Memorandum

To: UN Global Compact
From: Mattos Filho Advogados
Date: October 31, 2014
Re: Legal Perspective on an Annual Board “Statement of Significant Audiences and Materiality”

This memorandum has been prepared and submitted upon request of the UN Global Compact, following the research template provided by the UN Global Compact, with the purpose of assisting on the analysis of the viability of an Annual Board “Statement of Significant Audiences and Materiality”.

The information contained in this memorandum is based solely on the laws and regulations of Brazil effective as of the date hereof and does not consider the laws or regulations of any other jurisdiction.

Setting the legal landscape

1. Briefly explain the broader legal landscape regarding the obligations that a company has to its stakeholders or with regard to its impact on stakeholders, and in particular whether its primary duty is or is not to shareholders over all other stakeholders.

Federal Law No. 10,406, of January 10, 2002 (the “Civil Code”) regulates the various types of legal entities in Brazil and is complemented by Federal Law No. 6.404, of December 15, 1976 (the “Brazilian Corporate Law”), which specifically governs the corporations (sociedades por ações). The limited liability company (sociedade limitada) and the corporation are the most commonly used legal entities in Brazil.

The duties of the members of the management of a Brazilian company are regulated by the Brazilian Corporate Law and are generally and primarily owed to the company itself (and not...
necessarily to its shareholders). They are required to act to cause the company to achieve its corporate purposes, always in the best interest of the company.

The Brazilian Corporate Law also provides for a requirement to satisfy the “public at large” and the “social role” of the company. Our view is that such concepts could be construed as to encompass not only a duty to the company itself (and its shareholders) but also to non-shareholders that could be impacted by the company’s activities, such as, for example, the company’s employees, third parties with business relationship with the company, the community in which the company’s activities are carried out, the environment and the society in general.

For more details, please refer to questions 7, 9, 10 and 11 below.

Regulatory Framework

2. To what legal tradition does the jurisdiction belong, i.e. civil/common law, mixed?

Brazil is a “Federative Republic” comprised of a federal government, twenty-six states, a Federal District that contains the country’s capital, Brasília, and municipalities. Brazil features a civil law system. Accordingly, and unlike the common law systems in which court decisions are a principal source of law, the Brazilian legal system is based upon codified law and not upon judicial precedents. Hence, with the exception of a very small number of appellate decisions that have general applicability, judicial decisions in Brazil are not binding precedents that must be followed by subsequent courts.

All members of the Federative Republic may issue laws within the limits established for each legislative authority by the Federal Constitution. The Federal Constitution provides that the Federal Government, the States, the Municipalities, and the Federal District cannot enact laws that are contrary to the Constitution. The most important codified laws are the Civil Code, the National Tax Code, the Criminal Code, the Consolidation of Labour Laws, the Code of Civil Procedure and the Code of Criminal Procedure.

3. Are corporate/securities laws regulated federally/nationally, provincially or both?

Corporate and securities laws, monetary, fiscal and trade policies are regulated and executed at the Federal level in Brazil and are complemented by other laws, decrees and regulations.
As mentioned in question 1, the Civil Code regulates the various types of legal entities in Brazil and is complemented by the Brazilian Corporate Law, which specifically governs the corporations and provides for corporate governance rules and rights and obligations of the shareholders.

Federal Law No. 6.385, of December 7, 1976 (the “Brazilian Securities Act”) created the Securities and Exchange Commission (Comissão de Valores Mobiliários – “CVM”) and is also the main statute that regulates the public offering of securities in Brazil. By enacting regulatory instructions, the CVM regulates, develops, controls and inspects the securities market. The main rule governing the registration of public offerings of securities in Brazil is CVM Rule No. 400, of December 29, 2003. Please refer to question 4 below for more information about the CVM and other important regulators.

4. Who are the government corporate/securities regulators and what are their respective powers (in summary only)?

There are two main government agencies charged with regulating the corporate and securities laws in Brazil: the National Monetary Council (Conselho Monetário Nacional – “CMN”) and the Central Bank of Brazil (Banco Central do Brasil – “BACEN”). In addition to these agencies, the CVM has a fundamental role in regulating and monitoring investor activities within the Brazilian capital markets, as well as publicly-held companies.

CMN is the highest decision-making body of the National Financial System, whose main functions are (i) to establish general guidelines for the monetary, exchange, and credit policies of Brazil; (ii) to regulate the incorporation, operation, and monitoring of Brazilian financial institutions, as well as to maintain the liquidity of the financial system; (iii) to coordinate public internal and external debt transactions; and (iv) to provide subsidies to certain economic sectors. Under CMN, there are commissions for the regulation and organization of the financial system, capital and financial markets, rural and industrial credits, and housing credits and public debts, among others.

BACEN is an autonomous federal institution and part of the National Financial System. The jurisdiction of BACEN derives from the Federal Constitution and includes (i) sole responsibility for issuing money; (ii) control over foreign exchange markets; (iii) execution of foreign exchange transactions on behalf of public sector enterprises and the National Treasury; and (iv) execution of rules established by CMN. Additionally, BACEN exercises a fundamental role in the oversight and regulation of transactions carried out by Brazilian financial institutions. Subject to the
provisions of the law, BACEN is permitted to issue regulations, setting forth procedures and rules for the exercise of its jurisdiction. The actions of BACEN are monitored and subject to inspection by CMN. The decisions made by BACEN in its administrative proceedings may also be appealed to the Council of Appeals of the National Financial System (“CRSFN”).

