

**CORPORATE GOVERNANCE CODE**

**AND**

**LEGAL FRAMEWORK**

**CONSOLIDATION**

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## INTRODUCTION

The present document contains a repertoire of legal and recommendatory national sources concerning the governance of companies issuing shares admitted to trading on a regulated market and which are subject to Portuguese Law. The CMVM's Corporate Governance Code assembled herein has resulted from the progress made on the corporate governance recommendations which have been disclosed on a biennial basis since 1999 by the mentioned companies in their annual corporate governance reports. This document is also complemented by legislative and regulatory rules. There are two main reasons for this consolidation: Firstly, to allow for an overall understanding of the legal ruling and the corporate governance recommendations, and secondly, to make the related references more accessible within this scope. Legislation relating to Company and Securities Law is not meticulously described herein but attention is rather paid to those principles that have a greater bearing on the corporate governance subject theme. Were it not for this, the entire general part of the Commercial Companies Code would have to be re-written and would thus forfeit pithiness and consequently, its own worth.

As is customary in any consolidation, the current ensemble focuses on the descriptive background and is by no means groundbreaking. Under no circumstance does the current document aim to replace or interpret legislation or regulations currently in force.

As regards the structure of the document, self-directing between the General Meeting, Management and Supervisory Boards covered herein, is valued by systemising the codified National Law and does not propose to pilfer the concentrated liaison that abides among the three themes.

The latter is marked, particularly as regards the importance that the corporate system has given to the supervisory duty of the Chair of the Board of the General Meeting and the Non-Executive Board Members in any model, but focusing particularly on the Anglo-Saxon model. A third chapter covers important theme subjects pertaining to information, auditing and statutory auditing which is forthcoming not only due to its inherent importance of the themes covered therein, but also due to the fact that there are several primary sources for information duties, and thus being, its consolidation is valuable.

## **I. GENERAL MEETING**

### **I.1. PROCEDURE AND SCOPE OF RESOLUTIONS**

#### **Legislative Framework**

I.1.1. Shareholders shall adopt resolutions on matters which are specially assigned to them by Law, in the Articles of Association or those which do not fall within the scope of the powers of other corporate bodies. Shareholders may only deliberate on matters relating to the company's management at the request of the Board of Directors<sup>1</sup>.

I.1.2. Matters specially assigned to shareholders by Law, include: i) deliberating on the annual report and accounts for the financial year; ii) deliberating on the proposed application of the company's results; iii) overall assessment of the management and supervision of the company, and if deemed necessary, to proceed with the dismissal of Directors within the scope of the meeting's powers or to take a vote of no- confidence in a Director; iv) appointing members of the Board of Directors and Supervisory Board that fall within the powers of the meeting<sup>2</sup>; and by and large, v) setting of the remuneration of the members of the Board of Directors and Supervisory Board<sup>3</sup>. Furthermore, the duty to amend the company's articles of association is assigned to shareholders<sup>4</sup>.

### **I.2. GENERAL MEETING BOARD**

#### **Legislative Framework**

I.2.1. The General Meeting Board shall consist of at least a Chair and a Secretary, elected for a maximum of 4 years.

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<sup>1</sup> Article 373 of the Commercial Companies Code (CCC) except for the provided for in Article 420/A of the CCC.

<sup>2</sup> Article 376 CCC.

<sup>3</sup> At a General Meeting or through the Shareholders' Committee. Exception relates to remuneration of the Members of the Executive Board of Directors as provided for in Article 429 CCC.

<sup>4</sup> Article 85 CCC. Exceptions to this principle may be found in Articles 12/2 and 456 CCC.

The articles of association may stipulate that the Chair, the Deputy-Chair and the Secretaries of the General Meeting Board, be elected by the General Meeting from amongst the shareholders or other persons, for a period of no more than four years. Non-addressed provisions in the articles of association or failure to elect persons under the terms of the previous paragraph or further yet, elected persons who have failed attendance, the Chair of the Audit Board, the Audit Committee or the General and Supervisory Board, shall serve as Chair of the General Meeting Board and a shareholder present shall serve as Secretary. In the absence of the Chair of the Audit Board, the Audit Committee or the General and Supervisory Board, a shareholder will preside at the General Meeting by taking the number of shares owned, into account. In the event of a tie as to the number of shares owned, shareholder seniority and age shall be taken into account, in that order<sup>5</sup>.

I.2.2. The requirements regarding governance incompatibility and independence mentioned further on, shall apply to members of the General Meeting Board of the companies issuing securities that are admitted to trading on a regulated market<sup>6</sup>.

I.2.3. The remuneration of the members of the General Meeting Board shall be set for a fixed amount<sup>7</sup>.

### **Recommendatory Framework**

I.2.4. The Chair of the General Meeting Board shall be equipped with the necessary and adequate human resources and logistic support, taking the financial position of the company into consideration.

I.2.5. The remuneration of the Chair of the General Meeting Board shall be disclosed in the annual report on corporate governance.

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<sup>5</sup> Article 374 CCC.

<sup>6</sup> Articles 374/A, 413, 414 and 414/A CCC.

<sup>7</sup> Article 374/A CCC.

### **I.3. CONVENING NOTICE AND HOW THE GENERAL MEETING IS HELD**

#### **Legislative Framework**

I.3.1. The General Meetings shall be convened whenever stipulated by law or when the Board of Directors, the Audit Committee, the Executive Board of Directors, the Audit Board, the General and Supervisory Board or the Statutory Auditor, deem it fit. The General Meetings are convened by the Chair of the General Meeting or, under special circumstances provided for by Law, by the Audit Committee, the General and Supervisory Board, the Audit Board or the Court of Justice. The Audit Board, the Audit Committee or the General and Supervisory Board may only convene a Shareholders General Meeting once they have unsuccessfully requested same from the Chair of the General Meeting Board.

I.3.2. The General Meeting shall be convened whenever one or more shareholders that own shares equivalent to at least 5% of the company's equity capital, requests it. The Presiding Board of the General Meeting shall ensure that the notice convening the meeting is published within 15 days following its request; the meeting shall take place within 45 days following the notice of the meetings' publication<sup>8</sup>.

I.3.3. The Shareholders General Meeting shall meet within three months of the close of the financial year or within five months of the same date, for companies required to present consolidated accounts or that apply the equity method<sup>9</sup>.

I.3.4. The convening notice shall be disclosed as follows: (i) on the website of the Directorate-General for Registers and Notary Services<sup>10</sup>, (ii) on the Information Disclosure System of the CMVM's website<sup>11</sup> and (iii) on the website of the Issuing Company<sup>12</sup>. The articles of association may however, require other means of informing shareholders.

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<sup>8</sup> Article 375 CCC.

<sup>9</sup> Article 376 CCC.

<sup>10</sup> Article 167 CCC; Decree-Law 11/2005 of 8 July and Ministerial Order 590-A/2005 of 14 July.

<sup>11</sup> CMVM Regulation 4/2004 on Disclosure Requirements.

<sup>12</sup> CMVM Regulation 1/2007 on Corporate Governance.

Should all company shares be nominal, the company may substitute such disclosures with a registered letter or in case shareholders inform of their consent beforehand, then disclosure may be made via electronic mail with a read receipt confirmation of the message sent.

I.3.5. One month should have at least elapsed between the last disclosure of the convening notice and the date of the General Meeting and 21 days between having sent the registered letters or electronic mail messages and the date of the meeting. Albeit, during a pending takeover bid that covers more than one third of the securities from the respective category in which the issuing company is the targeted company, the time preceding the deadline for disclosure of the convening notice for the General Meeting, is reduced to 15 days<sup>13</sup>.

I.3.6. The convening notice whether published, sent via post or electronic mail, shall contain at least the following information: i) reference information required regarding any external acts<sup>14</sup>; ii) location, day and time of the meeting; iii) the type of meeting, whether general or extraordinary; iv) requirements relating to participation and exercise of voting rights; v) meeting's agenda; vi) description of the way in which postal voting is processed including the address, physical or electronic, safety measures, the deadline for receiving the voting ballots and the date for their count. Particular requirements as to the contents of the convening notices are imposed by Law, in cases such as: loss of half of the company's equity, reduction of company equity or the adoption of defensive measures<sup>15</sup>.

I.3.7. The convening notice shall clearly state the matter which is to be brought before the meeting for resolution. When the matter at hand relates to the amendment of the articles of association, the paragraphs to be amended, revoked or added to, shall be stated and the full text of the proposed paragraphs shall be provided or an indication that such text is available to shareholders at the registered offices, as from the date of its publication, notwithstanding shareholders' proposal for different wording for the same paragraphs at the Meeting or the necessary amendments being made to other paragraphs as a result of the amendments made to the paragraphs referred to in the convening notice<sup>16</sup>.

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<sup>13</sup> Article 182 Securities Code.

<sup>14</sup> Articles 35/3, 94/1 and 182 SC.

<sup>15</sup> Article 377 CCC.

<sup>16</sup> Article 377 CCC.

I.3.8. The meetings shall be held at: i) the head-office of the company or any other location within the national territory, to be chosen by the Chair of the General Meeting Board, if the company's facilities do not allow for the meeting to be held in satisfactory conditions; or, ii) unless provided for otherwise in the articles of association via IT tools, in which case, the company is obliged to vouch for the veracity of the announcements made and the required safety measures for the communications, and proceeds to register the contents of and the intervening persons at the meeting.

