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Jan / Mar 2005

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Boring Postcards #2, S14 Trieste, 2003

Colecção Fundação PLMJ

As concerns the Flexibility of the Legal Regime of Real Estate Investment Funds

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Acknowledging the growing importance of Real Estate Investment Funds (REIF) ("Fundos de Investimento Imobiliário") in Portugal (which value under management increased 20,5% during the last year, reaching 7 thousand million euros, according to a recent report of the Securities Market Commission), the Government approved a second amendment to its legal regime, approved by Decree-Law nr. 60/2002, of March 20th, already amended by Decree-Law nr. 252/2003, of October 17th, and now amended again by Decree-Law nr. 13/2005, of January 7th.

Therefore, aiming to adjust the legal regime of REIF to the "legitimate expectations of the real estate funds industry" (as stated in the Introduction of the law concerned), an attempt was made to endow this regime with a larger flexibility, namely in matters such as real estate development, the constitution of real estate investment funds of a special nature or furthermore in respect to funds exclusively constituted by institutional investors or by a very reduced number of participants.

Among the amendments introduced, we point out the following:

(i) Widening of the object of REIF Management Companies

Pursuant to the new regime, the management companies, besides its (previously exclusive) main object of administration of one (or more) REIF, can now also (a) render consultancy services for real estate investment and (b) proceed with the individual management of real estate assets, in conformity with the legal provisions and regulations applicable to the management of portfolios on account of third parties.

IN THIS ISSUE

Most Important Legislation Published

- Decree-Law nr. 241-B/2004, of December 30th, 2004 – Determines that 85% of the management balances existing as at December 31st, 2003 of the Securities Market Commission ("Comissão do Mercado de Valores Mobiliários" – CMVM), of the National Communications Authority ("Autoridade Nacional de Comunicações" - ANACOM), of the Ruling Entity of Energy Services ("Entidade Reguladora dos Serviços Energéticos - ERSE) and the Insurance Institute of Portugal ("Instituto de Seguros de Portugal" - ISP) shall be included in the general State income of 2004.

- Decree-Law nr. 242/2004, of December 31st, 2004 – Updates the value of the minimum monthly salary guaranteed for 2005 and revokes Decree-Law nr. 19/2004, of January 20th, 2004.

- Ministerial Order nr. 1509/2004, of December 31st, 2004 – Amends Annex I of Decree-Law nr. 242/96, of December 18th, 1996, that transfers into the Portuguese legal system the

(ii) Indirect real estate investment (acquisitions of participations in real estate companies)

The new regime reintroduced the possibility of REIF acquiring participations in Real Estate Companies. It should be emphasized that this possibility, which had been admitted in previous regulations, was subsequently set aside as it was considered that it did not provide the necessary guarantees of transparency and security for the investors.

The new regime now again permits the acquisition of this type of assets by REIF, up to 25% of its total value, being however surrounded by precautions aiming to safeguard the transparency conditions and adequate operation of this type of Companies, of which we point out, as an example, the obligation that (a) the object of these companies is exclusively framed within one of the activities that may be directly performed by REIF, (b) its assets consist of a minimum of 75% of real estate assets that may be directly included in the portfolio of the Fund, (c) its accounts are subject to a regime equivalent to that of the REIF and (d) the principles equivalent to the regime applicable to the REIF are applicable to the real estate and other assets included in its portfolio, namely in what concerns the evaluation rules, conflicts of interest and rendering of information.

It should be added that the new regime now contemplates ample powers of regulation by the Securities Market Commission, with the purpose to safeguard the principles of transparency, protection and information to investors.

(iii) Investment in other categories of assets

In parallel, the new regime also now clarifies the principle already expressed in the law in force that the Securities Market Commission may, by Regulation, define other values susceptible of being included in the portfolio of the REIF, namely rural and mixed real estate properties, units of participation in REIF and other equivalent assets.

(iv) Enlargement of the activities permitted to the REIF

The growing flexibility of the regime of the REIF is furthermore reflected in the enlargement of the activity of the REIF to the acquisition of other rights over real estate (besides the property right), under the terms foreseen in Regulations of the Securities Market Commission, with a view to its economic exploitation, thus going beyond the "traditional" activity of acquisition of real estate for lease or for resale.

(v) Investment possibility outside the European Union

Attempting to adapt to the needs of a larger internationalisation of the market, the new regime now permits investment in real estate outside the European Union. Although investments are only permitted in respect to real estate located in Member States of the OECD (Organization for Economic Cooperation and Development), this already represents a significant alteration and probably an increase of investment opportunities for the REIF. However, it should be referred that these investments outside the European Union area are limited to 25% of the total assets of Open REIF and Closed REIF of public subscription.

As concerns Closed REIF of private subscription, with more than five participants, which are not exclusively institutional investors, the investment in States that are not included in the EU or even the OECD can be made up to the limit of 10% of its assets (however, this restriction will not be applicable if the Fund is of private subscription and only has up to five participants).

(vi) Composition of the portfolio of REIF

Along the lines of flexibility of the regime of REIF, the new law amends the rules applicable to the composition of the portfolio of funds, namely, easing the percentages that some of the assets should represent in the total value of the fund, pointing out the circumstance that the value of the real estate assets should represent, for Open REIF, at least 75% of the total assets of the Fund (previously 80%), the development of building projects may represent up to 25% (previously 10%) and, finally, the indebtedness may represent up to 25% of its total assets (previously 10%).

For Closed REIF of public subscription, the percentage of building projects permitted in the respective assets that already was of 50% can now be of 60%, in the case of real estate rehabilitation projects and the indebtedness of these funds may now represent 33% of its total assets (previously 25%).

As concerns Closed REIF of private subscription, the flexibility in what concerns the composition of its portfolio was taken to the extreme, practically no restriction of consequence existing in the new regime, with the exception that the value of the real estate and other equivalent assets represent at least 75% of the total assets of the Fund and, for closed REIF of private subscription with more than 5 participants, which are not exclusively institutional investors, an indebtedness limit up to 33% of its total assets (previously 30%).

(vi) Other relevant aspects

The possibility of creating units of participation with special rights or characteristics should also be emphasized, namely as to the preference level in the payment of the periodic income, in the redemption of its value or in the payment of the settlement balance of the respective fund.

We believe that the fact that the Securities Market Commission, to the contrary to normal in the national legislative scene, has already ruled the analysed amendments to the legal regime of the REIF through the Securities Market Commission Regulation nr. 1/2005 (published in the II Series of the Official Gazette on February 14th, 2005) is also worthy of note.

Directive nr. 92/51/EEC that established a second general system of acknowledgement of professional diplomas and qualifications.

