Banking, Finance and Capital Markets Real Estate

Legal Flash | Portugal

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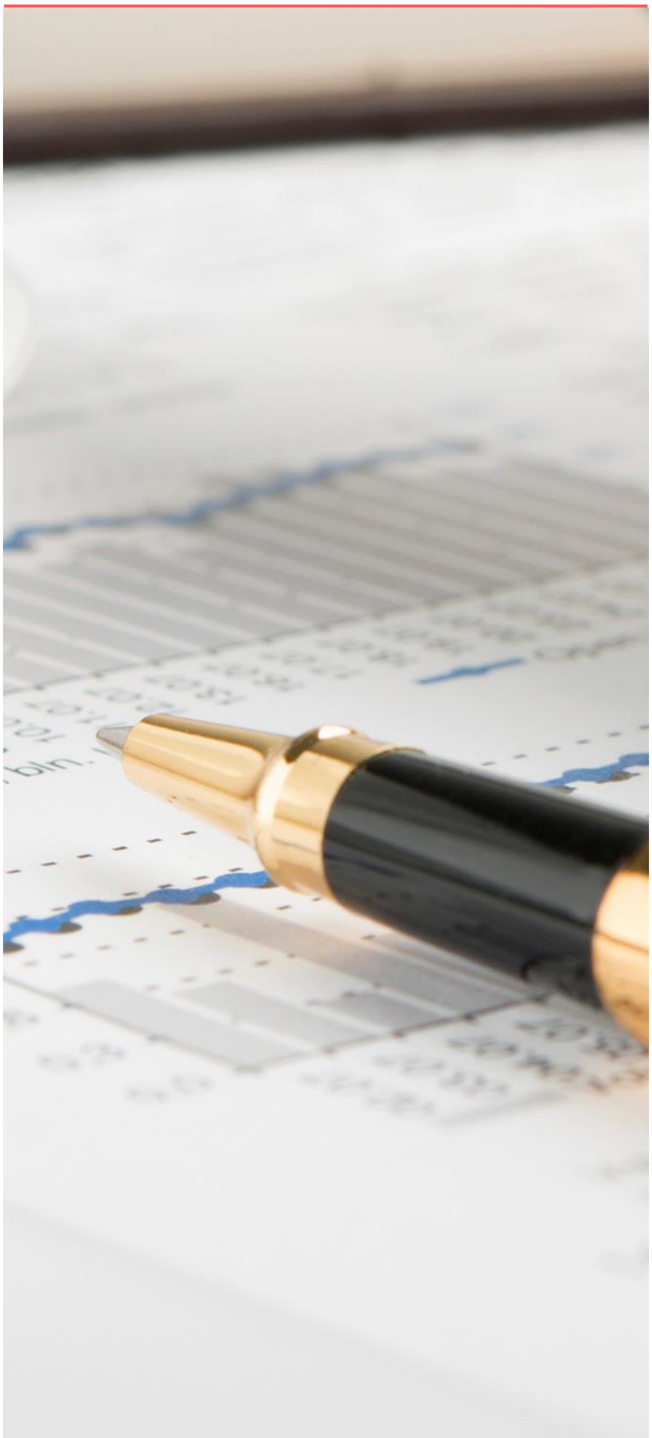

Contents

I. Decree-Law no. 19/2019, of January 28

Yesterday, Decree-Law no. 19/2019, of January 28 ("Decree Law no. 19/2019") was published, having approved the legal framework on Real Estate Investment and Management Companies ("SIGI"), a type of vehicles similar to Real Estate Investment Trusts ("REIT"), already foreseen in other relevant international markets.

The possibility to create this new type of real estate investment vehicles was highly expected by the market and has been put forward in order to attract investment and boost capital markets and the real estate market, notably the lease. Furthermore, the legal framework aims at promoting equity financing and at limiting debt financing in real estate investments.

Finally, Decree-Law no. 19/2019 has further carried out an amendment to the legal framework on companies for investment in securities and economy development, to clarify it.

