Brazil

Carlos Portugal Gouvêa
Levy & Salomão Advogados

Sources of corporate governance rules and practices

1 Primary sources of law, regulation and practice

What are the primary sources of law, regulation and practice relating to corporate governance?

The main sources are two federal laws, Law No. 6,404 of 15 December 1976 (Corporations Law) and Law No. 6,385 of 7 December 1976 (Securities Law).

Regulations issued by the Brazilian Securities Commission (CVM), especially rules and resolutions, are mandatory to publicly-held companies. The CVM also issues opinions, decisions in administrative proceedings and clarification notes.

The listing rules issued by the São Paulo Stock Exchange (BM&FBovespa) contain important provisions, especially the Novo Mercado Rules, which provide mandatory rules for companies listed in Novo Mercado, the listing segment with the highest standards of corporate governance in Brazil. There are other listing segments with lower degrees of corporate governance requirements, such as Nível 1 and Nível 2. Soft law often includes codes of best practices published by private associations, such as the Brazilian Association of the Entities of Financial and Capital Markets (ANBIMA) and the Brazilian Institute of Corporate Governance (IBGC).

Limited liability companies are very common in Brazil, even for large business organisations. Limited liability companies are primarily regulated by Law No. 10,406, of 10 January 2002 (Civil Code). The Civil Code allows limited liability companies to apply the Corporations Law as subsidiary law. Hence, for some limited liability companies, the rules applicable are mostly equivalent to those applicable to privately-held corporations. The Civil Code also governs non-profit legal entities, such as foundations, associations and cooperatives.

2 Responsible entities

What are the primary government agencies or other entities responsible for making such rules and enforcing them? Are there any well-known shareholder activist groups or proxy advisory firms whose views are often considered?

The CVM is the main government agency issuing regulations applicable to publicly-held corporations. The Council of Appeals of the National Financial System (CRSFN) is an administrative body with authority to decide over appeals against decisions issued by the CVM.

BM&FBovespa has an area of supervision of markets and any litigation related to corporate governance of corporations listed in the Novo Mercado is subject to an arbitration court named Câmara de Arbitragem do Novo Mercado.

Shareholder activism in Brazil has been historically weak. However, in the last few years, minority shareholders have been gradually more active before the CVM, both individually and through associations. The most representative association of minority shareholders is the Association of Investors in the Capital Markets (AMEC), composed mainly of asset managers, pension funds, and investment organisations. There is a trend towards greater litigation initiated by minority shareholders before the judiciary.

Proxy advisory firms do not have a prominent role in Brazil. ISS Governance and Glass Lewis have issued reports regarding specific issues with regard to a few Brazilian companies, mostly focused on foreign investors and with regard to Brazilian companies that have American depositary receipts.

The rights and equitable treatment of shareholders

3 Shareholder powers

What powers do shareholders have to appoint or remove directors or require the board to pursue a particular course of action?

According to the Corporations Law, the general meeting of shareholders has broad powers to decide over all matters relating to the functioning of the corporation, including appointing or removing directors of the corporation. The Corporations Law requires that officers or directors of corporations, as applicable, shall be elected at the annual shareholders' meeting only, and not at extraordinary meetings. The board of directors is mandatory for publicly-held companies and for companies with authorised capital only. Privately-held companies without authorised capital may not have boards and officers will be elected at the general shareholders' meeting. The Novo Mercado Rules require boards with at least five members and a minimum of 20 per cent of independent directors.

The members of the board of directors owe fiduciary duties exclusively to the corporation. This means that they are not subject to the interests of shareholders alone when performing their duties. However, shareholders' agreements in Brazil may contain provisions that, by effect of the law, bind the vote of the directors appointed by the shareholders that are party to the agreement, provided that the fiduciary duties owed to the company are not breached.

4 Shareholder decisions

What decisions must be reserved to the shareholders? What matters are required to be subject to a non-binding shareholder vote?