CVM is an autonomous federal institution linked to the Ministry of Finance, with the main functions of disciplining and regulating the Brazilian capital markets. For such purposes, CVM has wide powers over Brazilian public companies, including powers to demand information and documentation, to monitor bond and securities quotations, to issue binding instructions, resolutions and opinions for guidance, and to impose penalties and fines in the event of violations of laws or CVM rules. Also, the actions of CVM are monitored and subject to reexamination by CMN, and the decisions made by its Commission in CVM administrative proceedings may also be appealed to the CRSFN.

5. Does the jurisdiction have a stock exchange(s)?

Brazil currently has one stock exchange, located in São Paulo, BM&FBOVESPA S.A. - Bolsa de Valores, Mercadorias e Futuros (“BM&FBovespa”), which is a public-held company and was established as the result of the merger between Bovespa and BM&F in 2008. BM&FBovespa provides both central counterparty services as well as securities custody. It operates two lines of business: (a) the Bovespa Segment, that is the equity and equity-linked securities exchange and (ii) the BM&F Segment, that develops and operates systems for trading and settlement of securities and derivatives products based on interest rates, foreign exchange, equity and inflation indexes, financial indexes, commodities (including environmental commodities), energy prices and transportation and climate, for both immediate and future settlement.

BM&FBovespa is a diversified and integrated stock exchange which offers trading and post-trading services for issuers and investors in equity, equity-linked, fixed income and commodity trading, clearance and depository activity and ancillary services, including custody, listing, market data and securities lending.

Incorporation and listing

6. Do the concepts of “limited liability” and “separate legal personality” exist?
The concepts of separate legal personality and limited liability do exist under Brazilian law and are applicable to various types of legal entities that may be incorporated in Brazil, including the limited liability companies (sociedades limitadas) and the corporations (sociedades por ações) which are the most commonly used legal entities in Brazil. The limited liability company (known as a “limitada”) includes both features common to partnerships and features common to corporations, but is otherwise similar to English private limited companies and other types of European limited liability companies. The corporation (normally referred to as an “S.A.”) is broadly similar to a corporation organized under state law in the United States and a public limited company in England.

The Brazilian Civil Code created other types of legal entities which may not adopt the concept of limited liability (the sociedade simples would be one example). However, such legal entities are little used in Brazil, especially for business purposes, whether by residents or foreign investors, who generally prefer the corporate forms limitada and S.A., due to the limited liability feature for their owners. Therefore, we will not take such other legal entities into consideration for the purposes of this memorandum.

Generally, the “separate legal personality” concept means that the companies have a legal personality (and assets) that is separate from their owners. As a consequence, the assets of the company are not available for attachment by the personal creditors of the company’s owners.

The “limited liability” concept means that the owners of the companies are not personally liable for the companies’ debts. Therefore, limited liability protects the assets of the company’s owners from attachment by the company’s creditors.

Both in a corporation and a limited liability company the owners are liable up to the extent of their capital holdings, which means that after the capital stock is fully paid up the owners are not personally liable for the company’s obligations and are not required to make any additional capital contribution, even if the company is insolvent. However, in a limited liability company, until the company’s capital stock is fully paid up, owners are jointly and severally liable for the total amount of the unpaid capital.

Notwithstanding the existence of the concepts of “separate legal personality” and “limited liability” under Brazilian law, the corporate veil may be pierced, as to officers, directors and/or owners of a Brazilian entity, if (i) the company, and its assets, are used for the personal benefit or use of the owner(s); or (ii) the company constitutes a vehicle used for the achievement of
corporate purposes other than those provided for in their by-laws. In addition, bad management (either wilful or with negligence), combined with failure to comply with legal requirements and/or contractual provisions stated in the by-laws (such as failure to timely comply with the payment of taxes and/or labour duties) may result in the corporate veil being pierced and the personal assets of officers, directors and/or owners being seized for the benefit of company creditors.

The doctrine of piercing the corporate veil is available to general creditors of the insolvent or bankrupt company. In addition, certain creditors have additional protection under specific statutes and may take claims against officers, directors and/or owners with greater ease. Specifically, labour, consumer, tax and environmental claims are subject to special rules that magnify the exposure of officers, directors and/or owners.

7. Did incorporation or listing historically, or does it today, require any recognition by the company or its directors of a duty to society, an obligation to take account of the company’s social or environmental impacts, or to respect its stakeholders?

The duty to society can be construed as a result of the concept of the “social role”, which is present in the Brazilian legal system, especially in the Federal Constitution and the Civil Code.

The Federal Constitution sets forth the property as a fundamental right, associated however with the requirement of accomplishing its social role. The social role of the property is also a general principle of the economic activity under the Constitution. Following such constitutional principle, the Civil Code establishes that the “freedom to contract” shall be exercised within the limits of the social role of the contracts (i.e. not only the interests of the contracting parties but also the social purpose of the contract, the public interest).

The Brazilian Corporate Law imposes duties to the controlling shareholders and the members of the company’s management (i.e. the directors and officers). Such duties are generally and primarily owed to the company itself, but the social role of the company shall be observed when pursuing the company’s corporate purposes. As for the controlling shareholders, the Brazilian Corporate Law expressly indicates that they must use their controlling power in order to cause the company to achieve its corporate purposes and its social role, which duty is owed to the other shareholders and also to the employees and the community in which the company operates. As for the directors and officers, the Brazilian Corporate Law also indicates they shall
pursue the company’s corporate purposes, while satisfying the requirements of the public at large and the company’s social role.

