BUSINESS LAW 2016

CORPORATIONS

In a broad sense we can define *company* as an autonomous organization of human and material resources (people, goods and services), carried out by the businessman, for the pursuit of economic activity directed at the market. Any company is engaged in the practice of a certain economic activity.

Will be commercial or non-commercial companies, respectively, if economic activity is regulated or not by commercial law.

Companies, commercial or non-commercial, may be a natural (individual) person or a legal person (collective person). As an example of non-commercial individual person company we can mention the farmer or artisan. As to non-commercial legal person companies concerned, we have, among other examples, cooperatives and civil law partnership companies in commercial form. In the case of individual commercial companies we can distinguish two figures: the sole trader without limitation of liability and the (EIRL) - individual establishment of limited liability.

Types of limited companies and shares

Pursuant to the Portuguese Companies Code (*Código das Sociedades Comerciais*) (the "**PCC**") the main types of limited liability companies are:

(i) the "limited liability companies organized by shares", "share companies" or "public limited companies" (*sociedades anónimas*, "**S.A.**"). In S.A. companies, the liability of the shareholders towards the company is limited to the number of shares subscribed by the shareholder. In addition, the company's by-laws can set forth the obligation to provide additional contributions to the company. **The liability for paying the company's debts belongs to the company itself.**

(ii) the limited liability companies organized by quotas, "quota companies" or "private limited company" (*sociedades por quotas*, "**Lda**."). In Lda. companies, the principle is that only the company's assets shall be liable for the payment of its debts – quota holders' liability towards the company is limited to the amount of the share capital contributions stipulated in the by-laws. **Nevertheless, it is possible to set out in the company's by-laws the liability of one or more quota holders for the payment of the company's debts**, up to a certain amount. Such liability (i) may be either set out as joint or ancillary to the company's liability (and to be effective only upon liquidation of the company) and (ii) shall only cover the obligations undertaken by the company within the period in which the quota(s) are held by the quota holder (not transferable by death). In any case, unless otherwise provided in the by-laws, the quota holder which pays the debts of the company shall enjoy a right of recourse (*direito de regresso)* over the company for the amounts paid.

The Private Limited Company (Ltd.)/Sociedade por quotas (Lda.) is by far the most common type of business entity.

Considering that in both types of companies the liability of shareholders is limited the main drivers when deciding whether to incorporate an Lda. or an S.A. company are the size of the investment, type of structure intended and sector of activity.

The Lda. company is the most suitable type for the incorporation of small and medium sized companies as it involves a more simplified corporate structure and lower investment requirements whilst the S.A. is most commonly used for larger companies involving more complex corporate structures.

PRIVATE LIMITED LIABILITY COMPANIES (LDA)	
General topics	Share capital represented by "quotas" - which are dematerialized participations with a nominal value representing the share of rights and liabilities of the shareholders [197]
Liability	Shareholders are jointly and severally liable for the payment of the entire nominal share capital [197 and 198]. Other than in the cases of parent company liability or contractual shareholders liability being agreed, only the assets of the company are accountable to pay the creditors.
Minimum shareholders	Minimum of two shareholders.
Sole shareholding	Sole shareholding companies are allowed provided that: - In case the sole shareholder is a company, it is not itself a sole shareholding company; - In case the sole shareholder is an individual, he does not own another sole shareholding company. Agreements between the sole shareholder and the company must be within the scope of business of the latter and specifically authorised in the articles of association [270 *et*

	seq.].
Minimum Capital	The *Lda*'s minimum capital is 1 euro, divided into quotas with a value of no less than 1 euro each [201 and 219].
Paying-up the share capital	The capital can be paid up in cash and/or assets (which must be evaluated by an independent auditor) [28]. Cash payments shall be made until year-end following incorporation. Cash payments may be partially postponed, up to fifty percent of the share capital, for a maximum period of five years [202].
Transfer of quotas and pre-emption rights	Quota transfers are formalized by means of a private document subject to registration [228]. Prior consent of the company is required, except if in favor of spouse, ascendant or descendant or between shareholders [228]; Articles of Association may contain further limitations or forbid the transfer (in this case shareholder has a right to withdraw from the company 10 years after the quota has been acquired) [229].
Corporate Bodies	Lda's typically have a unitary structure, comprising one or more directors (*gerentes*) (roughly equivalent to a director) or a management board (*conselho de gerência*) [252] [261]. A statutory auditor may be required upon certain financial thresholds being met [262].

LIMITED LIABILITY COMPANIES CONTROLLED BY SHARES (S.A.)

Minimum number of shareholders	At least five shareholders [273] Sole shareholding companies controlled by shares are also admitted.
Liability	Shareholders liability is limited to their shareholding in the share capital [271]. Parent company liability regime may override limitation on shareholders liability.
Share capital	The minimum share capital is 50,000.00 euros, divided into shares with a value of no less than one cent of 1 euro each [276].
Paying-up the share capital	The share capital can be paid up in cash and/or assets (evaluated by a qualified auditor) [28]. Payment of up to 70% of the share capital can be postponed for a maximum period of 5 years [277].
Types of Shares	Bearer or registered. Registered shares are mandatory whilst: - They are not entirely paid up; - The Articles of Association contain restrictions to their transfer; or - Pursuant to the Articles of Association the shareholder is required to provide any ancillary contributions.
Transfer of Shares	Purchase and sale contracts are not subject to any specific contractual form. The formalities for an effective transfer of shares depends on the type of shares [328]: - Bearer shares: physical delivery of the share certificates [101 CVM]; - Nominative shares: endorsement, followed by

	written notice given by the seller to the company and recorded in the shareholder register book [102 CVM]. - Book-entry form: transferred by way of book entries, requiring notice of the transfer to be submitted to the securities brokerage firm designated by the company to enter such transfer in the appropriate records. The transfer of registered shares can be restricted in the Articles of Association by [328]: - Pre-emption rights conferred to other shareholders; - The need for prior consent of the company; - Compliance with certain specific requirements deemed to be in the company's interest.
Corporate Bodies	Structure [390 to 446] - Board of Directors and Supervising Board; - Board of Directors, comprising an Audit Committee, and Statutory Auditor; or - Executive Board of Directors, Supervising Board and Statutory Auditor.

Minimum Share Capital

The share capital after the completion of contribution obligation of each partner, allows the constitution of a common fund, with which the company will pursue the activity – it corresponds to the sum of the value of all partners initial contributions.

It´s a cypher expressed in currency coin and distinguishes from the asset because, the share capital, unlike the asset, is not a set of goods (money or other), but only numerical expression of the value of partners' contributions when they create the company. In this way the capital is, as a rule, stable, and asset is constantly changing. For example if some expense is realized or if some profit is obtained the value of share capital does not coincide with the value of the asset. Imagine that the partners' contributions is 50.000 euros, which constitutes the common fund, the share capital. However if they buy computers for the company for 10.000 euros the asset is now to 40,000 euros and the share capital remains in 50.000 euros.

The share capital realizes the following functions:

- Determination of the companies' economic situation, namely on the annual accounting when the values of assets and liabilities are evaluated, it allows to control the evolution of the business and make sure that the company produced profit. There will profit if the net asset (assets minus liabilities) exceeds the share capital;

- Warranty of creditors, the law seeks to ensure that the net asset does not fall below the amount of share capital - intangibility of the share capital: after the completion of the share capital, in virtue of the partners compliance of the legal contributions, the company must maintain in its asset, as far as possible, goods corresponding to the amount of the share capital and cannot be distributed profits to the partners if the net asset is inferior than the share capital. On the other hand, share capital cannot be arbitrarily changed, but only with obedience to strict legal criteria;

-Conservation of net asset corresponding to a certain value: the company must maintain an asset that covers the amount of the share capital;

-Quantification of partners' rights - is by the proportion of respective participation in the share capital that the partners see their rights quantified (right to the profits in proportion of each participation or the number of votes to express in company resolutions).

