BETTER MANAGEMENT PROGRAMME

SIMPLIFYING CORPORATE GOVERNANCE

iPCG
Instituto Português de Corporate Governance

Instituto Português de
Corporate Governance

EDIÇÃO
IPCG | Instituto Português de Corporate Governance
Av. Eng. Duarte Pacheco Amoreiras Torre 2, 14.º E,
1070-102 Lisboa • Portugal
Telefone: (+351) 21 317 40 09 • E-mail: ipcg@cgov.pt
www.cgov.pt

BETTER MANAGEMENT PROGRAMME

COORDINATOR'S NOTE

The Portuguese Institute of Corporate Governance ("IPCG") has a clear mission: "to establish itself as a center of excellence for reflection on matters related to corporate governance, disseminating and debating ideas and concepts about good practices in corporate governance, and contributing to the strengthening of ethics, accountability, and transparency in its application."

In this context, throughout its more than 20 years of existence, the IPCG has uniquely promoted the dissemination and debate of ideas and concepts on corporate governance in the national landscape, doing so in the most diverse forums and through a variety of media.

From organising conferences in the traditional sense, to promoting technical publications, and more recently, through organising events held exclusively via digital media, the IPCG has widely and competently used many formats to develop its mission.

In this "Better Management Programme" launched in 2023, the IPCG invited a group of corporate governance experts to explain ideas, concepts, and best practices in a simple, direct, and, above all, concise manner.

The outcome was a set of 18 videos, available on IPCG's website (www.cgov.pt), which contribute to deepening, in an accessible way, the key themes of corporate governance. We invite all interested parties to watch them.

As an alternative to watching the videos or as an aid to better understand them, the IPCG in now providing this "guide," where all interested parties can find the texts that form the basis of the 18 testimonies collected. We believe that this tool, in addition to providing another element of study and analysis available to all, will allow for a deeper understanding of the topics covered, including to those who do not master the Portuguese language (since this work is presented in a bilingual format).

Thus, we offer this contribution with the firm purpose of enabling a greater understanding of the content of these testimonies and, in this way, fully meeting the demanding and valuable mission assumed by the IPCG at its foundation.

Best wishes for good reading and good viewing,

The Project Coordinator,
José Costa Pinto
Founding Partner of Costa Pinto
Vice-President of the Board of the IPCG

CORPORATE GOVERNANCE

PEDRO MAIA

Professor at the Faculty of Law of the Coimbra University

Chairman of CAM – Monitoring Committee of the Corporate Governance Code

We may understand CG (corporate governance) as a theme or a subject: "the system by which companies are managed and controlled" is one of the most consensual definitions of CG. Although it may be said that CG has existed since companies have existed – because if there is a company, it must be somehow managed and controlled – the truth is that it only emerged around 50 years ago as an autonomous area of research, teaching, analysis and even practice. And throughout these 50 years, CG has not only grown and greatly deepened its analysis of said "system by which companies are managed and controlled" – specialising that analysis for certain sectors, such as banking, capital markets or public companies – but has also found new and different answers to old problems. The "trends" and the core concerns of CG have changed a lot over these decades. Originally, it focused a lot on the economic efficiency of companies and on ensuring that the (profitable) interests of shareholders were maximally pursued by managers, seeking to align their interests as much as possible.

Without having renounced this original vocation, CG has increasingly wider perspectives: today we can talk of a 360° CG. It is not only the shareholders and the economic efficiency of companies that are of interest. It is also the companies' social responsibility, their future impact on the planet, their relationship with the community, their relationship with their employees and their families, with consumers, their respect for ethical values and the rules that govern a global society. Thus, CG has been assimilating matters such as respect for human rights, diversity (for example, but not only gender diversity), sustainability and compliance. And it recently embraced an important and even radical discussion: what is a society for? What can or should be its purpose?

CG is not in itself an answer to all the problems neither of companies, nor of economies or communities. But it has been testing and analysing a wide range of mechanisms and structures underpinning the life of a company. And based on those analyses and on the work of a vast community of scholars and practitioners, it has built a kind of guide on what works and what does not work; on what should and should not be done; on the risks and inconveniences of this and that.

A guide that must be constantly updated, adapted to a constantly changing reality, but which is worth knowing, assimilating and debating.

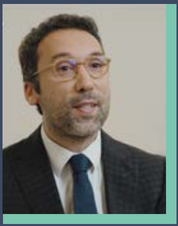
THE CORPORATE GOVERNANCE CODE

RUI PEREIRA DIAS

Professor at the Faculty of Law of the Coimbra University

Member of the CEAM – Executive Monitoring Committee of the Corporate Governance Code

Member of the Board of the IPCG



In addition to the accountability that is due, every year, by most companies, listed companies are furthermore subject to special Corporate Governance rules.

