



## Ordinary Shareholders' Meetings and quotaholders' annual meetings

In the upcoming months, corporations and limited liability companies shall disclose their financial statements and call their Ordinary Shareholders' Meetings or quotaholders' annual meetings, as appropriate, regarding the financial year ended on December 31st, 2021.

### Matters to be Discussed and Preparatory Proceedings to Ordinary Shareholders' Meetings and Quotaholders' Annual Meetings

**All corporations**, publicly-held and closely-held ones, need to hold, within the first 4 months following the end of the fiscal year, an Ordinary Shareholders' Meeting: (i) to examine the management accounts, analyze, discuss and vote the financial statements; (ii) to deliberate on the destination of the net profit of the relevant financial year and on the distribution of dividends; and (iii) to appoint managers and the members of the Audit Council (Conselho Fiscal), as applicable.

Additionally, corporations must prepare the documents listed in art. 133 of Law No. 6,404/1976 ("**Brazilian Corporations Law**") and publish a notice informing its shareholders that such documents are available at the company's headquarters. Such disclosure is waived if the companies publish their financial statements up to 1 month before the date set for the Ordinary Shareholders' Meeting or when such meeting gathers all the shareholders.

Nevertheless, corporations must publish their financial statements before the Ordinary Shareholders' Meeting is held, and those with annual gross revenue of up to R\$78 million may do so electronically through the SPED System (Central de Balanços do Sistema Público de Escrituração Digital - SPED), pursuant to

article 294, item III, of the Brazilian Corporations Law and, according to Ordinance ME No. 12.071/2021.

Regarding **limited-liability companies**, within the first 4 months following the end of the fiscal year, they need to hold a meeting in order: (i) to examine the management accounts, analyze, discuss and vote the financial statements; (ii) to appoint management, as necessary. The meeting is not necessary in case all of the shareholders decide, in writing, on the aforementioned matters.

### Financial Statements of Large Companies

It is important to highlight that limited-liability companies, or group of companies under common control, which, in the 2021 fiscal year, recorded assets in an amount higher than R\$240 million or annual gross revenue in an amount higher than R\$300 million shall: (a) prepare their financial statements in agreement with the applicable rules set forth in the Brazilian Corporations Law; (b) submit the financial statements to the appreciation of an independent auditor registered at Brazilian Securities and Exchange Commission ("**CVM**"), and (c) publish the financial statements prior to the date of the general annual meeting.

### Digital Meetings

Finally, due to the enactment of Law No. 14,030, of July 28th, 2020 (conversion of Provisional Measure No. 931/2020), **the meetings may be held partially or exclusively on a digital platform**, and shall comply with the applicable rules established by the Normative Instruction No. 622 of CVM, for listed companies, and/or those of the National Department of Business Registration and Integration ("**DREI**"), in case of closely-held corporations and limited liability companies.



## Brazilian Investment Offshore - Deadline for presenting the Annual Declaration of Brazilian Capital Abroad – DCBE before the Brazilian Central Bank

Between February 15th, 2022 and April 5th, 2022, all individuals and legal entities resident, domiciled or headquartered in Brazil, which, on December 31st, 2021, held assets abroad in an amount equivalent to or higher than US\$1 million shall submit the annual declaration of Brazilian capital abroad to the Brazilian Central Bank (“[Annual Declaration 2022](#)”)

Besides the Annual Declaration, it is mandatory to quarterly submit the Declaration of Brazilian Capital Abroad if the amount of goods and rights held abroad is equivalent to or higher than US\$100 million, based on the following schedule:

Base Date	Deadline
03.31.2022	04.30 - 06.05.2022
06.30.2022	07.31 - 09.05.2022
09.30.2022	10.31 - 12.05.2022



## Foreign Investment in Brazil - Deadline for presenting the financial and economic statement before the Brazilian Central Bank

It is mandatory that all Brazilian companies that have received foreign investment, regardless of the amount, inform, until March 31st, 2022, the value of their net equity and paid-up stock capital as of December 31st, 2021 ("Financial and Economic Statement").