#### **I.4. ADDING ITEMS TO THE MEETING AGENDA**

##### **Legislative Framework**

I.4.1. The shareholder or shareholders that hold shares equivalent to at least 5% of the company's equity capital, may request that certain items be included in the agenda of a General Meeting that has already been or is yet to be convened. The request referred to in the previous paragraph shall be addressed in writing to the Chair of the General Meeting Board within five days as of the last publication of the convening notice.

I.4.2. By virtue of the provisions of the previous paragraph, items to be included in the agenda shall be communicated to the shareholders via the same means used for the convening notice, within 5 or 10 days prior to the date of the meeting, whether it be made via registered letter or announcement<sup>17</sup>.

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<sup>17</sup> Article 378 CCC.

## **I.5. PARTICIPATION AT THE MEETING**

### **Legislative Framework**

I.5.1. Shareholders, who according to the Law and the articles of association hold at least one vote, are entitled to attend the General Meeting and discuss and vote on, issues raised therein. Shareholders with no voting rights and bondholders may also attend the General Meetings and discuss items on the agenda, unless the articles of association stipulate otherwise. Common representatives of holders of non-voting preference shares and bondholders are also entitled to attend General Meetings. Whenever the articles of association requires a certain number of shares to confer voting rights, those shareholders who lack the minimum number of required shares, are entitled to group in order to achieve the required or a higher number of shares and to be represented by one of the group members.

I.5.2. Members of the Board of Directors, Members of the Audit Board or of the General and Supervisory Board shall attend the General Shareholders' Meetings. The Statutory Auditor who examined the company's accounts shall attend the Annual General Meeting.

I.5.3. The attendance of any other person is subject to authorisation by the Chair of the General Meeting Board, albeit the Meeting may revoke such authorisation<sup>18</sup>.

### **Recommendatory Framework**

I.5.4. The obligation to deposit or block shares before the General Meeting, contained in the articles of association, shall not exceed 5 working days.

I.5.5. Should the General Meeting be postponed, the company shall not compel share blocking during that period until the Meeting is resumed and shall then follow the standard requirement of the first session.

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<sup>18</sup> Article 379 CCC.

## I.6. SHAREHOLDER REPRESENTATION

### Legislative Framework

I.6.1. The articles of association may not forbid a shareholder from being represented at a General Meeting<sup>19</sup>.

I.6.2. Should any person request representations of more than five shareholders to vote at a General Meeting, the following shall be observed: i) representation shall only be granted for a single specific meeting; ii) the granting of representation may be withdrawn. Attendance of the represented party at the meeting implies withdrawal. The request for representation shall contain at least the following information: i) details of the Meeting in question shall be specified by indicating its location, date, time and its agenda; ii) information on consultation of documents by shareholders; iii) precise information on the person or persons that have been proposed for representation; iv) whether the representative shall vote in favour or against the motions, should the represented party fail to instruct them; v) reference to the fact that, should unforeseeable circumstances occur, the representative shall vote in the manner that best suits the interests of those represented; vi) the voting rights ascribed to the petitioner<sup>20</sup>; vii) the basis upon which the vote is to be exercised by the petitioner<sup>21</sup>. The standard proxy document shall be sent to the CMVM and the market managing entity at least 5 working days prior to being sent to the shareholders with voting rights. The petitioner shall provide all the relevant information to the shareholders, upon their request<sup>22</sup>.

I.6.3. The company may not, through its actions or those of an intermediary, request the representation of any person, nor shall the members of the Audit Committee, the Audit Board, the General and Supervisory Board or the Statutory Auditors' request representation or be indicated as representatives.

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<sup>19</sup> Article 380 CCC.

<sup>20</sup> Ascribing is made as per provided for in Article 20/1 of the SC.

<sup>21</sup> Article 23 of the SC.

<sup>22</sup> Article 23 of the SC.

I.6.4. Should the solicited shareholder grant representation and instruct as to the vote, the petitioner may refuse representation but shall urgently inform the shareholder of that fact. Similarly, the representatives shall be clearly informed on the votes that have been cast due to unforeseeable circumstances. The party requesting representation shall forward a copy of the minutes of the Meeting held to the represented shareholder, at the former's own expense<sup>23</sup>.

## **I.7. VOTING AND EXERCISING VOTING RIGHTS**

### **Legislative Framework**

I.7.1. In the absence of a different clause in the articles of association, the one-share, one-vote principal prevails. The company's articles of association may: i) stipulate that a single vote corresponds to a certain number of shares, provided that all shares issued by the company are covered by the latter stipulation and that one vote corresponds to at least each 1000 (Euro) of the capital; ii) establish that votes over and above a certain number shall not be counted, when issued by a single shareholder, on their own behalf or as a representative for another shareholder. Such may be established for all shares or only for shares of one or more categories, apart from determined shareholders.

I.7.2. A shareholder may not vote in person or through a representative, nor in representation of a third party, when the Law expressly forbids it, and further yet, when the resolution relates to the following: i) release from obligation or liability owed by the shareholder, either in shareholder capacity or as a member of the Board of Directors or Supervisory Board; ii) any litigation arising from claims made by the company against a shareholder or vice-versa, either before or after petitioning the courts; iii) just cause for dismissal from office of a member of a corporate body; iv) any relations, established or to be established between the company and the shareholder, other than those provided for in the articles of association<sup>24</sup>.

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<sup>23</sup> Article 381 CCC.

<sup>24</sup> Article 384 CCC.

I.7.3. The procedure for exercising voting right may be determined by the articles of association, by means of a resolution adopted by the shareholders or a decision by the Chair of the General Meeting Board. When the postal voting is not prohibited in the articles of association, they shall regulate the exercise thereof, establishing the means of verifying the authenticity of the vote and ensuring its confidentiality until the moment of the vote, and choosing one of the following options for dealing with postal ballots: i) determine that votes cast in this fashion are null in relation to motions tabled on matters presented subsequent to the casting of the vote; ii) authorizing votes to be cast until at most five days after the meeting, in which case the final count of votes shall take place up to the 8th day after the meeting, after which the results of the vote shall be immediately disclosed<sup>25</sup>. Postal voting may be waived by the company's articles of association, except for amendments made to same and election of members of corporate bodies<sup>26</sup>.

I.7.4. A shareholder holding more than one vote shall not be allowed to split his/her votes in order to be able to vote otherwise on the same proposal or abstain from voting all his shares containing voting rights. A shareholder representing third parties may vote for or against a motion with his/her shares or those of parties represented, and may also abstain from voting with his/her shares or those of parties represented<sup>27</sup>.

### **Recommendatory Framework**

I.7.5. Companies shall not impose any statutory restrictions on postal voting.

I.7.6. The statutory deadline for receiving early voting ballots by post shall not exceed 3 working days.

I.7.7. The company's articles of association shall provide for the 'one-share, one-vote' principle.

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<sup>25</sup> Article 384 CCC.

<sup>26</sup> Article 22 SC.

<sup>27</sup> Article 385 CCC.

## **I.8. QUORUM AND RESOLUTIONS**

### **Legislative Framework**

I.8.1. The General Meeting may adopt resolutions the first time it is convened, regardless of the number of shareholders present or represented, except for when the articles of association provide for otherwise. However, in order to enable the General Meeting to adopt resolutions the first time it is convened, regarding amendments to be made to the articles of association, mergers, spin-offs, conversion or dissolution of the company or other matters for which the Law requires a qualified majority, without specifying it, shareholders with shares representing at least one third of the share capital shall be present or represented. On being convened a second time, the Meeting may adopt resolutions regardless of the number of shareholders present or represented and the capital which they represent<sup>28</sup>.

I.8.2. The General Meeting shall adopt resolutions by a majority of votes cast, regardless of the percentage of the share capital represented, unless otherwise stipulated in the Law or in the articles of association. Abstaining votes shall not be counted.

I.8.3. Should there be various proposals for resolution on the appointment of holders of office in the corporate bodies, statutory auditors or audit firms, the highest number of votes in favour shall prevail.

I.8.4. The resolution on the amendments to the articles of association, mergers, spin-offs, conversion or dissolution of the company or other matters for which the Law requires a qualified majority, shall be adopted by two thirds of votes cast, whether the General Meeting convenes during the first or second Meeting. If, at the Meeting convened for the second time, shareholders representing at least half of the share capital are present or represented, resolutions on some of the mentioned matters may be adopted by a majority of the votes cast.

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<sup>28</sup> Article 383 CCC.

I.8.5. When the Law or the articles of association require a qualified majority to be determined in terms of the company's capital, shares whose holders are legally hindered from voting, either in general or in that specific case, shall not be taken into account for the calculation of the majority, and, furthermore, the voting limitations permitted shall not function, unless stated otherwise in the articles of association<sup>29</sup>.

### **Recommendatory Framework**

I.8.6. Companies shall not set a constitutive or deliberating quorum that outnumbers that which is prescribed by Law.

## **I.9. MINUTES AND INFORMATION ON RESOLUTIONS PASSED**

### **Legislative Framework**

I.9.1. The Chair of the General Meeting Board shall organize the list of shareholders attending and represented at the beginning of the Meeting. The list of attendees shall be kept on file by the company and may be consulted by any shareholder. Copies requested by the latter shall be provided<sup>30</sup>.

I.9.2. The minutes of the General Meetings shall be drawn up and signed by the Chair of the General Meeting Board and the Secretary. The General Meeting may albeit decide that the minutes be submitted for its approval, prior to being signed under the terms of the previous paragraph<sup>31</sup>.

