This second edition is intended to put corporate governance into its global context, to show its significance for modern business society.

Written by the leading practitioners within the field, **from 32 jurisdictions**, this second edition will be a useful, first-hand reference material for practising lawyers and in-house attorneys who may counsel clients on their business in foreign countries.

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> *'Corporate governance rules cause acute concern for companies interested in investing or doing business in foreign countries, hence the need for their in-house and external legal counsel. They are keen to see that the business environment of the host jurisdiction is compliant with global standards. A corporate governance regime with global standards is now an essential element of international business.'* – Akira Kawamura

ISBN 978-0-414-05030-3

SWEET & MAXWELL

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INTERNATIONAL SERIES

2ND EDITION

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Published in July 2015 by Thomson Reuters (Professional) UK Limited, trading as Sweet & Maxwell
Friars House, 160 Blackfriars Road, London, SE1 8EZ
(Registered in England & Wales, Company No 1679046.
Registered Office and address for service:
2nd floor, 1 Mark Square, Leonard Street, London EC2A 4EG)
A CIP catalogue record for this book is available from the British Library.

ISBN: 9780414050303

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PREFACE

Akira Kawamura | Anderson Mori & Tomotsune

Following the great success of the first edition of this Book, it was agreed by the authors and the publisher, Thomson Reuters, to publish this updated second edition. The original edition was first published in 2013. It is an unusually short period of time in which to release a second edition – just about two years. I am deeply impressed by the amount of support and willingness expressed by all of the authors to participate in this work again. I also greatly appreciate the initiative taken for this by the publisher and its editors.

I am fully aware of the reason why we must update the first edition in such a short period of time: corporate governance rules and systems are changing rapidly and dramatically in many jurisdictions in the world. I am certain that this second edition may provide the readers with a good, current and quick understanding of the rules prevailing throughout the present time global markets.

1. GLOBAL CORPORATE GOVERNANCE

Good corporate governance is a necessary pre-condition for corporate culture to flourish. It ensures that companies comply with the law and the ethical rules of societies and as such are good corporate citizens.

Good corporate governance is also a key factor for companies to raise funds from the most suitable capital markets in the world or to trade their financial commodities in the market places. Unless they prove themselves as being highly and legitimately managed under the commonly accepted corporate governance rules, businesses may no longer be admitted to the major markets.

It is also a key consideration for the regulators of the recipient countries to introduce the rules according to global standards into their own jurisdictions because these are critical criteria looked at by foreign investors when deciding where to invest. They owe substantive responsibilities to commit themselves with their own corporate governance rules that prevail in their own home jurisdiction. Therefore, the globally recognised rules can be considered to be an important business infrastructure in the recipient countries.

Another trend is the globalisation of both companies and their investors. Hence, corporate governance rules must also be of a global standard. Such rules from different jurisdictions influence each other and are becoming very much the same in most of the world's leading markets, although, needless to say, the US law has been, among those, the most influential and has in many ways dominated global rule making. We can say that global corporate governance is emerging and is well accepted in many jurisdictions around the world.

Thus, I think, good corporate governance is essential for the sustainable growth of the world economy.

2. GLOBAL FINANCIAL CRISIS

Corporate governance became a critical item on the agendas of regulators and law makers everywhere in the world in the years since the global financial crisis (GFC), which took place following the collapse of Bear Stearns Co Inc and Lehman Brothers Holding Inc in 2008. It triggered, as is well known, the collapse of many financial institutions, banks and investment banks in major jurisdictions in the United States, Europe and then, in other parts of the globe. The serious aftermath of the GFC is still being felt in many jurisdictions such as Spain, Greece or Italy.

PREFACE

While there were many different reasons why rescue packages were or were not applied to the failed financial institutions, there was a common and important criterion, which was the ethical fairness of the corporate governance adopted by the board of such failed entity. It was observed that the people and their governments were not persuaded to help the collapsed entities unless they were successful in proving that they had been properly managed under a healthy corporate governance structure. If not, they were no longer admitted to play a role as corporate citizens.

3. ENRON AND THE SARBANES-OXLEY ACT

As early as 2002, the so-called Sarbanes-Oxley Act (SOX Law or Act) was introduced in the United States in reaction to a number of large corporate scandals revealed in that year. The largest one was the accounting fraud orchestrated by the board of Enron Corporation. It was said that it would have triggered a second Great Depression following the 1929 crisis, if a comprehensive reform of the management of corporate boards, as well as their accounting and audit systems and the professional services rendered by accountants and lawyers, was not introduced by way of the Act.

The Round Table Discussion on the rule-making to enforce the Act was held at the historic building that houses the United States Security Exchange Commission in Washington DC just before the Christmas holidays in 2002. I was invited to the Round Table as a panellist by the SEC. We discussed the scope of the cross-border reach that may be given to the Act and its subordinate rules. It was noted that the Act was intended to be a global rule and not just a national rule. As is seen in the following chapters of this book, the major principles of the Act have now been introduced and enforced in most of the major jurisdictions including Japan, Germany and so on.

4. COMMON ISSUES

As may be seen in the following chapters, there are many commonalities in the corporate governance rules of the jurisdictions covered in this book. The committees system of the board coupled with the independent directors, especially the independent audit committee, have been introduced in many jurisdictions after the introduction of the SOX Law and its subordinate rules. The power and functional support of independent committees may have to be introduced in many more jurisdictions.

Executive compensation is another hot issue: with the problem of so-called "say on pay". A large number of cases in this area have been instituted in many jurisdictions, especially in the United States. It is hoped that a sound standard for executive compensation will be established through those court cases.

Effective enforcement of the compliance programme developed under the SOX Law regime must be strengthened in many jurisdictions. In this regard, boards may have more practical powers to oversee the management of the companies.

Thus the topic of corporate governance is now an acute concern for the companies and their boards around the world. It is especially important for the companies that are active in multi-jurisdictional markets and hence, for their in-house counsels and outside legal counsels. They should keenly watch developments in corporate governance rules as an important part of the changing business environment.

