UNIVERSIDADE NOVA DE LISBOA
FACULTY OF LAW

PORTUGUESE LAW
an Overview

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PORTUGUESE LAW – an Overview

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CHAPTER 19

Company Law

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SUMMARY: 1. *Introduction 2. Civil companies versus commercial companies 3. Types of commercial companies 4. Companies and other legal forms of carrying on economic activities 5. The* Código das Sociedades Comerciais *6. Some aspects of the regime applicable to all commercial companies 7.* Sociedades anónimas *8.* Sociedades por quotas *9. Future trends*

1. Introduction

The Portuguese legal concept of *sociedade* is similar to the Spanish, Italian, French and German concepts of *sociedad, società, société* and *Gesellschaft* (less clearly in the last case). It encompasses equivalents of both the partnerships and companies of English law.

On the one hand the idea of *sociedade* refers to a type of contract and on the other hand it refers to a type of legal entity. The purpose of such a contract and of such an entity may be either commercial or civil but, in any case, there must be (unlike, for example, in German law) an economic purpose.

Evolution over the last two decades has caused the concept of the *contrato de sociedade* to be widened, to include also the cases where law admits the creation of a company by a unilateral act.

In this text the word "company" shall be used to translate *sociedade,* although as noted above the English concept of company is different from the Portuguese concept of *sociedade.*

2. Civil companies *versus* commercial companies

As in other countries, Portugal traditionally draws a major distinction between civil companies *(sociedades civis)* and commercial companies *(sociedades comerciais)*. The former are governed by the Civil Code and the latter by the *Código das Sociedades Comerciais* (the Companies Code that in 1986 replaced the part of 1888 Commercial Code dealing with companies, as well as other subsequent legislation).

Outwardly, the crucial difference between civil companies and commercial companies lies in their purpose. Commercial companies must have a commercial purpose and civil companies may not have such a purpose. Nevertheless, it should be stressed that companies with a civil purpose may adopt a commercial form and that in doing so they become subject to the rules on commercial companies.

As the regimes for the various types of commercial companies are quite different from one another, it is difficult and almost irrelevant to make a general comparison between civil companies and commercial companies. The most relevant difference is that all types of commercial companies are legal persons, while ordinary civil companies do not have (according to the majority opinion) legal personality, although they enjoy a certain degree of "patrimonial autonomy". However, besides ordinary civil companies (*i.e.* those governed only by the Civil Code), there are special types of civil companies ruled by other laws (such as, for instance, *sociedades de advogados* – "law firms"), which are legal persons.

3. Types of commercial companies

Commercial companies must adopt one of the types specified by law (they are subject to what in German is called *Typengesetzlichkeit*), these types being:

- *sociedades em nome colectivo,* which correspond to the French, Spanish and Italian types with similar names;
- *sociedades por quotas*, which correspond to the German *GmbH*, to the French *société à responsabilité limitée* and to the Spanish and Italian types with names similar to the latter;

- *sociedades em comandita simples,* which correspond to the French, Spanish and Italian types with similar names;
- *sociedades em comandita por acções,* which correspond to the French, Spanish and Italian types with similar names;
- *sociedades anónimas* – which correspond to the French and Spanish types with similar names, to the Italian *società per azioni,* and to the German *Aktiengesellshaft,* and, less closely, to the UK public company limited by shares.

The name of each company must permit identification of the type to which it belongs. The names of *sociedades anónimas* must end with the expression "*sociedades anónimas*" or with the letters "S.A." and those of *sociedades por quotas* with the word "*Limitada*" or with the abbreviation "*Lda*". The names of *sociedades em nome colectivo* must either include the names of all their members or include the name of one or some of them and a reference that indicates the existence of other members, such as "*e Companhia*". The names of *sociedades em comandita* must include the name of at least one of the members with unlimited liability and the word "*comandita*".

