

## \_ CVM decided on the replacement of Board members elected through the multiple voting process

In a recent decision, the Brazilian Securities and Exchange Commission's ("CVM") decided on **the replacement of members of the Board of Directors of a publicly-held company in case of vacancies due to resignation and death of members elected through the multiple voting process.**

In this case, the Board of Directors was elected at the Ordinary General Shareholders Meeting ("AGO") held in 2016 for a mandate of 2 years, and it was composed of 11 effective members and their respective alternates, among which 3 effective members of the Board of Directors and their respective alternates were elected through separate voting process, and the remaining members and their respective alternates were elected through the multiple voting process.

During the year 2016, two positions of effective members of the Board of Directors became vacant due to the death of one member and the resignation of another one.

Considering that the company's bylaws did not establish the possibility of replacement of these members by the alternate members in case of permanent vacancy, the Board of Directors approved the appointment of 2 new effective members to replace the former members, with a mandate until the company's next general meeting, pursuant to article 150 of Law No. 6,404/76 ("Brazilian Corporation Law"), as well as established that all members of the Board of Directors elected by multiple voting process

would also have a mandate until the company's next general meeting.

In this context, the managers' proposal for the company's 2017 AGO, the first meeting held after the vacancies in the Board included a resolution on the election of new directors, replacing all the Board members elected by the multiple voting process.

However, before the 2017 AGO, minority shareholders of the company submitted a complaint to the Superintendence of Corporate Relations at CVM ("SEP") questioning the validity of the procedure adopted by the company to replace all Board members elected by the multiple voting process and requested the suspension of the election.

In summary, **SEP decided in favor of minority shareholders**, arguing that, in the event of vacancy of effective members of the Board of Directors for reasons other than dismissal by the general meeting, it would not be necessary to hold a new election of all members of the board of directors elected through the multiple voting process if the effective member was elected along with his/her respective alternate, in accordance with article 141, §3º of Brazilian Corporation Law.

Due to SEP's decision, the company filed an appeal, claiming that the procedure was in accordance with the rules set forth in its bylaws and in the Brazilian Corporate Law.

In reviewing the case, CVM Director in charge of this procedure highlighted **important guidelines** for interpreting the provisions set forth in the Brazilian Corporation Law in case of replacement of members of the board of directors, as follows:

(i) **It is optional to appoint alternate members to the board of directors**, and it is up to the shareholders, if they wish to do so, to define the duties of the alternates in the company's Bylaws;

(ii) **Unless otherwise provided for in the company's Bylaws, in any case of vacancy, even in cases of election by multiple voting process**, the general rule set forth in Article 150 of the Brazilian Corporation Law shall apply. Therefore, in case of vacancy a **new members may be appointed by the Board of Directors with a mandate until the next general shareholder's meeting**; and

(iii) **In the event of election through multiple voting process**, in order to avoid the necessity of new election of the entire Board of Directors, the alternate must fulfill 2 conditions: (i) to be expressly allowed, pursuant to the company's Bylaws, to fill the vacant position; and (ii) to have been appointed by the same group of shareholders that appointed the replaced member. If these requirements have not been met, pursuant to article 141, paragraph 3 of the Brazilian Corporation Law, **the general shareholders' meeting**

**must convene to elect all members of the board of directors that have been elected though the multiple voting process.**

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**BASED ON THE ABOVE, THE REPORTING DIRECTOR CONCLUDED, IN HIS VOTE, THAT THE PROCEDURE ADOPTED BY THE COMPANY'S MANAGEMENT WAS APPROPRIATED, SINCE THE COMPANY'S BYLAWS DID NOT ESTABLISH THE POSSIBILITY OF REPLACEMENT BY THE ALTERNATE MEMBERS IN CASE OF PERMANENT VACANCY.**

Finally, CVM Board, by unanimous vote, accepted the appeal filed by the company and reversed SPE's decision.

