

## CORPORATE GOVERNANCE: REGULATION OR FLEXIBILITY?

The recent publication on the “Analysis of the compliance of the CMVM Recommendations on Corporate Governance in 2004” demonstrates that there still exists a significant distance between what CMVM (the Portuguese Capital Market Regulatory Authority) understands to be the good practises, as prescribed in its Recommendations, and their adoption by the listed companies. Notwithstanding the nine Recommendations that existed at the time CMVM undertook the study, the Commission itself admits that, although a significant improvement was noticeable in relation to previous years, the level of compliance with the Recommendations on corporate governance remain low: only 43% of the listed companies comply with half or less of the proposed Recommendations; and only 41% comply with seven or less of the Recommendations. Albeit this level of low adherence to the Recommendations, CMVM has recently enacted a new regulatory package, containing both a new set of Recommendations and additional obligations concerning the compliance thereof by listed companies. Will this increase of regulation be tuned in with the companies’ wishes and the market needs? Will the path leading to the adoption of good practices result from the increase of legal regulation (American model) or through self regulation with the adoption of Codes of Conduct (European model)? Or will the solution be a middle term solution, an equilibrium between regulation and flexibility? Those who have had the chance to follow the recent debate on corporate governance had the chance to confirm the diversity of arguments and positions in favour of, and against each one of these models. The problem will only be solved, and will only be definitively solved, when the companies acknowledge for themselves, and not through regulatory intervention, the virtues of good practises in matters of corporate governance. This is the current challenge that is at stake for everyone, including for CMVM itself: to convince the companies that the adoption of good practises, and, within these, those that are more adequate for each specific company, is vital for their efficiency, competitiveness and profitability. While the companies are not convinced of this need, the Recommendations issued by the CMVM, howsoever praiseworthy, will continue to have their future compromised.

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### Compliance with CMVM recommendations by groups / industry sectors

<i>Recommendations</i>	<i>R1</i>	<i>R2</i>	<i>R3</i>	<i>R4</i>	<i>R5</i>	<i>R6</i>	<i>R7</i>	<i>R8</i>	<i>R9</i>	<i>R10</i>
<i>Groups/Sectors</i>										
<b>Total</b>	<b>80.0%</b>	<b>20.0%</b>	<b>71.1%</b>	<b>71.1%</b>	<b>95.6%</b>	<b>77.8%</b>	<b>46.7%</b>	<b>6.7%</b>	<b>44.4%</b>	<b>97.8%</b>
<b>PSI 20</b>	<b>95.0%</b>	<b>35.0%</b>	<b>75.0%</b>	<b>60.0%</b>	<b>100.0%</b>	<b>75.0%</b>	<b>60.0%</b>	<b>0.0%</b>	<b>65.0%</b>	<b>95.0%</b>
<b>Extra PSI 20</b>	<b>68.0%</b>	<b>8.0%</b>	<b>68.0%</b>	<b>84.0%</b>	<b>92.0%</b>	<b>80.0%</b>	<b>36.0%</b>	<b>12.0%</b>	<b>28.0%</b>	<b>100.0%</b>
<b>PSI Services</b>	<b>81.0%</b>	<b>23.8%</b>	<b>76.2%</b>	<b>71.4%</b>	<b>95.2%</b>	<b>85.7%</b>	<b>42.9%</b>	<b>4.8%</b>	<b>47.6%</b>	<b>95.2%</b>
- PSI Financial Services	80.0%	60.0%	100.0%	60.0%	100.0%	100.0%	60.0%	0.0%	60.0%	100.0%
- PSI IT	75.0%	0.0%	50.0%	50.0%	100.0%	50.0%	25.0%	25.0%	25.0%	100.0%
<b>PSI Industries</b>	<b>82.6%</b>	<b>17.4%</b>	<b>69.6%</b>	<b>82.6%</b>	<b>95.7%</b>	<b>69.6%</b>	<b>47.8%</b>	<b>8.7%</b>	<b>39.1%</b>	<b>100.0%</b>
- PSI Consumption Goods	100.0%	25.0%	100.0%	100.0%	100.0%	100.0%	50.0%	0.0%	25.0%	100.0%

*Adapted from CMVM Compliance Report on Corporate Governance  
Portfolio and weight of PSI indexes is as of December 31<sup>st</sup> 2004*

PSI Portuguese Stock Index [Top-20 listed companies in the Portuguese Stock Exchange]

R CMVM Recommendations on Corporate Governance

R1 Contacts with investors      R2 Use of voting rights      R3 Internal control system      R4 Defensive measures on takeovers

R5 Board membership      R6 Board members' independence      R7 Internal control committees      R8 Remuneration of Board members

R9 Remuneration committee' independence      R10 Share option plans