GLI GLOBAL LEGAL INSIGHTS

Initial Public Offerings

2021

Fifth Edition

Contributing Editors: **Ilir Mujalovic & Richard Alsop**

glg global legal group

afme/ Finance for Europe

sifma

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Portugal

Eduardo Paulino, Margarida Torres Gama & Inês Magalhães Correia
Morais Leitão, Galvão Teles, Soares da Silva & Associados

Introduction

The evolution of capital markets in Portugal in recent decades has been greatly influenced by the political scene. The revolution of 1974, which reinstated a democratic regime in Portugal after a 48-year-long dictatorship, was a stepping-stone in the development of capital markets, with a clear impact on the upsurge of Initial Public Offerings ("**IPOs**").

In fact, in the first few years after the re-opening of the stock market, after a shut-down between 1974 and 1977 following the revolution, capitalisation was very low, as most of the larger companies listed before 1974 had been nationalised. However, the stock market grew strongly in the early and mid-1980s, supported by greater incentives for companies to list. Indeed, there were 88 IPOs, followed by listing, in 1986 and 1987, a period of unparalleled issuing activity in Portugal.

A significant number of the earlier IPOs in Portugal derive from a privatisation programme started in the late 1980s and early 1990s. There has been great disparity between the IPOs of state-owned and privately owned companies, with offerings in the former cluster averaging a size nearly 10 times greater than a typical privately-owned company IPO.[1] This is due to the fact that the largest Portuguese companies were nationalised in 1975, including banks and insurance companies as well as companies operating in strategic sectors such as telecommunications, electricity, and oil and gas. These nationalised companies have been progressively privatised since the 1980s, mostly through IPOs. Conversely, the bulk of privately-owned companies in Portugal is composed of small and medium-sized enterprises ("**SMEs**"), resulting from several decades of detachment from international competition, and from being mostly oriented to a small and emerging domestic market.

In recent years, the number of IPOs has been decreasing, especially since the financial crisis of 2008.

However, despite the decreasing volume of IPOs in recent times, a shifting trend can be noticed: as the majority of previously state-owned companies have been already privatised, most of the more recent IPOs have been executed by privately held firms and SMEs, and not by state-owned companies. Additionally, private companies seem to be starting to consider alternative listing venues, in particular multi-trading facilities such as Euronext Access and Euronext Growth (both of which are managed by the Euronext group).[2]

The IPO process: Steps, timing and parties and market practice

Under Portuguese law, IPOs are very often implemented through public distribution offers ("*ofertas públicas de distribuição*") of shares, most commonly through an offer for subscription ("*oferta pública de subscrição*"), where the issuing company offers its shares

for subscription to undetermined investors. In association with a distribution offer, the IPO process will often entail the admission of the company's shares to trading on a regulated market.

This analysis puts the focus on the procedure and listing requirements in the regulated market operated by Euronext Lisbon, which is currently the only regulated market for the trading of shares in Portugal, although sponsors and companies may elect to have their securities admitted to trading in other venues.

Due diligence

Most often, once a company decides to go public, its IPO process will begin with a due diligence procedure with the purpose of analysing several aspects and the status of the company (e.g., financial, commercial, legal, accounting, tax, and others).

This due diligence procedure may be conducted by the company seeking to go public with the assistance of legal counsel and financial intermediaries (e.g., investment banks) which may intervene in the IPO process as underwriters or, more generally, in the placement and distribution of the company's securities in the market.

The results of the due diligence exercise will also assist in the structuring and potential strengthening of the company's corporate governance practices and mechanisms.

Preparation of a prospectus

The carrying out of any public offer relating to securities should be preceded by the approval and disclosure of a prospectus containing complete, true, updated, clear, objective and lawful information necessary to enable the addressees to make an informed assessment of: (i) the offer, the securities concerned thereby and the rights attached thereto, its specific characteristics and its assets and liabilities; (ii) the economic and financial position of the issuer and the guarantor, if any; and (iii) the prospects for the business and earnings of the issuer and the guarantor, if any. Considering that admission to trading of securities generally requires the publication of a prospectus, the offer prospectus is usually prepared as an offering and listing prospectus.

