



The Legal 500 & The In-House Lawyer
Comparative Legal Guide
Portugal: Corporate Governance

This country-specific Q&A provides an overview to tax laws and regulations that may occur in Portugal.

This Q&A is part of the global guide to Corporate Governance. For a full list of jurisdictional Q&As visit <http://www.inhouselawyer.co.uk/practice-areas/corporate-governance/>



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1. What is the typical organizational structure of a company and does the structure typically differ if the company is public or private?

As an introductory remark, this article applies only to limited companies (*sociedades por quotas*) and stock companies (*sociedades anónima*), outside the public sector or state-owned, which are the most commonly used in the private sector in Portugal. Companies with shares admitted to trading in regulated market (hereinafter “public companies” or “listed companies”), public-interest entities (such as credit institutions, insurance companies and listed companies) and significant companies (considering for example its dimension and number of employees) are also legal qualifications under Portuguese laws to which specific governance rules apply.

Limited companies have the following corporate bodies: management (which may in

certain cases be a single manager) and supervisory body (either a fiscal board or a statutory auditor, mandatory in certain larger companies).

Stock companies may be organised as follows:


- Classic model: board of directors and fiscal board (or a single director and a single statutory auditor in smaller companies). In listed companies and significant private companies a statutory auditor outside the fiscal board is mandatory;
- Anglo-Saxon model: board of directors, comprising an audit committee, and a statutory auditor; and
- Two-tier model: executive board (or a single executive director in smaller companies), supervisory board and statutory auditor. In listed companies and significant private companies a financial matters committee within the supervisory board is also mandatory.

2. Who are the key corporate actors (e.g., the governing body, management, shareholders and other key constituencies) and what are their primary roles? How are responsibilities divided between the governing body and management?

In limited companies, the key corporate actors are shareholders and management (commonly being shareholders), and the supervisory body for larger companies.

The main roles in stock companies are played by the governing bodies responsible for the administration and supervisory tasks. Aiming at establishing adequate check and balances, the administration tasks include both management and oversight responsibilities (the latter being mainly focused on strategic decisions and monitoring the day-to-day management), and the supervisory tasks include the supervision of the administration, quality of financial information and efficiency of internal controls and risk management.

In the classic and Anglo-Saxon models (the most adopted in Portugal, the latter being more common in listed companies), the board of directors elected by the shareholders is responsible for the management of the company and may delegate, subject to certain limitations, the day-to-day management in director(s) or an executive



committee. In these one-tier board structures, the management and oversight responsibilities are performed by executive and non-executive board members, respectively. The supervisory role is carried out by a fiscal board (stand-alone corporate body elected by shareholders in the classic model), or by an audit committee (corporate body composed by non-executive board members also elected by shareholders in the Anglo-Saxon model), and by a statutory auditor as per 1. above.

In the two-tier model (less commonly adopted), the management and oversight responsibilities are divided between the executive board and the supervisory board, the former being appointed by the supervisory board (unless the by-laws grant such power to shareholders) and the latter elected by shareholders. Certain management decisions may be subject to the supervisory board's prior consent under the by-laws. The supervisory role is performed by the supervisory board (including a committee for financial matters) and the statutory auditor, as per 1. above.


In these different models, the shareholders are key actors in general, not only in relation to the election, removal and remuneration of corporate bodies, but also approving the annual reports and accounts and profits allocation and any by-laws' amendments.

3. What are the sources of corporate governance requirements?

The Companies Code (Decree-Law no. 262/86, of 2 September, as amended) provides for the general corporate governance framework.

In turn, the Securities Code (Decree-Law no. 486/99, of 13 November, as amended) and the related regulations of the Portuguese Securities Exchange Commission [CMVM]), and the IPCG Code (recommendations subject to a "comply or explain" principle of the Portuguese Corporate Governance Institute [IPCG]) apply to listed companies.

Public-interest entities are also subject to the Audit Supervision Regime governing the supervisory body's composition and powers.



