INFORMATIVE NOTE

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REAL ESTATE
CAPITAL MARKETS

SIGI – PORTUGUESE REITS

The approval of the SIGIs regime is expected to foster the rental market, capital markets and foreign direct investment. The full spectrum of types of real estate investment vehicles is now available in Portugal.

OVERVIEW

The long-awaited legal framework for Portuguese REITs has finally been published today through Decree-Law 19/2019 and will enter into force on 1 February 2019. It creates a new type of real estate investment vehicle, the *Sociedades de Investimento e Gestão Imobiliária* ("**SIGI**") similar to English REITs and Spanish SOCIMIs. With this new framework, the Portuguese Government intends to boost the Portuguese rental market, as well as foreign direct investment.

The above Decree-Law regulates the formation of SIGIs, the range of permitted activities, the composition of portfolio and leverage, admission to trading and minimum free float, mandatory distributions and the loss of SIGI status and benefits. By virtue of being a sub-type of real estate investment companies, SIGIs will benefit from the favourable tax regime applicable to such companies, at both the SIGI and investor level.

1. FORMATION

A SIGI must be incorporated as a public limited liability company (sociedade anónima) with a minimum share capital of EUR 5,000,0000 and maintain its registered office in Portugal. SIGIs may be newly incorporated by a sponsoring entity, by means of a private placement or public offering, or they may result from the conversion of other public limited liability companies or real estate collective investment schemes (real estate funds or companies).

The shares allocated to the sponsoring entities may not bear any preferred right or benefit.

2. PERMITTED ACTIVITIES

SIGIs main activities are restricted to:

- acquisition of freehold, surface rights and other similar rights over properties free of liens (except in favour financing entities) for rental purposes or other similar economic activity. This includes carrying out developments and urban renovation projects, as well as land which qualifies as urban property within three years of acquisition. Commercial rental and use contracts, such as rental of offices, shops, shopping centre spaces are included.
- acquisition of the shares in other SIGIs located in Portugal or in the EU complying with certain criteria.
- acquisition of units or shares in real estate investment schemes, real estate investment funds or companies for private dwelling rental purposes existing under specific Portuguese legislation.

SIGIs may delegate the management of properties to third parties.

3. PORTFOLIO COMPOSITION AND LEVERAGE

The following requirements must all be met at all times after the second year of formation of the SIGI:

- the value of the above-mentioned property or similar rights and holdings must represent at least 80% of the total value of its assets; and
- the value of rented properties must represent at least 75% of the total value of the assets.

Properties, similar rights and holdings must be kept for a minimum period of 3 years. Upon sale, at least 75% of the net proceeds of the sale must be reinvested within three years of the sale.

In addition, indebtedness may not correspond to more than 60% of the total value of the assets.

These requirements must be met in the individual or consolidated accounts of SIGIs, if these are the holding entities of a group.

4. ADMISSION TO TRADING AND FREE FLOAT

All the shares in a SIGI must be admitted to trading on a regulated market or multilateral trading facility operating in Portugal (Euronext Lisbon or Euronext Access or Euronext Growth, respectively), or another EU Member State, within one year of its formation or conversion. Listing on Euronext Access or Euronext Growth entails lighter upfront requirements, as well as ongoing information and regulatory requirements, as they will not qualify as an open company (sociedade aberta) under the Portuguese Securities Code, unless SIGIs are incorporated in the context of a public offer.

At least 20% of its share capital must be held by investors holding each less than 2% of the voting rights corresponding to the share capital in a SIGI.

5. MANDATORY DISTRIBUTIONS

Up to 9 months after each annual accounting period, SIGIs must distribute the following income as dividends:

- 90% of the profits resulting from the payment of dividends deriving from holdings in other investment vehicles; and
- 75% of the remaining profits.

The statutory reserve must not exceed 20% of the equity and SIGIS are not allowed to create other non-distributable reserves.

6. LOSS OF SIGI STATUS

A SIGI will lose its status and benefits upon:

- ceasing to be a private limited liability company, breaching its mandatory corporate object or having a share capital of less than EUR 5,000,000;
- simultaneously breaching, for a period of more than 6 months, the rules on portfolio composition and minimum holding period requirement;
- breaching, during two consecutive financial years, either of the requirements on the portfolio composition or the minimum holding period requirement;
- breaching the 60% leverage ratio requirement;
- breaching the rules on admission to trading, the free float 20% requirement or the 2% dispersion requirement.

Any loss SIGI status is maintained for at least the three years following the non-compliance.

7. TAXATION

SIGI level

Income generated by the SIGI's real estate related activity (i.e., investment income, rental income and capital gains on immovable property) will be exempt from Corporate Income Tax ("**CIT**"), essentially by applying the same tax rules already applicable to Collective Investment Vehicles. They are, however, subject to a 0.0125% stamp duty on their net value, on a quarterly basis.

Investor level

At the investors' level, taxation can be resumed as follows:

- **Income distributions:** taxed via a 28% or 25% withholding tax (for resident individuals or companies, although in the latter case as payment on account of the final CIT liability, currently at a standard rate of 21% on the annual taxable profit, plus applicable municipal and state surcharges), or 10% (for non-resident individuals or companies);
- **Capital gains on the sale of shares:** taxed at 28% (resident individuals) or 21% on the annual taxable profit, plus applicable municipal and state surcharges (resident companies). In the case of non-residents (both individuals and companies), we are of the opinion that the tax should be levied at 10% and be assessed on the basis of a tax return filed by the non-resident's local representative.

At this stage, based on the currently available information and without any further interpretation or ruling by the Portuguese Tax Authority or ministerial order, one thing remains unclear: whether or not it possible to apply the participation exemption regime to both the mandatory dividend distributions provided for in the SIGI regime (i.e., non-taxation of distributed dividends at level of the beneficiary) and to the sale of the shares in the SIGI for eligible shareholdings (i.e., non-taxation of the capital gains deriving from the sale of shares in the SIGI).

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