GUIDELINES

Questions and Answers on the CORPORATE GOVERNANCE CODE

(2023 revision)

The present guidelines constitute a complementary element of assistance to the application of and compliance with the Recommendations of the Corporate Governance Code in force (hereinafter, the **CGS 2023**), including answers to the most frequently asked questions received by the CEAM – the Executive Committee for Accompaniment and Monitoring of the Corporate Governance Code (*Comissão Executiva de Acompanhamento e Monitorização do Código de Governo das Sociedades*, hereinafter **CEAM**), which will be regularly updated with new questions that may subsequently be raised, as well as with additional answers that may prove relevant.

The implementation of the Code was the result of an effort carried out by the IPCG – the Portuguese Corporate Governance Institute (*Instituto Português de Corporate Governance,* hereinafter **IPCG)**, in co-operation with the CMVM - the Securities Market Commission (*Comissão do Mercado de Valores Mobiliários*, hereinafter **CMVM**) and AEM - the Association of Issuer Companies (*Associação de Empresas Emitentes de Valores Cotados em Mercado,* hereinafter **AEM**), to which the Protocols signed with both entities bear witness.

It was within the fundamental framework outlined by these instruments that a system of interpretation and monitoring was designed, pursuant to which the CEAM has been performing a set of tasks that now also culminate in the development and dissemination of the present Guidelines, in line with the permanent interaction it has maintained with the companies in order to, as established in the Protocol signed between the IPCG and the AEM, contribute to the clarification of interpretation doubts about the content of the Recommendations.

1) The *comply* or *explain* principle

In compliance with the *comply or explain* principle on which the Code is based, companies shall, on the one hand, reflect on the adequacy and relevance of each Recommendation to their reality and circumstances and, on the other hand, motivate their options in terms of corporate governance, specifically in light of the principles set out in the Code.

They shall do so regarding each of the Recommendations, stating in Part II of the Corporate Governance Report whether or not the Recommendation has been complied with and motivating their response, either directly or by reference to Part I.

As the Code is composed of Recommendations, but monitoring covers each of the subrecommendations into which, in certain cases, they are subdivided, it is beneficial for companies to, expressly or visually, break down the Recommendations as identified in the Table of Multiple Recommendations of the CGS 2023 (as per the autonomous document approved by the CEAM). In any case, whether or not this reporting option is taken, sufficient information should be provided for each multiple Recommendation to assess the compliance with each of the subrecommendations into which it is subdivided.

Within the scope of monitoring, in order for non-compliance to be qualified as an *explain* that is materially equivalent to compliance, an *explain* should be provided, containing the reasoned justification for the non-compliance with the Recommendation in question, accompanied by the identification of the adopted alternative good corporate governance solution and the corresponding adequacy, in terms of material equivalence, to the solution recommended by the Code.

Particular or even exceptional circumstances of specific companies shall not be taken into account regarding the interpretation of the Code and the Guidelines: such circumstances shall be fully relevant within the context of the "*explain*", the purpose of which, rather than the task of interpreting the Code, is, in fact, to weigh up the individual and concrete circumstances of each company.

To summarise, for an adequate *explain*, companies shall:

- reflect on the adequacy and relevance of each Recommendation to the reality and circumstances of the company;
- when the Recommendation is not adopted, present the adopted corporate governance option, justifying its material equivalence to the practice recommended in the Code;
- bear in mind that the Principles that frame each chapter (and subchapter) of the Code constitute a relevant support for the realisation of such reasoning exercise.

2) Multiple Recommendations

As mentioned in the previous section, in order to ensure the successful completion of the monitoring work, the CEAM has previously identified the Code Recommendations with multiple content and analysed them according to the following criteria:

- all subrecommendations were subdivided independently of each other;
- the following subrecommendations have not been subdivided:
    - those that end a general clause with a clarification;
    - where there is a logical dependency between subrecommendations.

This exercise resulted in 84 subrecommendations, as identified in the aforementioned Table of Multiple Recommendations.

3) Non-applicable Recommendations

The determination of some Recommendations as non-applicable to some or all companies stems from the interpretative task, by the CEAM, at the moment of the monitoring, where the provisions of the Recommendations are collated with the responses of the companies.

The non-applicability of Recommendations results from several circumstances, such as:

- the specificities of the governance model adopted by the companies;
- the interdependence between some subrecommendations.

Thus, Recommendations that have been categorised as not applicable by the companies may be considered as complied with or not complied with, and *vice versa*.

4) Guidelines

Certain parts of some Recommendations, although relevant for the understanding of the overall meaning of the Recommendation, will not be considered for the purpose of assessing the compliance with the respective Recommendation.