According to section 122 of the Corporations Law, the following decisions are reserved to the general shareholders' meeting:

- to amend the by-laws;
- to elect or remove, at any time, the directors, officers and overseers of the company; if the company has a board of directors, however, the board may remove the officers;
- to receive the accounts of the managers (directors and officers) and evaluate the financial statements;
- to authorise the issuance of debentures (bonds), unless the board of directors has authorisation to do this;
- to authorise the managers to apply for bankruptcy or moratory proceedings (concordata);
- to stay the rights of shareholders in breach of corporate obligations;

- to make a decision about the valuation of assets contributed by shareholders for the stock capital;
- to authorise the issuance of participation certificates; and
- to make a decision about transformation, consolidation, merger, spin-off, winding-up and liquidation of the company, as well as to evaluate the accounts and elect and remove the liquidators.

5 Disproportionate voting rights

To what extent are disproportionate voting rights or limits on the exercise of voting rights allowed?

The Corporations Law generally follows the principle of 'one share, one vote'. Publicly held corporations may not issue different classes of common stock. They may only issue different classes of preferred stock. Privately held corporations may issue different classes of both common and preferred stock. However, the advantages or disadvantages that may be granted are limited by law and neither common nor preferred stock may be granted multiple voting rights.

Preferred shares may lack voting rights if such a restriction is set forth in the by-laws. Most Brazilian companies issue preferred stock with no voting rights. Special class preferred shares held by the government in privatised firms (also known as 'golden shares') may have veto rights over specific subjects set forth in the by-laws (paragraph 2 of section 17 of the Corporations Law). The Corporations Law limits the issuance of preferred shares to 50 per cent of the total issued shares. The corporations listed in the Novo Mercado may only issue common shares, except for golden shares held by the government in privatised firms.

Additionally, the by-laws may cap the number of votes per shareholder. Novo Mercado firms may not cap the votes of shareholders at less than 5 per cent of the total capital, except in privatised firms or as otherwise required by the regulatory authorities.

The shareholders' agreement may establish rules for the exercise of the right of vote, by, for instance, providing that, before a general shareholders' meeting, the shareholders bound by the agreement shall hold a previous meeting in which they decide on how to vote. Votes contrary to the shareholders' agreement will not be taken into account by the chairman of the general meeting or the board of directors (paragraph 8 of section 118 of the Corporations Law). Brazilian law also forbids the sale of votes.

6 Shareholders' meetings and voting

Are there any special requirements for shareholders to participate in general meetings of shareholders or to vote?

The shareholders or their legal representatives shall prove their capacity as shareholders. Individuals need to bear their identity cards. In the case of book-entry shares, the shareholder must present the document issued by the depository institution as evidence of shareholding.

The shareholder may be represented by an agent with powers granted within a term of one year before the meeting. Such an agent must be a shareholder of the company, a manager of the company, a lawyer or a financial institution (for publicly-held companies). If the shareholder is an investment fund, its manager is entitled to represent its quota-holders.

7 Shareholders and the board

Are shareholders able to require meetings of shareholders to be convened, resolutions to be put to shareholders against the wishes of the board or the board to circulate statements by dissident shareholders?

The shareholders' meeting is the sovereign body of the corporation and, as such, may decide about certain subjects against the wishes the board, except with regard to certain matters that, by force of the law, can only be decided by the board of directors, such as with regard to the election of directors or issuance of shares based on authorised capital, when applicable (section 142 of the Corporations Law).

The general rule is that the meeting of shareholders is convened by the directors, in the case of publicly-held companies or companies with authorised capital, or officers in the case that the company does not have a board of directors. Shareholders representing at least 5 per cent of the stock capital may require the managers to call meetings. With such a requirement, if managers do not call a meeting within eight days, shareholders holding at least 5 per cent of the stock capital are entitled to call the meeting.

Dissenting shareholders may record their opinion in the minutes of shareholders' meeting.

8 Controlling shareholders' duties

Do controlling shareholders owe duties to the company or to noncontrolling shareholders? If so, can an enforcement action against controlling shareholders for breach of these duties be brought?

The Corporations Law provides that the controlling shareholder must exercise its power in order to direct the corporation towards the achievement of its purpose and has duties and responsibilities to minority shareholders, workers and the community. The controlling shareholder is liable for abuse in the exercise of control.

Section 117 of the Corporations Law lists a series of acts that may be regarded as abuse in the exercise of control, such as, among others:

- to direct the company to purposes other than the corporate purpose or those that are harmful to the national interest, or that benefit another company, to the detriment of the minority shareholders;
- to liquidate a solvent company, or merge it in order to achieve unfair advantage for him, her, itself or a third-person;
- to promote amendment of the by-laws, issuance of securities or adoptions of policies or decisions contrary to the interest of the company and harmful to minority shareholders, workers and investors; and
- to induce a manager or overseer to perform illegal acts or to promote, contrary to the interest of the company, their approval by the general meeting.

