CVM Resolution 44 issued in August 2021 **replaces CVM Instruction No. 358/2002**

In August 2021, the Brazilian Securities and Exchange Commission ("CVM") issued CVM Resolution No. 44, which addresses the disclosure of information related to a material act or fact, the trading of securities pending an undisclosed material act or fact, and the disclosure of information related to the trading of securities ("CVM Resolution 44"), which revoked CVM Instruction No. 358/2002 ("ICVM 358").

CVM Resolution 44, which came into force on September 1, 2021, has as its main objectives: (i) adapt the text of ICVM 358 that treats insider trading, in order to bring the provisions closer to the consolidated interpretation in CVM on the subject; (ii) make the regime of investment plans more flexible; and (iii) make the obligation of disclosure of information release policy by publicly-held companies more flexible.

While companies start the process of updating the policies of disclosure of information and trading of securities in order to reflect the new provisions introduced by CVM Resolution 44, we highlight the main changes briefly below.

Presumptions for characterizing the misuse of privileged information

To reflect the consolidated interpretation of the CVM board, CVM Resolution 44 provides the following relative presumptions in order to characterize the misuse of privileged information in securities trading:

- Presumption of use: The person who has traded securities with material information not yet disclosed has made use of such information in said trading. This presumption also applies to a former manager who has left the company for three months or less ago and has material, undisclosed information;
- Presumption of access and knowledge: Controlling shareholders (direct or indirect), managers and fiscal council (conselho fiscal) members, and the company itself, have access to all material information not yet disclosed. Such individuals, as well as those who have a commercial, professional or trust relationship with the company, upon having access to material information not yet disclosed, know that it is privileged information; and
- Presumption of relevance: Since the beginning of studies or analyses, information regarding the following matters are relevant: operations of any form of corporate reorganization or business combination, change in the company's control, decision to promote the cancellation of the publicly-held company's registration or change in the change of the environment or segment for trading of its shares, as well as a request for judicial or extrajudicial recovery and bankruptcy filed by the company itself.

Autonomous prohibition on trading securities prior to the disclosure of quarterly and annual information

The ICVM 358 already regulated the prohibition of trading securities by controlling shareholders, managers, and fiscal council members in the period of 15 days prior to the date of disclosure of the company's quarterly accounting information and annual financial statements, and this prohibition was maintained by CVM Resolution 44, in an objective form

However, CVM Resolution 44 has formalized the method of calculation of the 15 day period related to the prohibition, which must be made excluding the day of disclosure, observing, however, that, on the day of disclosure, trades can only be carried out after such disclosure has been effectively made. In addition, CVM Resolution 44 expressly provides that the referred prohibition is absolute, that is, it is not necessary to

demonstrate the intention of obtaining undue advantage from the trading.

Regime of individual investment plans

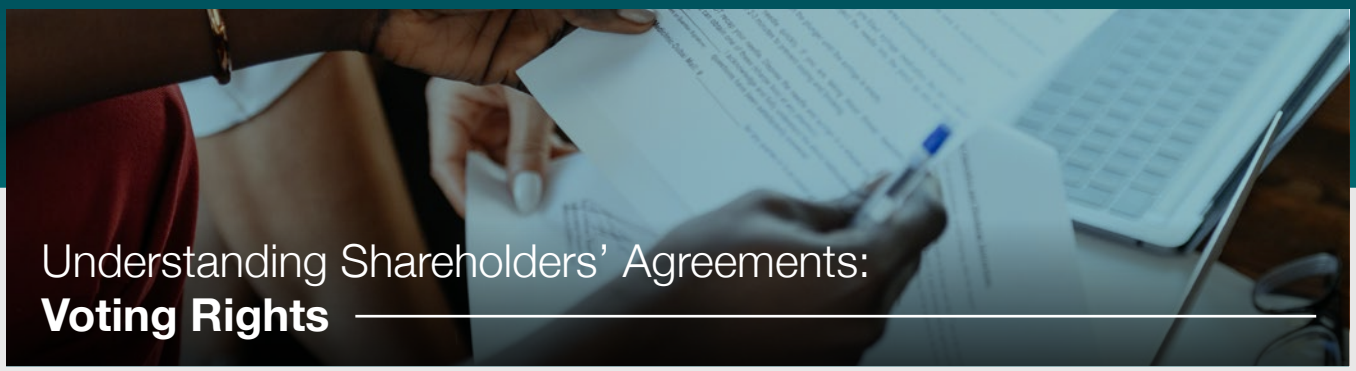
Regarding the rules related to investment plans, which are instruments that enable their signatories to trade securities during prohibited periods, CVM Resolution 44 has reduced from 6 to 3 months the minimum period related to the effects of the plans and their eventual modifications and cancellations.

Furthermore, CVM Resolution 44 has expanded the list of individuals who may enter into such plans, making it possible for anyone who has a relationship with a publicly-held company that makes them potentially subject to the trading prohibitions to enter into such plans.

