CISION

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VIDAIMOBILIÁRIA

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MORAIS LEITÃO
GALVÃO TELES, SOARES DA SILVA
& ASSOCIADOS

FINALLY, THE PORTUGUESE REITS

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A. Foreword

Decree-Law 19/2019 of 28 January 2019 (*"SIGI-Law"*) entered into force on 1 February 2019 and created the so-called *"Sociedades de Investimento e Gestão Imobiliária"* (real estate investment and management companies) (*"SIGI"*) following closely the regulation of the Real Estate Investment Trusts (REITs) implemented in several European countries.

The SIGI-Law has been enacted almost 5-years after the first proposal back in 2014 having been prepared by the former Portuguese right-wing coalition government.

B. Main features

Structure and corporate requirements: SIGIs shall be incorporated as a joint stock company (sociedade anónima), with or without public subscription, have a minimum paid-up share capital of €5,000,000.00 and adopt the supervisory model corresponding to a supervisory board (conselho fiscal) and a statutory auditor (revisor oficial de contas) (or an audit firm which is not part of the supervisory board).

In addition, SIGIs must have the following corporate purpose:

(i) Acquisition of property ownership rights, surface rights or other equivalent rights concerning properties for leasing purposes or other forms of commercial operation.

(ii) Acquisition of equity shareholding interest in other SIGI or in companies with registered office in other Member States of the European Union or of the European Economic Area that are bound by the administrative cooperation in the field of taxation equivalent to the one established in the European Union and that fulfill cumulatively certain requirements[1].

(iii) Acquisition of equity interests corresponding to shares or to investment units of (a) Alternative Investment Funds (*"AIF"*) for real estate investment with an income distribution policy similar to the one required for the SIGI and (b) AIFs for real estate investments in residential lease governed by Article 102 of Law no. 64-A/2008 of 31 December with an income distribution policy similar to the one required for the SIGI.

SIGIs may either directly manage or economically operate properties or enter into service agreements with third parties for the managements or economic exploitation of such properties.

Differently from the AIFs, the SIGIs are not regulated vehicles, i.e. are not under the supervision of the Portuguese Securities Market Commission (Comissão do Mercado de Valores Mobiliários) (*"CMVM"*).

Income distribution: SIGIs shall distribute income in a period of nine months after the end of every fiscal year, and distribute (i) at least 90% of the profits relating to such fiscal year arising from the payment of dividends and income distribution arising respectively from shares or from investment units held by the SIGI and (ii) at least 75% of the remaining distributable profits relating to such fiscal year under the terms of the Portuguese Companies Code.

Also, at least 75% of the net income resulting from the sale of assets allocated to the business of the SIGI should be reinvested in other assets allocated to the SIGI business within the period of 3-years counted from the referred sale.

Finally, the legal reserve of the SIGI cannot exceed 20% of the SIGI' share capital and it is expressly forbidden the creation of other unavailable reserves.

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Admission to trading and free float: Shares of SIGIs shall mandatorily be admitted to trading in a regulated market or a multilateral trading system within a period of one year from the commercial registry of the respective incorporation or of the effectiveness date.

The SIGI-Law further requires that, without prejudice to the rules applicable to each platform, at least 20% of the shares representing SIGI's share capital must be held by investors which hold shareholdings corresponding to less than 2% of the voting rights in accordance with Article 20 of the Portuguese Securities Code [2].

Furthermore, it should be noted that the minimum of share capital and free float required by the SIGI-Law allows the compliance with the free float requirements for the admission to trading in any of the (regulated and unregulated) markets of Euronext Lisbon.

Asset composition and indebtedness limits: According to SIGI-Law, at least 80% of SIGI's asset value shall correspond to property ownership rights, surface rights or other equivalent rights over properties, for leasing purposes or other forms of commercial operation and at least 75% of the total value of SIGI's assets shall correspond to rights over properties subject to lease agreements or other form of economic exploitation. These asset composition requirements shall be met as from the second year after the incorporation of the SIGI. The abovementioned rights and shareholdings must be held for at least three years following their acquisition.

SIGIs' indebtedness may not exceed, at all times, 60% of SIGI's total asset value.

C. Conversion of existing companies into SIGI

Conversion of joint stock companies into SIGI: In case there is no obstacle to the fulfilment of the abovementioned requirements, a joint stock company already incorporated may, through a resolution of its shareholders' general meeting adopted by the majority of votes required to resolve on the amendment to the articles of association, become a SIGI.

This conversion takes effect on the first day of the taxable period after the date of registration of the amendments to the articles of association.

This is a quite simple and fast procedure, mainly depending upon the resolutions of its shareholders' general meeting and upon its registration with the Commercial Registration Office.

Conversion of AIFs for real estate investment into SIGI: AIFs for real estate investment under a corporate form are allowed, through a resolution of its shareholders general meeting adopted by the majority of votes corresponding to 90% of the share capital, convert into SIGI.

After the resolution and corresponding amendment to the articles of association, these documents are sent to the CMVM, the former being immediately disclosed in the CMVM's information disclosure system and, should it exist, in the website of the AIF or the relevant AIF management entity.

The conversion produces effects on the date set on the abovementioned resolution (without prejudice to the right of withdrawal of the shareholders which have voted against the conversion) and determines the expiry of the AIF regulatory authorization granted by the CMVM.

The adoption of the new legal framework highlights and emphasizes the convenience and swiftness of the incorporation/conversion of/into SIGI, which may quickly become of great relevance in the Portuguese real estate market.

D. Tax regime

The SIGI-Law does not include the tax regime applicable to SIGIs, but it is referred to in the preamble that SIGIs will have a neutral tax regime as applicable to remaining real estate investment companies.

It is expected that the SIGIs will benefit from the tax framework applicable to AIFs, i.e., SIGIs in practice will be exempted from corporate income tax in relation to income arising from the lease of real estate properties and capital gains from the sale of those properties, as well as on dividends paid by entities in which SIGIs hold a shareholding equity interest.

In respect of shareholders, the income distributed by a SIGI to shareholders with residence in Portugal will be subject to a withholding tax at the rate of 28% in case of individuals, and 25% in case of corporate entities. Non-residence shareholders will be taxed at a reduced rate of 10%.

It is still unknown if there is going to be a stamp duty on the net asset value of SIGI's assets.

E. Conclusion

In light of the above, the SIGI-Law encompasses a remarkable step to boost the investment in real estate in Portugal through the capital markets, thereby attracting more foreign investment into the country. The REITs success story experienced in other countries like Spain (with the SOCIMIs experience) is now expected to be repeated in Portugal with this new investment vehicle. ■

[1] ( ) have an equivalent corporate purpose to SIGI, (ii) the asset composition is in line with the indebtedness limit foreseen in the SIGI-Law, (iii) the share capital is entirely represented by nominative shares and (iv) are subject to an income distribution framework similar to that foreseen in the SIGI-Law.

[2] Which means that there shall be at least eleven minority shareholders, not related among themselves and each with a shareholding under 2%.