As in other continental European countries, *sociedades em nome colectivo* and *sociedades em comandita simples* have existed at least since the Middle Ages. *Sociedades anónimas* descend from the companies that were created by royal charter, the first law allowing their incorporation without previous authorization having been published in 1867. *Sociedades por quotas* were created in 1901 under the strong influence of the German *Gesetz bettrefend die Gesellschaften mit beschränkter Haftung.*

Sociedades em nome colectivo and *sociedades em comandita* (either *simples* or *por acções*) are currently of little economic significance. That is why this text deals mainly with *sociedades anónimas* and *sociedades por quotas* (hereinafter also *"SA"* and *"SpQ"*).

The differences between the types of commercial companies relate mainly to the rules governing the liability of their members for the debts of the company, to the rules on the transfer of holdings in their capital and to the structure of the company bodies.

4. Companies and other legal forms of carrying out economic activities

According to concepts adopted by Portuguese legal rules, not all legal entities with an economic purpose are companies. Entities with charitable objectives, *i.e.* foundations, clearly lie outside this category. But even among self-interested entities with an economic purpose there are some that Portuguese law does not characterize as companies. This is the case of *cooperativas, agrupamentos complementares de empresas, entidades públicas empresariais* (all of which are types of legal entities) as well as of *estabelecimentos individuais de responsabilidade limitada* (which do not constitute a legal entity).

Until 1980, the *cooperativas* were ruled by the Commercial Code and were characterized as a special type of company, as in other legal systems. In that year a *Código Cooperativo* was adopted that has removed the *cooperativas* from the primary scope of company law – albeit establishing that commercial law, including the law on *sociedades anónimas,* was applicable to them on a subsidiary basis. The second *Código Cooperativo,* which came into force in 1996, has retained these principles, merely replacing the reference to commercial law with a reference to the *Código das Sociedades Comerciais.*

The *agrupamento complementar de empresas* (hereinafter *ACE*) is a type of legal entity created in 1973 under the strong influence of the French *groupement d'intérêt économique.* It is intended as a means for enhancing collaboration among pre-existing undertakings and may not have as a primary goal the generation of a profit in its accounts. Underlying the creation of the *ACE* was the (disputable) assumption that Portuguese law did not allow for non-profit-making companies, namely because the definition of company in the Civil Code (Article 980) sets out – following the definition of the original text of the corresponding article in the French Civil Code (Article 1832) – that the purpose of members of companies is to divide among them profits arising from the activity of companies. The *ACE* is therefore a kind of Portuguese ancestor of the European Economic Interest Grouping.

Undertakings that are entirely owned by the State may adopt the form of a company or the form of *entidades públicas empresariais (EPE).* The law characterizes this type of entity as "legal persons of public law" with an "entrepreneurial nature". Although their bodies are similar to those of *sociedades anónimas,* we might say that in practical terms they are less autonomous from the State than State undertakings that take the form of a company.

The *estabelecimento individual de responsabilidade limitada* (hereinafter also *EIRL*) was created in 1986, a few days before the publication of the *Código das Sociedades Comerciais.* It is not a company or any other kind of legal entity, but a mere separate undertaking belonging to an individual. The influence of the French *entreprise unipersonnelle à responsabilité limitée (EURL)* may be observed in its name and purpose.

Indeed, although in 1986 some European legal systems, including those of Germany and France, already provided for single-member private limited liability companies as a means to the limitation of the liability of individuals merchants, Portuguese legislation opted to follow a different path, echoing the suggestions made by a number of writers in the early decades of the twentieth century. Most probably it was due to this Portuguese legal device that Article 7 of the 12th European Directive of 1989 allowed Member States the possibility of not providing for single-member companies if their legislation offers individual merchants other means for limiting their liability. Nevertheless in 1996 the *CSC* was amended in order to admit the single-member *SpQ*. The *EIRL* was never embraced by the Portuguese business community, and since the creation of the single-member *SpQ,* it has become almost a dead letter.

5. The *Código das Sociedades Comerciais*

The *Código das Sociedades Comerciais* (hereinafter also "*CSC*") of 1986 was intended to replace old and fragmentary laws, transposing the European Directives on companies in force at the time (*i.e.* the 1st, 2nd, 3rd, 4th, 6th, 7th and 8th Directives). Additionally, it took into account the drafts of European Directives then under

discussion, which have not been finally approved (*i.e.* the drafts of the 5th and 9th Directives).

