Momentum

Special Edition
Sérvulo's 20 Years

20 ANOS

Sérvulo & Associados | Sociedade de Advogados, SP, RL

Momentum

Special Edition
Sérvulo's 20 Years

Brief notes on real estate investment companies

Earlier this year the legal framework for investment and real estate management companies ("sociedades de investimento e gestão imobiliária", hereinafter referred to as "SIGI") was approved by decree-law no. 19/2019, of January 28, which entered into force on February 1, 2019 and was recently amended by decree-law no. 19/2019 of 4 September.

Despite being a recent legal framework, it has already been the subject of some criticism, particularly in view of the corporate purpose of the SIGI and their tax regime.

This short note contains a brief overview of some aspects of the new legal framework that should be highlighted, from a perspective of deviations from the general rules applicable to joint stock companies. The legislator's goal, as expressed in the preamble of the decree-law referred herein, was the promotion of *"investment and dynamism of the real estate market, particularly of the real estate lease market"* as well as the dynamization of capital markets given the less stringent requirements for admitting SIGI shares to trading.

A SIGI must be a joint stock company (cfr. article 3, point a) of the decree-law), and may be constituted "ex novo" or result from a change of the articles of association of an existing joint stock company (and also from the conversion of a real estate investment fund in the corporate form), provided that the company complies with the legal requirements of said statute (cfr. respective articles 5 and 6). The conversion into a SIGI by an existing company will take effect on the first day of the tax period following the date of registration at the commercial registry of the amendments to its articles of association.

A SIGI must adopt the supervisory model provided for in item b) of article 413 (b) of the Companies Code (hereinafter "CC"), consisting of a supervisory board and a certified accountant (or an audit company) that is not a member of the supervisory body. This also means that the type of management structure is the one comprising a board of directors (article 278, paragraph 1 a) of the CC).

The minimum share capital is €5,000,000, which must be fully subscribed and paid up (in cash or in kind), and be represented by ordinary shares. All shares representative of the share capital of a SIGI must be admitted to trading on a regulated market or selected for trading in a multilateral trading facility situated or operating in Portugal or in another

Member State of the European Union or the European Economic Area, within one year as of the commercial registry of the incorporation of the SIGI or from the date of the effectiveness of the changes to the articles of association of an existing company.

The corporate purpose of a SIGI is the acquisition of real estate rights (property rights or "other equivalent rights") for lease, covering atypical contractual forms that include the provision of services required for the use of the property, namely "the development, construction or real estate rehabilitation projects" and / or their "allocation to the use of a store or space in a commercial centre, or use of office space" (article 7). SIGIs are subject to certain limits on the composition of their assets, established in article 8 of the decree-law. However, although it is mentioned that such limits are requirements that must be "met" by a SIGI, which means that they must be verified in order to be qualified as a SIGI (article 3, paragraph d) of the decree-law), article 8 (2) establishes that they are mandatory only starting from the second year after the incorporation (or amendment of the articles of association, in an extensive interpretation) of a SIGI.

A SIGI is required to distribute dividends in the percentages established in article 10: (i) 90% of yearly profits resulting from the payment of dividends and income from shares or units distributed by other SIGI subsidiaries or from real estate investment undertakings and real estate investment funds; (ii) 75% of the remaining distributable income for the year.

This regime does not apply to reserves and retained earnings existing at the date of registration of the amendments to the articles of association of a company converted into a SIGI.

The legal reserve cannot exceed 20% of the share capital, and it is not possible to constitute other non-free reserves (it is not entirely clear which regime will apply to realities that are, under the terms of the CC, subject to the legal reserve regime, such as those described in no. 2 of article 295 of the CC, namely premiums obtained in the issuance of shares and other equivalents).

The members of the board of directors and of the supervisory body are liable before the shareholders (in the general terms of civil liability) for damages that are directly caused to them as a result of the loss of qualification as a SIGI.