The disclosure of information in the prospectus shall comply with the national legal provisions in the Portuguese Securities Code[3] and Regulation (EU) 2017/1129 of the European Parliament, and of the Council of 14 June 2017,[4] as amended, on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market (the "**Prospectus Regulation**") and its delegated acts.[5]

Without prejudice to the format adopted, the prospectus is required to include a summary that provides key information to investors, concisely and in non-technical language.

Among other aspects, the prospectus will include information on:

(i) the persons who, according to the Portuguese Securities Code, are responsible for its contents;[6]
(ii) the purposes of the offer;
(iii) the issuer and its activity;
(iv) the main risks to which the issuer, its activities and the investment in the offered securities are subject;
(v) the issuer's corporate governance structure and the identity of the members of corporate bodies of the issuer; and
(vi) the financial intermediaries that are members of the placing consortium, where applicable.

If the offer is made in Portugal, the prospectus shall be drafted in Portuguese or a language accepted by the Portuguese Securities Market Commission ("*Comissão do Mercado de*

Valores Mobiliários" or "**CMVM**"), unless the offer is made in Portugal and other European Member States and the CMVM is not the competent authority, in which case the prospectus may also be drafted in a language commonly used in international financial markets, at the discretion of the issuer or the offeror. The CMVM has recently decided to accept English as the language of a prospectus approved by it in the context of an IPO.

Testing the waters: bookbuilding

A possible step in the IPO process which may occur prior to the announcement of the offer is the collection of investment intentions ("*intenções de investimento*") with the public, in order to help determine the price of the offer or assess its potential success.

Under Portuguese securities law, companies seeking to complete an offer for subscription of shares may "test the waters" through a pre-offering bookbuilding procedure. Here, the company should issue a preliminary prospectus (which must be approved by the CMVM), describing the conditions and price of the offer while the bookrunner, acting through managers, evaluates the level of public interest in the company's shares. At the end of the bookbuilding period, the price is determined in accordance with the level of demand.

Although foreseen in Portuguese law, preliminary prospectuses are fairly unusual.

Approval and publication of the prospectus

In order to obtain approval from the CMVM of the prospectus for the public offer and admission to trading, the issuer shall present an approval request to the CMVM, together with a set of documentation which includes the company's corporate documentation (for instance, among others, a copy of the relevant resolutions and the necessary management decisions, a copy of the issuer's by-laws, up-to-date certificate of the issuer's company registration, financial statements, etc.), as well as other documentation pertaining specifically to the offer (such as copies of contracts entered into with the financial intermediary assisting in the operation, placing contracts, if applicable, and stabilisation contracts, if applicable).

The issuer must be notified of the approval of the prospectus within a maximum period of 20 days from the receipt of any complementary information required. The absence of notification from the CMVM within the abovementioned period must be considered as non-approval of the prospectus.

Once approved by the CMVM, the prospectus must then be disclosed under the terms and conditions of articles 140 and 236 of the Portuguese Securities Code through one of the following means:

(i) publication in one or more newspapers of national diffusion or wide circulation;
(ii) in printed form to be available free of charge at the facilities of the regulated market or at the issuer's registered office and the branches of the financial intermediary in charge of the placing of the securities;
(iii) in electronic form on the issuer's website and, if applicable, on the website of the financial intermediaries in charge of the placing of the securities;
(iv) in electronic form on the website of Euronext Lisbon; or
(v) in electronic form on the CMVM's website.

Listing application

A request for the listing of shares must be submitted to Euronext Lisbon in order for the company's shares to be admitted to trading on a regulated market in Portugal.

With the listing application, a set of documents and information must be provided to Euronext Lisbon pursuant to the Portuguese Securities Code, Euronext's Harmonised Rules (Rule Book I, Notice n.º 1-01), as amended,[7] and other applicable legislation (such

as Euronext Lisbon Rule Book II and applicable Notices). The above includes some of the same documentation required by the CMVM for its approval of the prospectus and also, among others, the documents specified in the Euronext application form including, but not limited to, documentation evidencing that: (a) the legal position and organisation of the issuer are in accordance with applicable laws and regulations; (b) the communication of corporate events is ensured; (c) adequate procedures are available for the clearing and settlement of transactions in respect of the relevant securities; (d) the Legal Entity Identifier ("**LEI**") code pertaining to the issuer has been provided; (e) all press releases have been published in the context of the admission to trading; (f) a paying agent and a representative for relations with the market have been identified; and (g) a social security certificate and a tax office certificate, indicating if there are any amounts owed respectively to the social security system and to the national treasury.