Please note that Brazilian companies with assets or net equity equal to or higher than R\$250 million shall submit 4 Financial and Economic Statements per year, according to the schedule below:

Base Date	Deadline
03.31.2022	until 06.30.2022
06.30.2022	until 09.30.2022
09.30.2022	until 12.31.2022

Late submission of the Financial and Economic Statement or its submission with false, inaccurate, incomplete or incorrect information may result in fines of up to R\$250 thousand.



## Brazilian Department of Business Registration issues a new instruction which updates rules and simplifies procedures for filings with board of trade

On February 21, 2022, Normative Instruction No. 112 (“[IN DREI 112](#)”) was published, issued by the Brazilian National Department of Business Registration and Integration (DREI) which, among other measures, updates rules and simplifies the procedures of the Normative Instruction DREI No. 81/2020 (“[IDREI 81](#)”) which provides the general rules and guidelines for public registration of companies in Brazil.


In this sense, IN DREI 112 aims to regulate the provisions promoted by **(i)** the Legal Framework for Startups (Complementary Law No. 182, of June 1, 2021); **(ii)** the Football Corporation Law (*Sociedade Anônima do Futebol*) (Law No. 14.193, of August 6, 2021); **(iii)** Law No. 13,818, of April 24, 2019 (amending the Brazilian Corporation Law on mandatory publication rules); and **(iv)** Law No. 14,195, of August 26, 2021 (also known as the Business Environment Improvement Law, which promoted significant changes in the Brazilian market and in corporate law).

We highlight the following news set forth by IN DREI 112:

- **Non-residents in the Management.** Allows the election of non-residents in Brazil for a management position (member of the board of directors or executive officers) in a Brazilian corporation. The investiture of the manager residing or domiciled abroad must be subject to the constitution of a representative residing in Brazil.
- **Sole Officer.** Possibility of the board of executive officers of a Brazilian corporation to be composed of a single officer, instead of two as in the previous rule of the Brazilian Corporation Law.
- **Electronic Publications.** Private corporations with annual gross revenue of up to R\$78 million will be able to make their publications through the Central Balance Sheet (CB) of the Public Digital Bookkeeping System (SPED) and the company's website.
- **EIRELI extinction.** Formalization of the extinction of the corporate type of Individual Limited Liability Companies (EIRELI) with the exclusion of their reference in IDREI 81.
- **Corporate name.** Allows the use of the National Registry of Legal Entities (CNPJ) number as a corporate name for the individual entrepreneur or companies.
- **Corporate Purpose.** The corporate purpose of the companies can be described by means of codes that are part of the structure of the National Classification of Economic Activities – CNAE, as long as they are specific to the company's activities.
- **Liquidation and Dissolution.** Facilitates the liquidation and dissolution processes in the event of the death of a partner. The approval of the dissolution and liquidation can be made by the remaining partners and does not depend on the presentation of a judicial order or deed of distribution (official copy of the main documents of the probate), nor on the prior knowledge or consent of the heirs or the surviving spouse or even the presence of the inventor in the shareholders' meeting.
- **Startup.** Sets forth the requirements for registration of companies classified as Startups.
- **LGPD.** It determines that the issuance of a certificate of full content is carried out in accordance with the General Data Protection Law (LGPD), that is, it must not integrate the personal documents of the individual entrepreneur, manager, partners, shareholders or associates, as well as others that exceed the essence of the filed act.
- **SAF.** Sets forth the rules for incorporation of the Football Corporation Law - *Sociedade Anônima do Futebol* (SAF).

IN DREI 112 can be accessed in Portuguese at the link below:

<https://www.in.gov.br/en/web/dou/-/instrucao-normativa-drei/me-n-112-de-20-de-janeiro-de-2022-375498228>



## CVM proposes changes to the regulation on the composition of the board of directors and plural voting within the scope of listed companies

On December 21, 2021, CVM submitted a draft resolution (“Draft”) to public hearing No. 09/21, with proposals for specific amendments to CVM Instructions No. 367/2002 and 480/2009 (“[ICVM 358](#)” and “[ICVM 480](#)”, respectively).

