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THE CORPORATE LAW REFORM

Beware of Navigation Signs in Summer Time

PLMJ

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Editorial

With a view to reducing bureaucracy and simplifying the life of companies and citizens, of modernising and of creating a more "welcoming" legal framework for investment, on 29 March Decree-Law 76-A/2006 was published, to come into force on 30 June. This Decree-Law is amending 30 legal diplomas, revoking a regulation and approving the legal system governing administrative procedures for the winding up and liquidation of commercial entities.

The reference to the number of amended legal diplomas alone is indicative of the wide extent of the reform and of the work that lies ahead of us, citizens and companies, working and operating daily with rules and legal procedures. However, the commendable goals of the reform must encourage us to get down to work!

Many hundred legal provisions have been amended by force of Decree-Law 76-A/2006 and it is up to us Lawyers to know first and better than our clients the new rules, to reflect on and solve the doubts the application of these rules may cause and to anticipate the difficulties our clients will face in the process of conforming their decision making and their practices to the new rules, in order to mitigate their impact.

It was with this objective in mind that we decided to publish this thematic Newsletter.

In light of the weight they bear on the daily life of companies and of the professionals who work there and are entrusted with their management, the first themes we selected to raise awareness on the legal reform operated by Decree-Law 76-A/2006 are the company governance systems, Directors' liability regime, supervision of large joint stock limited liability companies, companies merger and de-merger, reduction of bureaucracy, new technologies and what we believe to be an alert to the changes to be made by a number of our clients in their companies, the time frame for implementation of the new rules.

In terms that are necessarily succinct, as the format of this publication imposes, we have sought to inform and to cause thought to be given to these issues, in the attempt to contribute to a better minded and smoother transition to the new regime.

Dulce Franco - Gabriela Rodrigues Martins

Corporate Governance of Joint Stock Limited Liability Companies the necessary replacement of certain members of the Management

Decree-Law 76-A/2006 has introduced significant amendments to the 1986 Portuguese Companies Code (*Código das Sociedades Comerciais* – "*CSC*") rules applicable to company management and supervision.

With the avowed goals of addressing concerns relating to the supervision of companies, which justify the revision of the Eighth Directive on Company Law, and of adopting the best international corporate governance practices, of reasserting corporate autonomy and also of rendering governance solutions more flexible, without renouncing to their typification, the legislator has reviewed the joint stock limited liability companies' supervision system, broadened the range of permitted management and supervision models for joint stock limited liability companies (Article 278 of the CSC) and, concurrently, introduced amendments producing practical effects on the two models – Board of Directors/Supervisory Board or Sole Supervisor and General Board/Management - until now available.

Of particular relevance to a more clear understanding of the effects that the amendments to the CSC may produce on a given company, is the fact that the legislator has distinguished companies according to their size, imposing more demanding, and also more costly, supervision solutions on "large joint stock limited liability companies", which are those that issue securities admitted to trading in regulated markets, and on companies that, although not totally controlled by others adopting a stricter supervision model, exceed two of the following limits in two consecutive years:

(a) balance sheet total - € 100,000,000;
(b) total net sales and other income - € 150,000,000;
(c) average number of employees during the financial year – 150.

The governance solutions that will now be available to joint stock limited liability companies are:

(a) "Simple Latin" Model – Board of Directors/ Supervisory Board or Sole Supervisor, who must be a Statutory Auditor or a Statutory Audit Firm, solution that can not be maintaied or adopted by the large joint stock limited liability companies;
(b) "Reinforced Latin" Model – Board of Directors/ Supervisory Board and (dual supervision) Statutory Auditor or Statutory Audit Firm, that cannot be a member of the Supervisory Board;
(c) "Anglo-Saxon" Model – Board of Directors including an Audit Committee/Statutory Auditor or Statutory Audit Firm;
(d) "Dualist" Model – Executive Board of Directors/ General and Supervisory Board/ Statutory Auditor or Statutory Audit Firm.

In necessarily succinct terms, we will describe the main novelties of the system and the new qualitative requirements for the composition of the corporate bodies and of the committees stemming from these, which will render evident the reason for the conclusion – the necessary replacement of certain members of companies' Management and Supervisory bodies – set out in this note's title.

"Latin" Model ("simple" or "reinforced")

Board of Directors – the Board of Directors may be composed of an even or uneven number of members; where this number is even, the Chairman will have a casting vote, and in the Chairman's absence or impediment, the member of the Board on whom this right has been conferred in his appointment will have the casting vote.

The isolated election system of Director (s) of minority shareholders, where applicable will now only take place among the minority shareholders.

In large joint stock limited liability companies, the liability of each of the Directors will mandatorily be secured by a bond of no less than € 250,000.00.

Supervisory Board – the number of members has to be in the minimum of three and for the "simple Latin" model, the Supervisory Board will be required to have at least one Statutory Auditor; the members of the Supervisory Board will be entitled to perform supervision duties for the company over a period not exceeding 12 years. Where the "reinforced Latin" model is concerned, at least one of the Supervisory Board members must have a degree compatible with his duties and be knowledgeable in the areas of accounting and auditing.

The law sets out minimum requirements to assess the independence of Supervisory Board members and lists the incompatibilities of its members to perform their duties.
In large joint stock limited liability companies adopting the "reinforced Latin" model, at least one of the members of the Supervisory Board cannot have any connection to the holders of qualified interests equal to or higher than 2% of the capital of the supervised company. In the particular case of companies having securities admitted to trading on regulated markets, the Supervisory Board must be composed mostly of independent persons.

Minority shareholders with an interest of no less than 10% in the company will be entitled to apply for the judicial appointment of one member of the Supervisory Board, in the event of having voted against the winning proposal.

The Supervisory Board must meet at least once a quarter and its members cannot be removed from office without just cause.

"Anglo-Saxon" Model

The rules applicable to the Board of Directors are those previously described for the Board of Directors of the "Latin" model ("simple" or "reinforced").

The Audit Committee must be composed of a minimum of three Directors who cannot perform executive duties. In large joint stock limited liability companies, one of the members of the Audit Committee must have a degree compatible with his duties and be knowledgeable in the areas of accounting and auditing; for companies having securities admitted to trading on regulated markets, the majority of the members of the Audit Committee must be independent, the independence requirements of these members being the same (save for incompatibility by nature) as for those responsible for company Supervision in the other governance models.

The Directors composing the Audit Committee have a regime of remuneration and dismissal that differs from the other Directors, - the remuneration cannot have a variable component, only fixed, and they can only be dismissed with just cause.