Certain requirements in this regard can also be found in the regulation of the Brazilian Financial and Capital Markets Association (Associação Brasileira das Entidades dos Mercados Financeiro e de Capitais – “ANBIMA”), which must be observed by issuers and underwriters in the registration documents of public offerings.

ANBIMA is a self-regulatory entity that represents institutions operating in the Brazilian capital markets. ANBIMA’s Regulation and Best Practices Code for Affiliated Activities (Código ANBIMA de Regulação e Melhores Práticas para Atividades Conveniadas – the “ANBIMA Code”) regulates the performance of ANBIMA and its affiliated members (including those not formally affiliated but that expressly adhered to ANBIMA’s codes) in the registration process of public offerings in light of agreements entered by ANBIMA with public entities, including the CVM.

According to the ANBIMA Code, a public offering prospectus, in addition to the information required by capital market rules, shall also include (i) information regarding the issuer’s adhesion or non-adhesion, by any means, to international environmental protection standards, including specific reference to the adhesion instrument or document; (ii) information regarding the issuer’s policies on social responsibility, sponsorship and promotion of cultural events, as well as the main projects developed in these areas or in which it participates; and (iii) a specific section with detailed description of the corporate governance practices recommended by the Brazilian Corporate Governance Institute (Instituto Brasileiro de Governança Corporativa – “IBGC”) in accordance with its code of best corporate governance practices, indicating if the issuer or its controlling shareholder adopts or not these practices. In practice, the ANBIMA Code is followed in most (if not all) of registered public offerings in Brazil, since currently the underwriters participating in public offerings in Brazil are financial institutions affiliated with ANBIMA and subject to its rules and recommendations.

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1 IBGC is a nonprofit organization and the main reference in Brazil for the development of best practices in corporate governance. It has a certification program for Board of Directors’ and Inspection Committees’ members, which allows the participants to acquire more knowledge about a range of topics related to their performance within the companies. The directors and members of Inspection Committees who obtain the certification are included in the certified database of IBGC.
8. Do any stock exchanges have a responsible investment index, and is participation voluntary? (See e.g. FTSE4Good\(^2\), Dow Jones Sustainability Index\(^3\), the Johannesburg Stock Exchange’s Socially Responsible Investment Index\(^4\).)

BM&FBovespa currently has two responsible investment indexes: (i) *Índice de Sustentabilidade Empresarial* (Corporate Sustainability Index – “ISE”); and (ii) *Índice Carbono Eficiente* (Carbon Efficient Index– “ICO2”).

Similar to Dow Jones Sustainability and Johannesburg Stock Exchange’s Socially Responsible Investment Index, ISE, which was launched in 2005, establishes a comparative analysis of the performance of companies listed on BM&FBOVESPA from the perspective of corporate sustainability, based on economic efficiency, environmental balance, social justice and corporate governance. It also increases the understanding of businesses and groups committed to sustainability, differentiating them in terms of quality, level of commitment to sustainable development, justice, transparency, accountability, nature of the product, as well as business performance, at the economic, financial, social, environmental and climate changes levels.

In addition, taking into consideration the concern with global warming, BM&FBovespa and *Banco Nacional do Desenvolvimento Econômico e Social* (“BNDES”), in a joint initiative, developed ICO2 as a new market index. The ICO2 takes into account, for stock valuation purposes, the companies efficiency degree of greenhouse gases (“GHG”) emissions and its free float; it is composed by companies that are in the IBrX-50 index (consisting of the 50 most liquid securities of BM&FBOvespa) and have volunteered to join the ICO2 by adopting transparent practices with respect to their GHG emissions.

**Directors’ Duties**

9. To who are directors’ duties generally owed?

The management structure of a Brazilian company may vary depending on its corporate form. Generally, the same duties apply to the members of the company’s management, although their liability may vary in certain cases.


\(^3\) [http://www.sustainability-indices.com/](http://www.sustainability-indices.com/)

\(^4\) [https://www.jse.co.za/services/market-data/indices/socially-responsible-investment-index](https://www.jse.co.za/services/market-data/indices/socially-responsible-investment-index)
The limited liability company is managed by one or more officers elected by the owners of the company. The officers are responsible for the conduct of the corporate business and for the representation of the company in dealings with third parties. Their powers may be limited by the Articles of Association.

The corporation is managed by (i) a Board of Officers (Diretoria), a mandatory body which is responsible for the conduct of the corporate business and for the representation of the company in dealings with third parties; (ii) a Board of Directors (Conselho de Administração), an optional body for a private company and a mandatory body for a public company, which is responsible for establishing the general business and financial policies, electing and dismissing the officers and supervising their activities, examining the books, and generally overseeing the company’s activities; and (iii) an Inspection Committee (Conselho Fiscal), an optional management body, created to supervise the acts of the other management bodies, with powers to issue opinions, request documents and information, review financial reports, and even call general shareholders’ meetings, if the Board of Directors fails to do so. The Inspection Committee may be a permanent body of the company or may be temporarily created, by decision of the shareholders.