The PCC sets forth minimum share capital requirements which shall be met by limited liability companies.

The Lda. company has a minimum share capital of EUR 1,00 being the minimum par value of each quota EUR 1,00 [219]; accordingly, the minimum share capital will effectively depend on the number of quota holders of the company. The minimum share capital of an S.A company is EUR 50,000 with a minimum par value of EUR 0,01 per share [276]. Regulated businesses have stricter capital requirements (e.g., insurance companies, banks).

2.2.2 Increase and reduction of share capital

In some circumstances the partners may decide to increase or reduce the share capital. Both operations involve a changing of the articles of association and a deliberation at the General Assembly.

Share capital increase

This is an operation to fortify the share capital of a company, being a source of financing that allows to develop and finance new projects.

The increase of share capital has fundamentally the purpose of attracting new investors. It´s a great way to finance companies because the invested amount is not repaid to investors they only acquire the right to vote and to the profits. Unlike bank loans the amounts granted by financial institutions have to be returned along with the payment of interest [87 265 and 456.].

Forms of share capital increase

1- By incorporation of reserves - The company may increase its capital by incorporation of reserves available for this purpose. This capital increase can only be done after the annual accounts approval [91].

The capital of the company may not be increased by incorporation of reserves until the completion of all partners' contributions, initial contributions or related with a previous capital increase.

In general, the capital increased by incorporation of reserves correspond to the increase of participation of each partner.

2 - New contributions – It cannot be deliberated a capital increase in the form of new contributions until a previous capital increase is registered or if all money contributions are not already accomplished [87];

Share capital reduction

It is possible to reduce the share capital to an amount less than the minimum required by law, provided that the reduction is subject to an increase for an amount higher than or equal to the minimum, within sixty days thereafter [94 *et seq.*].

The capital reduction can only be deliberated if the net asset of the company after the reduction, exceeds at least 20% the new share capital.

The reduction of the share capital may have the following purposes:

1. Coverage of losses – A company has losses if the net asset (asset minus liabilities) is inferior to the share capital. If the company has losses it can reduce the share capital in order to cover them;
2. Release excess capital - The capital will be considered excessive, regarding the investment and functioning needs of the company as well as the need of protection of the company creditors.

Equity

An S.A. company can issue **nominative shares** or **bearer shares** in the form of share certificates or book-entry shares. The issuance of nominative shares is mandatory: (i) while the shares have not been fully paid-up; (ii) when the company's by-laws restrict the transfer of shares or makes it subject to the company's consent; or (iii) in the case of shares held by a shareholder which is required to make ancillary contributions to the company under the terms of the by-laws [299].

A S.A. can also issue (i) **preferred shares** [341], which confer to its holder the right to be paid a dividend in priority to remaining shareholders and attach no voting rights and (ii) **redeemable shares [**345]. A S.A. can also have, as special class of shares, **use shares** (*ações de fruição*) which result from the redemption of shares without the corresponding share capital reduction [346 paragraph 5]

Shares providing the same rights to their holders form one category of shares. The rights provided by the shares may vary, notably in respect to voting, profit sharing or the distribution of the assets in case of liquidation of the company.

Furthermore, the PCC also sets forth that an S.A. may, provided certain requirements are met, issue **bonds**. Each issue entitles their holders to equal credit rights. The PCC sets forth examples of bonds which may have one or more of the following characteristics [348 *et seq.* and 360 *et seq.*]:

- (i) grant a supplementary interest or a return premium, whether fixed or subject to the profits of the company, in addition to the right to a fixed interest;
- (ii) grant an interest and repayment plan, dependent upon the company's profits;
- (iii) convertible into shares, ordinary or preferred, with or without voting rights or in other securities;
- (iv) grant a right to subscribe one or more shares, ordinary or preferred, with or without voting rights;
- (v) grant subordinated claims over the issuer;
- (vi) arise from the conversion of shareholder or third party claims over the company;
- (vii) grant special security over the assets or revenue over the assets of the issuer;
- (viii) have issue premiums.

Lda. companies may also issue bonds under the terms and conditions set forth for S.A. companies.

Shareholders

The PCC does not set forth a minimum or a maximum number of shareholders for Lda.

companies. As a result, an Lda. company may have a sole shareholder [270 A].

As a rule, a S.A. company must have a minimum of 5 shareholders. However, as an exception, the PCC allows a S.A. to have only two shareholders when the State holds the majority of the share capital of the company [273].

Also, it is allowed for an S.A. to be incorporated by a sole shareholder provided the latter is a company (national or foreign). The sole shareholder of a S.A. is subject to liability rules different from those generally applying to limited liability companies and may even be jointly liable for the obligations of the company.

Full control can also be supervening in an S.A.. Accordingly, a company which, directly or through other controlled companies or group companies, fully controls another company where there are no other shareholders, is deemed to form a *group* with the latter, unless the GMS of the controlling company adopts one of the following actions: (i) dissolves the dependent company or (ii) sells the shares or quotas of the dependent company.

General shareholders' rights [21]

The general rights of any shareholder, under the PCC, are to:

- share in the profits;
- participate in shareholders' meetings;
- be informed about the activity of the company, pursuant to the law and the by-laws;
- be appointed to the corporate bodies of the company;
- pre-emption right in the case of share capital increase through cash contributions [87 paragraph 2];
- challenge corporate resolutions;
- require judicial investigation of the company [216 and 292];
- freely transfer shares within the limits of the law and the by-laws [228 and 328];
- withdraw in the case of a merger, de-merger and redomiciliation [105]; and
- withdraw in the case of a decision to return to activity by the company after the resolution of winding-up.

Usually, all shareholders have the same rights. Notwithstanding this fact, the shareholders may enjoy special rights granted by the by-laws [24].

Typical situations are (i) shareholders owning preferred shares who shall not be entitled to vote on the company's resolutions and are entitled to a preferred dividend; and (ii) holders of special classes of shares attaching different economic rights.

On the other hand, unless otherwise provided by law or the by-laws, it is possible to suppress or limit special rights if the shareholder concerned consents.

Generally, the rights of shareholders may be suspended in certain situations determined by law, namely where the shareholder breaches its obligation to subscribe the company's share capital.

Minority shareholders rights

The relevant thresholds required for minority shareholders in a S.A.to exercise its rights vary in accordance with the concerned right. To this extent it is possible to summarize the following rights attributed to them:

a) *10 per cent of the shares:*

   (i) right to oppose to the waiver by the company of its right to compensation or court settlement in respect to the liability for the incorporation, management or supervision of the company [74 paragraph 2];

   (ii) right to request the court to appoint representative(s) for the company in the judicial proceedings referred in (i), if one has not been appointed by the company or if it is necessary to replace the existing one (replacement may be requested by holders of at least five per cent of shares) [394];

   (iii) collective right (namely by grouping) to request that the management body provides written information about the company's business [291];

   (iv) if set out in the company's by-laws and for a number of directors not exceeding 1/3 of the board, right to propose directors for election (holders of less than 20 per cent and more than 10 per cent of shares) [392 paragraph 1];

   (v) if set out in the company's by-laws, right to appoint at least one director, when the minority shareholders have voted against the winning proposal [392 paragraph 6];

   (vi) right to request for the judicial dismissal of a director for cause, when a general meeting of shareholders to discuss the matter has not yet been convened [403 paragraph 3];

(vii) right to oppose to the resolution of the GMS dismissing a director without cause in case such director was appointed pursuant to the rules set out in (iv) and (v) above;.