It is divided into eight parts, entitled:

- general part;
- *sociedades em nome colectivo;*
- *sociedades por quotas*;
- *sociedades anónimas*;
- *sociedades em comandita*;
- *sociedades coligadas (i.e.* groups of companies*);*
- provisions on crimes and offences; and
- final and transitional provisions.

The *CSC* contains the most important rules on commercial companies and is the centrepiece of Portuguese company law. However, there are many other pieces of legislation relevant to companies. These include the *Código dos Valores Mobiliários* (Securities Code), worthy of mention because it contains rules on public companies (*i.e.* companies open to public investment).

Since 1986, the *CSC* has undergone several amendments. Taken together, they have materially transformed the contents of the Code, although each one of them has had a limited reach. The most relevant of these amendments was perhaps that brought in by the very recent Decree-Law 76-A/2006, of 29 March 2006, which entered into force on 30 June 2006. This statute introduces changes in different fields, and particularly in the following: formal requirements concerning the *contrato de sociedade* and alterations to it, removing the requirement of notarial deeds; winding-up of companies; merger and division; and, last but not least, management and supervision of SA.

6. Some aspects of the regime applicable to all commercial companies

The general part of the *CSC* consists of 174 Articles. This shows clearly that Portuguese law has many provisions applicable to all companies irrespective of their type. The authors of the Code attempted to draft the largest number of general provisions, including by submitting all types of companies to many of the rules that European Directives only impose upon *SA* and in some cases upon *SpQ*.

In this section we shall outline various aspects of the main rules potentially applicable to all types of commercial companies. In the following sections we shall address some specific aspects of *SA* and *SpQ*.

6.1 *Formation of companies*

All companies result from a legal act known in Portuguese law as *contrato de sociedade* – even when this act is unilateral.

The *contrato de sociedade* comprises that which in English law is divided between the *memorandum of association* and the *articles of association*. For the sake of simplicity however, we shall often translate *contrato de sociedade* as "articles of association".

The minimum number of parties to a *contrato de sociedade* is two in the case of *sociedades em nome colectivo* and of *sociedades em comandita simples*. Single-member *SpQ*s are admitted with the requirement that the company name contains the word *unipessoal*. The main rule on *SA*s (and on *sociedades em comandita por acções*) states that five members are required for incorporation, but an *SA* or *SpQ* wholly owned by another *SA* may be incorporated by a unilateral act.

The principal rules applicable to the formation of all types of companies are:

- the company name must first be authorized by the *Registo Nacional de Pessoas Colectivas;*
- the *contrato de sociedade* must be drawn up in writing and the signatures of the parties notarized (until Decree-Law 76-A/2006 the *contrato de sociedade* generally had to consist of a notarial deed)
- the company must be registered with the relevant Commercial Registry;
- the *contrato de sociedade* must be published on an official internet site as well as in an ordinary newspaper;
- legal personality results from final registration.

The content of the *contrato de sociedade* required by the CSC is very similar to the minimum requirement of the 2nd European Directive.

The cash contributions of the founders of the *SA* and of the *SpQ* must be deposited with a bank prior to the "*contrato de sociedade*". In these types of companies, contributions in kind must be valued by a chartered accountant, according to rules transposing the 2nd European Directive.

The formation of a company is traditionally quite time-consuming and all measures taken so far to speed up the process have enjoyed only limited success. In July 2005, a law was published enabling the formation of the *SA* and the *SpQ* in a single day, provided a number of conditions are met. Under these rules, as long as the parties are willing to adopt a text of a *contrato de sociedade* corresponding to an officially approved model, the powers to carry out all the formalities required lie with the Commercial Registry. Establishing a name for the company under these rules is easy, as pre-approved names are available to those who choose this alternative route. However, these rules do not apply if there are contributions in kind or if the formation of the company (because of its purpose) is subject to any form of authorization.