The duties of the officers, directors and members of the Inspection Committee of a Brazilian company are generally and primarily owed to the company itself (and not necessarily to its shareholders). Under Brazilian Corporate Law, however, officers and directors are required to comply with the provisions of shareholders’ agreements filed in the headquarters of the company. Thus, in certain cases and to the extent permitted under the applicable laws, an officer or director may be required to vote as instructed by the shareholder who appointed him/her, provided that it does not violate any of his/her legal duties as further described in question 10 below.

10. What are the duties owed by directors – please state briefly. Please indicate if there are express or implied duties to avoid damage to the company’s reputation?

The Brazilian Corporate Law and the Brazilian Civil Code establish specific duties applicable to the officers, directors and members of the Inspection Committee of Brazilian companies, such as:
(i) Article 153 of the Brazilian Corporate Law / Article 1.011 of the Brazilian Civil Code: to exercise his/her duties with care and diligence as any prudent and honest person would employ in dealing with his/her own businesses – it is expected such general duty to include the (a) duty to be skillful and professional; (b) duty to keep himself/herself informed about the company’s business; (c) duty to be vigilant about the company’s business; (d) duty of inquiring any potential issue that may affect the company; and (e) duty to act in case of any irregularity related to the company;

(ii) Article 154 of the Brazilian Corporate Law: to act within the powers conferred to him/her by law and by the by-laws in order to achieve the company’s corporate purposes, in the benefit of the company’s best interests, provided that the company satisfies the requirements of the public at large and the social role of the company;

(iii) Article 155 of the Brazilian Corporate Law: to exercise his/her duties with loyalty to the company and to keep confidentiality about the company’s businesses, including in relation to any information not disclosed to the public, obtained as a result of his/her position and which may influence the market price of the company’s securities;

(iv) Article 156 of the Brazilian Corporate Law: not to take part in any transaction in which he/she may have a conflict of interest. Note that even if the officer or director comply with such duty, he/she may only execute an agreement with the company in reasonable and equitable conditions (arms’ length basis), equal to those prevailing in the market or to those in which the company could enter into with third parties; and

(v) Article 157 of the Brazilian Corporate Law: to inform the number of shares, warrants (bônus de subscrição), call options, debentures or similar instruments which are convertible into shares issued by the company, by a controlled company or by a company of the same economic group owned by him/her.

There are no specific duties to avoid damage to the company’s reputation. However, it is our understanding that such duties would be encompassed by the duty of care and diligence and the duty to act in the benefit of the company’s interests, as provided for in Articles 153 and 154 of the Brazilian Corporate Law.

11. More generally, are directors required or permitted to consider the company’s impacts on non-shareholders, including impacts on the individuals and communities affected by the company’s operations? Is the answer the same
where the impacts occur outside the jurisdiction? Can or must directors consider such impacts by subsidiaries, suppliers and other business partners, whether occurring inside or outside the jurisdiction? (See e.g. s. 172 UK Companies Act 2006, and in particular, ss.(1))?

First, it is important to highlight that Brazilian law does not provide for such a detailed rule as Section 172 of the UK Companies Act 2006. However, it is possible to have Article 154 of the Brazilian Corporate Law construed in a similar context.

Article 154 sets forth that officers and/or directors shall act within the powers conferred to him/her by law and by the by-laws in order to achieve the company’s corporate purposes, in the benefit of the company’s best interests, provided that the company satisfies the requirements of the public at large and the social role of the company. According to certain scholars, the achievement of the corporate purposes in benefit of the company’s best interest would be their primary and prevailing duty; however such duty should be pursued with the least possible burden to the community – that is the concept behind the terms “public at large” and “social role of the company”.

Based on the above and despite the lack of specific definition, it is our view that Article 154 of the Brazilian Corporate Law (and more specifically, the terms “public at large” and “social role of the company”) could be construed to encompass not only the company itself (and its shareholders) but also non-shareholders that could be impacted by the company’s activities, such as, for example, the company’s employees, third parties with business relationship with the company, the community in which the company’s activities are carried out, the environment and the society in general. No distinction is provided based on jurisdiction. Brazilian courts are competent to receive and decide upon a matter (and therefore to apply the Brazilian Corporate Law) whenever the defendant is domiciled in Brazil or the claim arises from a fact occurred or an act performed in Brazil, regardless of whether or not the impacts of such fact or act occurred in Brazil (pursuant to Article 88, item I, of Law No. 5,869/1973, the Brazilian Civil Procedure Code).

12. If directors are required or permitted to consider impacts on non-shareholders to what extent do they have discretion in determining how to balance different

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5 http://www.legislation.gov.uk/ukpga/2006/46/section/172
factors including such impacts? What, additional liabilities, if any, do the board or individual directors assume in exercising such discretion?

Please refer to question 11 above.

Notwithstanding any possible interpretation for the concepts of “public at large” and “social role of the company” (as detailed above), there are no rules establishing the extent of the officers’ and/or directors’ discretion in determining how to balance the different factors within his/her duty (i.e. to achieve the company’s corporate purposes, in benefit of the company’s best interest, observing the requirements of the public at large and the social role of the company).

13. What are the legal consequences for failing to fulfil any duties described above; and who may take action to initiate them? What defenses are available? Can these issues given rise to other causes of action or regulatory routes whereby a stakeholder can exert pressure on a company with regard to its actions?

