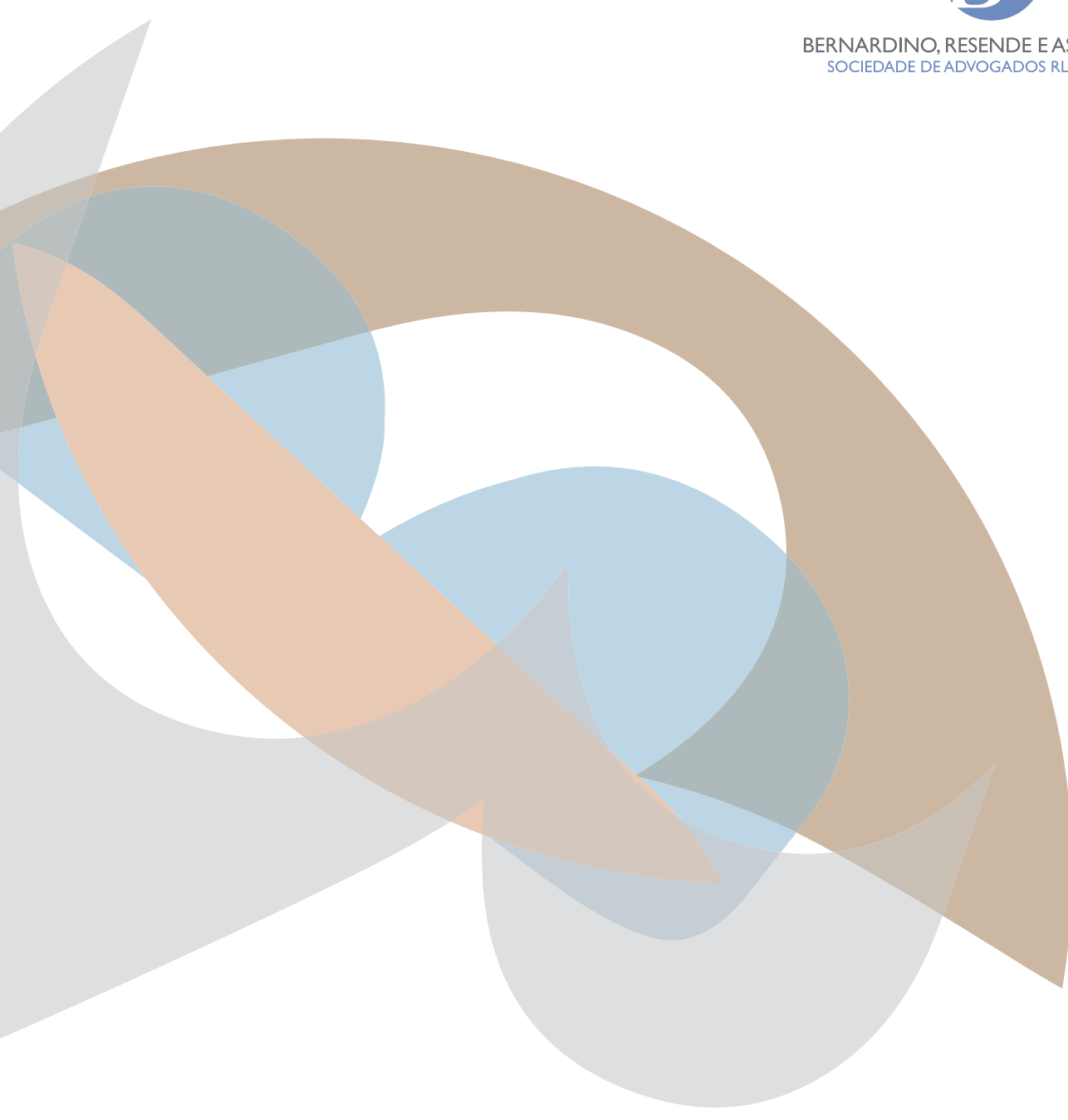




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LAWYERS AND THEIR WORK IN AND OUTSIDE THE COMPANY

These are times of profound political, economic and social changes reflected in events that impact us every day with alterations in the national and international context that affect companies operating in a wide variety of sectors, often resulting in downsizing, pay cuts, corporate reorganisation and changes in location, among others. As a result, we have decided to write a few lines on a lawyer's work and role in companies. My experience and that of other lawyers in the firm at Portuguese banks and companies leads to certain conclusions that we would like to share with you.

The practice of law in Portugal has changed substantially in recent years; I would say especially in the last decade. There has been exponential growth in the number of lawyers, law firms and foreign law firms have appeared along with mergers and splits.

The environment has changed for lawyers in Portugal! This is a fact, not just an opinion.

Going back a little further in our history to when Portugal joined what is now the EU and the resulting demands, since then companies and other public operators have begun to regard lawyers not only as "The Lawyers" but also and above all as consultants of the entity they work for. Their work applies to the entire organisation and all its departments (financial, human resources, commercial, security, quality, etc.), which interact with each other. Business deals are increasingly complex and require daily monitoring and sometimes have cross-border repercussions. The branches of law are becoming more and more specialised.

The situation has changed. Lawyers work on different matters that are sometimes new and act as consultants for other business areas. Their role is not just litigating in court, though we know that lawyers used to be called in only in the litigation phase!