6.2 *Capital*

All companies must have a fixed capital determined by the articles of association (the sole theoretical possible exception being *sociedades em nome colectivo* without capital contributions).

The CSC extends to all types of commercial companies many of the rules that the 2nd European Directive establishes for the *SA*. It would therefore be pointless to elaborate on this subject and we shall only address some of the particulars of Portuguese law.

First, the minimum capital required. For the *SA* and *sociedades em comandita por acções,* the minimum is € 50,000 and for the *SpQ* it is € 5,000. No similar requirement exists for *sociedades em nome colectivo* or for *sociedades em comandita simples.*

The percentage of the capital that must be paid up on execution of the *contrato de sociedade* is 30% for the *SA* and 50% for the *SpQ.*

Increases and decreases in capital are considered special cases of amendment of the articles of association, subject to the provisions generally applicable to such amendments and to other specific rules.

The capital may be increased by means of new contributions or through capitalization of reserves. The capital may be reduced to adjust it to the actual equity of the company or to pay back to the members a part of their contributions. In the latter case, the operation is subject to a judicial authorization.

In capital increases by means of new cash contributions, the members of the *SA* and the *SpQ* have subscription rights. The exclusion of such rights is feasible through a resolution of the general meeting on the grounds of the "interest of the company".

A curiosity suggestive of Portuguese economic problems is the fact that until January 2005 provisions concerning the transposition of Article 17 of the 2nd Directive (on "serious loss of the subscribed capital") were not in force. After completion of a tortuous path, a rule was adopted on this date corresponding to the softest solution admitted by the European rule.

6.3 *Resolutions of the members*

In its general part, the CSC allows resolutions of the members of the companies to be adopted either at the general meeting *(assembleia geral)* or without such a meeting, if all members agree in writing with the contents of the resolution. This means that not all resolutions of the members of companies are adopted at general meetings. For the sake of simplicity of language, over the following pages we shall speak only about resolutions adopted at general meetings, but these references are to be interpreted as encompassing all kinds of resolutions of company members (except where otherwise indicated or implied).

The formalities for convening the general meeting (*stricto sensu*) vary depending on the type of company. In the case of the *SpQ*, the means of convening is by registered letter (with advance notice of at least 15 days) and in case of the *SA* the means are publication on an official internet site (from 1 January 2006 onwards) as well as in a ordinary newspaper (with advance notice of at least one month). However, if all shares are registered shares, the articles of association may stipulate that general meetings are con-

vened by registered letter or (pursuant to Decree-Law 76-A/2006) even by e-mail (with advance notice of at least 21 days).

The convening formalities may be avoided if all members take part in the general meeting and agree to hold the meeting without observing such formalities.

For the *SpQ*, the *CSC* also allows resolutions to be adopted by circular, but this proceeding is not used in practice.

Other particulars concerning resolutions of the members shall be given in the specific sections on the *SA* and the *SpQ*.

6.4 *Liability of the members of the company for its debts*

Members of the *SA* and of the *SpQ* are not liable for the debts of the company, once the company is registered. However members of the *SpQ* are liable for the payment of the contributions of the other members. Portuguese law also enables that the articles of association of a *SpQ* state that one or more of its members are liable for the debts of the company but this possibility is not used in practice. Members of *sociedades em nome colectivo* and the *comanditados* of *sociedades em comandita* are jointly and severally liable for the debts of the companies – but such liability can only be enforced following enforcement of the liability of the company.

6.5 *Liability of the directors and of other persons entrusted with control of management and with auditing*

The *CSC* rules both the liability of the directors towards the company and liability of the directors towards the creditors of the company.

The main rules of the *CSC* on the liability of directors to the company are (more onerous since Decree-Law 76-A/2006) as follows:

- liability depends on the violation of duties deriving from law or the articles of association;
- liability depends on intention or negligence, the burden of proof (of the non-existence of intention or negligence) falling on the directors concerned;

- there is no liability if the relevant act was performed in accordance with a resolution of the general meeting;
- the directors involved are jointly and severally liable;
- proceedings to enforce such liability may be started by the company, upon a resolution of the general meeting or (for the benefit of the company) by any shareholder owning 5% or more of the capital.