Finally, with regard to the SIGI tax regime, article 11-A was recently added to the legislative decree, determining the application of the tax regime provided for in articles 22 and 22-A of the Tax Benefits Statute ("EBF") to SIGI, except in case of income resulting from the onerous disposal of real estate rights. In such cases, the exclusion provided for in article 22 (3) of the EBF, will only apply if the properties have been held for lease, covering atypical contractual forms that include services required for the use of the property for at least three years. On the other hand, if the loss of quality of SIGI under the terms of article 11 occurs, the application of that regime ceases, and the taxable profit will be determined and taxed under the Corporate Income Tax Code ("IRC"). Similarly, income from shareholdings held in SIGI to be paid or made available to the respective holders after the date of such termination, as well as capital gains realized after that date, will be taxed under IRC.

Teresa Anselmo Vaz
tav@servulo.com

Last but not least, Portugal has finally implemented legislation for the execution of the GDPR

Law 58/2019 was published on the 8th and has entered into force on the 9th of August.

A strange combination of an audacious approval of 13 years old for minors consent on information society services tagging along with employees protective measures.

The consent of minors over the age of 13 is accepted in the framework of the provision of information society services, thus lowering the age by 3 years to the general rule of the RGPD (which sets the minimum age of 16).

In the scope of video surveillance, a general prohibition of sound capture was established, with the possibility of recording only during the closing times of the installations or with the authorization of CNPD.

From an occupational point of view, we highlight an interesting measure that determines the possibility of retaining Social Security data for the purpose of indefinite retirement and retirement contributions, which may be useful in cases where there are doubts about the actual contributions made.

Still in the workplace, biometric data may only be used for attendance control and access to facilities. On the other hand, workers' consent will only be a valid condition for the processing of data when the processing does not give it an economic advantage.

In the values of the fines, it was decided to differentiate between acts performed by individuals, small and medium enterprises or large companies.

Ana Rita Paínho
arp@servulo.com

The new SPC Regulation — manufacturing waiver

The absence in Regulation (EC) No 469/2009 of any exception to the protection conferred by the supplementary protection certificate ("SPC") has the unintentional consequence of preventing the manufacture of generics and biosimilars established in the European Union ("EU") from manufacturers established in the European Union, including for the purpose of export to third-country markets in which protection does not exist or has expired.

Manufacturers established in the EU were also prevented, as a result of this legislation, from manufacturing generics and biosimilars for the purpose of storing them for a limited period before the expiry of the certificate. Those circumstances make it more difficult for those manufacturers, in contrast to manufacturers located in third countries where protection does not exist or has elapsed, to enter the Union market immediately after the expiry of the certificate, putting them at a significant competitive disadvantage.

Regulation (EU) 2019/933 of the European Parliament and of the Council of 20 May 2019, amended Regulation (EC) No 469/2009, concerning the supplementary protection certificate for medicinal products, and created an exception to the protection conferred by the SPC.

With the entry into force of this Regulation (1st July 2019), it became possible for manufacturers of generics and biosimilars established in the EU to manufacture products in the EU, or medicines containing those products, for export to third-country markets in which protection does not exist or has expired. Also, those manufacturers were now allowed to make and store products, or medicines containing those products, in a Member State for a defined period of 6 months until the expiry of the certificate, for the purpose of entering the market of any Member State upon expiry of the corresponding certificate. This amendment will help those manufacturers to enter in the market immediately after protection has expired ('EU day-one entry').

The manufacturer to which this exception is applicable has an obligation to provide certain information to the competent industrial property office (in Portugal, the INPI) and to the certificate holder.

This exception to the SPC protection is only applicable to certificates that are applied for on or after 1 July 2019. It is not applicable to certificates that are in force before 1 July 2019. Regarding the certificates that have been applied for before 1 July 2019 and that become effective on or after that date, the exception shall only apply from 2 July 2022.

Mariana Costa Pinto
mcp@servulo.com

Balanced representation of women and men on management and auditing boards

Legislative Order no. 18/2019

Legislative Order no. 18/2019 was published on the 21st of June to implement, as from the 22nd of June onwards, articles 10. and 11. of Law no. 62/2017, August 1 (that defined the legal regime of a balanced gender representation in management and auditing boards of public corporate sector entities and listed companies).

