The Corporate Governance Review

Second Edition

Editor
Willem J L Calkoen

Law Business Research

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For further information please email
Adam.Sargent@lbresearch.com

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Editor
Willem J L Calkoen

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EDITOR'S PREFACE

Willem J L Calkoen

I am proud to present this new edition of *The Corporate Governance Review* to you.

In this second edition, we can see that corporate governance is becoming a hotter topic with each passing year. What should outside directors know? What systems should they set up for better enterprise risk management? How can chairs create a balance against imperial CEOs? Can lead or senior directors create sufficient balance? Should most outside directors know the business? How much time should they spend on the function?

Governments, the European Commission and the Securities and Exchange Commission are all pressing for more formal inflexible acts, especially in the area of remuneration, as opposed to codes of best practice.

More international investors, voting advisory associations and shareholder activists want to be involved in dialogue with boards about strategy, succession and income. Indeed, wise boards have 'selected engagements' with stewardship shareholders in order to create trust.

Interest in corporate governance has been increasing since 1992, when shareholder activists forced out the CEO at GM and the first corporate governance code – the Cadbury Code – was written. The OECD produced a model code and many countries produced national codes along the model of the Cadbury 'comply or explain' method. This has generally led to more transparency, accountability, fairness and responsibility. However, there have been many instances where imperial CEOs gradually amassed too much power and companies have fallen into bad results – and sometimes even failure. More have failed in the financial crisis than in other times, hence the increased outside interest in government acts, further supervision and new corporate governance codes for boards, and stewardship codes for shareholders and shareholder activists.

This all implies that executive and non-executive directors should work harder and more as a team on strategy and entrepreneurship. It is still a fact that more money is lost due to lax directorship than to mistakes. On the other hand, corporate risk management is an essential part of directors' responsibility, and especially the tone from the top.

Each country has its own measures; however, the various chapters of this book show a convergence. The concept underlying this book is to achieve a one-volume text containing a series of reasonably short, but sufficiently detailed, jurisdictional overviews that will permit convenient comparisons where a quick 'first look' at key issues would be helpful to general counsel and their clients.

My aim as General Editor has been to achieve a high quality of content so that *The Corporate Governance Review* will be seen, in time, as an essential reference work in our field.

To meet the all-important content quality objective, it was a condition *sine qua non* to attract as contributors colleagues who are among the recognised leaders in the field of corporate governance law from each jurisdiction.

I thank all the contributors who helped with this project. I hope that this book will give the reader food for thought; you always learn about your own law by reading about the laws of others.

Further editions of this work will obviously benefit from the thoughts and suggestions of our readers. We will be extremely grateful to receive comments and proposals on how we might improve the next edition.

Willem J L Calkoen
NautaDutilh
Rotterdam
April 2012

Chapter 19

PORTUGAL

Bernardo Abreu Mota and Mariana Veiga Montez[1]

I OVERVIEW OF GOVERNANCE REGIME

i Legal framework: sources of law and enforcement

Portuguese listed companies with securities admitted to negotiation in Euronext Lisbon, Portugal's most important stock exchange, are in general governed by the Companies Code, the Securities Code, by mandatory regulations and instructions issued by the Portuguese Securities Commission ('the CMVM') and, in particular, by their articles of association. Furthermore, listed companies that are also classified as credit institutions or financial companies are subject to the provisions of the Legal Framework of Credit Institutions and Financial Companies.

In general terms, the Companies Code lays down the companies' core legal regime, setting forth aspects that apply to all types of corporate entities – from their incorporation to governance structures and the functioning of corporate bodies, as well as, *inter alia*, merger, de-merger and winding-up processes.

The Securities Code is applicable to companies whose share capital is open to investment by the public, such as listed companies, and includes rules for the functioning of shareholders' meetings, provides for information disclosure obligations, and regulates procedures for securities issuance and registration, qualified holdings, securities negotiation and investor protection rules, as well as takeover offers.

In addition to the above sources of law, the corporate governance system in Portugal is still significantly based on self-regulation by companies and market control. In past years we have witnessed the development of certain entities created by agents in the market for the purpose of investigating and divulging corporate governance principles, of which the Corporate Governance Institute is the chief example.