In regulated sectors (e.g., financial sector) and on specific matters (e.g., diversity or remuneration), there are specific corporate governance requirements.

4. What is the purpose of a company?

The by-laws establish the corporate purpose of each company and the Companies Code provides for the limitation of liability regime.

5. Is the typical governing body a single board or comprised of more than one board?

As per 2. above, stock companies may opt for a one-tier or two-tier board structure.

6. How are members of the governing body appointed and removed from service?

In limited companies, in principle, the management is elected and removed by shareholders.

In stock companies with classic or Anglo-Saxon models, the members of the board of directors and of the fiscal board, the audit committee and the statutory auditor, as applicable, are elected and removed by the shareholders. In the two-tier model, the members of the supervisory board and the statutory auditor are elected and removed by shareholders, whilst the members of executive board are appointed and removed by the supervisory board (unless the by-laws grant such powers to shareholders). In any case, the removal of said members of the supervisory bodies is only permitted with just cause. Portuguese laws also accommodate the possibility of co-optation to fill vacancies, in certain cases and subject to ratification by shareholders.

Members of governing bodies may also terminate office for example due to the

expiration of its term or resignation.

7. Who typically serves on the governing body and are there requirements that govern board composition or impose qualifications for directors regarding independence, diversity or succession?

In limited companies the managers may be shareholders or not (commonly being so).


Stock companies shall comply with composition requirements in relation to the supervisory bodies: incompatibility rules apply to all companies, whilst independence (including independence tests, such as the number of years in office and the relationship with shareholders) and expertise requirements apply to public-interest entities and significant private companies (e.g., such body in listed companies shall have a majority of independent members - including the chairman and a financial expert - and sector expertise).

Listed companies and certain private companies in regulated sectors (such as credit institutions) are also subject to gender diversity requirements applicable to the administration and supervisory bodies.

Finally, under the IPCG Code, diversity and independence recommendations also apply to governing bodies and specialised committees (for instance, recommending that at least 1/3 of the members of the board of directors are independent).

8. What is the common approach to the leadership of the governing body?

The general laws and the by-laws determine whether the chairman of the governing body is designated by shareholders or by such body. In public-interest entities, the chairman of the supervisory body shall be independent. Under IPCG Code, either the



chairman of the board of directors of listed companies is independent, or the appointment of a lead independent director is recommended.

9. **What is the typical committee structure of the governing body?**

Shareholders of stock companies may set up committees responsible for establishing the corporate bodies' remuneration.

In turn, the board of directors may set up an executive committee and specialised committees, and the supervisory board may create committees responsible for financial matters (mandatory in certain cases as referred hereabove) and for setting the remuneration of the executive board.

The most typical specialised committees in listed companies are on corporate governance, remuneration/evaluation and nomination matters, as recommended by the IPCG Code. In certain regulated sectors, specialised committees (such as remuneration, risk and selection committees) are also required.

10. **How are members of the governing body compensated?**

In limited and stock companies, compensation is in general established by the shareholders.

In stock companies, such powers may be delegated in a committee elected by shareholders (which may be assisted by a specialised committee with advisory powers). However, in the two-tier model and unless otherwise provided in the by-laws, it is a responsibility of the supervisory board concerning the executive board (or of a specialised committee set up by the former).

In addition to a fixed compensation, executive board members may be – and are frequently – entitled to variable compensation. See § 13 below.

11. Are fiduciary duties owed by members of the governing body and to whom are they owed?

The members of governing bodies are obliged to act with due care and skill and in the company's interest, bearing in mind shareholders' long-term interests and considering the interests of other stakeholders relevant for the company's sustainability, such as employees, clients and creditors.


12. Do members of the governing body have potential personal liability? If so, what are the key means for protecting against such potential liability?

Members of the governing bodies may be personally liable towards the company, shareholders and creditors under the Companies Code. Such members are subject to a presumption of liability towards the company, unless they can evidence acting according to business judgment criteria. In addition, they may pay a deposit or obtain D&O insurance (mandatory for listed companies and significant private companies).

