

## 2017 BRAZIL AGM SEASON PREVIEW

As the 2017 AGM season gets underway, we give an overview of the key issues facing Brazilian issuers and their investors. This document accompanies our Brazil 2017 Proxy Season Preview Podcast (see Appendix 1).

### CHANGING TIMES

The past few years have certainly been rocky in Brazil with a recession and escalating bribery scandals that ended with the impeachment of the president in 2016. Will Brazil turn a corner to a brighter tomorrow in 2017? While the answer to that question is still anybody's guess, institutional shareholders will find some comfort in reforms taking effect for the 2017 AGM season. Though certainly leaving something to be desired, a step in the right direction is very welcome.

### BOARD ELECTIONS

In Brazil, there are different types of board elections procedures which can be combined into the same meeting, often increasing investors' struggles – and misunderstandings – when exercising their respective rights:

1. *Slate elections*: all slate candidates will be appointed to the board, together (often resulting in reduced individual accountability).

In Brazil, directors will mostly be elected through slate elections (and, given that many Brazilian issuers are controlled, the outcome of board elections is mostly pre-established).

2. *Cumulative voting elections*: allows shareholders to concentrate their votes on a single candidate, or split his/her votes between all candidates.

Given the late nature of cumulative voting requests (petitions can be made up to 48 hours before the meeting date), it's highly unlikely that shareholders will know, in due time, whether cumulative voting has been requested or not.

3. *Individual elections*: Held, most commonly, for the appointment of minority and preferred shareholder representatives to the board.

Similarly to cumulative voting requests, information regarding these minority and preferred shareholder candidates is not always made available in a timely manner. Even when this information is released on time, before voting cut-off dates, additional candidates may be presented up to and during the meeting, preventing shareholders from making entirely informed decisions about the people who are specifically meant to represent their interests.

It's important to note that individual elections for minority and preferred shareholder representatives may always be combined with slate and cumulative voting procedures. However, cumulative voting and slate procedures are mutually exclusive. Moreover, shareholders only have the option to submit one vote for the slate presented by the controlling shareholder or the proposed minority/preferred representative.

### ***Instruction 561 & Changes for the 2017 Season***

Up until very recently, shareholders in Brazilian companies only had three options available to exercise voting rights:

1. *Be physically present* (at shareholder meetings to cast their votes);
2. *Vote by proxy* (have someone legally represent them with a specific power of attorney – a process entailing high administrative fees and complex bureaucratic proceedings); or, lastly,
3. *Remote electronic voting* (when this option was made available, and only in relation to specific proposals).

In light of the above, Instruction 561 was implemented aiming to make distance voting finally a reality for shareholders of Brazilian issuers. For upcoming annual meetings in 2017, electronic proxy voting will already be regulated under this instruction. The instruction establishes the mandatory creation of a *proxy card* through which shareholders can exercise their voting rights prior to meeting dates. However, the instruction also requires that the proxy card foresee all potential variables – all possible voting options for those voting by proxy must be included within the proxy card (even when those options aren't applicable to the meeting in question).

### ***What to Expect***

We've noticed a steady increase in the disclosure of minority and preferred shareholder representative nominees since 2014, and believe that 2017 will see a further increase. In fact, the proxy card established by Instruction 561 leads us to believe that information on these candidates will be released, in a timely manner, by more companies than ever this year.

Even though the proxy card has, in fact, created clearer voting options for shareholders voting by proxy, shareholders continue to have the right to request the adoption of cumulative voting up to 48 hours in advance of a general meeting and propose new candidates for election up to the meeting. Even though shareholders now have the option to request cumulative voting and to cast their votes cumulatively via the proxy form, most voting by proxy will typically not meet the minimum 5% ownership threshold required for their vote to count.

As a result of the mismatch between the proxy card and certain voting options, votes cast in favour of adopting cumulative voting will not be likely to count if the shareholder does not have a proxy physically present at the meeting in question. In cases where respective ownership thresholds aren't met, this scenario may also



occur with requests for the separate election of minority and preferred shareholder representatives.

Further, unless candidates' names are disclosed with enough time to be included within the proxy form, cumulative voting provides little advantages, in practice, to those who aren't planning to attend the meeting in person. Ultimately, shareholders who are looking to be more involved should have proxy representation present at meetings, or, alternatively, attend the meetings themselves.

