



CORPORATE GOVERNANCE

PARADIGM SHIFT IN CORPORATE GOVERNANCE

TO BE ADOPTED IN THE 2013 CORPORATE GOVERNANCE REPORTS

On the 19th of July, CMVM Regulation no. 4/2013 on the corporate governance of the issuers of shares admitted to trading in Portugal (“Issuers”), and a new version of the CMVM Corporate Governance Code amending the code in effect since 2010 (“2013 Corporate Governance Code”), were published.

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Although the aforementioned CMVM Regulation no. 4/2013 enters into effect on the 1st of January, 2014, it should be clarified that the corporate governance report filed by the Issuers in regard to 2013 must obey this new framework.

Thus, the Issuers will have until the end of this year to conform their practices to the changes resulting from this framework and, in particular, the new paradigm built by Regulation no. 4/2013, as follows:

WHAT CORPORATE GOVERNANCE CODE SHOULD BE ADOPTED?

Despite continuing to provide a set of recommendations in the corporate governance area, the CMVM now allows Issuers to adopt other corporate governance codes provided by entities dedicated to such purposes, as an alternative to the 2013 Corporate Governance Code.

However – and although the choice of corporate governance code can be made at the discretion of the Board of Directors of the Issuer –, CMVM Regulation no. 4/2013 requires that the choice of other corporate governance code is fully justified in the corporate governance report.

As such, the Issuers are notably given the alternative of either adopting the code published by CMVM or the corporate governance code issued this year by the Portuguese Institute of Corporate Governance (“IPCG”).

HOW TO ASSESS COMPLIANCE WITH THE ADOPTED CORPORATE GOVERNANCE CODE?

Regulation no. 4/2013 further states – expressly reaffirming what had already been stated in the 2011 CMVM Annual Report on Corporate Governance – that, in Portugal, there is a complete equivalence between “company or explain”.

In such context, it is therefore clarified that there is equivalence between complying with a certain recommendation and disclosing an effective explanation allowing the valuation of the reasons behind the non-compliance in substantially equivalent terms.

As such, it is the Issuers who must not only choose which recommendations to abide by, but also present the reasons for the non-compliance with the recommendations of the adopted corporate governance code, taking into account the good corporate governance practices presented therein.

WHAT ARE THE MAIN CHANGES TO THE CMVM CORPORATE GOVERNANCE CODE THAT SHOULD BE CONSIDERED?

The main changes arising from the reformulation of the corporate governance code issued by CMVM are the following:

TOPIC	CHANGES
GENERAL MEETING	<ul style="list-style-type: none"> ■ The Issuers must now abstain from adopting mechanisms that establish a mismatch between economic and social rights, unless the long-term interests of the shareholders justify such mismatch or, in the case of voting caps, unless they are re-evaluated by the general meeting at least every 5 years. ■ Close-out clauses or any other clauses that result in an aggravation of the contractual conditions in the event of a change of control or a change of management must not harm the free transferability of shares or the free evaluation of the management performance.
BOARD OF DIRECTORS	<ul style="list-style-type: none"> ■ A minimum proportion of independent directors is no longer imposed; the suitability of this number now depends on the adopted corporate governance model, on the size and shareholder structure of the company and on the company's free float. ■ Regulation no. 4/2013 and the Corporate Governance Code set forth specific criteria concerning the evaluation of the independence of directors; notably, the re-election in functions is no longer a cause for the automatic loss of such independence. ■ Should the chairman have executive responsibilities, an independent director must be nominated to ensure the coordination of the work of the non-executive members of the Board or, in alternative, another coordination mechanism must be established. ■ The Issuers are no longer compelled to set forth specialized committees regarding nominations.
SUPERVISION AND AUDITING	<ul style="list-style-type: none"> ■ There are no significant changes regarding these matters, in spite of a few adjustments to the powers of the supervision body concerning internal auditing and compliance.
REMUNERATION	<ul style="list-style-type: none"> ■ The members of the Remuneration committee, or any equivalent committee, must be independent of the executive management. ■ The Issuers should set forth legal mechanisms that eliminate the so called "golden parachutes" in case of dismissal of directors following inadequate performance, even if such situations do not constitute serious violations of their duties or inaptitude.
CONFLICTS AND RELATED PARTIES TRANSACTIONS	<ul style="list-style-type: none"> ■ The 2010 recommendations on this area remained in effect; however, the disclosure of any significant commercial relations established between the Issuer and any holders of qualified stakes is now mandatory.

PLMJ will shortly publish a detailed analysis of the changes introduced by CMVM Regulation no. 4/2013 and by the 2013 CMVM Corporate Governance Code, as well as in respect to their comparison with the IPCG Corporate Governance Code.

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