These rules arise from the need, as foreseen in our Securities Code, for each listed company to draw up and publish annually a "detailed report on the corporate governance structure and practices", a report in which it has to declare which corporate governance code it has voluntarily abided by. What is more: in relation to each of the recommendations contained in such corporate governance code, the issuing company has to inform investors regarding the acceptance or non-acceptance hereof, and, in the case of non-acceptance, the reasons why it has departed herefrom.

This is how corporate governance codes - in a tradition that has been growing from England in the nineties of the last century, and which is becoming firmly established throughout the world - provide the system with a good dose of flexibility: fundamental principles are established, rules are set down that at first sight seem to be adequate for most companies, but leave it to each company to choose whether or not to adopt the recommended practice. If it does not adopt it, it will not suffer any sanction imposed by law: it simply will have to be truthful and explain to all potential stakeholders the reasons for this non-acceptance, so that each investor or any other stakeholder can draw their own conclusions.

A corporate governance code deals with fundamental issues in the life of companies, from the relationship between shareholders, management and supervision, to internal control, including also performance assessment and the remuneration of corporate bodies.

In Portugal, as a result of an evolution that was possible thanks to the institutional cooperation between CMVM, AEM and the Portuguese Institute of Corporate Governance (IPCG), the latter created the 2018 Corporate Governance Code, already revised in 2020 and 2023, and which today is adopted by most listed companies in Portugal.

GOVERNANCE MODELS: THE CLASSIC MODEL

JOSÉ COSTA PINTO

Founding Partner of Costa Pinto

Vice-President of the Board of the IPCG

The "classic model", also known as the "Latin model", is the model of organisation of corporate governance with the greatest practical implementation and with the longest history in Portugal.

From a general perspective, we can identify in this governance model a management body and a supervisory body.

The management can be assumed by a sole member body ("sole director") whenever the share capital is equal or inferior to EUR 200,000.00.

However, in public companies and large companies, it is more likely - if not mandatory - to find an enlarged board of directors, which delegates executive management to one or more directors or an "executive committee".

From a perspective of the operation of the management of companies and the sharing of duties, it is essential to note that the delegation of the day-to-day management to executive directors does not remove from non-executive directors - contrary to what is often believed - the competence to take decisions on delegated matters and much less exempts them from a legal duty of general surveillance of the performance of the executive directors.

Supervision may be performed by a "sole auditor", except in the case of public companies or companies with a certain size, where a collegiate supervisory body (known as supervisory board) and an autonomous statutory auditor are mandatory.

The classic model may furthermore include a "remuneration committee", which will be appointed by the shareholders general meeting to set the remuneration of each of the directors, taking into consideration the duties performed and the economic situation of the company.

GOVERNANCE MODELS: THE ANGLO-SAXON MODEL

JOSÉ COSTA PINTO

Founding Partner of Costa Pinto

Vice-President of the Board of the IPCG

The "Anglo-Saxon model", also known as the "one-tier model", owes its name to the fact that it originated in Anglo-Saxon countries.

In these countries, due to the strong stock market dispersion of the companies' share capital, which translates into a huge number of micro shareholders, an attempt was made to confer greater protection to these shareholders by establishing a governance model in which the supervisors sit in the same room as the directors.

We can therefore state that the fact that the board of directors necessarily includes an "audit committee" within it is the cornerstone of this governance model.

Our law even determines that this "audit committee" - inspired by the "audit committees" stemming from the Anglo-Saxon systems - must be composed of a minimum of 3 members, who may not have executive functions.

The logic is to allow these people to guarantee the interests of the shareholders, since they - as members of the board of directors and elected along with the other directors - have a privileged position to monitor the performance of the executive directors' duties.

The latter constitute the "executive committee", which is a compulsory body in this governance model, alongside which there may also be a "remuneration committee".

Pursuant to the law, public companies and large limited liability companies (*sociedades anónimas*) that opt for the Anglo-Saxon governance model must include in the "audit committee" at least one member who has a university degree appropriate to the performance of his/her duties and knowledge of auditing or accounting and who must likewise be "independent".

In the case of issuing companies, the law even requires that a majority of the members of the "audit committee" is independent.

The Anglo-Saxon model of governance is also known as the "one-tier model" as opposed to the "dualistic German model", due to combining, at the management level, this function with the supervisory function.

