

Note on the Interpretation of the IPCG 2018 Corporate Governance Code

Interpretative Note N.º 1

Taking into consideration the questions raised by several listed companies through the Portuguese Issuers Association (AEM), the Executive Monitoring Committee of the Corporate Governance Code (CEAM), in a joint meeting with the Monitoring Committee of the Corporate Governance Code (CAM) and with the agreement of the latter, has deliberated, regarding the contents of the Corporate Governance Code 2018:

1. General framework

To underline that, in accordance with the comply-or-explain principle on which the Code is grounded, the companies should, on the one hand, reflect on the suitability and pertinence of each recommendation to their own reality and circumstances and, on the other hand, present their options concerning corporate governance in a reasoned manner, namely in light of the Code's Principles.

In tribute to the said comply-or-explain principle, special consideration will be given to the quality and depth of the "explain", the valuation of which may, depending on the specific circumstances, be accepted as equivalent to a "comply".

In what concerns the *interpretation* of the Code and the guidance in this respect, specific or even exceptional circumstances of a given category of companies shall not be taken into account: however, such circumstances shall be fully relevant in the context of the "explain", the aim of which, unlike that of the Code's interpretation, lies precisely in the weighting of *individual* and *specific* circumstances of each listed company.

2. Recommendation III.1

In the event that a company does not comply with recommendation III.4 – by not appointing independent non-executive directors, or not appointing them in a sufficient number – and considering that, in such situation, the possibility to appoint a lead independent director as literally recommended is logically impaired, the non-executive

directors may among themselves appoint a coordinator (lead non-executive director). Such appointment shall be deemed equivalent to compliance with the recommendation if the company's option taken as a whole is duly grounded.

3. Recommendation III.4

- a) Considering the lack of clarity of the recommendation's wording, it is acknowledged that the expression "no less than one third" shall refer solely to the number of non-executive directors – and not to all of the members of the managing body. Compliance with the recommendation necessarily requires the number of independent non-executive directors to be plural.
- b) Insofar as point i. is concerned, it is understood that the established time period (twelve years) is counted regardless of coinciding or not with the expiration of the period of office, although the fact that the limit occurs in the course of office shall be considered in the context of the "explain" and corresponding valuation, especially if at the time of the respective designation the recommendation was not yet in force.

4. Recommendation III.9

The recommendation allows the attribution to one single committee of all competences in matters of remuneration and appointments.

5. Recommendation V.2.1

- a) The committee to which the recommendation refers is not necessarily an internal committee of the managing body (see the Code's Glossary), as it may be the committee foreseen in Article 399, n.º 1, of the *Código das Sociedades Comerciais* (Commercial Companies Code).
- b) The presence of directors in the said committee, as long as in minority, does not automatically imply the loss of independence in relation to management.
- c) When the company is obliged to create a remuneration's committee fully or partially composed of directors due to a special legal regime, the recommendation shall be deemed inapplicable.

6. Recommendation V.4.2

- a) The recommendation is also applicable to family companies or to companies with a concentrated capital structure, considering that the only criterion justifying non-compliance, foreseen in the recommendation, is the company's size.
- b) Nevertheless, the family nature of the company or the capital structure's concentration may, among others, be invoked and its relevance assessed in the context of the "explain".

7. Recommendation VII.2.2

- a) It does not follow from the recommendation that the supervisory body should be the *exclusive* interlocutor of the statutory auditor, nor that it should be the *sole* recipient of the respective reports.
- b) The recommendation does not prevent that the managing body also immediately know of the reports disclosed to the supervisory body. But it does prevent existing interaction between the statutory auditor and the managing body not being known by the supervisory body.

8. Recommendations VII.2.4 and VII.2.5

It has been acknowledged that the addressees of these recommendations are the statutory auditors, not the companies, and that the content of these recommendations partially replicates the law. Therefore, the aspects of the statutory auditor's conduct which are covered by the legal regime in force shall not be autonomously considered in the context of the recommendations; compliance with the law hence determines, in that regard, compliance with the recommendation.

In what concerns the reference to the statutory auditor's competences to supervise the application of the remuneration policy, it should be noted that there is no legally attributed specific competence to the statutory auditor on this matter, and therefore the recommendation is only applicable in the event that such competence has been attributed to the statutory auditor.