All documentation required for submission must be in English, or in a language accepted by Euronext Lisbon, and translated by a certified translator if necessary.

With the submission of the listing application, the applicant and Euronext Lisbon should agree on a schedule for completion of the process of admitting the company's shares to trading. The issuer shall then appoint a Listing Agent ("*Agente de Admissão*") who will assist and guide the issuer during the entire process of admission to listing.

Euronext Lisbon will decide on the application for admission to listing within a 30-day period, unless otherwise agreed with the issuer (and in no case later than 90 days after the application). This period only begins when Euronext Lisbon is in possession of all relevant documentation and required information.

In case of a favourable decision to list, such decision shall remain valid for a maximum period of 90 days.

Simultaneously, the issuer should deal with the proceedings regarding the registration of the shares with the Portuguese Centralised System of Registration of Securities ("*Central de Valores Mobiliários*") managed by Interbolsa – *Sociedade Gestora de Sistemas de Liquidação de Sistemas Centralizados de Valores Mobiliários*, S.A.

Regulatory architecture: Overview of the regulators and key regulations

As mentioned above, under Portuguese securities law, the IPO process entails a public offer for distribution of shares ("*oferta pública de distribuição*"), as well as the admission of the company's shares to trading on a regulated market. This procedure poses a set of material and procedural requirements.

The role of the Portuguese securities regulating authority

The process of offering and admission to trading in an IPO is overseen by the CMVM, which supervises the licensing process, as well as trading operations and, more generally, the activity of securities markets in Portugal. In the context of IPOs, the CMVM must, within its supervisory role, approve a prospectus for the admission of securities to trading. Under article 145 of the Portuguese Securities Code, the CMVM is the competent authority to approve the prospectus for issuers with a registered office in Portugal, in relation to, among other cases, issues of shares. The CMVM is also competent to approve prospectuses concerning securities issued by non-EU issuers, when exclusively or firstly trading in a regulated market in Portugal.

The inclusion of any changes to the information and data disclosed in the prospectus must be subsequently approved by the CMVM by means of an approved supplement.

In addition, as mentioned previously, if a company intends to have its shares listed on a regulated market in Portugal, it must submit a formal request to Euronext Lisbon. In the process of admitting securities to trading, Euronext Lisbon may impose additional listing requirements, when reasonable, and demand any additional documentation from the applicant. Euronext Lisbon may also conduct inquiries and investigations in connection with the listing application.

Key rules and regulations

Offer and listing requirements are set out in three main legislative frameworks:

(i) the Portuguese Securities Code;
(ii) the regulations and instructions approved by the CMVM; and
(iii) the "Euronext Rule Book" and Notices, including Book I (the harmonised market rules, in force for all Euronext entities) and Book II[8] (the non-harmonised market rules, specifically applicable to the Securities Markets, the Non-Regulated Markets, and the Derivatives Markets operated by Euronext Lisbon),

as well as in EU legislation concerning capital markets, including the legislation mentioned in the previous sections and market abuse regulations.

In this respect, it should be noted that most of the rules contained in the Portuguese general framework with regard to securities regulation result from the implementation of, or are greatly influenced by, EU legislation, notably the MiFID framework,[9] the Prospectus Regulation and its delegated acts, the Market Abuse Regulation[10] and the Transparency Directive.[11] As such, the Portuguese legal regime is very similar to the regimes of other EU Member States.

Key listing requirements

In order to have its shares admitted to trading on a regulated market, the issuer must meet the following set of general eligibility criteria, as set out in articles 227 and 228 of the Portuguese Securities Code:

(i) the issuer must be incorporated in, and act in accordance with, the respective applicable law;
(ii) the company must be able to prove that its economic and financial situation is compatible with the nature of the securities, as well as with the market requirements on which listing is required;
(iii) the company must have carried out its business activity for at least three years; and
(iv) the company must have disclosed its annual accounting and financial reports for the three years preceding that of the requested listing (the so-called "track record" requirement).

