

CORPORATE & GOVERNANCE

AMENDMENTS TO THE
COMMERCIAL COMPANIES CODE

VdA EXPERTISE



January 2022

Since December 2021, the Portuguese Commercial Companies Code ("PCCC") has been subject to several amendments, namely in terms of the governance of commercial companies, the subtypes of public limited companies (by shares*), in terms of multiple-vote and corporate crimes and penalties.

This flash addresses the scope and range of such changes, which were also projected in other diplomas, such as the Portuguese Securities Code ("PSC"), the Insolvency and Corporate Recovery Code and the Commercial Registration Code.

In just over a month (from December 9, 2021 to January 11, 2022), the PCCC underwent changes in terms of corporate governance, crimes and penalties, multiple-voting and the subtype of public limited company (by shares). Below is a brief summary and comment on those changes, without addressing them chronologically.

I

In terms of public limited companies (by shares) subtypes, there is the elimination – by Law no. 99-A of December 31 – of the specific legal regime of unlisted public limited companies (by shares) (that is, companies open to investment by the public but whose shares and bonds are not admitted to trading on the regulated market).

As of January 30, 2022 (inclusive), there will be only three subtypes of limited company (by shares):

1. The public company limited (by shares) listed on a stock exchange, that is, a company issuing securities admitted to trading on a regulated market.
2. The "large private limited company (by shares)", i.e. a (unlisted) public limited company (by shares) which, for two consecutive years, exceeds two of the following three criteria:

- a) €20 million balance sheet;
- b) Sales volume and net income of €40 million; and

- c) Average number of 250 workers (in the same year).

3. The private limited company (by shares), that is, the public limited company which is not listed and does not meet the criteria to be classified as a "large private limited company (by shares)".

In the approved legal framework, all limited companies (by shares) are incorporated as simple or common (private limited companies by shares), subject to the regime contained in the PCCC, which regulates all limited company (by shares), including listed companies, which also remain subject to the regime established in the PSC.

The public limited companies (by shares) that qualified as public companies on December 31, 2021 but that are not listed remain subject to the legal regime that they were subject to until the end of 2022 and which resulted from the combination of the PCCC rules with some of the PSC rules, now (expressly) revoked.

II

Another important change, introduced by Law no. 99-A/2021 of 31 December, concerns the possibility of having shares with multiply-voting rights in (listed) public limited companies (by shares).

Indeed, the new article 21-D of the PSC admits that listed companies issue shares with voting privileges – corresponding to a maximum of five times the number of votes attributed to common shares.

III

But there are still other relevant changes in commercial companies in general.

* Public companies by shares, according to English Law, correspond to listed companies in Continental Law and private limited companies by shares, according to English Law, correspond to common limited companies by shares in Continental Law.



Since December 10, 2021, the appointment of management bodies – both directors and managers (*administradores* and *gerentes*) – requires an express acceptance of the position by those appointed, by means of a signed declaration for the purpose. This legal requirement is similar to the one that already applied to statutory auditors.

Also in December 2021, another legal diploma was published (Law no. 94/2021 of December 21) to enter into force on March 21, 2022 with substantial change in terms of corporate crimes, with a profound alteration of the criminal rules of the PCCC, which extended the criminal framework of corporate acts (and omissions) and, above aggravated the applicable penalties.

It is expected that the aggravated penalties will also bring effectiveness to the underlying legal obligations and drive a more compliant perspective to avoid unhealthy practices that may still hold true in some companies today.

IV

Finally, on January 11 of this year (2022), Directive (EU) 2019/1023, of the European Parliament and of the Council, of June 20, 2019, was transposed, introducing major changes to the Insolvency and Corporate Recovery Code, that were also projected in several legal provisions of the PCCC, and which will be applicable from April 11, 2022, without prejudice to their immediate application to pending (insolvency and restructuring) processes.

Amendments to the PCC enacted by :

- **Decree-Law no. 109-D/2021 of December 9**
- **Law no. 94/2021 of December 21**
- **Law no. 99-A/2021 of December 31**
- **Law no. 9/2022 of January 11**

The rules now added to the PCCC were intended to exclude the application of (amended) corporate rules to companies that are in the process of restructuring. Among other aspects, the PCCC now expressly admits that the reduction of the share capital be deliberated to an amount lower than the legal minimum for the respective corporate type (assuming the subsequent increase in capital), if such is necessary to enable the adoption of a restructuring regime foreseen in the Insolvency and Corporate Recovery Code.

V

In a nutshell:

- 1st – All limited companies (by shares) are incorporated in the model of simple or common company.
- 2nd – Those currently unlisted but public limited companies (by shares) are now subject to the regime of private limited companies (by shares) provided they meet the legally established eligibility criteria.
- 3rd – Listed companies may have shares with multiple-votes.
- 4th – Management both of limited companies (by shares) or quotas must formally accept their position in a written statement on appointment.
- 5th – Corporate crimes are extended and the corresponding penalties are significantly increased.

Contacts



PAULO OLAVO CUNHA
POC@VDA.PT



SOFIA BOBONE
SOB@VDA.PT



JOANA SILVA LEAL
JSL@VDA.PT