

## \_ CVM publishes Instruction reducing the minimum percentages of corporate interest required for filing lawsuits and exercise of related rights

On June 22, 2020, the Brazilian Securities Exchange Commission (“CVM”) published Instruction No. 627 (“ICVM 627”), which **establishes a scale reducing, based on the capital stock, the minimum percentages of corporate interest required for the exercise of some of the rights set forth in Law No. 6.404 of 1976** (“Brazilian Corporation Law”).

Pursuant to the 1<sup>st</sup> article of ICVM 627, the reduced percentages shall apply to the shareholder who wishes to exercise the following rights:

- i. filing of a suit to request the full presentation of the company’s books (article 105 of the Brazilian Corporation Law);
- ii. calling of a shareholders’ meeting in case the managers fail to call it within eight days upon a justified request (paragraph “c”, sole paragraph, article 123 of the Brazilian Corporation Law);
- iii. the request, in a shareholders meeting, for information regarding the shares and options held by the managers, the benefits and advantages paid to the managers by the company and correlated entities, the conditions of the managers and high executives’ labor agreements, as well as any material facts of the company (paragraph 1, article 157 of the Brazilian Corporation Law).);
- iv. filing of a derivative suit against the company’s

managers, i.e., when the shareholders meeting decides not to file the suit (paragraph 4, article 159 of the Brazilian Corporation Law);

- v. the request for information to the audit committee (*Conselho Fiscal*) on matters within its authority (paragraph 6, article 163 of the Brazilian Corporation Law); and
- vi. filing of a civil liability suit against the controlling company without the provision of a guarantee (paragraph “a”, paragraph 1, article 246 of the Brazilian Corporation Law).

As of July 1<sup>st</sup>, 2020, when ICVM 627 came into force, the percentage provided for in the aforementioned articles (i.e. 5% of the capital stock), was reduced according to the capital stock of the publicly-held company and is applicable as follows:

Capital Stock (R\$)	Minimum Percentage%
0 to 100.000.000	5
100.000.001 to 1.000.000.000	4
1.000.000.001 to 5.000.000.000	3
5.000.000.001 to 10.000.000.000	2
over 10.000.000.000	1

ICVM 627 AND THE REPORT OF ITS PUBLIC HEARING CAN BE ACCESSED AT THE LINK BELOW, IN PORTUGUESE:

<http://www.cvm.gov.br/legislacao/instrucoes/inst627.html>

[http://www.cvm.gov.br/export/sites/cvm/audiencias\\_publicas/ap\\_sdm/anexos/2019/sdm0719\\_relatorio\\_de\\_analise.pdf](http://www.cvm.gov.br/export/sites/cvm/audiencias_publicas/ap_sdm/anexos/2019/sdm0719_relatorio_de_analise.pdf)

## \_ Publicly-held company is forced to provide list of its shareholders for purposes of the filing of a management liability lawsuit

CVM's Board has decided, in Procedure SEI 19957.010274/2019-54, in favor of the request made by minority shareholders, regarding the delivery by a publicly-held company of a list of its shareholders, with their names and number of their shares, pursuant to article 100, §1<sup>st</sup>, of the Brazilian Corporation Law, in order to fulfill the minimum quorum for the proposal of a civil liability suit against the company's managers.

The company had rejected the shareholders' request stating that there was no specific reason to justify the request for information, according precedents of CVM's Board, declaring the shareholders were not able to support the alleged right to be defended, as required pursuant to article 100, § 1<sup>st</sup> of the Brazilian Corporation Law.