In any case, the latter requirement may be waived by the CMVM when the interests of the issuer and of the investors advise in such a way, and provided that sufficient information is disclosed in order to allow the investors to form an informed judgment on the issuer and the securities. This flexible solution may be particularly relevant in the case of recent or start-up companies.

Pursuant to article 227(4) of the Portuguese Securities Code, the application for admission to trading shall outline the means by which the company will disclose information to the public and identify a settlement system, accepted by the managing entity of the regulated market, through which equity payments and payments of other amounts associated with the securities can be assured.

Conversely, in order to decide on listing applications filed by issuers seeking to go public, Euronext Lisbon should also verify if the requirements established in the Euronext Rule Book are fulfilled. These requirements are set forth: (i) in section 6.2 of Rule Book I, which establishes general requirements, applicable to all kinds of securities' listings; and (ii) in section 6302 of Rule Book I, establishing specific requirements regarding share listings only.

The general requirements concern mostly corporate matters, for example: whether the issuer has the necessary legal form and structure in accordance with Portuguese law; whether it is in compliance with all requirements imposed by the CMVM; whether the necessary procedures for clearing and settlement of transactions are in order; whether the issuer has taken all necessary measures to have an ISIN code for the securities as well as an active LEI; and whether all members of the issuer's board of directors have satisfactory expertise in respect of the Euronext Rule Book and applicable laws and regulations. Regarding the securities to be issued, it must be ensured that the shares of the same class have identical rights (as a principle, the issuer shall apply for admission to trade of all its shares of the same class issued at the time of the application or proposed to be issued) and that such shares are capable of being traded in a fair, orderly and efficient manner, transferable and freely negotiable in accordance with Portuguese law. It must also be ensured that the shares are compliant with the applicable laws and regulations, the issuer's articles of association and other constitutional documents.

The specific requirements generally match those on the listing of shares specified in article 229 of the Portuguese Securities Code which include, in particular, requirements on the company's minimum market capitalisation and public float.

According to the Portuguese Securities Code, the market capitalisation of the company's shares must be at least €1m. In case it is not possible to determine the market capitalisation of the shares, the company's own funds, including the results of the preceding financial year, must be at least €1m.

Euronext Lisbon may set stronger capitalisation requirements in case there are other regulated markets with higher capitalisation thresholds. However, as of today, Euronext Lisbon is the only regulated market for the admission and trading of shares in Portugal and, for that reason, the applicable thresholds for minimum capitalisation are those set in the Portuguese Securities Code as described above.

On the other hand, the Portuguese Securities Code requires adequate dispersal of shares to the public. There is a legal presumption that the level of dispersal is adequate if the shares to be admitted to trading are dispersed to the public in a proportion of at least 25% of the share capital of the company represented by that class of shares. However, if the market is expected to trade in a regular manner below that threshold, a lower proportion may be acceptable.

There are no additional requirements regarding shareholdings, and the law sets no general restrictions on substantial or qualified shareholdings (except in the case of regulated companies, such as financial institutions). Conversely, there are generally no post-IPO share lock-up obligations established in the law (although they are not uncommon in practice).

Public company responsibilities

Under Portuguese law, when a company undergoes an IPO process, it will, as a requirement, be deemed a "publicly held corporation" or "public company" ("*Sociedade Aberta*"), meaning that its share capital is open to public investment. This status of "*Sociedade Aberta*" brings an additional legal regime which includes various duties and encumbrances, mostly related to greater transparency, reporting, and corporate governance requirements.

These additional obligations are intended to provide the market with greater information and to provide protection to undetermined and dispersed shareholders.

Periodic reporting and disclosure requirements

With regard to the disclosure of information, listed companies are required to publicly disclose inside information, i.e., any circumstances which exist or may reasonably be expected to come into existence, or any event which has occurred or may reasonably be expected to do so, regardless of its degree of materialisation, which a reasonable investor would be likely to use entirely or partially as a basis for their investment decisions, since it would be likely to have a significant effect on the prices of securities or financial instruments.

Issuers which have securities admitted to trading on a regulated market, or which have requested their admission to such a market, must promptly disclose privileged information as established in Regulation (EU) 596/2014, of the European Parliament and the Council, of 16 April 2014, as amended, and respective regulations and delegated acts. However, under these provisions, issuers may delay the public disclosure of this information in certain circumstances.