Members of the Audit Committee are required to meet once every fortnight and to attend the meetings of the Board of Directors, the General Meeting and the Executive Committee where the accounts for the financial year are analysed.

"Dualist" model

Executive Board of Directors – its members are appointed by the General and Supervisory Board or, should the articles of association so establish, by the General Meeting. In the absence of one member of the Executive Board of Directors, the General and Supervisory Board will be required to take the necessary

steps to replace him. Being a member of the General and Supervisory Board is incompatible with performing the duties of member of the Executive Board of Directors, save in the cases of temporary replacement of a member of the Executive Board of Directors, of the performance of Supervision duties in companies that have a controlling or group relationship with the concerned company, or of there being family ties or kinship with persons performing Supervision duties in these companies.

General and Supervisory Board – the number of members must always be higher than that of the Executive Board of Directors, the qualitative composition of this corporate body and the incompatibilities to perform the duties of member of this corporate body being governed by the provisions of Article 414 and 414-A applicable to the qualitative composition of the Supervisory Board and the incompatibilities to perform the duties of member of the Supervisory Board.

In large joint stock limited liability companies, the creation by the General and Supervisory Board of a Financial Affairs Committee is mandatory.

In conclusion, given that the practical reach of the newly introduced amendments to company management and supervision implies, in reality, necessary changes in the composition and, in certain circumstances, in the type of corporate bodies of the vast majority of Portuguese companies, it is vital to know clearly and in advance the new rules, so that company partners, shareholders and Directors may ensure a smooth and efficient transition to the new regime, in order to comply with it and benefit from the corporate governance possibilities established in the law. ■

The New Regime of Directors' Liability: Spot the Differences

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I. The issue relative to the Directors' liability in joint stock limited liability companies was one of the matters which, at the time of divulgation of the Proposals of *Amendment to the Commercial Companies Code* by the *Securities Market Commission*, was presented as being on the top of the list of matters which was by that way subject to public discussion.

Being one of the chapters of the Portuguese company law that has had less practical application, the interest and expectation surrounding the matter would be justified. However, what we after all realize is that on the basis of the amendments introduced to the regime of directors' liability, was the resignation with the idea that the scarce attribution of liability to directors in Portuguese law is not justifiable due to faults existent in the legal regime that rules this matter. In fact, this regime already corresponds to a consensual solution between a procedural model (of French origin) and a substantial model (of a Germanic origin), thus avoiding the inconveniences and permitting the benefit of the specific advantages of each one of those models. Otherwise, repeating the understanding that has long been divulged, a conclusion would have been reached that such situation is rather justified by factors of non-legal nature, such as (i) the traditional inertia of potential injured parties and (ii) the circumstance that the structure of the generality of Portuguese companies, based on the existence of a controlling shareholder and on the coincidence or relationship between that shareholder and the holders of administrative positions, tends to shift any potential conflicts to the relations between majority and minority shareholders, assuming the threats of attribution of liability to the members of the company bodies as mere instruments at the service of those other conflicts, in the logic of guerrilla that usually characterises them.

Being based on these assumptions, it is easily understood that the amendments introduced to the regime of Directors' liability have limited contents and range.

II. In any case, now that the final results of the analysis carried out and the way how its conclusions were transposed to the Commercial Companies Code (CCC) are known, we should again consider the matter, assessing what effectively has changed in the legal regime of Directors' liability of commercial companies and attempting to measure the possible effects of those modifications.

For that purpose and without considering the modifications exclusively imposed by the alteration of the designation of the members of administrative bodies of joint stock limited liability companies, there are four modifications of the regime that are worthy of reference. Two of those modifications may be reconducted to the correction of isolated questions, where the inadequacy (as

a rule, for being outdated) of a regime that has remained untouched since 1986 was verified. Therefore, first of all, the regime increases the protection of the minority shareholders of listed companies, now permitting that liability lawsuits against directors may be filed by shareholders that hold only 2% of the registered capital of the companies concerned, when previously it was required that they were holders of, at least, 5% of such capital. The 5% threshold continues to be valid for all the other companies.

Secondly, two aspects were also modified in respect to the regime of the bond to be deposited by the directors, as provided for in article 396 of the CCC. Therefore, on one side, the minimum value of the bond is now of € 50.000,00 in the vast majority of joint stock limited liability companies and of € 250.000,00 in the companies issuers of securities admitted to trading on a regulated market or companies that should be considered as joint stock limited liability companies because, during two consecutive years, those companies exceed two of the following limits: (i) balance sheet total of € 100.000.000,00; (ii) total net sales and other proceeds of € 150.000.000,00; and (iii) number of employees of 150 on average during the financial year. On the other hand, in respect to the latter companies, the possibility of being exempted from depositing the bond was now excluded and therefore, the bond has become mandatory .

III. The other two alterations introduced to the regime of Directors' liability require a more detailed analysis, taking into account its more substantial character and its effects potentially more broadened.

As regards the first of those alterations, what should be pointed out is that the CCC, in its article 64, now specifically sets forth the duties of diligence and of loyalty that impend on Directors, replacing the previous general reference to those duties by a relatively detailed description of the elements that contribute for a specific densification of its content and consequent control of its fulfilment. Therefore, it is now stipulated that Directors must comply with (i) duties of care, revealing availability, technical competence and knowledge of the activity of the company adequate to his duties and using in that extent the diligence of a wise and organised manager; and (ii) duties of loyalty, in the interest of the company, giving heed to the long term interests of partners and considering the interests of other persons relevant for the sustainability of the company, such as its employees, clients and creditors.
For the Securities Market Commission, the alteration introduced did not intend to be innovating having merely giving the form of law to solutions previously accepted. However, the observation should be accepted with certain reservations. In truth, this alteration definitively clarified a question which was previously, at least, arguable: that is, article 64 sets forth duties that Directors should fulfil, the intentional breach of which now imposes the respective liability. In the previous regime, as it is known, there were several authors who refused the possibility of Directors' liability exclusively based on the breach of general duties set forth in article 64 of the CCC. In the opinion of those authors, it was not sufficient that the breach of this legal provision be invoked for any Director to be convicted to the payment of any indemnity. On the contrary, in order that such a conviction be imposed, it would be necessary to identify another specific duty, stipulated by other legal or statutory provisions, which had also been violated.

Consequently, the new wording of the referred article 64 at least has clarified that Directors have a general duty to act diligently and with loyalty whose breach constitutes, in itself, a general and sufficient legal cause which, if faulty, creates the duty to indemnify. Thus, the assumptions for the attribution of liability to the Directors become potentially broadened.