- Decree-Law nr. 243-A/2004, of December 31st, 2004 – Amends the regime of trade of licences for the emission of greenhouse-effect gases in the European Community, approved by Decree-Law nr. 233/2004, of December 14th.
- Decree-Law nr. 2/2005, of January 4th, 2005 – Approves the Legal Regime of European Public Limited Liability Companies.
- Decree-Law nr. 12/2005, of January 7th, 2005 - In the exercise of the legislative authorization granted by Law. nr. 52/2004, of October 29th, proceeds with the definition of the conditions for the termination of contracts of acquisition of energy (CAE) and the creation of compensatory measures related to the position of each party in those contracts.
- Decree-Law nr. 13/2005, of January 7th, 2005 – Second amendment to the legal regime of real estate investment funds, approved by Decree-Law nr. 60/2002, of March 20th, and amended by Decree-law nr. 252/2003, of October 17th.
- Resolution of the Council of Ministers nr. 5/2005, of January 7th, 2005 – Creates a control structure of external action of the Portuguese State.
- Judgement nr. 1/2005, of January 12th, 2005 – Exceptional review in the terms of Article 150 of the Procedure Code of Administrative Courts. Pre-contractual litigation. Special urgent proceedings. Time-limits.
- Resolution of the Council of Ministers nr. 8/2005, of January 13th, 2005 – Approves the participation of Portugal in the Trust Fund of the Euro-Mediterranean Investment and Partnership Facility of the European Investment Bank (EIB).
- Amendment Notice nr. 1-A/2005, of January 17th, 2005 – Due to amendment of Decree-Law nr. 240/2004, the Ministry of Economic Activities and of Labour which, in the exercise of the legislative authorisation granted by Law nr. 52/2004, of October 29th, proceeded with the definition of the access conditions of contracts for the acquisition of energy (CAE) and the creation of compensatory measures related to the position of each party in those contracts, published in the Official Gazette, 1st Series, nr. 301, of December 27th, 2004.

The New European Public Limited-Liability Companies

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With the recent publication in the Official Gazette of Decree-Law nr. 2/2005 of January 4th, the institution of the so-called European Public Limited-Liability Company (also called *societas europaea*) has been provided for in Portuguese internal law.

This is a legislative innovation of major importance, stimulating the creation of a new form of Trans-European business organisation.

The difficulties and high costs inherent to the co-existence of the most diverse legal regimes applicable to companies, depending on the jurisdictions concerned are well known by all those who professionally undertake investment activities under an international scope (essentially and primarily the businessmen themselves and also their directors, business lawyers, consulters in general and auditors).

After the adoption of the Euro as the single currency by a large number of States in the European Union, it was fundamental to firmly advance in the sense to contemplate a form of company organisation common to that single economic area.

It was to reply to this vast need that the European bodies studied the subject (literally during more than three decades) and subsequently passed legislation, having approved the Council Regulation (EC) Nr. 2157/2001 of October 8th, 2001 – that only entered into force on October 8th, 2004 – Regulation that has a direct application in all Member States but is intended to be adapted to the specificities of each by the respective national legislators, as has just now occurred in Portugal.

The referred Regulation is completed by the Council Directive 2001/86/EC, of the same date, which refers to the involvement of the respective employees in the management of European Companies ("SE"), Directive that must also be adapted to each Country by the different national legislators.

But what does this business organisation tool that has just been ruled by the Portuguese legislator consist of ?

It is a new type of collective body, with a legal personality of a public limited liability nature – in which the respective capital is represented by shares – and with the following essential characteristics: limitation of the liability of each shareholder to the part of the capital stock subscribed, the obligation of adopting the initials "S.E." in the name of the company, obligation that the founder shareholders are – directly or indirectly – linked to more than one Member State of the European Union and as a consequence to locate the registered offices of the new company in that zone, as well as, to subject the company to commercial registration in one of the referred States.

The SE may essentially be incorporated by one of the following forms foreseen by law, which are: a) merger by incorporation of one or more companies into another provided that those companies are registered in at least two different Member States; b) merger of two or more companies among themselves (also necessarily originating from different Member States) which will be extinguished and give rise to a new company; c) incorporation of a "holding" SE ("SGPS"), situation that occurs provided that any of the assumptions referred to in a) and b) above are verified and there are affiliates or branches of any of the participating companies in other Member State(s); d) incorporation of an SE affiliate by companies originating from more than one Member State and provided those companies already have affiliates or branches for more than two years in other Member State(s); and e) transformation of a pre-existing public limited liability company of national law provided that it has an affiliate ruled by the internal laws of another Member State for at least two years.

The incorporation of SE's, which are subject to a notarial deed, shall comply with certain specific particularities among which we would like to point out the need of publication and registration of the respective draft incorporation, the operations of merger from which resulted the creation of an SE being subject to the prior notification to the Competition Authority and to the Regulatory Authorities of the Sector (if existing in the specific case).

SE Companies must have a minimum capital of a nominal value of 120.000 euros and must also have its effective registered offices (this is, the place where its central administration is installed and effectively operates) located in the same Member State where the respective statutory registered offices are located.

As concerns company matters relating with its organisation and internal operating, SE companies are subject to the legal provisions listed above, to the commercial legislation of the Member State where it has its registered offices and furthermore to the regulations set forth in its articles of association.

The company Boards of SE companies adopt a similar scheme to those of the classic Portuguese public limited liability with a Board of the General Shareholders Meeting and a Board of Directors (in the so-called monist model of company organisation) or, alternatively, a General Council – which operates as a supervisory Board – and a Direction (in the so-called dualist model), the respective mandates not to exceed six years.

Finally, as concerns tax law, labour, competition, intellectual property, insolvency and special regulations of a particular sector (for example, relating to banks, insurance companies, commercial and industrial licensing) the SE companies are as a rule subject to the law of the Member State where the registered offices are located, being fundamental for the full success of the new model the complete harmonisation of such aspects at the level of the European Union

- Amendment Notice nr. 1-B/2005, of January 17th, 2005 – Due to amendment of Decree-Law nr. 12/2005, the Ministry of Economic Activities and of Labour which, in the exercise of the legislative authorisation granted by Law nr. 52/2004, of October 29th, proceeded with the definition of the access conditions of contracts for the acquisition of energy (CAE) and the creation of compensatory measures related to the position of each party in those contracts, published in the Official Gazette, 1st Series-A, nr. 5, of January 7th, 2005.

- Decree-Law nr. 19/2005, of January 18th, 2005 – Amends Articles 35, 141 and 171 of the Commercial Companies Code.

- Ministerial Order nr. 66/2005, of January 25th, 2005 – Determines the minimum conditions of civil liability insurance in activities of real estate mediation and of real estate prospection.

- Law nr.15/2005, of January 26th, 2005 – Approves the Statute of the Bar Association and revokes Decree-Law nr. 84/84, of March 16th, with the subsequent amendments.