5. LATEST DEVELOPMENTS AND THANKS

In the last few years, the corporate governance rules have been massively innovated in the most of the major markets. They include, for example, the introductions in some part of a Corporate Governance Code and/or the Stewardship Code. In my own jurisdiction, Japan, both of them, being recently introduced, have brought about substantial changes to and reform of the Japanese corporate and investment culture.

I am very much honoured to again undertake the General Editorship of this Book, catching up with the changes in present day corporate governance around the world. This should continue to be a unique and excellent source of legal information on this topic. More importantly, this is one of the most current and comprehensive reference books on the topic.

The authors who have kindly agreed to contribute their valuable time to contributing to this book again are literally the best and most prominent lawyers on the topic in their respective jurisdictions and are very well known as such throughout the world.

This Book provides the best and most practical first hand reference material for the lawyers and in-house counsels who may have opportunities to counsel clients on their business in foreign jurisdictions. I would like to thank the authors for their valuable contributions to this Book.

I wish to note with thanks again the Foreword written by Marty Lipton of Wachtell Lipton Rosen & Katz. He is the legendary corporate governance lawyer of our age and a prominent advisor to the boards of major American and global entities.

Since 1 July 2013 the threshold for having to disclose substantial holdings of capitol or voting rights in listed companies was reduced from 5% to 3% and gross short positions have to be disclosed. The threshold to put items on the agenda was raised from 1% to 3%. Finally, the relevant Act contains a mechanism enabling a listed company to identify its "ultimate shareholder". Furthermore the NCGC obliges a shareholder to consult with management 180 days prior to putting an item on the agenda, which gives management time to settle a discussion with the shareholder or to build up a defence.

FOREWORD

Martin Lipton | Wachtell, Lipton, Rosen & Katz

The core purpose of corporate governance is to build long-term sustainable growth in corporate and shareholder value for the benefit of all stakeholders. The vitality of the global economy depends upon our fostering a long-term orientation and resisting the pressure to measure success on the basis of myopic benchmarks. Corporate governance practices can, and should, vary across jurisdictions, and the treatment of the following key issues by boards, management, stakeholders and regulators has global relevance in determining a corporate governance profile that facilitates the creation of sustainable value and is fine-tuned to specific country and company circumstances:

- Establishing an appropriate "tone at the top" to actively cultivate a corporate culture that gives high priority to ethical standards, principles of fair dealing, professionalism, integrity, full compliance with legal requirements and ethically sound strategic goals.
- Partnering with management and advisors to review the company's business and strategy and identifying and developing talent as part of robust succession planning.
- Organising the business, and maintaining the collegiality, of the board and its committees so that each of the increasingly time-consuming matters that the board and board committees are expected to oversee receives the appropriate attention of the directors.
- Understanding, and effectively evaluating, the ever-evolving legal rules, stock exchange requirements and aspirational 'best practices' that have come to have almost as much influence on board and company behaviour.
- Developing an understanding of shareholder and stakeholder perspectives on the company and fostering long-term relationships with shareholders and other stakeholders, as well as coping with escalating requests for meetings to discuss governance and business proposals, including employee lay-offs, stock buybacks, special dividends, spin-offs and other corporate transactions.
- Objective evaluation of activist agendas, notwithstanding the threat of proxy contests, with-hold-the-vote campaigns and other pressure tactics, to determine what will in fact further the best interests of the company and all of its constituents.
- Developing an understanding of how the company and the board will function optimally in the event of a crisis and proactively planning for a crisis.
- Ensuring appropriate procedures for review of transactions involving related persons or that could otherwise involve a conflict.
- Retaining and recruiting directors who meet the requirements for experience, expertise, diversity, independence, leadership ability and character, and providing compensation for directors that fairly reflects the significantly increased time and energy that they must now spend in serving as board and board committee members.
- Coping with the proliferation of new regulations and changes in the general perception of business that have followed the financial crisis.
- Addressing conflicts of proxy advisory firms and the shortcomings of one-size-fits-all governance checklists and

resisting unsound demands of corporate governance activists that are not linked to true value creation.

- Achieving the delicate balance of enabling the company to recruit, retain and incentivise the most talented executives while avoiding media and populist criticism for inappropriate compensation.
- Dealing with populist demands, such as criticism of risk management, and the demands of the public with respect to health, safety, environmental and other socio-political issues in a manner that will pre- empt increased regulation and avoid escalation of unsound demands, while at the same time furthering the best interests of the company.

Considerable attention has been devoted to searching for lessons learned from the global financial crisis and ways to improve board functioning. Perhaps one of the most valuable "lessons learned" is that boards and regulators need to focus on what works, without the undue distraction of reform for reform's sake and standardised mandates that pay lip service

to "best practices" but add little if any real value. Some of the other "lessons learned" include a renewed focus on risk management (including overseeing cybersecurity), a better understanding of the challenges faced by highly complex, global businesses and a rethinking of the experience and skill sets needed for an effective board.

In order to promote effective governance, the institutional, regulatory and governance environment must facilitate an adequate supply of quality directors who: (i) have sufficient knowledge of, and experience with, the company's businesses, even if this requires a re-examination of whether the trend towards boards with only one non-independent director makes sense and results in boards with a greater percentage of directors who are not "independent", (ii) are in sufficient number to staff the requisite standing and special board committees that handle much of the board's work, (iii) are able to devote sufficient time to board and committee meetings, and the preparation for them, (iv) receive regular tutorials by internal and external experts as part of expanded director education and (v) are encouraged to maintain a true collegial relationship among and between the company's senior executives and the members of the board.

PORTUGAL

Maria da Conceição Cabaços | PLMJ, Law Firm

1. GENERAL PRINCIPLES

1.1 What are the general principles of corporate governance in your jurisdiction? What are the main objectives of the corporate governance principles? Is your legal system based on common law, civil law, Islamic law or something else?

In contrast to the UK and, even more so, to the US (both Anglo-Saxon systems), in Portugal (continental system based on civil law) there is a smaller number of companies with capital open to investment by the public (among which we find companies listed on the stock market) and a lesser dispersal of share capital among the respective shareholders.

