

## **Annual Quotaholders' Meetings or assemblies of limited liability companies (sociedades limitadas)**

Every year, the quotaholders of limited liability companies shall hold the annual quotaholders' meetings or assemblies, according to article 1,078 of the Brazilian Civil Code (Law 10,406/2002), to deliberate about (i) the accounts of the officers, the balance sheet and the profit and loss statement; and (ii) if applicable, the appointment of officers or other matters that can be inserted in the agenda.

Accordingly, the companies shall take the measures to convene and carry out the meetings or assemblies, as follows.

**1. Date/Time Limit.** The quotaholders meetings/assemblies for the yearly approval of financial statements must occur within the 4 months following the end of the fiscal year. Therefore, the limited liability companies whose fiscal year ends on December 31 shall hold the meeting/assembly until April 30 of the following year.

**2. Call Notice.** Limited liability companies that have 10 quotaholders or less must follow the call notice rules of their articles of association, if they contain provisions in that regard. On the other hand, the limited liability companies that have 10 quotaholders or less whose articles of association do not provide call notice rules and the limited liability companies that have more than 10 quotaholders must publish the call notice of the quotaholders' meeting/assembly at least 3 times, in accordance with article 1,152, 3rd paragraph, of the Brazilian Civil Code.

The formality of the call notice by means of publication is not mandatory when all the quotaholders attend the meeting/assembly or declare in writing their awareness of its place, date, time and agenda, as provided in article 1,072, 2nd paragraph, of the Brazilian Civil Code.

**3. Publication of the Financial Statements.** According to Deliberation 2 of March 25, 2015, issued by the Board of Trade of the State of São Paulo (JUCESP) companies and cooperatives considered as large-sized, under the terms of Law 11,638/2007<sup>1</sup>, must publish their balance sheet and financial statements of the latest fiscal year in a wide circulation newspaper in the place of its head-office and in the Official Gazette of the State, before the date scheduled for the quotaholders meeting/assembly.

Based on the referred to Deliberation, JUCESP has denied the registration of minutes of quotaholders meetings or assemblies for the approval of financial statements of large-sized limited liability companies which failed to previously publish their financial statements.

However, several companies and professional associations have succeeded in judicially challenging the legality of such requirement.

It must be emphasized that other state boards of trade issued rules similar to Deliberation 2, of March 25, 2015, issued by JUCESP, so it is important to verify the specific requirements of the relevant Board of Trade to register the corporate act of each company.

**4. Effects.** Except for err, willful misconduct or simulation, the approval of the financial statements without reservations releases the officers and, if it exists, the members of the finance committee from liabilities

Although there is no express legal provision imposing penalties for failure to perform the annual approval of the financial statements, the limited liability company that fails to perform it may be impeded or have difficulties to develop their activities, such as the obtaining of financing or credit lines, participation in

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public bidding procedures, remittance of dividends abroad, among others.

**Araújo e Policastro** remains at your disposal for any necessary clarification and to assist you in connection with the measures necessary to hold annual quotaholders' meetings or assemblies of 2019.

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<sup>1</sup> According to article 3<sup>rd</sup>, sole paragraph, of Law 11,638/2007, company or group of companies under the same control shall be considered as large-sized if, in the previous fiscal year, their total assets were higher than R\$ 240,000,000.00 or their annual gross revenue was higher than R\$ 300,000,000.00.