## REMUNERATION

Brazilian executive remuneration practices are still a long way from North American and European standards.

Public companies are only required to get shareholder approval of the aggregate amount paid to executives, board and supervisory council members. Although the Brazilian CVM mandates the disclosure of the detailed remuneration plans in the *Formulário de Referência*, this information is still scarce and hardly ever rejected by shareholders.

The main concerns we find when it comes to dealing with Brazilian remuneration are the limited transparency, poor structures, and lack of performance-based equity awards. One of the main concerns we identify is companies making use of an injunction to not disclose the minimum, maximum and average executive remuneration amounts, as they are required to. Through this injunction, executives who are members of the Brazilian Institute for Finance Executives of Rio de Janeiro ("IBEF-RJ") are exempt from the obligation to disclose these amounts.

More examples of the concerns we find when dealing with Brazilian compensation are the lack of long-term performance plans, or even lack of any equity awards at all, no disclosure of performance targets for bonus payments, discounted awards, and short vesting periods.

### ***What to Expect***

International investors should know that anything can happen at a Brazilian shareholders' meeting. BR Malls Participações is a good example of this. At their 2016 annual shareholders' meeting, the aggregate compensation amount of R\$42 million proposed was rejected by 60.28% of the Company's shareholders, with a further 12.31% abstaining. Shareholder DYL Empreendimentos e Participações Ltda, present at the meeting, suggested a reduction of 7.5% of the variable part of the remuneration. The new amount was put to vote there and then, and was approved with 97 million votes in favor and around 207 million abstentions. As a result, the remuneration was approved with a mere 31% of the total voting shares and investors voting by proxy had no say at all on this new amount.

Finally, no changes in Brazilian remuneration best practices are to be expected for the upcoming season. While AMEC is trying to push for tougher regulations, companies seem happy to stick to the minimum required regarding disclosure and practices. Even the biggest international companies such as Banco Santander relax their standards in a clear step back from their European Standards.

## **APPENDIX 1**

The Proxy Season Preview Podcast accompanying this document may be found at <http://www.glasslewis.com/2017-brazil-season-preview/>.

### *Show Notes*

- Political turmoil fuels corporate governance reform. (1:12)
- Foreign investors' struggle to exercise their rights in board elections. (3:00)
- What Instruction 561 means for the 2017 AGM season. (5:47)
- Is the information provided to shareholders getting better? (8:40)
- How to make sure your votes are counted. (11:47)
- How Brazilian remuneration votes compare to other markets. (13:20)
- How issuers get around disclosure requirements. (14:40)
- Concerns about remuneration structures keep piling up. (15:55)
- Anything can happen at the AGM... (16:38)
- Is the information provided to shareholders getting better? Part 2. (18:35)
- Glass Lewis presents 2017 policy updates. (19:51)

## APPENDIX 2

Selected links from the Proxy Season Preview and Podcast.

*The following corporate governance statements, guidelines and instructions were referenced in the podcast.*

- Amec analyzes the coming into being of Instruction 561 (October 2015)  
<https://www.amecbrasil.org.br/en/the-ball-is-in-our-court/>
- Amec to convene special meeting on 2017 annual general meetings (February 2017)  
<https://www.amecbrasil.org.br/en/amec-to-hold-special-meeting-about-the-2017-general-shareholders-meetings-season/>
- BM&FBovespa alerts companies to adoption of proxy form (December 2016)  
[http://www.bmfbovespa.com.br/en\\_us/news/are-you-in-compliance-with-instruction-561-yet.htm](http://www.bmfbovespa.com.br/en_us/news/are-you-in-compliance-with-instruction-561-yet.htm)
- Amec expresses its opinion about the disclosure of management compensation and the shareholder list (February 2017)  
<https://www.amecbrasil.org.br/en/association-expresses-its-opinion-about-the-disclosure-of-management-compensation-and-the-shareholder-list/>
- Amec asks for transparency in management compensation (June 2015)  
<https://www.amecbrasil.org.br/en/amec-asks-for-transparency-in-management-compensation/>

*Further information on Glass Lewis.*

- Glass Lewis 2017 Policy Guidelines  
<http://www.glasslewis.com/guidelines/>
- Glass Lewis engagement policy  
<http://www.glasslewis.com/engagement-policy/>
- Meetyl engagement platform  
<https://meetyl.com/>