- Ministerial Order nr. 109/2005, of January 27th, 2005 – Applies the means of electronic vigilance for control of the obligation of house permanence that may be ordered by the competent courts with jurisdiction in all districts of national territory. Revokes Ministerial Order nr. 189/2004, of February 26th.

- Ministerial Order nr. 118/2005, of January 31st, 2005 – Determines the fees to be charged by the Environment Institute under the scope of the process for the attribution of titles for the emission of greenhouse-effect gases and respective up-dating.

- Notice nr. 27/2005, of February 2nd, 2005 – Public communication that on August 13th, 2004, China deposited a notification related with the extension to the Special Administrative Regions of Hong Kong and Macau of the Convention on Persistent Organic Pollutants, signed in Stockholm on May 22nd, 2001.

- Ministerial Order nr. 139/2005, of February 3rd, 2005 – Authorises the attribution of the license for commercialization of electric energy of external agents .

Liability of Companies With Regard to the Prevention and Remedying of Environmental Damage

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Directive 2004/35/EC of the European Parliament and of the Council of April 21st, on environmental liability with regard to the prevention and remedying of environmental damage entered into force on April 30th, 2004 (hereinafter the "Directive"). It was in this manner that a fundamental step was taken for the harmonisation of the rules with regard to environmental liability, the main aim of the European legislator being to institute "*a framework of environmental liability based on the "polluter pays" principle*"[1]. In as far as the maximum period for transfer of the Directive into the Portuguese legal system was determined for April 30th, 2007, during the next two years, the Portuguese State will have the task to proceed with the legislative amendments necessary for the correct transfer of that legal document into our legal system. From the companies' point of view, it is important that they immediately commence a process of reflection on the impact their legal economic structures have in light of the new obligations laid down in the Directive.

However, before we advance on the new legal framework instituted by the Directive, we must refer that, both the "polluter-pays" principle and the concepts of prevention and remedying of environmental damage are not at all unknown in our legal system. In fact, the "Base Regulations of the Environment" ("Lei de Bases do Ambiente"[2] - "LBA") first of all provided the specific principle of prevention of environmental damages that consists of the obligation of the polluter "*to correct and recover the environment, incurring the costs resulting therefrom*"[3]. Secondly, this law acknowledged that local authorities and citizens "*affected by the undertaking of an activity susceptible of damaging the use of environment resources*" have the right to be "compensated" for losses causes. Finally, the LBA instituted the general principle of objective liability with regard to the environment through a rule according to which the agents that cause "*significant damages to the environment due to a particularly dangerous action, even though in observance to the applicable rules*" are, even if without fault, compelled to indemnify the victims. In the same manner, in the regime of civil liability foreseen in the Civil Code, there are here and there examples that indicate the existence of a concept of remedying the environmental liability. This is namely the case of the obligation of the agent to remedy the damages caused in the undertaking of a dangerous activity[4] or the obligation of the owner to indemnify his neighbour for damages caused by "*any works, installations or deposit of corrosive or dangerous substances, if it is feared that these may have harmful effects to the neighbouring building that are not permitted by law*".[5]

However, the omissions of the LBA that are known, which essentially respect the obscurity of its principles (such as, for example, the undefined[6] "right to compensations", as well as the lack of effective regulation), the Directive to be transferred will bring important novelties to our legal system, considering that it will contemplate that which will be the *modalities* of the obligation of remedying the environmental damage, although, as we will see, in a very restrictive form.

Contrary to that provided for in our internal law, which is very broad in respect to the environmental components to be protected, the Directive only contemplates the responsibility for certain environmental damages[7], which are: damages caused to species and natural habitats, to water and to the land. As concerns species and natural habitats, only the damages caused to species and habitats protected under Directives 92/43/EEC and 79/409/EEC[8] are remediable, remaining outside the scope of application of the Directive more important damages, such as those resulting from nuclear pollution, pollution by oil or transport of dangerous substances[9] or furthermore damages that occurred prior to the date of transfer of the Directive into the internal legal system. On the other hand, the Directive also differs from our internal law as to the regime of liability, in as far as it provides for a double regime: liability without fault and liability with fault, reserving the application of the first regime to the activities set forth in Annex III (for example, water abstraction and impoundment of water, waste management, chemical industry). As concerns the activities that are not referred to in that Annex, agents will only be liable if they caused with fault damages to the protected species or habitats. Therefore, in a restrictive interpretation of the Directive, we are lead to consider that the damages caused to the water or the land due to the undertaking of activities not contemplated in Annex III cannot be remedied, even though the agent acted with fault. Finally, the Directive differs from our internal law because it releases from any liability agents who caused damage to species and habitats in the practice of acts that were authorised / licensed by the competent administrative authority. As concerns damages caused to the water and to the land, the circumstance of acts originating the liability having been authorised does not immediately exclude the liability of the agent.

As already stated, in our understanding, the most relevant input of the Directive resides on the fact that this legal document contemplates the modalities of remedying environmental damages specifically covered therein, in as far as that, in our internal law, this aspect was never ruled. First of all, the Directive provides as an absolute rule of remedying those environmental damages the *in natura*[10] indemnity, opposed to the indemnity in cash. We are faced with a regime that in a large measure breaks loose from the classic regime of civil liability because it provides for the remedying of the damages, under the control of the Public Administration, and with the resorting to financial means to assure the timely payment of the costs arising from the prevention and remedying actions by the "polluting agent". Furthermore the Directive organises the system of natural reconstitution of the situations in two modalities: when dealing with damages causes to the water or to protected species or habitats, the legal document provides for a regime of restitution, that is to say, the obligation of the agent to restore the situation that existed before the occurrence of the damage (for example, the obligation of replanting a plant species in another locality); when dealing with damages caused to

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- Ministerial Order nr. 119/2005, of January 31st, 2005 – Approves the new form for the request of installation grouping.
- Ministerial Order nr. 130/2005, of February 2nd, 2005 – Approves the new timetable for the opening of Notary Offices.
- Ministerial Order nr. 137/2005, of February 2nd, 2005 – Determines the remaining elements that should accompany the special plans of territory planning.
- Ministerial Order nr. 138/2005, of February 2nd, 2005 – Determines the remaining elements that should accompany the municipal plans of territory planning 005 – Authorises the attribution of the license for commercialization of electric energy of external agents.
- Decree-Law nr. 30/2005, of February 10th, 2005 – Approves the schedule of fee charges due for the registration of literary and artistic works and the respective regulation.
- Decree-Law nr.33-A/2005, of February 16th, 2005 – Amends Decree-Law nr. 189/88, of May 27th, reviewing the factors for calculation of the remuneration value for the supply of energy produced in renewable power stations delivered to the Portuguese Electric System network (SEP) and defining the procedures for allocation of power available in the same network and delays for the obtaining of the license of establishment for renewable power stations.
- Decree law. Nr 342/005 of 17 of February –Transfer into the internal legal system of the Directive nr 2003/49/C, of the Council, of.3rd July, regarding the common taxation regime applicable to payments of interest and royalties carried out between associated companies from different Member States(
- Amendment Notice nr. 8/2005, of February 22nd, 2005 – Due to the amendment of Decree-Law nr. 13/2005, of the Ministry of Finance and Public Administration, with the second amendment of the legal regime of real estate investment funds, approved by Decree-law nr. 60/2002, of March 20th, and amended by Decree-Law nr. 252/2003, of October 17th, published in the Official Gazette, 1st Series, nr. 5, of January 7th, 2005.

