



CORPORATE

BETWEEN SIMPLIFICATION AND SIMPLEX¹-ISATION

WHAT CHANGES IN COMPANY LAW AS FROM 1 JULY 2017?

Therefore, from 1 July 2017, companies will be allowed to adopt electronic format exclusively for their company records and bookkeeping. This opens the door, among others, to the adoption of electronic minute books to register all resolutions passed by the various corporate bodies.

Decree-Law no. 79/2017 of 30 June came into force on 1 July 2017. Among other measures, it amends articles 4-A, 87, 88 and 89 of the Portuguese Companies Code (“PCC”), and introduces the “electronic minute book” and a new way of increasing share capital for quota companies.

1. ELECTRONIC SIGNATURE OF ALL DOCUMENTS: THE ELECTRONIC MINUTE BOOK

The new wording of article 4-A of the PCC brings express recognition to the validity of any document issued under the terms of corporate legislation that is signed by electronic means.

Therefore, from 1 July 2017, companies will be allowed to adopt electronic format exclusively for their company records and bookkeeping. This opens the door, among others, to the adoption of electronic minute books to register all resolutions passed by the various corporate bodies.

However, this legislation does not clarify the procedure applicable to the transition between the current mandatory model for records of corporate resolutions (in which companies maintain traditional paper minute books) and the new model, in which companies may change to an exclusively electronic record of their corporate decisions.

In fact, article 32(1) of the Commercial Registry Code remains unchanged. This requires the filing at the commercial registry of the original documents (or certified photocopies of the documents) that support the facts subject to registration. Obviously, this will not be possible for companies that adopt the electronic minute book.

2. QUOTA COMPANIES: SHARE CAPITAL INCREASE BY CONVERSION OF QUOTAHOLDER LOANS (SUPRIMENTOS)

Regardless of the potential practical significance of being able to register corporate decisions electronically, the most important of the measures introduced by Decree-Law no. 79/2017 relates to the creation of a new way of increasing the share capital of quota companies. This allows quotaholders to convert the shareholder loans (“suprimentos”) made by them to the company, which are booked as liabilities, into share capital.

It is clear that the aim of the legislator was to make it possible to increase and strengthen equity through recourse to amounts already invested by the quotaholders in the company, which are accounted for as liabilities. Therefore, the aim is to strengthen the balance sheet of companies by reducing their liabilities.

¹ Simplex is the Portuguese Government’s programme to make everyday life easier for citizens and businesses by cutting red tape, reducing compliance costs and using ICT to deliver better public services.

The decision-making procedure applicable to this mechanism to increase share capital (or, actually, the new way of approving it) is now governed by article 87(4) and (5) of the PCC, which provide the following:

- (i.) Any quotaholder who, alone or jointly with others, holds 75% of the company's voting rights (or any higher percentage required in the bylaws to amend the articles of association) may communicate to the management its decision to increase the share capital. This is done by converting the credits over the company and which are registered as shareholder loans in the last approved balance sheet. There is no need for adopting a formal resolution by the general meeting of the company. As the law does not specify which formalities must be observed in this communication, it may be understood that it is not subject to special formalities and, among others, it may be made other than in writing (however, it is advisable that it should take written form);
- (ii.) After receiving the communication from the quota holder, the management must, within 10 days, inform the other quotaholders in writing of the decision of the participating quotaholder to increase the share capital, with a notice that the effectiveness of this increase depends on the express written non-opposition of any one of them, within 10 days of the communication from the management.

Under article 88(2) of the PCC, the share capital increase becomes effective against the company, and the new quotas are deemed to have been created (or the nominal value of the existing ones increased), on the date on which any manager declares, in writing and under his or her responsibility, "that the capital contributions have already been made and that no other contributions are required by law, by the articles of association or by a resolution".

This mechanism also requires the management to ask a registered accountant or statutory auditor (in cases in which a statutory audit is required) to issue a declaration that expressly indicates (i) the amount of the shareholder loans converted into capital, (ii) that this amount is booked in the accounting records of the company, and (iii) the source and date. A doubt remains as to whether this date means the date when the shareholder loans were made or the date of the decision to convert those shareholder loans into share capital. However, we believe it will be the date the shareholder loans were made, and this could be relevant for the purposes of calculating the remunerative interest and booking it in the accounts. It could also be relevant to determine the potential assessment of the stamp duty on the value of the shareholder loans converted into share capital.

In our opinion, once this process has been concluded, the management should register the decision to increase the share capital, as soon as it is made, in the minute book (whether electronic or not) of the general meeting, in accordance with the provisions of article 63(4) of the PCC. This article provides that "when decisions of the quotaholders is recorded under a public deed, an official record that is not a public deed, or a separate private document, the management shall (...) register a mention of its existence in the respective book" or, possibly, by analogy with the general rules on resolutions by written vote.

When it comes to the question of the share capital increase becoming effective against third parties, the rule that requires registration at the Commercial Registry remains in place. Although the law does not make this clear, we expect that, besides the declarations of the management and of the registered accountant or statutory auditor mentioned above, this registration must be supported by the documents that prove all the communications exchanged between the quotaholders and the company in this respect (and/or by the registration of the passing of the resolution in the minute book, in the terms described above).



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A Cor das Letras, 2000 (detail)

Acrílico e serigrafia s/tela
73 x 180 cm

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The Lawyer European Awards, 2015-2012

Portuguese Law Firm of the Year
Who's Who Legal, 2016, 2015, 2011-2006
Chambers European Excellence Awards, 2014, 2012, 2009

Top 50 - Most Innovative Law Firm in Continental Europe
Financial Times - Innovative Lawyers Awards, 2014-2011