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## CMVM Regulation N° 11/2003

### (Regulation amending Regulation 7/2001 and Regulation 11/2000 – Corporate Governance)

CMVM Regulation No. 7/2001 promoted part of "CMVM's Recommendations on Corporate Governance" to disclosure duties that, concomitantly, imposes on the relevant entities the duty to disclose the compliance and implementation of corporate governance recommendations previously issued by CMVM. It also aimed at imposing on directors of companies, which fell within the ambit of this regulation, certain disclosure duties based primarily on concerns regarding the control of use of privileged information.

Given the markedly dynamic character of corporate governance matters, and given, in the meantime, the approval of the European Commission's Recommendations regarding the independence of Statutory Auditors and the Action plan of the European Commission on Corporate Law, now is the moment to re-evaluate that regime and to raise the regulatory standards applicable to listed national companies. As a result, new disclosure duties for companies were created - information on fees paid to auditors and disclosure of compulsory information through their website.

The underlying objective of this prescribed regulatory intervention is to perfect the Portuguese Corporate Governance structures by aligning them with good international practices, and in this manner renew the investors' confidence in the Portuguese stock market and the models of corporate governance therein. In order to attain such an objective, the concept of "independent director" was clarified, as previously the board of directors of listed companies had defined it freely. The concept of independent director is now negatively defined based on criteria that identify, among directors, those that in the exercise of their functions are not associated in an indelible manner to any of the groups of specific interests that cohabitate in the company. It is acknowledged that all directors are important for the running of a company. As a result, the definition of independent directors does not attribute a negative responsibility nor does it diminish the importance of other directors that are not in this category. It is only aimed, on the one hand, at assisting the application of a recommendation destined to facilitate a well-balanced and diversified composition of the board of directors and, on the other hand, at stopping the current disparity of definitions presented so as to facilitate the comparability of the information disclosed to the market.

Parallel to this informative reinforcement, the opportunity was seized, by means of an amendment to Regulation No 11/2000, to exempt listed companies, admitted to trading on a regulated national market from publication on paper financial reports provided that the same becomes immediately accessible to the investors through the companies' website.

The present Regulation was subject to public consultation and approved by the Advisory Board of CMVM.

Pursuant to the terms of Articles 353 No 1(b), 249, No 3 and for the purposes of paragraphs c), d) and g) of No 1 of Article 359, of the *Código dos Valores Mobiliários*, the Executive Board of CMVM approved the following amendments to Regulations No 7/2001 and No 11/2000.

#### Article 1

#### Amendments to CMVM Regulation No 7/2001

Articles 1, 2 and 3 of CMVM regulation No 7/2001 shall have the following text:

#### Article 1

1. Listed companies in a regulated market and subject to Portuguese Statutory Law, are required to publish a detailed report on the structure and practices of corporate governance in accordance with Article 7 of the *Código dos Valores Mobiliários* and the model presented in the Appendix to the present regulation , which forms part thereof. This report is to be presented either as a chapter of the annual report of the company in question, drawn up specifically for that purpose, or as an appendix to the said annual report.

2. For the purposes of the present Regulation, directors that are associated with specific interest groups in the company are not considered as independent directors, namely, the following:

- a) members of the board of directors which also belong to the board of directors of a controlling company, as set out in *Código dos Valores Mobiliários*;
- b) members of the board of directors who are bearers of qualified holdings equal to or superior to 10% of the share capital or the voting rights of the company, or of identical percentage in a controlling company , according to the definition of control relationship as set out in the *Código dos Valores Mobiliários* ;
- c) members of the board of directors that are also members of the board of directors of a rival company or have a contractual relationship with it;
- d) members of the board of directors that receive any other remuneration, except remuneration due for their work, from the company, or other companies which has a control or group relationship with it
- e) members of the board that are spouses, family and kin in direct lineage up to and including the third degree, the persons referred to above .

3. Besides examining the verification of the circumstances enunciated in the previous point, the board of directors should evaluate and substantiate the independence of its members in front of other concrete circumstances relative to them.

#### Article 2

(...)

1. Listed companies issuing shares, which are admitted to trading on a regulated market, should submit to the CMVM information relating to plans for the allotment of shares and/or stock options to employees and/or members of the board of directors during the seven days following the respective approval.

2. (...)

#### Article 3

(...)

1. (...)

2. The persons referred to in the previous paragraph should inform the participate company of the material fact within seven working days of the date of verification of the said fact, which, when dealing with operations that implies the issue of shares, consists of the execution of the public deed.

3. (...)