The Draft, which was open for comments and suggestions until February 18, 2022, aims to regulate and assign practical applicability to new legal provisions introduced by Law 14,195/2021, which is the results of the conversion of Provisional Measure No. 1,040/2021, and its main themes are: (i) separation of the roles of CEO and chairman of the board of directors; (ii) presence of independent members on the board of directors; and (iii) definition of relevance criteria for the inapplicability of plural voting regarding the approval of related party transactions.

We highlight below, in summary, the main changes proposed by the Draft, which may still undergo changes depending on the outcome of the public hearing:

### [Prohibition of accumulating the positions of chief executive officer and chairman of the board of directors](#)

According to article 138, §3, of the Brazilian Corporations Law, listed companies are not allowed to have the same person cumulating the position of chairman of the board of directors and chief executive officer or main executive of the company. However, §4 of the same provision provides that CVM may exempt the rule in §3 for smaller companies, pursuant to art. 294-B of the Corporate Law

In this sense, the Minute introduces the exception of the aforementioned prohibition for companies with consolidated annual

gross revenue of less than R\$500 million, as reported in the financial statements approved by the general meeting, in relation to terms of office starting after January 1st, 2023.

### [Presence of independent members on the board of directors](#)

Pursuant to article 140, § 2, of the Brazilian Corporations Law, it is mandatory, in listed companies, the participation of independent directors, under the terms and deadlines defined by CVM. The mandatory presence of independent members was already applicable to certain listed companies due to the rules of the listing segments of B3 S.A. - Brasil, Bolsa, Balcão. In order to harmonize definitions and regulations, as well as seeking greater efficiency in the necessary adaptations, the Draft uses the Novo Mercado Regulation as a basis for the concept of independence and the number of independent members.

In this sense, the Draft provides for the need for at least 2 independent or 20% of the total number of directors, whichever is greater. The Draft provides that the rule for the presence of independent directors will only apply as of January 1st, 2023.

Additionally, the Draft proposes changes to ICVM 367 regarding the characterization of independence, describing the definitions and general rules that must be considered in the evaluation of the directors, pointing out cases in which the directors are or are not considered independent, and attributing the shareholders’ meeting the competence to determine the independence of a candidate. Furthermore, Schedule 24 to ICVM 480 (*Formulário de Referência*) will be adjusted to prevent a director from being indicated as independent without meeting the new criteria.

### Prohibition of plural voting in relevant transactions with related parties

Pursuant to article 110-A, § 12, II, of the Brazilian Corporations Law, a plural vote will not be adopted at shareholders' meeting that resolve on the execution of related party transactions that meet relevant criteria to be defined by CVM.

ICVM 480 already provided for a criterion to define the relevance of related party transactions with the purpose of disclosing information to investors. According to ICVM 480, relevant related party transactions are considered as: (i) those whose total value exceeds the lower of the following values, R\$50 million or 1% of the issuer's total assets; and (ii) those considered relevant by its management whose total value is lower than the parameters mentioned in item (i), considering the characteristics of the transaction, the nature of the relationship between the parties, and the nature and extent of the interest of the related party in the transaction.

In order to avoid different definitions of relevance, CVM proposes in the Draft that the criteria that were already used in ICVM 480 regarding disclosure should also be applied for the purposes of article 110-A, § 12, II, of the Brazilian Corporations Law. Therefore, the Draft provides that the plural vote does not apply to votes at shareholders' meetings that resolve on related party transactions that shall be disclosed pursuant to Schedule 30-XXXIII of ICVM 480.

The full text of the public hearing notice SDM nº 09/2021 can be accessed in Portuguese through the following link: [http://conteudo.cvm.gov.br/audiencias\\_publicas/ap\\_sdm/2021/sdm0921.html](http://conteudo.cvm.gov.br/audiencias_publicas/ap_sdm/2021/sdm0921.html).