

Portuguese Perspectives from within

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The Portuguese Corporate Landscape: Going my Way

Shareholder structure



High concentration of shareholdings

The Minorities: Children of a Lesser God

- **In a landscape where minority shareholders are overshadowed by dominant shareholders, it is critical to empower them;**
- **The Portuguese Companies Code and the Portuguese Securities Code comprise important rules protecting minority shareholders:**
 - Appointment and dismissal of directors;
 - Veto over certain management and policy matters;
 - Power to call GMs;
 - Access to information;
 - Dividends policy;
 - Prevention of dilution of the equity stake;
 - Deadlock of the company;
 - Protection in the context of M&A.

Market for Corporate Control: The Iron Curtain

- **Defensive mechanisms against takeover bids:**
 - **Golden shares, e.g. EDP, Cimpor, PT;**
 - **Voting caps, e.g.**
 - EDP and PT Multimédia (5%)
 - Cimpor, BCP and PT (10%)
 - BPI (12.5%)
 - Portucel (25%)
 - **Ownership by the company of its own shares, e.g. BCP and BPI.**

Forbidden Games:

▪Special duties upon the target during the standstill period:

- Present a report regarding the opportunity and conditions of the offer;
- Inform the CMVM daily of the transactions carried out by its members;
- Inform the CMVM and its employees of the contents of the offer;
- Act on a bona fide basis;
- Refrain of materially affect the net asset situation of the company or of using defensive devices against shareholders' interests:
 - Macaroni Defence;
 - Poison Pill of the flip-in type;
 - Disposal of Crown Jewels.
- Practice only acts of day-to-day management.

The Legal Framework: Evolution and Revolution of the System

*Combination of Mandatory Provisions with
Recommendations*

The CMVM Recommendations:

- Motivate the exercise of shareholder voting and representation rights and withdrawing statutory restrictions;
- Disclosure of information;
- Composition of the Board of Directors with independent members;

The CMVM Recommendations (Cont.):

- Internal control committees;
- Detailed internal procedures on conflicts of interest;
- Institutional investors should explain how and why they use voting and information rights and disclose information on their policies towards the companies in which they invest.

The Companies Code, the Securities Code and the CMVM Regulations:

- Exercise of shareholder voting and representation rights concerning proxy voting and proxy solicitation;
- The right to distribution of profits;
- The right to information;

The Companies Code, the Securities Code and the CMVM Regulations (Cont.):

- Structure and role of the Board of Directors and of the Executive Committee:
 - Unitary vs. two-tier management system;
 - Board of Directors' liability for the Executive Committee's performance.
- The Directors' duties and fiduciary powers;
- Regulation and supervision of conflicts of interests;
- Information on Website;

The Companies Code, the Securities Code and the CMVM Regulations (Cont.):

- Submission of plans for the allotment of shares and/or stock options to CMVM;
- Duty to provide information on acquisition and disposal of shares held by members of the Board of Directors;
- Annual report on corporate governance.

Specific Rules

- Special corporate governance requirements for banks;
- Specific corporate governance rules for insurance companies, newspaper publishers, airlines, telecommunication operators and pharmaceutical companies.

PSI 20s: Trends

- **Compliance with the Sarbanes-Oxley Act;**
- **Incorporation of some of the features of the two-tier system and of the Anglo-Saxon model into the traditional Portuguese unitary structure (PT, EDP);**
- **Board of Directors with independent members (EDP, BPI, BCP);**
- **Use of new technologies to provide and exchange information with stakeholders and supervisory entities;**
- **Some corporate social responsibility (EDP).**

Supervision of the System:

- **Regulatory and supervisory authority:** CMVM (*Comissão de Mercado de Valores Mobiliários*, the Stock Market Supervisory Authority);
- **Role:** actively promote good corporate governance practices, aiming at ensuring that Portuguese companies perform well and protect all investors (including minorities and foreign shareholders);
- **Tools:** Regulations, recommendations, inspection powers, supervisory enforcement;
- **Main objectives:** transparency, disclosure and equality;
- **Main principle:** comply or explain.

Levels of Compliance: Crime and Punishment

- The average level of compliance with CMVM's Recommendations on Corporate Governance is 56.1%.;
- 5 Recommendations (1, 3, 5, 6, and 10) are complied with by more than 60% of listed companies;
- (2004) 22 administrative proceedings for infringement of Corporate Governance related regulations (18% of the total).

Bound For Glory: Action Plan

Key policy objectives:

- Strengthening shareholders rights and third parties protection
- Fostering efficiency and competitiveness of business.

Portugal and the EU Plan to move forward:

- One size does not fit all. EU to coordinate corporate governance efforts from Member States;
- Short (2003-2005), medium (2006-2008).

PACSA & CAMEIRA
L A W F I R M

THANK YOU!

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