This Legislative Order determines (i) the procedures to be adopted by the relevant entities to ensure their mandatory reporting obligations; (ii) the shared competences between the Portuguese Commission for Citizenship and Gender Equality (*Comissão para a Cidadania e a Igualdade de Género – CIG*), the Portuguese Securities Commission (*Comissão do Mercado de Valores Mobiliários – CMVM*) and the Commission for Equality in Labour and Employment (*Comissão para a Igualdade no Trabalho e Emprego – CITE*) and (iii) the setup of a script to be used in the preparation of yearly equality plans.

Reporting of changes to management and auditing boards' composition

Entities integrated in the State's corporate sector shall report any relevant changes to the Portuguese Directorate-General for Public Employment (*Direção-Geral da Administração e Emprego Público – DGAEP*), using the State's management information system (SIOE). In turn, those integrated in the local corporate sector shall submit such report to the Directorate-General for Local Administration (*Direção-Geral das Autarquias Locais – DGAL*), using its own management information systems. On the other hand, listed companies shall comply with its reporting obligations before CMVM and by means of its information diffusion system (SDI).

None of entities has specific reporting obligations before CIG, considering it will be DGAEP's, DGAL's and CMVM's responsibility to redirect all data reported by the entities subject to Law no. 62/2017, August 1, to CIG.

All communications will have to take place up to 10 days after the relevant corporate board member is appointed.

Reporting of equality plans

In a similar fashion, these three groups of entities shall submit their respective equality plans to CIG and CITE through the same management information system, as soon as such platforms are adjusted and capable of processing this new set of data. Until then equality plans can be sent by emails directly to CIG and CITE (for entities integrated in the State's corporate sector), to DGAL (for entities belonging to the local corporate sector) and to CMVM (for listed companies).
In any case, equality plans shall be communicated on an annual basis and until the 15th of September of the preceding year.

This reporting obligation must not be mistaken with these entities' duty to disclosure their equality plans in their websites (pursuant to article 7., no. 1 of Law no. 62/2017).

Equality plans' script

To facilitate each entity's task of drafting their respective equality plan, the Legislative Order instructs CITE, in cooperation with CIG, to prepare a script on the preparation of these plans specifically targeting the following areas: **equal access to employment, equal working conditions, equal pay, parenting protection and family and work-life balance.**

This script includes a diagnosis support matrix, a monitoring matrix to measure the implementation of the equality plan and a monitoring matrix of the equality plan's enforcement in light of CITE recommendations.

The script shall soon be made available on CIG, CMVM and CITE websites, being applicable to all equality plans to be reported after such publication. This does not exempt any entity from preparing equality plans before the script is disclosed.

Inês Palma Ramalho
ipr@servulo.com

Cláudia Costa
cic@servulo.com

Compulsory arbitration or mediation to resolve low value consumer conflicts

The settlement of consumer disputes – i.e., those initiated by a consumer against a supplier of goods or a service provider[1] – through alternative means (such as mediation and arbitration) has been promoted by the legislator as a faster and less costly solution for consumers.

This trend was accentuated by the out-of-court settlement of consumer disputes, approved by Law no. 144/2015, of 8 September, which, namely, provided for a consumer arbitration network (composed of arbitration centres of consumer disputes authorized to pursue information, mediation, conciliation and arbitration activities) and lay down rules to ensure the effectiveness and accessibility of alternative resolution proceedings of those disputes (such as, for example, the decision within 90 days and the exemption of payment for the proceedings or the mere payment of a low fee).

In this context, with the clear objective of reinforcing consumer protection, the Law no. 63/2019, of 16 August, subjected consumer disputes of low economic value (namely not exceeding € 5,000.00) to compulsory arbitration or mediation when, at the express choice of the consumers, they are submitted to the arbitration court in a legally authorized arbitration centre of consumer disputes.

