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# **The Float Guide**

How to float a company on the Lisbon Stock Exchange

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## **INTRODUCTION**

This guide provides an overview of the requirements to float a Portuguese company on the Lisbon Stock Exchange. It is a practical manual covering the relevant aspects of the admission to trading on a regulated market.

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## **EXECUTIVE SUMMARY**

### **Why float?**

Floating a company:

- allows it to raise new capital through equity;
- increases its liquidity;
- permits existing shareholders to sell and trade their shares in the market;
- gives the company greater credibility and visibility.

### **Does my company qualify?**

In Portugal, only public limited companies (with share capital divided by shares) (*sociedades anónimas*) can be floated.

The company must comply with several requirements set forth by the Portuguese Securities Market Commission (CMVM) and Euronext Lisbon.

### **What will it cost?**

The costs to consider may include the costs of incorporating the company as a public limited company, the costs of a potential public offer and the fees derived from the admission to trading, which will generate legal, financial and administrative costs.

Public limited companies which intend to be admitted to trading on the market must pay (i) an admission fee, (ii) a handling fee, (iii) an annual fee in order to keep the company listed and (iv) subsequent admission fees (in the case of floated companies which intends to have additional shares trading on the market).

Fees are paid to Euronext and are based on the market capitalisation of the company.

### **How long will it take?**

The timing will depend on whether the public limited company is already incorporated, on the existence of a public offer and on the complexity of the operation.

The Portuguese Securities Code provides that, after the submission of the issuer's application for listing, Euronext shall approve or reject the request within a maximum period of 90 days, with the decision being immediately notified to the applicant.

**Who is on the float team?**

The float team includes accountants, statutory auditors, consultants, lawyers and investment services providers.

**Is my company ready?**

In Portugal, only public limited companies with share capital divided by shares (*sociedades anónimas*) incorporated and structured in accordance with law can be admitted to trading on the Lisbon Stock Exchange.

The corporate and governance structure is also important, as is complying with the corporate and governance legal recommendations issued by the Portuguese Securities Market Commission.

**What goes in the prospectus?**

Pursuant to the Portuguese Securities Code, the prospectus shall contain complete, true, updated, clear, objective and lawful information; it must contain all the facts that investors need to make an informed assessment of the offer, the securities concerned and the rights attached thereto, its specific characteristics and the assets and liabilities, economic and financial position of the issuer or any guarantor and the prospects of the business and earnings of the issuer and any guarantor.

**What is due diligence?**

The due diligence process is a review and analysis of the company's records and information - legal, financial, commercial, environmental, tax and others. It is performed in order to minimize the risk of liability in a complex transaction like a public offer or admission to trading.

**Pricing of the float?**

In the case of a public offer, the issuer may conduct a market sounding of the investors' intentions prior to the announcement of a possible public offer, in order to determine the viability of such public offer, making it possible to establish a non-speculative market price.

**How will the float be marketed?**

Any information regarding the public offer of securities and their admission to trading must be true, complete, current, clear, objective and lawful. The Portuguese Securities

Market Commission sets forth several restrictions regarding the advertisement of this type of transaction.

**What are the regulatory requirements?**

There are several regulatory requirements in order for a company to be floated on the Lisbon Stock Exchange. The company must submit a request for admission to trading on a regulated market to Euronext after obtaining the obligatory approval of the prospectus by the CMVM. There are also several obligations to comply with after going public.

**Will existing shareholders be able to sell?**

Existing shareholders will be able to sell both at the time of the public offer and after the offer.

## 1. PREREQUISITES TO FLOATING

For a company to be listed on the Lisbon Stock Exchange it shall apply for its shares to be admitted to trading on the regulated market. In order to trade on such market, the company's shares must be held in public hands (i.e., free float), which can occur through a public offering. A prospectus approved by the competent authority is required.

In Portugal, companies wishing to be listed on the stock exchange must comply with several requirements of the Portuguese Securities Code ("**PSC**") (*Código dos Valores Mobiliários*) and regulations issued by the Portuguese Securities Market Commission ("**CMVM**") (*Comissão do Mercado dos Valores Mobiliários*) as well as Euronext Lisbon ("**Euronext**").

Euronext Lisbon, which is the official regulated market operating in Portugal (approved by Ministerial Order No. 556/2005 of 27 June), is managed by Euronext Lisbon Sociedade Gestora de Mercados Regulamentados, S.A. and is part of NYSE/EURONEXT, with representation in several European markets.

For a company in Portugal to become a listed company (*sociedade cotada*), it must (i) have the legal form of a public limited company (with the share capital divided by shares) open to public investment (*sociedade aberta*) and (ii) comply with the requirements for admission to trading on an official listed market, pursuant to the Portuguese Securities Code, the rules and regulations of CMVM and Euronext regulations.

### 1.1. Incorporation of a public limited company

In Portugal, only public limited companies can be listed on the stock exchange, therefore if a company intends to be admitted to trading on the Portuguese market, it must previously be incorporated as a public limited company and operate according to the rules of the Portuguese Companies Code ("**PCC**").

In Portugal, public limited companies have their share capital divided by shares, with each shareholder's liability limited to the value of the shares they subscribe. The company must be incorporated by at least five (5) shareholders (natural and/or legal persons).

The minimum share capital is EUR 50,000.00 with a minimum par value or issue value (if the shares have no nominal value) of EUR 0,01 per share.

The shareholders must draft and approve articles of association defining the rules of the company, e.g. company name, scope of business, equity and governance structure and rules, distribution of dividends, dissolution and winding up, amongst others. They must also apply to the Legal Persons Registry (*Registo Nacional de Pessoas Coletivas*) for approval of the company name and object.