The officers and/or directors of a Brazilian company shall be held liable for damages or losses incurred by the company as a result of (i) acts within their duties, performed with negligence, fault or deliberately fraudulent conduct; or (ii) acts which violate any provision set forth in the by-laws of the company or in the Brazilian law (which would include the duties mentioned in question 10 above).

However, the officers and/or directors of a Brazilian company shall not be personally liable for any obligations that are assumed on behalf of the company in the normal course of business and within their powers.

In addition, please note that an officer and/or director shall not be liable for acts performed by other officers and/or directors, except (i) if such officer or director is conniving with such act; (ii) if such officer or director acts negligently at detecting the other officer or director’s practice; or (iii) if such officer or director does not try to prevent such other officer or director act. In order not to be held liable, the officer and/or director must disagree in writing with the acts of the other officers or directors, by demanding that such disagreement is registered in the minutes of the relevant meeting or, if this is not possible, by immediately informing the competent management body, the inspection committee or the shareholders about such disagreement.

In the event of any officer or director being held liable as mentioned above, the company may file a lawsuit against such officer or director for the losses and damages incurred by the
company. The filing of such lawsuit shall be previously approved by the shareholders’ meeting of the company. In the event the lawsuit is approved by the shareholders’ meeting but not filed by the company within three (3) months from the date of the approval, any shareholder may be entitled to bring such claim. Further, in the event the filing of the lawsuit is not approved by the shareholders’ meeting, then any shareholders representing five per cent (5%) of the company’s capital stock may bring such claim.

Also, an officer or director incurring in liability as mentioned above could give grounds to any shareholder or any third party to file a lawsuit against such officer or director for direct losses and damages suffered by the shareholder or third party.

Finally, it is important to mention the possibility of such officer or director to be held criminally liable, for example, in the event of (a) disclosure of false information regarding the financial condition of the company; (b) promotion of false quotation of the securities issued by the company; (c) insider trading; (d) fraud in the distribution of dividends; (e) market manipulation; (f) irregular exercise of its position in the capital markets.

14. Are there any other directors’ duties which are relevant to the interests of stakeholders?

In addition to the duties mentioned herein, there are no other duties of the officers and/or directors of a Brazilian company that could be material for the interest of the stakeholders of the company. Please refer to questions 9-13 for more details.

15. For all of the above, if these exist in your jurisdiction, does the law provide guidance about the role of supervisory boards in cases of two tier board structures. What obligations are owed by senior management who are not board directors? Is this determined by law if no specific contractual provision applies?

The structure of two tier board does not exist in Brazil. Please refer to question 9 for more details regarding the management structure of the Brazilian limited liability company and the Brazilian corporation.

The duties which are applicable to the officers (which are senior managers but not necessarily members of the Board of Directors) are the same duties mentioned in question 10 above (articles 153 to 157 of the Brazilian Corporate Law).
Reporting

16. Are companies required or permitted to disclose the impacts of their operations (including stakeholder impacts) on non-shareholders, as well as any action taken or intended to address those impacts? Is this required as part of financial reporting obligations or pursuant to a separate reporting regime? Please specify for each reporting route whether it is mandatory or voluntary. Please describe any mandatory reporting requirement, major voluntary initiative or trend towards voluntary reporting with regard to transparency (for example, payments to government or state-owned entities, reports on government orders to undertake surveillance or interception, reports on tax payments etc.).

There are both mandatory and voluntary disclosures of information by companies in Brazil and such requirements may vary for each different type of companies (i.e., limited liability companies or corporations, publicly or privately-held) and the applicable regulatory framework (i.e., companies with activities in a regulated sector such as financial institutions).

Corporations, for example, publicly or privately-held, are required to disclose by filing with the relevant Companies Registry (Junta Comercial) and publication in the local newspaper, annual financial statements, minutes of shareholders’ meetings and minutes of Board of Directors’ and Board of Officers’ meetings, in the latter case which contain resolutions with effects on third parties. In addition, publicly-held corporations (which are registered with the CVM) are subject to other specific rules regarding disclosure.

The reporting regulatory framework applicable to publicly-held corporations is set forth in CVM Rule No. 358 of January 3, 2002 ("CVM Rule 358") and CVM Rule No. 480 of December 7, 2009 ("CVM Rule 480").

According to the terms of CVM Rule 358, publicly-held companies are subject to mandatory disclosure of all information regarding decisions made by the company’s management or actions approved in a shareholders meeting, as well as any political, technical, economic or financial fact that could materially affect the company’s stock price, or the investors’ decision to buy, sell or maintain its securities. CVM Rule 358 also provides examples of material information, which include (i) the execution of any agreement related to the transfer of the company’s control; (ii) the change of control as a result of the execution, amendment or termination of a shareholders’ agreement; (iii) the decision to cancel the company’s registration as a public-held company; (iv)
the merger, amalgamation, or spin-off involving the company or related companies; (v) the transformation or dissolution of the company; (vi) any debts renegotiation; and (vii) the modification of disclosed projections.

The Investors Relations Executive Officer is responsible for the disclosure of relevant information pursuant to CVM Rule 358. Accordingly, shareholders, members of the board of directors and inspection committee or any other body with technical or advisory duties in the company shall report any act or fact that they become aware of to the Investors Relations Executive Officer, who shall carry out its proper disclosure.

