SIGI – New vehicle in Portugal for real estate investment
10 main features of Portuguese REITs

Following international trends, Decree-Law no. 19/2019, of 28 of January (which comes into force on the 1st of February 2019) brings a model of REIT (Real Estate Investment Trust) into the Portuguese legal framework, by creating the so-called Real Estate Investment and Asset Management Companies (*Sociedades de Investimento e Gestão Imobiliária*) or SIGI. SIGIs are vehicles designed for real estate investment, with the particularity that the shares representing their share capital must be listed and subject to specific free-floating requirements. SIGIs also need to comply with strict requirements as regards composition of portfolios, limits on indebtedness and mandatory distribution of profits. From a tax perspective, SIGIs benefit from the favourable tax regime currently applicable to real estate investment funds, although they are not subject to the legal framework applicable to collective investment vehicles (CIVs) nor to the supervision of the Portuguese Securities Market Commission (CMVM).

We highlight 10 features of the Portuguese REIT legal regime:

1. SIGIs take the form of private limited liability companies by shares (*sociedades anónimas*) with the minimum share capital of € 5,000,000.

2. Their corporate purpose is the acquisition of freehold rights, surface rights or other rights over property of similar nature, to be allocated to leasing or other forms of commercial exploitation, including leases under the form of agreements for the use of units or spaces in shopping centers or offices which are very common in Portugal. Among others, SIGIs can also invest on development and urban regeneration projects, as well as on land that will qualify as urban land for construction purposes within 3 years from acquisition. Portuguese REITs may also hold participations in other SIGIs, or in companies with registered offices in another Member State of the European Union or European Economic Area (in this case, provided that such non-resident companies meet the requirements applicable to SIGIs as regards corporate purpose, composition of portfolio and profits distribution). Stakes in Portuguese CIVs that have a similar income distribution policy similar may also be acquired by a SIGI. Both real estate assets and participations must be held by the SIGI for a minimum period of 3 years.

3. In addition to newly incorporated SIGIs, which can be set up through private or public placement, the conversion into SIGIs of existing private limited liability companies by shares is also permitted and regulated, as well as the conversion of real estate CIVs provided that these take corporate form already. It should be noted that for the purposes of incorporating a SIGI by way of a demerger from an existing company, the branch of activity comprising one or more real estate assets or holdings is considered from a legal perspective as an economic unit.

4. The composition of the portfolio of a SIGI must comply with two cumulative limits, starting from the second year upon incorporation (or conversion into a SIGI): (i) the value of rights over real estate assets (free of liens or encumbrances) and holdings shall represent at least 80% of the total value of the assets of the SIGI; and (ii) the value of rights over real estate assets (free of liens or encumbrances) subject to lease or other forms of commercial exploitation shall represent at least 75% of the total value of the assets of the SIGI. These limits are assessed in accordance with the individual accounts or, in the case that the SIGI has subsidiaries, in the consolidated accounts. Guarantees obtained in the framework of financing for the acquisition, construction or rehabilitation do not affect the value of real estate.

5. SIGI's indebtedness shall not exceed, at any time, 60% of the SIGI's total assets. This limit is assessed in accordance with the individual accounts or, in the case that the SIGI has subsidiaries, in the consolidated accounts.

6. Within one year after incorporation or efects of conversion, SIGIs' shares must be admitted to trading in a regulated market (Euronext Lisbon) or in a multilateral trading facility in Portugal (Euronext Access or Euronext Growth) - in which case the rules applicable by virtue of the admission to trading are simplified - or in the EU/EEA. Only in specific cases will SIGIs have "public company status" (i.e. being subject to the supervision of the

CMVM and to a wide and stricter set of obligations, notably information obligations), in particular in the case of incorporation through public placement or in the case that its shares have been, *inter alia*, subject of public offering or admitted to trading in a regulated market, which is not the regime generally applicable.