The company's articles of association must, in particular, contain the following: (a) the par value, if applicable, and number of shares; (b) the particular conditions of the

assignment of shares (if any)<sup>1</sup>; (c) the classes of shares which may be created, expressly indicating the number of shares and the rights conferred by each class (if any); (d) the form of the shares (nominal or bearer) and the rules for any conversions thereof; (e) the amount of paid-up capital and deadlines for paying up subscribed capital; (f) authorisation for the issuance of bonds, if granted; and (g) the structure adopted for the management and supervision of the company.

The PCC sets forth specific rules regarding the incorporation of a company through a public offer for the subscription of shares. The company's founders are responsible for promoting the incorporation of the company through a public offer and the underwriters are those who will adhere to the company's project by subscribing the company's shares.

Companies are incorporated by means of a deed of incorporation signed by the shareholders as a private deed and certified by a notary or a lawyer. The incorporation of the company and the appointment of its statutory members must be registered with the Companies Registry within 60 days of the incorporation deed.

Shares can be admitted to trading after the definitive registration of the company's deed of incorporation.

In the event of a share capital increase, the shares are admitted to trading after the definitive registration of such increase.

## **1.2. Company resolution regarding the application for admission to trading**

As a general rule, the power to manage and conduct a company's business and to make ordinary business decisions is vested in the company's Board of Directors, although certain powers are reserved (either by law or by the company's articles of association) for the company's General Meeting of Shareholders.

The PCC does not provide specific provisions regarding which corporate body is authorised to pass resolutions on the admission to trading, although, if the company's articles of association do not provide otherwise, this may be considered a management decision and be vested in the company's Board of Directors.

In the event of a public offer, the resolution to place the company's share capital in public hands shall be passed by either the General Meeting of Shareholders or the Board of Directors (for a share capital increase, the rule is that the authority is vested in the General Meeting of Shareholders; however, the company's articles of association may establish that this competence is vested in the Board of Directors).

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<sup>1</sup> In the event of admission to trading, shares shall be freely transferable.



### **1.3. Requirements for admission to trading on the Lisbon Stock Exchange**

In order to be listed on the Lisbon Stock Exchange, the shares of public limited companies must be admitted to trading on a regulated market.

In Portugal there are currently three regulated markets authorized by Ministerial Order no. 556/2005 of 27 June, with Euronext Lisbon being the official trading market.

Any company that intends to be listed on the Euronext Lisbon official trading market must file its application for admission to trading with Euronext, which must approve it, and then prepare a prospectus subject to the approval of CMVM.

The application for admission to trading must be submitted to Euronext by the following applicants: (i) the issuer or (ii) the shareholders of, at least, 10% of the issued shares of the same class, if the issuer is already a public limited company (*sociedade aberta*)<sup>2</sup>.

Any issuer of shares admitted to trading on a regulated market must, at the moment it requests the admission, appoint a representative with sufficient powers for its relationships with the market and the CMVM.

#### **1.3.1. Issuer requirements for trading on regulated markets**

Public limited companies whose securities have been admitted or which have filed an application for admission to trading on Euronext are defined as issuers and must comply with the following requirements:

- a) be incorporated in accordance with its respective law;
- b) provide evidence that it has a financial and economic position compatible with the nature of the securities to be admitted to trading and the market where the admission is requested;
- c) have been carrying out business for at least three (3) years<sup>3</sup>;
- d) have disclosed, as provided by law, the management reports and annual accounts for the three (3) years prior to applying for admission to the official regulated market.

The CMVM may waive the requirements referred to in c) and d), when the interests of the issuer and investors so advise and when the requirement referred in b), on its own, allows investors to make a clear assessment of the issuer and its securities.

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<sup>2</sup> Minority shareholders right.

<sup>3</sup> A similar requirement is set forth by Euronext Rule Book I – Harmonised Rule Book and can also be waived by Euronext if it is in the interest of the issuer or the investor and if the issuer has made sufficient information available to enable investors to make an informed assessment of the assets and liabilities, financial position, profit and losses, and prospects of the issuer and of the rights attaching to the securities to be admitted to listing. In those cases, Euronext may subject the admission to listing to additional requirements in respect of market capitalisation, shareholders' equity and/or lock-up requirements, or any other condition at the time of the admission to listing.

Public limited companies with shares admitted to trading on regulated markets have several information disclosure obligations with Euronext and CMVM, subject to the supervision of the latter and to administrative fines when they do not comply with such obligations.

### 1.3.2. Requirements for shares to be traded on a regulated market

According to the PSC, only securities whose contents and form of representation are in accordance with its applicable law and which have already been, overall, issued in harmony with the prevailing law of the issuer may be admitted to listing.<sup>4</sup>

In Portugal, shares may only be admitted to trading on the regulated market when:

- a) it is possible to verify an adequate free float at the time of admission to trading; and
- b) a market capitalisation<sup>5</sup> of at least **EUR 1,000,000** (one million euros) is expected or, if the market capitalization is not able to be determined, the company's equity, including the financial result for the previous financial year, is at least **EUR 1,000,000** (one million euros).

An adequate free float is deemed to exist when the shares subject to the request of admission to trading are dispersed amongst the public in a proportion of, at least, **25%** of the share capital subscribed, represented by said class of shares or with a lower percentage, when, due to the high number of shares of the same class and the level of dispersion amongst the public, a regular functioning of the market is still ensured.

According to Euronext, however, this percentage must be no lower than **5 %** of the subscribed capital represented by the class of shares concerned and must represent a value of at least **EUR 5,000,000** (five million euros) calculated on the basis of the subscription price.

According to the PSC, shares can only be admitted to trading if they are fungible shares, freely transferable, fully paid and not subject to pledges or any other encumbrances.