the land, the solution chosen was the obligation of suppression of the damage (for example, complete elimination of the pollutants or a reduction sufficient to cease any risk to public health). In any case, the agent will have to inform that administrative authority on the measures intended to be taken to restore the situation, as well as to submit them for prior approval. In the lack of initiative of the agent in that sense, the administrative authority will be responsible to take the measures necessary for the prevention or remedying of the environmental damage, as well as to request from the agent the payment of the costs arising from those measures. To assure the timely payment of those costs, the administrative authority may compel the agent to provide guarantees (over real estate assets or others), which may be enforced in the event he refuses to settle the amounts in debt[11].

As a conclusion and taking into account the above referred differences between national law and the Directive, we believe that the task to transfer the Directive into our legal system will mainly consist of maintaining the concept of environmental damage existing in our legal system and the contemplation of the modalities of remedying provided for in the Directive.

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[1] Article 1 of the Directive.

[2] Law nr. 11/87, of April 7th.

[3] Article 3, sub-paragraph a).

[4] Article 493 (2) of the Civil Code.

[5] Article 1347 of the Civil Code.

[6] Using the words of Prof. José Eduardo Figueiredo Dias in Environmental Legislation, Coimbra, 3rd Edition.

[7] *See* Article 2, sub-paragraph a).

[8] More well-known, respectively, as the "Birds" Directive and the "Habitats" Directive.

[9] In this respect, see the Geneva Convention of October 10th, 1989, which only entered into force after the 5th Ratification Instrument was adopted.

[10] Or "natural reconstitution" of the damaged situation.

[11] However, it should be referred that, under the terms of Article 8 (2) of the Directive "*the competent authority may decide not to recover the full costs when the expenditure required to do so would be greater than the recoverable sum or when the agent cannot be identified.*"

Contractual Propection of Confidential Information and Trade Secrets

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Intellectual property is an important asset for all companies and not only for those companies traditionally associated with producing content (software, books, music records, broadcasting, press, architecture, advertising, cinema, etc.).

In this context we are using the expression "intellectual property" to identify intellectual human creations (incorporeal goods that may be individually appropriated). The Portuguese legal system recognises copyright as the fundamental right in this area. Notwithstanding, other types of intellectual property are increasingly important for businesses. This brief commentary will deal with these other types of rights, generally referred to as "trade secrets", "confidential information" and "know-how".

We will not be dealing with industrial property rights, protected by the Industrial Property Code (trademarks, patents, designs and models, logos, rewards, business names, etc.)

An interesting way to protect this type of intellectual property is by contract.

Accordingly, all contractual relations where potentially disclosure of valuable information might occur should contain a clause creating a confidentiality and non-disclosure obligation. This clause should obey to the following principles:

1. The obligation should be reciprocal in the sense that both parties should be equally bound by this clause. Regardless of the fact that in many contracts only one party will actually disclose any information, the objective of the disclosing party is merely to protect its own information, which means that the reciprocal nature of the clause will not harm this interest and will aid the negotiation.

2. The contract must identify what information will be covered by the confidentiality and non-disclosure obligations. The simplest way is to use a wide definition such as "any information disclosed". However, such a vague definition might be counterproductive. In effect, this formula does not encourage parties to organise their business methods. In this sense, it more interesting to use a formula that distinguishes information (for example, clause limited to written information clearly marked as "confidential") or restricts the information covered (for example, clause limited to information regarding a specific project).

3. In any clause, it is important to identify the applicable exceptions to the confidentiality and non-disclosure obligations. These should include, at a minimum, (i) information already held or known by receiving party without any applicable confidentiality obligation; (ii) information that is or becomes publicly known without breach of contract; (iii) information that is obtained legally from a third party; and (iv) information obtained or developed independently without recourse to confidential information.

4. In case information is contained in complex media (for example, computer programs in object code or high quality graphic presentations) it is important to include an obligation to return all information disclosed in case of termination of contract.

- Decree-Law nr. 43/2005, of February 22nd, 2005 – Amends Decree-Law nr. 245/2003, of October 7th, that transfers into the national legal system the Directive nr. 2001/78/EC, of the Commission, of September 13th, amending the annexes related with the tender forms for contracts concerning the awarding of public works, set forth in Decree-Law nr. 59/99, of March 2nd, the annexes related with the tender forms for acquisition of movable assets and services, set forth in Decree-Law nr. 197/99, of June 8th, and the annexes related with the tender forms for the entering into of contracts in the water, energy, transports and telecommunications sectors, set forth in Decree-Law nr. 223/2001, of August 9th.

- Decree-Law nr. 44/2005, of February 23rd, 2005 - In the exercise of the legislative authorization granted by Law. nr. 53/2004, of November 4th, amends the Road Code, approved by Decree-Law nr. 114/94, of May 3rd.

- Decree-Law nr. 45/2005, of February 23rd, 2005 – Transfers into the internal legal system the Directive nr. 2000/56/EC, of the Commission, of September 14th, that amends the Directive nr. 91/439/EEC, of the Council, related with driving licences.

- Decree-Law nr. 46/2005, of February 23rd, 2005 - Transfers into the internal legal system the Directives nr. 2002/85/EC and 2004/11/EC, of the European Parliament and of the Council, of November 5th and of February 11th, respectively, approving the Regulations for the speed limitation of certain categories of car vehicles.

- Judgement nr. 650/2005, of February 23rd, 2005 – Declares as unconstitutional, with a general binding effect, of the rule set forth in the first sentence of Article 19 (1) of the general transports tariff, approved by Ministerial Order nr. 403/75, of June 30th, amended by Ministerial Orders nrs. 1116/80, of December 31st, and 736-D/81, of August 28th, in the part that it entirely excludes the liability of the railway company for damages caused to passengers resulting from delays, train cancellations or loss of train links.

- Ministerial Order nr. 209/2005, of February 24th, 2005 – Amends Ministerial Order nr. 1456/2001, of December 28th (approves the regime of costs in courts for minor offences).