9 Shareholder responsibility

Can shareholders ever be held responsible for the acts or omissions of the company?

As a general rule, liabilities of shareholders are limited to their shares of corporate capital. Under the Civil Code, there is the possibility of disregarding the legal entity if there is evidence of co-mingling of corporate assets or deviation from the corporate purpose (fraud). There are broader instances of shareholder liability due to piercing of the corporate veil independently of fraud or abuse in connection with labour, consumer, environmental and tax liabilities.

Corporate control

10 Anti-takeover devices

Are anti-takeover devices permitted?

The Corporations Law is silent on anti-takeover provisions. The CVM's interpretation is that they are not prima facie illegal, but in its Guiding Opinion No. 36/2009 it regarded certain entrenchment clauses that protected provisions in the by-laws requiring tender offers in the case of reductions in the free float, by means of penalties to shareholders who voted to eliminate such provisions, to be against the founding principles of the Corporations Law. As a result, the CVM mentioned that it would not enforce such penalties.

The Code of Best Practices of Corporate Governance issued by IBGC does not recommend the use of such devices, especially 'poison pills' or entrenched clauses, in corporations with a well-defined controlling shareholder or in which control may be acquired in the market. Such mechanisms only make sense in companies with dispersed capital, provided that the shareholders have the final decision regarding the public offer of shares in cases of acquisition of control.

Due to the high levels of concentrated corporate ownership, hostile takeovers are highly unusual in Brazil.

11 Issuance of new shares

May the board be permitted to issue new shares without shareholder approval? Do shareholders have pre-emptive rights to acquire newly issued shares?

The board of directors may only issue new shares if authorised expressly by the by-laws of the company. Such authorisation shall provide the limit of the capital increase by the board and the respective conditions.

The general rule is that in the event of a capital increase the shareholders have pre-emptive rights proportionally to their shareholdings. However, if the capital increase is authorised by the board of directors, the by-laws shall specify the situations and conditions in which the shareholders will not be entitled such pre-emptive rights.

12 Restrictions on the transfer of fully paid shares

Are restrictions on the transfer of fully paid shares permitted, and if so, what restrictions are commonly adopted?

In the case of publicly-held corporations, no restrictions to the transfer of shares may be provided in the by-laws. Shareholders' agreements may set forth rules related to the transfer of shares, even in publicly-held companies. Lock-up provisions or put/call options are very common. Other restrictions in the transfer of shares, as, for example, creation of pledge and fiduciary transfers also are allowed.

According to section 118 of the Corporations Law, shares traded in public markets, such as stock exchanges, may not be restricted by a shareholders' agreement.

13 Compulsory repurchase rules

Are compulsory share repurchases allowed? Can they be made mandatory in certain circumstances?

Yes, but it is restricted to certain conditions set forth in section 30 of the Corporations Law and, for publicly held companies, the CVM Rule No. 10 of 14 February 1980.

On another note, section 254-A of the Corporations Law provides for a mandatory bid rule to minority shareholders in the event of a sale of control of a publicly traded company at a price equal to at least 80 per cent of the price paid per share of the controlling interest. For corporations listed in the Novo Mercado and in Nível 2, the mandatory bid needs to encompass all shares of the company and the price shall be equal to the share price paid to the controlling shareholder.

A tender offer is also mandatory if a company is deregistering with CVM in order to go private and if the controlling shareholder, directly or indirectly, acquires more than one third of the free float of any class of shares. In the case of companies listed in Novo Mercado or Nível 2, if such companies delist in order to be listed at a level with lower corporate governance requirements, the controlling shareholder will also have to make such a tender offer for minority shares.

14 Dissenters' rights

Do shareholders have appraisal rights?

Shareholders of corporations have appraisal rights if one of the following matters is approved by the general meeting:

- issuance of preferred shares, or an increase of the class of preferred shares already existing, without proportion to the remaining classes of preferred shares, unless authorised by the by-laws;
- changes in preferences, advantages and conditions of redemption or amortisation of a class of preferred shares, or creation of a new more favoured class;
- a reduction of mandatory dividends;
- a merger;
- formal participation in a corporate group;
- a change of corporate purpose; and
- a spin-off.