For the purposes of trading on regulated markets fungible securities are those that belong to the same class, follow the same representation, are objectively subject to the same tax system and wherefrom no separate rights have emanated.

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<sup>4</sup> Euronext shall assess if the securities to be admitted to trading were issued under terms that allow admission to trading according to article 35 of Regulation (EC) no. 1287/2006 of the Commission of 10 August 2006.

<sup>5</sup> Market capitalization can be defined with regards to a particular security on a particular day: the price multiplied by the number of shares of that particular type at a certain period of time, subject to a maximum of the total number of securities of that type admitted to listing on a Euronext Securities Market.

Therefore it is not possible to trade shares which are not freely transferable and are subject to any transfer restriction clause, encumbrance or charge.<sup>6</sup>

### **1.3.3. Documentation required for admission to trading on regulated markets**

According to the Euronext Rule Book I at the time of the application, to the extent applicable, the documentation to be provided to Euronext includes but is not limited to:

- a) the application form duly signed by the issuer;
- b) the documents specified in the application form, in particular without limitation to documentation evidencing that: (i) the legal organisation of the issuer is in accordance with applicable laws and regulations; (ii) the administration of corporate events and the payment of dividends (if applicable) are ensured; and (iii) adequate procedures are available for the clearing and settlement of transactions in respect of the relevant shares;
- c) a copy of the **prospectus** prepared by the issuer in connection with the application to trading and each draft version of such prospectus;
- d) a copy of the minutes from the relevant corporate body or bodies containing resolutions authorising the application for admission to listing and issuance of shares;
- e) a statement from the issuer that it has filed or intends to file in the near future a similar application for listing of the relevant shares with another regulated or organised market (if any);
- f) the LEI code (Legal Identity Identifier, according to ISO 17442) of the Issuer.

According to the PSC and CMVM regulations, additional information shall be provided, including but not limited to:

- a) identification of the market relations representative, who shall be either a member of the issuer management body, a manager or a person discharging similar duties within the issuer, the linked financial intermediary or another financial intermediary;
- b) The identification of the paying agent that guarantees the payment of the equity rights inherent to the securities to be admitted and other amounts due;
- c) certified document issued by the competent Tax Authority indicating the issuer situation before the Tax Authority;
- d) certified document issued by the competent Social Security indicating the issuer situation before the Social Security.

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<sup>6</sup> Exception is made for the cases provided in article 35 of Regulation (EC) no. 1287/2006 of the Commission of 10 August 2006, which sets forth that securities which are subject to a restriction on their transfer shall not be deemed to be freely negotiable unless such restriction is not likely to disturb the market.

## 1.4. Prospectus

Public limited companies which intend to have their shares admitted to trading on a regulated market shall prepare and publish a prospectus subject to approval by the CMVM<sup>7</sup>.

In the case of a public offer of securities already admitted or expected to be admitted to trading on a regulated market located or functioning in Portugal or any other Member State of the European Union, a single prospectus satisfying the requirements of both may be approved and used.

There are several cases in which the prospectus is not required for admission to trading, such as:

- a) in the case of certain securities referred to in the PSC<sup>8</sup>;
- b) shares offered, allotted or to be allotted free of charge to existing shareholders, and dividends paid out in the form of shares of the same class as the shares in respect of which such dividends are paid, provided that the said shares are the same class as the shares already admitted to trading on the same regulated market and a document is made available containing information on the number and nature of the shares and the reasons for and details of the offer;
- c) securities that are offered, allotted or that are to be allotted to current or former board members or employees, by the employer, by a company in a control or group relation or by a company subject to common control provided the mentioned securities have the same class as those that have already been admitted to trading on the same regulated market and a document is made available containing information on the number and nature of the securities and the reasons for and details of the offer;
- d) shares representing, over a 12-month period, less than 10% of the number of shares of the same class already admitted to trading on the same regulated market;
- e) shares resulting from the conversion or exchange of other securities or from the exercise of rights conferred by other securities, provided that the said shares are of the same class as the shares already admitted to trading on the same regulated market;
- f) securities already admitted to trading on another regulated market provided that certain conditions set forth in the PSC have been complied.

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<sup>7</sup> The CMVM is the competent authority to approve prospectuses of issuers that have their registered offices in Portugal.

<sup>8</sup> For example: public offers for distribution of non-equity securities issued by a Member State or by one of a Member State's regional or local authorities and public offers for distribution of securities unconditionally and irrevocably guaranteed by a Member State or by one of a Member State's regional or local authorities.

### 1.5. Cost of floating

The costs to consider may include the costs of incorporating the company as a public limited company, the costs of a potential public offer and the admission to trading fees which will generate legal, financial and administrative costs.

Public limited companies which intend to be admitted to trading on the market shall pay (i) an **admission fee**, (ii) a **handling fee**, (iii) an **annual fee** in order to maintain the company listed and (iv) **subsequent admission fees** to be paid in case of floated companies which intend to have additional shares trading on the market.

Fees are paid to Euronext and are based on the market capitalisation of the company<sup>9</sup>.

According to Euronext, Fee Book issuers shall pay an admission fee at the moment the securities are admitted to trading on Euronext (even if conditionally).

The issuer shall pay Euronext a handling fee of EUR 10,000.00 in respect of standard actions (e.g. review of documents (prospectus, application form, corporate documents)) performed by Euronext in connection with an application for admission to trading; however, additional fees may be charged depending on the complexity of the operation.

According to the Euronext regulations, the initial admission fees to trade on Euronext Lisbon are between EUR 10,000.00 and EUR 2,000,000.00 depending on the company's market capitalisation.

### 1.6. Timing

The timing will depend on whether or not the public limited company is already incorporated, on the existence of a public offer and on the complexity of the operation.

