

NEWSLETTER No. 97

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LAW REDUCES QUORUM FOR DECISIONS TAKEN BY QUOTAHOLDERS OF LIMITED LIABILITY COMPANIES

On September 22nd, 2022, the Brazilian Federal Law No. 14,451/2022 was published, which alters Articles 1061 and 1076 of the Brazilian Civil Code, which determine quorum for decisions taken by quotaholders of limited liability companies.

With the change promoted by the Brazilian Federal Law No. 14,451/2022, Article 1061 of the Brazilian Civil Code now specifies that the appointment of officers who are not quotaholders require the affirmative vote of: (i) partners representing 2/3 of the capital stock when it is not yet paid up (reducing the previous quorum of unanimous approval); and (ii) partners representing more than half of the capital stock when it is already paid up (reducing the previous quorum of 2/3 of the capital stock).

Also, according to the changes promoted in Article 1076 of the Brazilian Civil Code, both the (i) alteration of the articles of association and (ii) transactions involving merger, amalgamation, cessation of dissolution now depend on approval of quotaholders representing more than half of the capital stock (reducing the previous quorum of 3/4 of the capital stock).

The Brazilian Federal Law No. 14,451/2022 will take effect 30 days after its publication (i.e., October 22nd, 2022).

More information, as well as the full text of the Brazilian Federal Law No. 14,451/2022, can be found at the “Planalto” portal of the site of the Brazilian Government (www.gov.br/planalto).

CVM ISSUES RULE TO REGULATE VOTING RIGHTS OF DUAL-CLASS COMMON STOCKS AND COMPOSITION OF THE BOARD OF DIRECTORS OF PUBLICLY-HELD COMPANIES

On September 20th, 2022, the Brazilian Securities Commission (CVM) issued Rule No. 168/2022, which modifies CVM Rules Nos. 59/2021 and 80/2022 to regulate aspects of voting rights of dual-class common stocks and composition of the board of directors of publicly-held companies (“CVM Rule No. 168/2022”).

CVM Rule No. 168/2022 is the result of the Public Hearing No. 09/2021, promoted by the Superintendency of Market Development (SDM) of the CVM, during which a proposal was put forward to regulate the legal provisions of the Brazilian Federal Law No. 6,404/1976 (Brazilian Law of Corporations) introduced by the Brazilian Federal Law No. 14,195/2021, namely:

- (i) art. 110-A, § 12, numeral II, of the Brazilian Law of Corporations: attributes powers to the CVM to determine the criterion for relevance of transactions with related parties when multiple voting rights will not be applied;

- (ii) art. 138, §§ 3 and 4, of the Brazilian Law of Corporations: attributes powers to the CVM to make exceptions for small corporations regarding the prohibition of a single person serving as chairman of the board of directors and chief executive officer (or the equivalent); and
- (iii) art. 140, § 2, of the Brazilian Law of Corporations: attributes powers to the CVM to establish the provisions on the obligatory participation of independent members of the board of directors of publicly-held companies and their terms in office.

In these respects, in light of the manifestations from the market participants received during Public Hearing No. 09/2021, CVM Rule No. 168/2022 was drafted with the following main provisions:

- (i) establishes that multiple voting rights of dual-class common stocks shall not be applied at general shareholder meetings that deliberate on transactions with related parties that must be disclosed under the terms of Annex F of CVM Rule No. 80/2022 (which contains the obligation to disclose certain transactions between related parties by issuers of securities);
- (ii) waives the prohibition of accumulation of the position of chief executive officer (or equivalent) and chairman of the board of directors of publicly-held companies classified as small (with annual gross revenue less than BRL 500,000,000.00, under the terms of Art. 294-B of the Brazilian Law of Corporations); and
- (iii) establishes the obligatory participation of independent members of the board of directors only for corporations that cumulatively satisfy the following requirements: (a) are registered in category A; (b) have securities registered for trading in an organized exchange; and (c) have issued shares or certificates of deposit of shares. Besides these aspects, the CVM Rule No. 168/2022 specifies that the number of independent directors in such situations must correspond to at least 20% of the total number of directors.

With respect to this last point, it should be noted that the initial proposal by the CVM submitted to the Public Hearing No. 09/2021 specified the need for independent directors of any corporation (regardless of the listing of securities for trading). The alteration in the final version of CVM Rule No. 168/2022 was due to the manifestations presented by market participants.

CVM Rule No. 168/2022 has taken effect on October 3rd, 2022.

More information, along with the full text of CVM Rule No. 168/2022, can be found at the CVM's website (www.gov.br/cvm).