In order to exercise the appraisal rights, the shareholder must have voted against the resolution that gave cause to the appraisal. Regarding the first and second items above, only the shareholders harmed by the decision will have appraisal rights. For the fourth and fifth items above, if the shares have liquidity and market dispersion the shareholder is not entitled to appraisal rights.

The by-laws may set forth rules for the value of appraisal, provided that such value may not be equal or higher to the net equity value included in the last balance sheet approved by the general meeting, unless this general meeting occurs more than 60 days after the date of the last approved balance sheet. In this case, the dissenting shareholder is entitled to request the preparation of a special balance sheet for purposes of calculation of the appraisal right.

The responsibilities of the board (supervisory)

15 Board structure

Is the predominant board structure for listed companies best categorised as one-tier or two-tier?

Under the Corporations Law, all publicly-held corporations must have a board of directors. Privately held companies without authorised capital may have a one-tier structure and officers will be elected by the general shareholders' meeting. All corporations shall have an oversight board, which may operate on an ongoing basis, if so provided in the by-laws, or upon request of its shareholders.

16 Board's legal responsibilities

What are the board's primary legal responsibilities?

According to the Corporations Law, the board's primary legal responsibilities are:

- to set forth the general guidelines of the company's business;
- to elect and remove the officers of the company as well as to establish its functions;
- to supervise the performance of the duties by the officers;
- to convene the general shareholders' meeting when it deems convenient;
- to opine on the officers' report and the accounts rendered by the officers;
- to opine about acts or contracts when required by the by-laws;
- to authorise the issuance of shares or warranties when empowered by the by-laws;
- to authorise, if the by-laws do not provide otherwise, the sale of non-current assets, the creation of encumbrances and provision of guarantees to obligations of third parties; and
- to appoint and remove the independent auditors, as the case may be.

17 Board obligees

Whom does the board represent and to whom does it owe legal duties?

The board represents the interests of the corporation and it owes legal duties to the corporation alone. Such duties are qualified by law as fiduciary duties, namely, duty of care, duty of loyalty, duty of abstention in the event of conflict of interest and duties of confidentiality and information, as applicable. However, as mentioned above, shareholders's agreements may set forth rules binding the votes of board members, which may limit their powers.

18 Enforcement action against directors

Can an enforcement action against directors be brought by, or on behalf of, those to whom duties are owed?

The law provides that the company may file a indemnification lawsuit to recover damages caused by directors upon resolution taken by the general meeting. Any shareholder is entitled to file a derivative lawsuit if the company does not file within three months from the resolution taken by the general shareholders' meeting approving an indemnification lawsuit against its managers. If the general shareholders' meeting decides not to file the indemnification lawsuit, shareholders representing at least 5 per cent of the capital of the company are entitled to file a derivative lawsuit. The recovered amounts belong to the company, but the managers must indemnify the shareholder who filed the derivative lawsuit for the expenses incurred in the lawsuit. Shareholders who suffered direct and individual damage from actions of managers, may file an individual lawsuit against managers and recover such damages.

19 Care and prudence

Do the board's duties include a care or prudence element?

The law specifies the duty of care as one of the fiduciary duties owed by directors and officers to all corporations.

20 Board member duties

To what extent do the duties of individual members of the board differ?

The board of directors is a collective body of the corporation. In other words, the directors do not have powers to act individually as members of the board, because its decisions are taken only on a collective basis. Thus, all members of the board are subject to the same duties and to the same standards, irrespective of their skills and experience.

The by-laws may provide for the election of a board member by the employees of the corporation. Such a board member will have the same duties as the other members of the board.

21 Delegation of board responsibilities

To what extent can the board delegate responsibilities to management, a board committee or board members, or other persons?

The Corporations Law provides that the responsibilities of the board may not be subject to delegation. The board may form special committees with more restricted numbers of members to discuss specific issues. The by-laws may also create special advisory and technical bodies. Members of such bodies will have duties equivalent to those of the other statutory managers.