The application for admission to trading may be submitted before all the necessary requirements have been met by the issuer, provided the issuer indicates to Euronext the foreseeable term and conditions for the completion of the application. Euronext and the issuer shall jointly agree on a timetable in respect of the admission to listing.

Prior to the decision regarding the admission to trading, Euronext shall send the CMVM a copy of the application for admission together with the documents required for approval of the prospectus. The CMVM's approval is always required prior to the decision regarding the admission to trading.

The PSC provides that after the issuer's filing of the application for admission to trading, Euronext has a maximum period of 90 days to approve or reject such application; the decision shall be immediately notified to the applicant. The decision period shall start from the date Euronext receives all the required documentation and information required.

Euronext shall issue a first notice in relation to the date on which the admission to trading shall become effective and any conditions and other particulars in respect of the admission

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<sup>9</sup> Please refer to footnote 5 above.

to trading of the relevant securities. Euronext may issue a subsequent notice in relation to the admission to listing confirming, among other points, that the conditions have been satisfied and the date on which the admission to listing shall become effective.

Euronext shall disclose its decision in respect of admission and notify it to the CMVM, identifying the securities admitted, describing their characteristics and the disclosure and consultation of the prospectus.

## **2. FLOAT TEAM**

Before the process of admission to trading and during a public offer the company will need a team responsible for the preparation of the prospectus and all the required information:

### **2.1. Accountants/auditors**

In the case of a public offer, the auditors are responsible for the preparation of the issuer's certified legal accounts and for the draft of the auditor's opinion.

During the process of admission to trading, the company's statutory auditor shall be responsible for preparing the company's certified financial statements for the preceding 3 financial years.

The statutory auditors are also liable for the information contained in the prospectus submitted for the approval of CMVM.

After the company goes public, the statutory auditors are responsible for compliance with several annual, biannual and quarterly disclosure information duties t.

The PSC sets forth that statutory auditors are unlimited and severally liable for the damages resulting from the auditor's report or opinion. Internal and external auditors are also liable to the company for actions or omissions in the performance of their functions.

### **2.2. Lawyers**

Lawyers are part of the float team and are responsible for the legal due diligence, preparation of the information contained in the prospectus, drafting of various sections of the prospectus for approval by the CMVM and preparation of the documents that must be filed with Euronext.

Lawyers can also assist in the incorporation of the company and reorganisation of its corporate and governance structure.

### 2.3. Investment Services Provider

In the event of a public offer, a **financial intermediary** shall be appointed in those cases where it is mandatory to prepare a prospectus, in order to provide assistance and placement services for distribution of securities. The financial intermediary is also liable for the information contained in the prospectus.

According to Euronext regulations, unless specifically provided otherwise, the issuer shall appoint a **listing agent** for the first admission to trading and for any subsequent admission to trading of securities requiring the approval of a prospectus.

Euronext shall specify by notice the requirements to appoint a listing agent and the tasks and the responsibilities of a listing agent. The requirement to appoint a listing agent does not impair the application of the provisions set forth by law regarding the appointment of financial intermediaries or other qualified entities in relation to a public offer or other offerings of securities.

### 2.4. Other experts

Other financial and communication advisors and consultants may be part of the floating team as well.

## 3. GETTING THE COMPANY READY

### 3.1. Public limited companies structure

As mentioned in **Section 1.1.**, in order for a company to be listed in Portugal, it shall be incorporated as a public limited company pursuant to the rules of the PCC and comply with certain corporate and governance rules.

In terms of corporate governance structure in Portugal, companies shall adopt one of the governance structures defined in the PCC, which means they cannot combine different types of structures (cherry picking), although they may have different combinations of the same defined structure.

A Share Company may adopt the following corporate governance models<sup>10</sup>:

- a. The Latin structure: composed of a board of directors (*conselho de administração*) and a supervisory board (*conselho fiscal*) or sole supervisor (*fiscal único*), appointed by the General Meeting of Shareholders.
- b. The dualist or German structure: composed of an executive board of directors (*conselho de administração executivo*), a general and

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<sup>10</sup> The articles of association may provide that a Share Company will have a sole director whenever the company's nominal share capital does not exceed EUR 200,000.00.

supervisory board (*conselho geral e de supervisão*) and a statutory auditor (*revisor oficial de contas*), elected by the General Meeting of Shareholders with the exception of the members of the executive board of directors who, as a rule, are appointed by the general and supervisory board, unless the articles of association set forth that the same are appointed by the General Meeting of Shareholders.

- c. The Anglo-Saxon structure: is composed of a board of directors (*conselho de administração*) that includes an audit board (*comissão de auditoria*) formed by non-executive members of the board of directors and an independent statutory auditor (*revisor oficial de contas*), all appointed by the General Meeting of Shareholders.

Notwithstanding the above, listed public limited companies are required to have a supervisory board and a separate independent statutory auditor (*revisor oficial de contas*).

The appointment of a company secretary (*secretário da sociedade*) is also mandatory for listed companies. The company secretary and his deputy shall be appointed by the shareholders in the act of incorporation or upon incorporation by the board of directors / executive board of directors.

Public limited companies which are or intend to be trading their shares on the market must comply with several duties, namely the preparation of a Corporate Governance Report describing the company's corporate and governance practices. The CMVM has therefore adopted several corporate and governance regulatory rules of a recommendatory nature which can be adopted by the issuers, although they may use a different corporate and governance code.

The issuer's declaration of commitment to a corporate governance code is mandatory<sup>11</sup>.

### **3.2. Classes of shares**

Companies' articles of association must set forth the number of shares representing its share capital and, if applicable, their par value and the different classes of shares (expressly indicating the number of shares and the rights granted by each class). Shares can be either ordinary shares or special shares.

