

**CONSOLIDATION OF THE LEGAL FRAMEWORK**

**AND**

**CORPORATE GOVERNANCE CODE**

**2010**

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## **REVISION (2010)**

A revision to the current document was carried out in January 2010 following the revision to the CMVM Corporate Governance Code and the publication of Regulation No. 1/2010 on Governance of Listed Companies as well as the publication of Law No. 28/2009 of 19 June and Regulation No. 5/2008 on Disclosure Duties.

This is a straightforward revision that while acknowledging the useful effect of this repertoire, keeps with the character whereon it is based: to allow an integrated and accessible idea of the legal and recommendatory rules on corporate governance via the consolidation of the national sources of both a descriptive and non-innovative nature.

## **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. In general, 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 management 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 no confidence vote 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 among 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 Supervisory 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 Supervisory 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>.

1.2.2. 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>.

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

### **Recommendatory Framework**

1.2.4. 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<sup>8</sup>.

1.2.5. The remuneration of the Chair of the General Meeting Board shall be disclosed Corporate Governance Annual Report<sup>9</sup>.

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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.

<sup>8</sup> CMVM Corporate Governance Code (CGC) No. 1.1.1.

<sup>9</sup> CMVM CGC No. 1.1.2. (2010).

### **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 Supervisory 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 Supervisory Board or the Court of Justice. The Supervisory 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>10</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>11</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>12</sup>, (ii) on the Information Disclosure System of the CMVM's website<sup>13</sup> and (iii) on the website of the Issuing Company<sup>14</sup>. The articles of association may however, require other means of informing shareholders.

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<sup>10</sup> Article 375 CCC.

<sup>11</sup> Article 376 CCC.

<sup>12</sup> Article 167 CCC; Decree-Law 11/2005 of 8 July and Ministerial Order 590-A/2005 of 14 July.

<sup>13</sup> Articles 249/2/a and 244/4/b of the Securities Code (SC).

<sup>14</sup> Article 5/h of CMVM Regulation No. 1/2010.

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.

1.3.5. 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>15</sup>.

1.3.6. 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>16</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>17</sup>.

1.3.7. 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

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<sup>15</sup> Article 182 SC.

<sup>16</sup> Article 171 CCC.

<sup>17</sup> Articles 35/3 and 94/1 of the CCC and 182 of the SC.

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>18</sup>.

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>19</sup>.

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<sup>18</sup> Article 377 CCC.

<sup>19</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 Supervisory 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>20</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<sup>21</sup>.

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<sup>22</sup>.

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<sup>20</sup> Article 379 CCC.

<sup>21</sup> CMVM CGC No. 1.2.1 (2010).

<sup>22</sup> CMVM CGC No. 1.2.1 (2010).

## **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>23</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>24</sup>; vii) the basis upon which the vote is to be exercised by the petitioner<sup>25</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>26</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 Supervisory Board, the General and Supervisory Board or the Statutory Auditors' request representation or be indicated as representatives.

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<sup>23</sup> Article 380 CCC.

<sup>24</sup> Ascribing is made as per the provided for in Article 20/1 of the SC.

<sup>25</sup> Article 23 of the SC.

<sup>26</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>27</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 certain 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>28</sup>.

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<sup>27</sup> Article 381 CCC.

<sup>28</sup> Article 384 CCC.

1.7.3. 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>29</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>30</sup>.

1.7.4. 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>31</sup>.

### **Recommendatory Framework**

1.7.5. Companies shall not impose any statutory restriction on postal voting and whenever adopted or admissible, on electronic voting<sup>32</sup>.

1.7.6. The statutory deadline for receiving early voting ballots by post shall not exceed 3 working days<sup>33</sup>.

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<sup>29</sup> Article 384 CCC.

<sup>30</sup> Article 22 SC.

<sup>31</sup> Article 385 CCC.

<sup>32</sup> CMVM CGC No. 1.3.1 (2010).

<sup>33</sup> CMVM CGC No. 1.3.2 (2010).

I.7.7. Companies shall ensure that the level of voting rights and the shareholder's participation are proportional, ideally through the statutory provision that obliges the one-share one-vote principle. The companies that: i) hold shares that do not confer voting right; ii) establish non-casting of voting rights above a certain number, when issued solely by a shareholder or by shareholders related to former, do not comply with the proportionality principle<sup>34</sup>.

## **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 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 wherein 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>35</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.

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<sup>34</sup> *CMVM CGC No. 1.3.3 (2010)*.

<sup>35</sup> *Article 383 CCC*.

1.8.4. 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.

1.8.5. 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>36</sup>.

### **Recommendatory Framework**

1.8.6. Companies shall not set a resolution-fixing quorum that outnumbers that which is prescribed by Law<sup>37</sup>.

## **1.9. MINUTES AND INFORMATION ON RESOLUTIONS PASSED**

### **Legislative Framework**

1.9.1. The Chair of the General Meeting Board shall organise 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>38</sup>.

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<sup>36</sup> Article 386 CCC.

<sup>37</sup> CMVM CGC No. 1.4 (2010).

<sup>38</sup> Article 382 CCC.

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>39</sup>.

### **Recommendatory Framework**

I.9.3. Extracts from the minutes of the General Meetings or documents with corresponding content shall be made available to shareholders on the company's website within a five-day period after the General Meeting has been held, irrespective of the fact that such information may not be classified as material information. The information disclosed shall cover the resolutions passed, the represented capital and the voting results. Said information shall be kept on file on the company's website for no less than a 3-year period<sup>40</sup>.

## **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 may 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.

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<sup>39</sup> Article 388 CCC.

<sup>40</sup> CMVM CGC No. 1.5 (2010).

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>41</sup>.

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<sup>41</sup> Article 182 SC.

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 that do not fully exercise the option referred to in the preceding paragraph, cannot provide for amendments to or removal of restrictions on the transfer or on the exercise of the super-quorum voting right than the 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.

I.10.10. The offeror shall be liable for any damages caused by the suspension of the 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>42</sup>.

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<sup>42</sup> Under certain circumstances provided for in Article 20 SC.

I.10.11. Any clauses in the articles of association concerning the 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>43</sup>.

### **Recommendatory Framework**

I.10.12. Measures aimed at preventing successful takeover bids, shall respect both the company's and the shareholders' interests. The company's articles of association that by complying with said principal, provide for the restriction of 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<sup>44</sup>.

I.10.13. 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<sup>45</sup>.

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<sup>43</sup> Article 182/A SC.

<sup>44</sup> CMVM CGC No. 1.6.1.

<sup>45</sup> CMVM CGC No. 1.6.2.