13. How are managers typically compensated?

Members of the governing bodies usually receive a fixed remuneration (variable remuneration is not legally permitted for the supervisory body's members and is not recommended for non-executive directors under the IPCG Code). The executive directors of stock companies may be entitled to receive variable compensation subject to each company's compensation policy (which may be a part of its annual profits and in cash or securities).

The compensation policy of public-interest entities is subject to annual say-on-pay by shareholders and disclosure requirements.



The remuneration policy of listed companies (under the IPCG Code) and of certain regulated companies, such as credit institutions (under mandatory rules), are subject to additional constraints, such as on performance criteria, caps and deferral and claw-back mechanisms.

14. **How are members of management typically evaluated?**

Annual appraisal of the governing bodies is mandatory in the annual shareholders meeting.

The IPCG Code also recommends an annual evaluation addressing the functioning of the board and of its committees and the individual contribution of each member, and the company's performance vis a vis its strategic plan, risk profile and budget (by the administration and supervisory bodies and specialised evaluation committees).

15. **Do members of management typically serve on the governing body?**

Management serves on the companies' governing bodies as stressed above.

16. **What are the required corporate disclosures, and how are they communicated?**

The most relevant corporate disclosures may be divided into three areas:

- Disclosure requirements related to the shareholders meetings (such as on the convening notices, proposals and resolutions adopted) and annual reports and accounts;
- Information duties concerning qualified shareholdings in private and public companies (being more demanding in listed companies and applying if anyone reaches, exceeds or reduces the thresholds of 2%, 5%, 10%, 15%, 20%, 25%, 1/3, 50%, 2/3 and 90% of voting rights);

- Listed companies are subject to additional disclosure requirements arising from the Securities Code and CMVM's regulations on other corporate matters (e.g., corporate governance report, own shares transactions and the exercise of shareholders rights), regular financial information (at least half-yearly and yearly) and from inside information rules (in line with the EU market abuse regime).

Relating to listed companies, this information is disclosed on their website and CMVM's website.

17. How do the governing body and the equity holders of the company communicate or otherwise engage with one another?

In addition to the general corporate disclosure and attendance to shareholders meetings, shareholders are entitled to certain information rights (subject in some cases to a minimum shareholding in stock companies). Moreover, public companies frequently do road shows, investors days and bilateral contacts (mainly through investor relations), provided that the shareholders' equal treatment and the inside information regime are complied with.

18. Are dual or multi-class capital structures permitted and how common are they?

Different categories of shares are allowed in limited cases under the Companies Code and the by-laws, whilst multiple or dual voting rights shares are not permitted.

19. What percentage of public equity is held by institutional investors versus retail investors?

There are no specific rules in this respect and it varies greatly in each company. Qualified holdings in listed companies are those equal to or above 2% of the voting rights (and usually correspond to institutional or strategic investors).

20. What matters are subject to approval by the shareholders and what are the typical quorum requirements and approval standards? How do shareholders approve matters (e.g., voted at a meeting, written consent)?

a) Main matters approved by the shareholders in limited companies:

- i. Consent to the division or sale of quotas;
- ii. Approval of annual reports and accounts and allocation of profits;
- iii. Dismissal of corporate bodies;
- iv. Election of corporate bodies and certain management decisions (as transactions over real estate assets and shareholdings), unless otherwise provided in the by-laws; and
- v. Amendments to the by-laws, including capital variations and mergers/demergers.

b) Main matters approved by the shareholders in stock companies:

- i. Acquisition/sale of own shares;
- ii. Approval of annual reports and accounts and allocation of profits;
- iii. Election and dismissal of corporate bodies;
- iv. Amendments to the by-laws, including capital variations and mergers/demergers.

Resolutions may be adopted by unanimous written consent or at a meeting by simple majority (except for qualified majority resolutions on the matters in a) v. and b) iv. or other matters set out in the by-laws or the law).