4 . Members of the Board of a listed company admitted to trading on a regulated market, or the parent company of the same, are required to inform the participate company within seven working days of the designation or admission to trading of the shares on a regulated market, as to the number of shares held in the said company, as well as the percentage of voting rights attributable to them, in terms of article 20 of the *Código dos Valores Mobiliários*. (Portuguese Securities Code).

5. The participate company must immediately inform CMVM of the information received in terms of No 2 and 4.

Article 2

(Addition to CMVM Regulation No 7/2001)

**Article 3-A**

**(Website)**

Listed C companies issuing shares, which are admitted to trading on a regulated market, located or operating in Portugal should have an easily accessible website in clearly identified terms, and updated with the following information :

- a) Company's corporate name, public company status, registered offices and other elements mentioned in article 171 of Código das Sociedades Comerciais (Portuguese Company Code);
- b) Articles of Association ;
- c) Identities of the office-holders of corporate bodies and the market liaison representative);
- d) Investor assistance service, respective functions and means of contacting the service;
- e) Financial reports, which should be accessible for at least two years;
- f) Semester calendar of company events, disclosed at the beginning of each semester, including, amongst others, *general* meetings, disclosure of annual, half-yearly, and if applicable quarterly financial reports;
- g) Proposals presented for discussion and voting in the general meeting, during the 15 days preceding the date of the general meeting.
- h) Convocations for the general meeting, during the 30 days preceding the date of the general meeting.

Article 3

(Amendments to the Appendix of CMVM Regulation No 7/2001)

Point A and chapters I, II, III and IV of point B of the Appendix to Regulation 7/2001 will have the following text :

**A. INSTRUCTIONS FOR THE FORMULATION OF THE REPORT**

1. The report on the practices related to Corporate Governance should not contain links to other informative documents or publications, with the exception of the company's annual management report.
2. The report on the practices related to Corporate Governance should not be prepared as if it was a questionnaire that is to be filled in mechanically, but should rather be an exercise of critical reflection and the adoption of a stance by the company as regards sound corporate governance practices.
3. The report should be written with the rules of CMVM Regulation No 7/2001 of which this appendix is a component of, as well as of CMVM Recommendation on Corporate Governance in mind.

**B. INFORMATION TO BE PROVIDED**

**CHAPTER I DISCLOSURE OF INFORMATION**

1. Organisation chart or functional diagrams relating to the distribution of responsibilities between the various corporate bodies and departments of the company in the area of corporate decision-making.
2. List of specific committees created in the company (for example, Ethics Committee and Corporate Governance Committee) with reference to its composition and including the Directors considered in terms of Article 1.2 as independent that constitute these Committees, and its attributes.
3. Description of the risk-control system implemented in the company.
4. Description of developments relating to quotation of shares in the issuing company, bearing in mind the following details, namely:
  - a) the issue of shares or other securities which confer rights of subscription or acquisition of shares;
  - b) the announcement of results;

c) the payment of dividends per category of shares with an indication of net value per share.

5. Description of the policy adopted by the company for the distribution of dividends identifying, namely, the value of dividend per share distributed in the last three financial years.

6. A description of the principal characteristics of schemes for the allotment of shares and plans for the acquisition options on shares approved or in force in the financial year in question, namely, justification for the adoption of the said scheme and details of the category and number of persons included in the scheme, the conditions for allotment, clauses of inalienability of shares, criteria relating to the price of the shares and the price of exercising the options, the period during which they may be exercised, the characteristics of the shares to be allotted, the existence of incentives for the acquisition of shares and/or the exercising of options and the powers of the board of directors for the execution and/or modification of the scheme.

Details of:

a) the number of shares necessary to meet the exercise of allotted options and the number of shares necessary to meet the exercise of exercisable options, with reference to the beginning and the end of the year in question;

b) the number of shares allotted, exercised or extinguished during the year;  
c) the approval in the shareholders general meeting of the characteristics of schemes adopted or in force in the financial year in question.

7. Description of the principal elements of business and operations executed between, on the one hand, the company and, on the other hand, the members of its board of directors and statutory audit committee, holders of qualified holdings or other companies in control or group relationship with the above, which are significant in economic terms for either party involved, except as regards the business or operations which, cumulatively, are executed in normal market conditions for similar operations and are part of the current business activity of the company.

8. Reference to the existence of an Investor Assistance Service or to a similar service, with the following details:

- a) The functions of the Service ;
- b) The type of information made available by the Service ;
- c) Means of contacting the Service ;
- d) Company's website;
- e) Identification of the Market Liaison Representative

9. Details of the composition of the Remuneration Committee or equivalent body, when applicable, identifying the respective members which are also members of the board of directors, as well as their spouses, family and kin in direct lineage up to and including the third degree.