Thus, if a consumer wishes to lodge a complaint concerning the purchase of a good or the provision of a service, which does not exceed that amount, he may apply to an arbitration centre of consumer disputes (part of the list published by the Consumer's General Direction) and initiate a mediation or compulsory arbitration procedure, binding the supplier of the good or the service provider to participate. This is not an unprecedented legal imposition, as consumer disputes concerning essential public services have been subject to compulsory arbitration since 2011, in the case of express choice of users (natural persons)[2].

On the other hand, under the same law, the consumer must be notified at the outset that he can be represented by a lawyer or paralegal, and if he has no economic means to do so, he can apply for legal aid. Accordingly, consumer disputes arbitration centres have a duty to inform the consumer of the right to appoint a lawyer or solicitor.

Finally, the diploma in question states that, in consumer disputes of low economic value, the consumer is exempt from the prior payment of a judicial fee, which will be determined in the end. Considering that there are arbitration centres of consumer disputes that host free alternative dispute resolution procedures, such provision does not apply in such cases.

These amendments, which although concern only Article 14 of Law no. 24/96, of 31 July (consumer's protection regime), must be included in the regime of out-of-court settlement of consumer disputes[3], will take effect on 15 September of 2019.

1. Concerning obligations arising from the purchase and sale or provision of services contracts.

2. See Article 15 (1) of Law no. 23/96 of 26 July, as amended by Law no. 6/2011 of 10 March.

3. In particular, the subjection of any low-value consumer disputes to compulsory arbitration, where this is the consumer's choice, expands the duty of information that the law imposes on suppliers of goods and service providers, which should disclose the arbitration centre(s) for consumer disputes to which they are bound in order to settle such disputes (see Article 18 (1) of Law no. 144/2015 of 8 September).

Alexandra Valpaços
ava@servulo.com

Judgment setting case law n° 3/2019: an approach or a separation between procedural administrative offense law and criminal procedural law?

On 2 July, it was published on Diário da República (the Portuguese official gazette) the Judgment setting case n° 3/2019 issued by the Supreme Court of Justice, which unanimously determined that "in an appeal of an administrative offense proceeding, against the decision of first instance, the appellant may raise questions which he did not claim in the appeal against the decision of the administrative authority".

This decision thus solves an issue which has been subject of different judgments by the Courts of Appeal, and that directly interfered with the rights and guarantees of the Defendant in administrative offense proceedings.

Considering article 75 of the General Regime of Offenses, which provides that the Court of Appeal is not limited to the "terms and meaning" of the decision of the Court of First Instance, there is no doubt that - as set in this decision - the questions which were not raised by the Defendant shall be considered.

At first sight, this possibility appears to be specific to the procedural regime applicable to the administrative offenses covered by the General Regime of Offenses and even contrary to the rules of criminal law in this area, which has led some courts to decide that they are inadmissible.
Although framed by identical procedural principles, the structure of the procedural administrative offense law is not similar to criminal law procedural. Indeed, and as this decision correctly explains, it is in light of the "simultaneous remoteness and proximity" between these branches of law that the issue must be considered: the first time that a court considers the administrative decision is in the judicial challenge, which means that the challenge is not a real appeal, and the decision on it is the first decision at first instance. Thus, this Court has full powers that cover the whole merits of the question, and the question to be decided by the Court of Appeal cannot be classified as a "new question". In fact, with their respective specificities, this is the case with the criminal appeal for the Court of Appeal or the direct appeal of a criminal decision at first instance to the Supreme Court of Justice, limited to law questions, as in the case of administrative offenses. In the latter case, it is only at this moment "that legal questions can be raised for the first time based on crystallized facts or allege the irregularities set in article 410, n. 2 of the Criminal Procedural Code, being irrelevant any concept of new question considering the range of knowledge imposed by article 410, n.1 of the Criminal Procedural Code".