21. Are shareholder proposals permitted and what requirements must be met for shareholders to make a proposal?

In limited and stock companies, shareholder proposals are permitted subject to certain requirements (e.g., in listed companies a 2% stake is required).

22. **May shareholders call special meetings or act by written consent?**

Shareholders may convene extraordinary meetings in limited and stock companies subject to certain requirements (e.g., in listed companies a 2% stake is required to request the chairman of the meeting's board to call a meeting, whilst in private stock companies a minimum 5% stake applies).

23. **Is shareholder activism common and what are the recent trends?**

Shareholder activism has not been frequent in shareholders meetings and tends to occur in the context of change of control or restructuring processes (e.g., during the financial crisis or in takeover processes).

24. **What is the role of shareholders in electing the governing body?**

Shareholders play a pivotal role by presenting and voting proposals at the general meeting for the election of corporate bodies (or ratifying co-opted members appointed in case of a vacancy). Minority shareholders may also be entitled to elect a certain number of members of the board of directors or of the supervisory board (mandatory right in listed companies, to be detailed in the by-laws).

25. **Are shareholder meetings required to be held annually or otherwise, and what information needs to be presented?**

Shareholder meetings shall be held at least annually (in the 5 or 3 months after the end of the financial year, depending on whether the company is obliged to present consolidated accounts or not) to resolve on the annual reports and accounts, allocation of profits and corporate bodies' appraisal, as well as on the election of corporate

bodies, when applicable.

26. **Do any organizations advise or counsel shareholders on whether to approve matters?**

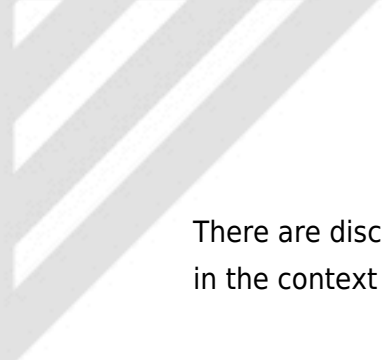
In Portugal, shareholders advisory is only a practice in certain listed companies.

27. **What role do other stakeholders, including debt holders, employees, suppliers and customers and the government, typically play in the corporate governance of a company?**

Employees', customers' and suppliers' role is becoming more relevant in the corporate governance landscape (for instance annual non-financial reports in respect thereto recently became mandatory for certain public-interest entities). In turn, debtholders have a relevant influence in the context of mergers/demergers and capital reductions. In addition, under their fiduciary duties, the members of administration bodies shall consider these stakeholders' interests.

Following the sale of several major holdings in private and public companies and the end of golden shares held in important listed companies in the last 10 years, the government's role in Portuguese companies' governance is currently focused on its position as regulator/supervisor (or as a shareholder mainly in state-owned companies).

28. **What consideration is given to environmental and social issues, including climate change, sustainability and product safety issues, and are there any legal disclosure obligations regarding the same?**



There are disclosure requirements on environmental and social responsibility matters in the context of the annual non-financial reports referred above.

29. **How are the interests of shareholders and other stakeholders factored into decisions of the governing body?**

The members of governing bodies shall act with due care and skill and in the company's interest. As aforesaid, members of the administration bodies shall also take into account the shareholders' long-term interests and consider other stakeholders' interests (as employees, clients and creditors).

30. **Do public companies typically provide earnings guidance on either a quarterly or annual basis?**

Certain listed companies provide guidance on business prospects for the year and on dividend policy.

31. **May public companies engage in share buybacks and under what circumstances?**

Share buybacks may be implemented by public companies provided that in compliance with general corporate law requirements (such as on shareholders' approvals, capped to 10% of share capital and in compliance with the company's interest and the equal treatment of shareholders). These operations are also subject to demanding disclosure requirements and to the market abuse regime.

32. **What do you believe will be the three most significant issues**



influencing corporate governance trends over the next two years?

Over the next years, we expect to witness a growing importance given to board composition, evaluation and remuneration, shareholders meetings rules and supervisory bodies' and auditors' role (e.g., on related parties transactions).