THE MEMBERS OF THE BOARD UNANIMOUSLY DECIDED TO FOLLOW THE TECHNICAL AREA'S REPORT, WHICH EXPRESSED SAID THAT **THE LIST SHOULD BE PROVIDED IF THE REQUEST OF A SHAREHOLDER (I) COMPLIED WITH THE LEGAL REQUIREMENTS OF ARTICLE 100, §1<sup>ST</sup>, OF BRAZILIAN CORPORATION LAW, THAT IS, IF IT WAS BASED ON THE BINOMIAL "DEFENSE OF RIGHTS" AND "CLARIFICATION OF SITUATIONS", (II) WAS AIMED AT THE DEFENSE OF A RIGHT INHERENT TO ITS CONDITION AS SHAREHOLDER AND, THEREFORE, OF INTEREST TO ALL SHAREHOLDERS; AND (III)**

**BASED ITS REQUEST, EVEN IF BRIEFLY, IDENTIFYING THE RIGHT TO BE DEFENDED OR THE SITUATION TO BE CLARIFIED.** IN THIS SENSE, IT WOULD NOT BE FOR THE COMPANY TO ANALYZE THE MERIT OF THE REQUEST MADE BY THE SHAREHOLDERS, BUT ONLY TO VERIFY THAT THE LEGAL REQUIREMENTS FOR THE PROVISION OF THE LIST OF SHAREHOLDERS HAVE BEEN MET.

The decision is in line with the precedents of CVM's Board in recent decisions and with the guidance of SEP (*Superintendência de Relações com Empresas*) contained in Circular Letter/CVM/SEP/No. 2/2020, which understand that, although requests that are justified to facilitate the mobilization of shareholders in order to discuss issues related to the company and participating in shareholders' meetings (such as the adoption of a multiple vote or separate election of members of the Board of Directors and of the audit committee (*Conselho Fiscal*)), do not find support in article 100, § 1<sup>st</sup>, of the Brazilian Corporation Law, in the event that shareholders have to act together to defend any right that, due to the applicable legislation or the bylaws of the company, there is a minimum quorum to be met (such as a liability action against managers to be proposed by shareholders, such as the case examined herein, or the action for the full presentation of the company's books), the list shall be provided.

MORE INFORMATION CAN BE ACCESSED AT THE LINK BELOW, IN PORTUGUESE:

[http://www.cvm.gov.br/decisooes/2020/20200114\\_R1.html](http://www.cvm.gov.br/decisooes/2020/20200114_R1.html)

## \_ CVM acquits officer accused of insider trading for lack of intention to obtain undue advantage

CVM's Board unanimously acquitted, following CVM's reporting officer, when ruling on Administrative Proceeding CVM No. 19957.005966/2016-38, an officer of a publicly held company of the accusation of insider trading, in violation to article 13 of CVM Instruction No. 358/02 ("ICVM 358").

The officer sold part of the shares he held after receiving financial information regarding the company during the quiet period, provided in article 13, §4<sup>th</sup> of ICVM 358. The defenses' main argument was that the sale of shares was made to bear extraordinary personal expenses he incurred during such period, due to renovations he was carrying out on his property.

**In the reporting officer's vote, the four elements that would characterize an insider trading were: (i) existence of relevant information, not yet disclosed to the market; (ii) access to such information by the**

**accused; (iii) use of the information when trading; and (iv) purpose to take advantage for themselves or for third parties.** In addition, there is a relative presumption, against the accused, regarding the use of the relevant information with the intention to obtain an undue advantage for himself or for others, pursuant to ICVM 358, which can be dismissed if there is evidence to the contrary.

In this sense, the numerous receipts presented by the defense, which identified extraordinary expenses whose value could justify the sale of shares, were taken into consideration by the reporting officer and, considered along with the other arguments of the defense, such as the low securities volume operated and the inexpressive amount of the supposed avoided loss, caused her to create a reasonable doubt regarding the officer's misconduct, therefore, voting for the acquittance of the accused, in accordance to the principle *in dubio pro reo*.

FOR MORE INFORMATION ON THIS CASE IN PORTUGUESE, PLEASE ACCESS THE LINK BELOW:

<http://www.cvm.gov.br/noticias/arquivos/2020/20200616-1.html>