

NEWSLETTER No. 117

JUNE 2024



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BRAZILIAN SEC AMENDS RULES ON REMOTE PARTICIPATION AND VOTING IN SHAREHOLDERS' MEETINGS

On June 4, 2024, the Brazilian Securities and Exchange Commission (Comissão de Valores Mobiliários — CVM) issued CVM Resolution No. 204/2024 ("CVM Resolution No. 204"), amending CVM Resolutions No. 80/2022 (which regulates the registration and periodic and occasional reporting requirements of securities issuers; "CVM Resolution No. 80") and No. 81/2022 (which regulates shareholders' meetings; "CVM Resolution No. 81"), specifically concerning remote voting by shareholders in meetings.

CVM Resolution No. 204 was issued following Public Consultation SDM No. 01/2023, wherein stakeholders had the opportunity to comment on a draft normative document on the subject.

The main change introduced in CVM Resolution No. 80 concerns the inclusion of the "central depository's synthetic map, with shareholders' voting instructions," in the list of periodic information (art. 22 of CVM Resolution No. 80) and occasional information (art. 33 of CVM Resolution No. 80) to be submitted by the issuer to the CVM.

CVM Resolution No. 81, in turn, was amended in several aspects, notably the following:

- (i) expansion of the scenarios for using remote voting ballots: from the effective date of CVM Resolution No. 204, the dissemination of the remote voting ballot will generally be mandatory for all shareholders' meetings of the issuer (ordinary or extraordinary; general or special). Currently, the remote voting ballot is only required for ordinary general meetings and extraordinary general meetings that are called to: (a) decide the election of members of the fiscal council or the board of directors (in the cases provided for in CVM Resolution 81); and/or (b) take place on the same date as the ordinary general meeting;
- (ii) exemption from remote voting ballot: notwithstanding the above rule, the company may dispense with the provision of the remote voting ballot if it cumulatively observes the following conditions:
 - a. the most recent ordinary general meeting was held timely;
 - b. at the most recent ordinary general meeting and other shareholders' meetings held thereafter, the company (b.1) timely provided the remote voting ballot; and (b.2) received votes via the remote voting ballot corresponding to shares representing less than 0.5% of the share capital;
 - c. no request for the inclusion of candidates or proposals for resolution in the remote voting ballot has been received, pursuant to art. 37 of CVM Resolution No. 81, by the time of convening the meeting where the company intends to use the exemption;
 - d. the meeting where the company intends to use the exemption was convened at least thirty days in advance, expressly including the intention not to provide the remote

voting ballot, and the company has not been timely notified of any shareholders' opposition; and

- e. no public offering of the company's shares has occurred since the most recent ordinary general meeting.

In any case, shareholders holding at least 0.5% of the share capital may object to the exemption of the remote voting ballot provision by addressing a manifestation to the Investor Relations Officer, which must be sent up to 25 days before the meeting date. In this case, the company must provide the remote voting ballot at least 17 days before the meeting date. Any requests for inclusion in the remote voting ballot of candidates for the Board of Directors or Fiscal Council, or of proposals for resolutions, must be presented along with the aforementioned objections;

- (iii) notice of meeting: It is now mandatory to indicate, in the notice of meeting, the minimum participation percentages in the voting and non-voting share capital required to request the installation of the Fiscal Council, specifically in cases where the said body is not in operation or its term ends on the meeting date. Additionally, if the company meets the requirements for not providing the remote voting ballot, as mentioned in item '(i)' above, the intention not to provide the said document must be expressly indicated in the notice of meeting;
- (iv) participation rules: the presence of the Chairman of the Meeting, the Secretary, and at least one company administrator at the meeting venue is mandatory, except when the meeting is held exclusively digitally;
- (v) changes in deadlines related to the remote voting ballot: companies must provide the remote voting ballot at least one month before the meeting date in the following cases: (i) on the occasion of the ordinary general meeting; (ii) whenever the general meeting is convened to deliberate on the election of Fiscal Council members; (iii) whenever the general meeting is convened to deliberate on the election of Board of Directors members, when the election is necessary due to the vacancy of most board seats, due to a vacancy in a board elected by multiple votes, or to fill vacancies dedicated to separate elections; and (iv) when the extraordinary general meeting is convened for the same date as the ordinary general meeting.

