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# Update

## Finance and Governance

October 2020

### Portuguese Securities Market Exchange Commission's Guidelines on the Suitability of Regulated Functions and Qualified Shareholders

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On the 9<sup>th</sup> of September, **the Portuguese Securities Market Exchange Commission ("CMVM") published its Guidelines on the Suitability of Regulated Functions and Qualified Shareholders.**

The CMVM had already highlighted the Guidelines as one of its priorities for 2020, considering the severe financial turmoil that Portugal endured not so long ago and the confidence crisis it currently withstands.

**These Guidelines are the result of the Consultation Process no. 1/2020**, which took place in the first half on the current year. The final document has benefited from contributions from several stakeholders, including the Portuguese Listed Companies' Association (*Associação de Empresas Emitentes de Valores Cotados em Mercados - AEM*), the Portuguese Association of Investment Funds, Pension Funds and Assets (*Associação Portuguesa de Fundos de Investimento, Pensões e Património - APFIPP*), the Portuguese Central Bank, the Portuguese Certified Auditors Bar (*Ordem dos Revisores Oficiais de Contas*) and the Portuguese Institute of Corporate Governance (*Instituto Português de Corporate Governance - IPCG*).

#### Main features

According to the CMVM, the **Guidelines are meant to be a procedural guide built to enable the supervisor to undertake its suitability assessment task**, using a set of common guiding principles that will enable CMVM to draw conclusions upon undertaking a rigorous, proportionate and harmonized assessment.

**The Guidelines intend to define assessment and suitability procedures not only based on objective and autonomous facts and circumstances, but also granting a certain level of flexibility and discretion to the CMVM on its task to conclude for a positive suitability assessment or a negative suitability assessment of a specific candidate.**

For now, the Guidelines only apply to candidates that wish to take a position or to acquire a qualified holding at any of the entities listed in Section A. of the Appendix I of the Guidelines (which include not only self-managed collective investment undertakings, venture capital funds, securitization vehicles or their respective management entities, but also social entrepreneurship companies, crowdfunding platform managers, independent investment advisors and auditors). At a later stage, CMVM intends to

apply the Guidelines to all entities listed in Section B. of its Appendix I (listed markets' and multilateral trading facilities' management companies, central counterparties, properties' appraisals experts, etc.)

**As part of its suitability assessment, CMVM appears to grant prevalence to the conduct requirement, highlighting its applicability to all candidates of all regulated entities, irrespective of any proportionality standards.** Close behind – but taking into consideration the type of candidate on a case-by-case basis – the CMVM considers other criteria such as availability, experience and independence.

CMVM shall notably:

- (i) In terms of **conduct**, assess if the candidate can undertake the regulated position's responsibilities based on his/her personality, behavioural characteristics, *modus operandi*, his/her personal, financial and professional conditions;
- (ii) On **experience**, confirm, considering the candidate's educational and professional path – and based not only on practical, but also on theoretical experience – if s/he has enough up-to-date and sound know-how on the market sector, the entity's business model and the activity's risks and the responsibilities that s/he seems to be ready to take on;
- (iii) As to **availability**, check if the candidate can dedicate enough time to the effective performance of its intended duties, not only under normal conditions, but also if and when facing exceptional circumstances;
- (iv) As for **independence**, measure if the candidate is likely to be swayed by its own interests or third parties' interests taking into consideration his/her current or past personal, professional, financial or political connections or affiliations.

As for **the suitability assessment regarding a prospective qualified shareholder**, it intends to confirm a reference shareholder's suitability to promote, in such capacity, a prudent and sound management of the regulated entity. To assess this purpose, the CMVM shall analyse the candidate's conduct and experience on other entities that can be compared to the one s/he wishes to become a qualified shareholder not only as reference shareholder or a qualified holder, but also as a manager or director therein. Moreover, the CMVM shall assess the financial soundness of the candidate, further to leading a transparent conduct and having respect for compliance with relevant rules and regulations.

### **Suitability Assessment Procedure**

The CMVM's Guidelines state that **the candidate and concerned parties** (i.e. the regulated entities) **must undertake a suitability's self-assessment under the most rigorous, comprehensive and serious criteria**. If that self-assessment is positive, the candidate and/or the concerned parties must send such self-assessment to the CMVM, along with the elements referred to in the Guidelines (suitability assessment questionnaire, criminal records, collective assessment matrix, etc.). Based on what it has received and what else comes to its knowledge, the CMVM will then issue a positive suitability judgement or a negative suitability judgement.

The Guidelines also prescribe the ongoing assessment of candidates and set a deadline of five (5) business days for the candidate and/or the concerned parties to report to the CMVM any subsequent change to an element previously provided that may impact on the suitability judgement that was previously granted.

## Effects

The Guidelines **became effective on the last 9th of September. The CMVM has published that the Guidelines are applicable not only to new suitability assessment procedures, but also to procedures that are currently pending** at the supervisor but have yet to be decided.