IV. However, this broadening ends by being compensated by the fourth alteration to the above referred regime of Directors' liability. That is to say, with the stipulation, even if limited, of the so-called business judgement rule in the Portuguese law. A new number 2 of article 72 of the CCC has been included which states that Directors' liability is excluded if the Directors prove that they have acted in a duly informed way, free from any personal interest and according to business reasonability criteria.

The general idea subjacent to this rule, which origin remounts to North-American law of the beginning of the XIX century, is that of the placing Directors' decisions under the cover of the impeachment of the respective merit by the Courts. Thus, what is aimed is that Directors are not faced with the scrutiny of the merit of their decisions taken, mainly in light of the results that arise therefrom. For that purpose, the analysis of the merit of decisions is replaced by the analysis of the regularity of the process that preceded the taking of such decisions and, especially, by the assessment if, in the course of the same process, the Director complied with his duty of diligence so that, in the final analysis, the decisions taken may be considered in advance as a good decision. In the new regime now enacted, such objective is pursued through the possibility granted to the Directors to withdraw their responsibility provided that they cumulatively prove that (i) they adequately have obtained all information required on the elements that would be abstractly necessary for the taking of a good decision, (ii) they did not corrupt the decision making process with the consideration of any personal interests, independently of the conclusion reached or the decision taken, (iii) the link between this decision and the informative elements on which the same was based is characterised by reasonable business criteria.

Under the terms previously referred, this possibility granted to Directors tends to serve as a counterbalance to the broadening of the assumptions of Directors' liability resulting from the new wording of article 64 above analysed. In any case, for an adequate understanding of the limits of this cause of liability exclusion, it would be important to list three conclusions which, at first sight, do not seem evident from the mere reading of the revised legal provisions. Consequently:

Notwithstanding the general form on how number 2 of article 72 of the CCC is worded, it should be understood that the exclusion of liability therein foreseen would only exist in those cases whereby an attempt to render Directors liable due to the breach of general (or fundamental) duties of behaviour provided for in article 64 of the CCC is concerned. In a contrary perspective, when there is a breach of other legal provisions or statutory duties, this cause of exclusion will not be applicable.

On the other hand, when the liability of Directors towards the partners or creditors of the company is under discussion, as per articles 78 and 79 of the CCC, based on the breach of article 64 (to the scarce measure that, in extreme situations, this may also be viewed as a legal rule aimed to their protection), this liability exclusion clause should, due to logical systematic reasons, also be applicable, although it has a result subtracted from the cross-reference made in numbers 5 and 2 of the referred articles 78 and 79, respectively.

Finally, notwithstanding the doubtful manner that number 2 of article 72 is worded, which refers to the exclusion of Directors' liability when one of them proves the facts referred therein, the most adequate position would be to understand that the cause of liability exclusion which is considered constitutes a cause of individual benefit which only profits the Director who invoked it. ■

Enhancing Supervision of Limited Liability Companies on Financial Matters

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I. Main Issues

One of the touchstones of the revision of the Commercial Companies Code (CCC) on the corporate governance field was, undoubtedly, an aim to strength the supervisory functions in joint stock limited liability companies, in particular as concerns the supervision of financial and related matters, such as, the financial reporting and the efficiency of internal control system, internal auditing and risk management.

The scope of this revision is not confined to the companies with securities admitted to trading on regulated markets (the so-called listed companies) but also to large joint stock limited liability companies, i.e., companies not totally controlled by another company, which, during two consecutive years, exceed two of the following limits: (i) total balance sheet of € 100.000.000,00; (ii) total net sales and other proceeds of € 150.000.000,00; and (iii) an average of 150 employees during the financial year.

The definition of a corporate governance architecture with checks and balances designed to ensure the integrity and transparency of the financial information is not a new topic, rather has been highly discussed both in European jurisdictions with a Continental and Germanic tradition (searching for solutions aiming to accomplish the rehabilitation and modernization of traditional role of the Fiscal Boards and Supervisory Boards) and in Anglo-Saxon jurisdictions (where, further to several financial scandals, such as Enron and Worldcom, legal and regulatory responses were developed seeking to protect the minority shareholders' interests contrasting with the management's interests).

The debate on the strengthening of the supervisory functions within each corporate governance model culminated with the approval in the USA of the Sarbanes-Oxley Act and in multiple initiatives at the European Union level envisaging a higher degree of harmonization of the laws of the various Member States in respect to the accounts revision, auditing and corporate governance.

In line with these trends, the CCC's revision was inspired by the recent approval of the amendments to

the Eighth EU Directive on Companies Law which clearly draws the attention to a need to create a corporate body consisting of, at least, one independent member with expertise on accountancy and auditing and which is competent to supervise the accounts revision and examine and oversee the independence of the Chartered Accountant, thus imposing a clear separation between the Chartered Accountant and the body in charge of its supervision. The Eighth Directive conferred also to the Member-States a large degree of discretion for the purpose of defining the so-called entities of "public interest" (besides issuers of securities admitted to trading on a regulated market) which, due to their dimension, shall be subject to this regime of "strengthened" supervision.

II. How did the Portuguese Laws addressed these issues?

1. By procuring a functional balance between the different models

Firstly, by "strengthening" the Latin model, thus imposing a separation between the Fiscal Board and the Chartered Accountant. Secondly, by contemplating the Anglo-Saxon model, the so-called Audit Committees of the Board of Directors are expressly recognized as a supervisory body separated from the Chartered Accountant (solving, to a certain extent, the traditional competences overlapping between these committees and the Fiscal Boards). Finally, in the two-tier model, it is now mandatory to set up a committee for financial matters within the Supervisory Board, also separated from the Chartered Accountant.

2. By strengthening (or broadening) its supervisory competences

The strengthening of competences traditionally conferred to the Fiscal Board was largely expanded under this revision of the CCC. Therefore, the Fiscal Board will now inter alia be responsible for: (i) verifying if the accountancy policies and valuation criteria adopted by the companies lead to a correct evaluation of the assets and results; (ii) supervising the efficiency of the management risks, internal control and internal auditing systems, if applicable; (iii) receiving any complaints submitted by shareholders, employees and others; (iv) engaging experts to assist its members within the performance of their duties, whose services and fees are required to take into consideration the relevance the matters involved and the economic situation of the company; (v) supervising the proceeding for the preparation and disclosure of financial information; (vi) proposing the Chartered Accountant to be appointed by the General Meeting; (vii) supervising the revision of financial statements; and (viii) supervising the Chartered Accountant's independence, in particular insofar as non auditing services are concerned.

