

## Portugal

Vieira de Almeida  
Lisbon

### Ethical corporate governance

Corporate governance best practices in Portugal do not aim to be a mere catalogue of practices to direct the corporate structure of a company, or to control the relationship between each member of the corporate bodies and the shareholders or with the stakeholders. In our opinion they go much further than that.

Corporate governance principles should be considered as advisable guidelines, not mandatory practices. They are an ethical imposition.

Directors and corporate bodies from major companies should not try to shield themselves behind the non-existence of formal irregularities. Their conduct should respect and uphold the values that the principals aim to preserve, and their actions should be above suspicion.

If this is not possible, they should set themselves aside and exclude the company from the market, recognising that their methods are outdated and condemned by corporate governance practices. These regulate their operations in two distinct perspectives:

(i) Internally, in the sense that directors should attend to the interests of the company, its shareholders and stakeholders; and

(ii) Externally, since the market in which the companies operate demands transparent conduct. In this case, directors' conduct is decisive, bearing in mind the applicable competition rules and the formation of the enlightened will of investors, prior to undertaking a shareholding position.

Directors and corporate bodies should put aside their own interests and focus on corporate ones, and should manage, or control, the corporate activity of the company, always complying with legal procedures and advised practices. By doing so they are improving the company's effectiveness and profitability. Let us consider some of the best practices recommended for joint stock companies (but extendable to all other public companies). First, regarding the general meeting (GM).

a) The chairman of the GM should have adequate human and logistical resources,

and his remuneration should be included in the company's annual report.

b) In order to be allowed to participate in a GM, all share deposits or their blocking must be made more than five days prior to the GM;

c) If the session is adjourned, the blocking of shares should be lifted.

d) The articles of association should not establish a quorum (constitution or deliberation quorum) superior to that foreseen by law.

e) The minutes of the GM should be made available to shareholders on the company's website, within five days of the meeting.

Concerning voting (including limitations) and the right to vote, each share should correspond to one vote, and the articles of association should include this provision. Correspondence votes should not have any restrictions and the deadline to receive them should not be more than three days prior to the meeting. Finally, the articles of association should say that the limitation to the number of votes that can be held by a sole shareholder, individually or in association with other shareholders, should be subject to revision by the GM every five years, and in every resolution all votes should be counted as if this limitation is not in force.

Measures that are undertaken with the intent of restricting IPOs or takeovers should respect the interest of the company and its shareholders. And as regarding the board of directors, it must comprise a sufficient number of non-executive members to ensure the effective supervision, oversight and evaluation of its executive members. And amongst the non-executive board members, there must be a certain number of independent members which, taking into consideration the size and shareholding structure of the company, should be equal to no less than a quarter of the total number of directors.

These practices, which are internationally considered essential leading steps for good corporate governance, should not impose inflexible and uniform rules and cannot be conceived away from ethics, which is the pillar of its creation and development. They should be taken into consideration as a core principal of the companies' best management, ensuring the equilibrium of shareholders' interests and the market.

*By Sofia Barata*