(vii) right to request for the judicial appointment of one effective and one substitute member to the supervisory board, following the vote against the appointment resolution adopted by the company [418];

(viii) right to request for a judicial dismissal of the additional effective and substitute member of the supervisory board appointed by judicial decision referred in (vii) above (must be the same shareholders which have requested the appointment) [419 paragraph 3];

b) *five per cent*

(i) right to file an action against directors for damages caused to the company, when the company fails to do so (two per cent in case of listed S.A.s) [74];

(ii) right to request the replacement of the representatives of the company when the GMS has resolved the filing of an action but has not replaced the company's representatives [76];

(iii) right to request the convening of a GMS [375];

(v) right to request the judicial convening of the GMS when the request referred in (iv) above has been refused [375 paragraph 6];

(vi) right to request the inclusion of matters in the agenda of the GMS [378 paragraph 1]; and

(vii) right to request for the judicial convening of a new GMS when the request for inclusion of matters in the agenda has not been accepted [378 paragraph 4].

c) *one per cent*

(i) right to request information concerning the activity of the company [288]; and

(ii) right to request the delivery of preparatory documents of GMS by letter [289 paragraph 3 a)].

d) *no threshold required*

right to form a group of shareholders in order to complete the minimum number of shares required to have voting rights [379 paragraph 5].

The rights attributed to minority shareholders in a S.A. regarding the convening and inclusion of matters in the agenda of a GMS *can be exercised by any shareholder of a Lda.*.

It is also noteworthy that minority shareholders holding less than 10 per cent of the share capital have a sell-out right following the acquisition of at least 90 per cent of the share capital of the company [490 paragraph 5].

General meeting of shareholders

Calling a general meeting

The shareholders shall meet whenever required by law or the by-laws of the company. The shareholders shall mandatorily meet to resolve and *approve the annual accounts within 3 months following the year-end.* Companies with consolidated accounts or which apply the equity method shall have the shareholders approval of the accounts *within 5 months as of the year-end* [65 and 376].

The decisions reserved for the GMS vary according to the type of company. As a general principle it is possible to say that the GMS shall decide on the most relevant issues of the company while the day-to-day issues are dealt with by the management body.

In Lda companies, the GMS shall decide on the following matters [246]:

- payment of supplementary contributions (prestações suplementares) by the shareholders;
- redemption of quotas, acquisition, sale or encumbrance of own shares and the consent for the division or transfer of quotas;
- exclusion of shareholders;
- dismissal of directors or of members of the supervisory body;
- approval of the management report and annual accounts, distribution of incomes and allocation of losses;
- discharge of liability of directors, shareholders and members of the supervisory body;
- filing judicial actions by the company against directors, shareholders or members of the supervisory body (including the waiver and settlement of such actions);
- amendment to the company's by-laws (including share capital increase and reduction); and
- merger, de-merger, transformation, winding-up and return to activity of a liquidated company.

Unless otherwise provided in the company's by-laws the GMS shall also decide on the following matters[246 paragraph 2];:

- appointment of directors and members of the supervisory body;
- transfer or encumbrance of real estate assets as well as sale, encumbrance and lease of the business establishment; and
- subscription or acquisition of holdings in other companies and their sale or encumbrance.

Under the PCC, the GMS of a S.A. shall decide on issues specifically assigned to it in the company's by-laws or the law (e.g. approval of annual accounts, merger, de-merger and dissolution) and on issues not specifically assigned to the competence of the other corporate bodies [373]

Under the PCC, the GMS may be held by telecommunication means, unless otherwise provided by the company's by-laws. It is also possible that the shareholders make unanimous written decisions [377 paragraph 6 b)].

Notice, information and quorum requirements

In respect to Lda. companies, the GMS is convened by any of the directors, by way of a registered letter with at least 15 days prior notice (unless the law or the by-laws require other formalities or set forth a longer term) [248 paragraph 3].

In S.A. companies, the chairman of the board of the GMS (or in specific cases set forth by law, the audit committee, the general supervision board, supervisory board or the court) shall convene the GMS by publishing a call notice, with one month prior notice (21 days for public companies). The by-laws may set forth other forms for calling the shareholders and if the company shares are nominative, the publication of the call notice may be replaced by registered letters or, in respect to shareholders which have previously consented, by an e-mail with acknowledgement receipt – in which case the prior notice required is 21 days [377].
Information for preparation of the GMS shall be made available for the shareholders' analysis at the company's headquarters within the 15 days prior to the date of the relevant GMS. In S.A. companies the referred information shall also be sent to shareholders holding shares corresponding to at least one per cent of the share capital within eight days upon their request. In Lda. companies, the directors shall provide information to any quota holder which has requested it – although the by-laws may regulate the shareholders rights to information, its effective exercise cannot be prevented nor unduly limited [289].

During the GMS any shareholder can request additional information regarding a matter under discussion to better evaluate it [290].

In S.A. companies

(i) at first call, the GMS may be held regardless of the number of shareholders present or represented except (i) if otherwise set forth in the by-laws or (ii) if the GMS is to resolve on amendments of the by-laws, merger, de-merger, transformation, dissolution of the company or on any other matters for which the law requires a qualified majority without specifying – in which case it is required the presence or representation of shareholders with at least *1/3 of the share capital*[383];

(ii) On second call, the GMS may be held regardless of the number of shareholders present or represented and the capital represented by such shareholders. The PCC does not set forth a quorum for holding the GMS in Ldas, but for some specific matters the approval of a certain percentage of the share capital (rather than issued votes) is required.[383];.

In S.A. companies, resolutions shall be passed by a majority of votes regardless of the percentage of the share capital represented, unless otherwise stipulated by law or the by-laws (abstentions do not count). If the GMS is resolving on the appointment of members of the corporate bodies or auditors (ROC or SROC) and there are several proposals, the winning proposal shall be the one with the majority of votes in favor.
Furthermore, resolutions by the GMS on amendments of the by-laws, merger, de-merger, transformation, dissolution of the company or on any other matters for which the law requires a qualified majority without specifying, must be approved by a **majority of 2/3 of the votes issued**, whether on first or second call (if on the second call of the GMS, shareholders present or represented hold at least half of the share capital, such resolutions may be passed by a majority of votes issued) [386 paragraph 1 and 2].

In Lda. companies, resolutions shall be passed by a majority of votes issued (abstentions do not count), unless otherwise stipulated by law or the by-laws [250 paragraph 3]. Furthermore, the PCC sets forth that resolutions regarding amendments of the by-laws, merger, de-merger or transformation of the company shall only be passed by a majority of 3/4 of the votes corresponding to the share capital or by a higher number of votes required in the by-laws [265].

Voting

In Lda. companies no shareholder can be prevented from participating in the GMS even if prevented from voting [248 paragraph 5]. Each cent of the nominal value of the quota confers one vote. However, the by-laws may attribute, as a special right, two votes per each cent of the nominal value of the quota or quotas of the quota holders (plural vote) which, in total, do not exceed 20% of the share capital [250].

A quota holder shall be prevented from voting (even through a proxy), for itself or on behalf of a third party if, in respect to the matter being resolved by the GMS, it has a **conflict of interest** with the company [251].

