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Update

Corporate, Commercial and M&A

The regime of multiple voting shares in the new Portuguese Securities Code

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On January 30, 2022, Law no. 99-A/2021 of December 31 came into force, introducing several amendments to the Portuguese Securities Code ("PSC").

One of the most significant innovations brought by the referred Law consists in the possibility of issuing multiple voting shares, instituting an exception to the express prohibition of multiple voting in public limited companies, as established in article 384, paragraph 5 of the Portuguese Companies Code ("PCC"), as well as a clear derogation to the "one share, one vote" principle, set forth in article 384, paragraph 1 of the PCC, which is based on a premise of full correspondence between share ownership and voting rights.

According to the Portuguese Securities Market Commission (*Comissão de Mercado dos Valores Mobiliários*), the introduction of multiple voting shares in listed companies aimed to "meet the needs of companies and investors, by reinforcing the competitiveness and development of the Portuguese capital market", and it is expected that this measure will promote a greater attractiveness of such market.

Therefore, under the new article 21-D of the PSC, issuers of shares admitted to trading on a regulated market or multilateral trading facility may now issue shares with multiple voting rights, up to a limit of five votes per share.

The provision of multiple voting may take place *(i) ab initio*, i.e., through a provision in the company's articles of association, at the time the company is incorporated (cf. article 24, paragraph 1 of the PCC), or *(ii)* subsequently, through an increase in the share capital or through the conversion of common shares into preferred shares, requiring, in either of these cases, approval by the majority legally provided for amending the articles of association of public limited liability companies, i.e., a two-thirds

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majority of votes cast (cf. articles 386, paragraph 3 and 383, paragraph 2 of the PCC, applicable *ex vi* article 21-D, paragraph 3 of the PSC).

Notwithstanding the above, deviations from the “one share, one vote” principle had already been admitted in the Portuguese legal system.

In this regard, article 384, paragraph 2 of the PCC establishes the possibility of the articles of association *(i)* making a single vote correspond to a certain number of shares, provided such limitation is applied to all shares issued by the company and at least one vote is attributed to each thousand euros of share capital, as well as *(ii)* establishing “voting caps”, by virtue of which votes issued by a shareholder above a certain number are not counted.

In turn, articles 341 et seq. of the PCC admit the issuance of preferred shares without voting rights, which, implying the suppression of the shareholder’s voting rights, grant him/her, in compensation, a preferential right in the distribution of dividends.

It should also be noted that multiple voting rights, limited to double voting, had already been accepted in article 250, paragraph 2 of the PCC with respect to private limited companies.

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