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## CORPORATE

# DISCLOSURE OF NON-FINANCIAL AND DIVERSITY INFORMATION

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Decree-Law 89/2017 was published on 28 July and enacts Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 into Portuguese law. The Directive governs the disclosure of non-financial and diversity information by certain large companies and groups.

### 1. DISCLOSURE OF NON-FINANCIAL INFORMATION

This new law requires certain companies to include a non-financial statement in their annual management report. This statement must contain sufficient information to understand the progress, performance, position and impact of its activities. It must also address environmental, social and employees matters, gender equality, non-discrimination, respect for human rights, and anti-corruption and bribery matters, including:

- A brief description of the business model;
- A description of the policies pursued by the company in relation to these matters, including due diligence processes applied;
- The outcome of those policies;
- The main risks associated with these policies, connected to the activities of the company, including, if relevant and proportionate, its business relationships, products or services capable of having a negative impact on those areas, and the way those risks are managed by the company;
- Key performance indicators relevant to its specific activity.

As an alternative to including a non-financial statement in the management report, the decree-law also establishes the possibility for companies to prepare a separate report, corresponding to the same financial year, which includes the information required for the non-financial statement.

If the company chooses to prepare the separate report, this must be published together with the management report, or made available to the public on the company's website, no later than six months after the date of closing of the balance sheet, and it must be referred to in the management report.

Upon the legal certification of the accounts, the chartered accountant is now required to state that the annual management report includes the non-financial statement, or that it has been included in a separate report.

To the extent that the disclosure of certain information regarding imminent matters or matters under negotiation is capable of seriously prejudicing the commercial position of the company, that information may, exceptionally, be omitted from the non-financial statement, provided that the members of the management and supervisory bodies issue a duly justified opinion to that effect.

Companies are subject to the obligation of disclosing non-financial statement in case they fulfil all of the following conditions:

- Are classified as large companies, i.e., companies that exceed two of the following three limits ("Large Companies"):
  - a) Total balance sheet: EUR 20 million;
  - b) Net turnover: EUR 40 million;
  - c) Average number of employees during the period: 250.
- Are classified as public-interest entities<sup>1</sup> ("Public-Interest Entities"); and
- Have an average number of 500 employees during the financial year.

This obligation also applies to parent companies of "large groups"<sup>2</sup> that are Public-Interest Entities, provided that they have an average number of 500 employees during the financial year. These companies must also include a consolidated non-financial statement in their consolidated accounts.

In this case, and provided that the non-financial information of a certain company and its subsidiaries is included in the consolidated management report of the parent company, that company and its subsidiaries are exempt from the obligation to include the non-financial statement in their own individual management reports.

## 2. DISCLOSURE OF INFORMATION ON DIVERSITY

The new Decree-Law also requires companies whose shares are admitted to trading on a regulated market, which are also classified as Large Companies, to include in their annual report on corporate governance structure and practices – comprised in a chapter of the annual management report or in an annex thereto – a description of the diversity policy applied by the company regarding its management and supervisory bodies with regard to aspects such as, age, gender, or educational and professional backgrounds, the objectives of that diversity policy, how it has been implemented and the results achieved in the reporting period.

This measure will allow the market to be informed regarding corporate governance practices of Large Companies and, will naturally put some pressure on Large Companies to ensure greater diversity in their management and supervision boards.

The obligation to disclose non-financial information and information on diversity will apply to Large Companies in all sectors, with an equivalent level in all EU Member States, thus enhancing transparency and cohesion of the information disclosed throughout the European Union.

This Decree-Law came into force on 2 August and applies to all financial years that begun on or after 1 January 2017.

<sup>1</sup> Under article 3 of the Legal Framework on Audit Supervision, approved under article 2 of Law 148/2015, of 9 September, the following entities are classified as public-interest entities: a) The issuers of transferable securities admitted to trading on a regulated market; b) Credit institutions; c) Investment companies; d) Contractual or corporate collective investment undertakings, provided for under the general rules on collective investment undertakings, approved by Law no. 16/2015 of 24 February; e) Venture capital companies, venture capital investment companies, and venture capital funds, provided for in the Legal Framework on Venture Capital, Social Entrepreneurship and Specialised Investment, approved by Law no. 18/2015 of 4 March; f) Specialised alternative investment companies and specialised alternative investment funds, provided for in the Legal Framework on Venture Capital, Social Entrepreneurship and Specialised

Investment, approved by Law no. 18/2015 of 4 March; g) Securitisation companies and securitisation funds; h) Insurance and re-insurance companies; i) Holding companies, when their holdings, directly and indirectly, confer them the majority of the voting rights in the credit institutions referred to in b) above; j) Holding companies in the insurance sector and mixed insurance holding companies; k) Pension funds; l) Public companies which, for two consecutive years, have a turnover above EUR 50 million, or net assets above EUR 300 million.

<sup>2</sup> Large Groups are groups in which the parent company and its subsidiaries exceed, on a consolidated basis, at least two of the following limits: (a) Total balance sheet: EUR 20 million; (b) Net turnover: EUR 40 million; and c) Average number of employees during the financial year: 250.

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Iberian Law Firm of the Year  
*The Lawyer European Awards, 2015-2012*

Portuguese Law Firm of the Year  
*Who's Who Legal, 2016, 2015, 2011-2006*  
*Chambers European Excellence Awards, 2014, 2012, 2009*

Top 50 - Most Innovative Law Firm in Continental Europe  
*Financial Times - Innovative Lawyers Awards, 2014-2011*