Thus, this decision only clarifies what already results from the applicable procedural rules, if interpreted in accordance with the principles applicable to both criminal law and administrative offence law, while respecting the proper structure of each of these branches of law.
It is possible to say considering these two branches of law that are intrinsically linked, only thus truly respecting the rights of the Defendants: "it is more what unites than what separates us"!

Cláudia Amorim
ca@servulo.com

ATAD Express # 1: changes to interest deductibility for corporate income tax purposes

On May 4th, entered into force Law no. 32/2019, which transposed the ATAD Directives (Anti--Avoidance Directives), namely Council Directive (EU) 2016/1164 of 12 July 2016), as amended by Council Directive (EU) 2017/952 of 29 May 2017.

As the preamble to the first directive states, the political priorities "in international taxation highlight the need for ensuring that tax is paid where profits and value are generated".

With this objective in mind, the Organization for Economic Co-operation and Development has developed a successful initiative against tax base erosion and profit sharing (the "BEPS" project) which received a strong welcome by the players in the market.

Further to the same, the European Union adopted the ATAD Directives with the aim of finding common, yet flexible, solutions at the EU level consistent with BEPS conclusions.

Considering the amendments at stake entered into force on a moment of heavy work for companies, in this return from holidays, SÉRVULO will present the main changes introduced in Portuguese legislation, as a result of the transposition of the ATAD Directives, in brief updates intended at highlighting the main changes to be considered for the future.

Thus, in this update, SÉRVULO presents the main changes introduced to article 67.º of the CIT Code, which provides for limitations on the deductibility, for purposes of this tax, of net funding costs up to € 1,000,000 or, if higher, at 30% of the EBITDA (as adjusted for the application of this rule).

The changes introduced were surgical, as the regime in force until now was already in line with European requirements at this level.

In fact, the Portuguese regime was and is even more demanding than the European one. For example, while the annual cap for deductibility of financing costs is € 3,000,000 under the Directive, the internal regime restricts it to only € 1,000,000 and, while the Directive allows for an unlimited reporting period for the future of such expenditures (and, in time-limited terms, their reporting to prior tax periods), the CIT Code does not allow reporting for past years and limits future reporting to the subsequent five periods.

Among the amendments now introduced, the concept of "funding costs" is amended to make it closer to that provided for in the Directive in order to include, inter alia, the amounts paid resulting from the subscription of zero-coupon bonds, convertible or subordinated, financing costs incurred with the acquisition of assets and capitalized (for accounting purposes) on the same acquisition value, as well as any payments arising from hybrid financial instruments, such as the yield on a participating loan or Islamic financial instruments.

Thus, the concept is broadened to cover expenses incurred with mechanisms similar to financing instruments, whose remuneration does not fall within the strict concept of "interest", but which generate expenses of a similar nature from a practical point of view.

Also, the concept of EBITDA is approximated to that contained in the Directive, according to which it corresponds to the taxable profit or tax loss subject to and not exempt from CIT, accrued of net funding expenses, as well as depreciations and amortizations deductible for CIT purposes.

Teresa Pala Schwalbach
tps@servulo.com

Whistleblowing or playing trombone

There are those who say that there is no such thing as bad publicity, but many of us would disagree. This is particularly true for businesses that prefer to correct shortcomings internally rather than being faced with an inspection by the authorities or the revelation of their faults of which they may be unaware, be they major or minor, in the media.

On the other side of the coin, many employees would be delighted if they could report shortcomings or possibly improper conduct, provided that they can do so in a safe environment and be sure that their complaints will be handled objectively, impartially and without fear of retaliation.

It is for this reason that the internal regulations of many businesses include whistleblower provisions, which create internal channels for complaints, which include the hotlines or ethics hotlines.

However, this is where things start to get complicated for businesses in Portugal. In 2009, the National Data Protection Commission (CNPD) issued guidance regarding the "Principles Applicable to the Processing of Personal Data for the purposes of the Internal Communication of Irregular Financial Management Issues (Ethics Hotlines)". According to this guidance, the whistleblower system is only acceptable when it is limited "to the areas of accounting, internal accounting controls, auditing, the combating of corruption and banking and financial crime", so that only persons who have committed acts of management that are related to these areas, who are generally management staff, can be reported.