Portuguese authors continue to discuss the extent to which the law imposes a general duty of good management on *administradores* and *directores*.

The main rules of the *CSC* on the liability of directors to the creditors of the company are as follows:

- liability depends of the violation of legal rules or contractual provisions designed to protect the creditors;
- liability exists only when the assets of the company become insufficient to satisfy its creditors;
- liability exists even if the relevant acts of the directors have been performed in accordance with a resolution of the general meeting and may not be excluded by any act of the company.

Members of the boards charged with the auditing are jointly and severally liable with the directors involved, both to the company and to the creditors whenever the damage would not have occurred if they had fulfilled their duties. They can also be independently liable under terms similar to those applicable to the directors.

Chartered accountants are also liable to the company and to the creditors of the company according to rules similar to those applicable to the directors.

6.6 *Right to information*

The right to information is hardly dealt with in the general part of *CSC*, but the Code has provisions on this subject for each type of company. In the *SpQ*, each member has a strong right to demand information. In the *SA*, the contents of this right depend on the percentage of the shareholding. Only shareholders (or groups of shareholders) with 10% or more of the capital may demand information

not disclosed in the financial statements and other documents made public by the company.

6.7 *Amendment of the articles of association*

The *CSC* governs the amendment of the articles of association both in the general part and in each of the parts dedicated to the specific types of companies. Rules included in the general part address mainly the formal requirements for all amendments and general aspects of increases and decreases of capital.

6.8 *Merger and division*

The CSC governs the merger and division of companies, applying to all types of companies the solutions set out by the 3rd and the 6th European Directives for public limited liability companies. Decree-Law 76-A/2006 has simplified the relevant proceedings, which were previously very bureaucratic and time-consuming.

6.9 *Dissolution and liquidation*

Under Portuguese law, the voluntary winding-up of companies consists in principle of three steps: dissolution, liquidation and the division of assets. When the company has no liabilities the liquidation can be avoided and the division of assets may take place simultaneously with dissolution.

The main causes of dissolution are:

- a resolution of the members;
- if the articles of association limit the duration of the company, expiry of the stipulated period;
- a judicial declaration of insolvency

Liquidation is carried out by liquidators, whose main duties are to collect debts, to turn assets into cash, to honour the obligations of the company and to prepare the division of the surplus. The general

meeting may authorize the liquidators to continue the business of the company temporarily.

6.10 *Groups of companies*

Portugal belongs to the short list of the countries where groups of companies are governed by private law. As we have already seen, Part VI of the CSC is devoted to *sociedades coligadas,* a (not successful and not commonly used) translation of the German expression *verbundene Unternehmen.*

This concept encompasses different scenarios for affiliated companies, ascribing duties and liabilities, which increase in line with the power of the relevant company over the other. A company that owns 100% of another company is liable for its debts.

7. Sociedades anónimas

As mentioned above, we shall now address some particulars of the *SA*, beginning with their management and supervision, not only because the rules on these subjects are the most relevant from a practical point of view, but also because these rules reveal some degree of originality.

7.1 *Management and supervision*

Prior to the enactment of Decree-Law 76-A/2006, the CSC already permitted more than one management and supervision model for *SA*. One of these models, corresponding to the Portuguese tradition, consisted of a board of directors (or in some cases of a single director) and a board of auditors (or a single auditor). The other model, inspired by the German system of *Aufsichtsrat* and *Vorstand*, consisted of a supervisory board (*conselho geral*) and a board of directors (or in some cases of a single director).

Sometimes the first model was described as a one-tier system of management, contrasting with the second, characterized as a two-tier system of management. Indeed, the first model envisaged the possibility of dividing the directors into "executive" and "non-executive" and could therefore accommodate a two-tier system of management.

