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IGJ: Mandatory gender quota in management and surveillance bodies of certain entities

The Superintendency of Corporations of the City of Buenos Aires established the mandatory quota for women in management and surveillance bodies for civil associations, simple associations, foundations, state-owned companies and certain corporations.

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Through General Resolution No. 34/2020, the Superintendency of Corporations of the City of Buenos Aires ("IGJ") requires the appointment of equal number of female and male members in management and surveillance bodies of certain legal entities, with the purpose of ensuring gender diversity. In the event that the number of members of the respective body is odd, at least one third of them must be women.

The managers of these entities must include in their annual report a description of the gender policy applied in relation to the management body.

The IGJ bases these requirements, which are not provided for in Companies Law or the Corporate Governance Code issued by the National Securities Commission, on certain international conventions on women's rights and on the elimination of discrimination.

Civil associations, simple associations that voluntarily apply for registration, foundations with temporary and elective managers, and state-owned companies are all subject to gender quota requirements, provided that they are registered in the City of Buenos Aires. As for corporations, the scope of application of the Resolution only extends to those that fall under the following categories of entities subject to permanent control by the IGJ:

- i. public-private companies (*Sociedades de Economía Mixta*) or corporations with majority state interest;
- ii. corporations that carry out capitalization or savings activities, or which in any way require money or securities from the public with a promise of benefits or services;
- iii. corporations operating public licenses or services; and
- iv. corporations that control or are controlled by another corporation which is subject to permanent control.

Consequently, the following corporations are excluded:

- a) corporations registered in a jurisdiction other than the City of Buenos Aires;
- b) companies of a corporate type different from a corporation;

- c) all those companies which, although registered with the IGJ, are not subject to permanent control by the IGJ;
- d) companies subject to permanent control by the IGJ exclusively by virtue of a public offering of their shares or debentures;
- e) companies subject to permanent control by the IGJ as a result of having a share capital which exceeds fifty million Argentine pesos;
- f) companies subject to permanent control by the IGJ as a result of being sole shareholder corporations (*Sociedad Anónima Unipersonal*).

Although the Resolution, which came into force on August 5, 2020, initially only refers to associations, simple associations and corporations that are created and registered as of its effective date, it is later established that gender quota requirements shall also apply when such entities appoint members of management and, if applicable, surveillance bodies. It is our understanding that an encompassing interpretation of the Resolution leads to the conclusion that, although entities previously registered with the IGJ are not required to immediately modify their management and surveillance bodies in order to meet the gender quota requirements, they shall comply with such requirements at the time of appointment of new members of such bodies, in accordance with their bylaws.

Finally, the Resolution establishes that the IGJ may exempt an entity from the aforementioned requirements, whether totally or partially, temporarily or definitively, upon request and based on unique, extraordinary, feasible and objective circumstances, resulting from their incorporation precedents, type of conformation or corporate activity.