

LEGAL ALERT

LAW NO. 50/2020, OF 25 AUGUST

TRANSPPOSITION OF THE DIRECTIVE ON THE RIGHTS OF SHAREHOLDERS OF LISTED COMPANIES (SRD II)

Law No. 50/2020, of 25 August, which transposes [Directive \(EU\) No. 2017/828](#) of the European Parliament and of the Council of 17 May 2017, on the rights of shareholders of listed companies with regard to their long-term engagement, entered into force on 26 August 2020 (the so-called SRD II, Shareholders Rights Directive II). This law amends and supplements the [Portuguese Securities Code](#) (*Código dos Valores Mobiliários*) (CVM), supplements the [Portuguese Regime of Collective Investment Undertakings](#) (*Regime Jurídico dos Organismos de Investimento Coletivo*) (RJOIC) and amends the [General Regime of Credit Institutions and Financial Companies](#) (*Regime Geral das Instituições de Crédito e Sociedades Financeiras*) (RGICSF).

Law No. 50/2020, of 25 August, adds new rules to the CVM with an impact mainly for companies issuing shares admitted to trading on regulated markets (listed companies), institutional investors, financial intermediaries, portfolio managers and proxy advisors, with special focus on the following matters:

- **Remuneration of the members of the management and supervisory bodies of listed companies**, providing for the obligation of these companies to define and disclose a remuneration policy applicable to those bodies and approved by the general meeting, as well as the obligation of the management body to prepare an annual report on remuneration (which may be replaced by a chapter of the annual report on corporate governance), to be submitted to the general meeting and disclosed.

In view of the legal and regulatory framework in force to date and the recommendations of the Portuguese Institute of Corporate Governance (*Instituto Português de Corporate Governance*) (IPCG), we would like to highlight the following main innovations:

- (i) The proposed **remuneration policy** must be submitted for approval to the general meeting at least every four years and in the event of a material change or non-approval at the previous general meeting, and now has a broader content as provided for in the new Article 26-C of the CVM (mainly in light of Law No. 28/2009, of 19 June). Until the policy is approved by the general meeting, the existing remuneration practices remain in effect and the remuneration policy approved by the general meeting is in effect until the general meeting approves a new remuneration policy (except in certain cases of derogation);
 - (ii) The transparency requirements in the **annual report on remunerations** are increased by the new Article 245-C of the CVM, for example by covering the annual variation of the remuneration, of the company's performance and of the average remuneration of employees in terms equivalent to full time in the company, excluding the members of the management and supervisory bodies, during the last five financial years, presented together and in such a way as to allow for their comparison (being the European Commission responsible for adopting guidelines relating to the disclosure formats in this respect).
- **Transactions made by listed companies with related parties**, which internal approval process and disclosure are subject to new legal rules.
As has been partly the practice of some companies, in light of IPCG's recommendations, the new Article 249-A of the CVM now imposes the obligation on listed companies to define an internal procedure approved by the management body, with the prior opinion of the supervisory body, through which it periodically assesses whether the transactions with related parties are carried out within the scope of the company's ordinary course of business and under market conditions. Transactions that do not meet these requirements are subject to approval by the management body, preceded by an opinion of the supervisory body, as well as to the obligation to disclose such transactions when their value is equal to or greater than 2.5% of the company's assets, unless an exemption is applicable.

- **Procedures in the context of the general meetings of listed companies to promote shareholder participation**, of which we highlight the following aspects:
 - (i) **Transmission of information on the exercise of rights by listed companies**, establishing the obligation for these companies to make available to financial intermediaries, through the management entity of the centralised system, the information necessary for the exercise by shareholders of the rights inherent to their shares in a standardised manner or a notice with reference to where on the website that information can be found;
 - (ii) **Facilitation of the exercise of shareholders' rights by financial intermediaries**, providing that financial intermediaries which render registration and deposit services for financial instruments shall take the necessary measures to enable shareholders of listed companies to exercise their rights attached to their shares;
 - (iii) **Electronic voting**, with a mechanism for confirmation of receipt of votes cast in this way, to be made to shareholders by the company and the financial intermediary acting as shareholder's representative.
- **Identification of the shareholders of listed companies**, providing for the possibility for these companies to request information on the identity and the stake held by their shareholders from the management entity of the centralised system, with the financial intermediaries participating in the centralised system being subject to respond immediately to their request.
- **Engagement of institutional investors and financial intermediaries which render portfolio management services**, providing that they draw up and disclose an engagement policy describing how they integrate shareholder engagement in their investment strategy, as well as disclose information in respect to the application of such policy and the way they vote at general meetings of listed companies in which they hold shares (in addition to the applicable rules on conflicts of interest). Institutional investors will also need to disclose the main elements of their investment strategy in listed companies and agreements with asset managers.

- **Transparency of portfolio managers and proxy advisors**, providing that, in the case of portfolio managers, they report annually to institutional investors on how their investment strategy and execution comply with the agreements they have entered into and, in the case of proxy advisors, that they disclose to the public information about their code of conduct, the preparation of their studies, opinions and voting guidelines and any conflicts of interest (in addition to being subject to disclosure duties before the *Comissão do Mercado de Valores Mobiliários* – CMVM).

Law No. 50/2020, of 25 August, also amends Articles 85, 93, 222-A, 359, 390, 392, 394, 397 and 400 of the CVM, amongst which the provision of some sanctioning rules essentially related to the matters dealt with by that law should be highlighted.

With regard to the **RJOIC**, a new subsection is supplemented concerning the transparency of the management companies of collective investment undertakings and self-managed investment companies authorised to carry out the activities of management of collective investment undertakings and of discretionary and individualised management of portfolios on behalf of third parties (with a few exceptions), to which it is determined to apply:

- the CVM's provisions regarding shareholder engagement in its investment strategy;
- conflict of interest rules to the activities of such entities in listed companies; and
- the transparency duties provided for in the CVM, including the disclosure of information together with their annual report and accounts.

With respect to the amendments to the **RGICSF**, the failure to comply with the rules on remuneration practices and policies contained in the RGICSF, as well as the failure to make mandatory disclosures relating to them, now constitute a particularly serious infringement.

This law also repeals [Law No. 28/2009, of 19 June](#), on certain financial sector criminal and misdemeanour penalties which also governed some aspects related to remuneration policies of public interest entities (thus going beyond listed companies).

On 3 September the [Commission Implementing Regulation \(EU\) 2018/1212](#), of 3 September 2018, enters into force. This Regulation establishes the minimum requirements regarding the

identification of shareholders, the transmission of information and the facilitation of the exercise of shareholders' rights, including the models to be used for this purpose. The new rules introduced by Law no. 50/2020, of 25 August on these matters enter into force on the same date.

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