

NEW RULES IN THE PORTUGUESE COMPANIES CODE II

PORTUGUESE LAW LINES UP WITH INTERNATIONAL VENTURE CAPITAL BEST PRACTICES



CORPORATE AND COMMERCIAL

Bonds

Similarly to the regime of preferred shares, the issuing of bonds now enjoys greater flexibility. Companies intending to issue these instruments are now subject to a post-issuing financial autonomy ratio requirement, equal or above 35%, which is calculated based on the company's balance sheet as per the terms of Article 349, and verified by the Supervisory Board, Single Auditor or Statutory Auditor ("ROC").

This financial autonomy ratio requirement is, nonetheless, not applicable to certain cases, notably: (i) to companies that issue stock admitted to negotiation in a regulated market; (ii) to companies having risk rating given by a rating agency registered in the European Securities and Markets Agency ("ESMA") or recognized as an External Rating Agency by the Bank of Portugal ("BdP"); (iii) to the issuing in which the reimbursement is guaranteed by special collaterals in favor of the bondholders; (iv) to the issuing having an unitary nominal value equal or superior to EUR 100,000, or having its subscription exclusively in minimum share lots equal or superior to EUR 100,000 (or the equivalent values in euros); (v) to the issuing that is entirely subscribed by qualified investors, in so far as the bonds are not subsequently assigned, directly or indirectly, to non-qualified investors.

In addition, the representation of the bondholders is extended to a wider list of entities, now including financial intermediaries and entities authorized to perform representation services to investors in any EU Member State. On the other hand, the independency requirements for the representative have been tightened to ensure that the bondholders' representation is not undertaken by any person or entity holding a specific interest in the company, for instance by having equity participation or being in a group relationship with the issuing company.

Significant changes were also introduced to the indicative list of bond categories, further reflecting the influence of the practices of international corporate finance, which provide, on top of the previous options, the possibility to issue bonds: (i) convertible into common or preferred shares, with or without voting right, or into

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other securities; (ii) granting the right to subscribe common or preferred shares, with or without voting right; (iii) granting rights to subordinated credits on the issuer, provided that the subordinated nature is established in the issuing terms and other documents, registry or inscriptions; (iv) resulting from the conversion of shareholder or third party credits; and (v) having special guarantees regarding assets or revenues either of the issuer or of a third party, provided that such guarantees comply with certain disclosure requirements.

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