

_ Brazilian Securities and Exchange Commission decides on the procedures regarding separate election of a member of the Board of Directors

On April 2nd, 2019, the Brazilian Securities and Exchange Commission (“CVM”) decided, within the scope of Administrative Proceedings No. RJ2016/4098 and No. 19957.009411/2017-46 (“Administrative Proceedings”), originating from appeals filed by a publicly-held company and its minority shareholders against a report from CVM’s technical area regarding the separate election of a member of the Board of Directors in the Analysis Report No. 29/2016-CVM/SEP/GEA-4 and No. 109/2017-CVM/SEP/GEA-4 (“Reports”), respectively.

In the Reports, CVM’s technical area argued that (i) it is possible to have a separate election of a member of the Board of Directors to fill a vacant position in the Board of Directors which was previously held by a member elected through the majority of votes; and (ii) it is not possible to hold a separate election of a member of the Board of Directors to fill a new position in the Board of Directors which was created by a recent statutory amendment.

On the date of the judgment, the Administrative Proceedings had already lost their object, however, CVM decided to analyze them as a consultancy, as an opportunity to clarify some questions regarding article 141, paragraph 4, of the Brazilian Corporations Law, as follows:

- in a separate election, up to two colleges may be formed separately from the general election: one is comprised by the minority of common shares’ owners

and the other one is comprised by the owners of preferred shares with restricted or no voting rights. In case these groups are not able to separately get the minimum percentage necessary appointed by law, it is possible to install a separate electoral college uniting both types of shares.

- the percentages set forth in paragraph 4, items I and II, and in paragraph 5 of article 141 represent the minimum quorum required to install a separate college. Therefore, once the college is installed, the minority of shareholders who participate in the separate voting shall decide by simple majority, by means of which the most voted candidate will be elected.
- the separate election shall be held before the Board of Director’s general election. Therefore, the vacant positions that were not filled by the separate electoral college shall be allocated to the general election.
- the prerogative of the separate election could only be used to replace a member of the Board of Directors when the vacant position had originally been filled by the separate electoral college. Therefore, in this case, the separate electoral college shall be responsible for the substitute election.
- the separate election is only compatible to the entire Board of Director’s election, which is why it shall not be applicable to the separate election of positions recently created by a statutory amendment.

ADDITIONAL INFORMATION CAN BE ACCESSED IN PORTUGUESE AT:

http://www.cvm.gov.br/decisoes/2019/20190402_R1/20190402_D0205_0847.html

_ Brazilian Department of Business Registry and Integration releases new rules regarding Single-member Limited Liability Company

On June 14th, 2019, the Normative Ruling No. 63 of Brazilian Department of Business Registry and Integration (“DREI”) was published, which amends the Limited Liability Companies’ Manual, in order to include new rules regarding Single-member Limited Liability Companies, which was created by means of Provisional Measure No. 881.

We highlight the following applicable rules:

- Corporate Name: Single-member Limited Liability Companies shall adopt the firm as its corporate name, which shall contain the single-member’s civil name, plus the word “limited”, written in full or abbreviated. It is also possible to add a more specific designation of the company’s activity.
- Partner Decisions: the single-member’s decisions shall be reflected in a written document (public or private) signed by the partner or by an attorney with specific powers.
- Publications: the publication in newspaper of the single-member’s decisions shall only be necessary in case of approval of capital decrease resulting from excessive capital in relation to the company’s object.
- Contractual Amendment: the single-member’s decision regarding the amendment to the act of incorporation may be formalized in a public or private document, regardless its form of constitution.
- Partner Decease: in the event of the individual partner’s decease, the succession shall be made by judicial permit or in the assets’ sharing, within the scope of a court sentence or public deed of assets’ sharing.

ADDITIONAL INFORMATION CAN BE ACCESSED IN PORTUGUESE AT:

http://www.mdic.gov.br/images/REPOSITORIO/SEMPE/DREI/INs_EM_VIGOR/IN_DREI_63_2019.pdf

_ Federal Justice Council approves new statements in the Corporate Law Conference

On June 7th, 2019, the III Corporate Law Conference was held, in which the Federal Justice Council approved 34 statements regarding Corporate Law, in special regarding legislative, doctrinal and jurisprudential innovations (“Statements”).

Among the Statements, we highlight the following:

- **Statement 85** – The obligation provided for in the Shareholder’s Agreement regarding the voting in accordance with an orientation may not be claimed by its signatories or by the members of the Board of Directors for the purpose of exempting them from the obligation of voting according to the Law and the company’s interests.
- **Statement 86** – a mistake regarding the negotiating decision’s merit is not, by itself, a civil liability of the manager, which presupposes a non-compliance of legal or statutory duty (business judgment rule).
- **Statement 88** – a civil liability suit against the controller (article 117 of the Brazilian Corporation Law) or controlling company (article 246 of the Brazilian Corporation Law) does not presuppose a previous assembly deliberation.
- **Statement 91** – the disregard of the legal entity of companies that are members of the same corporate group (de facto or of right of law) requires proof of the requirements provided in article 50 of the Brazilian Civil Code by means of the disregard of the legal entity or in the terms of article 134, paragraph 2, of the Brazilian Civil Procedure Code.
- **Statement 94** – the prohibition regarding spouses’ partnerships provided in article 977 of the Brazilian Civil Code is not applicable to publicly or privately-held companies, limited partnerships and cooperatives.
- **Statement 95** – social networks’ profiles regarding business purposes can be characterized as an immaterial element of the commercial establishment.

ADDITIONAL INFORMATION CAN BE ACCESSED IN PORTUGUESE AT:

<https://tinyurl.com/yxohbrff>