Portugal

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1. GENERAL PRINCIPLES

1.1 What are the general principles of corporate governance in your jurisdiction? What are the main objectives of corporate governance principles in your jurisdiction? State also whether your legal system is based on common law or civil law.

Like the majority of countries in continental Europe that are members of the EU, Portugal's corporate environment is different to that of the UK, which in the 1990s was the first European country to welcome the corporate governance movement that had come from these, where it had begun around 20 years earlier.

In the first place, in contrast to the UK and, even more so, to the USA (both Anglo-Saxon systems), in Portugal (continental system) there is a smaller number of companies listed on the stock market – the main targets for the issue of corporate governance – 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 – either by means of the direct control of the decisions taken at the general meeting or by means of control of the management itself which, under the dominant organisational model in Portugal (one-tier system), those shareholders elect and in which they very often have a seat themselves.

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

One can, therefore, say that the genesis of the framework of rules on corporate governance in Portugal may be found in the separation between ownership and management, and its aim, above all else, in making the interests of the stakeholders, the directors and the shareholders (owners) compatible – and among them, protecting and strengthening the rights of the minority shareholders.

The evolution seen over the last two decades in terms of information technology, allied to the liberalisation of the capital market and the growing internationalisation of companies, as well as the progressive increase in

the influence of institutional investors, together, 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 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 the shareholders in the life of the company.

As a result, despite that fact that the most visible face of the handling of corporate governance in Portugal is based on the Portuguese Securities Market Commission's (*Comissão of the Mercado de Valores Mobiliários*) recommendations on corporate governance – in respect of which listed companies are required annually to disclose their degree of compliance under the mechanism of explain or comply – the Portuguese legal framework on this issue includes other principles that are mandatory in character and included in various pieces of legislation and regulation. 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 the company board members;
- rules on the liability of board members towards the company; and
- 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 conscientious in the exercise of his or her duties, and (ii) *duties of loyalty*, in the *interest of the company*, bearing in mind the *long-term interests of the members* 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 is the Portuguese legal system's enshrinement of 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?

See paragraphs 2.1 and 2.2.

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

The cases of *Banco Português de Negócios* (BPN) and *Banco Privado Português* (BPP), two Portuguese private banks, illustrate perfectly how the incorrect application of and compliance with the main rules of corporate governance, in particular, the correct risk assessment and management of institutions, may have a serious impact on the solvency of a (financial) institution. The activity of supervising the actions of the two banks in question, namely the

failures detected in that supervision, were also subject to lively discussion in Portugal and its main consequence was the strengthening of measures in this area.

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.

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.

Furthermore, Law 28/2009 of 19 June, which revises the framework of sanctions for the financial sector in criminal and administrative offences, establishes the rules for the approval and disclosure of the remuneration policy of the members of the management and supervisory boards of public interest entities (which include listed companies).

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.

Portugal has a civil law and statute-based legal system. Court decisions are not the source of law but have value in the interpretation of legislation.

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

Notwithstanding these two basic pieces of legislation, Portuguese law contains other mandatory regulations on companies and governance, such

as:

- CMVM Regulation 10/2005 which amends CMVM Regulations 7/2001 and 4/2004 in corporate governance and the duties of information and which regulate the means and time limits for disclosing mandatory information;
- CMVM Regulation 5/2008 on the duties of information; and
- CMVM Regulation 1/2010 on governance of listed companies.

In addition to the above, corporate governance in Portugal is also subject to soft law: the Code of Corporate Governance of Listed Companies issued by the CMVM and approved in 2010 (the Corporate Governance Code). This code, presented in the form of recommendations, reflects international standards and recommendations on corporate governance best practice and adopts modern trends in corporate governance, as established by different institutions such as the OECD and the European Commission.

The provisions of the Corporate Governance Code are not mandatory. It sets out recommendations under the principle of 'comply or explain'. As previously noted, companies are legally required to issue an annual report describing their corporate structure and corporate governance practices, and stating the level of compliance with the 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 per cent in 2010 to 89 per cent 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, and powers and duties of directors, etc.). In the event of any discrepancy, 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 the Markets in Financial Instruments Directive 2004/39/EC of the European Parliament and of the Council of 21 April (MiFID).

Ministerial Order 556/2005 of 27 June approves 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) establishes the 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 such changes?

Regulation 1/2010 issued by the CMVM acknowledged the possibility for listed companies to opt for an alternative corporate governance code to the one issued by the CMVM, provided that such a code:(i) complies with the principles and embodies corporate governance practices that, overall, ensure protection of shareholders' interests and corporate governance transparency that are not inferior to those established by the Corporate Governance Code issued by the CMVM; (ii) at least covers the matters laid down in the code issued by the CMVM; and (iii) is issued by an institution that brings together recognised experts in corporate governance matters and operates independently of any particular interests.

The Portuguese Issuers Association began running the self-assessment of alternative corporate governance practices alongside the regular assessment performed by the CMVM. In addition, the Portuguese Institute of Corporate Governance (PICG) recently put forward the first code of corporate governance produced by the private sector.

More recently, in March 2013, the CMVM placed the proposed draft

Regulation on Corporate Governance (repeals CMVM Regulation 1/2010) and draft amendment to the Corporate Governance Code for public consultation. The proposed draft includes, among other modifications, the possibility of partial compliance with the recommendations. This is an important change since, at the present, partial compliance is not admissible.

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 the lesser 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 real control over the 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 designed to ensure that the interests normally associated with the capacity shareholder are pursued: appreciation in the value of the respective stake, aimed at maximising 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 in the articles of association or a shareholder resolution passed by a qualified majority to the contrary; (ii) with the right to permanent information on the facts relevant to the evolution of the company and its business and 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 board of directors.

