



Newsletter

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Cameira Law

13-15 Craven Street | London | WC2N 5AD
Telephone: 44 (0)20 7930 1900
Facsimile: 44 (0)20 7930 2828

Rua Tierno Galvan, Torre 3, 17º Piso
1070-274 Lisboa
Telephone: 351 21 382 2500
Facsimile: 351 21 382 2509

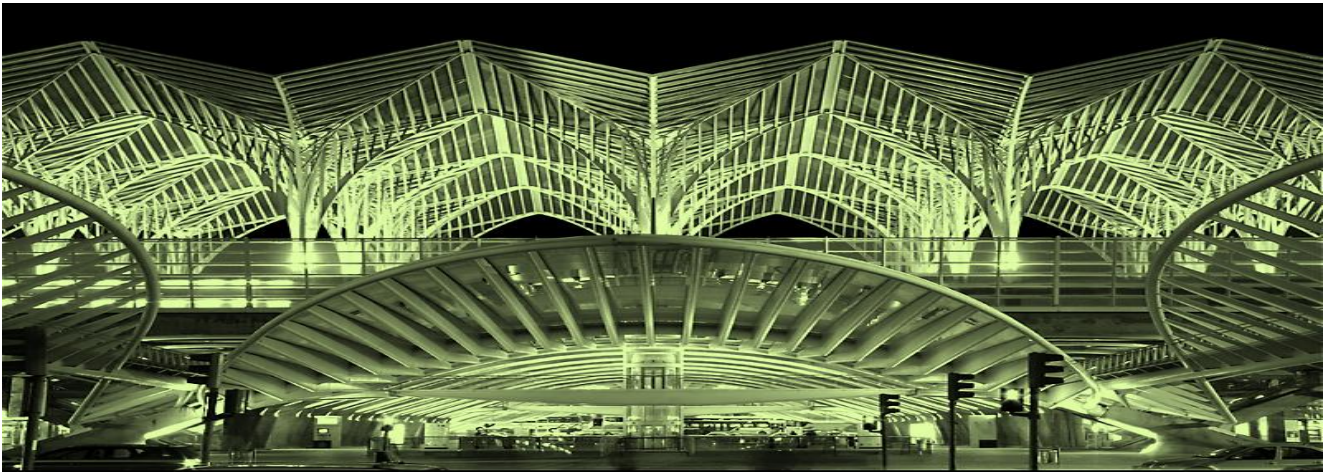
The Dynamics of Granting Put and Call Options Over Shares

This is the first of a series of articles on the subject of Stock Options. The present article focuses on the dynamics of granting put and call options over shares in relation to regulation, legal requirements and types of stock options. The following article will analyze grant price, stock options as exit strategies in deadlocks in relation to joint ventures, relationships with existing shareholders, clause agreements as well as some of the most relevant issues raised on exercising and enforcing stock options.

An option enshrines not only the concept of a derivative security but also embodies the rights and obligations of a binding contract granting the holder of the derivative the right to buy from or sell to the writer an underlying asset for a specific price and/or before a certain date.

The option's value is contingent on a future outcome of the underlying asset and holds no value of its own, however that does not prevent options and other common derivatives such as swaps and futures to be traded as if they were assets.

The agreements concerning the issuance of put and call options including the enforcement of the said agreements are governed by the general principles of contract law, provided for in the Portuguese Civil Code.



It follows that listed options are governed by the Portuguese Securities Code. Employee stock options, whether related to publicly held or privately held companies, are regulated by Employment regulations.

In intellectual capital-intensive industries, the buyer has a strong interest in using equity incentives to retain key talent. Hence the use of stock options consideration in M&A transactions as equity compensation awards.

Granting standardised stock options

Listed options follow a standard form of contract typically used by brokerage firms. A publicly held company shall grant standardised options in accordance with the following procedure:

The granting of listed stock options over shares is subject to the issuance of the underlying stock that must be standardised and may be carried out either by increasing the share capital or through the acquisition of own shares. Standardisation allows for the option to be traded as a security in the regulated market and to be interchangeable.

