

_ Brazilian Securities and Exchange Commission (CVM) discloses Circular Letter (Ofício Circular) with general guidelines for publicly-held corporations

In February 2018, CVM disclosed Circular Letter CVM/SEP 02/2018, which provides general guidelines for publicly-held corporations regarding the disclosure of information and the execution of certain transactions.

CVM annually discloses these general guidelines, providing a consolidation of rules and general understandings regarding relevant topics and the day-by-day issues of publicly held corporations.

This year, the Circular Letter provided the following important news:

_ changes to the distance voting bulletin procedures set forth in CVM Instruction nº 594/17;

_ recent changes to the Reference Form, including those promoted by CVM Instruction 586/2017, such as (i) the mandatory updating of the Reference Form in the event of changes to members of statutory committee or specific committee such as audit, risk, finance or compensation committees, even if they are not statutory; and (ii) the inclusion of information regarding the integrity program, disclosure of internal policies and regulations, management evaluation and compensation methodology;

_ recent CVM Collegiate decisions related to the abuse of voting rights, understanding that the shareholders are not allowed to vote in decisions to file claims against them and to approve their accounts as managers of the company, even if through the vote of a company under his full influence;

_ guidelines on the new report on the Brazilian Code of Corporate Governance;

_ guidelines on information to be provided in the event of general meeting deciding on indemnification commitments in favor of managers.

CVM INFORMED THAT THIS CIRCULAR LETTER HAS THE PURPOSE OF ENCOURAGING THE DISCLOSURE IN A COHERENT WAY AND IN ACCORDANCE WITH THE BEST CORPORATE GOVERNANCE PRACTICES AS WELL AS TO REDUCE QUESTIONING BY CVM AND APPLICATION OF PENALTIES AND COERCITIVE FINES.

THE CIRCULAR LETTER IS AVAILABLE IN PORTUGUESE AT:

<http://www.cvm.gov.br/export/sites/cvm/legislacao/oficios-circulares/sep/anexos/oc-sep-0218.pdf>

_ CVM convicts controlling shareholder and managers for violating corporate rules

In a recent decision, CVM decided on the Sanctioning and Administrative Procedure No. RJ/2013-2759, related to the liability of controlling shareholder and managers of two publicly traded companies belonging to the same economic group (“Companies”) for breach of Law Nr. 6.404/1976 (“Corporation Law”) and CVM Instructions.

The procedure was originated by a claim from minority shareholders of the Companies and the audit committee of one of them.

The first issue was related to the lack of disclosure of related party transactions with a real estate management company in the financial statements of the Companies. The defendants argued that there was no disclosure of these transactions due to lack of relevance and materiality since real estate management services had been provided for a long time by the same company and the amounts paid for the services rendered would not be sufficient to require mandatory disclosure in the statements financial statements, in accordance with applicable accounting standards.

However, CVM agreed with the accusation’s argument that it is not only the financial impact that characterizes the relevance of a transaction involving related parties. The mere existence of such transactions may already be sufficient to alter the way the company is perceived by its shareholders.

In this sense, CVM emphasized the importance of disclosing transactions with related parties and understood that, in the case under discussion, there was a specific demand from a group of shareholders and members of the audit council for more transparency

of the Companies, and, therefore, it considered as illegal the non-disclosure of these transactions with related parties in the financial statements.

Other irregularities addressed by CVM referred to the decisions taken at one of the Companies’ Annual General Meetings regarding management proposal and election of members of the Board of Directors and Audit Council (Conselho Fiscal).

With respect to the management proposal, CVM accepted most of the accusation arguments related to the errors identified in the proposal, namely (a) the inconsistency recognized by the investor relations officer (“DRI”) himself on the reported limits of variable management remuneration; and (b) the incomplete and superficial management comments on the Companies’ financial situation.

Regarding the elections of the members of the Board of Directors and Audit Council (Conselho Fiscal), CVM understood that the controlling shareholder, indirectly, through his political-administrative influence on certain shareholders of the Companies, prevented the minority and preferred shareholders from exercising their right to vote in these elections.

CVM emphasized that the participation of such shareholders under alleged influence of the controlling shareholder would only be allowed if they had an internal governance mechanism in place that would neutralize the influence of the controlling shareholder in the decisions taken by these shareholders on the election aforementioned, which did not occur.

In addition, the accusation requested that the chairman of the General Meeting be held responsible for having accepted the votes of shareholders which were clearly under the influence of the controlling shareholder. In his defense, the chairman alleged that there is no legal provision extending to the chairman the obligation to subjectively judge the votes cast in the meeting.

CVM disagreed with the accusation against the chairman of the General Meeting and decided to extinguish the claim against him, without deciding on the merit, recognizing that CVM had no power to decide on the alleged illegal acts by the chairman.

Finally, CVM court, by unanimous vote, decided to apply a fine of R\$350 thousand to the DRI for the errors in the management proposal and R\$50 thousand to another officer of one of the companies for the non-disclosure of transactions with related parties. Regarding the controlling shareholder, CVM decided, by majority vote, to impose an individual fine in the amount of R\$1.25 million for the abusive exercise of control power.

THE DECISION CAN BE ACCESSED IN PORTUGUESE AT:

http://www.cvm.gov.br/noticias/arquivos/2018/20180221-1.html#PAS_Cia_Part_Alianca_Bahia

_ Annual Declaration of Brazilian Capital Abroad – DCBE 2018

Between February 15th, 2018 and April 5th, 2018, all individuals and legal entities resident, domiciled or headquartered in Brazil, which, on December 31, 2017, held assets abroad in an amount equivalent to or higher than US\$ 100,000 must submit the Annual Declaration of Brazilian Capital Abroad to the Brazilian Central Bank (BACEN) (“Annual Declaration”)

Besides the Annual Declaration, it is mandatory to quarterly submit the Declaration of Brazilian Capital Abroad if the amount of goods and rights held abroad is equivalent to or higher than US\$100 million based on the following schedule:

Data Base	Deadline
31.03.2018	30.04 – 05.06.2018
30.06.2018	31.07 – 05.09.2018
30.09.2018	31.10 – 05.12.2018

Late submission of the Annual Declaration or its submission with false, inaccurate, incomplete or incorrect information may result in fines of up to R\$ 250,000.

More information regarding the Annual Declaration of Brazilian Capital Abroad can be found at:

<http://www4.bcb.gov.br/rex/cbe/port/cbe2017.asp?idpai=CBE>