

Corporate Governance in Portugal – the role of the IPCG

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Abstract: The first use of the term corporate governance appeared to denote the structure and functioning of corporate policies. This work aims to frame what is happening at the regulatory level in Portugal and present a case that justifies the improvement of monitoring mechanisms.

Keywords: Corporate Governance; IPCG; CMVM; banking sector

I. Introduction

The corporate governance code of existing companies in Portugal must be analyzed via the documents issued by the IPCG (Portuguese Institute of Corporate Governance) and the CMVM (Securities Market Commission). In 2011, the IPCG created a commission led by Pedro Maia to create the code in question. The first version was published in 2012 and subsequently received several suggestions, resulting in a new publication in 2014. After this period there was some controversy as the IPCG and CMVM codes were in force at the same time. This work seeks to analyze the importance of this Code and the structure of the banking sector in Portugal.

II. Corporate governance - corporate governance code

Between 2014 and 2016, the IPCG and the CMVM carried out a very fruitful dialogue, with a joint statement on March 16, 2016, the CMVM assuming that it ceased to publish its code and that of the IPCG became effective.

This code is not mandatory, but rather advisable in terms of adherence for compliance reasons. It is therefore intended primarily to detect and deal with any and all non-compliance with procedures that must be followed or adopted.

This code is structured on two levels: principles and recommendations. The principles are intended to provide a basis for interpreting and applying the recommendations as well as qualitative guidance.

Table 1 – The management structure in Portugal

Concept	Legislation	Elements
executivedirectors	Article 407, nº3, of the Commercial Companies Code	The members of the executive board of directors, the members of the board of directors to whom day-to-day management powers have been delegated and all directors if the board of directors has not carried out the said delegation of powers.
non-executivedirectors	Article 407, nº3, of the Commercial Companies Code	Members of the board of directors to whom management powers have not been delegated
Society committees (or internal committees)	Article 399 of the Commercial Companies Code	Committees composed mostly of members of company bodies, to whom they assign functions within the corporate scope, excluding the remuneration committee appointed by the General Meeting
Companystructures / corporate structures		The set of company bodies and committees, as defined in this

		<u>glossary</u>
management body		The board of directors, in companies that adopt the classical or Anglo-Saxon model; the executive board of directors, in companies that adopt the Germanic model
inspection body		The supervisory board, the audit committee and the general and supervisory board, without prejudice to the responsibilities of another nature that this last body is also responsible for
Relatedparts	IAS 24 or other than the substitute	It has the meaning defined in the international accounting standards adopted under the terms of Community regulation
leadingcadres		People who are part of the top management, but do not belong to the bodies of society
InternalRegulation		A set of non-statutory provisions drawn up by the company's bodies or committees with a view to regulating, namely, aspects of its composition, organization and functioning.

Source: Adapted from Monteiro et al (2018); The emergence and future of corporate governance in Portugal. Commemorative volume of the 10th Anniversary of the Portuguese Institute of Corporate Governance

The general principle present in the code is found in chapter I and advocates the following “corporate government must promote and enhance the performance of companies, as well as the capital market, and consolidate the confidence of investors, workers and the public in general. in the quality and transparency of management and supervision and in the sustainable development of companies.”

Chapter II of the aforementioned code, which establishes the relationship between shareholders and the general meeting, defines three principles. The first mentions that “adequate involvement of shareholders in corporate governance constitutes a positive factor of corporate governance, as an instrument for the efficient functioning of society and for the achievement of the social purpose.”

The second principle concerns the need to promote the participation of shareholders in the general meeting, while the third principle concerns the right to vote, which must be promoted in person or by any other remote means including electronic and correspondence.

The third chapter of the aforementioned code addresses non-executive management and supervision. Three principles are also defined for this chapter. In the first, it is mentioned that “members of corporate bodies with non-executive management and supervisory functions must exercise, in an effective and judicious way, a supervisory role and challenge the executive management for the full realization of the social purpose, and such action must be complemented by commissions in core areas of corporate governance.”

The second principle concerns the need for the supervisory body and non-executive management to “provide society with a balanced and adequate diversity of skills, knowledge and professional experience. The third principle is associated with the need for inspection to be carried out from a preventive perspective.

The fourth chapter concerns executive management, establishing two principles: the first establishes that “as a way of increasing the efficiency and quality of the performance of the management body and the adequate flow of information to this body, the day-to-day management of the company must belong to executive directors with qualifications, skills and experience appropriate to the role.” The second principle refers to the number of administrators, which must depend on the costs, size, complexity and geographical dispersion of the activity.

The fifth chapter of the aforementioned code is associated with performance evaluation, remuneration and appointments. It establishes the following principle: “the company must promote the evaluation of the performance of the executive body and of its members individually and also of the overall performance of the management body and the specialized committees established within it.”

