

AMEC/President Letter 08/2020

São Paulo, September 21, 2020

Your Honor
Mr. MARCELO SANTOS BARBOSA
Chairman of the Brazilian Securities Commission - CVM

CC: Office of the Superintendent of Market Development - SDM

Re: CONSIDERATIONS ABOUT THE PROPOSAL ON THE IMPLEMENTATION OF THE SUPER-VOTING SHARES STRUCTURE IN THE LAW 6,404/1976- INICIATIVA MERCADO DE CAPITAIS - IMK (CAPITAL MARKET INITIATIVE WORKING GROUP)

Dear Sir,

The Association of Capital Market Investors (Amec) is a non-profit association created in 2006 that gathers around 60 institutional investors, among which asset management firms and pension funds, based in Brazil and abroad, with more than BRL 700 billion in assets under management.

As part of its activities, Amec works on the defense of non-controlling shareholders in publicly-held companies and seeks to interact with governmental authorities and regulatory and self-regulatory agencies with a view to improving the standards, rules of conduct and procedures for the development of the capital markets and promoting actions to encourage good corporate governance practices.

With respect to the ongoing debate on the amendment to the Corporate Law to allow super-voting shares, Amec would like to express its concerns about the risks such change would pose to the dynamics of the Brazilian capital market. In our view, the potential gains arising from it

will have short-term effects but cause harmful and irreparable consequences in the long term, incurring systemic risks in the Governance area.

International Context and Race to the Bottom

In recent years, the debate on Super-Voting Shares, called "*Voto Plural*" in the Brazilian legal system, has gained relevance in several jurisdictions, especially due to the emergence of new tech companies. On one hand, these companies demand capital to accelerate the necessary investments, but due to the nature of the businesses, their founding partners do not seem interested in sharing control when it comes to strategic decisions.

Despite the arguments that the super-voting share structure would increase the companies' interest in choosing the jurisdiction to list in IPOs, many argue that the preference for listing in other markets, especially the US market, is more related to valuation and liquidity aspects than to the flexibility brought by the super-voting shares.

We recognize the need to drive the competitiveness of the Brazilian capital market to promote its development, but when we look at the risks and opportunities, it seems the balance tilts towards the former if dual-class voting structures or other forms that discriminate shareholders are adopted.

We believe that the consequences of a poorly structured competitive environment regarding regulations in diverse global markets can lead to a regulatory "race to the bottom" that will undermine the resilience of the Brazilian capital market, its reputation, and the quality of its corporate governance.

In the jurisdictions where the issue has been debated, institutional investors were against super-voting shares and advocated for the "one-share, one-vote" principle. This view results from the need of having balanced political and economic powers that complement each other and provide crucial counterweights in the face of potential divergencies inherent to the businesses.

These concerns have prompted several stock exchanges around the world to debate the issue. Some countries, such as Japan, Hong Kong, Singapore, and India, have even changed their listing rules and created robust safeguards to ensure high governance standards in listed companies, mitigate the possibility of entrenchment of controlling shareholders and reduce the risk of expropriation associated with this ownership structure.

The Brazilian Experience: *Novo Mercado* and the Enforcement Framework

It is important to recognize that Brazil has long lived with several classes of shares. Our corporate law allows corporations to issue up to half of their capital stock in non-voting shares, the so-called Preferred Shares (PN). This limit was lowered in 2001, when the law allowed that up to two third of shares were non-voting shares.

Although there are companies that apply high governance standards with more than one class of shares, it is important to mention the numerous cases of corporate scandals in companies with differentiated voting structures.

In such cases, as a general rule, Amec's experience reveals that many shareholders are harmed and cannot rely on protection mechanisms that are common in other countries. It should be recognized that the Brazilian legal and regulatory framework is not fast enough to dissuade and punish eventual excesses, and that the resources to intensify the enforcement in administrative sanctioning processes are limited.

In 2001, as an alternative way to minimize these imbalances, institutional investors joined forces and coordinated to create the *Novo Mercado* segment in the Brazilian stock market: companies listed in this segment must meet Brazil's highest levels of corporate governance. Since then, a significant number of the IPOs undertaken in Brazil have been in this segment, which has gradually improved the quality of corporate governance in the country.

One of the listing requirements in the *Novo Mercado* segment is that the holder of one share is entitled to one vote, meaning that companies can have only ordinary (voting) shares (ON). This is internationally known as the "one-share, one-vote" principle.

However, even considering the advancements achieved, we cannot state that our market is mature enough to allow more daring ownership structures.

The “One-Share, One-Vote” Principle and the Stewardship Culture

Amec has long defended the one-share, one-vote policy. This has become increasingly important as the global debate about the topic caused local repercussions, such as during the reform of *Novo Mercado* (2017) and the revision of the Code of Best Practice of Corporate Governance of IBGC – the Brazilian Institute of Corporate Governance (2016), among other events.