Information disclosure policy by publicly-held companies

The policy for disclosing material acts or facts is no longer mandatory for all publicly-held companies, and is now required only for companies that, cumulatively: (i) are registered in category "A"; (ii) have been authorized by a market managing entity to trade shares on the stock exchange; and, (iii) have outstanding shares, with the exception of the shares held by the controller, people related to the controller, company's managers and those held in treasury.

The full text of CVM Resolution 44 can be accessed in Portuguese through the following link: *http://conteudo.cvm.gov.br/legislacao/instrucoes/inst044.html*



Understanding Shareholders' Agreements: **Voting Rights**

Expressly foreseen in the Brazilian Corporation Law, the shareholders' agreement is an important instrument of corporate governance for companies, and through which shareholders may establish rules regarding their relationship within the company, such as the exercise of voting rights, election of managers and transfer of shares. It is worth highlighting that shareholders' agreements may be executed by all shareholders or by part of them. This enables the existence of more than one shareholders' agreement within the same company.

We are now initiating a series of articles in which the main aspects related to shareholders' agreements will be addressed.

In this first article, we present some considerations regarding the political rights that can be contemplated within a shareholders' agreement, with emphasis on the right to vote and its implications, in particular qualified quorums, golden shares, block voting, prior meetings, and voting limits.

Voting rights and qualified quorums

The Brazilian Corporation Law establishes as a general rule that each common share is entitled to one vote in the deliberation of the shareholders' meeting. It is possible, however, to restrict the voting rights of the preferred shares or to create classes of common shares with the attribution of plural voting, not exceeding ten votes per share. It is through the vote, and always observing the interests of the company, that the shareholders express themselves regarding the matters on the agenda at a shareholders' meeting, so that, depending on the corporate structure, a single vote can be decisive for the approval or rejection of a certain matter.

As a standard rule, decisions at a shareholders' meeting are taken by an absolute majority of votes (that is, a majority of the votes of those present at the meeting), excluding blank votes.

Regardless of the quorums provided by law, it is possible - and fairly common - for bylaws and shareholders' agreements to establish higher approval quorums for a wide variety of matters in order to accommodate the different concerns and/or needs of the shareholders on a case-by-case basis.

As shown in the following items, the shareholders' agreement may also provide specific rules for the exercise of voting rights, and it is always important to ensure the compatibility of the rules created for the agreement to be effective.

Golden Shares

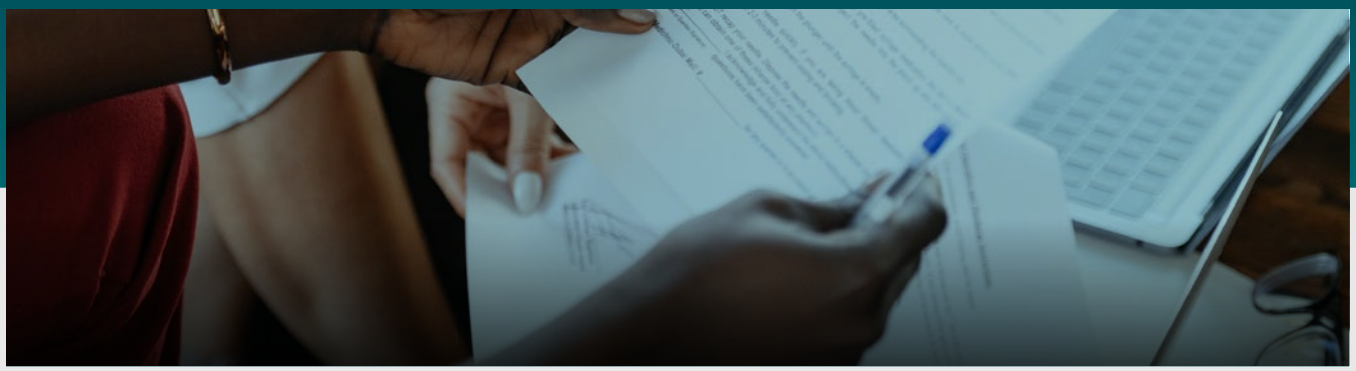
Another voting mechanism are the golden shares or, as a term used in the context of privatizations of Brazilian companies, "special class shares". The purpose of golden shares is to allow their holder to have distinctive influence on the deliberations of the general meeting, even if its owner does not hold the majority of the company's capital stock.

For instance, in the case of the privatization of Embraer, the Brazilian Union became the holder of a single special class common share, which grants it, among other dispositions, veto rights in a series of matters, including the change of Embraer's name and corporate purpose.

The golden share may also be used in contexts other than privatizations. In family businesses, for example, it may be held by the family leader and granted certain special rights that preserve his/her interests within the family context.