22 Non-executive and independent directors

Is there a minimum number of 'non-executive' or 'independent' directors required by law, regulation or listing requirement? If so, what is the definition of 'non-executive' and 'independent' directors and how do their responsibilities differ from executive directors?

The Corporations Law does not provide a mandatory requirement for independent directors. However, the Novo Mercado Rules require that a minimum of 20 per cent of the board members be independent directors, which, in general terms, may not maintain relations with the company (for example, control, relevant commercial relationships, employment and management), the controlling shareholder, the managers or entities of individuals related to them (including familiar relationships). The independent directors may not receive payments of the company, except for their remuneration as directors or returns over the capital due to their shareholdings. The Code of Best Practices of Corporate Governance issued by IBGC recommends that the majority of members of the board of directors be composed of independent directors, retained upon formal procedures and with a well-defined scope of practice and qualification.

23 Board composition

Are there criteria that individual directors or the board as a whole must fulfil? Are there any disclosure requirements relating to board composition?

A member of the board of directors of a Brazilian corporation must be an individual over 18 years old, which is the threshold of legal capacity under Brazilian law. A member of the board may be domiciled abroad. There is also no restriction regarding the nationality of board members.

Election to the board is forbidden for individuals with impairment set forth in special laws, caused by the committing of a bankruptcy crime, fraud, bribery or corruption, graft, embezzlement, crimes against the popular economy, the public faith or property, having been sentenced to a criminal penalty that forbids, even temporarily, access to public posts or declared not able by the CVM. There are specific requirements for membership of boards in certain regulated sectors of the economy, such as the requirement of expertise for board members of financial institutions.

The corporate acts relating to the election of board members must be registered with the Commercial Registry. For publicly held companies there is a duty to provide the documents related to the election of the members of the board to the CVM and to update certain registration information in its system.

According to CVM Rule No. 481, if directors and officers are elected at the general shareholders' meeting, the company shall disclose on the CVM website all the information requested in the annual report regarding each of such candidates nominated by the current management or the controlling shareholder. If there is a proxy solicitation with regard to elections of members of the management, such a request shall also include biographical information about the nominated candidates.

CVM Rule No. 367 provides that the shareholder who appoints a member of the board of directors shall present the curriculum of the candidate to the general shareholders' meeting with his or her qualifications, professional expertise, educational level, main professional activity that is currently performed, as well as an indication of posts held on the board of directors, oversight board or advisory committees of other companies.

For publicly-held corporations registered in the Novo Mercado and Nível 2, the company shall provide to BM&FBovespa information regarding all other positions of the board members as directors, officers, overseers or members of any committees of other companies.

24 Board leadership

Do law, regulation, listing rules or practice require separation of the functions of board chairman and CEO? If flexibility on board leadership is allowed, what is generally recognised as best practice and what is the common practice?

Although the Brazilian Corporations Law does not contain restrictions on the joining of the functions of board chairman and CEO, the Novo Mercado and Nível 2 Rules provide that the functions must be separated, except in extraordinary situations. The separation of functions of board chairman and CEO is regarded as a best practice by the Code of Best Practices of Corporate Governance issued by IBGC.

25 Board committees

What board committees are mandatory? What board committees are allowed? Are there mandatory requirements for committee composition?

There are no mandatory board committees for corporations under Brazilian law. The audit committee is also not mandatory under Brazilian Law. If a publicly held company decides to create an audit committee upon an amendment of its by-laws, it shall comply with the requirements provided in the CVM Rule No. 308, of 14 May 1999 as amended by the CVM Rule No. 509 of 16 November 2011. Such requirements include organisational rules, the form of meetings, the functions and the composition of the committee (necessary qualifications and impairments).

As mentioned above, the Corporations Law provides the oversight board with the powers to supervise the work of the managers, to issue opinions about the reports or proposals of the managers, to analyse financial documents, to convene general meetings in the situations set forth by law and to notify frauds, errors and crimes to the managers and the shareholders' meeting. However, the oversight board is not a committee of the board and shall not be confused with the audit committee. It is an independent body that may operate on an ongoing basis, if so provided by the by-laws or at the requirements of shareholders of the corporation, as discussed above.

26 Board meetings

Is a minimum or set number of board meetings per year required by law, regulation or listing requirement?

