



Momentum

Finance and Governance

September 2009

THE PORTUGUESE “SAY ON PAY”

In the generous flow of recent legislation arising in response to the crisis, an area garnering increased attention is the reform of remuneration policies.

As it is commonly recognised, the general concern is to ensure that the level and structure of remuneration is consistent with the long-term performance of the company, and that the remuneration of directors aligns interests of directors and shareholders.

It is also desirable that rewards for managerial failure are, to the extent possible, avoided.

These are global concerns that were reinforced during the crisis, although generally in Portugal remuneration packages are more modest than in other comparable European countries. Nevertheless, according to the widespread *Zeitgeist*, it was felt as important that a reform be adopted in Portugal to address such a highly visible corporate governance topic.

A mandatory say-on-pay rule was the result, covering all members in supervisory and managing board roles in all public interest entities. This comprises a board range of firms - namely financial firms, listed firms, venture capital funds and pension funds.

Law 28/2009 required such companies to submit their remuneration policy for shareholder approval. The policy must describe: i) the mechanisms for alignment of interests between members of the corporate bodies and the company; ii) the criteria for variable remuneration; iii) the existence of stock-option plans; iv) the possibility of deferred compensation; and v) the mechanisms of remuneration limitation once financial results deteriorate considerably.

It could be said that the Portuguese say-on-pay rules are paradoxical. In fact, officially the legal intervention is aimed at giving shareholders more influence over determining directors' salary, although general Portuguese company law already gave shareholders direct or indirect power to establish directors' remuneration (article 399 of the Portuguese Companies Code).



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However, it is expected that the Law will considerably increase awareness in respect to the structure of remuneration of corporate bodies' members and will hopefully allow best practices to disseminate.

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