In S.A. companies, the number and type of shares are relevant to determine whether the shareholder has voting rights and, if so, how many votes they have. Voting rights are proportionate to the shares held by each shareholder unless otherwise provided by the company's by-laws [384].

Unless stipulated otherwise in the by-laws, one share corresponds to one vote. However, it is possible to make several shares correspond to one single vote, provided that each EUR 1.000,00 of share capital are entitled to one vote and/or cap the number of votes issued by a shareholder. Plural votes are forbidden [384].

Consequently, there may be shareholders with and without voting rights attending a GMS. Shareholders are only entitled to participate, discuss and vote at the GMS if, according to the law and the by-laws, they are entitled to at least one vote. The by-laws may allow that shareholders with no voting rights and bondholders (or their representatives) be present at the GMS and discuss the matters in the agenda. As referred above, shareholders in an S.A. can group their shares to exercise their voting rights being possible to enter into shareholders' agreements to that effect [379].

Similarly to Lda., regardless of having voting rights, shareholders shall not be entitled to vote on matters where there is a **conflict of interest [**251].

The by-laws may make the approval of certain matters dependent on the vote of a certain class of shares. Conversely, preferred shares do not attach voting rights [384 paragraph 3 and 341].

In terms of voluntary representation at the GMS, while in a S.A. the general rule is that the shareholder may be represented by anyone and the by-laws may not forbid or limit the participation of a shareholder through a representative; in a Lda., quota holders may only be represented by their spouse, ancestor, descendant or another shareholder unless otherwise stipulated in the by-laws [380 and 249 paragraph 5].

The ways in which the shareholders express their vote will depend on the type of resolutions – for instance, (i) in **unanimous resolutions in writing**, the votes (necessarily for) are cast by subscribing the document in which the decision is stated, (ii) in **resolutions by a written vote**, the votes are cast in writing (signed) and sent by letter or any other means of communication. At the GMS, depending on the method chose, the vote can be cast orally or by a show of hands or even in writing (signed or not if it is a secret voting) [54 and 247].

The GMS of a Lda. company can be called and held at the request of any shareholder.
In S.A., the GMS may be called and held at the request of any shareholder or a group of shareholders representing at least five per cent of the company's share capital (two per cent for public companies) [248 paragraph 2 and 375].

In the situations where a GMS is not convened, despite being requested by shareholders holding the legal thresholds, the relevant shareholders are entitled to request the judicial convening of the GMS. The same applies to the non-inclusion of matters to the agenda of the meeting [375 paragraph 6].

The inclusion of issues on the agenda has to be requested prior to the GMS; otherwise the decision will be voidable, unless all shareholders are attending the meeting and agree to decide on the concerned issue [378].

In respect to a GMS already called or to be called, in Lda. companies, any shareholder may request an issue to be included and voted while in a S.A. company, only shareholders holding at least five of the share capital (two per cent in public companies) may do so [248 paragraph 2 and 378].

The request for the inclusion of issues on the agenda has to be made within the 5 days following the last publication of the call and notice of it shall be given to the remaining shareholders at least five or 10 days before the GMS (depending whether the call was sent by registered letter of published) [378 paragraph 3].

The information for the preparation of the GMS shall be made available for the shareholders' analysis at the company's headquarters **within the 15 days prior** to the date of the relevant GMS. In S.A. companies the referred information shall also be sent to shareholders holding shares corresponding to at least one per cent of the share capital within eight days upon their request. In Lda. companies, the directors shall provide information to any quota holder which has requested it – although the by-laws may regulate the shareholders rights to information, its effective exercise cannot be prevented nor unduly limited [375].

A shareholder who has not voted for the decision being challenged, may judicially challenge the resolutions adopted by the GMS, regardless of the shares owned, either by requesting the court to declare the voidance of the resolution (*anulação de deliberação social*) or the recognition that such resolution is null and void [59].

Considering that a court decision may be a lengthy process, in order to safeguard its useful effect, it is possible to apply for a protective order for the suspension of the company's resolutions.
The protective order shall be requested within 10 days following the date in which the resolution was adopted or, if the shareholder was not regularly called to the GMS, the date in which he becomes aware of the resolution.

While a decision regarding the protective order is pending, the company cannot implement the challenged resolution.

Shareholders' rights against directors

In Lda. companies, the appointment of directors is made by the decision of the GMS, unless the company's by-laws set forth otherwise [252].

Directors may be dismissed at any time by a decision of the GMS. The by-laws may set forth a qualified majority for the approval of the dismissal or other requirements. If a director is dismissed with **just cause** the GMS may always approve such dismissal by a simple majority. If the by-laws include a clause attributing a special right to the management of the company to one of its shareholders, such clause may not be amended without such shareholder's consent. However, the shareholders may resolve that the company requests the court the suspension and judicial dismissal of the director with just cause and the appointment of a special representative. When there is just cause, any shareholder may request the suspension and dismissal of the director in a judicial proceeding filed against the company. In case the company has only two shareholders, the dismissal of the management with just cause can only be decided by the court in judicial proceedings filed by one shareholder against the other. The PCC sets forth that just cause means, notably, the breach of the duties of the director and the incapacity for the performance of the office [257 and 403].

If the by-laws do not set forth compensation, the director dismissed without just cause is entitled to a compensation for damages (being understood that he would not be in office for more than four years or the time period remaining for the end of his term) [403 paragraph 5].

In S.A. companies the directors are appointed in the incorporation deed or by the GMS The by-laws may set forth that the appointment of directors must be approved by votes corresponding to certain percentage of share capital or that the appointment of some directors in a number not exceeding 1/3 of the total must also be approved by the majority of votes granted to certain categories of shares. However, the attribution of a right to appoint directors to certain categories of shares is forbidden [391].

In S.A. companies which have a supervisory board and an executive board of directors (the so called "German Model"), the directors are appointed by the Supervisory Board, unless otherwise set forth in the by-laws [425].

The by-laws may set forth that, for a certain number of directors not exceeding 1/3, the appointment is made solely among the people proposed by lists subscribed by groups of shareholders provided that none of those groups holds shares representative of more than twenty and less than ten percent of the share capital of the company. Each list shall propose at least two eligible persons for each of the offices concerned. The same shareholder cannot subscribe more than one list. If in an isolated election there are several lists from more than one group the voting shall refer to the set of lists. The by-laws may also set forth that a minority of shareholders holding at least ten per cent of the share capital and which have voted against the winning proposal in the appointment of directors, is entitled to appoint at least one director. In public companies and concessionaries of the Portuguese State the inclusion in the by-laws of such provision is mandatory [392].

Any member of the board of directors may be dismissed at any time by a resolution of the GMS. The resolution approving the dismissal without just cause of a director approved in accordance with the special rules for minorities referred above shall not be effective if shareholders holding at least twenty per cent of the share capital have voted against it. One of more shareholders holding at least ten per cent of the share capital may, while the GMS has not been convened to resolve on the dismissal, request the judicial dismissal of a director with just cause. The PCC sets forth that just cause means, notably the breach of the duties of the director and the ineptitude for the regular performance of the office. If the dismissal is not based on just cause, the dismissed director is entitled to a compensation for damages in the terms set forth by the law or under the general terms of the law. Such compensation may not exceed the amount of the remunerations which he would presumably receive until the end of the term for which he was appointed [403].

The GMS may declare the nullity or voidance of a resolution of the board of directors at the request of any shareholder with voting rights regardless of the share capital they hold, provided that such resolutions are null or voidable [412].

