

_ New Provisional Measure allows publications imposed by the Brazilian Corporation Law in the internet

On August 5th, 2019, the Provisional Measure No. 892 (“MP 892”) regarding mandatory corporate publications was published, which amends article 289 of Law No. 6,404, of December 15, 1976 (“Brazilian Corporation Law”), in order to establish a new system for publications made by closely and publicly-held companies.

According to the new wording of article 289 of the Brazilian Corporation Law, the publications of publicly-held companies shall be made in the Brazilian Securities and Exchange Commission’s website, as well as in the website of the applicable stock exchange entity.

The Brazilian Securities and Exchange Commission (“CVM”) shall release a specific regulation regarding the provisions of article 289 of the Brazilian Corporation Law, which shall establish the acts and publications that must be filed before the Board of Trade. Closely-held companies’ publications and disclosure are subject to a normative act of the Brazilian Minister of Economy (“Regulation”). Either way, according to MP 892, mandatory publications shall not be charged.

However, even though MP 892 is already in force, its article 5 sets forth that its provisions will only be effective on the first day of the month following the publication of the normative acts regarding the Regulation, which means **MP 892’s effectiveness is conditioned, at first, to the publication of the Regulation.**

In addition, a provisional measure is a type of normative ruling that needs to be converted into law by the National Congress, otherwise it may lose its effectiveness. In case MP 892 is not analyzed by the National Congress within 60 days of its release, which may be extended once for the same period, it may lose its effectiveness and article 289 of the Brazilian Corporations Law will not be amended.

MP 892 CAN BE ACCESSED IN PORTUGUESE AT:

http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/Mpv/mpv892.htm

_ Brazilian Securities and Exchange Commission acquits Investor Relations Officer for not disclosing a relevant fact

On July 9th, 2019, the CVM's Board decided, within the scope of Administrative Proceedings No. RJ2016/7190 ("Administrative Proceeding"), on the responsibility of an Investor Relations Officer for the non-disclosure of a relevant fact regarding the arbitration proceeding decision of a publicly-held company.

According to the accusation, the DRI failed to comply with the provisions of Article 157, paragraph 4, of the Brazilian Corporation Law and Articles 3 and 6, sole paragraph, of CVM's Normative Ruling No. 358/2002 ("ICVM 358"), which establish the obligation to disclose acts or facts that are considered relevant to the business and decisions of publicly-held companies' investors.

The defense argued that the disclosure was not made, at first, because of the confidentiality of the arbitration proceeding, and the information regarding the conviction was not relevant, since the decision did not have a significant financial impact to the company.

In addition, the defense claimed that the non-disclosure of the information did not influence company's investors' decisions regarding the purchase and sale of securities or in the decision to exercise any of their rights.

The Board's Reporting Officer, Gustavo Machado Gonzales, stated in his vote that the **definition of relevant information is open on purpose, and its application involves a complex and subjective judgement, which means it is possible to have a discrepancy regarding the actual relevance of a particular information to be disclosed.**

According to the Reporting Officer, even though he understood the aforementioned information was relevant, there was no breach of the Brazilian Corporation Law and ICVM 358, since the choice not to disclose the information was supported on reasonable grounds. Therefore, CVM's Board unanimously decided to discharge the DRI.

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

<https://tinyurl.com/y4af324j>

<https://tinyurl.com/y66gsnhp>

_ Controversy regarding article 115 of the Brazilian Corporation Law proposal presented by the Brazilian Bar Association

The Brazilian Bar Association's corporate law special committee included, in the Provisional Measure 881/2019 ("MP 881"), a new wording for Article 115 of the Brazilian Corporation Law regarding the possibility of shareholders voting in situations of conflict of interest.

Currently, CVM's prevailing understanding is that the controlling shareholder is previously prevented from voting in general meetings that discuss situations of conflicting interests, also known as "formal conflict".

The suggested amendment would authorize the controlling shareholder to vote in the event of a potential conflict, provided that such voting is in good faith. In this case, if any benefit was subsequently proved in favor of the controlling shareholder due to his vote, it would be considered void.

According to the special committee's members, the purpose of the proposed amendment is to provide legal certainty to investors, since it is still hard to identify conflict of interest in certain situations.

On August 9th, 2019, the Brazilian Institute of Corporate Governance ("IBGC") released a statement expressing its disagreement with the aforementioned proposal presented by the Brazilian Bar Association, because, in its opinion, the exclusion of this restriction and the authorization to vote in situations of conflict of interest, even if potential, are opposite to the best practices of corporative governance and would expose minority shareholders to situations of vulnerability.

In addition, the Capital Market Investors Association ("Amec"), also contrary to such proposal, stated that they agree with the clarification of doubts regarding the application of Article 115 of the Brazilian Corporation Law through debates and further discussions, considering the complexity and relevance of the issue.

After the disapproval by associations that operate in the area and all controversy and complexity involved in this matter, the amendment to Article 115 of the Brazilian Corporation Law was removed from MP 881, which is still in discussion by the National Congress.