In the sixth chapter of the code, the principle is intended for risk management and advocates the following: “based on the medium and long-term strategy, the company should institute a risk management and control system and internal audit that allows for anticipating and minimize the risks inherent to the activity carried out.” Finally, in the seventh chapter dedicated to financial information, two principles are presented. The first states that “the supervisory body must, independently and diligently, ensure that the management body fulfills its responsibilities in choosing appropriate accounting policies and criteria and in establishing adequate systems for financial reporting, for risk management, internal control and internal audit.”

As a conclusion on this point, it should be noted that the protocol signed on 13 October 2017 between the CMVM and the IPCG provides for the CMVM's corporate governance code for the year beginning on 1 January 2018 (clause two) to apply and is consequently revoked.

The responsibility of the referred code definitively passes to the IPCG, this entity being responsible for its interpretation and application (third clause of the referred protocol).

III. Characteristics of banks and their impact on corporate governance

This point aims to present the main characteristics of banking institutions in Portugal and their relationship with corporate governance.

3.1- The banking financial system in Portugal

Regarding the current situation in Portugal, it is important to visualize what Banco de Portugal (central entity responsible for the banking system) understands by institution and banking system.

Banco de Portugal, on its website¹, defines a Bank as “A credit institution whose activity consists of carrying out financial operations and providing financial services, the most common of which are the granting of credit and the receipt of deposits from customers, which remunerates.”

The definition contained in Article 2 of the General Regime for Credit Institutions and Financial Companies (approved by Decree-Law n° 298/92, of December 31) goes a little further:

“1. are credit institutions companies whose activity consists of receiving deposits or other repayable funds from the public, in order to invest them on their own account through the granting of credit.

2. Credit institutions are also companies that have for the purpose of issuing means of payment in the form of electronic money.”

Financial intermediaries are institutions that seek to serve the needs of both savers and borrowers (investors). They also provide a variety of specific services that savers and investors value separately.

➤ Financial Intermediation

Financial intermediation is a productive activity in which banks and other financial institutions obtain funds in order to channel them to other institutional entities through loans, thus reallocating resources in the economy over time.

➤ Financial System Functions

Financial markets (bond and equity markets) and financial intermediaries (banks, insurance companies, pension funds) have the basic function of transferring funds and resources from those who have excess funds (savers) to those who have shortages of funds (investors).

As conditions for financial intermediation are established, surplus economic agents, whose income received is greater than their total expenditures, will be able to channel their cash available to deficit economic agents, whose total expenditure on consumption and investment is greater than their current earnings.

➤ Banks (Banking Institutions)

Banking institutions perform a set of specific functions, as participants in the financial markets, essentially taking into account the close contact that characterizes them with the different economic agents: companies, individuals and other entities. In this way, they unequivocally contribute to promoting savings, increasing consumption, financing investment and sharing risks.

IV. A case of failure of the control system

Banco Privado Português (BPP) was a bank founded by João Rendeiro in 1996. On July 24, 2009, Paulo Guichard and Salvador Fezas Vital, two former directors of BPP who were suspended by Banco de Portugal, joined João Rendeiro in the process of BPP case when defendants were constituted for being indicted for falsification of accounts, tax crimes and money laundering.

On April 15, 2010, the Portugal's bank, "after verifying the unfeasibility of the efforts to recapitalize and recover this institution", decreed the end of Banco Privado Português.

On October 11, 2010, it was reported that the Judiciary Police conducted searches of the homes of former BPP officials as part of an investigation into suspected money laundering and fraud.

¹<https://cliente bancario.bportugal.pt/pt-pt/glossario/b> accessed in May 2020

The three main directors of Banco Privado Português - João Manuel Oliveira Rendeiro, António Paulo Araújo Portugal de Guichard Alves and Salvador Pizarro Fezas Vital - received 6.4 million euros in 2008, the year in which the institution went bankrupt. João Rendeiro alone, former chairman of the board of directors, raised 2.8 million.

On June 5, 2015, the three defendants João Rendeiro, Paulo Guichard and Salvador Fezas Vital were acquitted of the crime of qualified scam.

On October 15, 2018, João Rendeiro was sentenced by the Lisbon Court to five years in prison with a suspended sentence. João Rendeiro, who will have to pay 400 thousand euros to an institution so that the penalty imposed is not effective, and four other former bank administrators were tried for having hidden the bank's loss in accounting. The crimes of computer forgery and document forgery were committed by the directors between 2002 and 2008. With these forgeries, the directors intended to hide from Banco de Portugal, the statutory auditor, the market and essentially from customers the losses that could jeopardize causes the places they occupied in the BPP, with the consequent loss of salaries, but also of power.

On July 10, 2020, the Lisbon Court of Appeal decided to sentence João Rendeiro to 5 years and 8 months in prison.

This chronology of events is based on press reports on this case.

Conclusion

The aim of this study was to understand the impact of the various characteristics of Corporate Governance on risk taking by banks in Portugal. We present a picture of the regulation. BPP case shows the urgency or debate need to turn this topic into obligation.

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