

INFORMATIVE NOTE



CORPORATE AND CAPITAL MARKETS

AMENDMENTS TO THE COMPANIES CODE AND THE SECURITIES CODE

The Implementation of the Shareholders' Rights Directive and the issuance of shares without Nominal Value.

Decree-Law no. 49/2010, of May 19 ("DL 49/2010"), which has implemented in our jurisdiction the Directive 2007/36/EC, of June 11 ("Shareholders' Rights Directive") and the Directive 2006/123/EC, of December 12 (partially), entered into force on May, 24th, amending the Portuguese Companies Code ("PCC") and the Portuguese Securities Code. We stress out that DL 49/2010 has also introduced other amendments to the PCC in order to establish the issuance of shares without nominal value and the improvement of some minor aspects.

In the absence of transitional provisions, the companies shall now consider the compliance with the new legal provisions with special care.

Amongst the main matters comprehended in the DL 49/2010, the following should be highlighted:

A. Implementation of the Shareholders' Rights Directive – Consequences to issuers, shareholders and financial intermediaries

- Regarding public companies, a minimum deadline of 21 days between the disclosure of the notice and the date of the general meeting ("GM") was set out and the information to be included in the notices and minutes becomes more demanding (part of the information included in the

minutes must be made public in the companies' website in a 15-day-term).

- The preparatory information of the GM of issuers of shares admitted to trading in a regulated market ("Issuer(s)") must now be made available in the website at the date of the disclosure of the notice (including, for instance, (i) the financial documents to be approved by the annual GM, (ii) the names and curricula of the individuals to be proposed in elective GM and (iii) in general, the proposals to be presented by the managing board to the GM).

- The shareholder(s) of an Issuer which holding shares corresponding to, at

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"Portuguese Law Firm of the Year"
Chambers Europe Excellence 2009, IFLR Awards 2006 & Who's Who legal Awards 2006, 2008, 2009

"Corporate Law Firm of the Year - Southern Europe"
ACQ Finance Magazine, 2009

"Best Portuguese Law Firm for Client Service"
Clients Choice Award - International Law Office, 2008, 2010

"Best Portuguese Tax Firm of the Year"
International Tax Review - Tax Awards 2006, 2008

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It has been introduced the record date rule for participating in GM's of Issuers suppressing the blockage rule.

least, 2% of the share capital may request the convocation of the GM, to include items in the agenda as well as to present resolution proposals; Aiming the strengthening both the access to the information and the relevance of votes by correspondence, the inclusion of items in the agenda must always be accompanied by resolution proposals.

- It has been introduced the record date rule for participating in GM's of Issuers, by setting out that one has the right to participate and vote in a GM if at 0h (GMT) of the 5th negotiation day prior to the GM it holds shares corresponding to at least one vote; therefore, the exercise of the referred rights is not prejudiced by the transfer of the shares after the record date, nor depends of its blockage.

- Nevertheless, if there is a transfer of shares between the record date and the ending of the GM the disclosure of said information to the chairman of the GM's and to the Portuguese Securities Exchange Commission ("CMVM") is mandatory.

- Also on this regard, a "previous inscription" mechanism has been established under the form of a declaration of the intention to participate in the GM by the shareholder, to be submitted to the chairman of the GM's and to its financial intermediary until the day prior to the record date, being the latter due to subsequently send to the chairman of the GM's (until the end of the day corresponding to the record date) the number of shares registered in the name of its client (the abovementioned communications may be made by e-mail).

- It is now expressly set out that the financial intermediaries holding shares

of Issuers on its own name, but on the account of its clients, may cast votes differentially with its shares, according to the voting instructions of each client.

- It is expressly allowed the appointment of different representatives by the shareholders regarding shares of public companies held in different securities accounts.

- Following the entering into force of DL 49/2010, the companies shall consider these new rules in the next GM's as well as evaluate the relevance and adequate timing to the amendment of their by-laws so as to accommodate said legal amendments which are mainly mandatory provisions.

B. Shares without nominal value – Greater transparency and competitiveness in capital release

PCC allows now limited liability companies to issue shares without nominal value. It will be possible to choose between shares with nominal value and shares without nominal value, although both kinds of shares in one single company will not be permitted.

- With reference to the shares without nominal value:

- The contributions of each shareholder shall be, at least, equal to the amount of the share capital correspondingly issued;

- All shares shall represent the same portion of the share capital;

- The concept of "nominal value" is replaced by the concept of "issue value";

- A capital increase below the issue value is not allowed;

- The issue of shares with an issue value lower than the issue value of other shares previously issued will require a report of the board of directors regarding the value established and the financial implications of such

issuance on the shareholders;

- The premium issue is the difference (for more) between the price paid by the shareholders and the share capital correspondingly issued.

- The companies in a deficit situation may perform new capital increases without a previous capital decrease being required (*operação harmónio*) since the new issue value may be established in line with the shares' accounting value. This is a crucial change given the current market situation.

- This measure allows a greater transparency regarding the shares' value parameters, as well as a stronger competitiveness between national companies and foreign companies located in countries where such possibility was already set out.

- The law does not set forth how companies shall adopt shares without nominal value. In our opinion it will require an amendment to the companies' by-laws, without prejudice of other relevant formalities.

- With this amendment, PCC has embraced new concepts, such as "issue value", "share capital correspondingly issued", "in proportion to its accounting value" and "portion of the share capital", which will only be materialized upon its practical application in specific transactions, and might be different from our preliminary understanding.

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- In simple terms and as a first impression, it must be kept in mind that a new logic, in-between the conceptual frameworks of shares with nominal value and quotas, has been introduced when regarding the share capital division criteria.

C. Improvement amendments

The legislator has taken this opportunity to introduce some amendments to the PCC, corresponding in general terms to improvements to the alterations

made under 2006 reform, such as the prohibition of statutory limitations regarding shareholders representation and vote by correspondence.

This decree-law is however less ambitious than the proposal made under the Public Consultation performed in 2008 by CMVM (Consultation Paper no. 10/2008) since it does not regulate some of the matters then raised, such as the own shares' legal regime and the independence of the members of the board of the GM and supervisory board of the Issuers).

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