Thus, the following will be considered as guidelines, and therefore not subject to autonomous monitoring (without prejudice to the duty of the company to always issue truthful statements, even if they are not scrutinised by means of monitoring):

a) in II.1.1, the need for the mechanisms concerned to ensure that information is disseminated "in an appropriate and accurate manner";

b) in IV.1.1., the requirement that "[the] administration body ensures that the company acts in a manner consistent with its object (...)";

c) in VII.4., the requirement that the internal control system be "adequate" to the size of the company and the complexity of the risks inherent to its activity,

d) in VIII.2.2., the requirement that the supervisory body shall "ensure that adequate conditions for the provision of the services are in place within the company."

5) **Definitions**

The Code includes, as footnotes, two definitions that were considered essential for the proper understanding and application of the provisions.

For the sake of proper systematisation and ease of information, the content of these definitions is recalled in these Guidelines:

- "*Committees*, *company committees, specialised committees* or *internal committees* are understood to mean committees made up for the most part of members of the corporate bodies, to whom the company attributes company functions within the company ambit, excluding the Remuneration Committee appointed by the General Meeting, pursuant to Article 399 of the Portuguese Commercial Companies Code, unless the Code expressly states otherwise."
- Senior management: "In this Code *senior management* is understood as persons who are part of the senior management as defined (under the name "management") by European and national legislation regarding listed companies, excluding members of the corporate bodies."

6) **Recommendation I.1.** - Information on the sustainability of the company

Among the practices adopted by the companies that were considered to have complied with the Recommendation are, specifically, the adoption of social responsibility policies in the areas in which the companies operate and in the community they are a part of, the creation of innovative projects to promote good environmental, social and governance practices and the creation of departments with competences in defining and implementing strategies to promote sustainability and creating long-term social value.

7) **Recommendation II.2.1** - Criteria and requirements concerning the profile of new members of corporate bodies

For compliance with this Recommendation, it is not sufficient to merely refer to the curricula vitae of such members, nor to merely establish that certain requirements have been taken into account in practice, if these requirements had not been defined prior.

An example of good practice could be the definition of an internal policy for the selection and assessment of the suitability of members of the administrative and supervisory bodies, and individual assessment criteria (identifying experience, competence, independence and integrity and availability) and collective criteria for the composition of the body (where complementarity, diversity, conflicts of interest, representativeness of independent members and particular rules of the company are taken into account) can be identified within the scope hereof.

8) **Recommendation II.2.5** - Specialised committees

In order to fully comply with this Recommendation, in its various dimensions, the competence in corporate governance, appointments and performance assessment must be attributed to a committee or committees composed mainly of members of corporate bodies of the company, and the attribution of competences in any of these matters to senior management shall not suffice, as such - without prejudice, in any case, to the possibility, inherent in the CGS regime, of considering an *explain* as materially equivalent to compliance. With regard to the matter of appointments, this concerns merely the constitution of a committee with competences in relation to members of the corporate bodies, whereby the committee for the appointment of senior management is the specific object of Recommendation VI.3.4. The Recommendation allows for the attribution to a single committee of the competences provided for therein. Thus, in the event that the remuneration committee provided for in Article 399 of the Portuguese Commercial Companies Code (CSC) had been created, and if not prohibited by law, such Recommendation can be complied with by means of attributing to such committee the competences in the matters to which it relates, i.e., corporate governance, appointments and performance assessment.

9) **Recommendation II.4.1** - Information on conflicts of interest

Merely fulfilling the legal obligation set out in Article 410 paragraph 6 of the Portuguese Commercial Companies Code does not suffice for compliance with this Recommendation, since what is at stake is the obligation, to be determined by the companies, to communicate conflicts of interest that are not limited to the decision-making context, but rather it should occur *whenever there are* facts that may constitute or give rise to a conflict of interests.

10) **Recommendation II.5.1** - Verification of transactions with related parties

Recommendation II.5.1, the content of which was modified due to the transposition of the Shareholders Rights Directive by Law no. 50/2020, corresponds to the regulatory requirements set out in paragraphs 89 and 91 of CMVM Regulation no. 4/2013.

11) **Recommendation III.4** - Means for participating in the General Meeting without being present

With regard to the means for shareholders to participate in the General Meeting remotely, the reasons that the company presents in a motivated manner for its non-implementation, such as the high associated costs, the size of the company or the concentration of the capital structure, will be considered for the purposes of the *explain,* although companies must take into account the particular circumstances associated with the pandemic caused by COVID-19 or similar situations.

12) **Recommendation III.5** - Voting at the General Meeting of Shareholders without being present

If the admissibility of electronic voting is not expressly provided for in the Articles of Association, but results from a repeated and duly justified practice - appearing, in particular, in the convening notices for the General Meeting - the implementation of appropriate means in this regard is considered to be met.