3. Bycontemplating new qualitative and quantitative requirements

Article 414 now contemplates new rules as to the qualitative requirements applicable to the members of the Fiscal Board aiming to grant them a high level of expertise not yet practiced in Portugal. In fact, whenever the members of the Fiscal Board are shareholders, they should have adequate qualifications and professional experience for the performance of their duties. Additionally, the Fiscal Board of listed companies and large joint stock limited liability companies must include at least one member graduated in an area adequate for the performance of his duties, who has expertise in auditing or accountancy and is deemed to be independent (see nrs. 3 and 4).

4. By contemplating new criteria of incompatibility and of independence

Pursuant to the new article 414-A the Fiscal Board and, to the extent applicable, the members of the Audit Committee and of the Committee for Financial Matters are subject to several incompatibilities regarding their supervisory duties aiming to prevent conflict of interest between the supervisors and the company and to ensure adequate levels of availability for the performance of their duties.

Additionally, article 414 (5) foresees a "general independence criteria" seeking to ensure the impartiality of analysis and decision of, at least, one of its members, or its majority in the case of listed companies. Consequently, the members of the supervisory bodies will now be subject not only to a test of incompatibility but also to an independence test regarding "groups of specific interests" of the company.

For this purpose, a person is deemed to be independent when he is not associated to any group of specific interests of the company nor is in any circumstances capable of affecting his impartiality of analysis or of decision, namely by virtue of: (i) being the holder, or acting on behalf of holders, of a qualified participation equal or superior to 2% of the company share capital; and (ii) having been reelected for more than two successive or interpolated mandates. The legislator thus opted for a general independence criteria aligned with a brief exemplificative list of non-independent members, leaving to companies freedom to adopt more demanding criteria considering their particularities, namely in the case of companies with securities admitted to trading on foreign exchanges where more demanding rules are imposed.

III. In conclusion

The revision of the framework governing the supervision of joint stock limited liability companies, mainly concerning financial matters, has brought relevant innovations in the sense to strengthen the integrity of financial information and to revitalize and modernise supervisory bodies.

Important alterations result from these innovations impacting in the life of large joint stock limited liability companies and listed companies, thus imposing them to make relevant choices as to the corporate governance model to be adopted and the required amendments to their Articles of Association. Therefore, companies opting for a supervision model centered on the Fiscal Board and Chartered Accountant are required to confer additional competences to the Fiscal Board and to ensure more demanding levels of expertise and independence of its members. On the other hand, companies that intend to adopt an Anglo-Saxon model focused on the supervisory duties of the Audit Committee of the Board of Directors must adopted statutory rules ensuring its direct election by the General Meeting and conferring to this Committee the tasks traditionally performed by the Fiscal Boards. Finally, the modernisation of the two-tier model allows companies to adopt a supervisory structure functionally equivalent to the Anglo-Saxon model although deriving from the Supervisory Board and not from the Board of Directors.

Without prejudice to the innumerous alterations brought by this revision of the CCC, the Portuguese legislator could have gone further in this field, taking the advantage of this opportunity to settle questions which, without a doubt, have an unquestionable importance for corporate governance, such as the effective supervision of the related parties transactions and the civil responsibility of members of the supervisory bodies. ▪

The New Rules of the Regime of Merger and Split-Up Of Companies

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Decree-Law nr. 76-A/2006 of March 29th (DL 76-A/2006) was published, under the scope of the announced measures for the elimination of bureaucracy in respect to companies, which adopts measures for the simplification and elimination of notarial and registration acts and procedures, approves the new legal regime for the winding up and liquidation of companies and amends the models of governance of joint stock limited liability companies, thus operating a deep reform in company and in commercial registration Law.
Considering that the legal-administrative costs and the bureaucratic procedures applicable to the operation of Portuguese companies, including in company merger and split-up processes, constitute one of the obstacles for the competitiveness of the Portuguese economy, the steps taken by the legislator with the approval of this law concerning the elimination of bureaucracy and simplification of the life of companies are most welcome, aiming at the increase of the competitiveness of our economy, which is intended to be more efficient and attractive in procuring national and foreign investment.

Main alterations set forth in DL 76-A/2006 with an impact in company merger and split-up processes

- The execution of a public deed concerning acts relating to the life of commercial companies (for example, the incorporation of companies, any amendments to the Articles of Association, including increase or reduction of the registered capital, merger, split-up, transformation, winding up) becomes optional, except in those situations whereby the act concerned aims to transfer the ownership of real estate property, in which case the legally established form for the respective transfer, that is, the public deed, continues to be required.
- In this manner, the double public control is avoided when the existence of one sole public control, to be carried out by the Commercial Registry Office, is adequate to assure legal security, consequently the registration of the merger project and the adoption of the company resolutions by partners/shareholders concerning the approval of the merger being sufficient.

- The rules of commercial registration are substantially amended, among others, the elimination of the registration of the approval by partners/shareholders of merger and split-up projects.
- The exemption of the examination of the merger Project by an independent Chartered Accountant or Auditor Firm is contemplated, provided that there is an agreement of all partners of each one of the companies participating in the merger.
- The balance-sheets required for a merger process will cease to be "especially organised", the new law providing for alternative validity periods for the balance-sheets, that is to say, the balance-sheet may be (i) the balance-sheet of the last financial year, provided it has been closed in the six months prior to the date of the merger Project; or (ii) a balance-sheet as at a date that does not precede the first day of the third month prior to the date of the merger Project.
- Company creditors have now a period of one month after the publication of the summons of the General Meetings of the companies participating in the merger (on the contrary, in the previous regime, such one month period was counted as from the date of publication of the resolutions of the General Meetings that had approved the merger Project) to submit a judicial opposition to the merger provided that they have requested the settlement of their credit or the delivery of an adequate guarantee within the previous 15 days, and without their request having been complied with by the company.
- In this manner, the intervention of company creditors in merger processes will be lessened inasmuch as they can only judicially oppose to the merger after having requested the company for the settlement of their credits or the delivery of an adequate guarantee and the company has not complied with their request.
- In the case of mergers between companies under total domain and considering that, in this case, the resolutions of the General Meeting are exempt, the conclusion of the merger process may be carried out by the administration of the companies intervening in the merger, the new law providing for a reduction of the compulsory period from 60 days to 30 days between the date of the registration of the merger Project and the date of presentation to registration of the merger without the prior resolution of the General Meetings (period for the opposition of the company creditors).
- The exemption of the publication of advertisements related with (i) the registration of the merger Project and (ii) the approval of the merger Project by the General Meetings of the companies intervening in the merger.
- The exemption of the publication of the summons of the General Meetings in the Official Gazette (Diário da República) and in a newspaper in the locality of the registered offices of the company (or in the lack