Although it does not include B3’s special governance segments, the flexibilization proposed may threaten this hegemony. The structure facilitates an unprecedented governance situation in Brazil: a security with the same return rights that does not provide its holders with the same political rights.

We highlight that the advancements in corporate governance practices achieved during almost two decades can be lost and put the credibility of the Brazilian capital market at risk, with the intended change to serve the interests of a small group of businessmen.

In Brazil, there is an aggravating factor: the relationship between companies and investors is still under construction. In 2016, AMEC launched the Amec Stewardship Code and, since then, its signatories - fund managers and pension funds – have started to seek more engagement and participation in invested companies. However, stewardship principles are not incorporated into the laws yet or B3’s listing rules.

In Europe, stakeholder engagement is very prevalent and engagement policies are very advanced. In the USA, where the activism usually takes the judicial road, the market has been understanding that stewardship costs are lower via the engagement between companies and shareholders.

Institutional Position and Additional Safeguards

Considering the above and the high risks of the structure proposed, Amec is against the adoption of a super-voting share structure policy in the Brazilian capital market. However, if the proposal is eventually approved, we understand it should be implemented in conjunction with robust safeguards, especially considering the characteristics of our legal and regulatory framework and all the above-mentioned risks.

Accordingly, if it is understood that the Brazilian capital market, the Judiciary and that the supervising and punishment procedures and structure of our regulating authority are mature enough for the adoption of super-voting structures in Brazil, we believe that minimum requirements should be adopted to safeguard shareholders' rights and the credibility of the Brazilian capital market, as indicated in the following suggestions:

- (i) Explicit prohibition on the adoption of super-voting structures by already listed companies;
- (ii) Sunset clause of up to seven (7) years, permitted to be extended only once, as in other jurisdictions;
- (iii) Considering its nature, the ownership of shares with super-voting rights should be allowed only to individuals and their transfer should be prohibited, for any reason whatsoever, under penalty of loss of such characteristics;
- (iv) Restriction on the exercise of super-voting rights in specific deliberations;
- (v) For specific situations, include mechanisms for the right to withdraw through reimbursement based on the economic value, regardless of liquidity conditions and stock dispersion.

SUGGESTED CHANGES

Proposal included in B3 Draft Bill	Suggestions by Amec's members
<p>"Art. 15..... Paragraph 1 Ordinary and preferred shares may be of one or more classes; in the case of ordinary shares, they shall comply with the provisions of articles 16 and 110-A".</p>	<p>"Art. 15..... Paragraph 1 Ordinary and preferred shares may be of one or more classes; in the case of ordinary shares, they shall comply with the remaining specific provisions, notably the provisions of articles 16 and 110-A".</p>
<p>"Art. 16 IV – Granting of super-voting rights to one or more classes of shares, pursuant to the limit and conditions set forth in art. 110-A. Paragraph 1 If not expressly provided for and regulated, the amendment to the bylaws in the section that regulates the diverse classes of shares shall require the agreement of all holders of the shares affected". Paragraph 2 Listed companies can create one or more classes of ordinary shares with super-voting rights under the terms and conditions set forth in Article 110-A".</p>	<p>"Art. 16 IV – Granting of super-voting rights to one or more classes of shares, pursuant to the limit and conditions set forth in art. 110-A. Paragraph 1 If not expressly provided for and regulated, the amendment to the bylaws in the section that regulates the diverse classes of shares shall require the agreement of all holders of the shares affected". Paragraph 2 Listed companies can create one or more classes of ordinary shares with super-voting rights provided the convertible shares or securities have not been traded in organized securities markets, under the terms and conditions set forth in Article 110-A.</p>
<p>"Art. 110-A – Creating one or more classes of ordinary shares with super-voting rights shall be allowed, limited to 10 votes per ordinary share: I – by non-listed companies, even if they go public in the future and are allowed to trade</p>	<p>"Art. 110-A – Creating one or more classes of ordinary shares with super-voting rights shall be allowed, limited to 10 votes per ordinary share: I – by non-listed companies, even if they go public in the future and are allowed to trade</p>