Without prejudice, in the Anglo-Saxon governance model, the company shall also have a statutory auditor.

GOVERNANCE MODELS: THE GERMAN MODEL

JOSÉ COSTA PINTO

Founding Partner of Costa Pinto

Vice-President of the Board of the IPCG

The "German model" is one of the three government models admitted by Portuguese law.

It is also known as the "two-tier model", as the management functions are divided between two bodies: the general and supervisory board and the executive board of directors.

The first is the main differentiating element of this model when compared to the other governance models, since the general and supervisory board, in addition to having supervisory functions over the executive board of directors, may exercise greater influence over specific management decisions.

A relevant note on this model concerns the fact that the general and supervisory board may be given the power to appoint and dismiss the executive board of directors.

In the other two governance models, these competences always belong to the shareholders' general meeting.

Another relevant note on the general and supervisory board is that this body may have a direct influence on management, insofar as the prior consent by this body may be defined as being required for the practice of certain categories of acts by the executive board of directors.

This circumstance also marks a distinctive feature vis-à-vis the classic model and the Anglo-Saxon model, where management matters are reserved to the board of directors.

In order to emphasise the dichotomy between the executive board of directors and the general and supervisory board, executive directors cannot be members of the general and supervisory board (although it is possible for a member of the latter to temporarily replace a member of the executive board of directors, although he/she cannot simultaneously exercise duties in the general and supervisory board).

In the German model, there may also be a set of specialised committees, namely a financial matters committee. In the case of public companies and large limited liability companies (*sociedades anónimas*), said committee is mandatory.

In the German model of governance, the company must also have a statutory auditor.

THE DUTIES OF DIRECTORS

ALEXANDRE MOTA PINTO

Partner at Uría Menéndez

To promote and enhance corporate performance and protect the confidence of investors, employees and the general public in the sustained development of companies, directors of companies must observe certain general duties in the exercise of their management functions. In simple terms, directors are obliged to act with the diligence of a prudent and orderly manager and to act always in the best interests of the company.

First and foremost, directors shall fulfil a general duty of care, devoting the necessary time and effort and displaying the technical competence and knowledge of the company appropriate to the performance of their duties. For this purpose, they must monitor the economic and financial evolution of the company, obtaining the necessary information and preparing their decisions in an appropriate manner. They must also take reasonable decisions that pursue the company's interests, avoiding the dissipation (or squandering) of company assets, as well as assuming unreasonable risks.

In addition, directors must comply with a general duty of loyalty, which means that in their actions they shall only and exclusively aim to satisfy the interests of the company, taking into account the long-term interests of shareholders and other relevant stakeholders, such as employees, clients and creditors. They must therefore abstain from promoting their own interests or interests outside the company. Acting in a loyal manner means that directors must behave correctly if and when entering into contracts with the company, they must not compete with the company, nor shall they take advantage of business opportunities or company assets and information for their own benefit or for the benefit of third parties. In addition, they must never abuse their status or position as directors, namely and as is evident, they must not receive any financial advantages from third parties in connection with entering into deals with the company.

DIVERSITY IN THE GOVERNING BODIES

CLARA RAPOSO

Vice-Governor of the Bank of Portugal

What is Diversity?

Nowadays, when we talk about Diversity, the first idea that comes to mind is gender diversity, equal opportunities and equal pay for women and men.

But Diversity is about much more than gender. When we look at the dynamics of many organisations we sometimes identify a fairly "standardised" profile of their people.

For example, it could be the case that almost all of them studied at the same colleges and universities, almost all of them come from the same social class, almost all of them have the same internationalisation experiences - or none at all, almost all of them have the same tastes and interests....

Diversity goes in the opposite direction, i.e., bringing more varied profiles together in the same organisation and the same corporate body.

Why does Diversity matter?

Firstly, for the sake of Social Justice, in a society that wants to be more open and to truly provide equal opportunities to all; so that meritocracy does indeed reward those who deserve it.

But not least, what we see is that organisations that value Diversity of profiles in their senior staff are organisations that become more representative of society and therefore more business savvy and resilient.

In addition, a more diverse organisation does not drive away valuable people who might fear that they will never have a real chance for career progression. In other words, a culture of Diversity increases the organisation's ability to attract and retain talent and thereby better develop itself.

And why Diversity in the governing bodies?

The theme of diversity is likewise present in corporate bodies. Whether in executive or non-executive functions, more diverse corporate bodies make decisions and oversee that decision making with better information.

Why? Because people with different profiles bring more points of view to the table before decisions are taken. More information, More debate, Better decisions and Better management of the companies.