1 Bernardo Abreu Mota is a partner and Mariana Veiga Montez is an associate at Campos Ferreira, Sá Carneiro & Associados.

Currently, the 2010 model of the Corporate Governance Code issued by the CMVM ('the Governance Code'), under the form of a series of recommendations, can be considered as the most relevant governance code adopted by listed companies. The recent CMVM Regulation No. 1/2010 requires listed companies to either adopt the Governance Code or an equivalent, provided that the latter covers at least the same matters regulated in the Governance Code and insofar as it is issued by a reputable and independent entity. Companies must inform the CMVM in advance and justify their decision in adopting such other code.

Although the recommendations of the Governance Code are not mandatory, listed companies are legally required to annually issue a report detailing their corporate governance structure and practices and stating their level of compliance with the relevant principles on a comply or explain basis. The CMVM, after analysing such information, issues a public report ('the CMVM Report') on the general compliance of listed companies with the corporate governance principles. The last CMVM Report was published in 2011 in respect of the 2009 financial year.

The CMVM is also the national supervisory authority and has powers to oversee the compliance of listed companies with the applicable rules, as well as to instruct the procedures for any offences committed and apply the relevant sanctions, such as administrative fines or ancillary penalties.[2] Notwithstanding the CMVM's wide range of powers to conduct investigations and to inspect and apprehend documents, the criminal authorities and courts of law are responsible for instructing procedures concerning offences of a criminal nature and, as a rule, there is a right to appeal a CMVM decision to a court of law.

ii Recent developments in corporate governance

As in other jurisdictions, in Portugal there has been growing concern regarding compliance with corporate governance matters over the last few years. According to the CMVM Report, the average compliance with the CMVM's corporate governance recommendations by listed companies was 80 per cent in 2009, while other sources show that this number is likely to increase substantially in future years.[3]

The latest progress evidences a particular preoccupation with transparency and, as a consequence, matters related to subjects such as disclosure and remuneration practices have been in the order of the day. In 2009, Law No. 28/2009, of 19 June ('Law 28/2009') was approved; it imposed stricter disclosure obligations on companies relating to remuneration, including the yearly submission to the shareholders' meeting, for approval, of a statement containing the remuneration policies to be adopted by the company, as well as an obligation to disclose the amounts actually received, in aggregate and individually, by the members of the corporate bodies.

In addition, certain initiatives by private entities suggest that agents in the market are themselves trying to develop standards and governance principles – for example, the

2 Credit institutions and financial companies are also subject to the supervision and sanctioning powers of the Bank of Portugal.

3 According to the Índice Católica Lisbon/AEM, average compliance in 2010 was 89.2 per cent.

Corporate Governance Institute was in the process of approving a corporate governance code, although it has abandoned the project for the time being.

II CORPORATE LEADERSHIP

i Governance structures and practices

Listed companies must choose one of three board of directors or supervisory board models:

a the one-tier Latin model, entailing a board of directors, a supervisory board and an auditor that is independent from the supervisory board (in this aspect differing from the pure Latin model, which only has a supervisory board, but which is not available for listed companies);

b the one-tier Anglo-Saxon model, comprising a board of directors including an audit committee and an auditor; or

c the German model, which is the only two-tier structure available and which includes an executive board of directors, a general and supervisory board and an auditor.

The Latin model is by far the most popular among listed companies, followed by the Anglo-Saxon model. Only one of the companies listed on Euronext Lisbon currently adopts the two-tier structure.

ii Board of directors

Composition

The articles of association must indicate the number of members (two minimum)[4] that shall compose the board or executive board of directors. The chairperson has a mandatory casting vote when the number of directors is even.

In single-tier structures, the board of directors is generally composed of executive and non-executive members, the latter consisting of persons who do not form part of the executive committee and do not have delegated management powers. In the Anglo-Saxon model, there must be at least three non-executive directors in the audit committee. The chairperson can be an executive director, but in this case the Governance Code recommends that the board puts in place effective mechanisms for the coordination of the non-executive directors' role.