The Portuguese Securities Code further requires companies listed in Portugal to disclose additional information, including, among other items: (i) notices convening general meetings of the holders of listed securities; (ii) the issue of shares, with an indication of beneficial privileges and guarantees, including information on any procedures for their allotment, subscription, cancellation, conversion, exchange or repayment; (iii) amendments to the details that have been required for the admission to trading of securities; and (iv) the acquisition or disposal of own shares when, as a result thereof, the proportion of the same exceeds or falls below the thresholds of 5% and 10%.

Regarding a company's own shares, CMVM Regulation no. 5/2008, as amended, including by CMVM Regulation no. 7/2018, further provides that issuers of shares or other securities that confer subscription, acquisition or disposal rights, which are subject to Portuguese law as their personal law and exclusively admitted to trading in a regulated market located or operating in Portugal or exclusively traded in a multilateral trading system or organised trading system, or issuers with head offices located outside the EU who have elected Portugal as the competent EU Member State among those in whose territory they are admitted to trading on a regulated market or operate, should notify the CMVM of any acquisitions and disposals of such securities. Issuers should also disclose the final result of any transactions that reach, exceed or fall below 1% of the share capital or successive multiples, as well as all the acquisitions and disposals, regardless of their net balance, carried out in the same session of the regulated market reaching or exceeding 5% of the volume traded in said session. It should be noted that under Article 5(1) of the Market Abuse Regulation, if certain conditions are met, the prohibitions of insider dealing and of market manipulation established in Articles 14 and 15 of the same Regulation do not apply to trading in own shares in buy-back programmes. One of the conditions is that the full details of the programme are disclosed prior to the start of trading, notably in accordance with Article 2 of Commission Delegated Regulation (EU) 2016/1052.[12] Transactions in connection with such buy-back programmes must also be notified to the competent authority of the trading venue and subsequently disclosed to the public, in accordance with Article 5(3) of the Market Abuse Regulation and adequate limits with regard to price and volume must be complied with. Furthermore, only the purposes set out in Article 5(2) of the Market Abuse Regulation qualify for this "safe harbour".

It should also be noted that, according to articles 16 and 17 of the Portuguese Securities Code, public companies should disclose qualified shareholdings, as defined therein, as

well as certain cases where a shareholder reaches or exceeds certain thresholds of the voting rights corresponding to the capital, or reduces its holding to an amount lower than any of such thresholds.

Additionally, according to CMVM Regulation no. 5/2008, as amended, public companies are further required to disclose the following additional information:

(i) the exercise of subscription, incorporation and acquisition rights to securities, namely as a result of mergers or demergers;
(ii) the exercise of any existing rights to convert any securities into shares;
(iii) any changes in the attribution of voting rights in qualifying holdings;
(iv) any filing for insolvency, judgment initiating insolvency proceedings or dismissing the filing for insolvency, and also the approval and official confirmation of the insolvency plan;
(v) the increase or decrease of share capital;
(vi) information regarding applications for admission to regulated markets and respective decisions; and
(vii) the convening of a general meeting to determine the loss of public company status and the respective resolution.

Furthermore, issuers are required periodically to disclose financial information and reports. Indeed, issuers must disclose the following information within four months of the end of the financial year and make publicly available for a period of 10 years:

(i) the management report, the annual accounts, the audit report and other accounting documents required by law or regulation, even if such documents have not yet been submitted for the approval of the general meeting of the company;
(ii) the auditor's report; and
(iii) statements from each of the responsible persons of the issuer, whose names and functions shall be clearly indicated, stating that, to the best of their knowledge, the financial information was drawn up in accordance with the applicable accounting standards, reflecting a true and fair view of the assets and liabilities, financial position and results of the issuer and the companies included in the consolidation as a whole, when applicable, and that the management report faithfully states the trend of the business, the performance and position of the issuer and companies included in the consolidation as a whole, and contains a description of the principal risks and uncertainties faced.