THE SHAREHOLDERS' GENERAL MEETING

PEDRO REBELO DE SOUSA

Senior Partner and Founder of
SRS Advogados

Chairman of the General
Assembly of the IPCG

The shareholders' general meeting of a company is a sovereign body, where its members meet to discuss and resolve on matters relevant for the company's life.

It is through the shareholders' general meeting that shareholders meet to exchange ideas and share different and often conflicting interests. The greater their participation and, as a tendency, the greater the variety of personal and corporate interests at stake, the more disputes there will be. Thus, the need for organisation is felt, not only in terms of time management, but moreover with regard to the presentation of ideas and the taking of free and informed positions.

The chairman of the shareholders' general meeting has the power to manage the meeting, both in its preparation and the conduct of the meeting, being responsible for the arduous task of organising the collective body of shareholders, which is the deliberative body par excellence. The figure of the chairman of the shareholders' general meeting is provided for under Portuguese law, which does not occur regularly in other legal systems. This is a figure whose performance goes beyond the meeting he/she chairs. Notwithstanding the fact that the chairman generally acts accompanied by a secretary and possibly a vice-chairman, the Portuguese Commercial Companies Code devotes special attention to the chairman of the shareholders' general meeting.

The conduct of the chairman of the shareholders' general meeting may damage the interests of its participants or even of third parties if it is not carried out within the limits established by law.

Due to the fact that he/she has the power to manage a meeting in the presence of diffuse interests, he/she is required to be as impartial and independent as possible –for instance, by not allowing the due participation of certain shareholders, due to a meeting not being duly convened, possibly delaying urgent resolutions, or even due to the lack of clarifications in the meeting, the conduct of the chairman of the shareholders' general meeting may cause damage to the shareholders themselves, as an extension of the company, and even to third parties, such as creditors or employees.

Despite the importance of the chairman of the shareholders' general meeting, his/her civil liability is not dealt with in the text of Portuguese law. There is no express provision in the Portuguese Commercial Companies Code regarding the consequences of an irregular or illicit act by the chairman of the shareholders' general meeting. This is something worth reflecting on.

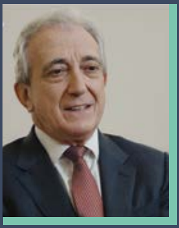
As part of the company, the chairman of the shareholders' general meeting assumes his/her own identity, different from the other corporate bodies. The chairman is not at all responsible for the management and representation of the company.

THE BOARD OF DIRECTORS

MIGUEL ATHAYDE MARQUES

Vice-Rector at Universidade Católica Portuguesa and Professor of Management at Católica Lisbon School of Business & Economics

Chairman of the Board of AEM – Association of Portuguese Issuers



The board of directors (BoD) is the highest governing body of a company or any organisation of a certain size.

The BoD performs the fundamental role of establishing a bridge between those who hold the capital and those who manage the company. When these functions separate following the natural development of the organisation and the dispersal of its capital, a body is necessary to bring together the differing interests of shareholders and managers, and so ensuring the cohesion and continuity of the organisation.

This role of the BoD has evolved to represent, nowadays, all parties with an interest in the organisation, the so-called stakeholders. Thus, we are no longer talking about the interests of shareholders alone, but in addition we include the legitimate interests of other parties that relate to the organisation and contribute to its success and continuity, such as human resources, customers, lenders, local communities, etc.

Today, it is understood that the function performed by the BoD members (the directors) should ensure not only the company's profitability but also its long-term sustainability. Therefore, the expanded role of the BoD covers issues not only of good governance for an efficient and well managed organisation, but also issues of environmental preservation, and social development. This responsibility based on three pillars is called the ESG approach, which stands for "Environment, Social, and Governance".

The execution of the BoD role is highly discretionary, to allow its members to perform their duties to the full potential. Typically, the BoD is responsible for providing direction to management, for approving the mission and strategy, recommending major decisions to shareholders, for proposing new members and the succession of current ones, for setting the level of remuneration of key managers, for monitoring performance and, naturally, for approving the company's accounts. The BoD is furthermore responsible for the company's financial integrity, risk management, sustainability, and good reputation. The work of the directors may be organised in Specialised Committees of the Board itself.

Finally, how is the BoD composed? In its most common configuration, the majority of BoD members should be non-executive and preferably independent. In this case, those directors with executive responsibilities will be members of an executive committee which is part of the BoD.

THE ROLE OF NON-EXECUTIVE DIRECTORS

ABEL FERREIRA

Executive Director at AEM –
Association of Issuer Companies
of Listed Securities

NEDs play a vitally important role in corporate governance, especially within a context of growing complexity of corporate business and corporate management.