5. The creation of a confidentiality and non-disclosure obligation without a time limit may give rise to competition concerns. In effect, a perpetual obligation may be considered to be disproportionate and anti-competitive. In this sense, the obligation must always have a time limit, such as two years after termination of contract for any motive.

6. In what specifically regards services contracts, it may be relevant to exclude "residuals". This expression aims to designate the experience acquired as a result of executing a contract. This situation frequently arises when the contract provides for the physical integration of workers of the service provider at the client's premises. Client must ensure that the service provider and its workers are bound by a confidentiality obligation. However, the service provider is interested in ensuring that the experience acquired may be reused in subsequent contracts (this is very important for consultancy firms). This aspect should be dealt with specifically in the contract.

In case of breach and subsequent recourse to the courts, it is very important that evidence exists regarding the breach. In this situation, the entity that disclosed information ideally will have an information system whereby it is able to unequivocally state what information was disclosed and in what terms, in order to determine the breach.

In short, due to the immaterial nature of the information that companies want to protect, the best solution is to implement prevention systems: internal organisation of the information and inclusion in contracts of a clause protecting this information.

The New Wording of Article 35 of the Commercial Companies Code

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1. Background

Article 35 appears for the first time in the Portuguese legislative scene with Decree-Law no. 262/86, of September 2, which approved the Portuguese Companies Code ("Código das Sociedades Comerciais" - hereinafter PCC), based on Article 17 of the 2nd Directive (no. 77/91/EEC, of the Council, of December 13, 1976) its entry into force being however immediately suspended until the respective enforcement by a legal diploma, as provided for in Article 2 of the referred Decree-Law.

The initial wording of Article 35 set out that managers / directors, who verified from the annual accounts that half of the registered capital had been lost, were under the obligation of proposing to the partners / shareholders that the company be winded up or the capital reduced, unless the partners / shareholders undertook to effectively provide, within 60 days after the resolution, payments of cash sufficient to maintain at least two thirds of the capital coverage. If the managers / directors failed to fulfil such obligation or if the foreseen resolutions had not been passed, any of the partners / shareholders or creditors could request the Court, whilst that situation continued, the winding up of the company, without prejudice to the partners / shareholders being able to proceed with the required payments of capital until the judicial order had been declared *res judicata. Whilst* Article 35 did not enter into force, Article 523 of the referred law provided that the creditors of the company could request for its winding up, provided evidence was produced that, subsequent to the entering into force of the pertaining contracts, half of the capital had been lost. The company could always oppose the winding up when the necessary payment guarantees were given to the creditors.

In turn, Decree-law no. 184/87, of April 21, introduced a Title VII in the PCC relating to the penal provisions which would include a new Article 523 with a penalty, of up to 3 months imprisonment and a fine up to 90 days, for the breach by managers, administrators or directors of companies of the duty to propose the winding up of the company or the reduction of the capital, originating the controversy regarding an eventual tacit entry into force of Article 35.

After 15 years of suspension, Decree-law no. 237/2001, of August 30, through its Article 4, determined the entry into force of Article 35.

Article 35, then in force for less than a year, would be amended by Decree-Law no. 162/2002, of July 11, which, imposing the penalty of the immediate winding up of the company, considered as a first relevant exercise for that purpose, the financial year of 2003. Under these terms, the immediate winding up of the company would only occur after the approval of the annual accounts of the financial year of 2004.

In 2005, Decree-Law no. 19/2005, of January 18, determined the present regime of Article 35, the most striking feature of which consists on the elimination of the penalty of immediate winding up of the company.

2. Main Differences in the Wording of Article 35

- Decree-Law nr. 51/2005, of February 25th, 2005 – Transfers into the internal legal system the Directive nr. 2002/84/EC, of the European Parliament and of the Council, of November 5th, that amends the Directives in force in the domain of maritime security and the prevention of pollution by ships, amending Decree-Laws nrs. 180/2004, of July 27th, 293/2001, of November 20th, 547/99, of December 14th, 27/2002, of February 14th, and 280/2001, of October 23rd.

- Decree of the President of the Republic nr. 16/2005, of March 3rd, 2005 – Ratifies the Convention on the Right related with the Use of International Water Courses for other purposes than for Navigation, adopted by the United Nations General Assembly on May 21st, 1997.

- Resolution of the Council of Ministers nr. 53/2005 of January 8th, 2005 – Approves the National Allocation Plan of Emission Permits ("Plano Nacional de Atribuição de Licenças de Emissão" – PNALE) relative to the period of 2005 – 2007. (greenhouse-gas).

- Decree-Law nr. 56-A/2005, of March 3rd, 2005 – Amends Decree-Law nr. 287/93, of August 20th, that transforms Caixa Geral de Depósitos, Credito e Previdência, into a public company of exclusively public capital.

- Decree-law nr 62/2005, of 11th March 2005-Transfers into the internal legal system the Directive nr 2003/48/EC,of the Council, of 3rd July, regarding the taxation of economized income under the form of interest

- Decree Law nr 69/2005, of 17th March –Transfers into the internal legal system the Directive nr 2001/ 95/EC,of the Council, of 3rd December, regarding the general safety of products

- Decree of the President of the Republic nr 76/2005, of the 17th of March 2005 – Ratifies the Protocol for the revision of the International Convention for the Simplification and Harmonization of the customs regime concluded in Brussels the 26th June 1999

Object	Previous wording	Present wording
Prevision	Loss of half of the capital, verified by the accounts of the financial year	Loss of half of the capital verified by the annual or intermediary accounts or the existence of justified reasons to admit the verification of that loss
Determination	Express reference in the management report and presentation of a proposal to the partners / shareholders in the General Meeting that analyses the accounts of the fiscal year, or in a General Meeting convened for the 90 days following the date of that General Meeting, or the judicial approval of one or more of the following measures: (i) winding up of the company, (ii) reduction of the capital; (iii) provision of payments in cash that maintain at least two thirds of the capital coverage; (iv) adoption of specific measures tending to maintain at least two thirds of the capital coverage.	Immediate convening of a General Meeting in order to inform the partners / shareholders of the situation and for the partners / shareholders to take the measures deemed convenient. The convening notice must include, at least, the following items on the agenda: (i) winding up of the company; (ii) reduction of the capital to an amount not lower to the company's equity with observance, if applicable, to the provisions of article 96(1); (iii) provision by the partners / shareholders of entries of capital to strengthen the capital coverage.
Penalty	Penal liability of the managers, administrators and directors; immediate winding up of the company if the loss of capital is maintained for two consecutive financial years.	Penal liability of the managers, administrators and directors; reference to the company's equity, when equal or lower than half of the capital, in all external acts.

3. Main Questions raised with the Present Wording of Article 35

Materialisation of the concept of "existence of justified reasons" to admit the loss of half of the capital

Going farther than any of its previous wordings, the present duties of the administration resulting from the application of Article 35 are imposed without the need for the elaboration of annual or even intermediary accounts – it being sufficient that the administration has the conviction that half of the capital has been lost.