Employee Share Options

Employee stock options are specific call options on the share capital of a company whose use among Portuguese companies is becoming increasingly widespread.

Under the Portuguese legal framework, employee call options are non-standardised calls. Essentially, they are private contracts governed by the general legal provisions of contract and employment law. Interestingly, there are no legal restrictions on the number of shares that companies can issue to employees.



The number of shares is apportioned among employees strictly in accordance with the company's policy and other determining factors such as remuneration packages. They may not be traded on the stock exchange.

Practical Issues

Practical issues may arise where employees exercise options after termination of their employment contracts, in the absence of a clause providing that such exercise is not permissible where the employment relationship no longer exists. Litigation has arisen out of such circumstances mostly in the case of dismissals.

Options are an extremely versatile investment tool. Because of their unique risk/reward structure, options can be used in many combinations with other option contracts and/or other financial instruments to create either a hedged or speculative position.

A stock option allows one to fix the price, for a specific period of time, at which it can be purchased or sold for a premium (price) which is only a percentage of what the buyer would pay to own the stock outright. That leverage means that by using options it is possible to increase the potential benefit from a stock's price movements.

Stock options can also be attributed to other several objectives: to align the interests of employees with those of shareholders, reducing agency costs or to minimize the recognition of costs with the salaries of employees once until recently the stock options were not recognized as cost. Stock options can also be used as substitutes for payment in cash and cash equivalents when at the time of payment there is no cash flow.

It is also a way of allowing shareholders to extract value that employees are remunerated at a level higher than optimal, without taking significant risks.



Summary of recently enacted legislation

INTRODUCTION

The Proposed Law of the Government of the State Budget (OE) for 2011, published in the Official Gazette of the Republic of Portugal, Series II-A No. 016 and No. 016- Supplement (<http://www.dgo.pt/oe/2011/Proposta/index.htm>) was presented in Parliament on the 15th October 2010.

The discussion and vote in general on the proposed new legislation were scheduled for the 2nd, 3rd, 22nd, 23rd, 24th, 25th and 26th November 2010. The proposed Budget including changes, updates and tax commitments contained therein, will become effective on 1st January 2011.

I. INDIVIDUAL INCOME TAX

Capital Gains Tax on the sale of a property that has been subject to a previous leasing contract is levied on the value of the rents paid under such contract plus the amount paid for the exercise of the option right to acquire the property.

Special Rates

Capital gains tax rates on capital income earned abroad by resident individuals and entities in Portugal shall be harmonised by an increase in the tax rate from 20% to 21.5%.

Capital gains for Non-Resident Individuals

Capital gains earned by non-resident individuals domiciled in a country, territory or region with which Portugal does not have a Double Taxation

Agreement or a Tax Information Exchange Agreement, shall cease to be tax- exempt.

Reimbursement of Individual Income Tax Paid by Individual in the EU

Individual income tax (IRS – Imposto sobre o Rendimento de Pessoas Singulares) payable in Portugal by individuals from another EU Member State shall be reimbursed for the following types of income: expenses, salary, remuneration received as a member of a statutory body of a corporate person or other entities, income from work performed on vessels and aircraft and income derived from intellectual or industrial property. The refund shall not exceed the total tax liability payable as individual tax income.



II. CORPORATE INCOME TAX

Cross-Border Mergers and Divisions

The scope of application of the “Revenue Neutral” regime shall be extended to all mergers and divisions covered by the Directive on Mergers, Spin-offs "(Directive No. 2009/133/CE).

Tax Rate on Income from Debt Securities and Other Investments

The tax rate shall be increased from 20% to 21.5% on income derived from debt securities and other investment income for non- resident entities which have no permanent establishment in Portugal.