QUADRO COMPARATIVO DOS PRINCIPAIS PROCEDIMENTOS APLICÁVEIS AOS PROCESSOS DE FUSÃO E CISÃO

Presently	**After the entry into force of DL 76-A/2006** **(June 30th, 2006)**
The administrations of the companies intervening in the merger prepare a merger or split-up Project (as the case may be), which shall contain the elements described in nr. 1 of article 98 of the CCC (merger) or in nr. 1 of article 119 of the CCC (split-up)	Maintained with the following **simplifications**: . **Elimination** of the compulsory reference to the date of inscription in the commercial registry office; . **Elimination** of the requirement that the balance-sheets be "especially organised" being able to be (i) the balance-sheet of the last financial year, provided it has been closed in the six months prior to the date of the merger Project; or (ii) a balance-sheet as at a date that does not precede the first day of the third month prior to the date of the merger Project
Registration of the merger Project at the Commercial Registry Office	Maintained with the following **simplification**: As from January 1st, 2007, with the elimination of the territorial jurisdiction of Commercial Registry Offices, such registration does not need to be presented at the Commercial Registry Office of the locality of the registered offices of the intervening companies but may be presented at any Commercial Registry Office in the national territory.
Publication of advertisements informing of the registration of the merger Project (articles 100 and 101 of the CCC)	**Formality eliminated**
Publication of the summons of General Meetings in the Official Gazette (Diário da República) and in a newspaper in the locality of the registered offices of the company (or in the lack thereof, in one of the most read newspapers) and also informing that the merger Project may be consulted by company partners and creditors at the registered offices of the company	Maintained with the following **simplification**: The publication of the summons is to be made on an Internet site of public access (*www.mj.gov.pt/publicacoes*).
Approval of the merger Project by resolution of the partners (passed by a qualified majority necessary for the amendment of the Articles of Association) of each one of the intervening companies (article 103 of the CCC)	Maintained
Annotation in the registration of the merger Project of the resolution approving the merger (article 107 of the CCC)	**Formality eliminated**
Publication of the resolution approving the merger (article 107 of the CCC)	**Formality eliminated**
Public deed of merger	**Formality eliminated**
Notice to the company creditors in the publication of the resolution approving the merger or by registered letter with notice of receipt, depending on the circumstances, that they may submit an opposition to the merger if they consider that it may impair the fulfilment of their rights	**Formality eliminated** . The company creditors are immediately informed in the summons of the General Meetings . The remittance of a registered letter with notice of receipt is no longer required.

thereof, in one of the most read newspapers), such publication to be made on an Internet site of public access (*www.mj.gov.pt/publicacoes*).

We would like to point out as evident failures of the legislator, to correct in another rectification law to DL 76-A/2006, the non-amendment of article 117 of the Commercial Companies Code (CCC), the wording of which ceases to make sense considering that a public deed for the merger is not required.

In summary, presently it is compulsory, for the conclusion of a merger or split-up of companies, the registration of the merger Project, the execution of a public deed and the subsequent registration of the merger at the Commercial Registry Office. Therefore, 3 acts of registration at the Registry Office, 4 publications, in hard copy format, in the III Series of the Official Gazette, a public deed to be executed before a Notary and 2 publications in local newspapers are compulsory.

As from June 30th, 2006, more simplicity and celerity in the execution of such merger and split-up operations is expected, considering that, with the new regime, two acts of registration and three publications on an Internet site, made by electronic means are the only formalities to be observed in the whole process.

The complexity and slowness of merger and split-up processes, as well as the costs with the compliance of the law inherent to the operability of the system until now borne by the private business sector in our Country, apparently seem to be coming to an end.

It is essential that the legalistic-bureaucratic culture prevailing in public organisations and in our legal system be replaced by a model of managing culture focused on companies and individuals founded on simplicity and agility and based on a rational and simplified system in the performance of corporate acts, in which the main principles be that of the elimination of bureaucracy and of the creation of the trust of the citizens and of companies in the operationality of the legal-administrative system.

Obviously, the extensive reforms that have now been approved will have to be adjusted to the sociological, cultural and economic reality of the Country but there are no relevant reasons prevailing so as not to be confident regarding its implementation and practical application, and therefore we await with expectation for the entry into force of the referred rules of legal-administrative simplification and for its practical effects in the life of companies in Portugal. ▪

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Less Bureaucracy, More Investment

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We are already aware that Decree-Law 76-A/2006, of March 29th, introduced significant amendments to the national legislative panorama aimed at promoting economic development and at encouraging investment in Portugal, all in the "joint interest of citizens and of companies", which, in general, shall be effective as ofJune 30th, 2006 (exception made to the elimination of the territorial jurisdiction of Registry Offices, which shall only enter into force at the beginning of 2007). Such decree-law essentially intends to eliminate useless acts and procedures that do not produce any added value, merely raising difficulties to the normal undertaking of the companies' activities. Although extensive, the wording of same legal text could be summarised into a simple motto: less bureaucracy, more investment. Let us see how.

Elimination of the compulsory requirement of Notarial Deeds in respect to the generality of external acts of the corporate life. It is presently compulsory that a large majority of external acts of corporate life be formalised through a public deed executed at a Notary's Office, the registration of the same act before the competent Commercial Registry Office being subsequently mandatory, with all the time delays and costs that such dual procedure necessarily implies. That is to say, a double public control is presently required in respect to the majority of corporate actions when, under the point of view of legal security, the existence of one sole public control of such acts would be sufficient: that performed by Commercial Registry Offices which, under the terms of the new law, will be the only one compulsory by law.

Therefore, the execution of notarial deeds in respect to the generality of acts of the corporate life will cease to be compulsory, exception being made to any situations involving transfer of real estate property, in which case the execution of a notarial deed will continue to be

required (since this is the formality legally determined for legal transactions involving property of that nature).
In this manner, namely in the case incorporation of commercial companies, of amendment to the Articles of Association, increase of capital, alteration of the registered offices or corporate purpose, winding up, merger or split-up of companies, transformation of companies and transfer of quotas, the execution of deeds before a Notary will cease to be compulsory, exception made to cases of transfer of real estate property. This would notably be the case when real estate property constitutes an entry in kind, for example, in the incorporation of a company or in an increase of the respective registered share-capital, thus maintaining the obligation to execute a public deed.