### **Recommendatory Framework**

I.9.3. The minutes of the General Meetings shall be made available to the shareholders on the company's website within 5 days, irrespective of the fact that such information may not be legally classified as material information.

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<sup>29</sup> Article 386 CCC.

<sup>30</sup> Article 382 CCC.

<sup>31</sup> Article 388 CCC.

The list of attendees, agenda items of the minutes and resolutions passed during such Meetings shall be kept on file for a 3 year period on the company's website.

## **I.10. MEASURES ON CORPORATE CONTROL**

### **Legislative Framework**

I.10.1. From the moment that the decision to launch a takeover bid is known, on over one third of the securities of the relevant category, and until the assessment of the result or until the prior termination of the respective process, the Board of Directors of the target company may not perform acts that materially affect the net asset situation of the target company and which may significantly affect the objectives announced by the offeror, apart from the normal day-to-day running of the company.

I.10.2. For the purposes of the previous paragraph: i) knowledge of the launching of a takeover bid is equivalent to the targeted company receiving the preliminary announcement; ii) relevant changes in the net asset situation of the target company are considered to be: the issuance of shares and other securities conferring the right to their subscription or acquisition and the entering into contracts representing the sale of important portions of the company's assets; iii) the restriction includes acts enforcing decisions made before the period referred to therein which have not yet been fully or partially enforced.

I.10.3. Exception to the provisions stated in the previous paragraph are: i) acts resulting from the fulfillment of obligations prior to the knowledge of the launching of the takeover bid; ii) acts authorized at a shareholders' General Meeting convened solely for that purpose, and during the period referred to in I.10.1.; iii) acts meant to seek out competing offerors.

I.10.4 During the period referred to above: i) the deadline for disclosing the notice convening the General Meeting, as mentioned previously, is reduced to 15 days; ii) the resolutions of the shareholders' meeting contemplated in the previous paragraph, as well as any resolutions on early distribution of dividends and other income, can only be adopted by the majority of votes required to amend the articles of association.

I.10.5. The offeror is liable for the damages incurred due to the decision to launch a takeover bid made with the sole objective of placing the target company in the described situation.

I.10.6. The framework set out in the previous paragraphs is not applicable to takeover bids launched by companies that are not subject to the same rules or are controlled by a company that is not subject to the same rules<sup>32</sup>.

I.10.7. The companies subject to Portuguese Law may statutorily provide for the following: i) restrictions provided for in their articles of association or in shareholders' agreements, on the transfer of shares or other securities carrying rights to acquire shares will be suspended, producing no effects on transfers resulting from acceptance of the bid; ii) restrictions provided for in their articles of association or in shareholders' agreements, concerning the exercise of voting rights will be suspended, producing no effects in shareholders' meetings convened for the purpose of authorising potentially defensive measures; iii) when at least 75% of the share capital carrying voting rights is achieved following a takeover bid, the restrictions on transfers and voting rights referred to in the preceding paragraphs shall not apply to the offeror, and no extraordinary rights to appoint or replace members of the Board of Directors of the targeted company can be exercised. The approval of these statutory amendments shall be disclosed to the CMVM and the public.

I.10.8. The articles of association of publicly traded companies subject to Portuguese Law which do not fully exercise the option referred to in the preceding paragraph, cannot provide for amendments to or removal of restrictions on transfers or voting rights and are conditional upon a favourable vote of more than 75% of all votes cast.

I.10.9. The articles of association of publicly traded companies subject to Portuguese Law which exercise the option mentioned in I.10.7., may provide that this framework need not apply to takeover bids conducted by offerors that are not subject to the same rules or controlled by a company that is not subject to the same rules.

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<sup>32</sup> Article 182 SC.

I.10.10. The offeror shall be liable for any damages caused by the suspension of effectiveness of shareholders' agreements that are fully disclosed up to the date of publication of the preliminary announcement. The offeror shall not be liable for damages caused to shareholders that voted in favour of the amendments to the articles of association for the purposes mentioned in I.10.7. and, to any persons related to shareholders under those circumstances that determine the attribution of voting rights<sup>33</sup>.

I.10.11. Any clauses in the articles of association concerning suspension of the effectiveness of restrictions on transfers and voting rights referred to in I.10.7., may not exceed a 18-month period, but may be renewed through a new resolution of the General Meeting, adopted in the terms laid down by Law to amend the articles of association. These provisions shall not apply if a Member State is the holder of securities in the target company that confers it with special rights<sup>34</sup>.

### **Recommendatory Framework**

I.10.12. Measures aimed at preventing successful takeover bids, shall respect both the company's and the shareholders' interests.

I.10.13. In observance to the principle of the previous paragraph, the company's articles of association that restrict/limit the number of votes that may be held or exercised by a sole shareholder, either individually or in concert with other shareholders, shall also foresee for a resolution by the General Meeting, (5 year intervals, at least) on whether that statutory provision is to prevail – without super quorum requirements as to the one legally in force – and that in said resolution, all votes issued be counted, without applying said restriction.

I.10.14. In cases such as change of control or changes to the composition of the Board of Directors, defensive measures shall not be adopted that instigate immediate and serious asset erosion in the company, and further disturb the free transmission of shares and voluntary assessment of the performance of the Board of Directors by the shareholders.

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<sup>33</sup> Under certain circumstances provided for in Article 20 SC.

<sup>34</sup> Article 182/A SC.

## **II. MANAGEMENT AND SUPERVISORY BOARDS**

### **II.1. GENERAL POINTS**

#### **II.1.1. MAIN DUTIES OF THE BOARD MEMBERS**

##### **Legislative Framework**

II.1.1. The companies' Directors shall display due care towards the company, by exhibiting willingness, technical capability and an understanding of the company's business that is appropriate to their roles, and shall execute their duties with the diligence of a careful and organised Director.

II.1.2. The companies' Directors shall act with loyalty on behalf of the company's interests and take the shareholders' long term interests into account, as well as other relevant parties, such as employees, clients and creditors by way of ensuring the company's sustainability.

II.1.3. Members of the corporate bodies with supervisory duties shall carry out their duties in the interests of the company, executing proper care and employing high standards of professional diligence and loyalty<sup>35</sup>.

#### **II.1.2. STRUCTURE AND DUTIES**

##### **Legislative Framework**

II.1.2.1 The management and supervision of the companies may take on a 3 model format: i) Board of Directors, Audit Board and Statutory Auditor<sup>36</sup>; ii) Board of Directors, Audit Committee and a Statutory Auditor; iii) Executive Board of Directors, General and Supervisory Board and a Statutory Auditor<sup>37</sup>.

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<sup>35</sup> Article 64 CCC.

<sup>36</sup> The need for a Statutory Auditor is subject to the fulfilment of legal requirements. (Article 278/3 CCC). The Law allows for a sole auditor (Audit Board) but not for companies whose securities are admitted to trading on a regulated market (Articles 278/3 and 413/2 CCC).

<sup>37</sup> Article 278 CCC.

II.1.2.2. In the first 2 model formats, the Board of Directors is responsible for managing the activities of the company, and shall be subordinate to the resolutions of shareholders or to the intervention of the Supervisory Board or the Audit Committee only in those cases where the Law or the articles of association stipulate it<sup>38</sup>. In the third model format, the Executive Board of Directors is responsible for managing the activities of the company, without prejudice to the articles of association of the company establishing that the Executive Board of Directors is required to obtain prior consent from the General and Supervisory Board before practicing certain categories of acts<sup>39</sup>.

II.1.2.3. The Board of Directors may delegate management powers to an Executive Committee or to one or more Chief-Executive Officers<sup>40</sup>.

II.1.2.4. The Auditing activities are carried out by the Audit Board and the Statutory Auditor for the first model format, the Audit Committee and the Statutory Auditor for the second model format and the General and Supervisory Board and Statutory Auditor for the third model format. In any of the previous cases, the Statutory Auditor shall proceed with the examination and statutory audits<sup>41</sup>.

II.1.2.5. The General and Supervisory Board shall appoint a Financial Matters Committee that is solely responsible for carrying out a set of supervisory duties provided for by Law<sup>42</sup>.

### **Recommendatory Framework**

II.1.2.6. The Board of Directors shall assess the adopted model in its governance report and pin-point possible hold-ups as to its functioning and shall propose measures that it deems fit for surpassing such obstacles.

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<sup>38</sup> Article 405 CCC.

<sup>39</sup> Articles 431 and 442 CCC.

<sup>40</sup> Article 407 CCC.

<sup>41</sup> Articles 420, 451 and 453 CCC.

<sup>42</sup> Article 444 CCC.

II.1.2.7. Companies shall set up internal control systems in order to efficiently detect any risk to the company's activity by protecting its assets and keeping its corporate governance transparent.

II.1.2.8. The Management and Supervisory Boards shall establish internal regulations and shall have these disclosed on the company's website.