Issuers required to draw up consolidated accounts shall disclose individual accounts, drawn up in accordance with national legislation, and consolidated accounts, drawn up in accordance with Regulation (EC) 1606/2002, as amended.[13] Conversely, issuers that are not required to draw up consolidated accounts shall disclose the financial information individually, drawn up in accordance with national law.

In the event that the annual report does not provide an exact picture of the net assets, financial situation and results of the company, the CMVM may order the publication of supplementary information.

The documents that comprise the annual report and accounts shall be submitted to the CMVM as soon as the same are available to the shareholders.

Additionally, within three months of the end of the first half of the financial year, issuers shall disclose the following information with regard to the activity for said period, and keep available to the public for 10 years:

(i) the condensed set of financial statements;

(ii) an interim management report, which shall include, at least, an indication of important events that have occurred during said period, and the impact on the respective financial statements, together with a description of the principal risks and uncertainties for the remaining six months; and

(iii) statements by the persons responsible within the issuer, whose names and functions shall be clearly indicated, wherein it is stated that, to the best of their knowledge, the condensed set of financial statements has been prepared in accordance with the accounting standards applicable, gives a true and fair view of the assets and liabilities, financial position and results of the issuer and the companies included in the consolidation as a whole, when applicable, and that the interim management report includes a fair review of the required information.

Finally, issuers which are credit institutions or financial companies[14] are obliged to publish quarterly financial information, within three months of the end of said period. The remaining issuers who decide nonetheless to disclose quarterly financial information shall comply with the CMVM's regulations in this respect and maintain such disclosure for at least two years.

The CMVM may waive some of the abovementioned disclosure duties whenever such disclosure would be contrary to public interest or seriously detrimental to the issuer, provided that the omission would not be likely to mislead the public with regard to the facts and circumstances essential for assessing the securities.

Corporate governance standards

Public companies must also comply with additional corporate governance disclosure requirements.

Current corporate governance standards derive from different legal sources, including the Portuguese Companies Code,[15] the Portuguese Securities Code, CMVM Regulation no. 4/2013 and the recommendations contained in the Corporate Governance Code of the Portuguese Institute of Corporate Governance (*Instituto Português de Corporate Governance*, "**IPCG**").[16]

According to article 245-A of the Portuguese Securities Code, issuers of shares admitted to trading on a regulated market situated or functioning in Portugal shall disclose, in their annual management report, a detailed report on the corporate governance structure and practices of the company. This report shall contain at least the following information:

(i) the capital structure, including information on shares which are not admitted to trading, with an indication of the different classes of shares and, for each class of shares, the rights and obligations attached to it and the percentage of share capital it represents;

(ii) any restrictions on the transfer of shares, such as clauses on consent for disposal, or restrictions on the ownership of shares;

(iii) qualified holdings in the company's share capital;

(iv) identification of any shareholders that hold special rights, and a description of such rights;

(v) the system of control of any employee share scheme where the voting rights are not exercised directly by the employees;

(vi) any restrictions on voting rights, such as limitations on the voting rights of holders of a given percentage or number of votes, deadlines for exercising voting rights, or systems whereby the financial rights attached to securities are separated from the holding of securities;

(vii) shareholders' agreements which are known to the company and may result in restrictions on the transfer of securities or voting rights;

(viii) the rules governing the appointment and replacement of board members and amendment of the articles of association;
(ix) the powers of the board, notably in respect of resolutions to increase equity;
(x) any significant agreements to which the company is party and which take effect, alter or terminate upon a change of control of the company following a takeover bid, as well as the effects thereof, except where their nature is such that their disclosure would be seriously damaging to the company; this exception shall not apply where the company is specifically obliged to disclose such information on the basis of other legal requirements;
(xi) any agreements between the company and members of the management body or employees providing for compensation if they resign or are made redundant without valid reason, or if their employment ceases because of a takeover bid;
(xii) core information on the internal control and risk management systems implemented in the company regarding disclosure of financial information;
(xiii) compliance with the corporate governance statement to which the issuer is subject by virtue of legal or regulatory provisions. The issuer shall also specify those parts of said code that deviate and the reasons therefor;
(xiv) compliance with the corporate governance statement by which the issuer voluntarily abides and shall specify those parts of said code that deviate and the reasons therefor;
(xv) the location where the public may find the Corporate Governance Code to which the issuer is subject in accordance with the previous subparagraphs;
(xvi) content and description of the way the issuer's corporate bodies function, as well as the committees created thereby; and
(xvii) a description of the diversity policy applied by the company in relation to its management and supervisory bodies, namely, in terms of age, sex, qualifications, and professional background, the objectives of such diversity policy, the way it was applied, and results in the period of reference. In case a company does not apply a diversity policy, it must explain in its report why it does not apply such policy. However, this requirement does not apply to SMEs.