Furthermore, the percentage of shares held by institutional investors is also lower. These factors, taken together, lead to greater control of the management of companies by the dominant shareholders. This happens either by means of the direct control of the decisions taken at the general meeting or by means of control of the management itself. In fact, under the organisational model most adopted by Portuguese companies (one-tier system or Latin model), the dominant shareholders have a strong say in the election of the management board, on which very often they have a seat themselves.

It should also be noted that in this area Portugal has not suffered, at least directly, from the pressures of corporate scandals, unlike what happened in the US (cases such as WorldCom, Nortel or Enron) and even in the UK (cases such as Maxwell and Brent Walker), which brought corporate governance concerns and the need for public scrutiny of companies' internal control mechanisms to the forefront and led to the creation of measures that were binding in character or punitive in nature, such as the US Sarbanes-Oxley Act (SOX).

Therefore, one can say that the genesis of the framework of rules and recommendations on corporate governance in Portugal may be found in the separation between ownership and management.

The evolution seen over the last two decades in terms of information technology, along with the liberalisation of the capital market and the growing internationalisation of companies, as well as the progressive increase in the influence of institutional investors, has brought the objective of restoring confidence in the markets to centre stage among corporate governance concerns. This was to be achieved by means of measures and rules aimed at increasing the transparency and independence of management, accountability, rendering of accounts, responsibility and key performance indicators (KPIs) and encouraging the informed participation of shareholders in the life of the company. Said rules also aim to protect and strengthen the rights of the minority shareholders and, although at a lower level, encourage compatibility between shareholder and other stakeholders' interests.

As a result, despite the fact that corporate governance in Portugal is mainly regulated through *soft law*, namely the Portuguese Securities Market Commission's (*Comissão of the Mercado de Valores Mobiliários*)(*CMVM*) recommendations on corporate governance – in respect of which listed companies are required annually to disclose their degree of compliance under the mechanism of "comply or explain" – the Portuguese legal framework for corporate governance includes other principles, compliance with which is mandatory and which are included in various pieces of legislation and regulations. These include:

- The obligation for the majority of the members of the supervisory and auditing bodies of the company to be independent.
- The obligation to disclose the remuneration of company board members.
- Rules on the liability of board members towards the company.
- Special rules for the election of directors by minority shareholders.

The Portuguese Commercial Companies Code also provides for the management and supervisory boards of the company to be bound by a set of duties, namely, (i) the duty of care and diligence of a manager in the exercise of his or her duties, and (ii) the duty of loyalty, in the interest of the company, bearing in mind the long-term interests of the shareholders and taking into account the interests of the other persons relevant to the sustainability of the company, including its workers, clients and creditors (stakeholders).

Another aspect of the framework of directors' duties in the Portuguese legal system is provided by the "business judgment rule", under which a director's liability is excluded if the director can prove that he or she acted on an informed basis, free of any personal interest and in accordance with criteria of sound business judgement.

1.2 Have there been any recent developments in the law, codes and rules of corporate governance?

On 19 July 2013 the Portuguese Securities Market Commission (CMVM) published Regulation No. 4/2013, which entered into force on 1 January 2014, and released a new version of the CMVM Corporate Governance Code, which replaced the previous Corporate Governance Code in force since 2010.

One of the main innovations introduced by Regulation No. 4/2013 was the possibility granted to Portuguese listed companies (companies whose shares are traded on a regulated market situated or operating in Portugal and subject to Portuguese law) to choose to adopt another corporate governance code as an alternative to the CMVM Corporate Governance Code. The only request was that such alternative corporate governance code has been produced by an entity specifically suitable for that purpose. However, such choice must be fully justified in the company's annual report on corporate governance.

Regulation No. 4/2013 also reinforces the principle that in Portugal there is a complete equivalence between "comply" and "explain", that is the company must declare to what extent each of the recommendations of the chosen corporate governance code is observed or, if that is the case, the reasons for the "non-compliance".

The main changes arising from the new corporate governance code issued by CMVM in 2013 are:

- Listed companies must now abstain from adopting mechanisms that establish a mismatch between economic and social rights, unless long-term interests of the shareholders justify such mismatch or, in the case of voting caps, unless they are re-evaluated by the general meeting every five years at least.
- Close-out clauses or any other clauses that may result in an aggravation of the contractual conditions in the event of a change of control or a change of management must not harm the free transmission of shares.

- A minimum proportion of independent directors is no longer requested; the suitability of this number now depends on the adopted corporate governance model, the shareholder structure and size of the company and on the company's free float.
- The members of the remuneration committee or any equivalent committee must be independent of the executive management.
- Listed companies should set forth legal mechanisms to eliminate the so-called "golden parachutes" in case of dismissal of directors following inadequate performance.

1.3 Outline recent court cases and incidents involving corporate governance issues. Were there any significant corporate scandals or large unlawful corporate cases?

During 2014 Portugal was confronted with the collapse of one of its major banks: Banco Espírito Santo SA (BES). In July 2014, BES announced losses largely above the foreseeable values in light of information disclosed either by BES or its external auditor.

In August 2014, Banco de Portugal, as the public entity responsible for supervision of the market conduct of credit institutions, financial companies and payment institutions, applied a resolution measure to BES. BES was split into a so-called "good bank", called Novo Banco, which is up for sale, and a "bad" bank, BES, which is being wound up.

BES's case highlighted a series of weaknesses and limitations of the legal supervisory framework and also the existence of internal governance practices that are deficient or do not comply with the established standards in the banking system. New measures are being discussed in order to guarantee that the institution's actual practice conforms to the rules of its governance model and to ensure that boards of auditors perform the tasks lawfully entrusted to them.

1.4 Which law enforcement agency is in charge of enforcing corporate governance? May a criminal sanction be levied upon infringement of the corporate governance rules?

In Portugal, the mission of the Portuguese Securities Market Commission, also known by its initials CMVM, set up in April 1991, is to supervise and regulate the securities markets and derivative financial instruments (traditionally known as stock markets) and the activity of all those who operate in them.

As mentioned above, Banco de Portugal is the public entity responsible for supervision of the market conduct of credit institutions, financial companies and payment institutions.

