

Corporate governance | Winter 2022 | Legal Briefing

The main changes to corporate governance in Brazil in 2020 and 2021

The last couple of years were difficult and challenging for all countries and the situation was no different for Brazil.

It is estimated that, in Brazil, more than 700,000 companies (mainly small business) ended their activities in the first half of 2020 due to the economic crisis caused by the Covid-19 pandemic.

For larger companies in need of capital to develop their activities, the crisis limited the supply of financial resources available in Brazil, reinforcing the trend of Brazilian companies listing their shares in stock exchanges in other countries.

This scenario brought unprecedented challenges both for companies – which were forced to innovate to survive – and for government – which was forced to adopt measures and to issue rules aimed at improving corporate governance which attracted investors and fostering entrepreneurship amid the crisis.

In this brief article, we will address some relevant legislative changes that impacted corporate governance and entrepreneurship in Brazil in 2020 and 2021, as well what can be expected for 2022.

Virtual shareholders meetings

The lockdown imposed during the Covid-19 pandemic hit Brazil just at the time of annual general meetings (AGM) of shareholders of publicly and privately held companies. These meetings are mandatory and are intended to approve the financial statements, the management accounts, the election of management and fiscal council members, and the distribution of dividends.

To make matters worse, Brazilian corporate law was very strict in relation to the location of general meetings. As a rule, attendance at the company's headquarters was mandatory. General meetings could only be held at a location other than the headquarters in case of *force majeure* (such as a pandemic), but they should still be held in person.

Given the importance of AGM for companies, the government correctly reformed, in 2020, Law 6404 (Corporations Law), the Civil Code, and the law of co-operatives to allow privately, and publicly listed companies, limited liability companies, and cooperatives to hold their general meetings in person or exclusively in a virtual or hybrid way (in other words, a combination of face-to-face and virtual).

The reform has proven to be successful, and many companies have adopted the hybrid or virtual format for their general meetings as, in addition to the lower cost, they enable greater shareholder participation.

Business Environment Improvement Law

The Business Environment Improvement Law (Law 14195/2021), enacted in 2021, brought relevant changes to entrepreneurship and corporate governance of Brazilian companies, including:

- **Starting a business.** According to the World Bank, in 2019 Brazil was in the 124th position (out of a total of 190 countries) in relation to the opening of new enterprises. The new law significantly reduced the bureaucracy for opening new businesses in Brazil by streamlining the organisation and making it easier to obtain licenses and permits for the operation of new entities.
- **Super-voting shares.** Until the enactment of Law 14195/2021, each share of a Brazilian company only conferred the right to one vote at general meetings. With the new law, publicly and privately held companies will be able to issue common shares of different classes and each share will give the right of up to ten votes (super-voting shares). However, some restrictions were created to avoid misalignment between the interests of shareholders, such as: publicly-held companies can only adopt super-voting shares before publicly trading their shares; qualified quorum for the issuance of multiple voting shares; a maximum period of seven years for the duration of the super-voting shares (extendable, subject to certain conditions); circumstance of automatic conversion of super-voting shares into shares without these rights (eg, voting agreement with shareholders who are not holders of shares with super-voting rights).

- **Appointment of officer residing abroad.** Another important change was the possibility of appointing individuals residing abroad as statutory officer, provided that such officers retain a local attorney-in-fact with powers to receive services of process in Brazil. Until then, only members of the board of directors could be non-resident individuals, while officers (who are in charge of the daily management of Brazilian companies) should be individuals residing in Brazil.
- **Separation of the CEO and the chairperson of the board of directors.** In the search for stronger corporate governance practices, the law expressly prohibits the chief executive officer from also holding the position of chairperson of the board of directors in publicly held companies. The Securities and Exchange Commission of Brazil (CVM) may exempt smaller publicly held companies (ie, with annual gross revenue of less than BRL500m) from complying with this rule.
- **Independent board members.** Publicly held companies must appoint independent board members to their boards of directors, in accordance with regulations to be issued by CVM.

Legal Framework for Startups and Innovative Entrepreneurship

Also in 2021, the Legal Framework for Startups and Innovative Entrepreneurship (Supplementary Law 182/2021) came into effect, bringing important innovations to Brazilian companies:

- **Officers.** Until June 2021, Brazilian corporations (sociedades por ações) should have, at least, two officers, which could represent a high cost for startups. With the Legal Framework of Startups, the minimum number of statutory officers was reduced to one member, who must be an individual, resident or not in Brazil (as authorised by Law 14195/2021).
- **Publication of corporate acts.** Privately held companies with annual gross revenue of up to BRL78m are now authorised to carry out the legal publications of their corporate acts electronically and free of charge on a government platform (dismissing publication on the Official Gazette and in a large-circulation newspaper), and replace its corporate books with mechanised or electronic records.
- **Access to the capital market by smaller companies.** CVM may regulate easier conditions for smaller companies to access the Brazilian capital market, and establish simplified procedures for issuer registration, public distribution of securities. Additionally, CVM may create special conditions or waive these companies with regard to the mandatory installation of a fiscal council at the

request of shareholders, intermediation of a financial institution in public distributions of securities, and distribution of mandatory dividends.

In 2021, Brazilian corporate law made great advances that favoured the opening of new businesses and strengthened corporate governance. We hope that, in 2022, the Brazilian capital market grows again with the new rules to be regulated by the CVM, despite the economic impact of the election of a new president in the same year.

 **LEGAL BRIEFING**