



INFORMATIVE NOTE



CORPORATE / M&A

LARGE, SMALL AND MICRO ALTERATIONS

WHAT HAS CHANGED IN CORPORATE LAW SINCE 01.01.2016?

1. LARGE LIMITED LIABILITY COMPANIES BY SHARES

Among other issues, Law no. 148/2015 of 9 September has amended (broadened) the concept of “large limited liability company by shares” (“*grande sociedade anónima*”), which appeared for the first time in Portugal with the reform of the Portuguese Companies Code (“*Código das Sociedades Comerciais*”) occurred in 2006.

With these amendments, “large limited liability companies by shares” are deemed to be companies which:

- (i) Are not totally controlled by others adopting the enhanced supervision model (the so-called “*modelo de fiscalização reforçada*”); and which
- (ii) Exceed two of the following limits for two consecutive years:

Old rules	New rules (from 01.01.2016)
Total balance sheet: EUR 100,000,000	Total balance sheet: EUR 20,000,000
Total net sales and other income: EUR 150,000,000	Total net sales: EUR 40,000,000
Average number of employees in the financial year: 150	Average number of employees in the financial year: 250

The enhanced supervision model means, in the traditional structure, that the supervision must be carried out on two levels: by a supervisory board and by a statutory auditor or firm of statutory auditors (that are not part of the supervisory board).

Furthermore, the members of the corporate bodies of large limited liability companies by shares are subject to specific requirements in terms of independence and in terms of the rules on incompatibility and on the provision of security.

When it comes to counting the period of “two consecutive years”, although Law no. 148/2015 may have different interpretations, as the same does not expressly governs how this period is counted, we believe the first relevant financial year should be 2016, that is to say that, under the general terms of law and as a rule, a new law only applies to new facts.

In practical terms, with the substantial reduction of two of these three limits, one may expect that more limited liability companies by shares will be classified as “large”, thus entailing the amendment of their articles of association and the reorganisation of their supervision bodies and perhaps also of the members of the board of the general meeting.

2. CHANGES TO THE RULES ON PRESENTATION AND CONSOLIDATION OF ACCOUNTS

Decree-Law no. 98/2015 of 2 June introduced some changes in the area of annual financial statements, consolidated financial statements and related reports of certain types of companies. The following changes are noteworthy:

(a) Micro-entities | Exemption from presenting a management report

The concept of micro-entity (“*microentidade*”) had already been introduced into corporate law with the reform of 2006. The aim of the current legislative amendment is to modify the value of its qualifying limits. Micro-entities are now deemed to be companies which, at the date of their balance sheet, do not exceed two of the following three limits:

Old rules	New rules (from 01.01.2016)
Total balance sheet: EUR 500,000	Total balance sheet: EUR 350,000
Total net sales and other income: EUR 500,000	Total net sales: EUR 700,000
Average number of employees in the financial year: 5	Average number of employees in the financial year: 10

In practical terms, and also as occurred under the old rules, the so-called “micro-entities” are exempt from preparing an annual management report.

In case “micro-entities” have carried out operations with own quotas or shares they must, however, disclose at the end of the balance sheet: (i) the number and nominal value, or in the absence of a nominal value, the accounting value of the own quotas or shares acquired or disposed of during the period; (ii) the fraction of the subscribed capital that they represent; (iii) the reasons for these actions and the respective price; and (iv) the number and nominal or accounting value of all the own quotas and shares held at the end of the period.

(b) Small groups of companies | Exemption from consolidating accounts

The exemption from consolidating accounts, which was already provided for in the law, is now associated with a new concept, of “small group”.

This means that, besides other situations, the parent company of a “small group” is exempt from preparing consolidated financial statements. For this purpose, a group is deemed to be “small” when, on a consolidated basis and at the date of the balance sheet of the parent company, it does not exceed two of the following three limits:

Old rules	New rules (from 01.01.2016)
Total balance sheet: EUR 5,000,000	Total balance sheet: EUR 6,000,000
Total net sales and other income: EUR 10,000,000	Total net sales: EUR 12,000,000
Average number of employees in the financial year: 250	Average number of employees in the financial year: 50

Decree-Law no. 98/2015 expressly states that it only applies to periods that begin on or after 1 January 2016. Specifically, when it comes to the financial years that are relevant for the purpose of calculating the limits referred to in (a) and (b), it draws a distinction between:

- (1) Entities incorporated before 1 January 2016: the limits refer to the financial statements of the financial year prior to this date, becoming effective as from the period in which the Decree-Law becomes effective (2016);
- (2) Entities incorporated in 2016 or later: the limits refer to the forecasts of the year of incorporation and become immediately effective.

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Iberian Law Firm of the Year
The Lawyer European Awards, 2015-2012

Portuguese Law Firm of the Year
Who's Who Legal, 2015, 2011-2006
Chambers European Excellence Awards, 2014, 2012, 2009

Top 5 - Game Changers of the last 10 years
Top 50 - Most Innovative Law Firm in Continental Europe
Financial Times - Innovative Lawyers Awards, 2014-2011