

INFORMATIVE NOTE

ENERGY AND
NATURAL RESOURCES

PLMJ

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ENERGY CERTIFICATION AND THE QUALITY OF AIR IN BUILDINGS

On 1 January 2009, the National Energy Certification and Quality of Air in Buildings System (SCE), as set out in Ministerial Order 4661/2007, of 5 June (the “MO”), came fully into force. This means that nearly all the properties that have already been built or those that will be built in the future in Portugal are or will come under this system.

The entry into force of the SCE was established in the MO in three separate phases:

- a) 1st phase – on 1 July 2007 the SCE began to apply to new residential buildings with a useful area of more than 1000m² and to new or rehabilitated services buildings with a useful area of more than 1000m² or 500m² (in the case of shopping centres, supermarkets, hypermarkets and heated indoor pools) which applications for building or renovation licences have been filed up to that date;
- b) 2nd phase – on 1 July 2008, the SCE became applicable to all new buildings, regardless of their size or purpose, which building licence application was filed after that date;
- c) 3rd phase – from 1 January 2009, the SCE applies to all the remaining buildings included within its scope, all of which are described below.

What is the SCE?

The legislation that enacted the SCE – Decree-Law 78/2008 – is part of the 4 April 2008 legislative package, which transposes into national law Directive 2002/91/EC of the European Parliament and Council, of 16 December, on the energy performance of buildings. The National Energy Certification and Quality of Air in Buildings System Regulation (RSECE) – Decree-Law 79/2006 – and the Thermal Behaviour of Buildings Regulation (RCCTE) – Decree-Law 80/2006 – were enacted on even date.

The RSECE sets out a number of new requirements for services and residential buildings (including housing and business units) equipped

with climatisation systems, with a view to meet the following objectives: (i) thermal and hygiene comfort in the different areas of the building according to their utilisation; (ii) enhanced overall energy efficiency of the buildings; (iii) enhanced efficiency in climatisation systems thereby allowing for increased energy performance and ensuring the continued good quality of the inside air, as well as (iv) regular monitoring of the maintenance of these systems.

The RCCTE, on the other hand, establishes the new rules for the design of residential buildings (apartments included) and services buildings with no central climatisation systems in order (i) for the levels of thermal comfort required for heating, cooling and ventilation to guarantee the quality of the air in the buildings and the warm domestic water needs, limiting the excessive use of energy and (ii) to minimize the adverse pathological situations caused by surface or internal condensation, which can have a negative impact on the durability of the construction materials and the quality of the air inside.

In this context, the SCE seeks to (i) ensure the application of the RSECE and RCCTE, (ii) certify energy performance and air quality in buildings and (iii) identify measures to correct or improve performance (including in relation to the energy systems themselves). Compliance with the obligations of the SCE, which is managed by the Agency for Energy (the “Adene”), will lead to the issue of an energy performance and air quality certificate for each building which, among other things, will attribute an energy class. The energy certification process is conducted by qualified experts together with the Adene. The certificates must be registered with this agency and, when their issue regards buildings not subject to audits or inspections, their validity lasts for a 10 year-period.

A new paradigm for the market: energy efficiency as an obligation

Energy efficiency is one of the political priorities of the European Union (“EU”) and all the Member States, which seek to reduce the current energy bill and the EU’s extreme dependence on third parties in terms of the supply of energy.

“Best Portuguese Law Firm for Client Service” - Client Choice - International Law Office, 2008

“Portuguese Law Firm of the Year” - IFLR Awards 2006 & Who’s Who Legal Awards 2006, 2008

The adoption of the SCE and its full entry into force must be viewed in the light of these priorities as well as a clear sign of new times ahead where it is possible to require developers, builders, architects and users are required to build, alter and use buildings in the most intelligent, effective and least expensive manner, namely as regards energy consumption.

This is why the SCE sets out the need to obtain the energy efficiency certificate and that in real estate transactions – e.g. letting, financial leasing or purchases and sales – the certificates must be previously obtained and produced.

This certificate gives us a clear picture of the energy characteristics of the building and shows that it is in compliance with the applicable legal provisions. Its periodic renewal imposes constant redoubled care and attention to the energy aspect of the utilisation of the building. This in turn may generate gains as a result of the increased energy efficiency, which reduces the energy consumption bill.

Affected buildings

The following buildings are obliged to have an energy and air quality certificate:

- a) New buildings;
- b) Existing buildings which undergo rehabilitation works, whether or not a licence or permit is required;
- c) Existing services buildings, subject to periodic audits;
- d) Existing residential and services buildings - for sales and leasing contracts, including rental agreements, the owners must show the certificate to the purchaser, lessee or tenant.

The only properties excluded from the obligation to obtain the certificate are military infrastructures and properties assigned to the security forces or State information agencies.

Obligations of developers or owners

Within the scope of the SCE, the developers or owners of the buildings mentioned above have the following obligations, among others:

- a) Obtain the energy performance and air quality certificate for the building;
- b) Comply with all the obligations, as applicable, from the SCE, RSECE and RCCTE;
- c) Arrange a qualified expert to monitor the certification process, audit or periodic inspection;
- d) Apply for the inspection of boiler heating systems and air-conditioning equipment, as set out in the RSECE;
- e) The owners of services buildings affected by the RSECE are also responsible for displaying a copy of the valid energy and air quality certificate in a visible accessible area near the entrance.

Breach of the obligations arising under the SCE

The breach of the obligations set out in the SCE is an administrative offence punishable with a fine. The law also provides, in certain particularly serious cases, additional penalties which include the suspension of the utilisation permit and the closure of the building. In terms of injunctions, it is possible for the competent authority to issue an order suspending the operation of the building or the preventative closure of all or part of the building and/or the seizure of equipment.

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