Committees

The Companies Code foresees the possibility of companies creating certain specialised committees aimed at addressing specific matters in the governance of the company. The Governance Code recommends that the board of directors in one-tier models, or the

4 Companies with a share capital of less than €200,000 can choose to have a single director. The share capital of the large majority of listed companies (if not of all) is higher than said threshold.

general and supervisory board in two-tier structures, create committees, such as executive and nomination committees.

The remuneration committee is elected by the shareholders' meeting (in the two-tier model, by the general and supervisory board, in which case it is composed in part of its members). The remuneration committee's members should be independent from the directors and the CMVM also recommends that at least one member have adequate knowledge and experience in remuneration policies. Any persons having provided any services to the board of directors or to any structure in the company dependent on the latter should not, pursuant to the Governance Code, be hired to assist the remuneration committee in its functions.

Companies adopting the German model are required by law to have a committee for financial affairs within the general and supervisory board.

Election and dismissal of directors

In one-tier board structures, directors are appointed and dismissed by the shareholders' meeting and may, in certain situations that prevent them from temporarily performing their duties, be suspended by the supervisory board or by the audit committee, as applicable.

The Governance Code recommends that at least a quarter of the non-executive members of the board of directors are independent. The Companies Code sets forth that the majority of the members of the audit committee must be independent (and at least one them must have an adequate university degree and possess knowledge in accountancy and auditing matters). Directors are deemed independent when they are not associated with any specific group of interests in the company or affected by any circumstances that could jeopardise the neutrality of their decisions, notably by virtue of holding or acting on behalf of holders of shares representing at least 2 per cent of the company's share capital, or by having been re-elected for more than two terms of office, either consecutively or not.

The members of the auditing committee are additionally subject to incompatibility provisions; for instance, they must not:

a be members of corporate bodies of group-related companies;

b be direct or indirect service providers of the company or any group-related company,

c have a significant commercial relationship with the company or any group-related company; or

d in any manner be bound to the interests of a competing company.

In the two-tier model, the executive board of directors' members are elected, suspended and dismissed by the general and supervisory board or, if the articles of association so determine, may be elected and dismissed by the shareholders' meeting.

Members of the executive board of directors are subject to specific incompatibility provisions (the most relevant ones being that they must neither be members of the general and supervisory board nor members of supervisory bodies of group-related companies).

Elections are for terms of office of up to four years. Members can be re-elected for more than one term, unless independency criteria apply (such as in the case of directors that are part of the audit committee), in which case two terms are considered the maximum limit.

Remuneration

The remuneration of the directors is the responsibility of the shareholders' meeting or of a remuneration committee appointed by the shareholders' meeting, which is also responsible for the remuneration of the supervisory corporate bodies. The responsibility for the executive board of directors' members' remuneration can be also be vested in the shareholders' meeting by the articles of association, but the general rule is for the same to be entrusted to the general and supervisory board (or to a committee elected by it).

The Companies Code allows the remuneration of executive directors to partially consist of a percentage (the maximum amount of which needs to be set out in the articles of association) of the company's profits, whereas the remuneration of directors with supervisory functions (i.e., members of the audit committee) must mandatorily consist only of a fixed sum. The Governance Code further advises this latter option for all non-executive directors.

The Governance Code sets out several recommendations concerning remuneration. Essentially, companies are encouraged to structure their remuneration schemes so as to align the interests of those in charge of the management with the long-term interests of the company (by basing part of the executive directors' remuneration on performance evaluation) and to deter directors from assuming excessive risks. A substantial part of the variable pay, or the right to exercise any options, should be deferred for at least three years and be linked to the good performance of the company during such period.

In addition, as outlined above, listed companies are subject to much tighter remuneration disclosure obligations following the approval of Law 28/2009.

Management and representation powers

In one-tier models the board of directors is entrusted with managing the activities of the company and can delegate the executive powers of day-to-day operation to a managing director or an executive committee. The delegation of powers does not hinder the board's capacity to resolve the same matters, nor does it exclude the responsibilities of the rest of the directors to control the executive committee's or the managing director's performance. The board of directors must determine the composition and functioning rules of the executive committee and its chairperson must ensure that all information concerning its activities is duly disclosed to the remaining directors. The Governance Code generally recommends, for all governance structures, the delegation of executive management powers.