Block Voting

Block voting, in turn, is a mechanism capable of standardizing the vote of shareholders integrating the same group. Under this mechanism, it is possible to establish approval quorums



within the block itself, so that the decision taken by such quorum is binding on all members of the block.

However, the matters foreseen in the shareholders' agreement for the purposes of block voting are not unlimited. As stated in Special Appeal 1.152.849-MG, judged by the Superior Court of Justice, there is a distinction between the vote of will, which refers to the manifestation of the shareholders' will, and the vote of truth, which consists in the shareholder's assessment regarding the correspondence of the document in question and the reality of the corresponding object. Therefore, a shareholders' agreement that has as its object the vote of truth, which declares the legitimacy of the managers' acts, is considered invalid.

Such mechanism is important, for instance, in companies that have as shareholders members of different family units. Therefore, it is possible, via shareholders' agreement, to establish that each family unit will vote as a block, which, in addition to ensuring a greater representation of each unit in corporate decisions, ends up being a way to bind future generations.

As an example, the Natura & CO Holding S.A. shareholders' agreement currently establishes five shareholder blocks, and there is a specific chapter in the document to address them, providing, among other matters, the definition of a representative and an alternate for each block, and the specification that each block may enter into shareholder and/or voting agreements with each other for the purpose of organizing the block's activities within the scope of the Natura & CO Holding S.A. shareholders' agreement.

Prior Meetings

The purpose of prior meetings is to enable a group of shareholders (whether the controlling group or not) to establish, in advance, their votes regarding the matters of a given meeting. The shareholders' agreement, therefore, may regulate prior meetings, including the rules for calling, installing, and approval quorums.

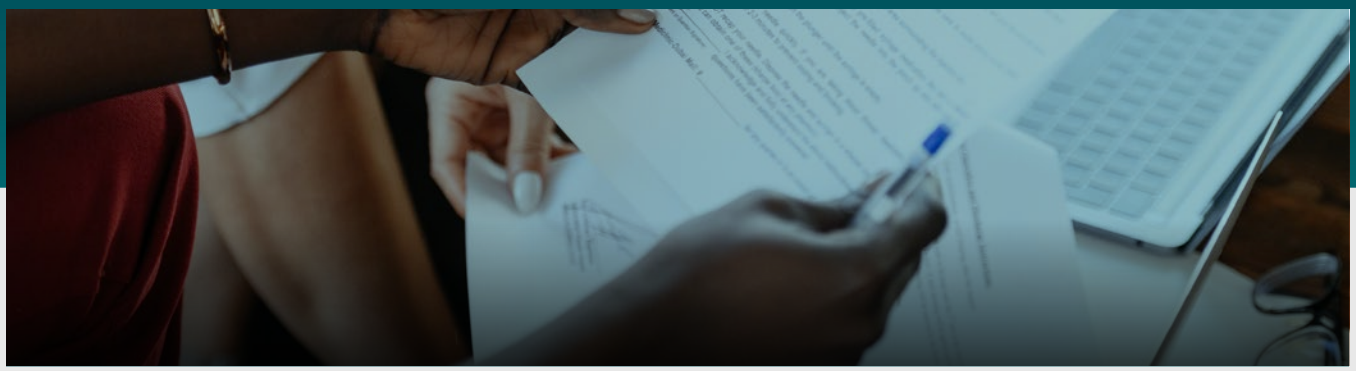
This mechanism is often used together with block voting. Using the same example as in the previous item, the Natura & CO Holding S.A. shareholders' agreement regulates prior meetings, which must be called and held prior to each shareholders' meeting. In this case, only the representatives of the shareholders' blocks attend, and the resolutions passed at the prior meeting (according to the quorum and rules established in the agreement) bind the vote of all shareholders that are parties to the agreement.

Voting Limit

Voting limits can be established in the bylaws and shareholders' agreements as a corporate governance tool to limit the interference of a certain shareholder or group of shareholders in the company's decisions. This limitation can be used, for example, to create equality among shareholder groups - which in a family business can be useful in creating a balance in voting rights among family units with very different corporate interest between them, without interfering in other rights inherent to each unit's corporate interest, such as profit sharing.

Out of curiosity, it is worth mentioning that currently B3's bylaws establish a shareholder voting limit, so that no shareholder or group of shareholders may, as a general rule, cast votes higher than 7% of the capital stock.

Considering the above, the relevance of the management of political rights in shareholders' agreements is evident, since its treatment may directly influence the outcome of the resolutions at shareholders' meetings. In upcoming publications,



we will mention other aspects related to political rights in shareholders' agreements, such as the election of directors and officers, the binding of votes regarding management and the resolution of deadlocks.

The text above was published in legislation and market session of Capital Aberto on October 6, 2021, and can be accessed in Portuguese through the link below:
https://legislacaoemercados.capitalaberto.com.br/entendendo-o-acordo-de-acionistas-direitos-de-voto/