## **I.11. COMPANY BUSINESS WITH SHAREHOLDERS**

### **Recommendatory Framework**

I.11.1. When deals are carried out between the company and shareholders with qualifying holdings or entities with which same are linked in accordance with Article 20 of the Securities Code, such deals shall be carried out under normal market conditions<sup>46</sup>.

I.11.2. When deals of significant importance are undertaken with holders of qualifying holdings, or entities with which same are linked in accordance with Article 20 of the Securities Code, such deals shall be subject to preliminary opinion from the Supervisory Board. The procedures and criteria required to define the relevant level of significance of these deals and other conditions shall be established by the Supervisory Board<sup>47</sup>.

## **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.

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<sup>46</sup> CMVM CGC No. IV.1.1. (2010).

<sup>47</sup> CMVM CGC No. IV.1.2. (2010).

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>48</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, Supervisory Board and Statutory Auditor<sup>49</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>50</sup>.

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>51</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>52</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>53</sup>.

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<sup>48</sup> Article 64 CCC.

<sup>49</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 (Supervisory Board) but not for companies whose securities are admitted to trading on a regulated market (Articles 278/3 and 413/2 CCC).

<sup>50</sup> Article 278 CCC.

<sup>51</sup> Article 405 CCC.

<sup>52</sup> Articles 431 and 442 CCC.

<sup>53</sup> Article 407 CCC.

II.1.2.4. The Auditing activities are carried out by the Fiscal 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 accounts' examination and statutory audits<sup>54</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>55</sup>.

### **Recommendatory Framework**

II.1.2.6. The Board of Directors shall assess the adopted model in its Annual Report on Corporate Governance and pin-point possible hold-ups as to its functioning and shall propose measures that it deems fit for surpassing such obstacles<sup>56</sup>.

II.1.2.7. Companies shall set up internal control and risk management systems in order safeguard the company's worth and to keep its corporate governance transparent. Said systems shall include at least the following components: i) setting of the company's strategic objectives as regards risk assumption; ii) identifying the main risks associated to the company's activity and any events that might generate risks; iii) analysing and determining the extent of the impact and the likelihood that each of said potential risk will occur; iv) risk management aimed at aligning those actual incurred risks with the company's strategic options for risk assumption; v) control mechanisms for executing measures for adopted risk management and its effectiveness; vi) adoption of internal mechanisms for information and communication on several components of the system and of risk-warning ; vii) periodic assessment of the implemented system and the adoption of the amendments that are deemed necessary<sup>57</sup>.

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<sup>54</sup> Articles 420, 451 and 453 CCC.

<sup>55</sup> Article 444 CCC.

<sup>56</sup> CMVM CGC No. II.1.1.1.

<sup>57</sup> CMVM CGC No. II.1.1.2. (2010)

II.1.2.8. The Board of Directors shall ensure the establishment and functioning of the internal control and risk management systems. The Fiscal Board shall be responsible for assessing the functioning of said systems and proposing the relevant adjustment to the company's needs<sup>58</sup>.

II.1.2.9. The companies shall: i) identify the main economic, financial and legal risk that the company is exposed to during the exercise of its activity; ii) describe the performance and efficiency of the risk management system, in their Annual Report on Corporate Governance<sup>59</sup>.

II.1.2.10. The Board of Directors and the Supervisory Board shall establish internal regulations and shall have these disclosed on the company's website<sup>60</sup>.

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

#### **Legislative Framework**

II.1.3.1. The following situations are considered to be incompatible with the duties of the Fiscal 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;

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<sup>58</sup> CMVM CGC No. II.1.1.3. (2010)

<sup>59</sup> CMVM CGC No. II.1.1.4. (2010)

<sup>60</sup> CMVM CGC No. II.1.1.5.

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>61</sup>; ix) those who are banned, incapacitated, insolvent, bankrupt and those sentenced to penalties involving the prohibition, albeit temporary, of exercising public service duties<sup>62</sup>.

II.1.3.2. The rules on incompatibility applicable to members of the Audit Committee are alike for members of the Fiscal Board and the Statutory Auditor but are not applicable to the exercise of management duties in the company itself<sup>63</sup>. However, the carrying out of executive duties in the company is prohibited<sup>64</sup>.

II.1.3.3. The incompatibilities applicable to members of the Fiscal 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>65</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>66</sup>.

II.1.3.4. The majority of the members of the Fiscal 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>67</sup>.

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<sup>61</sup> Article 76 of Decree-Law 487/99 of 16 November.

<sup>62</sup> Articles 374, 414/A and 423/B CCC.

<sup>63</sup> Article 434 CCC.

<sup>64</sup> Article 423/B CCC.

<sup>65</sup> Article 444 CCC.

<sup>66</sup> Article 437 CCC.

<sup>67</sup> Articles 414, 434 and 444 CCC.

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>68</sup>.

II.1.3.7. In its corporate governance report, the company shall distinguish between executive and non-executive members, and among these, differentiate those members that would comply, if the incompatibility rules were to be applied, with the incompatibility rules mentioned in II.1.3.1., except for item ii) and the independence criteria mentioned in II.1.3.1.<sup>69</sup>.

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 as well as a statement that same comply with the incompatibility rules provided for in II.1.3.1., including item vi) and the independence criteria mentioned in II.1.3.6<sup>70</sup>.

### **Recommendatory Framework**

II.1.3.9. 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<sup>71</sup>.

II.1.3.10. 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<sup>72</sup>.

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<sup>68</sup> Articles 374, 414 and 423/B CCC.

<sup>69</sup> CMVM Regulation 1/2010, Annex I, No. II.14.

<sup>70</sup> CMVM Regulation 1/2010, Annex I, No. II.25 and II.26.

<sup>71</sup> CMVM CGC No. II.1.2.1.

<sup>72</sup> CMVM CGC No. II.1.2.2.

II.1.3.11. The independency assessment of its non-executive members carried out by the Board of Directors shall take into account the legal and regulatory rules in force concerning the independency requirements and the incompatibility framework applicable to members of other corporate boards, which ensure orderly and sequential coherence in applying independency criteria to all the company. An independent executive member shall not be considered as such, if in another corporate board and by force of applicable rules, may not be an independent executive member<sup>73</sup>.

#### **II.1.4. ELIGIBILITY CRITERIA AND 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>74</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>75</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. The duration of the mandate may not exceed four years and re-election may occur.<sup>76</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>77</sup>.

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<sup>73</sup> CMVM CGC No. II.1.2.3.

<sup>74</sup> Article 391 CCC.

<sup>75</sup> Article 395 CCC.

<sup>76</sup> Article 425 CCC.