In the context of its general supervision, the CMVM has to ensure compliance with the mandatory rules of corporate governance that apply to listed companies and the application of fines for infringements of those rules.

In turn, the Commercial Companies Code and the Securities Code establish a set of obligations the breach of which may amount to an administrative or even criminal offence. This is the case for (i) the unlawful refusal to provide information to the shareholders by the board of the company, (ii) provision of false information on the life of the company, (iii) putting false or incomplete information in the notice of the general meeting, (iv) the market manipulation and the abuse of information by members of the management or supervisory boards of the company, by the shareholders or by the stakeholders and (v) the failure to obey the lawful instructions and orders of the CMVM issued in the context of its supervisory role.

2. SOURCES OF LAW

2.1 Which laws, codes or statutes govern company structures and organisations? Are there statutes like the Companies Act or other forms of law? Is there much relevant case law?

Portugal is a member of the EU and, as such, follows the standards set out by EU directives and regulations.

The Portuguese legal system is a civil law or continental legal system, based on Roman law. Court decisions are not the source of law but have value in the interpretation of legislation.

Portuguese companies are governed by two major laws: (i) the Commercial Companies Code containing the core legal framework applicable to all types of companies, namely to listed and non-listed companies and (ii) the Securities Code, which includes a relevant set of provisions specifically addressing publicly traded companies (listed companies).

Portuguese law also contains other mandatory regulations affecting companies and governance, such as:

- CMVM Regulation No. 10/2005 which amends CMVM Regulations No. 7/2001 and No. 4/2004 regarding corporate governance and the duty to inform and which regulate the means and time limits for disclosing mandatory information.
- CMVM Regulation No. 5/2008 on the duty to inform.
- CMVM Regulation No. 4/2013 which repealed CMVM Regulation No. 1/2010 on corporate governance of listed companies.

In addition to the above, corporate governance in Portugal is also subject to soft law. As mentioned above, relevant changes occurred to corporate governance soft law in 2013.

CMVM approved a new Corporate Governance Code replacing the 2010 code applicable to listed companies.

Also in 2013, the *Corporate Governance Code* of the Instituto Português de Corporate Governance (IPCG Code) was published. For the first time, commercial companies have access to a corporate governance best practice code prepared by a civil society as an alternative to the CMVM Code. Although it is intended for general application (that is, applicable to all commercial companies), the IPCG Code recognises that its natural targets are listed companies since the regulations that govern such companies requires them to adopt a corporate governance code.

Corporate governance codes are presented in the form of recommendations, reflect international standards and principles on corporate governance best practice and adopt modern trends in corporate governance, as established by different institutions such as the OECD and the European Commission.

The provisions of the corporate governance codes are not mandatory.

They set out recommendations under the principle of "comply or explain". As previously noted, companies are legally required to issue an annual corporate governance report describing their corporate structure and corporate governance practices, and stating the level of compliance with their chosen corporate governance code's recommendations. In the event they do not comply with any of those recommendations, they must give an explanation for their failure to comply.

Each year, the CMVM issues a public report stating the degree of compliance with the recommendations on corporate governance by the companies listed on the Portuguese regulated market and, therefore, subject to the Corporate Governance Code. The evaluation of the degree of compliance with the recommendations is left to the markets. The last *Annual Report on Corporate Governance of Listed Companies in Portugal* by the CMVM was published in 2012. According to this report, the average adoption level of the CMVM recommendations on corporate governance increased significantly from 74% in 2010 to 89% in 2011.

There is also a strong self-regulatory component in corporate governance. All companies have articles of association establishing the rules of organisation and operation of the company. These cover the relationships between shareholders and contain corporate rules (for example, shareholders' meetings, powers and duties of directors and so on). In the event of any discrepancy, mandatory legal provisions prevail over the articles of association.

Shareholders' agreements are common in Portugal. These agreements regulate matters not necessarily related to the governance and ownership of the company, where the rigidity of corporate law and the limited scope of the articles of association make it necessary to regulate these matters through separate agreements.

Shareholders' agreements generally regulate issues such as: (i) securities transfer mechanisms and limitations, (ii) voting criteria, (iii) financing requirements and capital calls, (iv) business plans and strategies, (v) non-compete agreements and (vi) control of management and shareholders' meetings.

Finally, listed companies classified as credit institutions are subject to the rules of the Legal Framework for Credit Institutions and Financial Companies.

2.2 Which laws, codes or statutes regulate capital markets in your jurisdiction?

Capital markets in Portugal are regulated by the Securities Code and by CMVM regulations and instructions.

Decree-Law 357-C/2007 of 31 October (*with the amendments introduced by Decree-Law 52/2010 of 26 May*) provides the legal framework applicable to regulated markets management companies of multilateral trading facilities, management companies, clearing-house management companies acting as the central counterparty, settlement system management companies and management companies of the Central Securities Depositary. This Decree-Law partially transposes into Portuguese law Directive 2004/39/EC on markets in financial instruments (MiFID).

Ministerial Order 556/2005 of 27 June approved the list of regulated markets for the purposes of Directive 93/22/EEC of 10 May.

Ministerial Order 913-I/2003 of 30 August (*with the amendments introduced by Ministerial Order 1018/2004 (2nd Series) of 17 September and Ministerial Order 712/2005 of 25 August*) established a new system of securities market supervision fees.

2.3 Are there any public interest laws which apply to or influence corporate governance?

Not applicable.

2.4 Have there been any recent developments in any of the above laws? What are the recent changes to the above laws or rules and the reasons for them?

Not applicable.

3. SHAREHOLDERS AND THE SHAREHOLDERS' MEETING

3.1 How are shareholders' interests represented in the company? How are the shareholders assured exercise of their rights? What is the highest governing body within the company structure if it is not the shareholders' meeting?

As a result of a smaller dispersal of the share capital in the majority of listed companies in Portugal, it is frequent for a small number or even a sole shareholder to hold effective control over a company. In these situations of concentration of ownership, the management of the company and a definition of its business strategy will always be closely associated with and bound to the interests pursued by the majority shareholder(s). The defence and protection of the minority shareholders, therefore, assumes particular relevance.