On the other hand, the remote voting ballot must be provided at least 21 days before the meeting date in other cases (i.e., for meetings other than those mentioned above);

- (vi) submission of the remote voting ballot: CVM Resolution No. 204 changed the final deadline for shareholders to submit the remote voting ballot directly to the company. Currently, this deadline ends seven days before the meeting date. With the new rule, the deadline will end four days before the meeting date;
- (vii) submission of the ballot by the central depository: shareholders may now transmit instructions for completing the remote voting ballot to the central depository where the

shares are deposited. Currently, only direct submission to the company or through the shareholder's custodian or the company's stock transfer agent is allowed; and

- (viii) Board of Directors and Fiscal Council: requests for adopting the multiple vote process made via remote voting ballot will be rendered ineffective if, at the time of the meeting, there are no candidates for the Board of Directors other than those nominated by the administration or the controlling shareholder. Similarly, requests for the installation of the Fiscal Council made via the remote voting ballot will be rendered ineffective if, at the time of the meeting, there are no candidates for the body.

CVM Resolution No. 204 will come into effect on January 2, 2025.

For further information, as well as the full text of CVM Resolution No. 204, please visit the CVM website (www.gov.br/cvm).

LAW ENACTED IMPOSING RESTRICTIONS ON FORUM SELECTION IN LEGAL TRANSACTIONS

On June 5, 2024, Law No. 14,879/2024 was published in the Official Gazette of the Federal Government, amending Article 63 of Law No. 13,105/2015 ("Code of Civil Procedure") to establish restrictions on the contracting of a forum selection clause responsible for resolving any disputes arising from a given legal transaction ("Law No. 14,879").

In this regard, Law No. 14,879 amended the provisions of Article 63, §1, of the Code of Civil Procedure to stipulate that forum selection will only be effective when it is contained in a written instrument, expressly refers to a specific legal transaction and is relevant to the domicile or residence of one of the parties or the location of the obligation, with consumer agreements being an exception when favorable to the consumer.

Furthermore, Article 63, §5, of the Code of Civil Procedure, included by Law No. 14,879, stipulates that the filing of a lawsuit in a random court, understood as one that is not linked to the domicile or residence of the parties or to the legal transaction in question, constitutes an abusive practice justifying the declination of jurisdiction ex officio.

The new wording of §1 of Article 63 of the Code of Civil Procedure is not clear regarding the definition of the "location of the obligation," which can be interpreted as authorization for the selection of the forum of the constitution and/or execution of the legal transaction. Nor is it clear what constitutes the required linkage "with the legal transaction in question" to justify filing a lawsuit in a particular forum, as required by §5 of Article 63 of the Code of Civil Procedure, as amended by Law No. 14,879.

In the Justification Instrument, attached to Bill No. 1,803/2023 ("Bill No. 1,803"), which originated the aforementioned Law No. 14,879, the following grounds were highlighted to justify the changes proposed by the said bill:

- (i) although the Code of Civil Procedure authorizes forum selection, such choice cannot be arbitrary, under penalty of violating the principle of objective good faith, a general clause that guides the entire legal system;
- (ii) although the rule is freedom of contract, the exercise of private autonomy has limits in the public interest;
- (iii) thus, limiting the choice of forum aims to avoid harm to the society of a given territorial area due to the overburdening of courts that have no relevance to the dispute, considering that the planning and structuring of the Judiciary takes into account the population and local peculiarities; and
- (iv) the requirement of relevance to the domicile of the parties or the location of the obligation aims to prevent the forum selection clause from serving as an instrument for the free choice of courts that perform better in the country, to the detriment of the jurisdiction in which they operate.

On May 8, 2024, the Constitution, Justice and Citizenship Committee ("CCJ") issued Opinion (SF) No. 28/2024 ("Opinion"), approving Bill No. 1,803.

In the Opinion, the CCJ noted that Bill No. 1,803 aims to curb the practice of "forum shopping" in the national territory, that is, the choice to file a particular lawsuit in a forum supposedly more favorable to the argument in question or offering greater advantages to the parties, such as faster or slower procedural progress, depending on the interests involved.

Law No. 14,879 came into effect on the date of its publication and does not provide for transitional law rules, so its provisions apply immediately to ongoing cases, as determined by Article 14 of the Code of Civil Procedure.

More information, as well as the full text of Law No. 14,879, can be found on the Presidency of the Republic's website (www.gov.br/planalto/pt-br).

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