II. Legal Framework on Real Estate Investment and Management Companies (SIGI)

The introduction of SIGI has brought some innovations *vis-à-vis* other types of real estate investment companies. Accordingly, new vehicles for investment and management of real estate assets are now foreseen, thus broadening the scope of financial instruments available to investors in said assets, allowing for a greater liquidity and flexibility.

SIGI present several singularities and new features. We mention below some of the main features of this new type of real estate investment vehicle:

- **Main activity**: SIGI's main activities are the acquisition of:
  (i) Ownership, surface or equivalent rights over real estate assets, for leasing purposes or other means of income generation (notably, the development of construction or rehabilitation projects regarding real estate assets; allocation of real estate assets to shop use in shopping centers or to office premises);
  (ii) stakes in other SIGI or in companies incorporated in the European Union or in the European Economic Area ("EEA"), with similar activity and features;
  (iii) units in real estate investment undertakings ("OII"); and
  (iv) stakes or units in real estate investment funds or companies for residential leasing ("FIIAH" or "SIIAH", respectively), provided the corresponding distribution regime is similar to that of a SIGI.

- **<u>Management</u>**: SIGI may be managed directly, by its board of the directors, or indirectly, by hiring services from a third party.

- **<u>Assets</u>**: as from the second year of the SIGI's activity, the following cumulative limits must be complied with:
  (i) the value of *in rem* rights over real estate assets and stakes in SIGI, OII, FIIAH or SIIAH must be at least 80% of total assets; and
  (ii) the value of the rights over real estate assets subject to leasing or other means of income generation must be at least 75% of total assets.

- For the purposes of accounting for SIGI's aforementioned assets value, only the value of real estate assets without liens or encumbrances excessively hindering their sale shall be considered, except if such security were granted for financing their acquisition, construction, or rehabilitation.
  The holding of *in rem* rights and stakes is subject to a minimum three-year term as from its acquisition.

- **<u>Indebtedness</u>**: SIGI's indebtedness is limited to 60% of its total assets, both at individual accounts and consolidated accounts level.

- **<u>Corporate structure</u>**: SIGI must be incorporated under the form of a public limited liability company by shares and have a minimum subscribed and fully paid-up share capital of EUR 5,000,000.
  SIGI's corporate governance structure must follow a one-tier board model, as the management is carried out by a board of directors and the supervision by an audit board and by an official statutory auditor, which is autonomous and independent from the former.

- **<u>Listing and dispersion</u>**: within one year, all shares representing SIGI's share capital must be admitted to trading in a regulated market or in a multilateral trading facility (MTF) in Portugal or any other country of the EEA.
  Furthermore, at least 20% of shares representing SIGI's share capital must be held by investors holding shares which correspond to less than 2% of the SIGI's voting rights, as from the moment such shares are admitted to trading.

- **<u>Distributions</u>**: up to nine months after the end of each financial year, SIGI must distribute, as dividends, at least (*i*) 90% of profits resulting from dividends and income from the shares or units held by the SIGI and (*ii*) 75% of other distributable profits.
  SIGI's legal reserve cannot surpass 20% of its share capital, and no other unavailable reserves may be accounted for.

- **<u>Reinvestment</u>**: within three years as from the sale of assets allocated to the SIGI's main activity, it must reinvest at least 75% of the corresponding net proceeds in other assets with the same purpose.

- **Tax Regime**: SIGI benefit from the tax regime applicable to other types of real estate investment companies, with no specificities being foreseen in respect of the property transfer tax (“IMT”) and of the municipal property tax (“IMI”).
- **Incorporation**: SIGI may be incorporated with or without a public subscription offer of shares, pursuant to the terms set out in Decree Law no. 19/2019 or through the conversion from a previously existing public limited liability company or OII into a SIGI.
- **Supervision**: differently from OII, SIGI are not subject to prudential supervision by the Portuguese Securities Market Commission’s (“CMVM”). Notwithstanding, as from the moment SIGI become listed companies, they are subject to all market transparency requirements and according supervision by CMVM.

III. Entry into force

The legal framework on SIGI enters into force on February 1, 2019.

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