Shares having the same rights form a class and different classes of shares are created when attributing special rights to their shareholders, such as voting rights, profit sharing or distribution of liquidation assets. Special rights are transferred with the shares to which those rights are attached and may not be revoked or limited without the consent of the shareholder, unless otherwise expressly provided by law or by an express provision in the articles of association.

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<sup>11</sup> There are several information duties regarding companies corporate governance structure and practices which are set forth by the PSC and detailed in **Section 10.1**.



The issuer shall apply for admission to listing of all its securities belonging to the same class that have been issued at the time of the application or proposed to be issued.

The issuer shall ensure that securities of the same class have identical rights in accordance with the provision set forth by law and the issuer's articles of association.

In of the event additional securities are issued in the same class as securities already admitted to trading, application for admission to trading of such additional securities shall be made (i) as soon as they are issued in the case of a public offer; and (ii) no later than ninety (90) days after their issuance in cases other than public offering.

In the event of a request for admission to trading of shares which belong to the same class as shares that are already listed, the adequacy of the free float should be assessed in view of the total number of listed shares.

## **4. THE PROSPECTUS**

### **4.1. Prospectus requirements**

During the process of admission to trading, Euronext shall send the CMVM a copy of the admission application together with the documents necessary for the CMVM's approval of the prospectus. In other words, prior to the admission to trading, the prospectus prepared by the issuer must be approved by CMVM.

#### **4.1.1. Prospectus content**

In the event of an application for admission to trading, the prospectus shall be subject to similar rules as those provided for the prospectus of a public offering.

The prospectus must contain the information provided in Directive 2003/71/EC of the European Parliament and of the Council, of 4 November 2003 (as amended), Commission Regulation (EC) No. 809/2004, of 29 April 2004 (as amended), and ESMA Guidance.

In the case of a public offering affecting securities already admitted or expected to be admitted to trading on a regulated market located or functioning in Portugal or in any other Member State of the European Community, a single prospectus may be approved and used.

The PSC provides that the prospectus must contain complete, true, updated, clear, objective and lawful information and all the facts investors need to make an informed assessment of the offer, the securities concerned and the rights attached thereto, its specific characteristics and the assets and liabilities, economic and financial position of the issuer or any guarantor and the perspectives for the business and earnings of the issuer and any guarantor.

The prospectus shall include, without limitation:

- a) a summary<sup>12</sup> that provides key information to investors concisely and in non-technical language, namely:
- i. identification of the persons liable for the information contained in the prospectus;
  - ii. a disclosure that should be included as an introduction to the prospectus, stating that any decision to invest in the securities should be based on information from the prospectus as a whole and that whenever a claim is presented in court pertaining to information contained in a prospectus, the investor may, following the national legislation of Member States, have to bear the costs of translating the prospectus before the legal proceedings are initiated.
  - iii. information which allows the investor to understand the risks associated with the issuer and shares to be offered /admitted to trading;
  - iv. a description regarding the nature and risk of the issuer, its guarantors (if applicable) including the assets, liabilities and financial position;
  - v. a description of the risks associated with and essential characteristics of the investment in the shares to be offered/admitted to trading, including any rights;
  - vi. the general conditions of the offer, including estimated expenses charged to the investor by the issuer;
  - vii. details on the admission to trading;
- b) general information regarding:
- i. the individuals responsible for the information contained in the prospectus;
  - ii. the issuer and its activity;
  - iii. the issuer's corporate governance structure.
  - iv. the name of the issuer's members and the offeror's governing bodies.

Additional information may be requested by the CMVM.

In the case of a public offer, in addition to the draft prospectus for the CMVM's approval, additional information must be provided, including, without limitation:

- i. resolution passed by the competent corporate body approving the public offer;
- ii. copy of the issuer's articles of association and commercial registry certificate;
- iii. copy of the management reports and annual accounts, the opinions of the supervisory bodies and the legal certification of the issuer's accounts for the last 3 financial years;

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<sup>12</sup> The format of the summary and the detailed content of the key information has to comply with Regulation (EC) No. 809/ 2004 of the Commission of 29 April.

- iv. auditor's report or statement;
- v. identification code of the offered securities that are the object of the offer (ISIN code);
- vi. copy of the agreement entered into with the financial intermediary assisting in the operation.

#### **4.1.2. Language**

The prospectus for admission of shares to trading shall be in Portuguese or in a language accepted by the CMVM or currently used in the international financial markets, with specific conditions set forth by the PSC. Moreover, the CMVM may require a translation into Portuguese of the summary of the prospectus.

#### **4.1.3. Approval**

The CMVM decides on the approval within 10 days, except in the case of issuers who have not previously made any public offer for distribution or admission to trading on a regulated market, in which case the deadline is 20 days.

#### **4.1.4. Publication**

The prospectus approved by the CMVM must be disclosed prior to the admission to trading and in the case of a public offer must be disclosed no later than the beginning of the public offer it concerns.

In the event of a public offer of a class of shares not yet admitted to trading on a regulated market and which is intended to be admitted to trading on a regulated market for the first time, the prospectus must be disclosed at least six (6) working days before the expiry of the offer period.

#### **4.1.5. Liability for the content of the prospectus**

There are specific rules in place regarding liability for the information contained in the prospectus in the case of admission to trading<sup>13</sup>. The PSC sets forth that in this case the persons liable for the information of the prospectus are (a) the issuer; (b) the members of the issuer's management body; (c) the members of the supervisory body, accounting firms, chartered accountants and any other individuals that have certified or, in any other way, verified the accounting documents on which the prospectus is based; and (d) any other entities that accept to be designated in the prospectus as responsible for any information, forecast or study included in the same.