### **II.1.3. GOVERNANCE INCOMPATIBILITY AND INDEPENDENCE**

#### **Legislative Framework**

II.1.3.1. The following situations are considered to be incompatible with the duties of the Audit Board and the Statutory Auditor: i) those enjoying certain company benefits; ii) those carrying out management functions within the company; iii) members of corporate bodies that find themselves in a controlling or group relationship with the company under supervision; iv) a Director in a partnership which is in a controlling relationship with the supervised company; v) those who directly or indirectly provide services or establish a significant business relationship with the supervised company or a company in a controlling or group relationship with the supervised company; vi) those who carry out duties in a competing company and who act in representation, on behalf of, or who are in any way bound by the interests of the competing company; vii) the spouses, next of kin up to and including third-degree lineage, as well as collateral (indirect) ancestry, of persons prevented from doing so under the terms of items i), iii), iv) and vi), as well as spouses of those persons mentioned in v); viii) those who carry out management and supervisory duties in five companies, with the exception of statutory audit firms and Law firms, to which the terms of specific legislation shall apply<sup>43</sup>; ix) those who are banned, incapacitated, insolvent, bankrupt and those sentenced to penalties involving the prohibition, albeit temporary, of the exercise of public service duties<sup>44</sup>.

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<sup>43</sup> Article 76 of Decree-Law 487/99 of 16 November.

<sup>44</sup> Articles 374, 414/A and 423/B CCC.

II.1.3.2. The rules on incompatibility applicable to members of the Audit Committee are alike for members of the Audit Board and the Statutory Auditor but are not applicable to the exercise of management duties in the company itself<sup>45</sup>. However, the carrying out of executive duties in the company is prohibited<sup>46</sup>.

II.1.3.3. The incompatibilities applicable to members of the Audit Board and the Statutory Auditor are also applicable to members of the General and Supervisory Board, except for those mentioned in point vi) of II.13.1., which apply solely to members of the Financial Matters Committee<sup>47</sup>. Apart from being Director of the company, it is considered incompatible to carry out management duties in another company that finds itself in a controlling or group relationship, whilst carrying out duties in the General and Supervisory Board<sup>48</sup>.

II.1.3.4. The majority of the members of the Audit Board and the Audit Committee shall be independent.

II.1.3.5. The majority of members of the General and Supervisory Board and the Financial Matters Committee shall be independent<sup>49</sup>.

II.1.3.6. A person is understood to be independent when there is no association to any specific interests in the company and that do not fall under any circumstance that might influence its impartial assessment or decision, by virtue of the following: i) the holder or acting on behalf of the holders of qualifying holdings equal or greater than 2% of the share capital of the company; ii) re-elected for a further two-year mandate, on a continuous or interleaved basis<sup>50</sup>.

II.1.3.7. The company is obliged to disclose in its corporate governance report, the identity of its non-executive members of the Board of Directors as well as the members of other established Committees that fully comply with the incompatibility rules provided for in II.1.3.1., except for item ii) and the independence criterion mentioned in II.1.3.6<sup>51</sup>.

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<sup>45</sup> Article 434 CCC.

<sup>46</sup> Article 423/B e CCC.

<sup>47</sup> Article 444 CCC.

<sup>48</sup> Article 437 CCC.

<sup>49</sup> Articles 414, 434 and 444 CCC.

<sup>50</sup> Articles 374, 414 and 423/B CCC.

<sup>51</sup> CMVM Regulation 1/2007.

II.1.3.8. Where applicable, the company shall also disclose in its corporate governance report, the identity of the members of the General and Supervisory Board and the identity of other established Committees that fully comply with the incompatibility rules provided for in II.1.3.1., including item vi) and the independence criterion mentioned in II.1.3.6<sup>52</sup>.

### **Recommendatory Framework**

II.1.3.10. The Board of Directors shall include a number of Non-Executive members that ensure the efficient supervision, auditing and assessment of the executive members' activity.

II.1.3.11. Non-Executive members must include an adequate number of independent members. The size of the company and its shareholder structure must be taken into account when devising this number and may never be less than a fourth of the total number of Directors.

## **II.1.4. ELIGIBILITY CRITERIA FOR APPOINTMENT**

### **Legislative Framework**

II.1.4.1. The members of the Board of Directors are elected by the General Meeting for a period which may not exceed four years and may be re-elected<sup>53</sup>. The Chair of the Board of Directors is appointed by the General Meeting or elected by the Board of Directors according to the terms established in the articles of association<sup>54</sup>. The Executive Members are appointed by the Board of Directors.

II.1.4.2. The members of the Executive Board of Directors, including the Chair, are appointed by the General and Supervisory Board or, if provided for in the articles of association, by the General Meeting.

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<sup>52</sup> *CMVM Regulation 1/2007.*

<sup>53</sup> *Article 391 CCC.*

<sup>54</sup> *Article 395 CCC.*

The duration of the mandate may not exceed four years and re-election may occur.<sup>55</sup> The General and Supervisory Board also have the power to remove Members of the Executive Board of Directors, if such power is not conferred to the General Meeting in the articles of association<sup>56</sup>.

II.1.4.3. The members of the General and Supervisory Board are elected by the General Meeting for a maximum period of four years and may be re-elected<sup>57</sup>. The Chair of the General and Supervisory Board is elected by the General Meeting or by the General and Supervisory Board as set forth in the articles of association<sup>58</sup>. The members of the Financial Matters Committee shall include at least one member holding an undergraduate degree suitable for the exercise of his/her functions and be knowledgeable in auditing and accountancy<sup>59</sup>.

II.1.4.4. The members of the Audit Committee are elected during the General Meeting under the same terms as the other Directors. The proposal lists for the Board of Directors shall name the members that will comprise the Audit Committee. The Chair of the Audit Committee is appointed by the General Meeting or by its peers. The members of the Audit Committee shall include at least one member holding an undergraduate degree suitable for the exercise of his/her functions and be knowledgeable in auditing and accountancy<sup>60</sup>.

II.1.4.5. The members of the Audit Board are elected by the General Meeting for a maximum period of four years and may be re-elected<sup>61</sup>. The members of the Audit Board shall include at least one member holding an undergraduate degree suitable for the exercise of his/her functions and be knowledgeable in auditing and accountancy<sup>62</sup>. The Chair of the Audit Board is appointed by the General Meeting or in the absence of former, by its members<sup>63</sup>.

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<sup>55</sup> Article 425 CCC.

<sup>56</sup> Article 441 CCC,

<sup>57</sup> Article 435 CCC.

<sup>58</sup> Article 436 CCC.

<sup>59</sup> Article 444 CCC.

<sup>60</sup> Article 423/B CCC.

<sup>61</sup> Article 415 CCC.

<sup>62</sup> Article 414 CCC.

<sup>63</sup> Article 414/B CCC.

II.1.4.6. The Statutory Auditor is elected upon proposal of either, the Audit Board, the Audit Committee or the General and Supervisory Board, depending on the adopted management and supervisory model<sup>64</sup>.

II.1.4.7. The articles of association shall alternatively establish the following: i) for a number of members of the Board of Directors or of the General and Supervisory Board that does not exceed one third of the corporate body, isolated appointments may be made, from persons proposed on lists drawn up by groups of shareholders, provided that none of these groups holds shares representing more than 20% and less than 10% of the share capital and that same shareholder may not draw up more than one list<sup>65</sup>, or ii) that a minority of shareholders that have voted against a motion which was passed in the appointment of the Board of Directors or the General and Supervisory Board, if need be, are entitled to appoint at least one Director, provided that this minority represents at least 10% of the share capital<sup>66</sup>.

II.1.4.8. Should the articles of association not provide for it, the following is applicable: the rule by which the minority of shareholders that have voted against a motion which was passed by the election of the Board of Directors or by the General and Supervisory Board, are entitled, if need be, to appoint at least one member of these bodies, provided that this minority represents at least 10% of the share capital.

II.1.4.9. At the request of shareholders that hold shares representing at least one tenth of the share capital, submitted within 30 days of the General Meeting at which the members of the Board of Directors and of the Audit Board were appointed, the courts may appoint one further permanent member and one deputy for the Audit Board, provided that the petitioning shareholders voted against the motions which won, and their votes were recorded in the minutes, and their term of office shall begin on the date on which the last General Meeting took place, if the election of the members of the Board of Directors and Audit Board was carried out at different meetings.

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<sup>64</sup> Article 446 of the CCC.

<sup>65</sup> Articles 392 and 435 of the CCC.

<sup>66</sup> Articles 392 and 435 of the CCC.

II.1.4.10. If there are various minorities exercising the respective rights, the courts may appoint up to two effective members, and the respective deputies, adding the shares which ran simultaneously<sup>67</sup>.

### **Recommendatory Framework**

II.1.4.11. Depending on the applicable model, the Chair of the Audit Board, the Auditing Committee or the Financial Matters Committee, shall be independent and be adequately capable to carry out its duties.

## **II.1.5. CONFLICTS OF INTEREST**

### **Legislative Framework**

II.1.5.1. The company shall be prohibited from granting loans or credit to Directors, making payments on their behalf, providing guarantees for obligations assumed by them and granting them salary advances of more than one month. Any contracts entered into between the company and its Directors, directly or through an intermediary, shall be null and void, if prior authorisation was not given in a resolution adopted by the Board of Directors, in which the party in question cannot vote, and with the consent of the Board<sup>68</sup>. During the period for which they were appointed, the Directors shall not exercise, in the company or any company with which it is in a controlling or group relationship, any work contracts, supply of services or enter into any such contracts<sup>69</sup>.

II.1.5.2. Members of the General and Supervisory Board shall not exercise any activity competing with the company on their own behalf or on behalf of a third party, if they fail to obtain the approval of the General Meeting, nor shall they exercise functions in a competing company or be appointed on behalf of or in representation of such a company<sup>70</sup>.

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<sup>67</sup> Article 418 of the CCC.

<sup>68</sup> Articles 397 and 428 of the CCC.

<sup>69</sup> Articles 399 and 428 of the CCC.