Elimination of the compulsory requirement to maintain commercial accountancy books. In the regime presently in force, companies the law compels companies to maintain the following books and/or records: (i) annual accounts book, (ii) day accounts book, (iii) accountancy ledgers, (iv) copy book and (v) minutes books. Besides the sole existence of those books being compulsory, the legalisation of the annual accounts books, the day accounts book and the minutes books before the competent Commercial Registry Office is also compulsory. Thus, and taking into consideration that the requirement of keeping and legalising said books by all Commercial Companies dates back to June 28th, 1888, to the law that approved the Commercial Code, it is in fact imperative to proceed with the respective modernisation and adequacy to the day to day activity of modern companies. It should furthermore be added that compulsory legalisation of all referred books annually implies the performance of hundreds of thousands of acts before the Registration Offices, which have been a significant burden to commercial companies.
Therefore, this new law eliminates the compulsory requirement to maintain commercial accountancy books and as a consequence eliminates the obligation to legalise those books at the commercial registry offices. In this manner, the existence of annual accounts book, day accounts book, accountancy ledgers and copy book cease to be compulsory, while the existence of the books of minutes continues to be compulsory, however its legalisation is no longer required.

Winding up and liquidation of inactive companies. There are presently in Portugal approximately 200.000 commercial companies that legally exist but do not undertake any commercial activity and the large majority of which do not even possess assets or liabilities. Among the so-called inactive companies, are a several thousand companies by quotas which did not comply with previous legal imperatives, namely those relating to the increase of the minimum amount or re-conversion of the registered capital and which the State, in the lack of the respective Partners, would have the obligation to close down. For the closing down of inactive companies, an administrative procedure of winding up and liquidation of commercial companies has now been created to be processed at commercial registry offices and under the scope of which the companies may now be winded up and liquidated by initiative of the State and through administrative means. The procedure may be adopted when (i) during two years, the accounts of the company have not been deposited and the company's income tax declaration has not been presented; and (ii) the tax administration communicates to the commercial registry office the absence of activity of the company or the termination of the fiscal activity of the company. The distinctive feature of this new procedure is centred on the elimination of judicial intervention, almost always compulsory in processes for the closing down of companies. Such fact, besides allowing legality to be restored, may permit a more trustworthy monitoring of the national economic reality and avoid the filing of further tens of thousands of processes in the courts which, as is know, are already congested.

Prompt winding up and liquidation of commercial companies. Nowadays, the process of winding up and liquidation of a commercial company is unquestionably slow, complex and bureaucratic. To act against this state of affairs, the "prompt winding up and liquidation of commercial companies" was recently instituted. Provided that previously (i) the partners are in agreement as to the winding up and liquidation of the company and (ii) have decided on the division of the liabilities and assets of the company, it will be sufficient to promote the registration of the winding up and liquidation at the competent registry office for the company to immediately close down. The corresponding publications will then be made *on-line* by the referred registry office.

Authentication and witnessing of signatures. Under the terms of the regime presently in force, solely the witnessing of signatures in the capacity and by resemblance was legally permitted both to notaries and, on the other side, to lawyers, solicitors and to chambers of commerce and industry. However, acts of authentication and personal witnessing of signatures were reserved uniquely to notaries. According to the new regime, lawyers will also be able to authenticate documents and personally witness signatures, as well as solicitors, chambers of commerce and industry and registry offices. It is believed that this small change, which has been demanded for some time, may significantly simplify the life of companies and citizens in general, without impairing the necessary legal security. In fact, the new competences are attributed to entities especially qualified to perform these acts, either because they are public entities or furthermore because they are entities with special duties to carry out activities of public utility and, on the other hand, because the new

acts those entities will be able to perform are, on a large scale, similar to those already performed by them.
The above referred reforms are intended to allow companies to save time and resources otherwise wasted on bureaucratic activities and, as a consequence, to release more resources for investment. No-one in good faith would dare to disagree on the need and on the benefit of the objectives defended and of the recent reforms, which create legal conditions that stimulate a structural change destined to make Portugal a (more) efficient market. It is also known that the desired economic growth does not solely rely on the volume of investment realised, which in the actual economic context, is moderate and, therefore, the option could in fact be to introduce a new factor of flexibility: adding simplicity and competitiveness, without compromising the guarantees and soundness of the constituted law. In this context, Public Administration's interoperability is definitively welcome since it becomes friendlier to companies. For that purpose, a system to guarantee the monitoring and enforcement of the now legislated reforms still seems indispensable in order to evaluate the success in implementing with Public Administration the announced profile of being more business focused and desirably more concentrated on the results. ▪

"Caught in the Net" Alterations to Commercial Registration under the scope of the Internet

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«For the first time in history, we can work backward from our imagination rather than forward from our past». (Gary Hamel, Leading the Revolution)

For those, who deal with Justice and Public Administration, as is the case of lawyers, the complaints that we most often hear from our clients, both local and particularly those overseas, is that bureaucracy is still a burden, demanding a great deal of paperwork, many formalities and, particularly, too much time, without regard to the individual or to the costs and losses involved.

It is not easy for a lawyer to cope with the needs of clients and often he or she feels that it is not possible to give more assistance within the required timeframe.

As we know, the time required by our Justice System and by our institutions does not always fit with the schedule of business and of business people. Nowadays, time is everything. To coincide with the schedules of institutions and of the people, who work in them, is not only an important task for them but also a condition for their credibility. In the global society which we live in, the difference between economies will most certainly come to be reflected by the quality and speed with which the different official services are capable of responding to the needs of companies and of people.

To this extent, the role to be played by the Internet will be prominent, as a privileged platform to link people and institutions in real time, as an inevitable instrument in the reforms that will be processed in business, in the life of people and, unavoidably, also in official institutions.

Within the scope of commercial companies and Commercial Registration, Portugal is not excluded from the process of adaptation to the formal procedures of the computer network which has started to occur bit by bit across the continent of Europe.

The possibility of official publications in respect to corporate acts – previously published in the Official Gazette – being made public through an official site of the Ministry of Justice on the Internet has already been introduced. With the last alterations to the Commercial Registration Code, the use of the Internet has broadened considerably and procedures relating to registration acts of commercial companies have been simplified.

« You've got mail! »

An electronic version of the commercial certificate will shortly be introduced – within a period that has still not been determined but which will certainly depend on the adoption of technologies capable of guaranteeing complete security.

It is currently possible to apply for a certificate *on-line* but the document is subsequently sent by post in a hard copy

format. With this alteration, we may apply for a certificate and receive it, via e-mail, at any location (even abroad).

This innovation is part of a natural evolution, which results from e-mail becoming a part of our day to day life. Furthermore, e-mail will be introduced in an even larger number of acts related to commercial registration, facilitating the life of commercial companies as a consequence; it will be possible to present documents for registration by electronic means and also claims and all acts and procedures related to the Commercial Registry Office may be presented by these means.