The law reserves the right to decide on the issues that are most relevant to the life of the company to the shareholders, by making them subject to resolutions taken at the highest level of decision-making in the company: the 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 action of the management and supervision the company; (iii) decide on any alterations 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.

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 'table of the general meeting', made up, at least, of a president and a secretary, elected for period not longer than four years. The requirements of independence and the rules on incompatibility of offices that apply to the supervisory body of the company also apply to the members of the table of the general meeting of the listed companies.

The recommendations of the Corporate Governance Code on this matter provide that the remuneration of the president of the table 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 a vote and bondholders may also attend the meetings, but they have no right to participate in the discussion.

Rather than simply allowing it, the law requires the presence at general meetings of the members of the board of directors and of the supervisory and auditing bodies of the company, and, in the case of a general meeting to approve the accounts, that obligation extends to the chartered accountant(s) who examined them.

The shareholders may be represented at the general meeting. However, the participation of a shareholder accompanied by a consultant (legal or other) depends on the authorisation of the president of the table of the general meeting, and that authorisation may be revoked by the shareholders by a resolution to this effect.

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 the minority shareholder, 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'. The aim of this principle is to ensure proportionality between voting rights and shareholder participation, and encouraging the participation of all shareholders.

Other important examples are as follows:

- Shareholders with a minimum of 10 per cent and a maximum of 20 per

cent of the share capital may be granted the possibility of appointing up to one-third of the company 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 per cent 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 per cent 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?

The active participation of shareholders in the life of the company is greatly encouraged in Portugal. 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 there is no need for regulation on this matter. .

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 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 to 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, listed companies, as publicly traded 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 (the model commonly known as *Anglo-Saxon*); and
- 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 is the one-tier board system, although the Anglo-Saxon model is adopted by 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 must not delegate its power in respect of the definition of the strategy and general policies of the company, or in respect of any decisions, which because of the amount, risk or any special characteristics are deemed to be strategic for the company.

Other powers may not legally be delegated. This is the case with (i) calling general meetings, (ii) co-opting directors and (iii) the provision 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 arises, essentially from the breach of the fiduciary duties by which they are bound in carrying out their work and from the information obligations, or the conditions of confidentiality that bind them in relation to the privileged information available to them in their capacity as a member 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 and 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 to the tax authorities or the social security 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 to the company, the shareholders and the creditors of the company.

4.3 Does the board of directors have a committee system, eg, 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 recommendations on this matter are for the board of directors or the supervisory board, in accordance with the 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) reflect on the appropriateness of the company governance model adopted and propose as any measures that may be appropriate to improve its performance; and (iii) identify candidates with the right profile to perform of 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 of directors 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 indicate the board of directors should include an adequate number of independent directors, taking in the size of the company and its shareholder structure and, in any event, this number may not be lower than a quarter of the total number of directors. The appointment of the independent directors is done in the same way as the appointment of the 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 incompatibilities and independence.

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 corporate bodies, and in particular of the directors, is extensively regulated by the law and is the matter that is the focus of the greatest number of recommendations in the area of corporate governance.

The basic principles that govern the determination of the remuneration of the directors are, first of all the need for 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 discourage the assumption of excessive risk in decision-making by the management.

The general rule is that setting 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, there commendations appearing in the 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 must contain information on: (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 the attribution of the various variable components of the remuneration, 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 each five years?

5.2 Do you have 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 (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 a chartered accountant), or a single statutory auditor (also a chartered accountant). As mentioned above, listed companies (as well as companies issuing securities which are publicly traded) 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; and
- issue an opinion on the management report and accounts of the company.

The internal supervisory body must prepare a report in 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 the 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 by deficiencies in the

report or opinion prepared. This liability is unlimited and shared jointly and 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 Code.

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, in 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 in the CMVM's Information Publishing System (an Internet site) and on the website of the company itself.

The management body of listed companies is also obliged 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 existence of permanent contact with the market and respecting the principle of equality between shareholders by ensuring they all have the same level of access to information. The duties of information, the obligation to disclose privileged information of the company and the obligation to disclose information relating to the transactions with the shares of the company are particularly important.

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

Finally, listed companies must prepare and publish a detailed annual report on the structure and practices of corporate governance it has adopted (Corporate Governance Report). This report must expressly identify the

recommendations of the Corporate Governance Code that the company has decided to adopt and, for any it has not 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 company target cannot take any decision capable of altering in any relevant way the company's asset/financial situation. This restriction covers, with some exceptions established by law, acts putting into effect decisions taken prior to becoming aware of the launch of the bid.

On the bidder's side, from the moment of publication of the preliminary announcement of the bid up 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 trade outside the regulated market 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 (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 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. The articles of association of the companies 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 the said limitation on the right to vote does not apply to this resolution.

Finally, the Corporate Governance Code recommends 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 the transfer in control of 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

permanently evaluating 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 what other items? 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 the companies is in the hands of a single shareholder or of a small block of shareholders, this matter has no particular relevance in the context of regulation of corporate governance and is not subject to any mandatory provision in the law or even a recommendation in the Corporate Governance Code.

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 for the determination of the remuneration of the members of the corporate bodies is that this is decided by the general meeting, or in the case of two-tier models, 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 EUR 250,000. The guarantee may be substituted by an insurance policy, the costs 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 by 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 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 per cent of the share capital have legal standing to use this mechanism, whereas for other companies they must hold at least 5 per cent. The company will be joined as a 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 case of this type in Portugal.

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 been increasingly adopting social responsibility best practices; in particular, the concept of sustainable development by implementing policies to protect natural resources associated with the operations and practices 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 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.

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