Duties of Directors

Directors are in charge of the **management and representation of the company**, in accordance with the law and the company's by-laws [64].

In general terms, directors are not allowed to make use of their powers in an arbitrary manner and, inter alia, must comply with the following:

- *duty of loyalty*, acting in the best interest of the company, attending to the long-term interest of the shareholders and balancing the interest of other stakeholders, such as employees, customers and creditors;
- *duty of care*, making use of the availability and technical competence and the knowledge of the company's activities that is appropriate to the performance of the respective duties and employing the diligence of a wise and ordered manager;
- *duty of diligence* of an orderly businessman;
- *duty of information* of company activity, including the rendering of accurate, true and complete information to shareholders [214];
- obligation to comply with legal rules of asset/liability ratios [64];

- obligation to refrain from performing any acts exceeding the company's business activity, namely is relation to securing or guaranteeing third party obligations [254];
- obligation to convey or request that the GMS is conveyed in cases of loss of half of the share capital for shareholders to decide on correction measure [35]s;
- draft the management report and annual financial statements in due time [65];
- request the company's declaration of insolvency;
- refrain from executing void resolutions, when notified by a shareholder [412 paragraph 4];
- duty of confidentiality;
- inform the GMS of any situation that may involve a conflict of interests [410 paragraph 6];

Shareholders holding, solely or jointly, 5% or more of a company's share capital are entitled to bring legal actions against the directors of the company for damages caused to it, whenever the company does not bring them [77].

The ruling principle in the Portuguese jurisdiction sets forth that the directors shall be held liable before the company for all damages caused to it by actions or omissions derived from a breach of legal or contractual duties, unless the directors prove they did not acted with fault. The aforesaid liability is excluded if the directors can evidence that they acted with information, free of any personal interests and in accordance with rational business criteria. This liability shall not apply when the envisaged director was not present at the decision making or has voted against it. Directors cannot be held liable for implementing resolutions issued by the GMS. By contrast, in companies with a supervisory body the favorable opinion or consent of this body does not exempt the directors from their liability. The liability of directors towards the company maybe waived by a decision of the GMS, where no minorities holding at least 10 per cent of the company's share capital have voted against [72 and 74].

In S.A. companies, the liability of the directors shall be guaranteed by rendering of bond (*caução*) unless the GMS agrees otherwise (the rendering of the bond is mandatory in listed companies and in companies which for to consecutive years exceed two of the following – (i) total balance sheet € 100,000,000, (ii) total of the net sales and other profits € 150,000,000 or (iii) number of workers 150) [396].

Furthermore, directors are also liable (i) to the company, for any damages caused by breach of their legal or contractual duties, unless they are able to prove that they have acted without fault

and to (ii) the company's creditors, where their willful disregard of legal or other requirements in the by-laws has the effect of dissipating the company's assets [72 and 78].
In transactions where the directors have a conflict of interest they are forbidden to vote on the relevant board resolution and shall inform the chairman of the board or the other directors of the conflict of interest [410 paragraph 6].

Pursuant to the PCC, an S.A. company is forbidden from (i) the granting loans or credit to directors, (ii) making payments on behalf of directors, (ii) render security for obligations undertaken by the directors and (iv) granting an advance exceeding one month on their remuneration [397].

Furthermore, unless it is an act within the commercial activity of the company with no special benefits for the contracting director, agreements between the company and its directors (directly or through third parties) shall be null and void unless previously authorized by the board of directors (in which meeting the relevant director cannot vote) and receive the favorable opinion of the audit committee or the supervisory board (the aforesaid applies to agreements entered into with companies which are controlled or control the company in which the director performs its functions) [397].

Although the PCC does not set forth a similar provision for Lda. companies, there is good argument to defend the applicability of the aforesaid to Lda. companies with the necessary adjustments.

Resolutions adopted in breach of such rules are null and void and can be challenged by the shareholders.

In respect to S.A. companies, the PCC allows for executive directors (responsible for day-to-day management of the company) and non-executive directors. Certain matters (such as the relocation of head offices, share capital increases to be resolved by the directors, merger and de-merger) cannot be included in the duties of the executive directors [407].

The PCC does not contain similar provisions in respect to Lda. companies although a delegation of powers by a director is possible.

The provisions of the PCC regarding the board of directors do not specifically address the independence of the directors which is regulated in respect to members of the supervisory board [414 A].

In S.A. listed companies, it is recommended by the Portuguese Securities Market Commission that the board of directors shall include a number of non-executive members ensuring effective monitoring, supervision and assessment of the activity of the remaining members of the board. It is further recommended that non-executive members shall include an appropriate number of independent members, taking into account the adopted governance model, the size of the company, its shareholder structure and the relevant free float.

Directors do not have service contracts – their functions are determined by law or the by-laws [398].

In Lda. companies, directors remuneration is required to be approved by the shareholders at the GMS although in specific cases, it may be determined by the court [255].

In S.A. companies, director's remuneration may be decided and approved by the shareholders at the GMS or the GMS may appoint a remuneration committee for such purpose (the committee may not approve remuneration of directors consisting of shares). Furthermore, if the company is organized under the German Model (supervisory board, executive board of directors and statutory public accountant ROC), the by-laws may also set forth that, the remuneration of the directors of the executive board of directors is determined by the supervisory board or a remuneration committee appointed by the latter [399].

In Lda. and S.A. companies, directors remuneration does not have to be disclosed to the public.

Disclosure of information to shareholders

In Lda. companies, directors must, upon request, provide any shareholder with (i) information regarding the management of the company, (ii) allow the consultation of the accountancy, the books (including the minutes books) and documents. This information may be provided in writing to any shareholders which requests it. Furthermore, shareholders are also entitled to inspect the company's assets in the same terms referred above [214].

Furthermore, any shareholder is entitled to receive information necessary for the preparation of the general meeting and to receive, at the general meeting, the information required to enable it to better form an opinion on the matters to be resolved. In particular, in respect to the general meeting to resolve on the annual accounts of the company, directors must make available to the shareholders the annual report and accounts as of the date in which the call for the general meeting to resolve on the annual accounts is sent [214 and 289].

In S.A. companies, any shareholder with a one percent or more of the share capital may consult, on reasonable grounds, the following documentation at the company's registered office (i) the annual report and financial statements relating to the previous three financial years; (ii) the convening notices, minutes and attendance lists of general and special meetings of shareholders and meetings of bondholders for the previous three years; (iii) the total amount of remuneration paid to members of the corporate bodies in each of the three previous years; (iv) the total amount paid in each of the three previous years to the 10 or 5 employees of the company who received the highest remuneration, depending on the number of employees of the company; and (v) the share register document. Furthermore, shareholders with one per cent may also receive by mail, upon request, the preparatory information for the general meeting [288].

In respect to preparation of general meetings, the information for the preparation of meetings must be made available to shareholders during the 15 days prior to the date of the general, in accordance with the provisions of the PCC [289].

Shareholders holding shares corresponding to 10 per cent or more of the company's share capital can request to receive written information from the board regarding corporate issues, which can only be refused in legitimate circumstances [291].

Shareholders are entitled to inspect the corporate books or other accounting documents of the company at the company's headquarters or request the relevant information to be provided to them in writing. Such inspection shall be made by the shareholder itself, which can be assisted by an external accountant or other expert. In an SA this inspection can also be done by the person entitled to represent the shareholder at the GMS [292].