The materialisation of this concept should be accommodated with the duty attributed to the administration in the effective triggering of the regime of Article 35: its starting point falls on the actuation of the administration, to which a role of "alert" of the partners / shareholders is bestowed, which will be rooted on the consideration that it is this entity that has a privileged knowledge of the company activity.

Therefore, as concerns the subjective element – the conviction – a mere suspicion will not be sufficient: there must be a conviction in the spirit of the administration, that is to say, an understanding without doubts or uncertainties as to the loss of half of the capital, a certainty to the point that the elaboration of intermediary accounts for confirmation is not even necessary.

This conviction should – considering the objective requirement – be based, this is, be founded on factual elements inherent to the company activity that are apt to influence the respective assets, liabilities or equity in such a manner that its occurrence is susceptible to cause the loss of half of the capital.

Therefore, the administration will be responsible to value these facts in light of the privileged company knowledge that it has, in particular, of its effective financial context, verifying, at each moment, if that valorisation originates a conviction as to the loss of half of the capital. Thus, it is a duty of increased vigilance that is expressly imposed on the administration.

The *dies a quo* ***of the obligation to*** make reference to the company equity in external acts of the company and the retroactive efficacy of Decree-Law no. 19/2005

The present wording of Article 171 provides that, in all contracts, correspondence, publications, advertisements and, in general, in the whole external activity, companies mention "*the amount of the company equity pursuant to the last approved balance-sheet, whenever it is equal or inferior to half of the capital*".

The law that approved the legislative amendment under analysis provides that it is effective (retroactively) as at December 31, 2004, which raises the question of knowing which is the first relevant balance-sheet to apply that obligation: the last approved balance-sheet before December 31st, 2004 or the balance-sheet that is approved immediately after that date?

In an overwhelming majority and as a rule, Portuguese commercial companies approve a balance-sheet, which includes its annual accounts, in a so-called Annual General Meeting held, also as a tendency, at the end of March of the year following that to which such accounts refer.

In this context, the reply to the question raised would depend on the justification of attribution of the retroactive efficacy to the law concerned, which, we believe, was to clarify that the financial year of 2004 would already be covered by the new regime; besides it is a relevant clarification, of major importance, so that this financial year would be excluded from the penalty of automatic winding up which, in practice, would start to be effective as from 2005.

If this is the case, the first balance-sheet that will be relevant for the effects of the referred Article 171 should be the first balance-sheet referent to the fiscal year of 2004.

Articulation of the penal penalty regime with the present wording of Article 35

The penal penalty regime foreseen in article 523 of the PCC for the breach by the administration of the duties imposed to it under Article 35 maintains the initial wording introduced by Decree-Law no.184/87, of April 21, managers, administrators and directors in that case being subject to up to 3 months imprisonment and a fine of 90 days.

However, Decree-Law no.19/2005, of January 18, that approved the present wording of Article 35, did not "up-

Significant Community Legislation

- Council Regulation (EC) No 2073/2004 of 16 November 2004 on **administrative cooperation in the field of excise duties** – O.J.E.U. no. L 359, of 04.12.2004;
- Practice Directions relating to **direct actions and appeals** - – O.J.E.U. no. L 361, of 08.12.2004;
- Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on **cooperation between national authorities responsible for the enforcement of consumer protection laws** (the Regulation on consumer protection cooperation) – O.J.E.U. no. L 364, of 09.12.2004;
- Council Regulation (EC) No 2182/2004 of 6 December 2004 concerning **medals and tokens similar to euro coins** – O.J.E.U. no. L 373, of 21.12.2004;
- Council Regulation (EC) No 2183/2004 of 6 December 2004 extending to the **non-participating Member States** the application of Regulation (EC) No 2182/2004 **concerning medals and tokens similar to euro coins** – O.J.E.U. no. L 373, of 21.12.2004;
- Council Directive 2004/113/EC of 13 December 2004 implementing the **principle of equal treatment between men and women** in the access to and supply of goods and services – O.J.E.U. no. L 373, of 21.12.2004;
- Council Directive 2004/114/EC of 13 december 2004 on the conditions of **admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service** – O.J.E.U. no. L 375, of 23.12.2004;
- Council Decision of 2 June 2004 on the signing and conclusion of the **Agreement between the European**

date" Article 523 which, by error, continues to have such penalties applied by cross-reference to Article 35 (1) and (2) and not to its (1) and (3) (considering that (2) merely defines under which terms the loss of half of the capital is considered).

Another aspect that Article 523 raises, when articulated with the present wording of Article 35, relates with the legality of the application of the provisions of a penal nature to the breach of duties that may arise in the sphere of the members of the Board of Directors due to the materialisation of undetermined concepts, as is the case of the existence of "*justified reasons to admit that [this] loss is verified*"

The Pollution Market: purchase and sale of the right to pollute

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The Kyoto Protocol – finally – entered into force last February 16th. Through the referred Protocol, the developed countries have committed to reduce its greenhouse-gas (GHG) emissions in at least 5% from 1990 levels. In order to fulfil that objective without prejudicing the respective economic development, States may resort to certain "flexible mechanisms", among which is the possibility of purchase and sale of "rights to pollute". That is to say, those States that are able to pollute less than the respective quota may sell that excess to those States that pollute above the levels agreed in Kyoto.

The European Union together undertook to reduce its emissions in 8% in light of 1990 levels. This commitment was subsequently the object of a "*burden sharing agreement*", through which the Member States redistributed the efforts of reduction of GHG emissions among themselves. As a consequence, Portugal was authorised to increase the respective emission levels in 27%. However, this "growth cushion" was rapidly consumed and nowadays the Country is again faced with the need to reduce its emissions or, as an alternative, to "purchase" rights to emit GHG gases.

In order to facilitate the fulfilment of the Kyoto targets and anticipating the respective entry into force, the European Union – as already was being done in the United States of America and in some of its Member States – decided to advance with the creation of its own internal market of permits for GHG emissions. This system of "European trade of emission permits" ("comércio europeu de licenças de emissão" – CELE), framed and ruled by Directive 2003/87/EC, of the European Parliament and Council, of October 13th 2003, allows industries of the several Member States to negotiate the respective GHG emissions among themselves, that is: companies that are able to pollute less may gain profits therefrom, selling "emission permits" to the industries where it is harder or more burdensome to reduce the pollutant load. In this manner, a financial incentive is created for the reduction of pollutant gases and, in the long run, a more efficient distribution of the efforts to fight pollution will be achieved, as well as a reduction of the costs associated to the fulfilment of the Kyoto targets.