Following the enactment of Decree-Law 76-A/2006, the CSC is even more generous in the range of models it offers for structuring the management and supervision of SA. The Code itself says that it offers three models, but in reality the following eight possibilities exist:

- single director (*administrador*) and single auditor (*fiscal único*) – necessarily a chartered accountant;
- single director and board of auditors (*conselho fiscal*) – comprising at least one chartered accountant;
- board of directors (*conselho de administração*) and single auditor – necessarily a chartered accountant;
- board of directors and board of auditors – comprising at least one chartered accountant);
- board of directors, board of auditors and chartered accountant (*revisor oficial de contas*);
- board of directors, auditing committee (*comissão de auditoria*) and chartered accountant;
- executive board of directors, supervisory board (*conselho geral e de supervisão*) and chartered accountant;
- single director, supervisory board and chartered accountant.

Models including a single director are permitted only in companies where the capital does not exceed € 200,000.

Listed companies and companies with "big figures" must adopt one of the models in which there is a chartered accountant acting out of any board of the company. In these companies, some (and in some cases the majority) of the members of the board of auditors, of the auditing committee and of the committee of the supervisory board charged with "financial matters" must be independent from the shareholders.

The main differences between models including *conselho geral e de supervisão* and the others are:

- when there is no *conselho geral e de supervisão,* the *administradores* must be elected by the general meeting, whilst when there is *conselho geral e de supervisão* this power belongs in principle to this board, although the articles of association may ascribe it to the general meeting;
- when there is a *conselho geral e de supervisão*, all directors must be executive, whilst when there is no *conselho geral e de supervisão* the board of directors may be divided into executive and non-executive members;
- the articles of association may give the *conselho geral e de supervisão* powers to intervene in management matters, prohibiting the *administradores* from acting in some matters without the consent of the *conselho geral e de supervisão*, whilst similar powers may not be given to the *conselho fiscal.*

Legal entities may be elected to the *conselho de administração* and to the *conselho geral e de supervisão*, but such entities must designate individuals to hold the office in question, and the persons so designated "hold office in their own name". The members of the *conselho fiscal* must be individuals, with two exceptions: law firms and firms of chartered accountants.

The *conselho de administração* must have a chairman, who is however is a mere *primus inter pares.*

The term of office of all members of the boards of management and supervision is limited to a maximum period of four years, although this term is renewable without limitation.

Pursuant to the amendments carried out by Decree-Law 76-A/2006, meetings of the boards of management and supervision of *SA* may take place with recourse to telematic means.

7.2 *General Meeting*

The main responsibilities of the general meeting of shareholders of *sociedades anónimas* are:

- to amend the articles of association;
- to decide on the allocation of results;
- to approve the annual accounts;

- to make an annual assessment of the management of the company; and
- to elect and dismiss the *administradores* except if there is a *conselho geral e de supervisão,* in which case, as mentioned above, this responsibility may be ascribed either to the general meeting or to such *conselho geral e de supervisão.*

The general meeting may not take decisions on management issues unless the management body requests it to do so.

The general meeting of an *SA* has a kind of permanent subbody, called the *mesa da assembleia geral,* composed of at least a chairperson and a secretary. Convening and conducting meetings falls within the powers of the chairperson. It is also the chairperson who, together with the secretary, drafts and signs the minutes of the meetings.

Pursuant to amendments of Decree-Law 76-A/2006, the general meetings of *SA* may also be held using telematics.

7.3 *Shares and their transfer inter vivos*

The capital of an *SA* is divided into shares *(acções)* with a minimum par value of € 0.01 each.

Shares can be either registered shares or bearer shares and both can be represented by certificates or electronically.

The articles of association may provide for different classes of shares, including non-voting preference shares.

In the absence of any clause on this matter in the articles of association, shares are freely transferable. However, the articles of association may restrict the transfer of shares, *inter alia* subordinating it to the consent of the company or ascribing a right of first refusal to the other shareholders.

The formalities for the transfer of shares vary depending on whether they are represented by certificates or electronically and whether they are registered shares or bearer shares. In any case, these formalities are intended to facilitate the speed of the transactions.