For this reason, legislation and governance codes have been consolidating and increasing the set of duties and responsibilities of NEDs.

The law and the governance codes establish the regime that distinguishes between independent and non-independent NEDs, a distinction based on relative concepts of impartiality, objectivity and independence of thought, in relation to the shareholders, the managers and the company itself.

But whether independent or non-independent NEDs, their role, of challenging, advising, and monitoring executive management, is essential to safeguard the purpose of the company and its culture, the development of strategy, the smooth functioning of the management and supervision mechanisms, financial stability, impeccable reporting and accountability, and ultimately the long-term sustainability of the companies.

For optimum performance of their functions, it is fundamental that the NEDs familiarise themselves with the corporate governance model adopted by the company, understanding well their responsibilities and powers, within the general legal framework and the specific framework of governance of the different structures in which they operate.

Non-executive directors do not have day-to-day management powers.

But by actively participating in decisions of fundamental importance for the future of the company and its activity (for example, regarding the business plan, the annual budget, or the definition of the main policies, financial, human resources, and others), the NEDs contribute decisively to a more effective functioning of the management body and supervisory bodies, and, as such, to the full achievement of the corporate purpose of the company and its long-term objectives.

By exercising their power/duty of access to all the information in the company, and in permanent dialogue with the other main players, the NEDs help to respond to the many challenges faced by organisations, providing better decisions and greater value creation for the company, ensuring long-term sustainable development.

THE CHAIRMAN

JOÃO TALONE

Senior founding partner (non-executive) at Magnum Capital

Senior International Adviser to the Davison Kempner Fund

The chairman, the Anglo-Saxon name for the chairman of the board of a company, obviously has as his main function, to preside. To lead and coordinate that board. Let's try to transform this concept into something simple and substantial.

It starts with the type of company board that we want to address. A one-tier board, in which the executive directors, led by the CEO, who perform the day-to-day management of the company, and the non-executive directors sit together with equal status, making decisions jointly on each matter. And a dual board (two-tier board) in which the supervisory board, exclusively made up of non-executive, independent members (not linked to qualifying shareholders), and dependent members (these appointed by qualifying shareholders), monitor the actions of the executive board and normally have functions or areas of decision-making that are exclusive to it, at least above certain quantitative or qualitative limits that are defined by the board itself, or by the company's articles of association or the Portuguese Commercial Companies Code.

I will focus on the 2nd version in which there are two boards (under Portuguese law both are directly elected by the shareholders' general meeting).

In essence, the priority functions do not differ in content with respect to the type of board. They do differ with regard to the form of its effectiveness.

It should perhaps be emphasised from the outset that the board is a collective body, with a fiduciary duty to defend or protect the interests of the company and its stakeholders, with focus on the shareholders who are the owners of the company, but without prejudice to the rights of the other stakeholders, who cannot and must not be harmed in favour of the company and its shareholders. This body thus issues collective positions or resolutions that must be the greatest common denominator of each of its members' perspectives on each matter in question.

Thus, in my opinion, the chairman's main function is to ensure the smooth running of the board. He/she selects, on his/her own initiative, the issues to be discussed and debated by the board, including suggestions that he/she must make or that he/she may receive from colleagues, and which, together with the issues submitted for decision or guidance of the board by the executive directors, constitute the agenda for each of the meetings. It is essential that the agenda for the meetings, which essentially establishes the action and intervention program of the board of directors, is drawn up in a holistic perspective, efficiently covering the company's various areas of interest and not, as is often the case, what, from the executive directors' point of view, are those interests. The board cannot and must not be subordinated to the impulses of the executive directors. Having said this, we must ensure that there is no asymmetry of information on each of the items on the agenda. The information made available to all the directors must have the adequate depth and materiality to allow them to debate the issues on an equal footing, defend their points of view, request the consideration of alternatives, etc.

This presupposes a suitable prior preparation of each of the directors and an appropriate and balanced intervention in meetings. Without monopolising the discussions, or omissions that prevent each one from assuming their responsibilities. It is the responsibility of the chairman to ensure that this is the case. And that the formation of a collective opinion is of the right quality, at the right time and with the contribution of all.

I could list many other issues. Perhaps putting the necessary cooperation and coaching with the CEO first. What I would call “independent collaboration”!

If we have to prioritise, this is my selection.

SUPERVISORY BODIES

ANA ISABEL MORAIS

Full Professor at ISEG

Chairman of the Audit Committee of Banco Santander

What are the supervisory bodies?