Pursuant to the Brazilian Corporate Law, duties related to disclosure of information are not restricted to the Investors Relations Executive Officer. In the event that the Investors Relations Executive Officer fails to do so, all executive officers, members of the board of directors and committees are required to notify the CVM, BM&FBovespa and to disclose through the media any decision taken at a board of directors’ meeting or shareholders’ meeting or the occurrence of any fact related to the company’s business, in each case that may affect the investors’ decision to buy or sell securities issued by the company.

Under CVM Rule 480, CVM also requires public-held companies to file annually a form named Formulário de Referência (similar to the Form S-1 disclosed by publicly-held companies in the United States), containing information such as risk factors, economic and financial data, pending actions and claims, management discussion and analysis of the financial results, corporate governance policies and practices to related parties’ transactions.

The mandatory disclosure, as provided by CVM Rule 358 and CVM Rule 480, aims primarily at the transparency and full disclosure to shareholders of information with material impacts on shareholders and the company itself, but impacts on stakeholders may be considered secondarily.

In addition, CVM publishes each year an official letter with guidelines for companies to fill their Formulário de Referência. One of CVM’s recommendations is to describe material long-term relationships of the company, including social-environmental responsibility policies, agreements with governmental entities and communities, sustainability practices, cultural sponsorship and incentives, and any other major projects developed by the company in these fields.

BM&FBovespa has created an investor relations guide, which determines certain disclosure policies and standards of corporate governance practices. The main purpose of BM&FBovespa
with this initiative is to highlight to directors and officers of publicly-held companies the importance of strategic management involving the disclosure of information and corporate perspectives, which increases the protection of stakeholders. Non-financial factors (such as corporate governance, public reputation, brand, intellectual capital, leadership, social and environmental responsibility, transparency, communication, innovation) have a direct influence on the valuation of companies. In line with this initiative, BM&FBovespa has created listing levels, which are voluntary, with specific rules regarding disclosure of information and corporate governance in addition to the legal requirements: (i) Bovespa Mais; (ii) Nível 1; (iii) Nível 2; and (iv) Novo Mercado.

Other mandatory requirements may apply to companies within a regulated sector. Financial institutions (which are registered with BACEN), for example, are also required to have a Policy of Social and Environmental Responsibility (Política de Responsabilidade Socioambiental – “PRSA”), under the terms of BACEN Rule 4,327 of April 25, 2014 (“BACEN Rule 4327”). The PRSA requires that financial institutions follow standards regarding their exposure to environmental and social risks related to their activities, as well as the proportionality of the PRSA and the nature of the financial institution itself. PRSA requires these companies to adopt an action plan, in order to implement the necessary changes in the institutions’ routine, actions and decision making process regarding the alignment with the PRSA’s rules.

Companies may also disclose voluntary information in the form of public announcements (Comunicados ao Mercado – “Public Announcements”) or other additional reports. Public announcements may contain any information that is not subject to mandatory disclosure (as described above) and that the companies decide to make public. Additional reports or non-mandatory information disclosure might be biased to some extent, since the companies freely determine its content. For instance, companies are inclined to include in their sustainability reports only positive information regarding companies’ environmental practices.

17. Do legal reporting obligations extend to such impacts outside the jurisdiction; to the impacts of subsidiaries, suppliers and other business partners, whether occurring inside or outside the jurisdiction?

The reporting obligations imposed on companies and described in question 16 above, especially those applicable to publicly-held companies, are mainly related to information deemed material to the companies themselves and/or their investors, and may include information on
subsidiaries, suppliers and other business partners in a jurisdiction outside of Brazil if the materiality threshold is met.

18. Who must verify these reports; who can access reports; and what are the legal or regulatory consequences of failing to report or misrepresentation? Is there a regulator tasked with investigating complaints of misreporting?

Reports prepared by public-held companies are verified by the CVM and shall be made available to the public in general, both at the CVM’s and the company’s website. In certain cases publication in local newspaper is also required.

Failure to report and/or a misrepresentation are considered a breach subject to administrative proceedings. According to the Brazilian Securities Act, the CVM is the governmental entity responsible for the supervision of public-held companies, including the disclosure of information, and may act either at its sole discretion or under investors’ complaints, when investigating misreporting.

The penalties that may be imposed in such inquiries are: warnings, fines, suspension from duties, temporary disqualification and suspension or revocation of the authorization to operate or of the registration with CVM.

It is important to mention that the CVM has the responsibility to report to the Public Attorney’s Office evidence of the occurrence of criminal offenses and to the Internal Revenue Service evidence of tax evasion in the course of an investigation of a misrepresentation or a failure to report relevant mandatory information.

19. What is the external assurance regime for reporting on a company’s impacts on stakeholders? Please specify any mandatory requirements and also where reporting is voluntary what the current market practice is as regards third party assurance. Please summarise any regulatory guidance on reporting that relates to impacts on non-shareholder stakeholders.

There are no requirements in connection with external assurance regime for reporting on companies’ impacts on stakeholders. Nevertheless, companies may choose to assess a third party opinion in order to look up to a performance improvement and competitiveness increase. Rating agencies, for instance, usually play this role on evaluating the company’s financial statements, debt ratio, image, and impacts on stakeholders.
Moreover, rating agencies are subject to CVM Rule 521 of April 25, 2012 ("CVM Rule 521"), which specifies certain requirements for voluntary rating reports, such as the responsibility for the report, the sources that were used, the methodology and main elements of the analysis, and in the case that there are conflicts of interest, the information on which the analysis was based on and the level of diligence.