The Corporations Law provides that only the rules applicable to the calling process for a meeting will be provided in the by-laws. However, since the law requires that the board approve the officers' report and the accounts rendered by the officers before they are submitted to the mandatory annual shareholders meeting, it can be inferred that the board will meet at least once a year.

27 Board practices

Is disclosure of board practices required by law, regulation or listing requirement?

According to section 140 of the Corporations Law, the board is composed of a minimum of three members elected by the shareholders' meeting. The by-laws must set forth:

- the number of the board's members, or the maximum and minimum number;
- the procedure for the choice and replacement of the chairman;
- the procedure for the replacement of the members of the board; and
- the rules for the call, installation and functioning of the board, which shall make decisions by a majority of votes, provided that the by-laws do not establish a qualified quorum for certain resolutions.

The minutes of the meetings of the board of directors where the resolutions affecting rights of third parties were taken must be filed with the Commercial Registry, and if the company is publicly-held, the CVM Rule No. 480, of 7 December 2009, provides that such minutes of the board's meetings shall be delivered electronically to the the CVM within seven days from the respective meeting.

28 Remuneration of directors

How is remuneration of directors determined? Is there any law, regulation, listing requirement or practice that affects the remuneration of directors, the length of directors' service contracts, loans to directors or other transactions between the company and any director?

The general shareholders' meeting has the exclusive authority to approve the global value, or the individual value, of the total remuneration of directors and officers, including all possible benefits. In most cases, the shareholders approve a global maximum amount in order to avoid singling out the remuneration to be paid to each manager, for security reasons.

Regarding transactions between the company and the director, there are several rules regarding transactions with related parties. The Corporations Law expressly forbids the vote of director or a controlling shareholder in the event of a conflict of interests.

The Corporations Law provides that directors and officers may participate in the profits of the company, provided that such payments do not exceed the lowest of the annual remuneration of the managers or one tenth of the total annual profits of the company.

29 Remuneration of senior management

How is the remuneration of the most senior management determined? Is there any law, regulation, listing requirement or practice that affects the remuneration of senior managers, loans to senior managers or other transactions between the company and senior managers?

Brazilian law does not differentiate between senior and junior management (see question 28).

30 D&O liability insurance

Is directors' and officers' liability insurance permitted or common practice? Can the company pay the premiums?

D&O liability insurance policies are permitted. The only limitation provided by the Brazilian Civil Code is that D&O policies may not cover cases of wilful misconduct by the director or officer.

D&O liability insurance policies are becoming increasingly more common since the Civil Code came into force in 2003, as before that, liability insurance policies were substantially restricted by the force of the law. D&O liability insurance policies are the standard practice among publicly held corporations.

31 Indemnification of directors and officers

Are there any constraints on the company indemnifying directors and officers in respect of liabilities incurred in their professional capacity? If not, are such indemnities common?

The CVM has provided in several cases that indemnification provisions in the by-laws or as separate agreements shall not apply to acts committed in bad faith, wilful misconduct or gross negligence by managers, since it would otherwise prevent the company or its shareholders from being dully indemnified for any violations of fiduciary duties by the directors and officers.

The CVM has ruled in a few cases that it would not be able to have settlements with directors and officers protected by such indemnification clauses, since the underlying matters being investigated could be related to acts committed in bad faith, wilful misconduct, or gross negligence.

Since settlements could not specify such material aspects, it would not be possible to know if the indemnification payment would be in accordance with the law or not.

Hence, under Brazilian law, D&O liability insurance policies would be preferable, since there would not be such restrictions.

32 Exculpation of directors and officers

To what extent may companies or shareholders preclude or limit the liability of directors and officers?

Rules applicable to liability of directors and officers are provided by the Corporations Law. As a result, shareholders can not preclude or limit such liabilities, except by means of indemnification provisions considering the limitation discussed in question 31.

33 Employees

What role do employees play in corporate governance?

According to the Corporations Law, the by-laws may provide that the employees will elect a member of the board as their representative. There is a general provision that the controlling shareholders have general duties in respect of the interests of the workers. There are several laws regarding conditions of labour and payments, including sharing in the profits generated by the company. Large corporations controlled by the federal government must have one employee representative on its board of directors.

Disclosure and transparency

34 Corporate charter and by-laws

Are the corporate charter and by-laws of companies publicly available? If so, where?