In the Anglo-Saxon model, the members of the board that also form the audit committee have supervisory rather than executive powers (i.e., they are prevented from exercising the latter) and are responsible for overseeing the administration of the company.

Under the two-tier structure, the company is managed by the executive board of directors, which is required to obtain prior consent from the general and supervisory board before carrying out certain types of acts.

The board of directors or the executive board of directors, as applicable, further represent the company in relation to third parties. Such representation powers are jointly exercised by all directors. The Companies Code determines that companies are bound by the intervention of the majority (or a lower number, if so provided for in the articles of association) of the directors as well as by any directors in which powers may have been delegated in the terms referred to above. The company so represented is bound towards third parties, notwithstanding any board resolution (or the lack thereof) and any restrictions that are provided for in the articles of association. The company can, however, oppose restrictions resulting from its objects, provided that it proves that the relevant third party knew of or could not, under the circumstances, ignore the respective clause.

Restrictions in takeovers

According to the Securities Code, from the moment the board of directors (or, if applicable, the supervisory board) becomes aware of the decision to launch a takeover offer for more than one-third of the relevant securities and until either the offer result is determined or the offer ceases – whichever occurs first – the board of directors (or, if applicable, the supervisory board) of the target must not perform any action outwith the ordinary course of business that is likely to have a material effect in the net equity of the target and that may significantly jeopardise the objectives announced by the offeror. Such prohibition extends to resolutions taken prior to the decision to launch the offer that have yet to be implemented, totally or partially. The neutrality rule contains exceptions – for instance, it can be evaded by a resolution of the shareholders' meeting (passed with at least two-thirds of the votes cast) and it does not hinder the board of directors from seeking a 'white knight' (i.e., alternative offers).

The existing breakthrough rules are optional and not popular among listed companies; no listed companies have implemented them and several companies' articles of association contain defensive measures. Based on the assertion that suspending the restrictions on the transfer of securities and on the exercise of voting rights attached thereto following the launching of a takeover offer renders the control market more flexible, fosters investment, enhances the liquidity of the shares and improves the governance of companies, the CMVM recently prepared draft legislation imposing breakthrough rules on listed companies. This legislation, however, has yet to be enacted.

Conflicts of interest

Directors are prohibited from voting in any resolutions concerning matters in which they have, directly or on account of a third party, a conflicting interest with the company and they must inform the chairperson of such conflict.

As a rule, contracts between the company (or group-related companies) and its directors, either entered into directly or through third parties, must be approved in advance by the board of directors (without any conflicting directors' vote) and are subject to a prior validation by the relevant supervisory corporate body.

Competition and sensitive information

For the duration of their office, directors are under the obligation not to exercise any activity that competes with the company, unless they are authorised to do so by the shareholders' meeting (or the general and supervisory board, as the case may be), which shall also establish the access by such board member to sensitive information.

Directors are prevented from exercising competing activities in their own name (including holding a stake representing 20 per cent or more in the share capital or profits of a competing company), on the account of others, as an officer of a competitor, or by being appointed on behalf of or to represent a competitor.

General duties and directors' liability

The Companies Code subjects directors to a general duty of diligence that is detailed in fiduciary and loyalty duties as well as in duties of care.

In broad terms, directors must possess adequate availability and technical competences, as well as knowledge of the activity of the company, which permit them to properly perform their functions. Directors must also act with diligence, in a judicious and organised manner, in the best interests of the company (which has generally been understood as the interests of shareholders), and additionally take into consideration the interests of other stakeholders, such as employees, clients and creditors.

Breach by directors of their duties may lead to their liability towards the company, the shareholders and the company's creditors.

Certain breaches by directors of their duties may lead to criminal liability and, in certain circumstances, directors may also be personally held liable for tax debts incurred by the company during the period in which they exercised office.

