purpose of orienting the market on the special proceedings to be observed by any company that decides to voluntarily adopt the distance voting in 2016.

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## CVM POSTPONES THE APPLICATION OF THE NEW RULES REGARDING THE PARTICIPATION AND DISTANCE VOTING IN SHAREHOLDERS' MEETINGS.

All of the above-referred regulatory documents may be accessed through the following links:

<http://www.cvm.gov.br/export/sites/cvm/legislacao/inst/anexos/500/inst570.pdf>

<http://www.cvm.gov.br/export/sites/cvm/legislacao/deli/anexos/0700/deli741.pdf>

## \_ approval of management accounts

A recent decision by CVM regarding the responsibility of Eike Batista, at the time chairman of the Board of Directors of Óleo e Gás Participações S.A., for indirectly casting a vote, through companies he controlled, to approve the management accounts of said company (article 115, §1º of the Brazilian Corporation Law), has brought attention to a subject which is frequently forgotten or neglected.

In Brazil, the predominant corporate structure is of concentrated control, in which a shareholder or group of shareholders has the power to effectively direct the activities and guide the management of the company.

In this scenario, the controlling shareholder (founder or not), many times also has a position in the management of the company.

When the controlling shareholder is a natural person with direct corporate interest in the company in which he is also a member of management, there is no doubt he is prevented from voting in the approval of his own accounts. Such constraint is justified once the director has evident personal interest in the deliberation of those accounts, because their unrestricted approval would exonerate him from any responsibility for the acts of management in the financial year in question.

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IF THE CONTROL OF THE COMPANY IS EXERCISED INDIRECTLY BY ONE OF THE MANAGERS, E.G., THROUGH A COMPANY OR ANOTHER VEHICLE (HOLDING), THE DETERMINATION ON THE POSSIBILITY OF CASTING A VOTE FOR THE APPROVAL OF MANAGEMENT ACCOUNTS BECOMES NEBULOUS.

This question is controversial and there is no unanimity in the doctrine or in precedents. There are positions in favor and against the constraint of voting in this case. CVM understands that the power the controlling shareholder has is capable of securing the direction in which the holding votes in the approval of the accounts of the company.

However, this does not mean that any holding in which a director of the company is a shareholder is forbidden from voting in the approval of the accountings of the management of the company.

According to CVM, the legal constraint reaches only holdings in which the manager exercises preponderant influence, which should be analyzed on a case-by-case basis.

This CVM decision brought a new light on this subject and should be carefully analyzed by all those who fit the profile of indirect shareholder and manager of the same publicly-held or private company.

## \_ new rules to obtain a permanent visa by foreign investors

On December 2, 2015, the Normative Resolution nr. 118 was published by the Brazilian National Board of Immigration (Conselho Nacional de Imigração), regarding the new rules for the concession of a permanent visa to foreigners who want to set themselves up in Brazil with the purpose of investing their own foreign resources in productive activities.

The concession of the permanent visa to foreigners is from now on conditioned upon the confirmation of an investment in Brazil, in national currency, of at least R\$500,000.00, confirmed by the presentation of an Investment Plan. Previously, the necessary investment was of at least R\$150,000.00.

The Ministry of Labor may also authorize the concession of the permanent visa when the investment is under R\$500,000.00, but not under R\$150,000.00, for the investor who wants to set himself up in Brazil with the goal of investing in an innovative activity, in a basic or applied research activity or in an activity of scientific or technological character.

It is important to highlight that, not only the recently incorporated companies, but also the already existing ones, which will receive foreign investment, are subject to the new rule. In the assessment of the visa request, the employment and income generation in Brazil will be primarily examined.

The rules related to the concession of work permit and permanent visa to foreign directors, managers or executives with management powers remain unaffected.