<sup>77</sup> Article 441 CCC,

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>78</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>79</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>80</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>81</sup>.

II.1.4.5. The members of the Fiscal Board are elected by the General Meeting for a maximum period of four years and may be re-elected<sup>82</sup>. The members of the Fiscal 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>83</sup>. The Chair of the Fiscal Board is appointed by the General Meeting or in the absence of former, by its members<sup>84</sup>.

II.1.4.6. The Statutory Auditor is elected upon proposal of either, the Fiscal Board, the Audit Committee or the General and Supervisory Board, depending on the adopted management and supervisory model<sup>85</sup>.

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<sup>78</sup> Article 435 CCC.

<sup>79</sup> Article 436 CCC.

<sup>80</sup> Article 444 CCC.

<sup>81</sup> Article 423/B CCC.

<sup>82</sup> Article 415 CCC.

<sup>83</sup> Article 414 CCC.

<sup>84</sup> Article 414/B CCC.

<sup>85</sup> Article 446 of the CCC.

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>86</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>87</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 Fiscal Board were appointed, the courts may appoint one further permanent member and one deputy for the Fiscal 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 Fiscal Board was carried out at different meetings.

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>88</sup>.

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<sup>86</sup> Articles 392 and 435 of the CCC.

<sup>87</sup> Articles 392 and 435 of the CCC.

<sup>88</sup> Article 418 of the CCC.

## **Recommendatory Framework**

II.1.4.11. Depending on the applicable model, the Chair of the Fiscal Board, the Auditing Committee or the Financial Matters Committees, shall be independent and be adequately capable to carry out its duties<sup>89</sup>.

II.1.4.12. The selection process of candidates for non-executive members shall be conjured so as to prevent interference by Executive Members<sup>90</sup>.

## **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>91</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 entering into any such contracts in future<sup>92</sup>.

II.1.5.2. Board Members 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>93</sup>.

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<sup>89</sup> CMVM CGC No. II.1.3.1.

<sup>90</sup> CMVM CGC No. II.1.3.2. (2010)

<sup>91</sup> Articles 397 and 428 of the CCC.

<sup>92</sup> Articles 399 and 428 of the CCC.

<sup>93</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>94</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<sup>95</sup>.

II.1.6.2. The general guidelines on this policy shall be disclosed in the Corporate Governance Annual Report<sup>96</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, Fiscal Board and the General and Supervisory Board<sup>97</sup>.

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<sup>94</sup> CMVM Regulation 1/2010, Annex I, No. III. 11.

<sup>95</sup> CMVM CGC, No. II.1.4.1.

<sup>96</sup> CMVM CGC, No. II.1.4.2.

<sup>97</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>98</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>99</sup>.

II.1.7.3. The remuneration of the members of the General and Supervisory Board, the Supervisory Board and the Audit Committee shall consist exclusively of a fixed amount<sup>100</sup>.

II.1.7.4. The Management Body or the Remuneration Committee shall annual submit for approval at the General Meeting, a statement on the remuneration policy of the Management and Supervisory Bodies. Said Statement of the remuneration policy shall contain the following information:

- a) Mechanisms that enable the Management Members' interests to be aligned with those of the company's;
- b) The criteria defining the variable component of remuneration;
- c) The existence of stock-option plans and share incentive plans for members of the Management and Supervisory Boards;
- d) The possibility of paying the variable component of the remuneration, if applicable, wholly or partially, after the assessment of the financial statement corresponding to the entire mandate;
- e) Mechanisms restricting the variable remuneration, should the earnings clearly show a pertinent decline in the company's performance during the last financial year assessed or when this is anticipated for the current financial year<sup>101</sup>.

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<sup>98</sup> Article 429 of the CCC.

<sup>99</sup> Articles 399 and 429 of the CCC.

<sup>100</sup> Articles 422/A and 423/D of the CCC.

<sup>101</sup> Article 3 of Law No. 28/2009 of 19 June.

II.1.7.5. The following information shall be disclosed in the Corporate Governance Annual Report:

- a) The statement on the remuneration policy of the members of the Management and Supervisory Boards mentioned in the previous paragraph, as well indication of the amount concerning the annual remuneration paid aggregately and individually<sup>102</sup>;
- b) The fixed and variable remuneration and as to the latter, mentioning the different components that gave rise to same, the parts that have been deferred and those that have been paid;
- c) Aggregate or individual remuneration received from another company within the group;
- d) The pension rights obtained during the employment period<sup>103</sup>.

II.1.7.6. The issuers of shares shall submit to the CMVM, information on share-allocation and/or stock-option plans for employees within seven working days after its relevant approval. Said information shall include the explanation for the adoption of the plan, the category and number of persons included in the plan, the conditions of allocation, the criteria for the share price and the option-exercising price, the period during which options may be exercised, the number and characteristics of share allocations, the existence of incentives for the purchase of shares and/or exercise of options and the powers of the Board of Directors for the implementation and/or modification of the plan<sup>104</sup>. Further yet, the company's corporate governance report shall include a description of the main characteristics of the share allocation and stock-option plans adopted or in force during the financial year at hand<sup>105</sup>.

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<sup>102</sup> Article 3 of Law No. 28/2009 of 19 June.

<sup>103</sup> Article 3 of CMVM Regulation No. 1/2010.

<sup>104</sup> Article 4 of CMVM Regulation No. 1/2010.

<sup>105</sup> CMVM Regulation No. 1/2010, Annex I, No. III.10.

II.1.7.7. The information on the Executive Members' remuneration covers the following:

- a) Reference to the fact that the Executive Members' remuneration includes a variable component and information on the way said component relies of the assessment performance;
- b) The corporate bodies responsible for assessing the performance of executive members;
- c) The pre-established criteria for assessing the performance of executive members;
- d) The relative importance of the variable and fixed components of the members' remuneration, as well as the maximum limits for each component;
- e) The deferred payment of the remuneration's variable component and the relevant deferral period;
- f) An account of the way whereby the payment of the variable remuneration is subject to the company's continual positive performance during the deferral period;
- g) Sufficient information on the criteria whereon the allocation of variable remuneration on shares is based, as well as on maintaining company shares that the executive members have had access to, on the possible share contracts, timely hedging contracts or risk transfer, the relevant limit and its relation apropos the value of the total annual remuneration;
- h) Sufficient information on the criteria whereon the allocation of variable remuneration on options is based as well as its deferral period and exercising price;
- i) The main factors and reasons for any annual bonus scheme and any other non-financial benefits;
- j) Remuneration paid in the form of a share in the profits and/or the payment of bonuses and the rationale behind the act of awarding such bonuses and/or share in profits;

- l) Compensation paid or owed to former executive directors in relation to early contract termination;
- m) Reference to the envisaged contractual restraints for compensation owed for undue dismissal of executive directors and its relation apropos the remunerations' variable component;
- n) Amounts paid on any basis by other companies in a group relationship or exercising control over the company;
- o) A description of the main characteristics of the supplementary pensions or early retirement schemes set up for Executive Directors and whether said schemes were subject or not to the approval of the General Meeting;
- p) An estimate of the non-financial benefits considered as remuneration that do not fall under the categories listed above;
- q) Mechanisms that prevent Executive Directors from having employment contracts that questions the grounds of the variable remuneration<sup>106</sup>.

