

PUBLIC  
LAW

## NOVELTIES IN THE LOCAL BUSINESS SECTOR REGIME

In the past day of November 15, Law 55/2011 was published, **altering, for the third time, the “Regime Jurídico do Sector Empresarial Local (RJSEL)” (Local Business Sector Regime)**. Law 53.º-F/2006, 29 December, which had approved this regime, had already been altered by Law 67-A/2007, 31 December (State Budget for 2008) and Law 64-A/2008, 31 December (State Budget for 2009).

This change has **two main goals**: on the one hand, to i) **suspend the creation of new municipal, intermunicipal or metropolitan enterprises and the acquisition of stakes by such type of enterprises** and, on the other hand, ii) **to increase the information and transparency obligations in the Local Business Sector**.

Regarding the first goal, the **new law suspends the possibility of the municipalities, as well as municipal associations and the metropolitan areas of Lisbon and Oporto to create or purchase stakes in companies**. Only exceptionally may the competent bodies determine the fusion of two or more entities of the Local Business Sector or the acquisition of stakes in companies with a majority of public capital existing as of November 16 of the current year. **This law also suspends the possibility of entities belonging to the Local Business Sector to incorporate or acquire any stakes in companies**.

**As for the goal of enhancing the information and transparency duties in the Local Business Sector**, we underline the following novelties:

- First, concerning enterprises' information duties towards the municipal council, the board council of the municipal association or the metropolitan union, depending on the case, the new law now obligates the **disclosure of the annual and pluriannual investment plans as well as the respective financing sources** (article no. 27.1, c)).
- Second, this legislative change also embraces **new duties of information for municipalities, municipal associations and metropolitan areas towards DGAL**

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(“Direcção-Geral das Autarquias Locais”), in various areas priorly uncommitted to the obligation of information (e.g. in case of incorporation and change of by-laws, according to articles no. 8.5 and no. 33.5).

- Third, **each and every decision of acquisition of stakes** (and not only the acquisition that results in a dominant influence) **must now be approved by the municipal, intermunicipal or metropolitan assembly**, according to the type of company - municipal, intermunicipal or metropolitan (article no. 8.1).
- Fourth, **municipalities, municipalities’ associations and metropolitan areas are now obliged to provide institutional and financial information to DGAL about the companies they hold or participate in** (article no. 27.3 and 4).
- Fifth, **the breach of such obligation before DGAL**, as well as the disrespect for the respective deadlines, **may determine the withholding of 10% of the duodecimal of the current transfers from the FGM** (“Fundo Geral Municipal”), as long as the infringement lasts. Relapse determines the raise of this percentage to 20% (article no. 27.5 and 6).
- Sixth, **these companies must provide the municipalities the required information** for the latter to comply with the information duties stated in the RJSEL, **or they may face immediate dissolution of the respective administration bodies and their members may be held responsible for the payment of a compensation** (article no. 27.2).
- Finally, **this Law introduces a duty for companies to have permanently updated web pages containing certain information**, for example, the identity of the corporate bodies’ members and their curriculum, the annual budget or the stakes held (article no 27.A).

**Aiming for transparency in the Local Business Sector**, this regime also introduced the following innovations:

**In what concerns the local manager’s statute, Law 55/2011 widens prior existing restrictions.** On one hand, those who work in the municipal council cannot simultaneously carry out paid functions, at any title, in any municipal,

*Increase of the information  
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intermunicipal or metropolitan companies, as well as in municipal participated companies. On the other hand, the prohibition of simultaneous mandates in the municipal assembly and in the exercise of functions in municipal, intermunicipal and metropolitan companies held or participated by the municipality in which it was elected, is also applicable when those functions are non executive ones. In the previous regime, the incompatibility was only deemed as existing in executive functions.

Law 55/2011 entered into force in the past November 16.

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