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A new regime for preference shares - Vieira de Almeida

The new Decree Law 26/2015 of 6 February, which has already entered into force, amended the Companies Code in order to update the legal regime for preference shares (PS).

PS were used in the past by companies as a non-dilutive form of capitalisation. A preferred and majored dividend was granted to owners of such shares. In exchange, voting rights were removed from the shares. Nevertheless, the legal framework for PS was not flexible enough and was not adapted to the present juncture of low inflation and financial debility of companies as (i) a minimum dividend of five per cent should be distributed to such shareholders, and (ii) the shares regain voting rights after two years of no dividend, which potentially could destabilise the ownership of companies.

Therefore, the issuance of preference shares declined in recent years, precisely at a time when this type of structure was most needed, due to companies' appetite for hybrid instruments and new equity.

With a view to changing things and making the issue of PS again a valid alternative for financing companies, the government decided to address the main causes of the low amount of issues.

First of all, the minimum dividend to be attributed to preference shares was lowered to one per cent. But the most interesting feature of the new regime is to allow companies that decide to issue preference shares – subscribed by institutional investors – to postpone for a maximum period of five years with no dividends the conversion of PS into common shares. This dramatically extends the timeframe for conversion, giving companies precious time to negotiate and implement measures that could avoid unintended changes in their control structure due to the fact that converted shares attach voting rights.

Impact

We do not anticipate that companies will rush to issue preference shares due to these amendments. Moreover, the impact on listed companies in regulated markets will be minimal, as the extended deadline for conversion does not apply to such companies. However, for unlisted SMEs and companies listed on non-regulated platforms the new regime can make PS an interesting option for raising new equity and an alternative to debt.

Conclusion

This development is clearly positive, and it is a part of a package of amendments to Portuguese company law that

are aimed at boosting the issuance of hybrid instruments. However, a complete overhaul of the obstacles (including tax obstacles) to raising new equity is still needed. Moreover, we see no valid reason to exclude listed companies from these improvements, as long as such instruments are reserved to market segments only accessible to institutional investors.

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Source: http://www.iberianlawyer.com/legal-updates/corporate/4658-a-new-regime-for-preference-shares-vieira-de-almeida