The result of this is that employees, who are prevented in this way from whistleblowing, have no alternative but to raise their concerns with outside authorities, when they would much rather see these issues resolved internally, particularly because repercussions can be controlled when such issues are dealt with internally, which is not the case when whistleblowers "go public".

However, there is some good news for employees and the businesses they work for. The European Parliament (EP) has drafted a Directive on the protection of persons who report violations of EU law. According to the EP's draft directive, businesses with 50 or more employees will be required to create internal channels of communication for whistleblowing, together with procedures for the subsequent processing of the complaints and the issues raised. The draft Directive also expressly provides that the internal channels for the receipt of complaints must permit oral or written complaints, made by telephone or voice messaging systems, without prejudice to the right of whistleblowers to request an interview.

Moreover, the areas regarding which protected complaints can be made, go far beyond the CNPD guidance and include areas such as environmental protection, food safety and animal welfare, consumer protection and transportation safety. Member States also have the power to extend the whistleblower protection in the Directive, to other areas or activities.

The draft Directive is particularly at pains to protect whistleblowers and not only prohibits retaliation but also includes measures to actively protect whistleblowers from legal proceedings brought on the basis of breach of confidentiality obligations, or the accessing or acquisition of relevant information, provided that the said acquisition or accessing do not amount to crimes.

All this will not be implemented in the immediate future, but the future for whistleblowers is brighter.

Margarida Costa Gomes
mcg@servulo.com

Issues paper on digital ecosystems, big data and algorithms

The digitalization of the economy led to the emergence of new business models based on multi-sided platforms. In 2018, 94% of Portuguese internet users have made at least one online purchase within a wide range of product categories (Nielsen, 2018). Due to the rising importance of this matter the Portuguese Competition Authority (PCA) has published an Issues Paper on the application of competition law to the specificities of Digital Ecosystems, Big Data and Algorithms. In brief, the PCA analyses the role of big data as a factor that enhances the network effects and which is crucial to the digital ecosystems of products/services.

One of the challenges for competition policy is that incumbent platforms may adopt exclusionary strategies, for example, by restricting their rivals' access to the data they need in order to carry out their activities.

At the sectoral level, the Second Payment Service Directive (PSD2) regulates the access to data in the digital era. PSD2, implemented in Portugal in November 2018, imposes obligations on banks to provide FinTech operators with access to client data in order to provide certain payment services, upon the client's request. In this regard, we have analysed, in a previous update, the PCA's FinTech Issues Paper, in particular the risks of foreclosure by banks of FinTech operators access to client data and the PCA's recommendations to mitigate them.

Big data contributes to the expansion of pricing, monitoring or recommendation algorithms. There are positive effects, such as the enhancement of product discovery and price comparison, or the decrease of transaction and search costs. However, big data may also facilitate collusion in the market, in particular on prices.

As we have anticipated, "alongside its normal activity in traditional sectors, the PCA is paying close attention to new exclusionary practices in the digital economy. Interestingly, businesses that undertake such practices should not be exempted from liability for the use of algorithms or artificial intelligence likely to result in anticompetitive conduct. This means that the PCA is not afraid to act in the digital environment where the use of technology facilitates anticompetitive behaviour" (for further developments see our chapter on "The Cartels and Leniency Review – 2019").

Companies should be conscious of the opportunities and dangers this new era brings given the severity of sanctions for competition law infringements, both at public and private enforcement level. Compliance will reward those who are compliant!

Alberto Saavedra
as@servulo.com

The new regime on the conflicts of jurisdiction between the judicial and administrative and tax courts: Law No. 91/2019, of September 4th.

The new regime for the prevention and resolution of conflicts of jurisdiction between the judicial and administrative and tax courts was approved by the Law no. 91/2019, this past September 4th.