### **Recommendatory Framework**

II.1.7.8. The remuneration of the Members of the Board of Directors shall be structured so that the formers' interests are capable of being aligned with the long-term interests of the company. Furthermore, the remuneration shall be based on performance assessment and shall discourage taking on extreme risk. Thus, remunerations shall be structured as follows:

- i) The remuneration of the Board of Directors carrying out executive duties shall include a variable element which is determined by a performance assessment carried out by the company's competent bodies according to pre-established quantifiable criteria. Said criteria shall take into consideration the company's real growth and the actual growth generated for the shareholders, its long-term sustainability and the risks taken on, as well as compliance with the rules applicable to the company's activity;
- ii) The variable component of the remuneration shall be reasonable overall as regard the fixed component of the remuneration and maximum limits shall be set for all components;

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<sup>106</sup> CMVM Regulation No. 1/2010, Annex I, No. III.33.

iii) A significant part of the variable remuneration shall be deferred for a period not less than three years and its payment shall depend of the company's steady positive performance during said period;

(iv) Members of the Board of Directors shall not enter into contracts with the company or third parties that will have the effect of mitigating the risk inherent to the variability of the remuneration established by the company;

(v) The Executive Directors shall hold up to twice the value of the total annual remuneration, of company shares that were allotted by virtue of the variable remuneration schemes, with the exception of those shares that are required to be sold for the payment of taxes on the gains of said shares;

(vi) When the variable remuneration includes stock options, the period for exercising same shall be deferred for a period of not less than three years;

(vii) The appropriate legal instruments shall be established so that in the event of a Director's dismissal without due cause, the envisaged compensation shall not be paid out if the dismissal or termination by agreement is due to the Director's inadequate performance;

(viii) The remuneration of Non-Executive Board Members shall not include any component, the value of which is subject to the performance or the value of the company<sup>107</sup>.

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<sup>107</sup> CMVM CGC No. II.1.5.1. (2010).

II.1.7.9. A statement on the remuneration policy mentioned in II.1.7.4. shall in addition to information mentioned in subparagraphs a/ and e/, include adequate information on: i) which groups of companies the remuneration policy and practices of which were taken as a baseline for setting the remuneration; ii) the payments for the dismissal or termination by agreement of the Directors' duties<sup>108</sup>.

II.1.7.10. The remuneration policy statement referred to in No. II.1.7.4. shall also cover the directors' remunerations which contain an important variable component, within the meaning of Article 248-B/3 of the Securities Code. The statement shall be detailed and the policy presented shall particularly take the long-term performance of the company, compliance with the rules applicable to its business and restraint in taking risks into account<sup>109</sup>.

II.1.7.11. 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<sup>110</sup>.

II.1.7.12. At least one of the Remuneration Committee's representatives shall be present at the Annual General Meeting for Shareholders<sup>111</sup>.

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<sup>108</sup> CMVM CGC No. II.1.5.2. (2010).

<sup>109</sup> CMVM CGC No. II.1.5.3. (2010).

<sup>110</sup> CMVM CGC No. II.1.5.5. (2010).

<sup>111</sup> CMVM CGC No. II.1.5.6. (2010).

II.1.7.13. The amount of remuneration received, as a whole and individually, in other companies of the group and the pension rights acquired during the financial year in question, shall be disclosed in the Annual Report on Corporate Governance<sup>112 113</sup>.

## **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 incumbent on 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>114</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.

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<sup>112</sup> This Recommendation shall remain in force until the disclosure duties envisaged in Article 3/c and /d of CMVM Regulation No. 1/2010 is enacted.

<sup>113</sup> CMVM CGC No. II.1.5.7. (2010).

<sup>114</sup> Articles 406 and 407 of the CCC.

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.

II.2.5. The Chair of the Executive Committee shall i) ensure that all information regarding the former committee's activity and resolution is provided to all the members of the Management Board; and ii) ensure the compliance of delegation limits, the company strategy and the duties for collaborating with the Chair of the Management Board.

### **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<sup>115</sup>.

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<sup>116</sup>.

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<sup>115</sup> *CMVM CGC No. II.2.1.*

<sup>116</sup> *CMVM CGC No. II.2.2.*

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<sup>117</sup>.

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<sup>118</sup>.

II.2.10. The company shall expound its policy of portfolio rotation on the Board of Directors, including the person responsible for the financial portfolio and report on same in the Annual Corporate Governance Report<sup>119</sup>.

### **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.

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<sup>117</sup> *CMVM CGC No. II.2.3.*

<sup>118</sup> *CMVM CGC No. II.2.4.*

<sup>119</sup> *CMVM CGC No. II.2.5.*

II.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>120</sup>.

II.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>121</sup>.

### **Recommendatory Framework**

II.3.4. When Directors that carry out executive duties are requested by other Board Members to provide information, the former shall do so in a timely manner and the information provided shall adequately suffice the request<sup>122</sup>.

II.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 Fiscal Board and the Audit Committee<sup>123</sup>.

II.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<sup>124</sup>.

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<sup>120</sup> Article 431 of the CCC.

<sup>121</sup> Article 441 of the CCC.

<sup>122</sup> CMVM CGC No. II.3.1. (2010).

<sup>123</sup> CMVM CGC No. II.3.2. (2010).

<sup>124</sup> CMVM CGC No. II.3.3. (2010).

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

11.4.2. 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.

11.4.3. 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 accounting information.

11.4.4. 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.

11.4.5. 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.

II.4.6. The Fiscal 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 Fiscal Board shall draw up a yearly annual report, so as to inform the shareholders of its supervisory action.

II.4.8. The Supervisory 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<sup>125</sup>.

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 Supervisory Board shall be disclosed on the company's website together with the financial statements<sup>126</sup>.

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<sup>125</sup> CMVM CGC No. II.4.1.

<sup>126</sup> CMVM CGC No. II.4.2.

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 Supervisory Board must include a description on the supervisory activity and shall mention any restraints that they may have come up against<sup>127</sup>.