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<sup>13</sup> In case of a public offer the financial intermediaries are also responsible as well as the promoters in case of a company incorporated through public offer.

However, liability is excluded if the abovementioned individuals prove they acted without fault or they prove that the investors knew or should have known that the information contained in the prospectus was incorrect or incomplete.

The issuer shall be responsible regardless of fault if the individuals referred in (b) and (c) are held responsible.

The referred individuals are severally liable for the damage caused (*responsabilidade solidária*).

The investor is entitled to claim compensation meant to restore the exact situation he would be in if, at the moment of acquisition or alienation of the securities, the contents of the prospectus had been in accordance with the provisions set forth by PSC.

In the case of admission to trading, the right to compensation should be exercised within the period of six (6) months from the knowledge of the misleading information in the prospectus or its amendment and termination, and in any case, two years counting from the disclosure of the prospectus or the amendment that contains the incorrect information.

#### **4.1.6. Administrative offences**

The disclosure of a public offer without a prospectus or the non-disclosure of a prospectus in case of admission to trading, respective amendments and rectification, or information necessary for their update without the approval of the CMVM are very serious offences carrying a fine between €25,000.00 and €5,000,000.00.

## **5. DUE DILIGENCE**

### **5.1. General**

In order for a company to be floated and prepare itself for a public offer, it is fundamental to perform a due diligence exercise consisting of an audit of the company's financial, commercial, legal, accounting and tax records, which provides an overview of the company's current situation in those matters.

Due diligence is usually conducted by the company (by its consultants, lawyers) or by the financial intermediary, especially in the case of an underwriting agreement by which the financial intermediary is obliged to acquire the securities that are the object of the public offer of distribution and place them at its own expense and risk in the terms and time period agreed with the issuer.

### **5.2. Why is a due diligence necessary?**

In cases of public offering and admission to trading, a due diligence is essential in order to minimize the risk of liability of the company and its governing bodies that are

responsible for the documents and information filed together with the company's application for admission to trading or, in the case of a public offer, namely for the information contained in the prospectus, and it is necessary so that the company can ensure that all the documentation and information required is gathered and submitted to the competent authorities.

### **5.3. Types of due diligence**

Depending on the company's activity and scope of business, the following due diligence exercises can be performed:

- Commercial due diligence
- Financial due diligence
- Legal due diligence
- Employment due diligence
- Environmental due diligence
- Technical due diligence

### **5.4. Scope of the due diligence**

The due diligence will have the scope indicated by the company (and described in the prospectus) and shall involve the areas which are crucial to the company in order to comply with its obligations vis-a-vis the competent authorities in order to proceed to the public offering or be admitted to trading.

### **5.5. Performing the due diligence**

Due diligence is usually an analysis performed by the company's lawyers and consultants, who analyse and review the information and documentation made available by the company by physical or virtual means (*data rooms*).

The due diligence concludes with a report issued by the company's lawyers and consultants regarding their analysis of the information provided and indicating any relevant contingencies or material issues linked to the information and documentation provided by the company. Due diligence reports can also include further actions or investigation necessary to clarify the issues and matters identified during the performance of the due diligence.

## **6. PRICING**

### **6.1. Book building**

In the event of a public offer, the issuer may perform a market sounding of the investors' intentions prior to the announcement of a public offer, in order to determine the viability of a possible public offer for distribution. This allows it to establish a non speculative market price and determine the quantity of securities to be offered and adjust it to demand. The market sounding can only be initiated after the disclosure of a preliminary prospectus and is subject to the rules of the PSC and CMVM regulations. It is performed by the financial intermediary.

Market soundings are purely consultative in nature and may not serve as a means of entering into contracts.

According to CMVM Regulation no. 3/2006, during the offer period or the market sounding process, financial intermediaries that receive orders or intentions to invest shall send the representative of the issuer (and offeror) daily information on the declarations received, indicating the overall quantity of the corresponding securities and a quantified breakdown identifying the class of securities and class of investors.

The issuer's representative must supply the CMVM with any information requested on the evolution of the offer acceptances. If the interests of investors or the market so advise, the CMVM may impose public disclosure of any information transmitted.

If the preliminary prospectus contains complete, true, updated, objective and licit information on the conditions in which the offer may be launched, CMVM may authorise the automatic conversion of intentions to invest into orders on the 5th day before expiry of the offer period.

Intentions to invest may be freely changed during the period of market sounding and investors may revoke any expressed intentions to invest up to the expiry period of the market sounding or the 5th day before expiry of the public offer period subsequent thereto, provided the intention is convertible into an order.

## **7. MARKETING THE FLOAT**

According to the PSC, information regarding the public offer of securities and their admission to trading must be true, complete, current, clear, objective and lawful. Directive (EC) no. 2003/71/CE of the European Parliament and of the Council provides that the obligations regarding advertisements shall apply to information regarding public offers and admission to trading.

Notwithstanding the above, the advertisement of a public offer shall (a) make reference to the existence or future availability of a prospectus and indicate the ways to access the same and (b) must be consistent with the information contained in the prospectus.

All the advertisement material related to the public offer is subject to prior approval by the CMVM and may create civil liability for losses resulting from the information contained in the prospectus.

When the CMVM, following its preliminary examination of the application for approval, considers the approval of the prospectus or registration of the offer to be viable, it may authorise advertising prior to approval of the prospectus or registration, as long as this does not disturb investors or the market.

## **8. LISTING DECISION**

In order to be floated on the Lisbon Stock Exchange, the company must prepare a prospectus to be approved by the CMVM and submit an application for admission, which is subject to the approval of Euronext.