Directors of listed companies are required to provide surety or to subscribe to an insurance contract, in an amount of at least €250,000, in favour of the holders of compensation rights, the costs of which must not be borne by the company (except for the part of the compensation exceeding such amount).

iii Supervisory corporate bodies and auditors

Both the members of the supervisory body and the auditors are elected by the shareholders' meeting. The general and supervisory board must have a higher number of members than the executive board of directors.

There are some differences in the functions entrusted to the members of supervisory corporate bodies depending on the governance structure adopted but, in general, all are responsible for:

a supervising the corporate activity;
b supervising the internal audit and risk control systems;
c controlling the financial information and bookkeeping of the company;
d receiving communications of irregularities; and
e issuing reports regarding their supervision and opinions about the accounts submitted by the board of directors.

Auditors are essentially responsible for examining the books, accounts and financial statements of the company and verifying the adequacy of the adopted accountancy policies and standards.

The supervisory bodies' members and the auditors are generally subject to independency and incompatibility criteria and the auditors must be certified chartered accountants duly authorised by the Chartered Accountants' Bar. In order to guarantee such independence, under a provision recently introduced into the Governance Code, the auditor must be replaced after two or three terms of office, depending on whether those terms are for four or three years, and the supervisory body must issue a justified opinion weighing the auditor's independency conditions *versus* the advantages and costs of its replacement in the event that the company intends to keep the same auditor further to such period.

Members of supervisory bodies may be held liable in the same terms as directors and can additionally be held jointly and severally liable with directors for acts and omissions of the latter if the damage caused by the directors would not have occurred had the former complied with their supervisory functions. Auditors can be held liable for damages caused, *inter alia*, to the company and to shareholders by their wilful misconduct.

Members of the supervisory corporate bodies must also provide a surety or sign an adequate liability insurance policy, under the same terms as the directors. Auditors are also under an obligation to possess special insurance for their activity.

III DISCLOSURE

Listed companies are required to disclose to the CMVM and to the market individual and, if applicable, consolidated financial information essentially on an annual, bi-annual, quarterly or intercalary basis, depending on the type of information. Certain financial information must also be submitted to the tax authorities and to the commercial registry office. Moreover, companies are urged to disclose, *inter alia*, their financial statements and annual reports on the activity of their supervisory bodies on their website, and also to provide such information in the English language.

'SDI', the CMVM computer system, is used by listed companies as a platform for disclosing relevant information that is then immediately made accessible for consultation by the general public. Information to be provided on a regular basis consists of, notably:

a annual reports and accounts prepared by the board of directors;
b reports and opinions of the supervisory body;
c lists of qualified holdings; and
d related parties' transactions.

Occasional information, such as information that may be price-sensitive, must be disclosed immediately. Companies may only decide to defer the disclosure of relevant information for a limited period if its immediate disclosure would harm their legitimate interests, such deferral will not harm the interests of the public and the company can prove that it is able to ensure the confidentiality of the information.

As mentioned above, listed companies must also disclose their annual corporate governance report on a comply or explain basis.

The Governance Code recommends that companies ensure a permanent contact with the market in order to respect the principle of shareholders' equality and to prevent asymmetries in information access. Companies therefore often create an office to provide support to investors.

IV CORPORATE RESPONSIBILITY

i Internal control and risk management

Following recent financial scandals, listed companies in Portugal have been urged to establish internal procedures and systems concerning risk management, internal control and internal audit. Understandably, financial institutions have particularly stringent requirements in this respect.

The Governance Code recommends that companies' systems comprise at least:

a setting out strategic objectives for risk assumption;
b identifying the major risks connected with the company's activity;
c analysis of the impact and probability of each potential risk; and
d mechanisms for controlling the implementation of risk management measures.

Internal control mechanisms include whistle-blowing policies that enable shareholders, workers and others to report, through a special channel, fraudulent behaviours, irregularities and improper internal management, thus promoting corporate responsibility and transparency and preventing illegalities that could impact on the company's financial situation.

Members of supervisory corporate bodies are in charge of receiving whistle-blowers' reports of irregularities. Companies must, in their annual report on corporate governance, inform on their whistle-blowing policies by identifying the means used for communications, the persons in charge of receiving them, the treatment to be given to the communications and the identification of the persons with access to such information.