10. Details of the annual fees paid to the auditor and/ or to his network members supported by the company and/or by other companies found in control or group relationship with the aforementioned, and, as well as, differentiation of the percentages relating to the following services:

- a) statutory audit services;
- b) further assurance services;
- c) tax advisory services;
- d) other non-audit services.

If the auditor renders services as described in c) and d) above, the company should also provide details of the means that was adopted in order to safeguard the auditors' independence.

For these purposes, the concept of the system is currently governed by the European Union's Recommendation No C (2002) 1873 dated 16 th May 2002 .

## CHAPTER II EXERCISING OF VOTING RIGHTS AND REPRESENTATION OF SHAREHOLDERS

1. The existence of statutory rules concerning the exercise of voting rights , namely those that withdraw the right to vote by correspondence;
2. The existence of a model for exercising the voting rights by correspondence;
3. The possibility of exercising voting rights *by* electronic means;
4. Requirement for notice to be given for the deposit or blocking of the shares before the general meeting is held;
5. Requirement for the lapse of a time period between the reception of declarations of vote by correspondence and the date on which the general meeting is held;
6. The number of shares that corresponds to one vote.

#### **CHAPTER III COMPANY RULES**

- Reference to the existence of the codes of conduct or other internal regulations of the corporate bodies, as well as a summarized description or indication of the means by which the investors may gain access to the aforementioned codes of conduct or internal regulations.
2. (...)
  3. Details of the measures capable of interfering with the success of public offers for the acquisition of shares , describing briefly the following, at the very least: voting caps, restrictions on the transferability of shares, special rights of some shareholders and shareholders' agreement, if known to the company.

#### **CHAPTER IV BOARD OF DIRECTORS**

1. The composition of the board of directors, namely in respect of:
  - a) Identification of the members that constitute the board of directors, differentiating between executive members and non-executive members, and independent and non-independent members;
  - b) Differentiating functions carried out by members of the board in other companies, from those carried out in other companies of the same group;
2. Reference to the possible existence of an executive board or of other boards with expertise in management, identifying namely, the powers and capacities attributed to these boards and its composition. The directors, which constitute these boards, are to be considered, in terms of Article 1.2, as independents.
3. Description of the functioning of the board of directors showing, namely, the following:
  - a) Definition of powers between the Chairman of the Board of Directors and the Chief Executive Officer, if applicable;
  - b) List of restricted matters for the executive committee, if applicable ;
  - c) Information for the members of the board of directors relating to matters dealt with and decisions taken by the executive board, if applicable;
  - d) List of disqualifications defined internally by the board of directors and the maximum number of posts accumulated by directors in other companies, if applicable;
  - e) Number of meetings held by the board of directors during the financial year in question.
4. Description of the remuneration policy including, namely, the means of aligning the interests of the directors with the interests of the company.
5. Information on the individual or collective remuneration, in the broad sense so as to include, namely, performance bonuses awarded in the financial year in question to members of the board of directors, differentiating the executive directors from the non-executive directors and the fixed part from the variable part of the remuneration. In calculating the remuneration package obtained by the directors of the company, earnings paid by other companies relating to control or group relationships should be included.

(Supplement to the Appendix of CMVM Regulation No 7/2001)

Chapter 0 is hereby added to point B of CMVM Regulation No 7/2001 with the following text:

#### **CHAPTER 0. DECLARATION OF COMPLIANCE**

**The report shall specifically identify CMVM's recommendations on corporate governance that are complied with and those that are not. Non-complied, is understood for this purpose, as recommendations that are not fully adopted. The non-compliance of recommendations should be duly explained.**

#### Article 5

(Amendments to Regulation No 11/2000)

Article 8 A of CMVM Regulation No 11/2000, with text introduced by CMVM Regulation No 13/2002 is hereby amended, to read as follows:

#### Article 8A

(...)

1 - (...)

2 - (...)

**3 - Listed companies admitted to trading on a regulated market, located or operating in Portugal, that immediately place their financial reports on their website as soon as they are made available to the shareholders, and notifies the CMVM thereof, are exempted from the duty of publishing these documents in a newspaper of mass-circulation in Portugal and in the Bulletin of the Regulated Market .**

4 - (previous No 3)

#### Article 6

(Effective date)

**1. The present regulation takes effect on the date of its publication in the "Diário da República".**

**2. Article 3A of CMVM Regulation No 7/2001, appended in terms of article 2 of the present regulation, comes into effect 4 months after the date referred to in the previous paragraph and applies to information relating to the financial year which began in 2003.**

**3. Regulation No 7/2001 is re publish ed as an appendix to the present regulation .**