

Venture Capital

As far as legal work is concerned, venture capital transactions are from a Portuguese lawyer perspective one of the most demanding ones, where the ability to innovate within a pre-defined and somewhat rigid legal environment is tested to the limit.

The fact that these transactions are mainly based on an Anglo-Saxon format (which benefit from a more flexible legal environment) and that they tend to be increasingly sophisticated, requires the constant update of the legal tools and the implementation of new legal solutions to keep fully up to the speed with the market requirements.

The main challenge is to find legally acceptable mechanisms that ensure an adequate degree of protection of the venture capital investor's specific concerns, throughout the investment period. That is the case namely in respect of the degree and scope of intervention of the investor in the management of the target (where the investor is in minority on the board of directors), the setting up of anti-dilution protection mechanisms that go beyond the ones provided for in the law, as well as in respect of the type of privileges and preferences granted to the venture capital stockholder.

It is important to note that shareholders agreements, which are a crucial tool in designing the legal platform on which the investors base their case, have a somewhat limited scope, under the Portuguese law.

In fact as far as the company's corporate bodies are concerned, these agreements may only regulate the exercise of voting rights by the shareholder (at the General Meeting of Shareholders), and may not interfere with the functioning of other corporate bodies (in particular the management). On the other hand, these agreements cannot be enforced against the company, being effective only between shareholders who are parties thereto.

As venture capital investors typically require being involved in certain management decisions, these legal limitations require the setting up of multifaceted structures that enable the achievement of the same result.

We thus may say that venture capital transactions are, for a Portuguese corporate law practitioner, one of the most challenging areas of activity, and to that extent one of the most rewarding ones.

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