Portugal's Data Protection Authority, the CNPD, has approved a resolution concerning the principles applicable to the treatment of personal data within the scope of ethical lines, which sets out the requirements with which companies' whistle-blowing systems must comply; confidentiality has been favoured over anonymity as a way of safeguarding risks of libel and discrimination.

ii Corporate responsibility

As mentioned above, the Companies Code foresees that directors consider other stakeholders' interests in their decision-making processes. It also requires companies to include in their annual management report an analysis of the performance of the company in matters related to activities that are not financial, such as environmental and employees' related issues.

Listed companies have recently started to develop internal policies aimed at balancing their corporate initiatives with social responsibility; however, only a few have chosen to create specific corporate responsibility or ethic committees for such purpose.

V SHAREHOLDERS

i Shareholder rights and powers

Matters reserved to shareholders

The majority of Portuguese listed companies have traditionally been controlled by large-block shareholders and Portugal can essentially be considered a 'shareholder-centric' rather than a 'board-centric' jurisdiction. Notwithstanding shareholders being prevented from resolving on matters related to the management unless so requested by the board, the shareholders' meeting can be seen as the ultimate decision-making corporate body.

In effect, certain decisions that would have a major impact on the company are reserved to the shareholders, including:

a the amendment of the articles of association;
b share capital increases (as a rule);
c approval of mergers, de-mergers or the winding-up of the company;
d approval of annual accounts;
e distribution of dividends; and
f the appointment and dismissal of directors and supervisory board members.

Voting and participation rights

Although companies can, with certain restrictions, set out a minimum number of shares to be granted voting rights, listed companies have increasingly adopted the one-share/one-vote system. This principle is indeed advised by the Governance Code in order to ensure the proportionality between voting rights and shareholdings. In addition, the law permits different categories of shares to be issued, such as preferential non-voting or redeemable shares, but the same class of shares must be granted the same rights.

Further to the transposition in May 2010 of Directive No. 2007/36/EC, listed companies' shareholders have seen their rights reinforced. Holders of more than 2 per cent of the share capital can request that a shareholders' meeting is convened and may request the inclusion of items in the agenda as well as present proposals for resolutions. Shareholders may participate in the meeting if they provide evidence that on the fifth day of negotiation prior to the date of the meeting they hold shares enabling at least one vote (on the basis of a record date principle without share blocking).

Minority shareholders' rights

Minority shareholders are conferred certain special protection rights, the exercise of which shareholders may aggregate. Example of such rights are the collective information right for shareholders that hold shares representing at least 10 per cent of the share capital and the right to appoint members to the board of directors as specified below.

Public companies must include in their articles of association a system of protection of minorities setting forth that:

a not more than one-third of the members of the board of directors (or executive board) are elected on a separate poll from a list subscribed by groups of shareholders that, jointly, hold not less than 10 per cent and not more than 20 per cent of the share capital. The rationale behind this provision appears to be that a shareholder ceases to qualify as a minority shareholder and to have the rights inherent to such capacity when it holds more than 20 per cent of the share capital; or
b the minority of shareholders that voted against the list approved for the board of directors (or executive board) by the majority of the votes cast designates not less than one director, provided that such minority holds not less than 10 per cent of the share capital (in the absence of choice, this system is applicable).

ii Shareholders' duties and responsibilities

Shareholders – including controlling shareholders and institutional shareholders – are not subject to particular fiduciary duties, even though general loyalty and good faith duties can be extracted from some legal provisions (such as that granting shareholders the right to request the annulment of abusive resolutions).

Shareholders are prevented from voting in resolutions concerning matters where they have conflicting interests, specified in the Companies Code as follows:

a the release of a liability or obligation of the shareholder as such or in the capacity of member of a corporate body;

b any litigation against the company;

c the shareholder's dismissal from an office in a corporate body with just cause; or

d any relationship to be established with the company that is unrelated to the articles of association.

