NEW RULES IN THE PORTUGUESE COMPANIES CODE I

PORTUGUESE LAW LINES UP WITH INTERNATIONAL VENTURE CAPITAL BEST PRACTICES

CORPORATE AND COMMERCIAL

The recent review of the Portuguese Companies Code ("PCC") – which entered into force on March, 2nd, 2015 – introduced new provisions with regards to the issuing shares and bonds intending to promote appealing alternatives to traditional bank financing, notably venture financing and capital markets.

It is now expressly provided the possibility to issue participating preferred shares (with or without voting rights), and the issuance of bonds with convertible features – among other matters.

The changes introduced provide greater flexibility and clarification to such regimes, which are now more in line with international best practices, notably with practices commonly used in the venture capital arena, and friendlier to start-up financing techniques.

Preferred Shares with no Voting Rights

Preferred shares with no voting rights are shares which have all rights typically attached to common shares with the advantage of granting a priority dividend as well as a preference in a liquidation scenario at the cost of not having voting rights.

It was common practice before and it is now clear that the holders of preferred shares, in addition to the priority dividend, may further participate on distributions on par with other shareholders (participating preference). Also, on a liquidation scenario, they may rank senior to common shareholders (liquidation preference). The company's by-laws are therefore now expressly authorized to grant a "double dip" participation preference and the company is under general obligation (subject to specific performance) to pay the priority dividends, as long as there are distributable profits.

Pursuant to the amendments, the company's by-laws may allow for this type of shares to grant a priority dividend of no less than 1% of the nominal value (or of its issuing value minus any share premium), in contrast with the previously established 5%.

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Moreover, the changes introduced to the PCC create specific rules for shares subscribed exclusively by qualified investors, as defined under the Portuguese Securities Code ("PSC"), provided the shares are not admitted to trading on a regulated market. For the qualified investors the "double dip" participation preference is granted by default, unless the company's by-laws expressly establish otherwise. The company's by-laws may also determine other different features for preferred shares subscribed by qualified investors, notably: *(i)* change the regime with regards to the non-payment of the dividend in a given financial year; *(ii)* determine the loss of the priority dividend in case there are no distributable dividends (non-cumulative dividends); *(iii)* determine the conversion of the preferred shares into common shares (under the conditions determined in the issuing – convertible preferred shares), in case of decline of the company's financial situation that hinders the payment of priority dividend; and *(iv)* provide a different number of financial years of unpaid priority dividends before the granting of voting rights.

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