

_ Amendment to the Brazilian Corporations Law regarding mandatory publications

On April 24, 2019, the Brazilian Official Press (“DOU”) published the Law 13.818/19, which amends certain articles of Law No. 6,404, of December 15, 1976 (“Brazilian Corporation Law”) regarding mandatory publications.

Under the provisions of the referred new law, the maximum net equity of corporations with less than 20 shareholders, which are exempt from publishing their notices to call general shareholders’ meetings and their financial statements, was increased from one million Reais (R\$1.000.000,00) to ten million Reais (R\$10.000.000,00).

In addition, the Law 13.818/19 establishes that publications in the Brazilian Official Press by publicly-held and closely-held companies will no longer be required as of January 1st, 2022. Only a summary of the companies’ corporate acts and their financial statements will be published in a wide-circulation newspaper edited at the companies’ headquarters, with the simultaneous disclosure of the complete documents on the newspaper’s web page.

ADDITIONAL INFORMATION CAN BE ACCESSED IN PORTUGUESE AT:

https://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/lei/l13818.htm

_ Provisional Measure establishes the Declaration of Rights of Economic Freedom

On April 30th, 2019, the Provisional Measure No. 881 (“MP”) was published, which establishes the Declaration of Rights of Economic Freedom, as well as certain guarantees intending to promote free enterprise in Brazil.

Among the changes regarding corporate aspects, we highlight the following:

(i) **Disregard of Legal Entity:** the following new requirements were established: (i) distortion of the legal entity purpose, which consists in the fraudulent use of the legal entity for the purpose of harming creditors and for the practice of illegal acts of any nature; and (ii) fraud (*confusão patrimonial*), such as the improper confusion between the companies’ and the partners’ assets. The mere existence of an economic group without the presence of the other requirements does not authorize the disregard of the legal entity. The mere expansion or change in the original purpose of the legal entity shall not represent a distortion of the legal entity purpose.

(ii) **EIRELI:** The MP clarified that only the social assets of Individual Companies of Limited Liability (“EIRELLIs”) shall respond for contracted debts, which means the partners’ assets shall not be affected, except in cases of fraud.

(iii) **Single-member Limited Liability Company:** The MP brought a new legal type of limited liability company, in order to allow the constitution of a limited liability company by a single quotaholder, and the single partner’s constitution document shall observe the article of associations’ provisions, when applicable. Unlike EIRELI, it is not required for a Single-Quotaholder Limited Liability Company to have a capital stock equivalent to, at least, one hundred (100) minimum wages and the same individual may hold more than one Single-Quotaholder Limited Liability Company. Therefore, it is possible that Single-Quotaholder Limited Liability Company will increasingly replace the EIRELLIs.

ADDITIONAL INFORMATION CAN BE ACCESSED IN PORTUGUESE AT:

http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/Mpv/mpv881.htm

<http://www.economia.gov.br/central-de-conteudos/apresentacoes/2019/apresentacao-mp-liberdade-economica.pdf>

Brazilian Securities and Exchange Commission's Board rejects a request of the term interruption regarding a shareholders' ordinary meeting which management proposal and distance voting bulletin were disclosed without the name of candidates indicated by the controlling shareholder

On February 26th, 2019, Brazilian Securities and Exchange Commission ("CVM") decided, within the scope of Administrative Proceedings No. SP2016/0245 ("Administrative Proceeding"), regarding an appeal filed by minority shareholders against a report from CVM's technical area ("Report"), that there was no abuse of control in the reduction of the number of the Board of Directors' positions on the occasion of the election of its members.

Since 2011, the company's Board of Directors was comprised of 7 (seven) members. In 2015 the number of members was decreased to 5 (five) members, and in 2016 to 4 (four) members.

The minority shareholders argued that the arbitrary decrease of the number of members the company's Board of Directors over the years was a strategy of the controlling shareholder to prevent candidates nominated by minority shareholders from being elected separately or by multiple voting, which would be considered as abuse of power, pursuant to article 117 of the Brazilian Corporation Law.