In terms of rules, it is in the Commercial Companies Code that we can find the regulation of the main rights and obligations of the shareholders and the legal mechanisms set up to ensure the protection of the interests normally associated with the position of a company's shareholders: maximisation of the profits associated with the investment of capital.

This is the case, among others: (i) with the guarantee of mandatory distribution of a percentage of the profits, except if there is a provision to the contrary in the articles of association or a shareholder resolution passed by a qualified majority, (ii) with the right to pertinent information on the facts relevant to the evolution of the company and its business and with the right to have access to the preparatory information for general meetings and (iii) with the right to claim compensation, for themselves and/or the company, for any losses caused by the action of the members of the company's management.

The shareholders are entitled by law to decide on the issues that are most relevant to the life of the company, by means of resolutions taken at the highest level of decision-making in the company: the shareholders' general meeting.

Among other matters, it falls to the shareholders to: (i) pass resolutions on the accounts of the company and on the proposal for application of the results, (ii) carry out a general assessment of the performance of the management and supervision the company, (iii) decide on any amendments to the articles of association of the company, (iv) decide on any plan for merger or splitting up of the company or transformation of the company into a different type of company, (v) as a rule, elect the members of the management and supervisory boards of the company and, if applicable, remove them from their positions, and (vi) set the remuneration of the members of the management and supervisory boards, directly or by means of the election of a remuneration committee.

However, on matters of management, the shareholders may only take decisions at the request of the board of directors.

3.2 How is the shareholders' meeting conducted? Who may chair the meeting? May attendance (not voting) at the meeting be restricted only to the shareholders? Are the shareholders allowed to be accompanied by legal or other counsel?

General meetings are conducted by the chairman of the general meeting, who is elected normally along with at least one secretary of the general meeting for a period not longer than four years. The requirements of independence and the rules on the incompatibility of offices that apply to the supervisory body of the company also apply to the chairman and secretary of the general meeting of the listed companies.

The recommendations of the Corporate Governance Code on this matter provide that the remuneration of the chairman of the general meeting must be disclosed in the annual report on corporate governance.

The law reserves to the shareholders with voting rights the right to vote at the general meeting. However, it also allows shareholders with no voting rights and bondholders to attend the general meetings and even to participate in the discussion of the items on the agenda, except when there is a provision to the contrary in the articles of association.

The joint representatives of holders of preferential shares (preferred stock) without voting rights and bondholders may also attend the meetings, but they have no right to participate in the discussion.

The presence at general meetings of the members of the board of directors and of the supervisory and auditing bodies of the company is required by law, and, in the case of a general meeting to approve the company's annual accounts, that obligation extends to the chartered accountant(s) who audited the accounts.

The shareholders may be represented at the general meeting. However, the participation of a shareholder accompanied by a consultant (legal or other) depends on authorisation by the chairman of the general meeting.

3.3 How are minority shareholders' rights protected?

Both the Commercial Companies Code and the Securities Code contain a range of provisions aimed at protecting minority shareholders' rights, and making it possible for them to play an active role in the life of the company.

A highlight among these provisions is the general principle enshrined in the Commercial Companies Code – also appearing as a recommendation in the CMVM's Corporate Governance Code – of "one share, one vote".

This general principle aims to ensure the proportionality between voting rights and shareholder participation, and to encourage the participation of all shareholders.

Other important examples are as follows:

- Shareholders with a minimum of 10% and a maximum of 20% of the share capital may be granted the possibility of appointing up to one-third of the company's board members or, if applicable, the supervisory board, by means of special election mechanisms regulated by law.
- Any shareholder with shares corresponding to at least 10% of the share capital may, under the legally defined conditions, apply to the court to appoint one more member and one more alternate member to the supervisory board of the company.

- Shareholders with shares corresponding to at least 2% of the share capital may ask for a general meeting to be called and may also ask for new items to be included on the agenda of a general meeting that has already been called.

3.4 Is shareholder activism encouraged or discouraged? If not encouraged, how is it regulated?

Shareholder activism has been evident in recent years, following the global financial crisis of 2008. Discussions around short-term activism as opposed to long-term engagement gained particular importance in view of the threat short-term activism poses to the stock markets.

Short-term activism is often associated with institutional shareholders and mainly with hedge fund investments that have an investment strategy based on buying and holding stock for short periods of time and who are known for their tendency of "exiting" if short-term results are not satisfying.

This strategy can conflict with companies' long-term interests and with its sustained development. Because of this, the European Commission has recently proposed a review of Directive 2007/36/EC on the exercise of certain rights of shareholders in certain companies (Shareholders Rights Directive) in order to require institutional investors and asset managers to adopt an engagement policy to be disclosed to the public.

In Portugal, short-term activism is not regarded as a major issue due to the strong concentration of share capital in listed companies. The principal concern remains on creating mechanisms to encourage the active participation of shareholders in the life of the company. First, mechanisms that make it possible to hold general meetings using electronic means and to vote by post have been created. Second, the enshrinement of the principle of "one share, one vote" together with the principle of the right of shareholders who hold at least one vote to participate in meetings, is aimed at reinforcing the idea that all shareholders are equal and all votes count and are important to the decision-making process.

There is also a prohibition on establishing periods greater than five days for sending declarations proving the deposit and blocking of shares to the table of the general meeting and, in the event of suspension of the works of the general meeting, the company must not require the blocking of the shares during the period suspension, which are factors that could discourage shareholders from participating in general meetings.

3.5 How are professional shareholders (those minority shareholders who seek some extra benefit from companies by unduly and habitually influencing management by using their shareholding) treated by the law? Are they excluded from attending the shareholders' meeting? Are they criminally or otherwise publicly sanctioned?

In Portugal there are no special rules aimed directly at professional shareholders. However, the heavy concentration of share capital in the hands of a small number of shareholders, which is common in Portuguese listed companies, means that, until now, there is no need for special regulation on this subject.