Corporate Governance

The term "corporate governance" refers to the system of rules and codes of conduct relating to the management and control of companies issuing shares admitted to trading on a regulated market based on transparency of information, the protection of the interests of all stakeholders, independent control of the Board of Directors and proper liability of the

decision-makers for its infractions. It expresses how business organizations should operate internally and before the financial markets and the market in general. This analysis of corporate governance is not designed to impose rigid and uniform models. It is rather aimed at contributing to the optimum development of companies and at protecting the interests of all those who are involved in these companies - namely investors, creditors and workers.
In the structure of Corporate Governance rights and responsibilities of the different actors are specified in the company whether they are Directors, partners or others. It´s unanimous that good Corporate Governance practices contribute to better performance of the companies, it has been developed different kind of efforts to implement them, especially in companies issuing shares admitted to trading on a regulated market (listed on the stock exchange).
The Corporate Governance good practices are mainly four:

- Information: There must be transparency and all relevant information must be made public, whether the information on results, events or any other facts related to the company with interest to the financial community (investors, partners or analysts) and to the community.

- Administration: On the Board of Directors should be represented several interests, including the interests of the most important partners, small partners, workers and even elements without any special bond. On the other hand, conflicts of interest should be avoided in the relationship between directors and the company and an important part of the remuneration should depend on the results obtained.

- Control: There must be internal control structure composed by elements that are independent of the Board of Directors to assist the own Board of Directors in fulfilling its responsibilities of financial reporting, audit and implementation of codes of conduct.

- Liability/Accountability: ensuring proper liability of the decision-makers for its infractions.

In Portugal, the companies listed on the stock exchange are required to adopt the Corporate Governance Code of CMVM (Securities Market Commission) or one similar. However, most of the rules of Corporate Governance are not mandatory, are only recommendations or proposals to the big companies. So the companies only adopt it if they want to, and in order to have social recognition and affirmation in the market.

There is a corporate governance code in Portugal issued by the Portuguese Securities Commission. Although the aforesaid code is deemed soft law (i.e. breach of this code involves no legal sanction) certain provisions may have a correspondence in the provisions of the Portuguese Securities Code and the PCC. In such cases, breach of corporate governance rules will result in the sanction stipulated in the law.

Furthermore, under the Portuguese Securities Code, the management bodies of the issuer will have to include, inter alia, in their annual report on corporate governance a declaration on how the code of corporate governance under which it is legally or voluntarily bound has been complied by the issuer, indicating which parts have not been complied with and the reasons for not complying (comply or explain approach applies).

In Lda. companies the shareholders right to information may be regulated in the by-laws provided that the exercise of such right is not effectively prevented or limited without fair grounds; notably, such right may not be excluded when, for its exercise, the it is invoked a suspicion of actions able to lead to the liability of its author under the law or the when the consult is aimed at judging the accuracy of financial statements or to enable the shareholder to vote in a meeting already called [214 paragraph 2].

Unless otherwise provided in the by-laws (in accordance with the PCC) the information, the consult or inspection may only be refused by the directors when (i) there is a concern that it may used for purposes not related to the company and which may cause damages to company and (ii) when the rendering of such information breaches a legal confidentiality duty to protect third parties. In case of a refusal to render information or in case the information provided is false, incomplete or not clear, the shareholder may call a shareholders resolution so that such information is provided or corrected. Furthermore, the shareholder to whom the information has been refused or to whom false, incomplete or unclear information has been provided, may request the court to investigate the company [215].

In respect to information requested at the shareholders meeting, the provisions of the PCC set forth for S.A. apply to Ldas. As a result, the corporate body which is more able to render the information (may not necessarily be the board of directors) requested may only refuse to provide if by providing such information it would cause severe damages to the company or to a linked company (*sociedade coligada)* or a breach of a secret imposed by law. Unjustified refusals are grounds for an annulment of the resolutions [290 paragraph 2].

In the S.A. companies, shareholders which have been refused information requested or which have received information presumably false, incomplete or unclear may request the court to investigate the company. Furthermore, in respect to shareholders right to information at the meeting, the corporate body which is more able to render the information requested may only refuse to provide if by providing such information it would cause severe damages to the company or to a group company (*sociedade coligada*) or a breach of a legal confidentiality duty. Unjustified refusals are grounds for an annulment of the resolutions [292].

Shareholders holding ten percent or more of the share capital which have requested to the board of directors or the executive board of directors written information on company matters may not be refused in case such information is aimed at finding the liability of the members of such bodies or of the supervisory board or the general and supervision board (unless due to its content or other circumstances it is clear that such request is not intended for such purpose) [291 paragraph 2].

Shareholders agreements [17]

The provisions of shareholders agreements vary but they typically include the right of appointing members of the management body of the company, non-compete clauses, shareholder's rights of first refusal, call / put options. Dead-lock and dispute resolutions mechanisms. Shareholders agreement can refer to the exercise of voting rights but not to the behavior of the intervening parties or other persons performing management or auditing functions. Shareholders agreements under which a shareholder undertakes to (i) vote in accordance with the instructions of the company or any of its bodies, (ii) always approve the proposals made by the latter or (iii) to use its voting right or not to vote in trade of special advantages are null and void. Shareholders agreements are only enforceable between the parties and may not be used as grounds to challenge actions of the company or of the shareholders against the company. In order to be enforceable, provisions included in the shareholders agreement would need to be repeated in the by-laws.

Shareholders' agreements typically do not have to be disclosed to the public nor registered in any public registry. However, the Portuguese Securities Code includes specific provisions for public companies (a) when such agreements are aimed at acquiring, maintaining or reinforcing a qualified shareholding in a public company or to ensure or frustrate the result of a takeover, they must be notified to the Portuguese Securities Market Commission by any of the parties within 3 days, (b) the Portuguese Securities Market Commission determines the disclosure of such agreements, in total or in part, when relevant and (c) the resolutions adopted on the basis of shareholders agreements which are not notified to the Portuguese Securities Market Commission or disclosed, are voidable. The shareholders agreements entered into (i) between shareholders of credit institutions and (ii) between shareholders of insurance companies, referring to voting rights, which are not registered with the Bank of Portugal and the insurance regulator respectively, are deemed ineffective.

SHAREHOLDERS AGREEMENTS	
Generic features	- There are no specific requirements as regards the form; - Shareholders' agreements bind only the signatories and therefore no acts taken by the company or by another shareholder before the company can be challenged on grounds of breach of a shareholders agreement; - Performance of management/auditing duties are out of its scope; - Voting agreements are allowed within certain limits.

Dividends

The distribution of dividends must be preceded of the approval of the accounts in order to determine the profits of the company. The PCC also sets forth limits to the distribution of dividends applicable to Lda. and S.A. companies. Without prejudice to the rules applicable to decreases of share capital, dividends may not be distributed to shareholders if the equity of the company, including the net result of the year as it is included in the approved annual accounts, is less than the sum of the share capital and reserves (stipulated by law or the by-laws) or becomes inferior as a result of the result of the distribution of dividends [31 and 32].

Furthermore, the year-end profits which are necessary to cover the retained losses or to form or rebuild the reserves stipulated by law or the by-laws may not be distributed to shareholders. In addition, while the expenses with the incorporation, investigation and development are not completely paid up, dividends may not be distributed to shareholders (unless the amounts of free reserves and retained earnings is at least equal to such expenses). The reserves which existence and amount are not included in the company's balance sheet may not be used to distribute dividends to shareholders [33].

The dividends corresponding to the shareholders which quotas or shares are not fully paid up may not be paid to such shareholders but shall be credited for compensation of the share capital contribution debt (without prejudice to the enforcement of the credit of the company) [26 paragraph 4].