### **8.1. Admission to trading**

The application for admission must comply with several requirements set forth by the CMVM and Euronext and certain information and documentation must be submitted (as described non-exhaustively in **Section 1.1.3**). Regarding the timing of the decision, please refer to **Section 1.6**.

Prior to the decision on admission to trading, the prospectus must be approved by the CMVM.

According to the PSC, in the case of a public offer of securities, the float shall become effective after completion of the subscription period. Euronext may authorise business deals on securities, issued or to be issued, object of public offer for distribution to which the application for admission relates, in a short time period prior to the admission on the market, provided that it is subject to the condition that the admission becomes effective.

### **8.2. Refusal of application for admission to trading**

The PSC sets forth that the admission to trading can only be refused if:

- a) the legal and regulatory requirements are not fulfilled;
- b) the issuer has not complied with the obligations to which he is subject in other markets, located or operating in Portugal or abroad, where the securities are listed.
- c) it is not advisable to proceed with the admission, given the interests of investors and in view of the issuer's situation.

Euronext shall notify the issuer of its decision in order to proceed to the necessary amendments or corrections.

The admission is considered refused if the decision is not notified to the issuer within ninety (90) days following the admission request.

Euronext regulations additionally set forth other grounds for refusal, including: (a) if admission to listing of the securities may be detrimental to the fair, orderly and efficient operation of the Euronext securities market or to the reputation of Euronext as a whole; or the fact that (b) the issuer, any of its board members (including supervisory board members) or its beneficial owners are on the EU Sanction List or on the Office of Foreign Assets Control's list (OFAC).

### **8.3. Delisting**

Companies can be delisted from the Lisbon Stock Exchange in case of (a) acquisition for the purpose of total control or (b) loss of the status of public limited company (*sociedade aberta*).

## **9. OFFER PERIOD**

### **9.1. Launching an offer**

The announcement of the offer depends on CMVM's approval of the prospectus. As mentioned above, if the issuer (and offeror) intends to apply for admission to trading, it is possible to have a single prospectus.

The public offer starts with a resolution by the competent corporate body of the company regarding the number of shares to be offered, the addressees of the offer, the price of the offer, the possibility of book building and the intention of applying for admission to trading on the market.

Prospectuses are approved within 10 days, except in the case of issuers who have not previously made any public offer for distribution or admission to trading on a regulated market, in which case the deadline is 20 days.

The deadlines for the approval shall begin as from the date of reception of the request for approval or as from the request of complementary information.

The prospectus approval can be refused only if any of the documents used in the preparation of the request are false or are not consistent with the legal or regulatory requirements.

The prospectus is valid for a period of twelve (12) months as from the date of its approval, within this period the offeror shall launch the public offer by disclosing the prospectus making it available by the means set forth in the PSC.

According to the PSC the offer period shall be determined by the issuer in accordance with its characteristics, in defense of the investors' and issuer's interests and the market's operating requirements.



During the offer the investors may issue its acceptance declarations by means of an order addressed to the financial intermediary. The declaration of acceptance may be revoked by means of a communication to the financial intermediary, received up to five (5) days before the offer's expiration deadline or within a shorter term if stated in the offer documentation.

At the end of the offer's period, the offer's results are immediately assessed and published by the financial intermediary that collects all the offer acceptances issued by the investors or in a special regulated market session.

## **9.2. Offer modifications and revocation**

In case of a substantial change of the circumstances which determined the decision to launch the offer it is possible to modify the terms or revoke it.

The declarations of acceptance of the offer by the investors prior to modification of offer are considered effective for the modified offer.

The offer can also be modified by CMVM upon request of the offeror being this modification subject to disclosure.

CMVM shall, as the case may be, order the withdrawal of the offer or prohibit its launch if the offer is illegal or breaches any regulation. Decisions on withdrawal or prohibition shall be published by the CMVM, at the expense of the offeror.

If any incorrectness is detected or a previous or new fact not considered in the prospectus which might be relevant to the investors' decision is verified, the CMVM's approval shall be immediately requested for the addendum or amendment to the prospectus.

Investors who have accepted the offer before the disclosure of the addendum or amendment have the right to withdraw their acceptance within at least two (2) working days after the disclosure of the addendum or amendment provided that the incorrectness or the fact not considered in the previous prospectus is detected, known or occurred before the end date of the offer and delivery of the securities.

## **9.3. Admission to trading request**

If the issuer intends to launch a public offer and request for admission to trading on a regulated market, the investors may terminate the acquisition transaction if the admission to listing has not been requested for until the assessment of the offer's result or if the admission is refused based on a fact triggered by the issuer, offeror, financial intermediary or those which hold voting rights considered in the calculation of a qualified shareholding.

## 10. BEING PUBLIC

As aforementioned a public limited company with shares admitted to trading on a regulated market (*sociedade cotada*) is also a company which share capital is open to public investment (*sociedade aberta*).

Public limited companies have several different obligations set forth by the PSC and regulations issued by CMVM and Euronext.

### 10.1. Legal information

In general, a public limited company has to comply with several obligations which are set forth by the PSC and CMVM regulation (such as CMVM Regulation no. 5/2008 (as amended) and Euronext regulation, including, but not limited to the following:

- the status of public limited company should be mentioned in acts classified as external acts by the PCC;
- a public limited company should ensure equal treatment of the shareholders;
- communication and disclosure duties regarding qualifying holdings and voting rights;
- disclosure of its shareholders' agreements;
- information disclosure duties regarding management report and annual accounts, financial information, increase and reduction of share capital, remuneration of the corporate bodies and others;
- composition of the company's management and supervisory body;
- compliance with the specific rules regarding the control and group relationships of public companies;
- compliance with the specific rules regarding the corporate resolutions of the public limited company without prejudice of the general rules set forth in the PCC;
- compliance with a specific regime regarding the acquisition and loss of the status of public limited company (*sociedade aberta*) according to the rules of the PSC.