3.6 Are shareholders' benefits given to some of the shareholders by the company without resolution by the shareholders' meeting prohibited or regulated by the law or other rules?

The amendment of a company's articles of association (by which special rights/benefits may be granted) as well as the distribution of dividends in any form is always dependent on a resolution being passed by the shareholders.

The CMVM Corporate Governance Code recommends that the business of a listed company with shareholders that are in a situation of control or a group relationship with it, or have a qualified shareholding, must be carried on under normal market conditions. Whenever such business has significant relevance, it must be submitted for the prior opinion of the supervisory body of the company.

4. DIRECTORS AND BOARD OF DIRECTORS

4.1 What are the functions and responsibilities of the directors and the board of directors? Do you have a one- or two-tier board system? What are the outside directors called?

In Portugal, commercial companies may choose between three organisational models:

- Board of directors, statutory auditors' board and chartered accountant or firm of chartered accountants (one-tier board system).
- Board of directors, including an audit committee, and chartered accountant or firm of chartered accountants (commonly known as the Anglo-Saxon model).
- Executive board of directors, supervisory board and chartered accountant or firm of chartered accountants (two-tier board system).

The model used most commonly in Portugal, namely by listed companies, is the one-tier board system, although the Anglo-Saxon model is adopted by some larger companies.

In the one-tier system, the general principle is that the board of directors must decide on any matter related to the management of the company.

The rules of corporate governance on this matter recommend that the board of directors delegates to one or more managing directors, or to an executive committee made up of executive directors, the day-to-day management of the company, and the powers delegated must be identified in the annual report on corporate governance.

The board of directors cannot delegate its power in respect of defining the strategy and general policies of the company, or in respect of any decisions, that in view of the amount of money or risk involved or any special characteristics are deemed to be strategic for the company.

Other powers may not be delegated. This is the case with (i) calling general meetings, (ii) co-opting directors and (iii) the granting of security and personal and real guarantees by the company, among several others.

The delegation of powers does not prevent the board of directors from passing resolutions on the same matters, and the non-executive directors continue to be liable for any losses caused by the acts or omissions of the executive directors if it is proved that they were aware of the mismanagement and did not take any steps to avoid it.

There must be enough non-executive directors to ensure the effective supervision, control and evaluation of the actions of the executive directors, and among them there must be an adequate number of independent directors.

4.2 What are the rules that may give rise to civil and criminal liability of the director(s)? How are those liabilities sought?

The civil and criminal liability of the directors arise, essentially from the breach of the fiduciary duties by which they are bound in carrying out their work and from the obligations to inform, or the conditions of confidentiality that bind them in relation to the privileged information available to them in their capacity as members of the board.

The Securities Code expressly regulates and classifies as crimes subject to a prison sentence of up to five years: (i) abuse of information, (ii) market manipulation and (iii) disobedience.

In turn, the Commercial Companies Code also regulates a set of acts or omissions on the part of the directors that may give rise to criminal liability, namely: (i) the unlawful refusal to provide information, (ii) the provision of false information, (iii) improperly calling a general meeting, (iv) preventing the supervision of the operations of the company, (v) irregularities in the issuing of securities, (vi) the unlawful distribution of assets of the company and (vii) the unlawful acquisition of shares among others.

These actions will only be punishable as crimes if there is intent, and mere negligence or blame is insufficient to establish criminal liability.

The failure to comply with certain obligations from the tax authorities or social security obligations may give rise to criminal liability on the part of the directors.

Any practices of directors that may give rise to the application of fines or penalties in administrative proceedings are also extensively regulated by law.

Besides criminal liability, the directors are subject to civil liability, in general terms, for any losses their actions may cause the company, the shareholders and the creditors of the company.

4.3 Does the board of directors have a committee system, for example nomination committee, compensation committee, audit committee? If not required, is it common practice for companies? How does it function?

The articles of association of the company may include provision for the creation of specialised committees within the board of directors that are responsible for certain areas of management and these may include matters that may not be delegated to a director or an executive committee.

The soft law recommendations on this matter are for the board of directors or the supervisory board (in accordance with the organisational model adopted) to create any committees deemed necessary to: (i) ensure a competent and independent evaluation of the performance of the executive directors and for the evaluation of their overall performance as a management of body the company, (ii) to reflect on the appropriateness of the company governance model adopted and propose any measures that may be appropriate to improve its performance and (iii) to identify candidates with the right profile to perform the duties of director. In the context of the supervisory board, there must be a committee for financial matters.

In the case of the Anglo-Saxon model, some of the directors of the board sit on the audit committee, which acts as the supervisory body of the company.

4.4 Is it a legal requirement to have an independent director or a third party director? If so, how are they appointed? Is it required for listed companies?

The rules of corporate governance on this matter state that the board of directors should include an adequate number of independent directors, taking in the size of the company and its shareholder structure, its organisational model of governance and the company's free float. The appointment of independent directors is done in the same way as the appointment of other directors, normally by election at the general meeting.

The characterisation and evaluation of the independence of the directors must take into account the applicable legal and regulatory rules on the requirements of independence and the rules on incompatibilities applicable to the members of the other corporate bodies. No director should be considered independent if he or she could not take up a membership position in another corporate body because of the applicable rules on incompatibility and independence.

Should the company's chairman have executive responsibilities, an independent director must be nominated to ensure the coordination of the work of the non-executive members of the board or, alternatively, another mechanism must be established.

4.5 How is the compensation for directors or officers determined? Can it be contested by the shareholders or the regulatory authorities? What are the common rules or practices for the compensation of officers?

The remuneration of the company's corporate bodies, and in particular the directors, is extensively regulated by law and is the focus of the greatest number of recommendations by corporate governance soft law.

The main principles that govern remuneration of directors are first, the need for the directors' remuneration to be structured so as to allow the interests of the directors to be brought into line with the long-term interests of the company, and second, the fact that it should be based on the evaluation of performance and should discourage the assumption of excessive risk in decision-making by the management.

The general rule is that the settlement of the level of remuneration for the management and supervisory bodies of companies is in the power of the general meeting (which may be in the hands of a remuneration committee appointed by it). In the case of the two-tier model, the remuneration of the members of the executive board is in the power of the supervisory board or a remuneration committee created within this body.