In Lda. companies, unless otherwise set forth in the company's by-laws or resolved by the GMS by a majority of 3/4 of the votes representing the share capital in a GMS convened to that effect, half of the yearly distributable profits shall be distributed between the shareholders. The distribution is made in the proportion of the shareholder's quotas unless otherwise set forth in the by-laws [217].

For Lda. companies, although the PCC does not set forth any provisions in regard to the advance payment of dividends there is good argument to defend the applicability of the provisions of the PCC in this respect for S.A companies (described below).

In S.A. companies, unless otherwise set forth in the company's by-laws or resolved by the GMS by a majority of than 3/4 of the votes representing the share capital in a GMS convened to that effect, half of the yearly distributable profits shall be distributed between the shareholders [294].

The by-laws may authorize the advance payment of dividends provided that the following conditions are met [297]:

(i) the board of directors or the executive board of directors, with the consent of the supervisory board, the audit committee or the general and supervision board resolve on such advance distribution;

(ii) the resolution of the board of directors or the executive board of directors is preceded of an interim balance sheet, drafted within a maximum of 30 days before and certified by the statutory public accountant (*ROC*), evidencing the existence of amounts available for the advance payment of dividends, in compliance with capital ratios maintenance taking into account the results verified;

(iii) only one advance payment is made in the course of each exercise and always on the second half of the year;

(iv) the amounts to be attributed as advance payment do not exceed half of the distributable amounts referred in (ii) above.

The right to dividends may be limited in the case of special rights in the S.A., i.e. shares which can attribute their holders a different amount of dividends (a*ções de fruição)* or a priority in the payment of the dividend-right (*ações preferenciais*). The distribution of dividends may also be limited or excluded when all the shareholder's rights are suspended. However, any limitation or exclusion of distribution of dividends shall always be temporary [341 to 346].

As per the applicable legal provisions, it is mandatory to allocate at least 20 per cent of the company's net result for the **legal reserve**. The legal reserve shall correspond to, at least, one-fifth of the company's share capital, with a minimum of EUR 2.500,00 in Lda. companies. The amounts allocated assigned to the legal reserve can only be used (i) to cover the part of the losses in the balance sheet which cannot be covered by other reserves; (ii) to cover the part of the retained losses which cannot be covered by the profits or the use of other reserves; and (iii) for the incorporation of share capital [295, 218 and 296].

Financing and share interests

Shareholders are entitled to pledge their shares/quotas. The pledge of shares/quotas is executed in the form required and pursuant to the limitations for the transfer of shares/quotas (*inter vivos)*. The rights inherent to the shares/quotas may only be exercised by the pledgee if so agreed by the parties [23 paragraph 3 and 4].

In Lda. companies, unless otherwise set forth in the by-laws, the granting of security interest over the quotas require the company's consent. In S.A. companies, the by-laws may set forth requirements for the pledge of nominative shares compatible with the protection of the corporate interest.

Financial Assistance [323]

A S.A. company may not grant loans or provide funds or security in any manner to a third party, so that the latter subscribes or acquires by any means shareholdings in the company. Although the PCC does not set forth an equivalent rule for Lda. companies there are good arguments to defend a similar restriction.

This prohibition is not applicable to current banking operations or to staff buyouts. However, as a result of the relevant transaction or operation, the net assets of the company may not become inferior to the subscribed share capital and the legal or statutory reserves that may not be distributed.

The agreements or unilateral acts breaching the aforementioned provisions are null and void.

Share transfers and exit [246 b)]

In Lda. companies, the transfer of quota requires the consent of the company unless the transfer is executed among spouses, ascendants or descendants or between shareholders and it is effective once notified in writing to the company or expressly or tacitly recognized by the company [228].

The by-laws may set forth that following the death of a shareholder the quota is not transfer to its successors and subject the transfer to certain requirements provided that when, in in accordance with the by-laws, the quota is not transferred to his successors, the company redeems, acquires or causes the acquisition by another shareholder or third party [225].

In Lda. companies the by-laws may include a lock-in provision which will entitle the quota holders to exit from the company within ten years from the acquisition of the quota [229].

In S.A. companies, shares are freely transferable and the by-laws may not exclude or limit the transferability of the shares except, in case of nominative shares, to (i) make it dependent on the company's consent (ii) set forth a pre-emption right for the other shareholders and (iii) subject the transfer and the rendering of a pledge or right of use (*usufruto*) over the shares to certain requirements, subjective or objective in accordance with the corporate purpose [328 paragraph 1 and 2].

In certain circumstances where the company's consent is required the company is obliged to acquire the shares when it opposes the transmission[328 paragraph 3 c)].

In Lda. and S.A.companies, in the case of new shares, *i.e.* in case of an increase of the company's corporate capital in cash, the shareholders have pre-emption rights over third parties to acquire the new shares in the proportion of the share capital held before the increase. By decision of the GMS the pre-emption right of the shareholders may be waived grounded on the best interest of the company [458 and 266].

Own shares

Companies may buy back their stock in some specific situations set forth by law.
In Lda. companies, the company may not acquire own shares which have not been fully paid up except in cases of loss of the quota by a shareholder in favor of the company. The company may only acquire own shares (i) for no consideration, (ii) in an enforcement proceeding against the shareholder or (iii) if the company has free reserves in an amount not lower than the double of the consideration to be paid for the acquisition of the shares [220].

In S.A. companies, the company may not subscribe own shares and may only acquire and hold them in the following cases: (a) unless such acquisition is not forbidden or limited by the by-laws, (b) such shares do not represent more than ten per cent of the share capital. The company may acquire own shares representative of more than ten percent as follows: (i) the acquisition is a result of the compliance with the law, (ii) the acquisition aims at executing a resolution regarding a decrease in the share capital, (iii) it concerns the acquisition of an estate, (iv) the acquisition is made for no consideration, (v) the acquisition is made pursuant to enforcement proceedings or settlement (or other judicial proceedings with the same purpose) filed by third parties and (vi) the acquisition is a result of a process set forth by law or the by-laws in cases of failure by the shareholders to make the necessary contributions in respect to the shares [317].

Exit

Shareholders may withdraw from a company voluntarily by transferring their shareholdings in accordance with the law and the by-laws as may be applicable.

The PCC sets forth specific cases entitling shareholders to withdraw from the company which differ for Lda. and S.A. although the following apply to both types: (i) transfer abroad of the company's head offices where the shareholder has voted against, (ii) shareholders which have incurred in error, willful misconduct, coersion or usury in the execution of the incorporation deed (provided that the requirements for annulment are verified); (iii) shareholders which voted against the merger or the de-merger where this possibility is allowed by the by-laws [3 paragraph 5, 45 and 105].

In respect to sell-out rights (i) upon the acquisition of at least 90 per cent of a company by a single shareholder, minority shareholders may under certain circumstances require the purchase of its shares and (ii) the free shareholders of a company in a subordination relationship may request the directing company to purchase its shares [490 and 499].

Apart from any other stipulated in the by-laws in accordance with the law, the specific cases of withdrawal in Lda. companies, are the following [240]:

(a) When the shareholder has expressly voted against but the company resolved on a share capital increase to be subscribed, in total or in part, by third parties;
(b) When the shareholder has expressly voted against but there is just cause to exclude the shareholder and the company has not resolve to exclude him or has not requested its judicial exclusion
(c) Ten years after the acquisition of the quota when its transfer is prohibited by the by-laws [229];;
(d) Where the by-laws allow the right to amortize its quota in accordance with the rules for withdrawal[232 paragraph 4];
(e) Change of corporate purpose when the shareholder voted against [137];
(f) Extension of the company with limited duration when the shareholder has voted against [61];
(g) Return to activity of a dissolved when the shareholder has voted against [61].