Adopting a strategy of "*learning by doing*", the Directive 2003/87/EC (subsequently amended by Directive 2004/101/EC, of the European Parliament and Council, of October 27th, 2004, in order to "accommodate" the remaining "flexible mechanisms" set forth in the Kyoto Protocol) instituted a first experimental phase – which will remain in force for three years (it commenced last January 1st, 2005, stretching until the end of 2007) – designed to prepare the European economic agents for this new market and to rehearse the operation in the second phase, this being truly decisive, considering that its start up (in 2008) will coincide with the period of verification of the fulfilment of the Kyoto targets (2008 – 2012).

In the first phase – already in force – the CELE is only applicable to certain industrial plants that produce CO2, operating in the following sectors of activity (and provided determined minimum levels of production are reached): energy, production and processing of ferrous metals, mineral industry and manufacture of pulp, paper or board.

These industrial plants will receive a certain number of GHG emission permits (the number of permits to be specifically allocated to each industrial plant is set forth in a National Allocation Plan of Emission Permits ("Plano Nacional de Atribuição de Licenças de Emissão" – PNALE), which is drawn up by each Member-State and approved by the European Commission). At least 95% (or 90%, as from 2008) of those permits shall be allocated free of charge and may – subsequently – be freely transacted in an open market. Up to April 30th of each year, the industrial plants will have to return a number of permits equivalent to the total of GHG emissions made during the previous calendar year. If the industrial plants fail to do so, they will be subject to heavy and severe penalties

The referred Directive 2003/87/EC was transferred into the Portuguese legal system through Decree-Law nr. 233/2004, of December 14th (subsequently modified by Decree-Law nr. 243-A/2004, of December 31st). Several Ministerial Orders were also approved, destined to enforce this mechanism of trade of GHG emissions permits. The Portuguese PNALE, after having been approved by the European Commission, was published in the Official Gazette last Mach 3rd. Therefore, we are now in a condition to fully participate in this innovative "Pollution Market" which is taking its first steps at a European level. It is very important that national industries be alert to the evolution of the CELE, knowing how to make the most of the advantages and the business opportunities that it brings.

Community and the Swiss Confederation providing for measures equivalent to those laid down in Council Directive 2003/48/EC on **taxation of savings income in the form of interest payments** and the accompanying Memorandum of Understanding – O.J.E.U. no. L 385, of 29.12.2004;

- **Commission Recommendation** of 14 December 2004 fostering an appropriate **regime for the remuneration of directors of listed companies** – O.J.E.U. no. L 385, of 29.12.2004;

- Council Regulation (EC) No 111/2005 of 22 December 2004 laying down **rules for the monitoring of trade between the Community and third countries in drug precursors** – O.J.E.U. no. L 22, of 26.01.2005;

- Regulation (EC) No 183/2005 of the European Parliament and of the Council of 12 January 2005 laying down **requirements for feed hygiene** – O.J.E.U. no. L 35, of 08.02.2005;

- Council Decision of 11 May 2004 **abrogating the decision on the existence of an excessive deficit in Portugal** – O.J.E.U. no. L 47, of 18.02.2005;

- Final Adoption of the general budget of the **European Union for the financial year 2005** - O.J.E.U. no. L 60, of 08.03.2005;(

PLMJ Participations

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A.M.PEREIRA, SÁRAGGA LEAL, OLIVEIRA MARTINS, JÚDICE E ASSOCIADOS
SOCIEDADE DE ADVOGADOS

Date	Lawyer	Participation	Publication/Organization
January	António Maria Pereira Dorothée Choussy	**Article** **"Les moyens de lutte contre la contrefaçon au Portugal" / "The means to fight against counterfeits in Portugal"**	Magazine "ASPECTOS" (ASPECTS) of the Portuguese-French Chamber of Commerce and Industry
January	Manuel Santos Vítor Luís Miguel Nunes	**Article** **"The existing regulatory model of the power market in Portugal"** / SEN ("Sistema Eléctrico Nacional"/National Electric System)	Global Competition Review Electricity Regulation in 29 Jurisdictions Worldwide - 2005
January	Vasco Marques Correia	**Article** "**The New European Limited Liability Companies**"	Newspaper "Expresso" of 29/01/2005 (Economy and International)
January	Diogo Leite de Campos	**Article** The Forced Governmentalization - (Supervisory authorities of the financial system and independent supervisory authorities)	Newspaper "Expresso" of 29/01/2005 (Economy and International)
February	Diogo Leite de Campos	**Article** "**The present tax system permits enormous possibilities to evade taxes"**	Newspaper "Jornal de Negócios" of 04/02/2005
February	José Luís Cruz Vilaça Ricardo Oliveira	**Seminar** **"The legal framing of competition"** / Upon the invitation of AIMMAP (Association of Metal, Machinery and related Manufacturers of Portugal)	Head Office of AIMMAP (News coverage in the "Diário Económico" of 16/02/2005)
February	Abel Mesquita	**Interview** **Collective Bargaining -** «the actual paralysis of collective bargaining is only one example, for now the most visible, of the difficulties created by the Labour Code»	To the newspaper - "Diário Económico" Edition of 16/02/2005
March	José Luís Cruz Vilaça Ricardo Oliveira Rui Neves dos Santos Maria João Melícias	**Seminar** (PLMJ in association with CENTROMARCA) - **Competition Law - relevant questions**	Held at the PLMJ Auditorium
March	José Miguel Júdice	**Interview** **The new Statute of the Portuguese Bar Association -** «...the publicity regime must be implemented and regulated» / «decisions should be of the competence of the Superior Council" » / «possibility of delimitation of professional liability with strengthened protection »	To the newspaper - "Diário Económico" Edition of 2/03/2005
March	Maria Castelos	**Interview** **Legal Training Duration / Remuneration of Legal Trainees - «**PLMJ remunerates legal trainees from the beginning with an average monthly amount of 900 euros which is updated mid the legal training duration**» /** «In practice, the legal training duration in PLMJ was already of 24 months. It is important that the Bar Association endeavour to conclude processes quickly» (under the supervision of the Bar Association)	To the newspaper - "Diário Económico" Edition of 9/03/2005
March	Nuno Líbano Monteiro	**Interview** "The XVII Constitutional Government" **Justice -** According to Nuno Líbano Monteiro: «In the reform of enforcement proceedings, having been oriented for its celerity, what occurred was precisely the contrary. If the courts are unable to give a reply to companies why not place companies (or its associations) whose litigation has a large expression at the service of the courts.» «The Judge Adviser, entity created in a shameful and exceptional form, with the thousands of law graduates who conclude their studies every year, it would be easy to develop the entity of the adviser. He would assist the Judge in all acts that go beyond the art to judge.» «Procedural Simplification. As occurs with arbitration proceedings, the reduction to two articled documents with the enumeration of facts in all processes, leaving eventual responses to the preliminary hearing or trial.» «A distinct reduction in court costs in those cases whereby the regime of hearing of witnesses at the domicile of the attorney is applied, with video taped statements.»	To the newspaper - "Semanário Económico" Edition of 11/03/2005
March	Dulce Franco Manuel Santos Vítor	**Article** The European M&A Market - EXPERT OPINION (Dulce Franco) «The Portuguese M&A market is very active with a high volume of lower valued deals. It promises more as local and international investors begin to heighten their interest in the market.» PORTUGAL CHAPTER (reference to PLMJ by Chambers) «Manuel Santos Vitor of AM. Pereira, Sáragga Leal, O. Martins, Judice e Associados successfully represented this "superb firm" in a number of high profile deals in this last year. Other well known Senior M&A Partners are Luís Sáragga Leal, Dulce Franco, Fernando Campos Ferreira, Vítor Réfega Fernandes, Vasco Marque Correia and Gabriela Rodrigues Martins.»	Chambers Client Report The European M&A Market FTSE EURO 100 SURVEY The lawyers to Europe's largest companies Issue of March 6th, 2005
March	Diogo Leite de Campos	**Conference** "The new Articles of Association: from taxes to contributions"	University of Castilha La Mancha (Toledo) Sponsored by the Council of Castilha and the Bolonha University 7/03/2005
March	José Luís Cruz Vilaça Ricardo Oliveira	**Article** European Competition Journal "Recent Developments in Competition Law" - (Contribution for the Section on Portugal)	Ashurst / European Competition Journal Newsletter of March 31st, 2005