If the remuneration of the directors partially consists of a percentage of the profits earned in the financial year, the maximum value of this percentage must be set in the articles of association of the company. The remuneration of the members of the supervisory board, audit board and audit committee is made up exclusively of a fixed value.

In relation to listed companies, the recommendations appearing in the CMVM Corporate Governance Code point to the remuneration of the executive directors being made up of a fixed portion and a variable portion, with the latter depending on performance evaluation that takes into account the real growth of the company and the wealth actually generated for the shareholders.

The board of directors, or the remuneration committee if one exists, must submit a declaration on the remuneration policy of the members of the board of directors and the supervisory board annually for approval by the general meeting.

The declaration on the remuneration policy must contain information about: (i) the mechanisms that make it possible to bring the interests of the members of the board of directors into line with the interests of the company, (ii) the criteria for defining the variable component of the remuneration of the directors, if there is one, (iii) the existence of share allocation or share option plans for members of the board of directors and the supervisory board, (iv) the possibility of payment of the variable component of the remuneration being made, in whole or in part, after clearance of the accounts for the financial year, and (v) the mechanisms for limiting variable remuneration, in the event the results show any relevant deterioration in the performance of the company.

The annual report on corporate governance must disclose the declaration on the remuneration policy, the annual amount of remuneration earned by the members of the board of directors and supervisory board, both as a total amount and individually, the different components that make up the variable remuneration of the directors and any remuneration earned for work done for other companies of the group.

The information to be disclosed in respect of the remuneration of the executive directors is even more detailed and must include the criteria on which attribution of the various variable components of the remuneration is fixed, indicating the maximum limits of both the fixed and variable components and identifying the parameters and basis of any system of annual bonuses or any other non-pecuniary benefits. It must also identify the mechanisms and criteria for evaluation of the performance of the directors.

4.6 How will the board handle a corporate crisis like an internal criminal case, violence, social media exposure or dawn raid by the authorities?

The management of an internal crisis situation in the company, regardless of its characteristics, will be carried out with recourse to the general legal means available for the situation in question. The management must act in compliance with the laws applicable to the case and always respecting the duties to which it is subject in the exercise of its duties and the legitimate interests of the company it represents.

5. BOARD OF AUDITORS, AUDIT COMMITTEE, ACCOUNTING AUDITORS

5.1 How is the internal accounting and legal audit structured and conducted? Is an outside accounting audit required and, if so, how is it structured? Are there requirements to change the auditor every five years?

See 5.2 below.

5.2 Are there supervisory auditors? What is the function of the supervisory auditors' board?

The method of internal supervision of the activities of the company depends on the organisational model adopted.

As a rule (also applicable to non-listed companies under a set of thresholds related to value of assets, turnover and/or number of employees), companies organised in accordance with the one-tier model have either a statutory auditors' board, a collegiate body with a minimum of three members (one of whom should be a chartered accountant), or a single statutory auditor (also a chartered accountant). As mentioned above, listed companies should have a statutory auditors' board plus a chartered accountant or firm of chartered accountants.

In the Anglo-Saxon model, there will be an audit committee that is part of the board of directors and a chartered accountant.

The two-tier model includes a supervisory board that comprises a committee for financial matters and a chartered accountant.

All of the supervisory bodies identified above are required to:

- Supervise the activities of the management body.
- Ensure compliance with the law and the articles of association of the company.
- Whenever it considers appropriate to do so, ensure that the accounting records of the company are in order.
- Check that accounting policies and the criteria for calculating values adopted by the company lead to a correct evaluation of the assets and results.
- Supervise the effectiveness of the system of risk management and internal control.
- Receive any communications of irregularities presented by shareholders, employees of the company or other stakeholders.
- Issue an opinion on the management report and accounts of the company.

The internal supervisory body must prepare a report on its activity annually to inform the shareholders of the supervision it has carried out. According to the recommendation of the Corporate Governance Code this annual report must published on the company's website together with the financial statements.

The annual financial information in financial statements of listed companies must be certified by a chartered accountant registered with the CMVM and subject to a report prepared by an external auditor also registered with the CMVM.

The chartered accountant(s) and external auditors of listed companies are appointed by the shareholders' general meeting on the basis of a proposal from the company's supervisory body – statutory auditors' board, audit committee or supervisory board, depending on the governance model adopted.

The external auditors of listed companies are liable for any losses caused to companies audited by them or to third parties as a result of deficiencies in the report or prepared opinion. This liability is unlimited and shared jointly with the appointed chartered accountant(s).

Listed companies are required to disclose the annual amount paid to the external auditor.

6. MARKET DISCLOSURE/TRANSPARENCY TO THE SHAREHOLDERS AND THE PUBLIC

6.1 What are the disclosure requirements for companies in your jurisdiction under company law, capital markets law or any other rules?

The duties of information imposed on companies in general are regulated in the Commercial Companies Code and in the Commercial Registration Code. Listed companies are subject to the additional regulations on this matter contained in the Securities Code and CMVM Regulation 5/2008, as well as the recommendations of the Corporate Governance Codes.

The basic principle is that all the information relating to securities and to the issuing companies must be complete, true, up-to-date, clear, objective and lawful.

The directors are under an obligation to prepare and submit the management report and the accounts for the financial year (report and accounts) for consideration and approval by the shareholders within three months of the end of the financial year (as a rule).

In relation to listed companies, within four months of the end of the financial year: (i) the report and accounts and other accounting documentation, (ii) the report prepared by the external auditor and (iii) the declarations of compliance prepared by the internal auditors must be published on the CMVM's Information Publishing System (an internet site) and on the website of the company itself.

The management bodies of listed companies are also compelled to disclose interim financial information – half-yearly or quarterly, in accordance with the size of the company.

Additionally, the directors of listed companies must also ensure compliance with a vast number of duties of information aimed at guaranteeing permanent contact with the market and upholding the principle of equality among shareholders by ensuring that they all have the same level of access to information. The duties of information, the obligation to disclose privileged company information and the obligation to disclose information relating to transactions with the shares of the company are particularly important.