Withholding Tax on Profits Distributed to Resident Entities in the EU or EEA

Withholding Tax on Profits paid to resident entities in another EU or EEA member state (provided there is an obligation for administrative fiscal cooperation equivalent to that established in the EU) by a company resident in the Portuguese territory subject to and not exempt from Corporate Income Tax (IRC - Imposto sobre o Rendimento de Pessoas Colectivas) or subject to a special gambling tax will be reimbursable. Any income generated by such entities in the Portuguese territory shall also be taken into account in the assessment of the value of the tax to be reimbursed.

Taxation Regime for Debt securities Issued by Non Resident Entities

Income deemed to be obtained in Portugal arising from government and corporate debt

securities issued by non-resident entities will be exempted from income tax.

The exemption will apply when the income is to be paid by the Portuguese State as a guarantor of obligations assumed by companies in which the Portuguese State and other EU Member States is a shareholder.

Taxation Regime of Dividends Distributed to Resident Entities in EU or EEA

Pursuant to the applicable provisions of the taxation of profits distributed by a national legal entity to its EU or EEA subsidiary, as enshrined in the dispositions of the Parent – Subsidiary Directive, are tax exempt provided that the subsidiary holds at least a 10% shareholding in the paying company.



Case Law

Withholding Tax

Topic matter - Withholding Tax on payments to Non Residents

Case: Decision of the Supreme Administrative Court, 29th September 2010

Source: www.dgsi.pt

Synopsis:

I – Withholding tax on payments made to non resident individuals by a resident legal entity is final and reliefs the non resident tax payer from the obligation of making any other tax payment in relation to such income.

II - The liability of the paying company which withholds the tax at the source is primary. The non resident can only be called to pay the tax secondarily if the paying company fails to do so.

Case Law

Capital Gains

Topic matter – Capital Gains of Non Residents – Article 56 of the Treaty on European Union

Case: Decision of the Supreme Administrative Court, 16th January 2008

Source: www.dgsi.pt

Synopsis:

The provisions of no 2 of Article 43 of the IRS Code, exempting from the payment of tax, capital gains earned by non resident individuals, whilst residents are subject to capital gains tax on 50% of such gains, and is in breach of the dispositions of article 56 of the Treaty on European Union.

Case Law

Stock options

Topic matter – Employee Stock options taxation

Case: Decision of the North Central Administrative Court, 1st June 2006

Source: www.dgsi.pt

Synopsis:

Individual Income Tax on the purchase of shares allotted under employee Stock Options schemes is levied on the difference between the price the shares were bought and their market value.



Publications

Property Guide

Following the success for the first edition of the “Portuguese Property Guide”, Cameira Law is pleased to announce publication of its second edition of the highly-praised “Portuguese Property Guide”. The strengths of the first edition have been preserved, the book is concise, systemically structured, extensive, up-to-date in its content and practical to all readers.

Latest Published Papers

Maria Antonia Cameira, Managing Partner of Cameira Law successfully published a series of paper which were selected for presentation at the UIA Seminars as outlined below:

1. Budapest Seminar, Budapest, March 2010, focused on “M&A Revival: Taking Off the Corporate Insolvency Processes Connection”. The Seminar Paper is thorough, well researched and provides useful information and an analytical overview of specific issues relating to the topic.
2. 54° UIA Congress, Istanbul, November 2010, on the theme “Put & Call Options Over Shares Advantages And Pitfalls”. The Published Paper is detailed and presents an in-depth examination related to the theme.
3. UIA Congress, Istanbul, November 2010 “Acquiring Regulated Businesses Mergers and Acquisitions and Competition Law Perspectives”. The Paper is well-structured, fully developed and includes an extensive analysis of specific aspects of Mergers and Acquisitions and Competition Law.
4. The UIA 54th annual Congress - 30 October-3November 2010, addressing and analyzing current legal issues within the Share Options arena. The Published Paper focused mainly on the regulatory framework, enforcement and other issues pertinent to Call and Put Options.



News in Brief

1. Paulo C. Pereira - Perella & Partners - CPE (Centre for Portuguese Studies) – 21st January 2010

The CPE is an association whose purpose is primarily to promote reflection and action on Portuguese topics of financial and economic international spectrum.