II.4.12. The General and Supervisory Board, the Audit Committee and the Supervisory 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<sup>128</sup>.

II.4.13. According to the applicable model, the General and Supervisory Board, the Audit Committee and the Supervisory Board, shall assess the external auditor on an annual basis and shall advise the General Meeting to discharge the latter whenever justifiable grounds are present<sup>129</sup>.

II.4.14. The internal audit services and those that ensure compliance with the rules applicable to the company (compliance services) shall functionally report to the Audit Committee, the General and Supervisory Board or in the case of companies adopting the Latin model, an independent Director or Supervisory Board, regardless of the hierarchical relationship that these services have with the Executive Management of the company<sup>130</sup>.

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<sup>127</sup> CMVM CGC No. II.4.3.

<sup>128</sup> CMVM CGC No. II.4.4. (2010).

<sup>129</sup> CMVM CGC No. II.4.5. (2010).

<sup>130</sup> CMVM CGC No. II.4.6. (2010).

## **II.5. SPECIAL COMMITTEES**

### **Legislative Framework**

II.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>131</sup>.

II.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.

II.5.3. The attribution of particular responsibilities to one or more of the Directors, does not exclude the normal aptitude of the other Directors or of the Board and their responsibilities in accordance with the Law.

II.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>131</sup> Article 407 of the CCC.

## **Recommendatory Framework**

II.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; iii) timely identify potential candidates with the high profile required for the performance of director's duties<sup>132</sup>.

II.5.6. Members of the Remuneration Committee or alike, shall be independent from the Members of the Board of Directors and shall include at least one member with knowledge and experience in matters of remuneration policy<sup>133</sup>.

II.5.7 Any natural or legal person that provides or has provided, over the past three years, services to any structure subject to the Board of Directors, to the Board of Directors of the company or that has to do with the current consultant to the company shall not be recruited to assist the Remuneration Committee. This recommendation also applies to any natural or legal person who has an employment contract or provided services<sup>134</sup>.

II.5.8. All Committees shall draw up minutes of the meetings held<sup>135</sup>.

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<sup>132</sup> CMVM CGC No. II.5.1. (2010)

<sup>133</sup> CMVM CGC No. II.5.1. (2010)

<sup>134</sup> CMVM CGC No. II.5.3. (2010)

<sup>135</sup> CMVM CGC No. II.5.4.

### 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 management entities' of the market, the settlement systems and centralised securities systems, shall be complete, true, current, clear, objective and lawful<sup>136</sup>.

III.1.2. The primary sources on disclosure duties for companies issuing shares that are admitted to trading on a regulated market, is the Securities Code<sup>137</sup> and the CMVM Regulation 5/2008<sup>138</sup>. Further yet, the disclosure 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.

III.1.3. The Directors shall draw up and submit the management report, financial statements and other financial documents provided for by Law, regarding each financial year (Annual Reports and Accounts)<sup>139</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 companies that submit consolidated accounts or that use the equity method<sup>140</sup>.

III.1.4. The following information shall be disclosed on the CMVM's website under Information Disclosure System<sup>141</sup> and on the Issuer's website within a four-month period as from the date of the close of accounts for the financial year<sup>142</sup>:

- a) The annual report, annual financial statements, the audit and audit report and other financial reports required by law or regulation, which have not yet been submitted for approval in the General Meeting;

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<sup>136</sup> Article 7 of the SC.

<sup>137</sup> Particularly Articles 244 and ss.

<sup>138</sup> Repealing CMVM Regulation No. 4/2004 on Disclosure Duties.

<sup>139</sup> Article 65/1 of the CCC.

<sup>140</sup> Article 65/5 of the CCC.

<sup>141</sup> Articles 245/1 and 244/4/b of the SC.

<sup>142</sup> Article 5/h of the CMVM Regulation No. 1/2010.

- b) A report drawn up by an auditor registered with the CMVM;
- c) Statement from each person responsible within the issuer, whose names and functions shall be clearly identified and stating that, to the best of his knowledge, the information envisaged in paragraph a) was drawn up in accordance with applicable accounting standards, depicting a true and fair view of assets and liabilities, financial position and earnings of the issuer and the companies included in the consolidation, where applicable, and that the management report accurately sets out the development of the business, performance and position of the issuer and companies included in the consolidation, and contain a description of the main risks and uncertainties faced.

The information referred to in the preceding paragraphs should be available to the public for five years, including on the website of the issuer.<sup>143</sup>

III.1.5. The annual reports and accounts shall be drawn up in accordance with the IAS/IFRS, for both individual<sup>144</sup> and consolidated<sup>145</sup> accounts.

III.1.6. The Directors of companies that issue shares admitted to trading on a regulated market, are also subject to a duty to disclose interim financial information. Firstly, information regarding the activity and earnings of the first half-year shall be disclosed within two months after the close of said half-year.<sup>146</sup> Secondly, taking size into account, the quarterly information shall be disclosed within two months as from the close of the first, third, and where applicable, the fifth quarter of each financial year reported including the minimum data as envisaged in IAS 34 or a statement by the Board on the interim period.<sup>147</sup> All interim financial information should also be drawn up in accordance with the IAS/IFRS.<sup>148</sup>

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<sup>143</sup> Article 245/1 and Article 244/7 SC.

<sup>144</sup> For financial years commencing on or after 1 January 2007, see Decree-Law No. 35/2005, of 17 February, and CMVM Regulation No. 11/2005.

<sup>145</sup> According to the European Parliament and Council Regulation No. 1606/2002, of 19 July.

<sup>146</sup> Article 246 SC and Article 9 CMVM Regulation No. 5/2008.

<sup>147</sup> Article 246-A SC and Article 10 CMVM Regulation No. 5/2008.

<sup>148</sup> Article 5 CMVM Regulation No. 11/2005.

III.1.8. 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, which include the following: *(i)* the disclosure of material information regarding companies;<sup>149</sup> *ii)* the disclosure of information on transactions carried out on company shares or related financial instruments;<sup>150</sup> and *iii)* the disclosure of information regarding share-allocation plans and/or stock-options.<sup>151</sup>

III.1.9. Companies issuing shares that are admitted to trading on a regulated market or functioning in Portugal shall make available on their website, the following minimum information in a clearly identifiable and updated manner: *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; *v)* accounts reporting documents, which should be accessible for at least five years; *vi)* half-yearly calendar on company events, disclosed at the beginning of each half-year including General Meetings, disclosure of annual, half-yearly and where applicable, quarterly accounts; *vii)* proposals submitted for discussion and voting in the General Meeting, within the time limit required by law; *viii)* notices convening the General Meeting, within the time limit required by law.<sup>152</sup>

III.1.10. 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.1.11. 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>153</sup>

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<sup>149</sup> Article 248 SC.