13) **Recommendation III.7** - Assumption of charges by the company in the event of a change of control or similar

The existence of measures leading to costs by the company in the event of a change of control or a change in the composition of the administration body, in itself, do not prevent the Recommendation from being complied with; however, it is up to the companies to justify, in a motivated manner, that the measures in question do not appear "likely to damage the economic interest in the transfer of shares and the free assessment by shareholders of the performance of the (Members of the Board of) Directors".

14) **Recommendation IV.1.2.** - Exercise of executive functions in entities outside the group

When the Executive Directors do not exercise executive functions in entities outside the group, full compliance with the Recommendation depends on the adoption, by the company, of a regime designed for the event that such a situation [*i.e.*, there are Executive Directors exercising executive functions in entities outside the group] were to occur.

In other words, the existence of such a regime is indispensable for the Recommendation to be deemed complied with.

However, cases in which the company has established a general prohibition on the exercise of executive functions outside the group are deemed compliant.

15) **Recommendation IV.2.1** - Coordination of Non-Executive and Independent Directors

In the event that the company has no (or only one) Non-Executive Director, the possibility of appointing a Coordinator of Non-Executive Directors is jeopardised (admitted by the Code only when there is no possibility of appointing a Coordinator of Independent Directors, as recommended in the first instance, whenever the Chairman of the Board of Directors is not independent). For this reason, in such cases where it is not possible to appoint a Coordinator, the Recommendation is deemed not to apply.

This same result, of non-applicability, is the one considered in the case of adoption of the

German model, as well as in cases in which the Chairman of the administration body is independent.

16) **Recommendation IV.2.2** - Number of non-executive members of the administration body

Since the monitoring exercise does not include the formulation of a judgement regarding the adequacy of the specific composition of the corporate bodies, compliance depends on the inclusion, in the Governance Report, of a judgement, albeit brief, on the adequacy of the number of members referred, as is clear from the text of the Recommendation itself, in its final part.

It should be noted, however, that in cases where the administration body of the company does not have any Non-Executive Directors, this total absence cannot but continue to be assessed as non-compliance with regard to the Recommendations that depend on that presence for the respective compliance, without prejudice to the possibility, inherent to the monitoring system of the Code, of any *explain* considered as materially equivalent to compliance.

17) **Recommendation IV.2.4** - Independence and the passage of time

With regard to point i., it is understood that the established time period (twelve years) is counted regardless of whether or not it coincides with the end of the mandate, even though the fact that this limit occurs during a mandate shall be considered in the context of the *explain* and the respective valuation.

18) **Recommendation V.1** - Competence of the body and supervision

In cases where the knowledge, assessment or opinion of the supervisory body concerns multi-annual strategic lines or risk policy, the Recommendation is deemed complied with when, in the financial year under monitoring, the Governance Report contains information regarding the adoption of the recommended practice in the year in which they were subject to final approval by the administration body, thus extending the compliance for the period of time during which such strategies and policies may be considered in force.

To summarise, the following sequence of events constitute good practice in the compliance with this Recommendation:

- the administration body, in the exercise of its powers, defines the strategic lines and risk policy for the company;
- the supervisory body takes cognisance of the strategic lines and, within its competences, assesses and renders an opinion on the risk policy as prepared by the

administration body;

The administration body approves the strategic lines of the company and risk policy.

19) **Recommendation VI.1.1** - Performance assessment

In monitoring this Recommendation, the role of an internal committee with competences in performance assessment will be taken into account, if it is composed of a majority of non-executive members, preferably independent ones.

Furthermore, in order to fully comply with this Recommendation, it is considered adequate that – in addition to the finding in the Governance Report that the administration body carries out the appropriate assessments on the basis of the reference factors set out in the final part of the Recommendation - the duty to assess performance on an annual basis is enshrined in internal rules or other equivalent means.

20) **Recommendation VI.2.3** - Severance pay

Merely stating that to cases of dismissal solely the legal regime applies, without any further reference to the other forms of termination of office does not suffice for compliance with this Recommendation.

When, in a given financial year, one or more cases of termination of office of members of any body or committee occurs, this fact should be referred in the respective Governance Report or Remuneration Report, including the amounts of all company costs related to the termination of office.

21) **Recommendation VI.2.5** - Contracting of consultancy services

For the Recommendation to be complied with, it is not sufficient to inform in the Governance Report that no consultancy services were requested or contracted to support the remuneration committee: it is necessary to make it explicit that the remuneration committee enjoys the freedom to do so, if it deems it necessary.

22) **Recommendations VI.2.6 and VI.2.7** - Independence and authorisation of consultancy services

Similarly to the understanding proposed for compliance with Recommendation VI.2.5., it has also been understood in relation to these Recommendations that it does not suffice to inform in the Governance Report that no consultancy services were requested or contracted in support of the remuneration committee; it is necessary to make it explicit that, in case they were, the remuneration committee will have the responsibility to ensure that these will be provided independently and that the respective providers will not be contracted to provide other services, related to their competences, to the company itself or to others with whom

the company is in a control or group relationship, without its express authorisation.