It aggregates Portuguese executives working in multinational companies in the City of London. Its database has more than six hundred Portuguese.

Among its activities there is the organization of dinner-lecture in which there are honoured guests and speakers that are notable figures of the Portuguese public and political life.

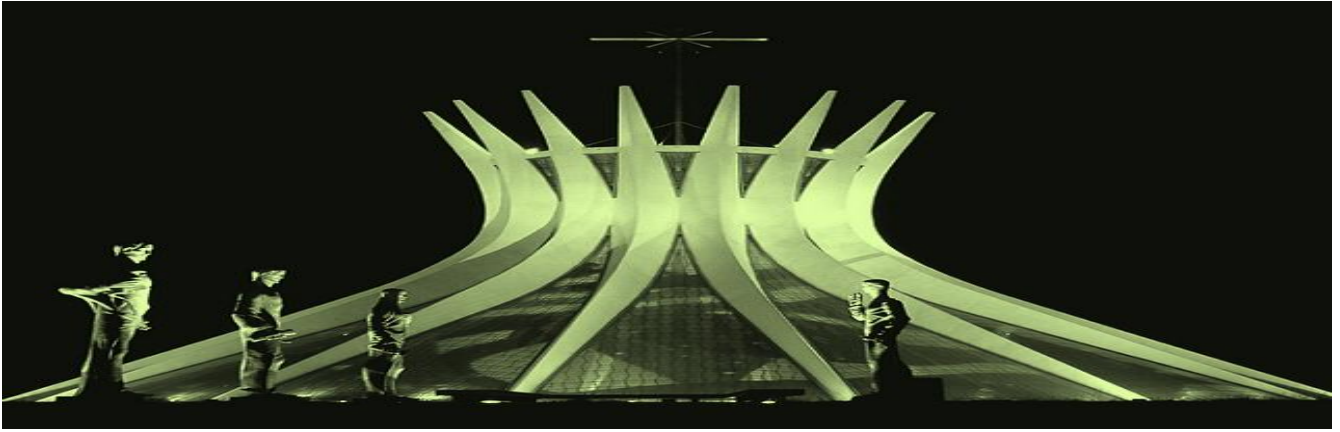
The Dinner Seminar took place on 21st January 2010 at the Institute of Directors, in London. The guest speaker was a Partner of PERELLA WEINBERG PARTNERS UK LLP, Mr. Paulo C. Pereira, an independent, privately owned financial services firm that provides corporate advisory and asset management services to clients around the world.

Owing to his varied curriculum, wide range of experiences and his current position, Paulo C. Pereira is in a privileged position to ponder and analyze the great challenges faced by the companies in the new M&A markets.

The primary aim of the debate was to gain deep insight into new challenges for mergers and acquisition deals in the near future. The debate was also centred on the business aspects of the M&A markets.

2. Mr. Fernando Ulrich, Chairman of BPI, - CPE (Centre of Portuguese Studies) - 10th November.

Cameira Law, a member of the CPE, organized and sponsored the CPE dinner on the 10th November 2010. The dinner was held in the wonderful setting of the Sofitel St James, London. The speaker was Mr. Fernando Ulrich, the current President of the Executive Committee of the Board of Banco BPI, Chairman of the Board of Banco de Fomento, Angola.



3. Seminar on Investment Opportunities in the Federal State of Piauí, Brazil rescheduled for March 2011.

The Seminar on investment opportunities in the Federal State of Piauí, Brazil scheduled for 23rd November 2010 in Oporto, Portugal has now been

postponed to March 2011. As a result of the recent appointment of the newly elected Government in Brazil, the Government officials of the Federal State of Piauí who had been invited to participate in the Seminar have requested a postponement of the Seminar to March 2011, to allow them to tackle key issues of immediate concerns in Brazil.

The materials of this Newsletter are not intended to constitute legal advice and should not be construed or otherwise relied upon as legal advice or as a legal opinion with respect to any of the subjects addressed.