Entrepreneurs have changed their vision of business and are more aware. They have set new priorities and now really focus on their business!

In our humble opinion, it is not enough for entrepreneurs or even company executives to become aware of this. It is also necessary for this philosophy to be instilled in all supervisors within the company, even low-level employees, as they are the ones most affected in an immediate way.

For example, in a country with large number of micro, small and medium-sized companies, their owners have a multidisciplinary attitude. Therefore, if they choose to work with a lawyer they will have access to all the information and tools they need to make sound and timely decisions, which, as we know, is not always otherwise the case.

It's the end of the one-man show. Entrepreneurs can absolutely no longer take on all tasks and functions. Not only do they not have the necessary qualifications or experience, they would also be wasting time on matters that do not pertain to their core business, which is enlarging their customer base and consequently their profit.

It is the business owners and managers who set the company's legal policy and this can take years to accomplish. I am talking about the fact that, just as a business is something that is built gradually, legal support also is gradual and adapts to the company's many needs.

Companies exist to create wealth and that is only possible with a modern attitude in which lawyers play an essential role. Once again, this is a fact, not just an opinion!

The importance of the legal function in contemporary companies is undeniable and it is not compatible with empiricism or voluntary work.



In the process of implementing this policy, companies take stock of their legal needs and identify appropriate solutions based on a number of premises:

Strategic prior analysis of the matter

In their analysis prior to making and implementing strategic choices, lawyers examine and reflect on the matter and its risks and limitations using their expert knowledge and the resources enshrined by law. Together with the company managers, they then define the strategy for the business transaction in question and its iter negotii may sometimes take months or years.

Peace of mind

A company's growth and expansion result in decentralisation. The one-man show has disappeared, as the business has grown and developed and several managers take actions and sign contracts that are important to the company.

Regardless of the type and size of company, it would be unreasonable to run a business that directly and indirectly affects a number of people without legal advice, as the aforementioned policy and legal culture must be present, just like other areas; for example there is almost always a financial director. Obtaining prior legal advice on daily operations of the company is the right choice for our security and peace of mind.

Negotiating power

Companies achieve their goals through good management, which leads to sustainable business and, therefore, to qualitative leaps.

There are often times when managers discuss contracts that may change or even ruin a company. For example, I recall a finance contract based on a repayment timeline that was out of synch with the timeline of payments from customers. Imagine the damage that this can cause and the risks associated with such decisions. The choice of monthly, quarterly or bi-annual payments can make all the difference and usually does!

In other cases, there are negotiations of contracts whose outcome (good or bad) has an important impact on the company's accounts. The team that negotiate these contracts normally involve lawyers.

Litigation

The old saying goes, 'It's better to have a bad agreement than a good lawsuit'. However, I read somewhere that in company management there are cases where litigation is the best solution.

A company's legal policy and culture is designed to provide the best medium- and long-term solutions and their repercussions.



The company lawyer's role

Defining the Company's Legal Policy and Culture

In-House versus External Lawyer

An important and much-discussed issue is whether legal matters should be dealt with by resources within or outside the company.

Quid juris?

In my opinion, a company should have its own legal department with an in-house lawyer, though it should also have external lawyers.

There are many advantages to having company lawyers with an in-depth knowledge of the company and its members, why it was set up, its culture, the people who depend on it, and its needs and strategic goals. They are true experts in the company's core business and understand its dealings, know its customers and constantly interact with everyone working there.

Nonetheless, companies sometimes need answers from people outside the company and its culture, who can take a different look at issues and may be able to find a quicker solution to incidental problems. External lawyers are certainly more qualified to monitor these uses so this policy seems more appropriate.

Having an in-house lawyer is also based on a cost-benefit analysis and corporate goals.

Type of contract and coordination

In the same way as it is advisable to guarantee a stable relationship with customers, the driving force of any company, it is also wise to ensure a stable relationship with external lawyers, either on retainer or for occasional matters. A retainer offers more regular interaction with the firm plus better mutual knowledge and personalised treatment, with all its advantages.

It is essential for in-house lawyers to be involved with the external lawyers in their duties and the in-house lawyers should liaise and coordinate the handling of matters with the external lawyers so that both provide the best possible service to the company.

It's a win-win situation!

Duties

In short, the areas of intervention for external lawyers are:

Legal specialisations and projects involving multidisciplinary teams:

- Specialised areas other than those handled by the company lawyers should be entrusted to external lawyers. In my opinion, obviously depending on the company's corporate object, these areas include tax law, labour law and administrative law, among others.
- Following the same reasoning, we believe that the external lawyers should be allocated multidisciplinary projects involving different branches of law. Indeed, retainer agreements usually have a clause excluding this type of work.



In cases of litigation, there are certain situations that can be handled by in-house lawyers, although they should be limited if the company only litigates occasionally.

In most cases, litigation should be entrusted to external lawyers and companies' annual budget should include adequate funds for legal matters.

In conclusion, in this brief article, we would like to underscore that legal work is one of the many aspects that are essential to the company and must always merit managers' close attention. They must interact with their lawyers on a regular basis in order to allow them to achieve results offering value added to shareholders.

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