The Governance Code sets out that any business between companies and qualified shareholders or any related persons must be conducted at arm's-length, and any significant business must be previously submitted to the supervisory body, which must define the criteria for the determination of relevancy.

The duty of launching a mandatory takeover offer is triggered by the acquisition of an interest in shares that carry more than one-third or one-half of the voting rights.

iii Shareholder activism

Traditionally, there has not been any significant shareholder activism in Portugal. This can perhaps be explained by the fact that large-block shareholders are present in the majority of Portuguese listed companies and thus minority shareholders do not usually have a record of being active in trying to influence such companies.

Proxy battles as a form of shareholder activism are not common in Portuguese listed companies; nor are specific shareholder campaigns.

iv Contact with shareholders

One of the most important forms of contact between shareholders and listed companies in Portugal is through compliance with information and disclosure obligations.

Information to be made available prior to shareholders' meetings must also be disclosed on the company's website as from the date of disclosure of the relevant convening notice, which must be published at least 21 days in advance of the meeting.

As referred to above, certain matters require a minimum shareholding in order for shareholders to be granted certain rights; for example, only stakeholders with a stake of more than 10 per cent are entitled to request from the board of directors information concerning corporate matters. In general, the board cannot refuse to provide such information if the requesting shareholder asserts that the examination of such information is in order to assess a possible liability of the directors or members of the supervisory body (unless it is clear that the purpose of the information request is for another reason).

Shareholders may also request information to the board of directors during shareholders' meetings.

VI OUTLOOK

Both the CMVM Report and other reports recognise a general increase among listed companies towards voluntary compliance with the recommendations and principles of corporate governance.

Nevertheless, the CMVM has identified certain matters where compliance levels may still be considered insufficient and in need of improvement, such as:

a participation and control;
b appointment, evaluation and dismissal of chartered accountants;
c remuneration policies;
d alignment of the interests of the management board with shareholders; and
e the independence of remuneration committees.

As shown above, some of these matters (for instance, remuneration) have been dealt with at least partially by law, but others are matters that will be due attention in the future.

Challenging decisions must also be taken by the government; for example, whether or not to impose breakthrough rules, potentially enhancing liquidity in the shares market, while facing strong resistance by some national groups that remain in control of companies despite their minority stakes.

Appendix 1

ABOUT THE AUTHORS

BERNARDO ABREU MOTA

Campos Ferreira, Sá Carneiro & Associados
Bernardo Abreu Mota finished his law degree in 1997 at the Faculty of Law, Catholic University of Lisbon, where he also did a postgraduate in commercial companies law.

He started his career as a lawyer in Ferreira Pinto & Associados and in 2002 joined Vasconcelos, F. Sá Carneiro, Fontes & Associados, one of Portugal's most prestigious law firms, which was incorporated by Uría Menéndez two years later and where he became a partner.

In 2009 Bernardo Abreu Mota participated in the integration of Campos Ferreira, Sá Carneiro & Associados and focuses his practice in company law, M&A and private equity.

MARIANA VEIGA MONTEZ

Campos Ferreira, Sá Carneiro & Associados
Mariana Veiga Montez has been an associate lawyer at Campos Ferreira, Sá Carneiro & Associados since 2010 and is part of the firm's commercial and corporate law and M&A practice areas.

Mariana provides legal advice to Portuguese companies, including listed companies that are part of the PSI20, as well as multinational groups in all types of commercial and corporate related matters, assisting in the preparation and negotiation of commercial contracts and being involved in mergers and acquisitions projects.

Mariana has been registered in the Portuguese Bar since 2008, having previously worked as an intern and associate lawyer in PLMJ – A.M.Pereira, Sáragga Leal, Oliveira Martins, Júdice & Associados. In 2010 she obtained an LL.M degree in international company law from King's College London.

CAMPOS FERREIRA, SÁ CARNEIRO & ASSOCIADOS

Av. da Liberdade, 249, 8º
1250-143 Lisbon
Portugal
Tel: +351 211 926 800
Fax: +351 211 926 899
bernardo.abreumota@csassociados.pt
mariana.veigamontez@csassociados.pt
www.csassociados.pt