7. Upon admission to trading, at least 20% of the shares representing a SIGI's share capital must be spread across investors with holdings corresponding to less than 2% of voting rights.

8. Credit institutions such as Banks are only allowed to hold participations above 25% in SIGIs for a maximum period of 3 or 5 years (consecutive or cumulative).

9. Within nine months after the end of each financial year, SIGIs shall distribute, in the form of dividends, at least (i) 90% of the profits of the financial year that result from dividends on shares or income from participation units; and (ii) 75% of the remaining distributable profits of the financial year. The legal reserve of SIGIs shall not exceed 20% of their share capital. At least 75% of the net proceeds deriving from the sale of assets allocated to the core corporate purpose of the SIGI shall be reinvested in other assets to be allocated to the development of such corporate purpose, within 3 years from disposal.

10. Companies lose their SIGI status upon occurrence of any of the following events: (i) ceasing to be private limited liability companies by shares, changing their corporate purpose or reducing their share capital below € 5,000,000; (ii) not requiring the admission to trading of their shares within one year after incorporation or efects of conversion; (iii) not complying with the free-float requirements of 20% and 2% for more than 6 months; (iv) simultaneously not complying with the portfolio composition and minimum holding period requirements for more than 6 months; or (v) not complying with either the requirement on portfolio composition or the minimum holding period requirement for two consecutive years; (vi) failing to meet indebtedness limits. The loss of SIGI status prevents the company from reacquiring such status in the following 3 years.

From a tax perspective, the Portuguese Government chose to apply to the SIGIs the tax regime already in force for the CIVs. This regime is characterized, in summary, by: (i) a corporate income tax exemption on income received by the SIGI and considered as having a "passive" nature (i.e. Investment income, capital gains and rental income); (ii) taxation at investor level mainly via withholding tax on both income distributions made by the SIGI to its shareholders and capital gains arising from the sale of its shares at a rate of 10% (for non-residents) and 25% or 28% (in the case of resident companies or individuals, respectively). Regarding real estate taxation (Real Estate Transfer Tax and Municipal Property Tax), the new regime does not provide for a specific regime for these entities and therefore, general rules apply.

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REITs have proven to be a successful investment vehicle across the world in mature markets, most recently in jurisdictions such as Spain (SOCIMI) or Ireland, much by virtue of the flexibility of such vehicles, which combine the professional management of its activity with the ability to attracting specialized and institutional investors in the sector, and the free-floating of shares. Another factor that contributes to the success of these types of vehicles is the favourable tax regime that ensures a single stage of taxation at the level of the final investors. These are understood to be decisive factors in the success of SIGIs also in Portugal.

Assuming the aim of fostering investment and further consolidating growth in the Portuguese real estate market, in particular the rental market, SIGI's regime allows for a very broad scope in terms of the rules on composition of portfolios, wider than in other jurisdictions, covering the most dynamic realities in the Portuguese real estate market when it comes to attracting investment to the sector.

With a high level of specialization in the monitoring and structuring of these types of vehicles in Spain (SOCIMI), together with an extensive experience in the real estate sector in Portugal, where we have advised in some of the largest and most challenging transactions, Garrigues is well prepared to analyse the legal and tax benefits of SIGIs for different types of investors and assets.

For any additional information on any aspect of this alert, please do not hesitate to get in touch with Garrigues.

For more information:

Jorge Salvador Gonçalves
jorge.goncalves
@garrigues.com
Real Estate

Marta Graça Rodrigues
marta.graca.rodrigues@
garrigues.com
Corporate and Capital Markets

Tiago Cassiano Neves
tiago.cassiano.neves@
garrigues.com
Tax

GARRIGUES

Follow us

Av. da República, 25 -1°
1050-186 Lisboa (Portugal)
T +351 213 821 200
lisboa@garrigues.com

Av. da Boavista, 3523, 2° Edifício Aviz
4100-139 Porto (Portugal)
T +351 226 158 860
porto@garrigues.com