

LONG DISTANCE PARTICIPATION AND VOTING FOR SHAREHOLDERS MEETINGS

On 18 March 2020, the **Financial Market Commission** (“**CMF**”) issued general rule 435 (hereinafter “**NCG No. 435**”) amending general rule 273 from 2010, which, in turn, regulates the voting systems for shareholders meetings.

Given the current sanitary situation Chile is enduring on account of Covid-19, or coronavirus, and the responsibilities the law has vested on it, the CMF authorized the **use of technological means to ensure participation and voting** of shareholders in shareholders meeting of openly-held corporations and special corporations subject to the supervision of the CMF, of bondholders in bondholders meetings or meetings of quota-holders in quota-holders meetings for funds subject to CMF supervision. Under NCG No. 435, shareholders, bondholders or quota-holders, as applicable, may participate and vote from afar provided the technological means used to such ends guarantee the proper identification of participant and simultaneous or secret balloting, as applicable, during those meetings or assemblies.

The Board of directors of the foregoing corporations or fund managers or the representative of the bondholders, as the case may be, shall implement the suitable technological means to ensure the requirements mentioned, along with certifying fulfillment of such a situation.

The corresponding summoning notice to the meeting or assembly shall include the fact that long distance participation and voting will be allowed, and record shall be set in the attendance registry and in the relevant minutes to be drafted of the meeting, of who were the shareholders, bondholders or quota-holders, as applicable, that used said mechanisms. However, for this case, the CMF authorized the use of technological means in meetings and assemblies having been summoned prior to the passing of the NCG No. 435, provided notice is issued sufficiently in advance to the date on which said meetings are to be held.

This news alert is provided by Carey y Cía. Ltda. for educational and informational purposes only and is not intended and should not be construed as legal advice.

Carey y Cía. Ltda.
Isidora Goyenechea 2800, 43rd Floor.
Las Condes, Santiago, Chile.
www.carey.cl

Finally, the CMF instructed that, if because of sanitary limitations the authorities may implement, or because of the lack of technological means, the meeting cannot be held, the company or entity may invoke force majeure and suspend or postpone the meeting, with the argument being ultimately assessed by the CMF.

In the case of Board meetings, please bear in mind that Board members were already authorized to hold those meetings through technological means, without having to be personally present, provided certain requirements were met. The latter notwithstanding, in order to carry out the resolutions adopted, the minutes ought to be signed by each and every director in attendance in the meeting. To these ends, the CMF issued last February general rule 434 (“NCG 434”), which makes easier the process of signing board meeting minutes in respect of every director in attendance, who may all use an electronic signature.

NCG 434 sets forth that, to check the identity of the director that electronically signed the minutes (in cases in which advanced e-signature is not used), the requirements are: (i) prior agreement of the Board establishing the means through which to evidence signatory identity and (ii) for the CEO, or whomever had acted as secretary during the relevant meeting, to set record, when incorporating the minutes into the book kept to such ends, of the fact that the electronic signature belongs to the director shown as having signed the relevant minutes.

Authors: Pablo Iacobelli; Salvador Valdés; Francisco Ugarte; Guillermo Acuña; Felipe Moro; Cristián Eyzaguirre; Jorge Ugarte; Fra