The mentioned regime revokes and replaces the obsolete and dysfunctional previous legal framework which was the result of two diplomas approved in the 1930s[1]. In fact, the entry into force, in 1976, of the new Fundamental Portuguese Law, based on principles and rules different from those in force at the time[2], had long required a proper regulation adapted to a new legal reality.

In this sense, the law establishes several relevant changes.
It should, therefore, be noted that, in the composition of the Court of Conflicts, two innovative rules are established:

a) The presidency is taken over either by the President of the Supreme Court of Justice or by the President of the Supreme Administrative Court, depending whether the issue originated, respectively, from the judicial court or the administrative and tax jurisdiction court.

b) Besides the President, two more judges are seated, one of them being the oldest Vice-President of the Supreme Court of Justice in charge and the other being the Vice-President of the Supreme Administrative Court elected from among and by the judges of the respective sections of administrative or tax litigation, depending on whether the matter in question is of administrative or tax nature.

Thus, the law breaks with the previous paradigm. On the one hand, it ceases to give the permanent presidency to the President of the Supreme Administrative Court, by establishing a regime of perfect parity between the top bodies of the judicial and the administrative and tax courts, having in mind the plurality and the wider-range of the points of view present within the court of conflicts. On the other hand, it abandons the rule that the remaining judges are drawn for each process, therefore, aiming at the stability and coherence of the jurisprudence of this instance and the achievement of efficiency gains.

Then, regarding the regime of the dispute resolution process, the matrix of which is regulated by the Procedure Civil Code on articles 109 to 114, the most important novelty is the creation of a third access route to the Court of Conflicts (articles 15 to 17), in addition to the two existing routes (the appeal of the decisions of the Courts of Appeal both of the judicial and administrative jurisdiction in cases of pre-conflict and the request for resolution in the event of an effective conflict). This third access route allows any court to address consultations on matters of jurisdiction, which, being the subject of immediate binding pronunciation by the Court of Conflicts, are intended to avoid as much as possible the proceedings concerning discussions on the competent jurisdiction.

Lastly, the legislator also took the opportunity to articulate the new regime of resolution of the conflicts of jurisdiction with the dispute resolution mechanism enshrined in article 1 (3) of the Court of Auditors' Organization and Process Act (Law No. 98/97, of August 26th), which states that it is incumbent on the Court of Conflicts, with the composition envisaged therein, to solve the conflicts of jurisdiction between the Court of Auditors and the Supreme Administrative Court.

1. The essential of the previous regime consisted of two diplomas prior to the Portuguese Constitution of 1976: Title II of the Regulation of the Supreme Council of Public Administration – approved by Decree No. 19 243, of January 16th, 1931, amended by Decree No. 19 438, of March 11th, 1931 – supplemented by the provisions of article 17 of Decree No. 23 185 of October 30th, 1933, a diploma which extinguished that Supreme Council and restored, in its substitution, with the Presidency of the Council, the Supreme Administrative Court.

2. In particular, regarding the Courts' independency (article 203), the prevalence of imperative court rulings for all public and private entities (article 205 (2)) and the parity itself between the three categories of the courts currently foreseen (article 209 (1)).

Débora Melo Fernandes
dmf@servulo.com

Joana Aragão Seia
jas@servulo.com

Sérvulo & Associados | Sociedade de Advogados, SP, RL

20 years of Sérvulo.

ENTHUSIASM, FORTITUDE AND STAMINA IS OUR MOTTO.

It has been 20 years since our inception. The world, together with the legal landscape, has changed at breakneck speed. The future is unpredictable, we cannot control it. But we can maintain our culture, identity, core values and ethos.

These are the essential characteristics with which we will continue to meet the challenges and expectations of our people and clients over the next 20 years and beyond.

20 ANOS

Sérvulo & Associados
Sociedade de Advogados, SP, RL

Rua Garrett, 64
1200–204 Lisboa – Portugal

T +351 210 933 000
F +351 210 933 001/2

Momentum

Special Edition Sérvulo's 20 years