Once a public limited company is floated on the Lisbon Stock Exchange there are several specific obligations, including but not limited to:

<b>Publication of certified financial statements</b>	Disclose within four (4) months from the close of the financial year and make publicly available for at least ten (10) years, the following: <ul style="list-style-type: none"><li>i. the management report, the annual accounts, the audit report and other accounting documents required by law or regulation, even though same has not yet been submitted for approval at the General Meeting;</li></ul>
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- ii. the auditor's report;
- iii. statements from each of the responsible persons of the issuer, whose names and positions should be clearly indicated, declaring that to the best of their knowledge, the information envisaged in (i) above 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, contains a description of the principal existing risks.

**Publication of annual corporate and governance report**

Attached to the annual management report a report regarding the company's corporate and governance structure and practices with the following information shall be disclosed:

- i. the structure of the company's share capital, including shares which are not admitted to trading, with an indication of the different class of shares and, for each class of shares, the rights and obligations attaching to it and the percentage of share capital that 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. qualifying 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 attaching to securities are separated from the holding of securities;

- vii. shareholders' agreements among shareholders 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 a party and in are in force, which can be amended or terminated terminate upon a change of control of the company following a takeover bid, except if the disclosure of this agreements can be seriously prejudicial 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 in case of resignation, dismissal without just cause, or termination of labor contracts due to a takeover bid;
- xii. information on the internal control and risk management systems implemented in the company regarding disclosure of financial information.
- xiii. statement regarding the compliance with statement to which the issuer's Corporate and Governance Code imposed by law or regulatory provision.
- xiv. statement of compliance with a Corporate and Governance Code which the issuer is voluntarily subject to.

- xv. location where is available to the public the Corporate and Governance Code to which the issuer is subject to;
- xvi. content and description of the way the issuer's corporate bodies' function as well as the committees created therein.

**Publication of half-year financial statements** Disclose no later than (3) months of the end of the first semester of the financial year and make publicly available for at least ten (10) years, the following information:

- i. the condensed set of financial statements;
- ii. an interim management report (including at least an indication of the important events that have occurred during the said period, and the impact on the respective financial statements, together with a description of the principal risks and uncertainties for the remaining six (6) months);
- iii. statements by the persons responsible within the issuer, whose names and functions shall be clearly indicated, declaring that to the best of their knowledge, the information envisaged in sub-paragraph i) above 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 information required.

Special rules are provided regarding issuers required to prepare consolidated accounts.

**Publication of quarterly information and interim information** Issuers may disclose quarterly information, being mandatory in case of financial institutions. According to CMVM Regulation no. 5/2008 (as amended) the referred issuers shall disclose no later than two (2) months after the ending of Q1 Q3 and eventually Q5 of each financial year the minimal information set forth in the rules of IAS 34.

**Disclosure of inside information** Inside information is defined as any information regarding a set of circumstances which exists or may reasonably be expected to come into existence, regardless of its degree of materialisation, which a reasonable investor would be likely to entirely or partially use as a basis for his investment decisions, since it would be likely to have a significant effect on the prices of securities or financial instruments.

Any issuers which have securities admitted to trading on a regulated market or have requested their admission to such a market must promptly disclose:

- a) any information that directly concerns them or the securities issued by them which is of a precise nature and has not been made public and, if it were made public, would be likely to have a significant effect on the prices of such securities, their underlying instruments or related derivatives;
- b) any significant changes concerning information publicly disclosed in the terms of the preceding paragraph, through the same channel as that used for public disclosure of the original information.

Without prejudice of the existence of criminal liability, any natural or legal person that holds information with the referred characteristics shall be prohibited from disclosing such information to any other person before the same is publicly disclosed, unless such disclosure is made in the normal course of the exercise of his employment, profession or duties.

CMVM has special regulation on the disclosure of inside trading information.

**Disclosure of other relevant information** The issuer shall send to CMVM and to Euronext the following information:

- a) draft of the amendments to the company's articles of association until the date of the notice to convene the authorised company body to approve the referred amendments;
- b) extract of the minutes containing the resolution regarding the amendment of the company's articles of association within the fifteen (15) days following the resolution.

The issuer shall disclose the following information to the public:

- a) notices to convene the general and special meeting of shareholders holding shares admitted to trading in the regulated market, as well as requests for inclusion of items in the meeting's agenda, and proposals submitted to the resolution of the shareholders.
- b) amendments, attribution, payments or exercise of any rights related to the securities admitted to trading or shares which grant such rights, including the applicable procedures and financial institution through which the shareholders may exercise the respective economic rights.
- c) amendment to the rights of bondholders resulting, namely, from the change of the terms of a loan agreement or interest rate;
- d) issue of shares and bonds, indicating their privileges and guarantees, including information regarding the procedure of attribution, subscription, canceling, conversion, trade or reimbursement;
- e) amendments to the requirements that have been requested for the securities to be admitted to trading;
- f) acquisition and disposal of own shares whenever as a result thereof the proportion of same exceeds or falls below the thresholds of 5 % and 10 %;

- g) resolutions of the general meeting of shareholders regarding the annual accounts documents.

## **11. CONCLUSION**

This guide provides an overview of the necessary requirements to in order to float a Portuguese company in the Lisbon Stock Exchange. This process is very complex and there are several regulatory obligations to comply with prior to the admission to trading and after such admission.

## **DISCLAIMER**

**This guide is general and does not constitute legal advice on any particular float. Anyone involved in a float should seek specific legal advice. This guide reflects the provisions set forth by law as at April 2017.**