

New initiatives for containing governance crisis in State-owned companies

By way of Interministerial Commission of Governance and Administration of Corporate Participations (CGPAR) Resolutions SE/CGPAR No. 5, No. 6 and No. 7, published on September 29, 2015, the Brazilian Federal Government established new regulatory requirements for improving State-owned company governance.

These new requirements address two lines of action:

1. *transparency and internal controls* – broadening the requirements for disclosure of relevant information and strengthening the oversight activities of the fiscal council;
2. *administrative transparency* – obligating official website publication of specific company information¹, in addition to annual financial statement publication with fiscal council and independent auditor assessment.

Among the new rules, State-owned companies must maintain financial statements and corresponding documents as available on their official websites for at least five years, with updates as required. Said companies must also provide via their official website a “service channel” for investors, employees, suppliers, customers, users and society in general for suggestions, complaints and comments as to company activities. All federal State-owned companies must submit annual financial statements to independent auditors and State-owned as well as Semi-public companies must adopt annual work plans for their audit committees. Further, said companies must implement annual self-assessment of audit committee performance based on the execution of the work plan.

These rules aim to ensure that Public and Semi-public companies apply the constitutional principles inherent to public administration, principally those of morality, publicity and efficiency, as per Article 37 of the Federal Constitution. These new initiatives also go beyond what is established by Brazilian Corporate Law, with the additional requirements of transparency and expanded review capability for minority shareholders and the community.

These new rules should improve corporate governance in Brazil. The challenge remains, however, as to the effectiveness of their enforcement.

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¹ According to SE/CGPAR Resolution No. 5, Article 1, the following information must be disclosed: (i) the act or law of creation of the company; (ii) the company's bylaws; (iii) statement of the company's mission, principles and values; (iv) statement of the company's code of ethics; (v) statement of the company's capital structure; (vi) statement of the composition of the company's executive board; (vii) statement of the composition of the company's board of directors and audit committee; (viii) excerpt of the company's general meeting minutes, if applicable; (ix) annual financial statements as required from publicly-held companies, together with audit committee and independent auditor assessments; (x) annual administration reports; (xi) quarterly financial statements; (xii) balance sheets, if applicable; (xiii) material facts communicated to the market, when applicable; (xiv) summarized professional resumes of the members of the administrative and fiscal corporate bodies.