The CMVM Corporate Governance Code provides that listed companies must publish a vast range of information on their websites. Besides financial and legal information, they must publish a six-monthly calendar of corporate events and information and as well as the means of accessing the Investor Support Office, which every company must have.

Finally, a listed company must prepare and publish a detailed annual report on the structure and practices of corporate governance it has adopted (Corporate Governance Annual Report). This report must expressly identify the recommendations of the Corporate Governance Code that the company has decided to adopt and, for any recommendation it has not been adopted, it must provide an explanation.

6.2 What is the liability or responsibility of the board in relation to the company's disclosure requirements?

The failure to comply with the obligations to provide information, as well as the provision of incorrect, incomplete, abusive or unlawful information will give rise to liability on the part of those responsible and, in the event of intent, even criminal liability.

7. M&A AND CORPORATE GOVERNANCE

7.1 Upon an M&A offer, how are the transparency and fairness rules of the company provided under the company and stock market laws and rules?

Once a listed company becomes aware of a decision to launch a takeover bid for more than one-third of the securities in the category subject to the bid, and until the result of the bid is known or until the end of the takeover proceedings, the target company cannot take any decision capable of altering in any relevant way the company's assets/financial situation.

This restriction covers, with some exceptions established by law, even acts that aim to put into effect decisions taken prior to becoming aware of the launch of the bid.

On the bidder's side, from the moment of the publication of the bid's preliminary announcement to the point at which the result of the bid is known, the bidder and anyone with whom the bidder is in a group relationship or control situation established by law: (i) may not, outside the regulated market, trade securities in the categories of those that are the subject of the bid or which form part of the consideration, except if they are authorised to do so by the CMVM, after first hearing the opinion of the target company and (ii) must inform the CMVM on a daily basis about any transactions carried out in relation to any of the securities issued by the target company.

In terms of soft law recommendations, it is a requirement that any measures taken by the target company aimed at preventing the success of takeover bids must respect the interests of the company and its shareholders. A company's articles of association that provide for a limitation on the number of votes that may be exercised by a single shareholder must establish that this provision in the articles has to be subject to a vote at the general meeting every five years and that said limitation on the right to vote does not apply to this resolution.

Finally, the CMVM Corporate Governance Code recommends that the company should not adopt defensive measures that have the effect of causing serious erosion in the assets of the target company in the case that a transfer of control in the company is successful, thus restricting the free transferability of the shares.

All processes aimed at acquiring control over listed companies are supervised and mediated by the CMVM, which is responsible for a permanent evaluation of whether or not the actions carried out by the various parties involved comply with the law.

8. PROXY FIGHTING

8.1 Is proxy fighting customarily conducted for control of the company management or anything else? How is it regulated under the company law or market regulations?

In Portugal, given the above-mentioned situation that a heavy concentration of the capital of companies is in the hands of a single shareholder or a small block of shareholders, this matter has no particular relevance in the context of the regulation of corporate governance and is not subject to any mandatory provision in the law or even a recommendation in the Corporate Governance Codes.

9. OFFICERS' REMUNERATION RULES

9.1 How is remuneration of officers determined? By whom? Is there a role for the shareholders' meeting? Is there any mechanism for an independent body to review and evaluate them?

See paragraph 4.5 above. The general rule determining the remuneration of corporate body members is that this is decided by the general meeting, or in the case of companies with a two-tier model, by the supervisory board.

9.2 Is the mechanism of officers' remuneration publicly debated?

See paragraph 4.5 above.

10. DIRECTORS' LIABILITIES, LIABILITY INSURANCE, INDEMNIFICATION

10.1 What are the directors' responsibilities and liabilities under the law? Can those liabilities be covered by insurance? Can it be indemnified by the company or other related parties?

The responsibility of the directors has already been addressed in paragraph 4.2 above.

In Portugal, the responsibility of each director must be guaranteed by an amount established in the articles of association of the company which, for listed companies, may not be less than EUR250,000. The guarantee may be substituted by an insurance policy, the cost of which, at least up to the minimum value imposed by law, may not be paid by the company.

Listed companies may not dispense with this guarantee, even with a resolution of the shareholders. This is not the case with non-listed companies, where an exemption of guarantee may be granted.

11. SHAREHOLDERS' DERIVATIVE SUITS

11.1 Is a shareholder's derivative suit provided for by law in your jurisdiction? How is it enforced by the shareholders?

The Commercial Companies Code establishes and regulates civil liability actions brought by shareholders against directors to obtain compensation of damages for the company for any losses it has suffered as a result of the conduct of the directors against whom the action is brought.

In Portugal, this legal procedure is given the name *acção social de responsabilidade* (corporate liability action). Shareholders in public companies that hold at least 2% of the share capital have legal standing to use this mechanism, whereas for other companies they must hold at least 5%. The company will be joined as an interested party to the proceedings.

11.2 Have there been any recent relevant court cases on the subject?

We are not aware of the existence of any relevant cases of this type in Portugal, however it is expected that they may arise in a near future.

12. SOCIAL INTEREST IN CORPORATE BEHAVIOUR

12.1 How is a company in your country expected to deal with the following issues: corporate social responsibility; gender, racial and social diversification; environmental issues; ecology and corruption?

Portuguese listed companies, like those in the rest of Europe, have increasingly adopted social responsibility best practices, and sustainable development in particular, by implementing policies to protect natural resources associated with their operations and practices in order to monitor environmental impact.

The adoption of codes of ethics and conduct has also been taking on special importance in the process of implementing social responsibility policies in companies, both internally in the management of human resources and externally in their relationships with the communities of which they form a part.

The social responsibility and sustainability reports published annually by listed companies reflect the growing and positive evolution that has been witnessed in this area.

13. REGULATORY FRAMEWORKS FOR PROFESSIONAL INVESTORS

13.1 How are professional investors (like pension funds or investment funds) required or encouraged to exercise their power for the good corporate governance of the company? Are they required to comply with rules like the Stewardship Code?

See paragraph 3.4.

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