PLMJ News

PLMJ Foundation

The exibition "Uma Extensão do Olhar" (Extension of the Eye), which opened last January 20th, commissioned by Miguel Amado, gathering in the Museum of the Visual Arts Centre of Coimbra many of the photographic works belonging to the PLMJ Foundation Collection, was remarkably successful, as was extensively communicated by journalists in the praising press coverage.

The quality of the works of the PLMJ Foundation Collection is already generally acknowledged by the most prestigious institutions linked to Portuguese culture.

As an example of this fact, the Modern Arts Centre of the Calouste Gulbenkian Foundation has requested that we cede two oil paintings of Manuel Botelho – "Sapatos de Gatas" (Flying Fingers) and "Os Imputáveis" (The Assault) for an important retrospect of the work of this artist opened in that Centre from February to the end of May.

The Casa das Mudas Arts Centre in Madeira sent an invitation to the PLMJ Foundation to exhibit the same collection, after the closing of the Exposition at the Visual Arts Centre of Coimbra, from April 30th to July 30th. The referred Arts Centre is a new space supported by the Regional Government of Madeira that was recently inaugurated with an important exposition of paintings of the Bernardo Collection and therefore the invitation to the PLMJ Foundation is extremely prestigious.

References to the PLMJ Foundation Collection are already frequent in the majority of the Artists profiles, as is the case of the sculptress Joana Vasconcelos in a recent exposition in Paris and of João Paulo Serafim in another of his photography expositions.

References to PLMJ

According to the Tax Business magazine, PLMJ nowadays has one of the largest and most accredited Tax Law teams in Portugal counting on the collaboration of 15 specialised lawyers.

The Latin Counsel, a well-known newsletter on line, with head office in Madrid, in its edition of February 25th, 2005, refers to the sale of "Impresa", assisted by a PLMJ's corporate /media team lead by Vasco Marques Correia as "*the Portuguese media deal of the year*".

The survey of the Global Competition Review that preceded its February edition "GCR100" considers PLMJ as one of the two Portuguese law firms with the best law practice in the area of competition, among the "*World's leading competition law*" placed PLMJ, in 7th place ex-aequo in the list of the "*fastest growing firms*", in 5th place ex-aequo among the "*Top 15 for lateral hires*" and in a prominent position regarding the law firms with the largest number of "*new clients at fastest growing groups*".

Departments

PLMJ promotes "Foreign Investment in Brazil" Seminar

PLMJ held a Seminar on "Foreign Investment in Brazil" last March 14th, 2005 in joint organisation with AIP – Associação Industrial Portuguesa (AIP – Portuguese Industrial Association). It was our honour and great pleasure to count on the intervention of two of the partners of the law firm Tozzini, Freire, Teixeira e Silva e Associados - TFTS (with which we have a Joint Venture), José Luís de Salles Freire and Ana Cláudia Utumi who, through their brilliant interventions, contributed for the clarification of several aspects of future Portuguese investments in Brazil.

Their presence in Lisbon also contributed for the divulgation of our Joint Venture which was received with enthusiasm by the Partners of PLMJ as proof of the interest of TFTS in the continued success of our professional relationship.

This Seminar was covered by the press in an article published in the newspaper "Diário Económico" of March 16th under the title "*PLMJ stimulate businessmen to invest in the Brazilian market*".

PLMJ changes its image

The "new PLMJ image" was firstly presented last April 1st in an internal, simple and informal ceremony held at the Hotel Tivoli that was attended by all professionals who work in this law firm.

Luís Sáragga Leal commenced the ceremony by referring to the several historical stages of the law firm pointing as the cause of the success achieved the values that have been strictly observed since the beginning, having concluded on the strong belief that the position nowadays occupied by PLMJ will be maintained both in the internal and international markets.

Fernando Campos Ferreira, representing the generation that followed that of the Founder Partners, then made a brief presentation and also manifested his great trust in the future of the law firm in the new challenges that await it.

The 4th of April , was marked, in turn, by the firm's presentation of t its corporate image to Clients and to the press. Fernando Campos Ferreira, President of the Board of Directors of our firm, took this presentation at his charge.

Initiatives at PLMJ

PLMJ will carry out in May (in Lisbon and Oporto) a cycle of conferences under the title "Great Lawyers" which aims to enhance the law practice by lawyers who stand out in their respective fields of law as leading professionals of unquestionable quality and competence. The relationship between the law practice and other aspects of human and social activity will be one of the strong topics in these conferences.

Movements in PLMJ

João Maricoto Monteiro has assumed the leadership of the Algarve office.

Lawyers, Rita Prates and João Costa Andrade have recently joined PLMJ to respectively become a part of the teams of the, Competition and Telecommunications Law and Tax Law Departments.

Two Lawyers of PLMJ have been invited to join the list of the XVII Constitutional Government as Assessors.

Carolina Rêgo Costa as Assessor to the Minister of Science Technology and Education

Tiago Caldeira Antunes as assessor to the Deputy Secretary of State of the Prime Minister.

Luís Pais Antunes, **Sofia Galvão**, **Nuno Morais Sarmento** and **Lourenço Vilhena de Freitas** who were part of the XVI Constitutional Government have reassumed the law practice and have returned to PLMJ.

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