Brazilian corporations do not have a corporate charter separated from the by-laws. There is only one corporate document, named Estatuto Social, which is amended from time to time. The by-laws and all their amendments must be registered with the state commercial registries. Publicly held corporations must also make these documents available on the website of the CVM.

35 Company information

What information must companies publicly disclose? How often must disclosure be made?

The requirements of information disclosure by publicly held corporations are higher than those for privately held corporations.

For privately held companies, there is a duty of disclosure only regarding documents that must be registered in the commercial registry, which are the minutes of corporate meetings, including the meetings of the shareholders and of the boards (board of directors and board of officers) that affect the rights of third parties as well as the by-laws and their respective amendments. Other documents, such as, for example, convening meetings and financial statements, shall be published in official, local newspapers.

For publicly held corporations, in addition to the duty to disclose the documents mentioned above, there are mandatory filings with CVM, which include, among other documents mentioned in CVM Rule No. 480, of 7 December 2009, any information that may affect the valuation of the securities issued by the company, shareholder's agreements, financial statements on a periodical basis, quarterly reports and a complete annual report with information about the market in which the company performs its activities and the internal organisation, including the management, the economic group, risk factors, commercial data, main liabilities and related-party transactions.

With regard to corporations listed in Novo Mercado and Nível 2, the financial statements must also be translated into English. For corporations listed in Novo Mercado, Nível 2, and Nível 1, they shall also hold an annual meeting with analysts and make the schedule of corporate events public. They also need to make public the policy regarding dealings with the corporations' securities by their officers, directors, overseers, controlling shareholder and the company itself, as well as a code of conduct.

Hot topics

36 Say-on-pay

Do shareholders have an advisory or other vote regarding executive remuneration? How frequently may they vote?

The remuneration of the management is decided by a binding vote of shareholders at a general meeting.

37 Proxy solicitation

Do shareholders have the ability to nominate directors without incurring the expense of proxy solicitation?

According to CVM Rule No. 481, any shareholders holding 0.5 per cent or more of the corporate capital may request that the company reimburses the expenses with proxy solicitation regarding any matters to be discussed in the general shareholders' meeting. CVM Rule No. 481 specifies which expenses may be reimbursed in the event the company does not offer electronic means of proxy solicitation using the internet. If the company offers means of proxy solicitation using the internet, it must allow any shareholders holding 0.5 per cent or more of the corporate capital to use this system to make proxy solicitation without cost.

LEVY & SALOMÃO
ADVOGADOS

Carlos Portugal Gouvêa **cgouvea@levysalomao.com.br**

Av. Brigadeiro Faria Lima 2601, 12th Floor
São Paulo 01452-924
Brazil

Tel: +55 11 3555 5035
Fax: +55 11 3555 5048
www.levysalomao.com.br

GETTING THE DEAL THROUGH®

Annual volumes published on:

Acquisition Finance
Air Transport
Anti-Corruption Regulation
Anti-Money Laundering
Arbitration
Asset Recovery
Banking Regulation
Cartel Regulation
Climate Regulation
Construction
Copyright
Corporate Governance
Corporate Immigration
Data Protection and Privacy
Dispute Resolution
Dominance
e-Commerce
Electricity Regulation
Enforcement of Foreign Judgments
Environment
Foreign Investment Review
Franchise
Gas Regulation
Insurance & Reinsurance
Intellectual Property & Antitrust
Labour & Employment
Licensing
Life Sciences
Mediation
Merger Control
Mergers & Acquisitions
Mining
Oil Regulation
Outsourcing
Patents
Pensions & Retirement Plans
Pharmaceutical Antitrust
Private Antitrust Litigation
Private Client
Private Equity
Product Liability
Product Recall
Project Finance
Public Procurement
Real Estate
Restructuring & Insolvency
Right of Publicity
Securities Finance
Shipbuilding
Shipping
Tax Controversy
Tax on Inbound Investment
Telecoms and Media
Trademarks
Vertical Agreements

For more information or to purchase books, please visit:
www.gettingthedealthrough.com

The Official Research Partner of the International Bar Association

THE QUEEN'S AWARDS FOR ENTERPRISE: 2012

ABA Section of International Law
Your Gateway to International Practice

Strategic research partners of the ABA International section

CORPORATE GOVERNANCE 2013 ISSN 1476-8127