The integration of a supervisory board in the corporate structure depends on the legal form of the company. In the so-called *sociedade por quotas*, the subsidiary regime is that of the non-existence of a supervisory body (supervisory board), although the shareholders may provide for the existence of a supervisory board in the articles of association. In the so-called *sociedade anónima*, the existence of a supervisory body is compulsory and may be one of three types: a supervisory board (which may be a sole supervisor or a supervisory board), audit committee or a general and supervisory board. The possibility of opting for a lighter organisational model, with a sole supervisor, is however reserved for smaller companies.

What are the supervisory bodies for?

The supervisory bodies play a key role in corporate governance. The main functions of the supervisory body include monitoring and challenging the strategic plan, supervising the rigour of financial reporting and of the preparation and disclosure of financial information, supervising and monitoring the effectiveness of internal control, risk management and compliance systems and internal audit functions, as well as proposing the appointment of the statutory auditor (ROC) and the verification and monitoring of his independence.

How do they relate to other company bodies/ committees?

Building good, but independent, relationships with the internal stakeholders (including the board of directors, executive committee and internal auditor) is crucial for the efficient and effective performance of the duties of the supervisory body. The importance of internal audit, when it exists, as a source of information, advice and assurance for the supervisory body is also highlighted. In addition to the internal stakeholders, the supervisory body supervises the performance of the statutory auditor, notably his/her independence, but also the planning of the audit and its main conclusions.

THE COMPANY SECRETARY

ANA PINA CABRAL

Member of the Board of the IPCG

Pursuant to Article 446-A of the Commercial Companies Code, companies issuing shares admitted to trading on a regulated market must appoint a company secretary and an alternate.

The appointment of the company secretary, as well as that of an alternate, shall be made by the founding shareholders or by the management body and is subject to registration, and they shall perform their duties for terms of office that coincide with those of the corporate body that elects them.

The company secretary (SSOC) is civilly and criminally liable for the acts performed in the exercise of his/her functions, and the certifications made regarding the identity and signatures, quality and competences of the members of the corporate bodies, the copies or transcripts of the books or documents filed in the company, as well as the content of the articles of association, substitute the commercial registry certificate, making them public faith documents.

Of particular note among his/her responsibilities are those of convening and acting as secretary at the meetings of all the corporate bodies, drafting and signing the minutes of the respective meetings, which makes him/her the common link between the different corporate bodies and their members, and he/she is responsible for ensuring the formal regularity of and consistency in the respective resolutions.

In practice, he/she has the duty to ensure the good, regular and articulated functioning of the different corporate bodies, guaranteeing that the corporate governance model is implemented in compliance with the procedures and rules of good governance, this being in fact the essence of his/her function.

Within the scope of his/her powers, he/she shall also satisfy shareholder requests in relation to the exercise of the right to information and provide information to the members of the management and supervisory bodies.

In case of absence or impediment, even if occasional or episodic, the functions of the company secretary shall be performed by his/her alternate.

Although it is mandatory for listed companies in Portugal to appoint a company secretary, the latter is unfortunately not adequately governed in the legislation that regulates the activity of such companies and therefore it is important to govern this matter in the articles of association.

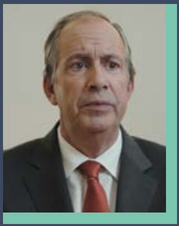
REMUNERATION POLICIES

ANTÓNIO GOMES MOTA

Full Professor at ISCTE

Chairman of the Board of Directors at EDP Renováveis

Chairman of the General Council of the IPCG



The definition of the remuneration of the corporate bodies is the responsibility of the shareholders' general meeting, which generally delegates it to a remuneration committee elected for this purpose.

The most important element of the remuneration policy is that relating to the board of directors (BoD). Within this context a distinction must be made between executive directors and non-executive directors (members of the general and supervisory board in the two-tier model).

Non-executive directors have exclusively fixed remuneration, without any variable component or other benefits. The idea is that they are completely independent from the immediate performance of the company. The values set should reflect, on the one hand, the non-executive status, i.e., it is not the person's main function, but on the other hand, they should adequately compensate the responsibility and availability required for the function. The remuneration table should also reflect the participation of each non-executive director in the specialised committees of the BoD.

In addition to their fixed remuneration, executive directors have a variable remuneration which should reward their performance. This variable remuneration may have an annual component and a multi-annual component (generally linked to the duration of the mandate). The latter aims to reinforce the role of the longer-term vision in defining the remuneration.