<sup>70</sup> Article 399 CCC.

II.1.5.3. The corporate governance report shall include the main elements on the business deals and operations carried out in the company and among the members of the Management and Supervisory bodies, holders of qualifying holdings or companies that find themselves in a control or group relation, provided they are significant in economic terms for any of the parties involved, except for businesses or operations that are carried out collectively, under normal market conditions for similar operations and are part of the day-to-day activity of the company<sup>71</sup>.

## **II.1.6. POLICY ON THE REPORTING OF IRREGULARITIES**

### **Recommendatory Framework**

II.1.6.1. The company shall adopt a policy whereby irregularities occurring within the company, are reported. Such reports shall contain the following information: i) the means through which such irregularities may be reported internally, including the persons that are entitled to receive the reports; ii) how the report is to be handled, including confidential treatment, should it be required by the reporter.

II.1.6.2. The general guidelines on this policy shall be disclosed in the corporate governance report<sup>72</sup>.

## **II.1.7. REMUNERATION**

### **Legislative Framework**

II.1.7.1. The General Meeting of Shareholders or a Remuneration Committee appointed by the General Meeting shall be responsible for setting the remuneration of each of the members of the Board of Directors, including the members of the Audit Committee, Audit Board and the General and Supervisory Board<sup>73</sup>.

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<sup>71</sup> CMVM Regulation 1/2007.

<sup>72</sup> CMVM Recommendation 10/A.

<sup>73</sup> Articles 399 and 422/A of the CCC.

The General and Supervisory Board or its Remuneration Committee or if stated in the company's articles of association, the Shareholders General Meeting or a Committee appointed by the latter, shall be responsible for setting the remuneration of the members of the Executive Board of Directors <sup>74</sup>.

II.1.7.2. The remuneration may be set or may consist partially of a percentage of the profits for the financial year, however the maximum value of that percentage shall be authorised in the articles of association<sup>75</sup>.

II.1.7.3. The remuneration of the members of the General and Supervisory Board, the Audit Board and the Audit Committee shall consist exclusively of a fixed amount<sup>76</sup>.

II.1.7.4. Companies shall inform the CMVM on information regarding share-allocation plans or stock option for employees and/or members of the Management and Supervisory bodies, during the seven working days following its approval<sup>77</sup>. Furthermore, a description of the main characteristics of the share-allocation plans and stock options adopted or in force at the time, shall be disclosed in the company's corporate governance report<sup>78</sup>.

II.1.7.5. The individual or collective remuneration shall amply include performance pay bonuses, overtime payments, retirement benefits, discharge compensations, earned by members of the Board of Directors and shall be disclosed on the corporate governance report. Whenever the remuneration surpasses by twofold the monthly salary, it shall also be disclosed individually and all the amounts received, in the corporate governance report regardless of its character, should duties cease during that time<sup>79</sup>.

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<sup>74</sup> Article 429 of the CCC.

<sup>75</sup> Articles 399 and 420 of the CCC.

<sup>76</sup> Article 422/A and 423/D of the CCC.

<sup>77</sup> CMVM Regulation 1/2007

<sup>78</sup> CMVM Regulation 1/2007.

<sup>79</sup> CMVM Regulation 1/2007.

## **Recommendatory Framework**

II.1.7.6. The remuneration of the members of the Board of Directors shall be aligned with the interests of the shareholders. Thus: i) The remuneration of Directors carrying out executive duties shall be based on performance and a performance assessment shall be carried out periodically by the competent body or committee; ii) the level of remuneration shall be consistent with the maximization of the long term performance of the company, and shall be dependent on sustainability of the levels of the adopted performance; iii) when the remuneration of non-executive members of the Board of Directors is not legally imposed, a fixed amount shall be set.

II.1.7.7 The Remuneration Committee and the Board of Directors shall submit a statement on the remuneration policy to be presented at the Annual Shareholders' General Meeting on the Management and Supervisory bodies and other Directors as provided for in Article 248/3/b of the Securities Code. The shareholders shall be informed on the proposed criteria and main factors to be used in the assessment of the performance for determining the level (share bonuses; option on share acquisition, annual bonuses or other awards).

II.1.7.8. At least one of the Remuneration Committee's representatives shall be present at the Annual Shareholders General Meeting.

II.1.7.9. A proposal shall be submitted at the General Meeting on the approval of plans for the allotment of shares and/or options for share purchase or further yet, on the variations in share prices, to members of the Management and Supervisory Boards and other Directors within the context of Article 248/3/B of the Securities Code. The proposal shall mention all the necessary information for its correct assessment. The proposal shall contain the regulation plan or in its absence, the plan's general conditions. The main characteristics of the retirement benefit plans for members of the Management and Supervisory Boards and other managers within the context of Article 248/3/B of the Securities Code, shall also be approved at the General Meeting.

II.1.7.10. The remuneration of the members of the Management and Supervisory Boards shall be individually and annually disclosed and, information on fixed and variable remuneration must be discriminated as well as any other remuneration received from other companies within the group of companies or companies, controlled by qualified shareholders.

## **II.2. BOARD OF DIRECTORS**

### **Legislative Framework**

II.2.1. The Board of Directors is responsible for the decision-making on any matters related to the management of the company.

II.2.2. The company's articles of association may stipulate authorisation for the Board of Directors to delegate one or more Executive Directors or an Executive Committee to be responsible for the day-to-day management of the company. However, the following are not within the delegation duties' scope: i) appointment of the Chairperson (if not the General Meeting); ii) co-opting Managing Directors; iii) request for convening General Meetings; iv) annual reports and accounts; v) providing personal and real guarantees for the company; vi) changes in head-office and capital increase, under the terms provided for in the articles of association; vii) plans for mergers, spin-offs and company conversion<sup>80</sup>.

II.2.3. The Board of Directors' resolution shall set the limits for delegating powers and in the event of the creation of an Executive Committee, it shall establish its composition as well and how it is run.

II.2.4. Delegating powers does not exclude the Board of Directors from adopting resolutions on the same subject matters; other Directors are responsible, under the Law, for the overall supervision on how the Executive Director or Chief Executive Officers or further yet, the Executive Committee, as well as for damages caused through acts or omissions, when it is aware of such acts or omissions or their intent to carry out such actions and do not alert the Board to take the appropriate measures.

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<sup>80</sup> Articles 406 and 407 of the CCC.

## **Recommendatory Framework**

II.2.6. Within the limits established by Law for each Management and Supervisory structure, and unless the company is of a reduced size, the Board of Directors shall delegate the day-to-day running and delegated duties shall be identified in the Annual Corporate Governance Report.

II.2.7. The Board of Directors must ensure that the company acts in accordance with its goals, and shall not delegate its duties, namely in what concerns: i) definition of the company's strategy and general policies; ii) definition of the corporate structure of the group; iii) decisions taken that are considered to be strategic due to the amounts, risk and particular characteristics involved.

II.2.8. Should the Chair of the Board of Directors carry out executive duties, the Board of Directors shall set up efficient mechanisms for co-ordinating non-executive members that can ensure that these may decide upon, in an independent and informed manner, and furthermore shall explain these mechanisms to the shareholders in the corporate governance report.

II.2.9. The annual management report shall include a description of the activity carried out by the non-executive Board Members and shall mention any restraints encountered.

## **II.3. CHIEF EXECUTIVE OFFICER (CEO), EXECUTIVE COMMITTEE AND EXECUTIVE BOARD OF DIRECTORS**

### **Legislative Framework**

II.3.1. The Executive Committee and the Chief Executive Officer (CEO) shall carry out the management duties that they have been entrusted with. The Board of Directors may at any time, resume its duties that had been delegated to the CEO/s or to the Executive Committee and may, in like way, change the composition of the Executive Committee by substituting its members, provided they are on the Board of Directors.

11.3.2. The Executive Board of Directors is responsible for representing the company, except for when the company represents the former. Such duty is conferred upon the General and Supervisory Board, as well as managing the company, without prejudice to prior authorisation by the General and Supervisory Board that is provided for in the articles of association<sup>81</sup>.

11.3.3. The Executive Board of Directors shall inform the General and Supervisory Board of the following: i) the management policy that it intends to use as well as the facts and issues that mainly determine its options, at least on a yearly basis; ii) on a quarterly basis, before the Board Meeting, on the company's situation and business evolution by indicating its turnover and the rendering of services; iii) disclosure of the management report regarding the previous financial year, at the date set by Law. The Executive Board of Directors shall also inform the Chair of the General and Supervisory Board on any business deals that may significantly influence the liquidity and profitability of the company and basically on any abnormal situation or any other important fact<sup>82</sup>.

### **Recommendatory Framework**

11.3.4. When Directors that carry out executive duties are requested by other Board Members to supply information, the former shall do so in a timely manner and the information supplied shall adequately suffice the request made.

11.3.5. The Chair of the Executive Committee shall send the convening notices and minutes of the meetings to the Chair of the Board of Directors and, when applicable, to the Chair of the Supervisory Board and the Audit Committee.

11.3.6. The Chair of the Executive Board of Directors shall send the convening notices and minutes of the meeting to the Chair of the General and Supervisory Boards and the Chair of the Financial Matters Committee.

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<sup>81</sup> Article 431 of the CCC.

<sup>82</sup> Article 441 of the CCC.