THE DECISION CAN BE ACCESSED IN PORTUGUESE AT:

[http://www.cvm.gov.br/decisooes/2018/20180220\\_R1/20180220\\_D0697.html](http://www.cvm.gov.br/decisooes/2018/20180220_R1/20180220_D0697.html)

## \_ CODIM disclosed the Guidance Statement on “Shareholder Participation at General Meetings”

On March 14, 2018, the CODIM (the Guidance Committee for the Disclosure of Information to the Market) disclosed the Guidance Statement on “Shareholder Participation at General Meetings”.

According to CODIM’s coordinators, the objective of the Guidance Statement No. 24 is to assist companies in developing and establishing mechanisms to facilitate and encourage the participation of shareholders, as well as to improve the disclosure of information to shareholders, enabling a more active involvement on their part in the General Meetings.

We have highlighted below the main recommendations:

(i) Simplification of the shareholder participation process in the General Meetings, through the **admission of digitally certified documents** and an analysis thereof always based on the principle of objective good faith. It also recommends full disclosure of any exemption from compliance with other formalities, such as notarization and consular

legalization and/or the Hague Apostille and other document requirements regarding shareholders’ representation;

(ii) Development and implementation of a **Proposal Storage Center**, by the company or third parties, through an electronic system, that would allow shareholders and custodians to make available any material related to the General Meeting, such as their voting statements, questions, proposals, and candidates to the board of directors and to the audit committee, in order to facilitate the disclosure of information to shareholders who will not be physically present at the General Meeting; and

(iii) Development and implementation of an **Engagement Policy** to improve the interaction between the Board of Directors and the shareholders on a continuous ways and not restricted to the General Meeting, enhancing the communication between shareholders and the company and increasing the transparency of actions taken by the Board.

THE GUIDANCE STATEMENT ON “SHAREHOLDER PARTICIPATION AT GENERAL MEETINGS” CAN BE ACCESSED IN PORTUGUESE AT:

[http://www.projup.com.br/arq/121/arq\\_121\\_222577.pdf](http://www.projup.com.br/arq/121/arq_121_222577.pdf)

## \_ CVM publishes annual report on its sanctioning activities in 2017

On March 27, 2018, CVM released the second edition of its report on sanctioning activity. This report contains key findings and results in this area, and aims at promoting a better understanding of CVM functions, as well as at enhancing market transparency.

According to the report, the total amount of fines applied in 2017 was R\$166 million, a significant increase if compared to the average of the previous 3 years, which was R\$ 103 million.

The report highlighted a few landmark cases that were filled and/or decided in 2017 regarding insider trading, abuse of voting rights by controlling shareholders, failure to comply with directors' and officers' fiduciary duties, irregular compensation of board members and failure to include mandatory information in the prospectus of public offerings and in the reference form (Formulário de Referência).

THE ANNUAL REPORT ON CVM SANCTIONING ACTIVITIES IN 2017 CAN BE ACCESSED IN PORTUGUESE AT:

[http://www.cvm.gov.br/export/sites/cvm/publicacao/relatorio\\_atividade\\_sancionadora/anexos/2018/Relatorio\\_Atividade\\_Sancionadora\\_2017\\_janeirodezembro.pdf](http://www.cvm.gov.br/export/sites/cvm/publicacao/relatorio_atividade_sancionadora/anexos/2018/Relatorio_Atividade_Sancionadora_2017_janeirodezembro.pdf)

## \_ The founding partner Gyedre Carneiro de Oliveira was recently recognized by Who's Who Legal 2017

Our founding partner Gyedre Carneiro de Oliveira was recently recognized as an esteemed M&A lawyer by Who's Who Legal, a leading directory on the global legal market, which, like Latin Lawyer, is edited by Law Business Research.

MORE INFORMATION REGARDING THE WHO'S WHO AS WELL AS OUR FOUNDING PARTNER PROFESSIONAL BIOGRAPHY CAN BE ACCESSED AT:

<http://whoswholegal.com/profiles/81122/0/carneiro-de-oliveria/gyedre-palma-carneiro-de-oliveria/>