With these alterations, we are certain that a lot of time and significant costs to companies will be saved and the periods involved in obtaining the documents necessary for the activity of companies is expected to become shorter.

Permanent certificate *on-line*

Besides the introduction of e-mail, a service of permanent *on-line* certificates will soon also be made available. More than just an informative service for/ about companies, it is also an official site on the Internet that certifies the commercial information of companies. Such information will therefore have the same value as a commercial certificate in hard copy format and may be used under the same terms.

In this manner, any interested party may consult the *on-line* certificate, verify the capacity of a certain signatory and check whether he holds powers to bind the company he represents.

This legal alteration, technologically possible for some time, will also represent a great advance in the simplification of formal procedures and bring new possibilities for the future.

We believe that the time is not so far away when a permanent *on-line* certificate may be possible even for acts that involve companies of different Countries and legal systems.

In truth, if a Portuguese Notary can confirm on an official site the information in respect to Portuguese companies, there is no reason why he cannot do the same on foreign official sites that certify information of companies in that jurisdiction.

On the other hand, under the scope of the community integration process, it should not be discounted that information may at some time be centralised within a European body, which officially discloses information concerning commercial companies of the different States of the European Union.

We shall see if the *Apostille* foreseen in the Hague Convention of October 5th, 1961 will not be condemned to the "Museum of Documents" having fulfilled its role in time but, in the meantime, becoming obsolete.

We are certain that all those people, in different positions, who are involved in cross border transactions will welcome the possibilities that are now offered with open arms.

Incorporation of companies *on-line*

The possibilities of the Internet in this domain do not, however, stop here. As announced, it will also be possible until the end of this year to incorporate a commercial company through the Internet. The "*Empresa na* Hora" (Prompt incorporation of a company) – which was introduced about a year ago and allows a company to be incorporated in one sole act at the Commercial Registry Office – may now be carried out at a distance with a single "click" of the mouse. The incorporation of a company through the Internet will be possible, either under the format of the "*Empresa na* Hora" (with a pre-defined corporate name and Articles of Association) or under the standard format of choosing the corporate name – through the prior obtaining of a certificate authorising the name – and adopting specific Articles of Association.

A profound change to the concept of the founding act of a legal entity, which goes way beyond a simple simplification of procedures, has been introduced in the last few months. If before, the requirement of a public deed was associated to the concept that in the act of incorporation, and following the necessary considerations which justified it, the ceremony with the parties was required, carried out by a Notary, in case something had "escaped" the view of the interested parties attention, the incorporation of a company is now moving in a direction, whereby the ceremony of the public deed no longer adds value to the act, an alteration that we believe makes sense.

In conclusion

The alterations now introduced which are hereby briefly listed – **(i)** use of e-mail for acts of registration and commercial certificates, **(ii)** permanent certificate *on-line*, **(iii)** incorporation of companies through the Internet – are part of a set of measures aimed at the elimination of bureaucracy and the simplification of procedures of acts related to commercial companies and, consequently, the simplification of economic activities.

If, at this initial phase and as seems likely, some doubts arise as to the guarantee of maintaining legal security, it is indispensable that such worries be overcome by experience

showing that the essential security and legality values are not impaired in the slightest by these alterations.

We of course acknowledge that in some of the announced measures there may be a clash with the past but, if this were not the case, the clash could be of another kind: that is between institutions with the present conditions and with reality.

Within the scope of progress that the present demands, Gary Hamel, an expert in Innovation, states that "*in a non-linear world, only non-linear ideas will create new wealth*".

Perhaps this is what is sought – and we believe so – with the set of alterations that is intended to be introduced. ▪

The entry into force of Decree-Law 76–/A 2006 and the transitional arrangements

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1 introduction.

DL 76–/A 2006 of 29 May establishes June 30 as the date of entry into force for the majority of its provisions. As such, we might think that the amendments it makes will be directly and immediately applicable as from this date.

However, the date on which a new law becomes applicable to specific cases is not determined just by the date of entry into force of the provision setting out the new regime *(vacatio legis*). It is also necessary to ascertain whether the new law is immediately applicable, from that date, to relationships that existed previously and remain in force at that time (thus effectively replacing the old law) or, instead, only to new facts/relationships beginning after that date, and if so, to which facts/relationships (in which case the old law continues to apply on a transitional basis to pre-existing relationships).

While DL 76–/A 2006 is generally clear in relation to the dates on which its provisions come into force, it is not in our view always so consistent or sufficiently unequivocal with regard to the second issue in question.

Bearing in mind that the general provisions of Article 12 of the Civil Code, which deals with this matter, does not always allow us to reach the correct solution with any degree of certainty, this can give rise to some difficulties in this respect.

While not presuming to clarify the existing doubts, which only the legislator itself could have clarified, it is nevertheless useful to take an initial look at this theme, both with regard to the date of entry into force of several of the provisions of the decree-law and the transitional arrangements it establishes, so as to advise on the procedures to be used by companies.

II Provisions entering into force on June 30, 2006 and the corresponding transitional arrangements

A **- The provisions on simplifying the required form for corporate acts,** including the principal measure of abolishing the requirement of a notarial deed for corporate acts (except where real estate is transferred), **enter into force on June 30, 2006 and will apply to all corporate acts carried out after that date,** regardless of whether the company was incorporated before or after June 30, 2006.

Further, DL 76–/A 2006 provides "Any provisions of law, regulations or others which presume or require the execution of a notarial deed for a corporate act of the type for which that form has become optional shall be read as presuming or requiring the form established herein ".Although the position of the new decree-law is equivocal, it would seem that this rule must apply to the statutes of the company.

B **- Abolition of the obligation to keep commercial record books** (inventory, balance sheet, day books, ledgers and correspondence). As from June 30, 2006 it will no longer be compulsory to keep records of the company's transactions in these books.

C **- Dispensing with the validation of the minutes books**, but without prejudice to the need to comply with the provisions of Article 31 of the Commercial Code. Minutes books issued after June 30, 2006 will no longer require validation by a commercial registry, as they did in the past. It would also seem, although this is not entirely clear, that books which were issued in the past and are therefore subject to this validation process will have this requirement waived in cases where they have not yet been validated by June 30.

D - New simplified regime for mergers and splits. The new provisions will come into force on June 30, 2006 and will apply to all mergers carried out after this date by companies governed by Portuguese law.

E - Extending the power to authenticate private documents and to attest signatures to registrars and registry officials. As from June 30, 2006, authentication and attestation may be carried out in the registry offices.

See Section III A with regard to lawyers, legal executives and chambers of commerce and industry.