Rating agencies have also specific requirements regarding their internal procedures, which include the enactment of an ethics code, Chinese wall between the group in charge of the rating and the employees preparing the information to be provided specially for rating agencies, among other duties related to their compliance with the code of conduct fundamentals for credit rating agencies of the international organization of securities commissions.

**Stakeholder engagement**

20. **Are there any restrictions on circulating shareholder proposals which deal with impacts on non-shareholders, including stakeholder impacts?**

Under the Brazilian Corporate Law, shareholders convened in general meetings have the authority to decide on all matters related to the company’s corporate purposes and to take measures deemed necessary for the protection and development of the company.

Accordingly, the company’s directors have the authority to present proposals and convene shareholders’ meetings (such proposals may be subject to review by the inspection committee depending on the topic to be discussed, as determined by the Brazilian Corporate Law, and the committee’s opinion on such proposals will be presented to the shareholders).

In addition, any shareholder (or group of shareholders) holding at least 5% of the company’s capital stock may request to the company’s directors the convening of a shareholders’ meeting to resolve on any matter in connection with the company’s corporate purposes. If the meeting is not called by the directors within eight (8) days from the shareholders’ request, the same shareholders are allowed to convene themselves such meeting. Even though there are no restrictions on the topics suggested for discussion and voting, the reason for calling a shareholders’ meeting shall be justified by the shareholders requesting such meeting and they shall submit an agenda of the issues to be discussed.
In this respect, CVM Rule 481 of December 17, 2009 provides that a company shall make available for all the shareholders any information and documents that are necessary or material for the exercise of their voting rights in a shareholders’ meeting.

21. Are institutional investors, including pension funds, required or permitted to consider such impacts in their investment decisions? What is legal duty that pension funds owe with regard to investment decisions in this regard? How does the legal duty of the fund align with term and contractual performance criteria of fund managers – does this facilitate or deter consideration of such impacts?

Even though there is no legal requirement in Brazil related to institutional investors’ decisions, such investors are permitted to consider all information they believe is relevant to their investment decision. Furthermore, investors in general are advised by the CVM to access all documents made public, whether due to mandatory disclosures or in the context of a public offering of securities.

Despite not having a legal requirement to consider impacts on non-shareholders, many institutional investors opt to do so to comply with best governance practices and improve their reputation and image. For instance, a number of pension funds became signatories of the Principles for Responsible Investment (“PRI”) of the United Nations Environment Programme Finance Initiative (“UNEP FI”) to implement environmental, social and governance factors into investors’ decision making process, and of the Carbon Disclosure Project (“CDP”), related to global warming.

The adoption of PRI and CDP are examples of voluntary decision to consider impacts on non-shareholders. On the other hand, because those disclosures are voluntary, rating agencies are not able to assure the validity of the information disclosed by the invested companies.

Another example of investors considering impacts on non-shareholders is the environmental and social responsibility clauses in the BNDES financial agreements and other projects. BNDES formally requires that all parties to their agreements comply with environmental practices, restriction on child labour and slavery; which shall be observed by investors when considering their investment decision.

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6 Source: http://www.unpri.org/
7 UNEP FI is a global partnership between UNEP and the financial sector. Over 200 institutions, including banks, insurers and fund managers, work with UNEP to understand the impacts of environmental and social considerations on financial performance. (source: http://www.unepfi.org/)
22. Can non-shareholders address companies’ annual general meeting? What is the minimum shareholding required for a shareholder to raise a question at a company’s AGM?

Only shareholders (or their legal representatives) can attend a general shareholders’ meeting. In any general shareholders’ meeting (annual or extraordinary), the shareholders can be represented by an attorney-in-fact (i) appointed no longer than one (1) year prior to the general shareholders’ meeting date; (ii) who is also a shareholder, or a member of the management of the company or an attorney.

An amendment to the Brazilian Corporate Law was enacted in 2011 to allow shareholders to attend and vote at general meetings remotely (i.e., not being physically present). Such rule is applicable only to public companies and its implementation is subject to further regulation by the CVM. In this context, CVM recently submitted to public hearing the Notice of Hearing SDM No. 9/2014 in order to discuss some practical alternatives to implement the recent amendments to the Brazilian Corporate Law, taking into consideration the experience in other countries, the regulatory framework, the technologies available in the market and the convenience of shareholders (especially the non-resident investors). Depending on the outcome of such Notice of Hearing, the remote attendance and voting by shareholders of public companies can become an alternative to be adopted by the companies.

There is no minimum shareholding required to raise questions at the general shareholders’ meeting, however only those matters included in the agenda can be discussed and resolved by the shareholders’ meeting.

23. Are there any other laws, policies, codes or guidelines or standards applied in the context of particular contractual relationships (for example project finance) or through adherence to particular sustainability principles (for example the UN Global Compact, the OECD Guidelines for Multinational Enterprises etc.), related to corporate governance that might encourage companies to consider in a structured way their impacts upon and the interests of their wider stakeholders including through a stakeholder engagement process?