## **II.4. GENERAL AND SUPERVISORY BOARD, FINANCIAL MATTERS COMMITTEE, AUDIT COMMITTEE AND AUDIT BOARD**

II.4.1. The General and Supervisory Board is responsible for: i) appointing and dismissing Directors, if such is not provided for in the articles of association at the General Meeting; ii) nominating a director that will serve as Chair of the Executive Board of Directors and discharge him/her, if such is not provided for in the articles of association to the General Meeting; iii) representing the company in relations with the Directors; iv) overseeing the activities of the Executive Board of Directors; v) seeing to it that the law is upheld and the articles of association are observed; vi) verifying, when deemed fit, and by means seen to be adequate, the regularity of the books, accounting records and supporting documents, as well any such assets or property owned by the company on any basis; vii) verifying whether accounting policies and the assessment criteria adopted by the company correctly assess the assets and turnover of the company; viii) furnishing statements of opinion on the management report and accounts for the financial year; ix) overseeing whether the risk management, internal control and internal audit systems are running smoothly; x) receiving reports by shareholders, employees and other persons of the company on irregularities; xi) overseeing the process for preparing and disclosing financial information; xii) proposing the appointment of the statutory auditor to the General Meeting; xiii) overseeing the auditing on documents of the company's financial statements; xiv) overseeing the statutory auditor's independence, particularly as regards additional supply of services; xv) employing experts that collaborate with one or more of their members during the exercise of their duties, and that the employment and remuneration of these experts must take into account the importance of matters assigned to them as well as the economic situation of the company; xvi) approving or refusing the consent to transmitting shares, when same is required by contract; xvii) convening a General Meeting, whenever deemed fit; and xviii) carrying out any other duties ascribed by Law or by the articles of association.

II.4.2. In the event of permanent absence or the temporary unavailability of the Executive Directors, the General and Supervisory Board, shall make provisions for their replacement. The General and Supervisory Board may appoint one of its own members to replace an Executive Director that is temporarily unavailable, for a period that does not exceed one year. However, the member of the General and Supervisory Board that has been appointed to replace an Executive Director, may not simultaneously carry out duties in the General and Supervisory Board.

II.4.3. The General and Supervisory Board shall, at its convenience, appoint one or more committees from among its members, for the purpose of exercising certain duties, in particular the supervision of the Executive Board of Directors and the setting of the Board of Directors' remuneration. It is compulsory that the General and Supervisory Board sets up a Committee for Financial Matters for carrying out a set of duties, namely in what concerns overseeing financial and account information.

II.4.4. The Financial Matters Committee is responsible for: i) verifying whether the financial statements and the accountancy assessment criteria are correct; ii) issuing statements of opinion on the management report and accounts for the financial year; iii) overseeing whether the risk management, internal control and internal audit systems are running smoothly, if these exist; iv) receiving communications by shareholders, employees and other persons of the company on irregularities; v) overseeing the process for preparing and disclosing financial information; vi) proposing the appointment of the statutory auditor to the General Meeting; vii) overseeing auditing and the statutory auditor's independence.

II.4.5. The Audit Committee, as a supervisory body which also includes a 'Board of Directors' model, is responsible for: i) overseeing the management of the company; ii) ensuring that the law is upheld and the articles of association are observed; iii) verifying the regularity of the books, accounting records and supporting documents; iv) verifying, when deemed fit and by means considered to be adequate, the extension of cash and stock of any kind of the assets or property belonging to the company or received by it by way of pledge, deposit or to some other end; v) verifying the accuracy of the financial statements; vi) verifying whether the accounting policies and valuing criteria adopted by the company lead to the correct evaluation of the assets and the results; vii) furnishing statements of opinion on the management report and accounts for the financial year; viii) convening the General Meeting whenever the Chair of the Board fails do so; ix) overseeing whether the risk management, internal control and internal audit systems are running smoothly, if any exist; x) receiving reports by shareholders, employees and other persons of the company on irregularities;

xi) overseeing the process for preparing and disclosing financial information; m) proposing the appointment of the statutory auditor to the General Meeting; xii) overseeing auditing on documents of the company's financial statements; xiii) overseeing the statutory auditor's independence, particularly as regards additional supply of services; xiv) employing experts that collaborate with one or more of their members during the exercise of their duties, and that the employment and remuneration of these experts must take into account the importance of matters assigned to them as well as the economic situation of the company; and, xv) carrying out any other duties ascribed by Law or by the articles of association.

11.4.6. The Audit Board is responsible for: i) overseeing the management of the company; ii) ensuring that the law is upheld and the articles of association are observed; iii) verifying the regularity of the books, accounting records and supporting documents; iv) verifying, when deemed fit and by means considered to be adequate, the extension of cash and stock of any kind of the assets or property belonging to the company or received by it by way of pledge, deposit or to some other end; v) verifying the accuracy of the financial statements; vi) verifying whether the accounting policies and valuing criteria adopted by the company lead to the correct evaluation of the assets and the results; vii) furnishing statements of opinion on the management report and accounts for the financial year; viii) convening the General Meeting whenever the Chair of the Board fails do so; ix) overseeing whether the risk management, internal control and internal audit systems are running smoothly, if any exist; x) receiving reports by shareholders, employees and other persons of the company on irregularities; xi) employing experts that collaborate with one or more of their members during the exercise of their duties, and that the employment and remuneration of these experts must take into account the importance of matters assigned to them as well as the economic situation of the company; xii) carrying out any other duties ascribed by Law or by the articles of association; xiii) overseeing the process for preparing and disclosing financial information; xiv) proposing the appointment of the statutory auditor to the General Meeting; xv) overseeing auditing on documents of the company's financial statements; xvi) overseeing the statutory auditor's independence, particularly, as regards additional supply of services.

II.4.7. The General and Supervisory Board, the Financial Matters Committee, the Audit Committee and the Audit Board shall draw up a yearly annual report, so as to inform the shareholders of its supervisory action.

II.4.8. The Audit Board shall meet at least on a quarterly basis.

### **Recommendatory Framework**

II.4.9. Besides fulfilling its supervisory duties, the General and Supervisory Board shall advise, follow-up and carry out on an on-going basis, the assessment on the management of the company by the Executive Board of Directors. Besides other subject matters, the General and Supervisory Board shall decide on: i) definition of the strategy and general policies of the company; ii) the corporate structure of the group; and iii) decisions taken that are considered to be strategic due to the amounts, risk and particular characteristics involved.

II.4.10. The annual reports and financial information on the activity carried out by the General and Supervisory Board, the Financial Matters Committee, the Audit Committee and the Audit Board shall be disclosed on the company's website together with the financial statements.

II.4.11. The annual reports on the activity carried out by the General and Supervisory Board, the Financial Matters Committee, the Audit Committee and the Audit Board must include a description on the supervisory activity and shall mention any restraints that they may have come up against.

II.4.12. The Financial Matters Committee, the Auditing Committee and the Audit Board (depending on the applicable model) shall represent the company for all purposes at the external auditor, and shall propose the services supplier, the respective remuneration, ensure that adequate conditions for the supply of these services are in place within the company, as well as being the liaison officer between the company and the first recipient of the reports.

11.4.13. According to the applicable model, the Committee for Financial Matters, the Audit Committee and the Audit Board, shall assess the external auditor on an annual basis and advise the General Meeting that he/she be discharged whenever justifiable grounds are present.

## **11.5. SPECIAL COMMITTEES**

### **Legislative Framework**

11.5.1. The Board of Directors may empower a Director or several or the Directors to deal with certain aspects of the management of the company, unless the articles of association forbid it<sup>83</sup>.

11.5.2. This particular responsibility must not include the following matters: i) appointment of the Chairperson (if not up to the General Meeting); ii) co-opting Directors; iii) request for convening General Meetings; iv) annual reports and accounts; v) acquisition, disposal of and encumbrance of real estate; vi) providing personal or real surety or guarantees for the company; vii) opening and closing establishments or important parts thereof; viii) important extensions or reductions of the company's activities; ix) important modifications to the organisation of the company; x) establishment or termination of long-term and important cooperation with other companies; xi) changes in head-office and capital increase, under the terms provided for in the articles of association; xii) plans for mergers, spin-offs and company conversion.

11.5.3. The attribution of particular responsibilities to one or more of the Directors, does not exclude the normal competence of the other Directors or of the Board and their responsibilities in accordance with the Law.

11.5.4. The General and Supervisory Board may create other Committees that it deems fit, apart from the Financial Matters Committees.

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<sup>83</sup> Article 497 of the CCC.

## **Recommendatory Framework**

11.5.5. Unless the company is of a reduced size and depending on the adopted model, the Board of Directors and the General and Supervisory Committees, shall set up the necessary Committees in order to: i) ensure that a competent and independent assessment of the Executive Directors' performance is carried out, as well as its own overall performance and further yet, the performance of all existing Committees; ii) study the adopted governance system and verify its efficiency and propose to the competent bodies, measures to be carried out with a view to its improvement.

11.5.6. Members of the Remuneration Committee or alike, shall be independent from the Members of the Board of Directors.

11.5.7 All Committees shall draw up minutes of the meetings held.

## **III. INFORMATION AND AUDITING**

### **III.1. GENERAL DISCLOSURE DUTIES**

III.1.1. All information on securities and its issuers that might influence the investors' decisions or is supplied to supervisory entities as well as to the market, settlement systems and centralised securities systems management entities, shall be complete, true, current, clear, objective and lawful<sup>84</sup>.

