

THE NEW PARADIGM FOR SPORTS COMPANIES

A decade on from the enactment of the previous legal regime for sports companies, Decree-Law no. 10/2013, of 25 January, now comes Law no. 39/2023, of 4 August, which establishes the new legal regime for sports companies and repeals the regime previously in force, with the aim of implementing a new paradigm in defence of transparency and optimising the essential role of sports companies.

In the preparatory work for this new legal regime, the Office of the Secretary of State for Youth and Sport revealed that around 20 per cent of SADs have been or are on the way to extinction, insolvency or dissolution. In this sense, one of the aims of Law 39/2023, of 4 August, is to attract investment to a sector that is intended to be more attractive, ensuring greater regulation and control for investors in sports companies.

MAIN HIGHLIGHTS

- Decree-Law no. 10/2013, of 25 January, only provided for the creation of two types of company, whereby Sports Companies could be set up in the form of a Sports Limited Company (SAD) or a Single Shareholder Sports Company (SDUQ). **The new legal regime for sports companies provides for the incorporation of Sports Companies by Quota (SDQ) and thus makes it possible to set up a new type of company, which makes it possible to overcome some of the issues raised by the SDUQ, as pointed out by Portuguese doctrine.**
- The new legal regime for sports companies aims to promote women's sport. In this sense, it establishes that **a sports club can only set up or hold the share capital of two sports companies, relating to the same sport, if they are differentiated by gender.** This is undoubtedly a measure aimed at attracting investment to women's sport, as it prevents exclusive investment of corporate resources in men's sports and favours the growth and professionalisation of women's sport in Portugal.
- In addition to the clear focus on women's sport, the new legal framework for sports companies provides for the **introduction of a gender parity system**, which establishes that the proportion of people of each sex appointed to each management and supervisory body of the sports company must ensure a minimum percentage of 33.3 per cent.

- Law no. 39/2023, of 4 August, **reduces the minimum limits for the direct participation of the founding sports club in the capital of the sports company, from 10% to 5%**, in cases where the sports company has been set up through the transformation of a sports club or the legal personalisation of a sports club team that participates or intends to participate in sports competitions. In order to dispel the doubts that the previous regime raised, the legislator enshrined the nullity of a legal transaction that results in the founding sports club having a direct stake in the sports company of less than 5% of the share capital.
- The new legal regime for sports companies gives the founding sports club **the right to elect an associate to the SAD's management body**, with the right to take part in all meetings, albeit without the right to vote.
- The **minimum amount of share capital for sports companies participating in the 1st League is €250,000.00, while the amount set for sports companies participating in the 2nd League is €50,000.00**. For sports companies taking part in other professional competitions, the minimum share capital is set at €50,000.00. The type of company adopted is now only relevant for setting the minimum share capital for sports companies that do not take part in professional competitions.
- In order to promote the professionalisation of management, **at least one of the executive members of the sports company's management body must dedicate themselves exclusively and full-time** to managing the company.
- The new legal regime establishes various **incompatibilities for the exercise of administrative or management functions**, in order to avoid the emergence of conflicts of interest. Having said this, we would like to point out that no one may be a member of the administrative bodies, a proxy or, regardless of their title, exercise administrative or management functions in sports companies who;
 - a) in the same sporting season, has held positions of director or manager in another sports company set up in the same sport;
 - b) holds share capital, directly or indirectly, in another sports company participating in national competitions in the same sport;
 - c) engages in the occasional or permanent activity of intermediating players and coaches;
 - d) has links to companies or organisations that exploit, promote, negotiate, organise, conduct events or transactions related to sports betting.
- Sports companies are subject to the anti-money laundering and anti-terrorist financing measures set out in Law 83/2017 of 18 August, which makes it **mandatory to identify the beneficial owners of companies that hold shares in sports companies**.
- Sports companies are **obliged to provide information to the sports federation of the sport in question and to the supervisory body** regarding transfers of professional athletes.

- Law 39/2023 of 4 August reinforces the suitability **requirements imposed on holders of qualifying holdings in the share capital of a sports company and on members of management and supervisory bodies**, who submit a declaration of honour that they meet the suitability criteria laid down.
- Candidates for the acquisition of a qualified holding in the share capital of a sports company are **obliged to demonstrate their economic capacity for the investment to be made and the origin of the financial resources to be used**, submitting a declaration of honour to this effect.
- The new legal regime for sports companies requires the Portuguese Institute for Sport and Youth (IPDJ) to set up **a channel for reporting offences**, which is given powers to carry out investigations, inspections, enquiries and external audits.
- To remedy one of the shortcomings of the previous regime, Law 39/2023 of 4 August introduces a **specific administrative offence regime for sports companies**, which provides for fines of between €500.00 and €500,000.00, as well as sporting sanctions.

Law 39/2023 of 4 August came into force on 4 September 2023.



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