Amendments to the legal framework applicable to preference shares

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The Portuguese Companies Code ("**PCC**") has been amended by Decree-Act 26/2015 ("**DA 26/2015**") of 6 February, which has significantly improved the legal framework applicable to preference shares (i.e. shares which confer the right to be paid a dividend in priority to remaining shareholders).

The aforesaid amendment seeks to provide flexibility and clarity to the legal framework applicable to preference shares, expressly providing that companies may issue preference shares with different characteristics.

Some of the most relevant changes brought about by the amendment are as follows:

- The minimum limit of the priority dividend to be attached to the holders of these shares is reduced from 5% to 1% of the respective par value, or, in the absence of a par value, of the issue value, after deducting any issue premium, payable in priority to remaining shareholders.
- Companies' by-laws may confer a right to an additional dividend, which, in addition to being paid in priority, shall accrue to the dividends to be distributed to each shareholder;
- Companies are given the possibility to create categories of shares which ordinarily confer voting rights while, at the same time, confer the right to priority dividends or other special rights expressly provided in the by-laws;
- If there are distributable profits, the company's obligation to pay the priority dividend is subject to specific performance.
- The by-laws may extend the number of financial years for the payment of priority dividends, which by default is set at 3;
- It is clarified that the provisions regarding the redemption of shares are equally applicable to preference shares.

It is worth noting that the protection conferred to qualified investors is reinforced as a result of the review of the legal framework applicable to preference shares insofar as the following matters can now be determined by the by-laws:

- to set out or cast aside the rules applicable in the event of failure to pay priority dividends in a given financial year;
- that the priority dividends for financial years where there were no distributable profits are deemed lost;
- the conversion of preference shares into ordinary shares under the circumstances specified in the terms of issue in the event of financial deterioration of the company jeopardising the payment of the priority dividend;
- a number of financial years not exceeding five, for the attachment of voting rights as a result of the failure to pay in full the priority dividend;
- that preference shares only confer a right to a priority dividend set out in the company's by-laws but shall not participate in the remaining dividends to be attached to all shares.

The alterations made to the PCC by DA 26/2015 shall only apply to preference shares issued after 2 March 2015 (the date on which DA 26/2015 came into force).

In addition to the aforementioned changes to the corporate regime, a new rule governing the tax deduction of the costs related to such category of shares was included in the Portuguese Corporate Income Tax Act ("**PCIT**") by Act 82-C/2014 of 31 December.

Under this new rule, costs related to preference shares, including those incurred with the issue of such shares, are PCIT deductible at the level of the issuer, provided that such preference shares are recorded on the latter's balance sheet as a financial liability in accordance with the accounting rules in force.

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