Issuers of shares admitted to trading on a regulated market subject to Portuguese law as their personal law shall disclose information on their corporate governance structure and practices in the terms laid down in a regulation of the CMVM, which shall include the abovementioned information.

Conversely, disclosure requirements for the annual governance report are further regulated by CMVM Regulation no. 4/2013, which includes a model corporate governance report.

Finally, the Corporate Governance Code includes a set of recommendations concerning the organisational structure and corporate bodies of public companies, as well as more specific issues such as remunerations, auditing, risk management, conflicts of interest and related party transactions.

Potential risks, liabilities and pitfalls

The process of going public through an IPO may present relevant risks and potential liabilities to the offeree company and other parties involved.

On the one hand, the IPO process and the admission to trading on a regulated market imply additional costs associated with the listing application and annual listing fees. Issuers with listed securities are required to pay any fee charged by Euronext Lisbon pursuant to the conditions set forth by Euronext. These fees are determined on the same terms as in other

Euronext Markets abroad and may vary in accordance with the type of securities admitted to listing, the nature of the issuer or the amount of market capitalisation.

On the other hand, IPOs entail further liabilities related to the offering of shares to the public, beginning with those that necessarily arise with the publication of a prospectus. Under Portuguese securities law, the issuer and the members of its management bodies are liable for damages caused by non-compliance with the contents of the prospectus, except in the case that they prove to have acted without fault. In certain cases, the issuer may even face a strict liability rule. Equally liable are: members of the auditing body, accounting firms, chartered accountants and any other individuals who have certified or, in any other way, verified the accounting documents on which the prospectus is based; financial intermediaries in charge of assisting with the offer; and promoters of the offer and any other entities that accept being appointed in the prospectus as responsible for any information, forecast or study included therein.

Other than the liabilities directly connected with the offer and the publication of the prospectus, companies which undergo IPOs are also faced with the general costs and potential liabilities associated with their public and listed company status, which include the ongoing costs of complying with the strict corporate governance, periodic reporting and aggravated disclosure requirements described above, as well as the potential liabilities arising out of the application of, for instance, the framework on market abuse.

Furthermore, both public companies and their shareholders must take into consideration the specificities of the legislation governing this type of company, including the provisions regarding mandatory takeovers, according to which anyone whose holding in a public company exceeds one third or one half of the voting rights attributable to the share capital has the obligation to launch a takeover for the totality of shares and other securities issued by the company that grant the subscription or acquisition of shares. Shareholders of the relevant company shall thus take due consideration of these rules and structure the transaction in a manner that minimises risks in this respect.

* * *

Endnotes

1. For an empirical analysis of the evolution of IPOs in Portugal, see Maria Rosa Borges, *Underpricing of Initial Public Offerings: The Case of Portugal*, Int Adv Econ Res (2007) 13:65–80 and João Duque, Miguel Almeida, *Ownership Structure and Initial Public Offerings in Small Economies: The Case of Portugal*, Paper for the ABN-AMBRO International Conference on Initial Public Offerings (2000).
2. According to Euronext Lisbon, in 2020 the shares of three entities were listed in a trading venue in Portugal, all such companies being real estate investment vehicles: Olimpo Real Estate Portugal, SIGI, S.A., and RSR Singular Assets Europe SOCIMI, S.A.U. were admitted to trading in Euronext Access, while Merlin Properties SOCIMI, S.A. (a company whose shares were already listed in Spain) was admitted to trading in the Euronext Lisbon regulated market (a *dual listing*).
   So far, at the time of writing this chapter, only the investment units of Fundo Especial Fechado de Investimento Imobiliário em Reabilitação Urbana Coimbra Viva I, a closed-end real estate investment firm, were admitted to trading in 2021, in Euronext Access (according to information available at http://live.euronext.com/en/markets/lisbon), although one other company has indicated the intention to consider the IPO of one of its subsidiaries.

