

REAL ESTATE INVESTMENT FUNDS UNDER CORPORATE FORM

Decree-Law 71/2010, 18 June implemented into Portuguese law the incorporation of collective investment organizations (“OIC”) and real estate investment funds (“FII”) under corporate form named securities investment companies (“SIM”) and real estate investment companies (hereinafter “SIIMO”). In this briefing we will only refer to SIIMOs.

The abovementioned Decree-Law amended Decree-Law 60/2002, 20 March, rules the incorporation and operation of FIIs and SIIMOs.

Therefore SIIMOs are added to the open-end and closed-end real estate investment funds which can be fixed share capital real estate companies (“SICAFI”) following the regime of closed-end real estate funds and variable share capital real estate companies (“SICAVI”) following the regime of open-end real estate funds, unless otherwise stated.

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with legal capacity*

Unlike FIIs, SIIMOs comprise collective investment institutions with legal capacity incorporated as public limited companies, whose assets are held as property and managed under fiduciary duties, directly or by an independent third entity in the sole interest of the shareholders. Under the terms of the abovementioned legislation, and contrary to FIIs, SIIMOs might be self-managed or hetero-managed, depending on whether or not a third entity is appointed to manage the investment company. This possibility of being self-managed is one of the main advantages of this new regime, as it allows the investors a greater involvement in a company’s operation and management without requiring the intervention of a management entity. On the other hand, it is still possible to have a management entity, as long as the same is duly authorized by the Bank of Portugal (“Banco de Portugal”). Unless otherwise provided for in Decree-Law



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60/2002, SIIMOs are governed by the Portuguese Companies Code, notably in what concerns the appointment of the corporate bodies, accounts, distribution of profits, changes to the share capital and the merger and spin off of companies. It should, however, be pointed out that, despite the fact that the companies that comprise SIIMOs are financial intermediaries, the Portuguese Securities Code regarding open-end companies does not apply.

The minimum initial share capital of a SIIMO is 375,000.00 Euros, represented by nominative shares without nominal value, (not participation units as in the case of the FII), and, their global net value may not fall below 5,000,000.00 Euros. The directors are liable to abide by this threshold. The equity of a self-managed SIIMO may not fall below the following percentages concerning the estate they manage:

- (i) up to 75 million Euros – 0.5%;
- (ii) any amount above the referred amount – 0.1%.

As previously mentioned, the rule is that the SICAFIs are governed by the regime of closed-end funds and SICAVIs by the open-end funds, therefore the share capital of SICAVIs corresponds, at each moment to the net value of its estate, changing with the subscriptions and redemptions that may occur; while the SICAFIs share capital is defined at the time the company is incorporated with possible modifications due to changes in the share capital.

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The tax system applicable to SIIMOs is provided by Law nº 3-B/2010, 28 April, (State Budget Law of 2010) which reverts to article 22 of Decree-Law 251/89, 1 July, (Statute of Tax Benefits – “EBF”), that states that SIIMOs are still subject to corporate income tax. Concerning the real estate owned by SIIMOs, the following distinction is provided by article 49 of EBF:

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- (i) Real estate owned by SICAVIs benefits from the exemption of municipal tax on the transfer of real estate (IMT) and from municipal tax on real estate (IMI);
- (ii) Real estate owned by SICAFIs does not benefit from the aforementioned exemption under the terms of State Budget Law for 2010, which revokes the partial exemption of IMT and IMI owned by balanced and closed-end subscription funds, by non-qualified investors or by financial institutions on their account.

Regarding supervision, the incorporation of a SIIMO and any changes to the agreements between SIIMOs and the depositary and/or the marketing entities require the prior authorization of the Securities Market Commission (“CMVM”).

Similarly to funds SIIMOs are required to have a management regulation subject to the CMVM’s approval.

In brief, the referred decree-law intends to provide the market with a new device to capture savings at a national level different from investment funds, notably in what concerns self-management.

Contacto
Filipa Arantes Pedroso | fapedroso@mlgts.pt

MORAIS LEITÃO, GALVÃO TELES, SOARES DA SILVA

ASSOCIADOS
SOCIEDADE DE
ADVOGADOS

www.mlgts.pt

LISBON

Rua Castilho, 165
1070-050 Lisbon
Telephone: (+351) 213 817 400
Fax: (+351) 213 817 499
mlgtslisboa@mlgts.pt

OPORTO

Av. da Boavista, 3265 - 5.2
Edifício Oceanvs – 4100-137 Oporto
Telephone: (+351) 226 166 950
Fax: (+351) 226 163 810
mlgtsporto@mlgts.pt

MADEIRA

Avenida Arriaga, Edifício Marina Club, 73, 2º
Sala 212 – 9000-060 Funchal
Telephone: (+351) 291 200 040
Fax: (+351) 291 200 049
mlgtsmadeira@mlgts.pt

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LEX MUNDI
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Mattos Filho, Veiga Filho,
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