CVM's technical department clarified that, based on the evidence presented within the scope of the Administrative Proceeding, it was not possible to prove that the reduction of the number of the company's Board of Directors' members was intended to prevent the election of candidates nominated by minority shareholders.

President Marcelo Barbosa, as well as the other members of CVM's Board of Appeal, voted to maintain the understanding of the technical department's Report and provided the following information regarding the election of the Board of Directors' members of publicly-held companies:

- *"In the case the company's by-laws establish a variable number of members to comprise the Board of Directors, is it necessary to inform the number of members which shall be elected, in order to enable the shareholders to decide which election proceeding they intend to use.*
- ***"the definition of the number of the members of the Board of Directors must precede the deliberations regarding the election of its members, in which shareholders may be required to express their opinion about (i) proceeding with the multiple voting method, in case it has already been requested, or (ii) adopting the separated voting method, with the withdrawal of the request for the multiple voting method, without prejudice to, if applicable, both procedures being adopted."***

NEWSLETTER

may 2019

- ***“if both multiple and separated voting methods are adopted in the same general meeting, the election of the Board of Directors’ members by separated voting shall occur before the multiple voting, since it will only be possible to identify the number of remaining seats after the separate voting, from which shall be calculated the multiple voting coefficient.”***
- *“these measures may also prevent possible abuses by shareholders holding shares that ensure the election of the majority of the Board of Directors members, which, by knowing the election method, may fix the number of members in order to prevent the election of the candidates appointed by the minority shareholders by multiple voting.”*

ADDITIONAL INFORMATION REGARDING THE REPORT AND THE ADMINISTRATIVE PROCEEDING CAN BE ACCESSED IN PORTUGUESE AT:

http://www.cvm.gov.br/export/sites/cvm/decisoes/anexos/2019/20190226/1234__SEP.pdf

<http://www.cvm.gov.br/export/sites/cvm/decisoes/anexos/2019/20190226/1234.pdf>

Brazilian Securities and Exchange Commission's Board rejects a request of the term interruption regarding a shareholders' meeting which management proposal and distance voting bulletin were disclosed without the name of candidates indicated by the controlling shareholder

On April 22nd, 2019, CVM's Board decided, by majority of votes, to reject the request regarding the interruption of an Ordinary and Extraordinary General Meeting's call term of a publicly-held company ("AGOE"), pursuant to article 124, paragraph 5, item II, of Law No. 6.404/1976 ("Brazilian Corporation Law").

The proceeding was originated from a complaint made by a minority shareholder, who informed, among other possible deviations from the aforementioned company, the late disclosure of the members of the Board of Directors' candidates, as well as the disclosure of the distance voting bulletin, without the name of the candidates indicated by the controlling shareholder.

Since the names of the candidates indicated by the controlling shareholder were not sent within the term for disclosure of the AGOE's management proposal and the distance voting bulletin, the aforementioned company decided disclose the referred documents without the candidates indicated or supported by the controlling shareholder and/or the administration.

Since the term for resubmission of the distance voting bulletin was over by the time the company received the

controlling shareholder's indication, according to article 21-A, paragraph 3, of CVM Instruction No. 481/2009, the information regarding the candidates was only included in the management proposal, which was submitted. For this reason, the applicants argued that shareholders were prevented from fully exercising their right of distance voting.

CVM's Board, by majority of votes, understood that, in this case, it would not be possible to extend the AGOE's call term, pursuant to article 124, paragraph 5, item II, of the Brazilian Corporation Law, **since the complexity of the case shall be associated to matter of the resolution and not resulted from circumstances that, although they may interfere in the exercise of the shareholders' voting rights, would take time to correct informational mistakes, and not to understand it.** However, the same directors recognized that the Brazilian Corporation Law's article aforementioned was created before the distance voting method and may need to be updated for the protection of shareholders.

MORE INFORMATION REGARDING THE DECISION CAN BE ACCESSED IN PORTUGUESE AT:

http://www.cvm.gov.br/decisooes/2019/20190422_R2/20190422_D1383.html