7.4 *Amendment of the articles of association*

The main specific rules on the amendment of the articles of association of the *SA* are as follows:

- powers for amendment lie with the general meeting, but the articles of association may ascribe to the management body authority concurrent with that of the general meeting to increase the capital by contributions in cash, provided that such authority is limited in terms of value and time;
- resolutions on the amendment of the articles of association require two thirds of the votes cast; and
- in principle, the general meeting may only decide on the amendment of the articles of association if the votes of the shareholders participating in the meeting correspond to at least one third of the total votes; such requirement, however is not applicable if the general meeting is convened for a second time for the same purpose.

8. Sociedades por quotas

Moving on to the particulars of the *SpQ*, we shall address the same issues considered above in connection with the *SA*, in order to provide a comparative framework.

8.1 *Management and its supervision*

SpQ have one or more directors *(gerentes)*, entrusted with the management and representation of the company. Only individuals (either shareholders or third parties) may be appointed directors.

The term of the office of the *gerentes* is open-ended, unless otherwise stipulated in the articles of association or in the resolution of election. The articles of association may attribute to the *gerentes* a special right to their office.

The articles of association may provide for the existence of a *conselho fiscal*, to which the rules on the same body in the *SA* are applicable.

Using the possibility presented by Article 51/2, of the 4th Directive, the *CSC* excuses those *SpQ* that do not exceed certain figures for balance sheet total, net turnover and number of employees from the requirement of auditing accounts.

8.2 *General meeting*

The main responsibilities of the general meeting of *sociedades por quotas* are:

- to amend the articles of association;
- to approve the annual accounts;
- to decide on the allocation of results;
- to make an annual assessment of the management of the company; and
- to elect and to dismiss the directors.

Unless the articles of association attribute the relevant powers to the *gerentes*, the general meeting has the power to take decisions on important transactions, *e.g.* transfer of immovable property and acquisition of holdings in other companies.

Powers to convene meetings lie with the directors. The chair of the meetings belongs to the holder of highest stake of capital. The minutes of the meetings must be signed by all the participants.

8.3 *Quotas and their transfer* inter vivos

The capital of an *SpQ* is divided into *quotas* (a concept that corresponds to the German concept of *Anteile).* The minimum par value of each *quota* is € 100,000.

Quotas may not be represented by certificates.

All members of the *SpQ* must have voting rights, which in principle are proportional to the par values of their *quotas. CSC* allows the articles of association to ascribe double voting rights to certain *quotas* on the condition that these do not correspond to more than 20% of the capital (but this possibility is seldom used).

The articles of association may regulate the transfer of *quotas*, making it free or restricting it. In the absence of any clause on this matter in the articles of association, the transfer of *quotas* depends on the consent of the company, to be given by the members in a general meeting, unless it is a transfer between members, a transfer between a member and his spouse or a transfer between a member and a person who belongs to his or her direct family line.

The transfer of *quotas* must be in writing and must be subsequently registered with the Commercial Registry (traditionally the transfer of *quotas* required a notarial deed, but Decree-Law 76-A/2006 abolished this requirement).

8.4 *Amendments of the articles of association*

The main rules on the amendment of the articles of association of an *SpQ* are as follows:

- powers for amendment lie at all times with the general meeting; and
- resolutions on the amendment of the articles of association require the votes of three quarters of the votes corresponding to the total capital (or more if the articles of association so require).

9. Future trends

The future of Portuguese company law will of course reflect the evolution of EU law on the subject. In any case, we can attempt to predict a number of tendencies.

Concern about corporate governance will continue to be reflected in greater regulation of public companies. Globalization will require corporate mobility and the appearance of transnational types of companies (of which the European Company is a mere forerunner). The digital world will require the replacement of formalities. The attempt to render Portuguese rules more "competition friendly" will lead to alterations to the current rules on *SA* and *SpQ*, perhaps through the creation of a simplified sub-type of *SA*, as implemented in other countries and as is currently being discussed at the level of European law.

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