



## ***Family Ownership and Tenancy Rights***

In Civil Code jurisdictions, passing on one's assets to the next generation is both a matter of law as well as the first choice of the great majority of the population. Most people are looking to build their net wealth, enjoy retirement and pass on their assets to their children. Many want to buy their home, a company or establish an investment portfolio and want include their adult children in the ownership with the intention of leaving their affairs in order and mitigating eventual inheritance tax problems.

However, life sometimes takes unexpected and cruel twists: bitter divorce, crippling illness, untimely death. In the worst case scenario, a retirement home in the children's name can vanish as a consequence of an unanticipated calamity, leaving the parents without a home, or the means to replace it.

### **Staying in Control**

One simple and inexpensive solution is to use a nominee company with the shareholding in the name of the children. The Company grants a Deed of Usufruct (Lifelong Tenancy) to the parents who then have full and exclusive rights to the property for as long as they live. Upon the passing of the last survivor, the tenancy rights automatically revert to the Company which is already owned by the children, thereby solving harmlessly any potential IHT problem outside of Portugal.

*Usufruto* (right of tenancy) is the right to the use and enjoyment of the fruits or profits of another's asset, without fundamentally changing its substance. *Usufruto* is the right to enjoy things that someone else owns, in the same way as an owner, but subject to an obligation to conserve the substance. In order to define usufruct, it is necessary to introduce two other characteristics:

- a) first, usufruct is a temporary right, and in the majority of cases, on a lifetime basis of an individual (a corporate entity is restricted to 30 years);
- b) also usufruct is a real right (*direito real*).



Usufruct grants the right to use the asset and receive the fruits therefrom. Without the right of usufruct, there is the complementary right called bare ownership (*nua propriedade*). When the usufruct is extinguished the bare ownership reverts to absolute ownership (*plena propriedade*). Usufruct comprises two of the rights to property as recognized in Roman law, the right of user (*usus*) and the right of enjoyment (*fructus*), but does not include the right to change or transform the property (*abusus*), this latter right is only available to the absolute owner (*nu-proprietário*).

Usufruct may be created by deed, by testamentary grant or it may be created by law, as with the right of parents over the property of their children while they are minors. Usufruct may be granted over movable (*móveis*) or immovable (*imóveis*) property. Unlike a lessee, the usufructuary takes and accepts the thing as he finds it, but is obliged to return the subject matter as he found it originally or to provide equivalent value. Although, if the property wears out through normal use, as with most goods, the usufructory is not responsible for such degradation. The grantor or bare-owner (*nu proprietário*), is responsible primarily for major repairs and the usufructory for maintenance, but not for deterioration due to wear and tear (*vetustez*) or damage caused by “*força mayor*”.

A usufruct may come to an end:

- a) at the death of the grantee;
- b) a set period of limitation;
- c) by renunciation, merger or subrogation.