

## **ANEEL Normative Resolution 787 regulates the evaluation of electric energy distributors' corporate governance**

Electric energy distributors can look forward to new mandatory resolution from the Brazilian Agency for Electric Energy (ANEEL), which aims to regulate the quality evaluation of its corporate governance systems. The new measure will certainly prompt the improvement of distributors' corporate governance and compliance structures by means of Normative Resolution No. 787/2017 ("Resolution"), published on November 8<sup>th</sup>, 2017.

The rating is divided in four levels: (i) high, (ii) average; (iii) insufficient; and (iv) not eligible. Companies operating markets inferior or equal to one Terawatt-hour/year, as well as permission holders and authorized parties are considered not eligible.

The corporate governance systems' quality rate will be assessed through the following criteria: (i) transparency; (ii) structure of the senior administration; (iii) relation between assets and control; (iv) internal controls; and (v) regulatory compliance. The methodology to measure the criteria is described in Exhibit I of the Resolution, in which some of the items are mandatory, while others are desirable. Particularly interesting among the mandatory items, is the need of implementation *Compliance and Risks* ("Compliance e Riscos"), in accordance with the structure and requirements foreseen in the Resolution.

Benefits will be granted in accordance with the distributor's rate. Distributors rated as high-level governance will be exempt from prior authorization to (i) execute agreements with related parties; (ii) release of assets which are not classified as unserviceable; and (iii) review of incorporation acts. The Resolution establishes the distributor's obligation of sending relevant documents to ANEEL or simply maintaining a dossier of the documents listed in the Resolution's Section 7 to qualify for the benefits.

If the distributor is rated as average, the benefits granted are (i) the limit of the annual amount to contract with related parties will be doubled without the need of prior authorization, as per Section 19, Subsection XII of ANEEL's Normative Resolution No. 699/2016, and (ii) the prior authorization required for review of the incorporation acts of the company will only be necessary in case of reduction of its share capital or modification of its dividends distribution or shareholder compensation policies.

High and average level corporate governance companies should comply with the economic and financial sustainability requirements foreseen in Exhibit II of the Resolution.

Distributors rated as insufficient, inspecting and monitoring programs will be implemented by ANEEL to at least comply with regulatory goals. In these case, the distributor will present a corporate governance restructure plan to ANEEL and, subsequently, a report presenting its improvements.

The administrative proceeding of corporate governance rating will initiate upon the demand of the interested party, along with the mandatory documents established by Section 10 of the Resolution. At the end of the proceeding, the decision which determined the corporate governance's level can be reconsidered and appealed, under the terms of ANEEL's Normative Resolution No. 273/2007.

The Resolution will become enforceable on January 1st, 2018. There will then be a two-year adaptation period, in which evaluation will not be performed. The distributor can request a demonstrative evaluation, presenting the information of twelve months from the enforcement of the Resolution during the adaptation period.

We highlight that during the adaptation period, the distributor is entitled to request an initial evaluation. As well, if granted, it will have the effects as of the publication of ANEEL's rating decision.

The RSMC team remains available to clarify any additional doubts regarding the Resolution and any other aspects of potential interest to our clients.

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