

## \_ 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 or quotaholders' annual meetings, as appropriate, regarding the financial year ended on December 31, 2017.

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 2017 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, and the distance voting bulletin through which the shareholders may participate in the Meeting and exercise their voting rights. 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 shall observe the new set of rules and deadlines already in force regarding the distance voting procedures, pursuant to CVM Instruction 481/09, as amended.

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 2017 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 rejects Term of Commitment in a Claim Involving the Breach of the Diligence Duty

In recent decision, the CVM's Board rejected the proposal to execute a Term of Commitment presented by two officers of a publicly-held company, within the scope of a Punitive Administrative Procedure CVM. The procedure investigated alleged irregularities related to the possible non-compliance of fiduciary duties of company officers regarding the purchase of a drilling vessel.

The drilling vessel purchase was concluded in February 2009 and had an estimated value of R\$4.176 billion, more than 130 times above the competence of each officers at the time.

According to the accusations, the company's officers failed with their due diligence duty, among other reasons, by lack of:

- (i) checking the real necessity to the purchase the asset;
- (ii) analyzing comparable offers, since they were made under different terms and condition; and
- (iii) complying with the corporate governance standard, as the authorization for the execution of the agreement

was given by a non-competent officer, and there were no clear contracting strategy for the service hiring and no records of the negotiation meetings.

Simultaneously to the defenses, the accused presented proposals to execute the Terms of Commitment, in the amount of R\$100 thousand, each, to close the administrative sanctioning procedure. After the examination of the proposals, the Specialized Federal General Attorney (Procuradoria Federal Especializada) along with CVM and the Term of Commitment's Committee deliberated to reject the proposals.

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ACCORDING TO THE COMMITTEE, THE EXECUTION OF THE TERM OF COMMITMENT WOULD BE INCONVENIENT AND INAPPROPRIATE, CONSIDERING THE NATURE AND THE RELEVANCE OF THE MATTERS OF THE CASE UNDER THE OPERATION CAR WASH. IN ADDITION, THE TERM OF COMMITMENT FAILS TO SET GUIDELINES FOR THE MARKET PARTICIPANTS, BEING INSUFFICIENT TO DISCOURAGE SIMILAR ACTS.

In this context, the CVM Board, unanimously, followed the understanding of the Committee and decided to reject the proposals for Term of Commitment.

THE CVM DECISION CAN BE ACCESSED IN PORTUGUESE IN THE LINK BELOW:

[http://www.cvm.gov.br/decisooes/2017/20171219\\_R1/20171219\\_D0810.html](http://www.cvm.gov.br/decisooes/2017/20171219_R1/20171219_D0810.html)

## \_ Corporate officers acquitted of omission of information on the quarterly financial reports

On January 16, 2018, the Brazilian Securities and Exchange Commission (“CVM”) judged the Punitive Administrative Procedure CVM No. RJ2014/7352, started by the Superintendence of Companies Relations (“SEP”), regarding the alleged omission of information on a real estate company’s quarterly financial report – ITR due to lack of disclosure of material uncertainties related to the necessity of a review on some of the company’s projects budget, which would have impacted the company’s revenues recognition.

According to SEP, company’s officers were aware of the need to revise the budgets for third-party constructions months before the release of ITR reports. In addition, according to the independent auditors’ reports, there was a relevant set of unfinished constructions projects with overrun costs, which clearly supports the necessity for budget adjustments in order to prevent a substantial impact on the company’s revenues and results.

In this sense, pursuant to the Technical Pronouncement CPC 23 and 26, SPE argued that even if the company’s officers were unaware of the exact value of the budgets of the third-party projects, it does not mean that the company should not have the obligation to disclose a statement about the possibility of relevant adjustments on the budget in the company’s ITR explanatory notes. The officer’s knowledge of the necessity of budget review is per se enough to trigger that obligation.

Nevertheless, the Director Report understood that the prosecution failed to gather sufficient evidence to prove the mandatory disclosure to the market regarding

the necessity of budget revision and, therefore, the responsibilities of the company’s directors.

It is worth mentioning that the Director Report, in his vote, **warned about the use of generic arguments** by the defendants, such as, that the risks inherent to the company’s activities were well-known to the market as they had already been disclosed by the company in its prospectus of the public offerings, Reference Form and financial statements. In its understanding, the risks are disclosed in prospectuses and reference forms to inform and alert the public to certain typical industry characteristics that may create risks to investors of any company in the market. Therefore, the company’s management cannot consider that these generic arguments are sufficient to rule out the obligation to disclose specific events that have or could lead to the realization of those risks.

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According to the Director Report, “IF THE MANAGEMENT HAS KNOWLEDGE OF ANY ESTIMATED UNCERTAINTIES THAT MAY FORCE THE NEED FOR BUDGET REVIEWS, WITH A SIGNIFICANT EFFECT ON THE RECOGNITION OF REVENUES BY THE COMPANY, THAT FACT SHOULD BE IMMEDIATELY DISCLOSED TO THE MARKET, AS PER THE APPLICABLE REGULATION, INCLUDING THE RELEASE OF MATERIAL FACT, DEPENDING ON THE CIRCUMSTANCES.”

Based on the above considerations, CVM’s Board decided, by unanimity, to acquit the company’s officers.

THE DECISION CAN BE ACCESSED IN PORTUGUESE THROUGH THE FOLLOWING LINK:

<http://www.cvm.gov.br/noticias/arquivos/2018/20180116-2.html>

## \_ CVM revokes specific provisions regarding the periodic obligations of Instruction 480

On February 7, 2018, the Brazilian Securities and Exchange Commission (“CVM”) issued the Instruction 596, which revoked two provisions of Instruction 480 regarding the registration of issuers of securities admitted to trading on regulated markets.

According to CVM’s President, the changes are part of an ongoing process to improve and rationalize the number of rules that comprise the CVM’s regulatory system.

The revoked item VI and paragraph 5 of Article 21 of CVM Instruction 480 provided, respectively, for

(a) the submission to CVM of copy of the notice set forth in article 133 of Law 6404/76, within at least 1 month prior to the Ordinary Shareholders’ Meeting,

to disclose the location where the documents related to the meeting can be accessed by the shareholders; and

(b) the case in which the submission of this notice to the CVM was exempted.

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IT IS IMPORTANT TO HIGHLIGHT THAT THE REVOCATION OF THE ITEM VI AND PARAGRAPH 5 OF ARTICLE 21 OF CVM INSTRUCTION 480 DOES NOT EXCLUDE THE OBLIGATIONS OF THE COMPANIES PROVIDED FOR IN THE ARTICLE 133 OF LAW 6,404/76.

CVM INSTRUCTION 596/2018 CAN BE ACCESSED IN PORTUGUESE AT:

<http://www.cvm.gov.br/export/sites/cvm/legislacao/instrucoes/anexos/500/inst596.pdf>