23) **Recommendation VI.3.1** - Grounds of proposals for the election of members of corporate bodies

The Recommendation applies, for each company, from the first year in which there exists a General Meeting electing new members of corporate bodies.

Notwithstanding the fact that the proposals for the election of the members of the corporate bodies come from the shareholders, it is the responsibility of the company, according to this Recommendation, "in the terms it deems adequate, but in a manner susceptible of demonstration", to promote that those proposals are accompanied by a statement of grounds, on the points provided for, and mere compliance with the provisions of the Law (see Article 289 paragraph 1 subparagraph d) of the CSC) or mere reference to the curricula vitae of the proposed members cannot be considered sufficient for the purposes of compliance.

Among the good practices adopted by the companies that amount to compliance with the Recommendation are, in particular, the instruction of the proposals submitted to the elective General Meeting with the documentation that allows the demonstration required herein, whereby such documentation remains available *online* for several years; the drafting, in the Corporate Governance Report itself, of a description of the functions, qualifications and skills required to fulfil the positions; or even the adoption of a "selection policy" for members of the corporate bodies, of broader applicability than that corresponding to a particular elective moment, with the aim of thus favouring best practices regarding the selection processes of such members.

24) **Recommendation VI.3.3** - Appointment of senior management

As noted in 5), *senior management* is defined as "persons who are part of the senior management as defined (under the name "management") by European and national legislation regarding listed companies, excluding members of the corporate bodies."

However, in cases where companies make it explicit in the Governance Report that they adopt, within the specific context of their structure, another definition of persons comprising senior management, and assign to a specialised committee the powers for the respective appointments, it can be considered that this practice is in line with the teleology of the Recommendation, and thus corresponds to compliance.

The Recommendation also applies to companies that are family-owned or whose capital structure is highly concentrated, since the only criterion justifying non-compliance, as set out in the Recommendation, is the size of the company.

Without prejudice, the family nature of the company or the concentration in the capital

structure may, inter alia, be invoked in the context of the *explain* and its relevance assessed within that context.

In these terms, merely invoking the size of the company does not immediately determine the non-applicability of the Recommendation, which may be assessed in the *explain*, in terms that prove to be substantiated, pointing out the relevant particular characteristics of the company and the identification of the equivalent option that the company adopts.

25) **Recommendation VII.1** - Limits on risk-taking

Regarding the risk policy, the fundamental importance of disclosing, even in general terms, the topics that have been defined in the risk policy, in terms of setting limits, objectives or others that are considered relevant, is reinforced.

26) **Recommendation VII.3** - Organisation of the supervisory body

It is essential that the information be provided in a complete manner, so that it can be concluded that the procedures in question correspond to the periodic monitoring referred to in the Recommendation text. It is also necessary to detail the terms under which the monitoring is carried out, particularly with regard to its periodicity.

27) **Recommendation VII.6** - Identification of the probability of occurrence of the identified risks and the respective impact

Even if the actual "probability of occurrence of the identified risks" is not disclosed, it is essential that the company clearly states that it makes such calculations and assesses the impact of their occurrence.

28) **Recommendation VIII.1.1** - Oversight of the information preparation and dissemination process

The rules of the supervisory body should require it to monitor the adequacy of the process for preparing and disclosing financial and non-financial information by the administration body, including the appropriateness of accounting policies, estimates, judgments, material disclosures and their consistent application between financial years, in a properly documented and reported manner.

The Recommendation shall be merely complied with where the regulation of the body provides for the duty mentioned.

29) **Recommendation VIII.2.1** - Independence of the statutory auditor

By recommending the definition, by the supervisory body, in internal regulations and in accordance with the applicable legal regime, of the supervisory procedures aimed at ensuring

the independence of the statutory auditor (*revisor official de contas*, ROC), it is not only a matter of the generic establishment of the competence of such body for that definition, but also the definition, *ex ante* and abstractly, of those same procedures.

30) **Recommendation VIII.2.2** - Interlocution with the statutory auditor

It does not follow from the Recommendation that the supervisory body is the exclusive interlocutor of the statutory auditor, nor that it should be the sole recipient of its reports.

The Recommendation does not prevent the administration body from also being immediately aware of the reports disclosed to the supervisory body, but it does prevent the interaction between the statutory auditor and the administration body from being unknown to the supervisory body.

31) **Recommendation VIII.2.3** - Annual assessment by the supervisory body of the work of the statutory auditor

The following is deemed good practices in the performance of the supervisory body in this regard:

- annual assessment of the work carried out by the statutory auditor;
- its independence and adequacy for the performance of the duties;
- propose to the competent body the removal from office or the termination of the contract for the provision of its services whenever there is just cause for doing so.

Compliance with the Recommendation requires all the duties listed to be made explicit.