3. Approved by Decree-Law no. 489/99, of 13 November, as amended.
4. Official Journal L. 168, 30/06/2017, p. 12.
5. Commission Delegated Regulation (EU) 2019/979 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council with regard to regulatory technical standards on key financial information in the summary of a prospectus, the publication and classification of prospectuses, advertisements for securities, supplements to a prospectus, and the notification portal, and repealing Commission Delegated Regulation (EU) 382/2014 and Commission Delegated Regulation (EU) 2016/301, as amended and Commission Delegated Regulation (EU) 2019/980 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) 809/2004, as amended.
6. Portuguese law provides for a list of entities which may be held civilly responsible for prospectuses – please refer to section 5 in this respect.
7. Available at https://www.euronext.com/en/regulation/harmonised-rules.
8. Available at https://www.euronext.com/en/regulation/lisbon.
9. The MiFID framework currently comprises MiFID II (Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, as amended), MiFIR (Regulation (EU) No. 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No. 648/2012, as amended) and their respective implementing legislation.
10. Regulation (EU) 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse.
11. Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, as amended.
12. Commission Delegated Regulation (EU) 2016/1052 of 8 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the conditions applicable to buy-back programmes and stabilisation measures.
13. Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards.
14. As defined by Decree-Law no. 298/92, of 31 December – *Regime Geral das Instituições de Crédito e Sociedade Financeiras*, as amended.
15. Approved by Decree-Law no. 262/86, of 2 September, as amended.
16. Available at: https://cam.cgov.pt/images/ficheiros/2020/revisao_codigo_pt_2018_ebook.pdf. This Corporate Governance Code resulted from a protocol between the CMVM and the IPCG and includes the contribution of the AEM – *Associação de Empresas Emitentes de Valores Cotados*.

Eduardo Paulino
Tel: +351 213 826 603 / Email: epaulino@mlgts.pt

Eduardo Paulino joined the firm in 2002 and became a partner in 2015. He is the head of a corporate team.

Eduardo's main areas of practice include capital markets, company and corporate law and banking and finance. He specialises in M&A, public offerings, project finance and privatisations and is also experienced in banking and finance law matters and compliance.

He has recently been involved in complex high-profile M&A transactions in the banking sector and is in the process of recapitalisation of the Portuguese banking sector. Eduardo regularly acts in equity and debt public and private offerings, public takeover processes in the banking, telecommunications, construction, paper and media sectors, as well as in privatisations of Portuguese and foreign companies and complex financing transactions.

Eduardo also participates in various interdisciplinary teams working in domestic and cross-border M&A transactions, acting both for Portuguese and foreign clients.

Margarida Torres Gama
Tel: +351 213 826 603 / Email: mtgama@mlgts.pt

Margarida Torres Gama joined the firm in 2007. She is a member of the corporate and M&A and capital markets team and of the insurance, reinsurance and pension fund team.

Margarida specialises in mergers, acquisitions and joint ventures, acting both for Portuguese and foreign clients, as well as on the provision of general legal advice to companies mainly in the areas of commercial, corporate, securities, and insurance law.

Margarida has also been involved in several transactions regarding the issue and offering of equity and debt securities.

Inês Magalhães Correia
Tel: +351 213 826 613 / Email: imcorreia@mlgts.pt

Inês Magalhães Correia joined the firm in March 2015. She is a member of the corporate and M&A and capital markets team. She was also part of the litigation and arbitration team.

Inês provides regular legal advice to national and international clients mainly in the areas of commercial and corporate law, corporate governance and securities law and specialises in M&A transactions, often cross-border, such as share deals, asset deals, partnerships, restructurings, and sales of non-performing loans and distressed assets.

In the field of securities law and capital markets, Inês regularly assists in transactions regarding the issue and offering of equity and debt securities, including medium term notes and covered bonds.

Morais Leitão, Galvão Teles, Soares da Silva & Associados

Rua Castilho, 165 – 1070-050 Lisboa, Portugal
Tel: +351 21 381 74 00 / Fax: +351 21 381 74 99 / URL: www.mlgts.pt

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