<sup>150</sup> Article 248-B SC.

<sup>151</sup> Article 4 CMVM Regulation No. 1/2010.

<sup>152</sup> Article 5 CMVM Regulation No. 1/2010.

<sup>153</sup> Article 248-C SC.

## Recommendatory Framework

III.1.12. 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 a uniform fashion. To this end, the company shall create an Investor Assistance Unit.<sup>154</sup>

III.1.13. 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 submitted for discussion and voting during the General Meeting;
- h) Notices convening meetings.<sup>155</sup>

III.1.14. Companies shall advocate the rotation of auditors after two or three terms in accordance with whether its four or three years respectively. Their continuance beyond this period must be based on a specific opinion for the Supervisory Board to formally consider the conditions of auditor independence and the benefits and costs of replacement thereof.<sup>156</sup>

III.1.15. The external auditor must, within its powers, ascertain the implementation of remuneration policies and systems, the efficiency and functioning of internal control mechanisms and report any shortcomings to the company's Supervisory Board.<sup>157</sup>

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<sup>154</sup> CMVM Corporate Governance Code No. III.1.1

<sup>155</sup> CMVM Corporate Governance Code No. III.1.2.

<sup>156</sup> CMVM Corporate Governance Code No. III.1.3. (2010)

<sup>157</sup> CMVM Corporate Governance Code No. III.1.4. (2010)

III.1.16. The company shall not recruit the external auditor for services other than audit services, nor any entity with which same takes part or incorporates the same network. Where recruiting such services is called for, said services should not be greater than 30% of the total value of services rendered to the company. The hiring of these services must be approved by the Supervisory Board and must be expounded in the Annual Corporate Governance Report.<sup>158</sup>

## **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>159</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 complete and are also subject to the CMVM's Corporate Governance Code or an equivalent Code.<sup>160</sup> And in the case of companies where the shares are listed on a regulated market subject to Portuguese Law, said companies are also subject to a duty to disclose information on the corporate governance structure and practices as laid down in CMVM Regulation No. 1/2010. According to this Regulation, the information disclosed on the corporate governance structure and practices shall be structured according to the model in its annex and is an integral part thereof.<sup>161</sup>

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<sup>158</sup> *CMVM Corporate Governance Code No. III.1.5. (2010)*

<sup>159</sup> *Article 245-A/4 SC.*

<sup>160</sup> *Article 245-A/1 SC and Article 1 CMVM Regulation.*

<sup>161</sup> *Article 245-A/2 SC and Article 2 CMVM Regulation.*

III.2.3. The minimum content of 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 same, embraces the following aspects: *i)* compliance with the Corporate Governance Code statement to which the issuer is subject 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 under the provided for in the previous paragraphs; *iv)* content and description of the way the issuer's corporate boards function, and the Committees created; *v)* description of the key points of internal control and risk management systems implemented in the company, namely as regards the financial information disclosure system; *vi)* capital structure, including information on shares that have not been admitted to trading, the different classes of shares, rights and duties conferred to same and the capital percentage that each class 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 share capital; *ix)* identification of the shareholders with special rights and a description of said rights; *x)* control mechanisms of any employee scheme where the voting rights are not exercised directly by said employees; *xi)* any restrictions on voting rights, such as restrictions 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 and which take effect, alter or terminate upon a change of control of the company following a takeover bid, and also the results thereof, except when said disclosure is seriously detrimental to the company - this exception shall not apply when the company is obliged to disclose such information by virtue of legal provisions; and *xvi)* any agreements between the company and Board Members or employees providing for compensation in the case of resignation or wrongful dismissal or if employment ceases as a result of a takeover bid.<sup>162</sup>

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<sup>162</sup> Article 245-A/1 SC.

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>163</sup>

III.2.5. The Corporate Governance Report should specifically identify and state the reasons for the Recommendations of the CMVM Corporate Governance Code or other Code that the company has decided to adopt, those that are complied with and those that are not. The recommendations that are not fully complied with will be considered as being non-implemented. The company may also make an overall assessment, provided reasons are stated, on the degree of adopting groups of interrelated recommendations. When the corporate governance practices differ from the CMVM Recommendations or other Code that the company is subject to or voluntarily applied, the company shall explain which parts of each code that have not been complied with or that the company deems not to be applicable, the reasons therefor and other relevant comments. It shall also clearly indicate where in the Report a description of this can be found. The company should inform the public the whereabouts of the Corporate Governance Code, to which it is subject or to which it has decided to apply voluntarily.<sup>164</sup>

III.2.6. The Corporate Governance Report includes the following matters relating to the General Meeting: *i)* identification of the members of the General Meeting Board; *ii)* indication of the commencement and end date of mandates; *iii)* indication of remuneration of the General Meeting Board's Chairman; *iv)* indication of prior notice required for the deposit or blocking of shares in order to take part in the General Meeting; *v)* indication of the applicable rules for share-blocking in the event of the General Meeting being suspended; *vi)* number of shares that correspond to one vote; *vii)* indication of the statutory rules which envisage the existence of shares that do not confer voting rights or establish that no voting rights are counted over a certain number, when issued by a single shareholder or shareholders related thereto;

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<sup>163</sup> Article 245-A/3 SC.

<sup>164</sup> CMVM Regulation No. 1/2010, Appendix I, No. 0.1 - No. 0.4.

*viii)* existence of statutory rules on the exercise of voting rights, including constituent or decision-making quorums or systems for equity rights; *ix)* existence of statutory rules on the exercise of voting rights via postal voting; *x)* providing a model for exercising the right to vote by post; *xi)* deadline requirement for receipt of the postal ballots and the date on which same shall be counted; *xii)* the exercise of voting rights via electronic means; *xiii)* shareholders' access to extracts from the General Meetings' Minutes on the company's website within five days after the General Meeting was held; *xiv)* existence of a historical record on the company's website, containing the resolutions passed at the company's general meetings, the represented share capital and results of votes pertaining to the previous three years; *xv)* indication of representative(s) of the Remuneration Committee present at General Meetings; *xvi)* information on the intervention by the General Meeting as regards the company's remuneration policy and performance evaluation of the Board Members and other directors; *xvii)* information on the data submitted to the General Meeting and its intervention in the proposal for plans to allot shares and/or options to acquire shares, or based on changes in share prices, to members of the Board of Directors and Supervisory Boards and other directors; *xviii)* information on the General Meeting's approval of the key features of the retirement benefits system for members of the Board of Directors and Supervisory Board and other directors; *xix)* existence of a statutory rule which provides for the duty to impose, at least every five years, the General Meeting's resolution on the maintenance or withdrawal of restriction on the number of votes capable of holding or exercise by a single shareholder individually or together with other shareholders; *xx)* an indication of the defensive measures intended to cause an automatic erosion of company assets in the event of a transfer of control or change in the Board of Directors' composition; *xxi)* important agreements to which the company is a party and that come into force, are amended or cease in the case of a change in the control of the company and the effects thereof; and *xxii)* important agreements between the company and members of the Board of Directors or directors that provide for compensation in the event of resignation, unfair dismissal or redundancy as a result of a change in control of the company.<sup>165</sup>

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<sup>165</sup> CMVM Regulation No. 1/2010, Appendix I, No. 1.1 - No. 1.22.