Variable remuneration is generally determined through a set of criteria and indicators that reflect the performance of the share on the stock exchange (if the company is listed), the economic and financial performance of the company and its performance in terms of the satisfaction of the different stakeholders (measured for example with customer and employee satisfaction surveys, environmental impact indicators, etc.). There may also be a qualitative assessment component (generally the responsibility of a committee of the BoD).

Usually, the variable remunerations are not paid in full immediately, but a part (usually, 50%) is retained for some time (usually, 3 years) and will only be paid if subsequently the company has a good performance (in order to avoid obtaining artificial results, which then are not sustainable).

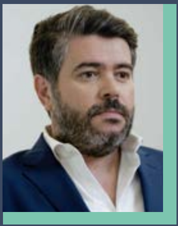
INFORMATION SYSTEMS GOVERNANCE

BRUNO HORTA SOARES

Leading Executive Advisor of IDC – International Data Corporation Portugal

Member of the General Council of IPCG

Coordinator of the IPCG Advanced Programme in Artificial Intelligence for Administrators



Today no one can remain indifferent to the topic of digital transformation, whether for the opportunities that more and more individuals, organisations and societies in general are taking advantage of, or for the threats that remind us that "with great powers come great responsibilities".

The fact that we live in an increasingly accelerated, uncertain, complex and ambiguous context where everything and everyone is connected does not change the foundations and responsibilities of Corporate Governance, but brings new issues that the board of directors (BoD) should be competent to assess, manage and monitor. If, on the one hand, the disruptive contribution of new technologies is evident, it is increasingly recognised that data and information are the most valuable assets of organisations in a digital economy, so only a global vision at the highest level of the company of information and technology (I&T) Governance can guarantee the creation of value.

Good I&T Corporate Governance involves the adoption of six fundamental principles that should guide the responsibilities of the BoD:

1. The BoD is responsible for the I&T Corporate Governance;
2. The I&T strategy should be aligned and integrated with the business strategy and objectives;
3. The BoD is responsible for defining and maintaining an I&T Governance system and delegates the implementation of support structures to the executive management;
4. The BoD must assess and control the relevant investments and costs related to I&T;
5. Opportunities and threats related to I&T are an integral part of the organisation's risk management; and
6. The BoD is responsible for ensuring the effective management of the information assets.

The adoption of these best practices is crucial if organisations are to survive in a digital economy and thrive in increasingly connected ecosystems.

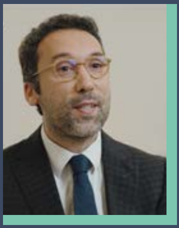
THE PLURAL VOTE

RUI PEREIRA DIAS

Professor at the Faculty of Law of
Coimbra University

Member of CEAM – Executive
Monitoring Committee of the
Corporate Governance Code

Member of the Board of the IPCG



The rule known as one share, one vote, i.e., to each share corresponds one vote, is a rule that at first sight makes perfect sense: each investor, on acquiring a share, is on a completely equal footing with the others, insofar as the investment made, in addition to a share in the capital, grants him or her a proportionally identical power to vote in shareholders' general meetings.

But there are good reasons why one might find some deviations from this idea of one share, one vote.

One of these deviations has long been known to the Portuguese market: companies may issue shares without voting rights, which are thus stripped of voting power, but, in return, grant privileges to their holders as regards the dividends to be distributed.

Another possibility, much more recent in the so-called Portuguese limited liability companies *sociedades anónimas* is that of plural voting.

In 2022, it became possible for listed companies - and only them - to issue shares with the right to more than one vote.

This is the so-called special right to plural vote, currently admitted by the Securities Law up to the limit of five votes for each share. In other words, it is accepted that certain shareholders hold shares which, pursuant to the articles of association, benefit from a voting power five times greater than that which, under normal conditions, would correspond to ordinary shares.

This novelty sought to respond to the assessment that was made of the Portuguese capital market, in 2020, by the OECD, which resulted in the recommendation to adopt measures that promote stock market listing and the dispersion of capital by companies not yet listed.

With the plural vote, the founders of the company (and other key investors) have at their disposal another instrument that allows them financing through market access, while minimising the impact that such access will have on the control of the company, which they wish to retain.

RELATED PARTY TRANSACTIONS AND CONFLICTS OF INTEREST

DUARTE PITTA FERRAZ

CEO at Ivens Governance Advisors

Professor of Governance, Nova SBE Executive Education

The OECD advocates that good Governance helps build an environment of trust and transparency for investment promotion, financial stability and business integrity, supporting strong growth and inclusive societies. We will focus on the scope of best Governance practices - more demanding than the legal framework, where the potential for abuse is significant when the legal system is permissive - which mainly involves two concepts: independence and conflicts of interest.