<p>their shares in organized securities market, in compliance with the rules established by the respective management entities; and</p> <p>II – by listed companies whose convertible shares or securities have not been traded in organized securities markets.</p> <p>Paragraph 1 Creating ordinary shares with super-voting rights shall be allowed only when at least half of all shareholders with voting rights are in favor of it, provided a higher quorum is not required by the company's bylaws.</p> <p>Paragraph 2 In companies with non-voting preferred shares entitled to fixed or minimum dividends, the creation of ordinary shares with super-voting rights shall also be approved by the owners representing at least half of these non-voting preferred shares.</p> <p>Paragraph 3 Regarding Paragraphs 1 and 2 of this article, dissenting shareholders shall have the right to leave the company (Art. 137) upon reimbursement of the value of their shares pursuant to Art. 45, unless the creation of ordinary shares with super-voting rights is already provided for or authorized by the company's bylaws.</p> <p>Paragraph 4 After that convertible shares or securities begin to be traded in organized securities markets, increasing or changing the characteristics of a class of ordinary shares with super-voting rights shall be forbidden.</p> <p>Paragraph 5 Shareholders may stipulate the cancellation of super-voting shares in the bylaws associated with an event or term,</p>	<p>their shares in organized securities market, in compliance with the rules established by the respective management entities; and</p> <p>II – by listed companies whose convertible shares or securities have not been traded in organized securities markets.</p> <p>Paragraph 1 Creating ordinary shares with super-voting rights shall be allowed only when at least half of all shareholders with voting rights are in favor of it, provided a higher quorum is not required by the company's bylaws, excluding from the voting the shareholders whose shares are intended to be granted super-voting rights.</p> <p>Paragraph 2 In companies with non-voting preferred shares entitled to fixed or minimum dividends, the creation of ordinary shares with super-voting rights shall also be approved by the owners representing at least half of these non-voting preferred shares, excluding from the voting the shareholders whose shares are intended to be granted super-voting rights.</p> <p>Paragraph 3 Regarding Paragraphs 1 and 2 of this article, dissenting shareholders shall have the right to leave the company (Art. 137) upon reimbursement of the values of their shares pursuant to Art. 45, unless the creation of ordinary shares with super-voting rights is already provided for or authorized by the company's bylaws.</p> <p>Paragraph 4 After that convertible shares or securities begin to be traded in organized securities markets, increasing or changing the characteristics of a class of ordinary shares with super-voting rights shall be forbidden.</p> <p>Paragraph 5^o Shareholders may stipulate the cancellation of super-voting shares in the bylaws associated with an event or term,</p>
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<p>pursuant to the limit provided for in Paragraph 6 of this article.</p> <p>Paragraph 6 The duration of super-voting rights attached to ordinary shares shall be limited to 10 years, allowed to be extended, for 10-year periods, upon the approval, in separate voting processes, of at least half of all votes of the remaining shares with voting rights and half of non-voting preferred shares subject to fixed or minimum dividends, excluding from the voting, in both cases, the holders of shares of the class whose super-voting rights are intended to be extended".</p>	<p>pursuant to the limit provided for in Paragraph 6 of this article.</p> <p>Paragraph 6 The duration of super-voting rights attached to ordinary shares shall be limited to 7 years, allowed to be extended only once and only for another 7 years, upon the approval, in separate voting sessions, of at least half of all votes of the remaining shares with voting rights and half of non-voting preferred shares subject to fixed or minimum dividends, excluding from the voting, in both cases, the holders of shares of the class whose super-voting rights are intended to be extended".</p> <p>Paragraph 7 The super-voting rights attached to specific shares is only permitted if these shares are owned by individuals, who are also directors of the company, being prohibited any clause or condition that grants super-voting rights to legal entities.</p> <p>Paragraph 8 In the event of negotiation or transfer, by any reason whatsoever, of shares with super-voting rights, these classes of shares shall be automatically converted into common ordinary shares.</p> <p>Paragraph 9 In the following deliberations, all ordinary shares shall be entitled to one single vote, regardless they are assigned with super-voting rights, and the Securities and Exchange Commission may discipline other restrictions:</p> <ul style="list-style-type: none"> a - Change to the company's business purpose; b - Capital raise or share buyback; c - Change to the rights of any class of shares; d - Nomination or dismissal of independent board members; e - Setting of Executive Compensation; f - Substitution of external audit firm; and
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	<p>g - Liquidation and/or delisting of the company.</p> <p>Paragraph 10 All eventual operations and corporate restructurings involving companies in which at least one of them adopts the super-voting structure shall grant all shareholders of the companies involved the right to withdraw, regardless of liquidity conditions and stock dispersion.</p> <p>Paragraph 11 The hereinbefore right to withdraw shall take place upon reimbursement based on the stock economic value, to be calculated by three experts or company specialized in appraisal reports, and whose nomination should be approved by the majority of the remaining shareholders of the company, excluding from the voting the shareholders that are granted or intend to be granted super-voting rights.</p>
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Amec is at your disposal to discuss this matter further and to share more information about the sunset clauses we consider necessary to preserve the rights of shareholders in the country.

Respectfully yours,



ASSOCIATION OF CAPITAL MARKET INVESTORS – AMEC

Fábio Henrique de Sousa Coelho
CEO