F - Administrative dissolution of companies. The new system will come into force on June 30, 2006 and will apply to cases initiated after this date and, subject to the special provisions set out in Articles 57 to 59 of the Decree-Law, to cases initiated before June 30, 2006.

G - New rules on corporate governance models. The same rules will apply unequivocally to **companies** incorporated after June 30, 2006. See Section III B for companies incorporated before June 30, 2006.

H - New rules on the convening and functioning of general meetings, shareholder access to information, and the exercise of voting rights.

If the rules on these matters are:

a) Incorporated in imperative rules (mandatory rules which cannot be waived), they will be applicable, in our view, to all companies, from January 30, 2006 for acts carried out after that date;

b) Incorporated in supplementary rules which can be set aside by the statutes of the company, in principle they are applicable from June 30, 2006 to new companies unless set aside by the statutes of the company.
For all remaining cases, that is, for supplementary rules for companies formed prior to June 30, 2006, see Section III C.

III Special provisions

Several of the provisions of the new DL however are subject to distinct conditions for entry into force and/or transitional arrangements.

We would like to draw particular attention to the following cases:

A - Extending to registrars and registry officials the power to authenticate private documents and to attest signatures, with regard to **lawyers,** legal executives and chambers of commerce and industry is dependent on the creation of a computerised registration system (to be published in a ministerial order**).**

Until such time as this measure is implemented, red tape will remain an issue in cases where the law continues to require the attestation of signatures, such as for the incorporation of a limited company.

B - The new corporate governance models for companies incorporated before June 30, 2006. Companies whose structure comprises a board of directors and a supervisory committee or an administrative council, general council and chartered accountant (in other words the S.A structures) will come into effect upon the earlier of:

- the company statutes being adapted to the new executive and supervisory models set out in DL 76–/A 2006;
- one year after June 30, 2006 if the statutes have not been changed, in which case:

a) companies with the board of directors and supervisory committee structure will use the type set out in Article 278(1)(a) of the Companies Code, as amended by DL 76–/A 2006 (board of directors and supervisory committee);
b) companies with the management board, general committee and chartered accountant structure will use the type set out in Article 278(1)(c) of the Companies Code, as amended by the Decree-Law (administrative council, general and supervisory committee and chartered accountant).

We believe that the current provisions (pre-DL 76–/A 2006) on models for administrative and supervisory bodies will continue to apply up to the time that the first of the conditions referred to above is fulfilled.

The entry into force of the new law also requires us to ascertain whether the provisions governing the new corporate governance models will apply immediately to existing relationships or whether they will apply only to new facts/relationships formed after that date.

In our opinion, no unequivocal answer to this question is to be found in Article 63(1) of DL 76–/A 2006, and thus we will have to ascertain, on a case-by-case basis, when each one of the new provisions applies.

A typical example of the difficulties raised is the new rules on the composition of the administrative body, and particularly the supervisory committee, for certain joint

stock limited liability companies (S.A). It is necessary to ascertain whether these rules are applicable immediately to the terms of office of those who are members of the company's bodies at the time the provisions come into force (in principle, December 30, 2007), or only to future terms (commencing after that date).

It is our view, despite the existing doubts, that the aim of the legislature would have been to apply these rules to all companies from June 30, 2007 at the latest, with the 12-month deadline being provided so that companies would have time to adapt to the new models.

A parallel problem is the composition of the board of the general meeting and the suitability of its members, in this case with the aggravating factor of having to determine whether this matter is or is not envisaged by the regime set out in Article 63(1) of DL 76–/A 2006 and/or by 63(2) (in which case the mandatory provisions would apply immediately). It is our view that the issues as to the composition of the board of the general meeting and suitability must be subject to identical rules to those applicable to the other bodies in the same companies.

C – **With regard to the convening and functioning of general meetings, shareholder access to information, and the exercise of voting rights,** DL 76–/A 2006 provides that "Provisions on the convening and functioning of the general meeting, shareholder access to information and the exercise of voting rights, **which may be ousted by the statutes, can apply at once to the companies referred to in the previous number, if they should so choose, or compulsorily from June 30, 2007.**

Without prejudice to II H above, we believe that DL 76–/A 2006 is not very clear on various aspects relating to companies incorporated before June 30, 2006, particularly on the range of companies to which this provision applies.

In fact, when the legislature mentions the companies referred to in the previous number (DL 76–/A 2006 Article 63(1)) it is not certain whether this reference applies only to the S.A. (mentioned in the subparagraph of the" previous number") or to all companies incorporated before 2006 (mentioned in the preamble to the "previous number"). Only this latter interpretation would allow for the allocation of a 12-month period for all companies to change their statutes.

D - It must also be pointed out that the provision referred to in III C does not include, in our opinion (at least outside of the contents of the provision referred to in C above), the alterations introduced by DL 76–/A 2006, which signify a reversal of previous supplementary provisions (which could have been set aside by the statutes) for new contrary supplementary provisions, such as the paradigm of the new supplementary rule allowing directors to relocate the registered office within national territory (amending Article 12 of the Companies Code), in replacement of the former supplementary rule of non-relocation.

In cases where both laws (the old law and the new law) are supplementary, it is our opinion that there is no reason for the new law to be applied to pre-existing situations. In the light of this interpretation, we consider that in the specific case of directors relocating the registered office, the new law will only apply, in principle, to pre-existing companies in cases where the statutes of these companies already make provision for such a possibility (within the limits allowed by the existing law at the time).

E – **The system for registering corporate acts online** is expected to be operative before the end of 2006.

F - **The permanent company certificates system** is only expected to come into force during the second half of 2006.

G – **The abolition of the geographical jurisdiction of commercial registries** and the possibility of carrying out commercial registry acts at any commercial registry in the country will only come into force in January 1, 2007. Until then, the transitional arrangements contained in the new decree-law will apply.

H – The decree-law establishes several exceptions, particularly in relation to some of the commercial registry changes, which either delay or bring forward the commencement of some of the provisions on commercial registries (see Articles 53 to 55 and Article 63(2) and (3)).

IV – It is appropriate to conclude by advising companies, and particularly the S.A. companies, to carry out a review of their statutes in order to avoid any interpretational disputes which could otherwise arise as a result of the new decree-law.

The Mayor of the Faro City Hall and the President of the Board of the PLMJ Foundation are pleased to invite you to the exhibition **Options & Futures**, to be held from the 18th of May to 31st August at the Faro City Museum.

18.05 > 31.08

UNTIL 31.05

Tuesday > Friday 09H00 > 18H00
Saturday and Sunday 11H30 > 18H00

FROM 01.06 UNTIL 31.08

Tuesday > Friday 10H00 > 20H00
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