The withdrawal may only occur once the shareholder has fully paid up its shares [204].

In S. A. companies, the right to withdraw is an exception and the by-laws may not include provisions in this regard apart from the ones set forth by law (referred above). In the case of withdrawal, the value of the shareholders' shares is determined based upon the situation of the company by the time the decision is made, by an accountant appointed by the parties or, in case of dispute, by the court. The parties may also request a second evaluation in order to determine the value of the shares. The by-laws may set out different rules resulting however in a greater amount being due [105].

In respect to cases where a shareholder may be required to exit the company, the PCC sets forth for Lda. companies that a shareholder may only be required to exit the company in the following cases: (i) judicial exclusion in accordance with the law, (ii) shareholders defaulting on the payment of their share capital contributions within the applicable legal time period or failure to make additional contributions set forth in the by-laws and (iii) abuse of information to which they have been made available and unjustly causing damages to the company. In all cases, the exclusion requires a resolution of the GMS [241, 242, 204 paragraph 1 and 214 paragraph 6].

In Lda. companies, the company may be entitled, pursuant to the law or the by-laws, to redeem the quota or to acquire it or cause its acquisition by a third party or another shareholder, in the following circumstances [232]:

a) Legal compulsory redemption: this possibility includes, *inter alia*, the company's right to redeem the quota if the by-laws include a restriction on the transfer of the quota *mortis causa* or if the by-laws require the consent of the company for transfers of quotas and such consent is refused [225 paragraph 2 and 231 paragraph 1];
b) compulsory redemption pursuant to the by-laws: redemption without the consent of its holder upon the occurrence of a fact set forth in the by-laws which is deemed grounds for compulsory redemption, provided that such a provision was already included in the by-laws at the time the quota was acquired or if its inclusion in the by-laws was unanimously decided by the shareholders [233];
c) agreed redemption: without legal or contractual grounds with the consent of its holder and if this possibility is foreseen in the by-laws [233].

In S.A. companies, the by-laws may impose or allow (by way of a decision of the shareholders) the redemption of shares, in both cases without the consent of its holder, followed by a decrease of the company's share capital and the extinction of the shares. There is also good argument to defend that, albeit no specific legal provision has been included in the PCC for S.A. companies, the by-laws may allow the redemption without legal or contractual grounds with the consent of its holder [463].

Liquidation

Shareholders may cause the liquidation of the company by deciding on its winding-up. Once the company is wound-up it enters automatically into liquidation (unless otherwise provided by law) [464].

In Lda. companies, the winding-up decision requires the approval of a majority of 3/4 of the votes corresponding to the share capital unless the by-laws set forth a higher majority (or unanimity) or other conditions [270].

In S.A. companies resolutions by the GMS on the winding-up of the company, must be approved by a majority of 2/3 of the votes issued, whether on first or second call (if on the second call of the GMS, shareholders present or represented hold at least half of the share capital, such resolutions may be passed by a majority of votes issued) [464].

In exceptional situations, including the absence of activity for two consecutive years, the lack of the minimum number of shareholders required by law or the development of activity not comprised in the corporate object, the PCC allows that the winding up decision is adopted by absolute majority of the votes issued at the GMS [464 and 142].

Corporate groups

The PCC recognizes the concept of corporate groups. Generally, this concept is limited only to companies with head offices in Portugal (including Lda. and S.A. companies). A corporate group is characterized by a vertical legal link (control or simple participation), a horizontal direct line (reciprocal participations) or a specific contractual link (subordination relationship).

Legal groups include (i) companies in simple participation relation, *i.e.* the holding of 10% or more of other entity, either directly or indirectly; (ii) companies with reciprocal participations, *i.e.*, companies with reciprocal shareholdings exceeding 10%; (iii) companies in a control relationship, i.e., the situation involving the exercise of a domain influence, such domain being assumed whenever a company holds the majority of the share capital, has more than half of the votes, or can appoint the majority of the members of the board or of the auditing body; (iv) domain relationship, characterized by the holding of the whole share capital of other entity; (v) parity group, where two entities accept to abide by a joint management; and (vi) subordination relationship, where one entity agrees to subordinate itself to the directions of another.

After acquiring control of at least 90% of the share capital of an entity, the controlling shareholder may be forced by the minority shareholders to acquire their shares in the company [490].

Generally, in respect to the liability of the controlling shareholder the PCC sets forth that:

(a) The shareholder which (solely or jointly with others by way of a shareholders agreement) has the right to, pursuant to the by-laws, appoint a director without the other shareholders resolving thereupon shall be joint and severally liable with the director appointed if there is fault in the appointment [83 paragraph 1];

(b) The shareholder which holds the votes required to appoint a director or member of the auditing body shall be joint and severally liable with whom he appoints if there is fault in the appointment and the appointment resolution has been approved by the votes of such shareholder and less than half of the remaining shareholders present at the meeting [83 paragraph 3];

(c) The shareholder which, pursuant to the by-laws or the voting rights held (solely or jointly with others, through a shareholders' agreement) has the right to dismiss or cause the dismissal of a director or member of the supervisory body and by using its influence determines that such person carries out certain action or omission, shall be joint and severally liable with such [83 paragraph 4];

Without prejudice of the aforesaid, if a company reduced to a single shareholder is deemed insolvent such shareholder shall be liable for the obligations undertaken in the period following the concentration of the shares or quotas provided that during such period there was a breach of the obligation to allocate the company's estate for the fulfilment of its obligations [84].

Furthermore, in case of a subordination agreement (i.e. a company which subordinates its management to another) the directing company (*sociedade directora*) will be required to pay to the free shareholders the balance between the actual profit of the subordinated company and the highest of the following (i) the average of the profits earned by the free shareholders in the three years prior to the subordination agreement, calculated in percentage as per the share capital; or the profit which would have been earned by the free shareholders if they exchanged their shares by shares of the directing company [500].

Finally, both the directing company or controlling company (the company holding 100 per cent of the share capital of other) shall be responsible for the obligations of the subordinated/fully controlled company, prior or following the subordination agreement or the controlling situation, and until its term. The referred liability may not be demanded before thirty days have elapsed since the date in which the subordinated/controlled company's default [501].

The subordinated/controlled company is entitled to demand compensation from the directing/controlling company for the annual losses, which are accrued during the subordination agreement's/controlling relationship's term provided that such losses are not compensated by the reserves accrued during that period [502].

Directors of the directing company or the controlling company are liable before the subordinated/controlled company (please refer to question 19 with the necessary adaptations) [504].

The PCC sets forth that companies are in a reciprocal share interest relationship as of the moment they hold at least 10 per cent of the share capital of each other. A company is required to inform the percentage of shareholding held after crossing the 10 per cent threshold; in the case of companies in reciprocal participations, the company which has last made the communication of the amount of shares held cannot acquire new shares in the other company. Acquisitions made in breach of this rule are not null and void but prevent the acquiring company to exercise the rights attached to those shares in the part exceeding ten per cent, other than the right to share in the liquidation proceeds [485].

Furthermore, a company cannot acquire shares or quotas in companies which, directly or indirectly, control it. This rule shall not apply in the case of acquisitions made for no consideration, by adjudication in a judicial enforcement proceedings or resulting from the sharing of the liquidation proceeds [487].