Independence is reflected in the expression of a balanced opinion in the alignment of the parties' interest, adopting best practices. The most common limitations that impair independence are the lack of information in the decision-making process and understanding its impact, the lack of financial independence or the desire to renew the mandate. It furthermore means not having relationships or ties that may influence objectivity and balance in judgement. It is a relative concept, involving different criteria, which suggests the potential impossibility of total independence. The determination of this requirement should be specific and indicate to what degree it may occur. This framework makes it possible to find ways to mitigate the potential conflict.

Conflicts of interest are very relevant and challenging when related parties are involved, such as the existence of agreements through a pre-existing relationship or shared interests, which may occur in subtle ways. Furthermore, it may involve the transfer of resources, services or obligations or a contract with a relevant shareholder. When identified, these situations are controversial and create high tensions, due to the risk they involve of undue benefit being derived by one of the parties.

The potential for abuse in transactions with related parties acquires relevance in the capital markets, especially with shareholder concentration and prevalence of business groups. Transactions for one´s self benefit occur when there are close relationships with the company (e.g. relevant or controlling shareholders) and when they are carried out to the detriment of the company and investors. Best practices advocate that minority shareholders should be protected against these abusive actions. However, banning them does not seem to be the solution, since it may be that nothing wrong occurs in such transactions if the potential conflicts of interest are adequately addressed (e.g. related party relations committee, supervision, oversight and disclosure).

As the board of directors is the centre of decision making, responsibility and power, the relations between related parties constitute a challenge that it has to manage and supervise, ensuring the proper management of conflicts of interest and the protection of the interests of the company and all shareholders. Consequently, to protect minority shareholders it is critical that directors exercise their duty of loyalty towards the company, which requires the equal treatment of shareholders, the monitoring of related party transactions and the disclosure of transparent information.

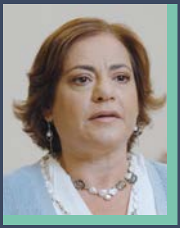
I emphasise the role, mainly of the independent non-executive directors, as guarantors - fiduciary responsibility - that transactions with related parties are conducted on an arm's length basis. I stress that good Corporate Governance is relevant for attracting capital from shareholders, securities holders and the capital market, as well as attracting, motivating and retaining talent. Related party transactions should be proactively supervised by management, exercising the duty of loyalty for the equitable protection of shareholders and the building of trust.

CORPORATE SUSTAINABILITY AND ESG

GABRIELA FIGUEIREDO DIAS

Chairman of IESBA – International Ethics Standards Board for Accountants

Member of the IPCG General Council



Until recently, the (private) company was understood as an entity of a selfish and profitable nature, aimed exclusively at creating economic value for shareholders.

The management choices and fiduciary duties of managers of private companies were defined by strict criteria of economic rationality and exercised in the exclusive (profit-making) interest of shareholders.

However, the vision of the company as a mere source of profit at the service of its shareholders has been challenged. Sustainability imperatives now require companies to consider other interests and stakeholders, integrating a broader purpose and a wider range of interests into their institutional objectives.

The wear and tear caused on social structures and on the planet by the current forms of business organisation have led to the emergence of profound changes in policies and mentalities and a different institutional approach to the objectives of the company.

Their models of governance and action must now ensure the protection of the well-being of present and future generations, alongside the objective of generating profits for shareholders.

Today we recognise that the objectives and responsibilities of companies go far beyond the objective of generating profit for shareholders, without dispensing with it.

Examples of areas of responsibility in this area are the preservation of the environment and the planet; gender diversity and equality policies in the company; the protection of human rights and the individual or collective interests of other stakeholders, such as employees, creditors or the State itself.

The concept of "sustainable governance" has taken hold and requires companies to adopt responsible labour, remuneration, financial or tax policies and practices that promote economic and social balance, in addition to profit for their shareholders. The conventional notion of making profit at the expense of eroding the interests of third parties and the planet itself is no longer accepted.

The "sustainable governance" model impacts company strategy and its governance structures and practices. The management of a company must now assess its choices against a demanding standard of conduct and consequences that guarantees its environmental and social neutrality. What is more, the company now has to publicly disclose a non-financial information report on how it acts and positions itself towards sustainability imperatives.

Governance thus moves away from its traditional focus on aligning the interests of management with those of its shareholders to a focus on identifying and promoting a corporate purpose for the benefit of shareholders, economic development and of citizens.