As described in question 21 above, an example of standards applied in the context of particular contractual relationships is the inclusion of the environmental and social responsibility clauses imposed by BNDES in all the financial agreements and other projects to which it is a party. There is also the recommendation of the adoption of sustainability principles as set forth in
IBGC’s Code of Best Practices for Corporate Governance explained in question 7 above. Another non biding initiative is the BACEN’s Policy of Social and Environmental Responsibility mentioned in question 16 above.

Additionally, the Brazilian Association of Public-Held Companies (Associação Brasileira das Companhias Abertas – “ABRASCA”) issued the ABRASCA Code of Good Corporate Governance and Practices for Publicly-Held Companies (the “ABRASCA Code”), which establishes principles, rules and recommendations with the purpose of contributing to the improvement of corporate governance practices in order to increase investors’ confidence, to facilitate access to the capital markets and to reduce capital cost, encouraging the adoption of sustainability principles by Brazilian publicly-held companies. Currently, over one hundred public-held companies are affiliated with ABRASCA and adopt its code’s recommendations.

The ABRASCA Code adopts the “apply or explain” model, giving flexibility for the affiliated companies to choose not to apply one or more rules set in such code, provided that the company explains the reasons for that decision. ABRASCA states that this flexibility is necessary because not always “one size fits all” companies and the adoption of good corporate governance practices depends on the degree of maturity, the cycle of existence, the structure of corporate control and other particular circumstances of each company; the ABRASCA Code also includes recommendations for governance practices that, given the current stage of corporate governance in Brazil, have not been adopted at a sufficient level to be established as rules.

One of the principles stated in the ABRASCA Code is the ethical, transparent and equitable relationship with stakeholders. The code recommends that the company’s management discloses periodical reports about the activities of the company that are relevant for the stakeholders (which they call “interested parties”), including information such as operating performance, corporate governance, social and environmental initiatives and investments, relationship with the community in which the company’s activities are carried out.

24. Are there any laws requiring representation of particular stakeholder constituencies (i.e. employees, representatives of affected communities) on company boards?

The Brazilian Corporate Law does not require representation of particular constituencies on the Board of Directors. It is possible, however, for the by-laws to establish employees’ representation on the Board of Directors, appointed by the direct vote of the employees of the company, in an election organized by the company together with the relevant employees’ union.
25. Are there any laws requiring gender, racial/ethnic, religious or other stakeholder representation; or non-discrimination generally, on company boards?

There are no laws in Brazil requiring gender, racial/ethnic, religious or other stakeholder representation on company boards.

The Brazilian Senate is currently discussing the enactment of a law (Project of Law No. 112/2010) that would establish that certain companies which are controlled by the State (such as empresas públicas and sociedades de economia mista) shall have their Board of Directors composed by at least forty per cent (40%) of women until 2022. It is still uncertain when such Project of Law will be submitted to the approval by the National Congress.

The IBGC also stimulates the increase of the participation of women in the company’s boards by means of its Code of Best Practice of Corporate Governance and Recommendation Letters. However, IBGC has already stated its position against the approval of the Project of Law No. 112/2010.

In addition, it is important to highlight that the Federal Constitution has certain anti-discrimination provisions, establishing, for example, that all individuals are equally treated by the law, without distinction of any nature, and that men and women have the same rights and obligations under the Constitution. Racism is classified as a non-bailable crime, which can be claimed without any limitation of time. Accordingly, discrimination of any person because of its race, ethnic, religion, origin, age or physical condition is considered a crime under the Brazilian Criminal Code.

26. In your jurisdiction is there any legal route whereby a parent company can incur liability with regard to the impacts that one of its subsidiaries has had on stakeholder groups? Are there any serious proposals to impose such responsibility?

The parent company could incur liability in the event damages are caused to other shareholders or third parties as a result of an abuse of its controlling power, pursuant to Article 117 of the Brazilian Corporate Law.

The Brazilian Corporate Law provides for a list of acts deemed as being abuse of the controlling power, which includes to cause the company not to conduct the business in accordance with its corporate purposes, to favour a third party to the detriment of the minority shareholders, to obtain undue advantage, to issue securities intended to cause damage to minority shareholders,
to appoint an officer or director unqualified or known to be unfit for the position and to induce an officer or director to perform any unlawful act or contrary to its duties, the law, the by-laws or the best interest of the company.

It is important to highlight that the Brazilian Corporate Law establishes in its Article 116, sole paragraph, the duty of the controlling shareholders of using its controlling power in order to make the company achieve its corporate purposes and social role. The controlling shareholder owes its duties not only to the other shareholders of the company, but also to the employees and the community in which the company operates.

27. Are you aware of any incoming law or proposals that are relevant to the issues raised in this questionnaire? If so please describe, providing an indication of the anticipated date the legislation will come into force or be adopted.

In addition to those incoming law or proposals mentioned in the questions above, the Brazilian Chamber of Deputies is currently discussing the enactment of a new Brazilian Commercial Code (Project of Law No. 1572/2011). Such proposed Brazilian Commercial Code would give even more strength to the concept of the “social role” of the company mentioned in the questions above, since it establishes that a company complies with its social role when (a) the company generates employment, taxes and wealth, (b) the company contributes to the economic, social and cultural development of the community, region or country where it operates and (c) the company adopts sustainable measures to protect the environment and its consumers. It is still uncertain when such Project of Law will be submitted to the approval by the National Congress.

We are not aware of any incoming law or proposals that are relevant to the matters discussed in this Memorandum other than those mentioned in this Memorandum.