III.1.2. The primary sources on information duties for companies issuing shares that are admitted to trading on a regulated market, is the Securities Code<sup>85</sup> and the CMVM Regulation 4/2004<sup>86</sup>. Further yet, information duties also originate from the Commercial Companies Code and the Commercial Registrar Code, as well those stipulated in Regulation 1606/2002 of the European Parliament and Council of 19 July.

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<sup>84</sup> Article 7 of the SC.

<sup>85</sup> Particularly Articles 244 and ss.

<sup>86</sup> Amendments introduced by CMVM Regulation 10/2005, CMVM Regulation 3/2006 and CMVM Regulation 5/2006.

III.1.3. The Directors shall submit the management report, financial statements and other documents provided for by Law, regarding each financial year (Annual Reports and Accounts)<sup>87</sup> to the relevant bodies. The Annual Report and Accounts shall be submitted to the competent body for review, with the exception of specific cases provided for by Law, no later than three months following the end of each financial year, or within five months for organisations that submit consolidated accounts or that use the equity method<sup>88</sup>.

III.1.4. The management report, financial statements and the proposal for the application of profits, which are included in the proposals presented by the Board of Directors for discussion and voting at the General Meeting, shall be disclosed on the issuer's website, 15 days prior to the General Meeting taking place<sup>89</sup>. As soon as possible and no later than 30 days after approval by the General Meeting, the management report, financial statements, the legal certification of accounts, the report drawn up by the auditor registered with the CMVM, and all other required financial statement documents shall be disclosed<sup>90</sup>.

III.1.5. The annual reports and accounts shall be drawn up in accordance with the IAS/IFRS, for both individual<sup>91</sup> and consolidated accounts<sup>92</sup>.

III.1.6. The Directors of companies that issue shares that are admitted to trading on a regulated market, are likewise obliged to disclose interim financial information. They shall firstly disclose information regarding the activity and results of that half-year, within three months after the close of the first half-year<sup>93</sup>. Secondly, information regarding its activity, results and economic and financial situation of the company, shall be disclosed within 60 days as from the close of the first, third, and where applicable, the fifth quarter of each reporting of the financial year<sup>94</sup>. All financial interim information must also be drawn up in accordance with the IAS/IFRS<sup>95</sup>.

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<sup>87</sup> Article 65/1 of the CCC.

<sup>88</sup> Article 65/5 of the CCC.

<sup>89</sup> Article 4 of the CMVM Regulation 1/2007.

<sup>90</sup> Article 245 of the SC.

<sup>91</sup> For financial years beginning or following 1 January 2007, as mentioned in Decree-Law 35/2005, 17 February and CMVM Regulation 11/2005.

<sup>92</sup> In accordance with the European Parliament and Council Regulation 1606/2002, 19 July.

<sup>93</sup> Article 246 of the SC and Article 9 of the CMVM Regulation 4/2004.

<sup>94</sup> Article 10 of the CMVM Regulation 4/2004.

<sup>95</sup> Article 5 of the CMVM Regulation 11/2005.

III.1.7. The Directors of companies that issue shares that are admitted to trading on a regulated market shall also ensure compliance with a set of information duties<sup>96</sup>, which include the following: (i) the disclosure of material information regarding companies; ii) the disclosure of information on transactions carried out on company shares or related financial instruments<sup>97</sup>; and, iii) the disclosure of information regarding share-allocation plans and/or stock-options<sup>98</sup>.

III.1.8. Companies issuing shares that are admitted to trading on a regulated market or functioning in Portugal shall make available on their website, the following clearly identifiable and updated information: i) the company, the public company status, headquarters and remaining data provided for in Article 171 of the Commercial Companies Code; ii) articles of association; iii) credentials of the members of the Board of Directors and the Market Liaison Officer; iv) the Investors Assistance Unit and its functions and access tools; vi) half-yearly calendar on company events, disclosed at the beginning of each semester including General Meetings, disclosure of annual, half-yearly and where applicable, quarterly accounts; vii) proposals sent through for discussion and voting during the General Meeting, 15 days preceding the date of the General Meeting to be held; viii) notices convening the General Meeting<sup>99</sup>.

III.1.9. Furthermore, listed companies shall draw up and publish a detailed annual report on the corporate governance structure and practices (Corporate Governance Report), in accordance with the requirements and conditions mentioned further on.

III.1.10. Companies issuing shares that are admitted to trading on a regulated market shall disclose at least on a yearly basis, a document that contains or refers to information that has been published or disclosed to the public, during the preceding 12 months, on its situation as an issuer of shares admitted to trading<sup>100</sup>.

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<sup>96</sup> Article 248 of the SC.

<sup>97</sup> Article 248/B of the SC and Article 3 of the CMVM Regulation 1/2007.

<sup>98</sup> Article 2 of the CMVM Regulation 1/2007.

<sup>99</sup> Article 4 of the CMVM Regulation 1/2007.

<sup>100</sup> Article 248/C of the SC.

## **Recommendatory Framework**

III.1.11. Companies shall maintain permanent contact with the market thus upholding the principle of equality for shareholders and ensure that investors are able to access information in an uniform fashion. To this end, the company shall create an Investor Assistance Unit.

III.1.12. The following information that is made available on the company's website, shall be disclosed in the English language:

- a) The company, public company status, headquarters and remaining data provided for in Article 171 of the Commercial Companies Act;
- b) Articles of Association;
- c) Credentials of the members of the Board of Directors and the Market Liaison Officer;
- d) Investor Assistance Unit – its functions and access tools;
- e) Accounts Reporting documents;
- f) Half-Yearly Calendar on Company Events;
- g) Proposals sent through for discussion and voting during the General Meeting;
- h) Notices convening meetings.

## III.2. CORPORATE GOVERNANCE REPORT

### Legislative Framework

III.2.1. The companies issuing securities admitted to trading on a regulated market situated or functioning in Portugal are obliged to ensure the disclosure of a set of information on the corporate governance structure and practices either as a chapter in the annual management report specially drawn up for the purpose or as an annex to same<sup>101</sup>.

III.2.2. For companies issuing shares that are admitted to trading on a regulated market, the information to be supplied on the corporate governance structure and practices shall be more detailed. Among these, the companies subject to Portuguese Law are also subject to the CMVM's Corporate Governance Code and to the duty to disclose information on the corporate governance structure and practices in accordance with the provided for in the CMVM's Regulation 1/2007. According to this Regulation, the information disclosed on the corporate governance structure and practices, shall be structured according to the model in its annex.

III.2.3. The minimum content of the information pertaining to the corporate governance structure and practises to which all companies issuing shares that are admitted to trading on a regulated market situated or functioning in Portugal, are subject to, and regardless of the Law that governs them, embraces the following aspects: i) compliance with the Corporate Governance Code statement to which the issuer is subject to by virtue of legal or regulatory provisions; ii) compliance with the Corporate Governance Code statement to which the issuer voluntarily abides by; iii) location where the public may find the Corporate Governance Codes to which the issuer is subject to under the provided for in the previous paragraphs; iv) content and description of the way the issuer's corporate bodies function, as well as the Committees created; v) description of the internal control and risk management systems implemented in the company, namely as regards the financial information disclosure system;

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<sup>101</sup> Article 245/A of the SC.

vi) capital structure, including information on shares that have not been admitted to trading, the different categories of shares, rights and duties conferred to same and the capital percentage that each category represents; vii) possible restrictions to the transfer of shares, i.e. consent clauses for the disposal or restrictions to ownership of shares; viii) qualifying holdings in the company's capital; ix) identification of the shareholders with special rights and a description of same rights; x) control mechanisms of any employee scheme where the voting rights are not exercised directly by the employees; xi) any restrictions on voting rights, such as limitations to the exercise of voting based on the ownership of a number or percentage of shares, imposed deadlines for exercising the voting right or systems for equity rights; xii) shareholder agreements which are known to the company and may result in restrictions on the transfer of securities or voting rights; xiii) rules governing the appointment and replacement of Board Members and amendments to the articles of association; xiv) powers of the Board, notably in respect of resolutions to capital increase; xv) any significant agreements to which the company is a party to and which take effect, alter or terminate upon a change of control of the company following a takeover bid, as well as the results thereof, except for when its nature is such that their disclosure seriously damages the company; this exception shall not apply when the company is obliged to disclose such information by virtue of legal provisions; xvi) any agreements between the company and its Board Members or employees providing for compensation if they resign or are made redundant without valid reason or if their employment ceases following a takeover bid<sup>102</sup>.

III.2.4. Issuers of shares admitted to trading on a regulated market subject to Portuguese Law, obliges the Board of Directors to annually disclose an explanatory report on the information included in the Corporate Governance Report, at the General Meeting<sup>103</sup>.

III.2.5. The Corporate Governance Report shall specifically identify and state the reasons for the CMVM's Recommendations that are complied with and those that are not. The recommendations that are not fully complied with, will be considered as non-implemented. The company shall further identify other Corporate Governance Codes that it is subject to and/or other Corporate Governance Codes that it has decided to apply voluntarily. When the corporate governance practices deviate from the CMVM's Recommendations or other Corporate Governance Codes that the company is subject

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<sup>102</sup> Article 245/A of the SC.

<sup>103</sup> Article 245/A of the SC.

to or voluntarily applies to, the company shall explain which parts of each code have not been complied with, and the reasons for such deviation. The company must inform the public of the location where one might find the Corporate Governance Codes to which it is subject to, or to which it has decided to apply voluntarily.