III.2.7. With regard to the Board of Directors and Supervisory Board, the Corporate Governance Report should contain the following: *i)* identification and composition of corporate boards; *ii)* identification and composition of special committees established with responsibilities for the management or the supervision of the company; *iii)* description of the division of powers among the various boards, committees and/or departments within the company, including information on the scope of the delegation of powers, particularly with regard to the delegation of day-to-day management of the company, or distribution of functions among the members of the Board of Directors or Supervisory Board, and a list of non-delegable matters and powers actually delegated; *iv)* reference to the annual reports on the activities undertaken by the General and Supervisory Board, the Financial Board, the Fiscal Board and the Supervisory Board including the description of the supervisory activity and indicating any restraints found, and being subject to disclosure on the website of the company, together with the financial statements; *v)* description of the company's internal control and risk management systems, particularly with regard to financial reporting and the functioning and effectiveness thereof; *vi)* responsibility of the Board of Directors and the Supervisory Board in establishing and operating the company's internal control and risk management systems, and also in assessing said system's functioning and adaptation to the company's requirements; *vii)* indication of the existence of regulations on the functioning of the corporate boards or other internally defined rules on incompatibility and the maximum number of positions that a member is entitled to hold and the place where said rules may be consulted.

With particular regard to the Board of Directors, *viii)* in the event of the Board of Directors' Chairman carrying out an executive role, an indication of the mechanisms coordinating the tasks of non-executive members in order to ensure independence and notification of decisions; *ix)* identification of the major economic, financial and legal risks to which the company is exposed in pursuing its business activity; *x)* powers of the Board of Directors, especially with regard to resolutions concerning capital increase; *xi)* information on the rotation policy of the Board of Directors' functions, namely as to the financial responsibility division and the rules applicable to the appointment and replacement of members of the board of directors and of the supervisory board; *xii)* number of meetings held by the board of directors and the supervisory board and reference to the minutes of said meetings;

*xiii)* number of meetings held by the Executive Committee or by the Executive Board of Directors and reference to the drawing up of the minutes of said meetings and whenever applicable the submission of same with the convening notices to the Chair of the Board of Directors, the Chair of the Supervisory Board or of the Audit Committee, the Chair of the General and Supervisory Board and to the Chair of the Financial Matters Committee; *xiv)* distinction between executive and non-executive members and among these, differentiating those members that would comply if the incompatibility rules referred to in II.1.3.1 were to be applied, except for item *ii)* and the independency criteria provided for in II.1.3.6; *xv)* description of the legal and regulatory rules and other criteria that have been used as a basis for assessing the independency of its members carried out by the board of directors; *xvi)* description of the selection rules for candidates for non-executive member positions and the way in which executive members refrain from interfering in the selection process; *xvii)* reference to the fact that the company's annual management report includes a description on the activity carried out by non-executive directors and possible obstacles that may be detected; *xviii)* professional qualifications of the members of the board of directors, the professional activities carried out by same during at least the last five years, the number of company shares they hold, the date of the first appointment and date of the end of mandate; *xix)* duties that the members of the board of directors carry out in other companies and a description of duties carried out in other companies of the same group.

As regards the General and Supervisory Board, Financial Matters Committee and Supervisory Board, whichever is applicable *xx)*, identification of the members of the supervisory board and statement indicating that same comply with the incompatibility rules as provided for in II.1.3.3 and whether same comply with the independency criteria in II.1.3.6; *xxi)* professional qualifications of the members of the Supervisory Board, professional activities carried out by same during at least the last five years, the number of company shares they hold, the date of the first appointment and date of the end of mandate; *xxii)* duties that the members of the Supervisory Board carry out in other companies and a description of duties carried out in other companies of the same group; *xxiv)* Reference to the fact that the supervisory board assesses the external auditor on an annual basis and the possibility of proposing to the general meeting that the auditor be discharged whenever justifiable grounds are present.

Or, *xxv*) identification of the members of the general and supervisory board and other committees created within the company for the purposes of assessing the individual and overall performance of the executive members, consideration on the governance system that has been adopted by the company and the identification of potential candidates with the professional profile fitting the Director position; *xxvi*) statement indicating that members comply with the incompatibility rules provided for in II.1.3.1 including item *vi*) and the independency criteria provided for in II.1.3.6; *xxvii*) professional qualifications of the members of the general and supervisory board and of other committees created within the company, the professional activities carried out by same during at least the last five years, the number of company shares they hold, the date of the first appointment and the date of the end of mandate; *xxviii*) where applicable, the duties that the members of the general and supervisory board, and other committees established within the company, carry out in other companies and that carried out in companies of the same group; *xxix*) description of the remuneration policy including that of the managers and other employees whose professional activity might have a significant impact on the company's risk profile and whose remuneration contains an important variable component.

