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1822-2026

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Implementing SHRD II in Portugal

VdA's Paulo Olavo Cunha and Cristina Melo Miranda highlight the implications of the directive for the country's Securities Code

The Long-Term Shareholder Engagement

Directive (SHRD II)¹ requires EU member states to put in place, until 10 June 2019, certain mechanisms with a view to, among other things, increase the engagement of shareholders with trading companies listed in the member states.

In Portugal, the transposition of SHRD II is still underway, with the draft regulation implementation being subject to a public consultation at the end of 2018.

With particular relevance from a corporate governance perspective, we would highlight the following proposed amendments to the Portuguese Securities Code (PSC):

(a) Remuneration Policy

Remuneration of members of the corporate bodies of listed companies will take place only in accordance with a remuneration policy approved by the shareholders, upon proposal of the remuneration committee or of the board of directors (BoD), if such committee is not in place.

The remuneration policy must be submitted for approval of the shareholders at least every four years and whenever a relevant change to the existing policy occurs. It should be clear and easy to understand, and publicly available.

The company may, however, on exception, decide not to apply the policy in force if that is necessary to ensure its long-term interests and sustainability or viability. In such cases, the policy will also detail the process for that exception to apply, detailing the terms that may be not complied with and to what extent.

The remuneration policy will:

- contribute to the company's business strategy, its long-term interests and its sustainability, detailing how it does so;
- detail how the employment conditions and remunerations were taken into account in the definition of such policy;
- detail the different fixed and variable components of the remuneration foreseen;
- explain all bonus and other benefits that may be attributed to the members of the BoD and of the supervisory body, detailing the relevant proportion;
- detail the term of the agreements with the members of the BoD and of the supervisory body, relevant termination

notice periods and the payments associated with termination of such agreements; and

- detail the main terms of the retirement plans applicable to the members of the corporate bodies.

Specific disclosures are also requested whenever the policy for directors' remuneration also includes a variable remuneration or stock options.

The remuneration policy shall also list the process for its approval, review and implementation, namely the measures put in place to prevent and address conflicts of interests.

An annual report by the BoD on remuneration of each of the members of the company's corporate bodies, detailing, among others, total remuneration of each member by components and any remuneration they are entitled to from companies within the company's corporate group. Such report must be available online for at least a ten-year period and must be verified by the statutory body.

(b) Related party transactions

Listed companies are required to have in place an internal procedure, approved by the BoD and with a prior favourable opinion from the supervisory body, to assess periodically whether the transactions with related parties² occur within the company's ongoing activity and in accordance with market practice.

Transactions that do not comply with these requirements shall be approved by the BoD, with a prior favourable opinion from the supervisory body and must be publicly disclosed.

Transactions with related parties (or affiliates) with a value equal to or higher than 2.5% of the company's consolidated assets (or of the relevant entity's assets if it is not subject to consolidation) that occur outside the company's ongoing activity or that are not in compliance with market practice must also be made publicly available at the latest at the moment they occur.

Transactions with related parties carried out without permission or under conditions not permitted will constitute a very serious misdemeanour under the PSC.

It is expected that these mechanisms, among others, contribute to increase the engagement of long-term shareholders.

Additional measures regarding financial intermediaries in respect of trading securities are also reflected in the Draft Regulation, in accordance with SHRD II, with a view to increase the transparency of the financial intermediaries' dealings in respect of trading securities and their related social rights.

1. Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement.

2. 'Related party' in this context means any related person in accordance with the international accounting standards approved by Regulation (EC) No 1606/2002, of the European Parliament and of the Council of 19 July 2002.

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