III.2.6. The Corporate Governance Report includes the following matters pertaining to the General Meeting: i) identification of the members of the General Meeting Board; ii) indication of the commencement and end of the mandates; iii) indication of individual and collective remuneration of the members of the General Meeting Board; iv) indication of prior notice for deposit of shares or share-blocking for participating in the General Meeting; v) indication of the applicable rules for share-blocking should the General Meeting be suspended; vi) number of shares that correspond to one vote; vii) the existence of statutory rules on the exercise of voting rights, including constitutive or deliberating quorums or systems for equity rights; viii) existence of statutory rules on the exercise of voting rights via postal voting; ix) model format for exercising the right to vote via postal means; x) requirement deadline for the receipt of the postal ballots and the date on which they shall be counted; xi) the exercise of voting rights via electronic means; xii) information on the resolution adopted at the General Meeting on subject matters pertaining to the management of the company; xiii) information of the intervention by the General Meeting on matters concerning the remuneration policy of the company and the performance assessment of the members of the Board of Directors; xiv) indication of the defensive measures that are intended to immediately instigate asset erosion in cases such as change in control or to the composition of the Board of Directors; xv) main agreements to which the company is a part of and that come into force, are changed or end in cases such as change in company control following a takeover bid; and xvi) agreements between the company and members of the Board of Directors or employees providing for compensation if they resign or are made redundant without valid reason or if their employment ceases following a takeover bid.

III.2.7. As regards the Management and Supervisory bodies, the corporate governance report shall include the following: i) reasons for the option taken on the management and supervisory structure of the company, if deemed fit; ii) identification and composition of the corporate bodies; iii) identification and composition of other committees created with responsibilities for the management and supervision of the company; iv) description of the delegation of responsibilities among the various corporate bodies, committees and/or departments within the company, including information on the scope of delegating responsibilities or distributing duties among the members of the Management or Supervisory Bodies, as well as a list of responsibilities that cannot be delegated; v) description of the internal control and risk management systems within the company, namely as regards the financial information disclosure system; vi) the powers of the Management Body, particularly as regards resolution on capital increase; vii) indication on the existence of regulation on the functioning of the corporate bodies or any other internally defined rules on incompatibility and the maximum number of positions that a member is allowed to hold and the place where these rules may be consulted at; viii) rules applicable to the appointment and replacement of members of the Management and Supervisory Body; ix) number of meetings held by the Management and Supervisory Body and other committees created and that are responsible for managing and supervising during that time; x) the identity of members of the Board of Directors and other Committees created within the company, and distinguishing executive from non-executive Members and further distinguish those members that comply with the incompatibility rules provided for in Article 414/A/1, except for item b) and the independence criterion mentioned in Article 414/5, both from the Commercial Company Code; xi) professional qualifications of the members of the Board of Directors, the professional activities carried out by them, during the last five years, at least, the number of company shares that they hold, date of the commencement and end of the first mandate; xii) duties that the members of the Board of Directors carry out in other companies as well as those carried out in companies of the same holding; xiii) if applicable, the identification of the members of the Supervisory Board by listing those members that comply with the incompatibility rules provided for in Article 414/A/1 and the independency criterion provided for in Article 414/5, both from the Commercial Company Code;

xiv) if applicable, the professional qualifications of the members of the Supervisory Board, the professional activities carried out by them, during the last five years, at least, the number of company shares that they hold, date of the commencement and end of the first mandate; xv) if applicable, the duties that the members of the Board of Directors carry out in other companies as well as those carried out in companies of the same group; xvi) if applicable, the identification of the members of the Audit Committee and other Committees within the company, by listing those members that comply with the incompatibility rules provided for in Article 414-A/1 including item f) and the independency criterion provided for in Article 414/5, both from the Commercial Company Code; xvii) professional qualifications of the members of the General and Supervisory Board and other Committees within the company, the professional activities carried out by them, during the last five years, at least, the number of company shares that they hold, date of the commencement and end of the first mandate; xviii) if applicable, the duties that the members of the General and Supervisory board as well as other Committees established within the company or carry out in other companies as well as those carried out in companies of the same holding; xix) description of the remuneration policy and the alignment of the Directors' interests with those of the company and the performance assessment, distinguishing executive from non-executive Directors, a summary and reasoning behind the company's policy on compensations negotiated on contracts or through transactions for cases of impeachment or severance payments; xx) indication of the composition of the Remuneration Committee or like body, if applicable, identifying the respective members that are likewise members of the Board of Directors, as well as their spouses, next of kin up to and including third-degree lineage, as well as collateral (indirect) ancestry; xxi) indication of the individual or collective remuneration that amply includes performance pay bonuses earned by the members of the Board of Directors; and, xxii) information regarding the reporting policy of irregularities adopted by the company.

III.2.8. Further information on the following is also required: i) capital structure, including information on shares that have not been admitted to trading, the different categories of shares, rights and duties conferred to same and the capital percentage that each category represents; ii) qualifying holdings in issuers' capital, calculated according to Article 20 of the Securities Code; iii) identification of the holders of shares with special rights and a description of same rights; iv) possible restrictions to the transfer of shares, i.e. consent clauses for the disposal or restrictions to ownership of shares; v) shareholder agreements that the company is aware of and that may lead to restrictions on the transfer of securities or voting rights; vi) rules applicable to changes in the articles of association; vii) control mechanisms of any employee scheme where the voting rights are not exercised directly by the employees; viii) identification of the documents available on the company's website and how long they are made available for; ix) description on how the issuer share price has evolved; x) description of the dividend distribution policy adopted by the company, including the dividends per share distributed during the last three periods; xi) description of the main characteristics of the share-allotment and stock-option plans adopted or valid for the period; xii) description of main business deals and operations carried out among the company and the members of the Management and Supervisory bodies, holders of qualifying holdings or companies that find themselves in a control or group relation, provided they are significant in economic terms for any of the parties involved, except for deals or operations that are carried out collectively, under normal market conditions for similar operations and are part of the day-to-day activity of the company; xiii) reference to the existence of a Investor Assistance Unit or a similar unit; and, xiv) indication of the amount paid to the auditor and other related persons as well as the percentage on the services supplied for statutory audits, and other reliability assurance services, fiscal consultancy services and other services that are not related to statutory auditing in which case, a description of the safety measures for the independence of the auditor must be made.

III.2.9. The statutory auditor shall comment on the information relating to the description of the internal control and management risk system regarding the financial information disclosure systems as well as, verify that conformity exists between the annual management report and the financial statements and the following elements in the Corporate Governance Report: qualifying holdings in the company's share capital; identification of the shareholders with special rights; possible restrictions on voting rights, i.e. restrictions to the exercise of voting based on the ownership of a number or percentage of shares; deadlines imposed for the exercising the voting right or systems for equity rights; rules applicable to the appointment or replacement of members of the Board of Directors and amendments to the articles of association; and powers of the Board, notably in respect of resolutions for capital increase. As for the remainder of the data, the statutory auditor shall only verify whether same is included in the Corporate Governance Report.

### **III.3. EXTERNAL AND STATUTORY AUDITING**

#### **Legislative Framework**

III.3.1. The annual financial information contained in the financial statements of an issuing company whose share are traded on a regulated market must be included in the report drawn up by the auditor registered with the CMVM (external auditor), as well as statutory auditing of the accounts carried out by a statutory auditor which must also be registered with the CMVM<sup>104</sup>. Only statutory audit firms and other auditors that are allowed to carry out their activity in Portugal and that have the necessary human, physical and financial resources for ensuring their propriety, independence and technical capability, can be registered as auditors.

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<sup>104</sup> *Articles 8 & 245 of the SC, Articles 451 and ss. of the CCC and Article 50/4 of the Statutory Auditors' Association.*

Provided that they include equivalent reliability safeguards in accordance with internationally recognised standards, the CMVM may however acknowledge a report or opinion drawn up by a non-registered auditor that is subject to the qualification control of the home Member State<sup>105</sup>. Auditors registered with the CMVM are subject to its supervision<sup>106</sup>. Statutory auditing of accounts and the audit report may be drawn up by the same statutory auditor.

III.3.2. When the statutory auditors and external auditors of companies issuing shares that are admitted to trading on a regulated market are not one and the same, the General Meeting, at the proposal of the corporate body responsible for the supervision, in accordance with the adopted model (Audit Board, Audit Committee or the General and Supervisory Board), will be responsible for the appointment. This body is further responsible for overseeing the auditing of the company's financial statements and the independence of the statutory auditor, particularly with regard to the supply of additional services<sup>107</sup>. The results obtained by the oversight of the Audit Board / Audit Committee / General and Supervisory Board are generally considered by the shareholders on an annual basis.

III.3.3. External auditors are liable for damages caused to the audited companies or third parties due to errors in the report or statement of opinion, and statutory auditors and other persons that signed the report or statement of opinion, are also liability-bound<sup>108</sup>.

III.3.4. Companies are obliged to disclose the annual remuneration paid to the external auditor and other related persons as well as the percentage on the services supplied for statutory audits, and other reliability assurance services, fiscal consultancy services and other services that are not related to statutory auditing<sup>109</sup>. Should the auditor carry out fiscal consultancy services and other services that are not related to statutory auditing, the measures for safeguarding the independence of the auditor that have been implemented, must be disclosed.

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<sup>105</sup> Article 9 SC.

<sup>106</sup> Article 359 SC.

<sup>107</sup> Articles 420/2, 423/f and 441 CCC.

<sup>108</sup> Article 10 SC.

<sup>109</sup> CMVM Regulation 1/2007.