

**CORPORATE & M&A AND LITIGATION**

Changes to the legal rules on private security activity

Law no. 46/2019 was published on 8 July and enters into force 60 days after its publication. It makes the first amendment to Law no. 34/2013, of 16 May, which establishes the rules on operating in the area of private security.

In **regulatory matters**, the law introduces some relevant changes, among which we highlight:

- a) Clarification and distinction of the concepts of "**control centre**" and "**alarm reception and monitoring centre**";
- b) Express **prohibition of unfair commercial practices** in the provision of private security services, such as contracting with undeclared or loss-making services;
- c) The user of an alarm system with an external audible siren or panic button becomes solely responsible for communicating its installation and registration with the police authority in the area;
- d) Regarding the **period for preservation of images** obtained by video surveillance systems, it is still provided that they must be kept for 30 days from their capture, but a **maximum period of 48 hours** is now established for their destruction. This period begins to run from the end of the 30 days period;
- e) **The power of supervision of private security** and self-protection activities is now exercised by the National Directorate of the **Public Security Police** ("Polícia de Segurança Pública") in liaison with the **Working Conditions Authority** ("Autoridade para as Condições do Trabalho") and with the **Tax and Customs Authority** ("Autoridade Tributária e Aduaneira");
- f) The application for a permit is now available in **electronic** format, and will be accompanied by a detailed **identification of the list of holders for their own account or for the account of a third party and usufructuaries of shares in the share capital of entities with an interest in a private security company**;
- g) Inclusion of a list of **requirements for video-surveillance systems** to be observed by private security companies, providing companies in the sector with a **period of adaptation of 5 years**. Note: the technical requirements are still subject to specific regulation through an ordinance of the Government member responsible for internal administration;

- h) Regarding the **registration of activities**, the following changes are introduced: (i) widening of the range of mandatory information/documentation; (ii) express reference to the obligation to enter into a contract for the provision of services directly with the beneficiary of the services provided; (iii) obligation to keep a record of activities and contracts concluded for a period of 5 years after their termination. It is also clarified that the registration of activities must be kept in a computerised register of entities until their submission into the Integrated System of Management of Private Security (“SIGESP”) is possible;
- i) **Entities that contract** private security services become **jointly liable** with private security companies (i) **for illegal acts or for the risk** of damage caused by private security personnel on their premises and at their service; and (ii) for **payments due to the workers** that provide the services, as well as for **tax and social security contributions obligations**;
- j) The **provision of a guarantee** by private security companies to the entities contracting their services to ensure compliance with their legal and contractual obligations when the price provided for in the **contract is higher than EUR 200,000**;
- k) Expansion of the list of **acts subject to administrative fees, in particular, communication of false alarms**.

With regard to the **penalty system**, the law provides for the **adoption of police measures**, such as the restriction of the activity of the private security company and the activity of the private security professional card holder, when there is non-compliance with the rules governing such activities or when its exercise results in the susceptibility to disturbance of public order, security or tranquillity.

In **criminal matters**, it is now possible to be held responsible for the commission of the **crime of unlawfully engaging in private security activity**, not only for those who provide private security services without a permit, but also for those who adopt certain self-protection measures without the necessary licence. This offence is punishable by a **prison sentence of 1 to 5 years** or a **fine of up to 600 days**.

Also within the scope of the **crime of unlawfully engaging in private security activity**, the following will be punishable with a **prison sentence of up to 4 years** or with a **fine of up to 480 days**:

- a) Engaging in private security work without an employment relationship with an entity duly qualified to provide the services, or when it is suspended;
- b) Use of private security services, knowing that the provision of security services is carried out without the necessary licence or that private security services are being performed by those who do not hold a professional card or are suspended;
- c) Practices prohibited in engaging in private security and self-protection activities.

With the new law, the following will be punishable by a **prison sentence of up to 3 years** or by a fine:

- a) The installation and use of security systems likely to endanger the life or physical integrity of persons;
- b) Carrying out intrusive prevention and security searches.

With regard to the **administrative offence rules**, the objective scope of the offences has been broadened and the following are now classified as **very serious offences**:

- a) Engaging in prohibited activities or unfair commercial practices;
- b) Failure to comply with the obligation of private security companies to carry out private security activities on an exclusive basis;
- c) Providing specialised private security services in an area of specialisation for which it is not qualified;
- d) Failure to comply with the duty of the event promoter to ensure the presence of a security force;
- e) Carrying out security control outside the legal conditions;
- f) Use of unauthorised technical means of security.

It also provides for the **computer processing of administrative offence proceedings**.

The **National Republican Guard** (“Guarda Nacional Republicana”) and the **Public Security Police** (“Polícia de Segurança Pública”) will be responsible for the **investigation of administrative offences**.