With regard to the remuneration of the members of the Board of Directors and Supervisory Board; *xxx*) description of the remuneration policy of the board of directors and the supervisory board, as referred to in Article 2 of Law 28/2009 of 19 June; *xxxi*) indication on the amount concerning the annual remuneration paid individually to members of the board of directors and of the supervisory board of the company, including fixed and variable remuneration and as to the latter, mentioning the different components that gave rise to same, the part that has been deferred and paid; *xxxii*) information on the way the remuneration is structured so as to allow aligning the interests of the members of the board of directors with the long-term interests of the company and how it is based on the performance assessment and how it discourages excessive risk assumption; *xxxiii*) reference to the fact that the executive members' remuneration includes a variable component and information on the way said component relies of the assessment performance; indication of the corporate boards responsible for assessing the performance of executive members;

indication of pre-established criteria for assessing the performance of executive members; explanation of relative importance of the variable and fixed components of the directors' remuneration, and also the maximum limits for each component; indication of the deferred payment of the remuneration's variable component and the relevant deferral period; an account of the way whereby the payment of the variable remuneration is subject to the company's continual positive performance during the deferral period; sufficient information on the criteria whereon the allocation of variable remuneration on shares is based, and on maintaining company shares that the executive directors have had access to, on the possible share contracts, namely hedging contracts or risk transfer, the relevant limit and its relation apropos the value of the total annual remuneration; sufficient information on the criteria whereon the allocation of variable remuneration on options is based as well as its deferral period and exercising price; identification of the key factors and reasons for any annual bonus scheme and any other non-financial benefits; indication of the remuneration paid in the form of a share in the profits and/or the payment of bonuses and the rationale behind such bonuses and/or share in profits; indication of the compensation paid or owed to former executive directors in relation to early contract termination; reference to the envisaged contractual restraints for compensation owed for unfair dismissal of directors and its relation apropos the remunerations' variable component; amounts paid on any basis by other companies in a group relationship or exercising control over the company; a description of the main characteristics of the supplementary pensions or early retirement schemes set up for directors and whether said schemes were subject or not to the approval of the general meeting; an estimate of the non-financial benefits considered as remuneration which do not fall under the categories listed above; mechanisms for preventing executive directors from entering into employment contracts that question the grounds of the variable remuneration; xxxiv) reference to the fact that remuneration of non-executive members of the Board of Directors is not included in the variable component; and xxxv) information on the reporting of irregularities adopted by the company (reporting means, persons entitled to receive said reports, how the reports are to be handled and the names of the persons or boards that have access to the information and the respective involvement in the procedure).

As regards Special Committees, *xxxvi)* identification of members of those committees that have been established for the purposes of individual and overall performance assessment of the executive directors, consideration on the corporate governance system that has been adopted by the company and the identification of potential candidates with the professional profile fitting the director's position; *xxxvii)* number of meetings held by the committees that have been established for management and supervision during the financial year concerned, and reference to the minutes of said meetings that have been held; *xxxviii)* reference to the fact that one member of the remuneration committee has knowledge and experience in remuneration policy issues; *xxxix)* reference to the independency of natural or legal persons with an employment contract or providing services to the remuneration committee, as regards the Board of Directors and, when applicable, to the fact that said persons have an existing relation with the company's consultant.<sup>166</sup>

III.2.8. Further information on the following is also required, *1)* equity structure including the shares that are not admitted to trading, the different classes of shares, rights and duties of said shares and the equity percentage that each class represents; *i)* qualifying holdings in the issuer's equity calculated pursuant to Article 20 of the Securities Code; *ii)* identification of the shareholders that hold special rights and a description of said rights; *iv)* possible restrictions on share-transfer i.e. consent clauses for disposal or restrictions on share-ownership; *v)* possible restrictions on share-transfer i.e. consent clauses for disposal or restrictions on share-ownership; *v)* shareholder agreements that the company may be aware of and that may restrict the transfer of securities or voting right; *vii)* control mechanisms for a possible employee-shareholder system inasmuch as the voting rights are not directly exercised by them; *viii)* description concerning the evolution of the issuer's share price; *xix)* description of the dividend distribution policy adopted by the company, including the dividend value per share distributed during the last three financial years; *x)* description of the key characteristics of the share and stock-option plans adopted or valid for the financial year in question; *xi)* description of the main data on business deals and transactions carried out between the company and between the members of the Board of Directors and Supervisory Board or companies in a control or group relationship, provided the

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<sup>166</sup> CMVM Regulation No. 1/2010, Appendix I, No. II.1 - No. II.39.

amount is economically significant for any of the parties involved, except for those business deals or transactions that are cumulatively considered within the bounds of normal market conditions for similar transactions and are part of the company's current business; *xii)* description of the key data on business deals and transactions carried out between companies and holders of qualifying holdings; *xiii)* description of the procedures and criteria applicable to the supervisory body when same provides preliminary assessment of the business deals to be carried out between the company and holders of qualifying holdings; *xiv)* description of the statistical data (number, average and maximum values) on the business deals subject to preliminary opinion by the supervisory board; *xv)* indication of the availability on the company's website, of annual activity reports drawn up by the general and supervisory board, the financial matters committee, the audit committee and the supervisory board, including constraints that might be encountered, and financial information documents; *xvi)* reference to an Investor Assistance Unit or similar service; e *xvii)* indication of the annual remuneration paid to the auditor and other individuals or groups that belong to the same network and the percentage of the statutory audit, further assurance services; tax advisory services; other non-statutory auditing services with the latter two requiring a description of the auditor's independency safeguarding measures.; *xviii)* reference to the external auditor's rotation period<sup>167</sup>

III.2.9. The statutory auditor shall comment on the information relating to a description of the internal control and management risk system regarding the financial information disclosure systems and ascertain that there is conformity between the annual management report and the financial statements and the following data in the Corporate Governance Report: qualifying holdings in the company's share capital; identification of the shareholders with special rights and a description of said rights; possible restrictions on voting rights, i.e. restrictions on the exercise of voting based on the ownership of a number or percentage of shares; deadlines imposed for 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 of Directors, notably in respect of resolutions for capital increase.

As for the remainder of the data, the statutory auditor shall only confirm whether same is included in the Corporate Governance Report.

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<sup>167</sup> CMVM Regulation No. 1/2010, Appendix I, No. III.1 - No. III.17.

### 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 shares are traded on a regulated market must be included in the report drawn up by an auditor registered with the CMVM (external auditor), and the statutory audit of the accounts carried out by a statutory auditor which must also be registered with the CMVM.<sup>168</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. 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>169</sup> Auditors registered with the CMVM are subject to its supervision.<sup>170</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 board responsible for the supervision, in accordance with the adopted model (Supervisory Board, Audit Committee or the General and Supervisory Board), will be responsible for the appointment. This board 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>171</sup> The results obtained by the oversight of the Supervisory Board/Audit Committee/General and Supervisory Board are generally considered by the shareholders on an annual basis.

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<sup>168</sup> Articles 8 & 245 SC, Articles 451 et seq. CCC and Article 50/4 of the Statutory Auditors' Association.

<sup>169</sup> Article 9 SC.

<sup>170</sup> Article 359 SC.

<sup>171</sup> Articles 420/2, 423-F and 441 CCC.

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 liable.<sup>172</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 further assurance services, tax advisory services and other services that are not related to statutory auditing. Should the auditor carry out fiscal advisory 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.<sup>173</sup>

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<sup>172</sup> Article 10 SC.

<sup>173</sup> CMVM Regulation No. 1/2010, Appendix I, No. III.17.