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COUNTRY UPDATE-Portugal: Securities & Banking

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Portuguese securities and banking markets legislation is mainly based on the European legislation (and therefore does not materially differ from the legal framework implemented in other EU member states) and the country's own experience further to the banking crisis, following the financial crisis of 2008-2009, which lead Portuguese authorities to test first-hand the new legislation set forth by the Bank Recovery and Resolution Directive (BRRD).

Portuguese economy has been growing in the past few years and we have seen some sales of some banks in Portugal and the recapitalisation of other banks. The results of the AQR and stress tests make it possible to ascertain the resilience of the Portuguese banks.

In any event some vulnerability still persists, namely the need for Portuguese banks to reduce their non-performing assets, NPL portfolios and their continuous effort and need to improve capital ratios and to attract fresh equity.

Portugal is currently implementing a legislation package which is expected to change considerably the current regulation overview – in particular it has just implemented MIFID II (Law 35/2018, dated July 20), the Fourth AML Directive (Law 83/2017, dated August 18 and Law No. 89/2017, of August 21), being the implementation of the Payment Services Directive 2 expected to occur very soon.

Regulators

The supervisory authority within the banking markets is the Portuguese central bank, the Bank of Portugal (hereinafter the BoP), which is responsible for the conduct and prudential regulation of credit institutions and financial companies. BoP is regulated by its Organic Law approved by Law 5/98 of January 31 (as amended from time to time).

The BoP is a public-law legal entity, with administrative and financial autonomy and own property. The corporate bodies of the Bank are the governor, the board of directors, the board of auditors and the advisory board. The two core missions of the BoP are maintaining the price stability and promoting the financial system stability.

The Securities Markets Commission (in Portuguese *Comissão do Mercado de Valores Mobiliários* or CMVM) is the supervisory authority in Portugal which regulates the securities markets. CMVM is an independent, public institution with administrative and financial autonomy whose primary role is to oversee the activities of the securities and derivatives markets. Among others, the following individuals and entities, among others, are subject to the supervision of the CMVM:

- Securities issuers;

- Financial intermediaries;
- Independent investment advisors;
- Markets, settlement and centralized systems managing entities and the entities whose object is the clearing of operations on commodities in derivatives markets;
- Professional investors;
- Investment funds;
- Holders of qualifying holdings in public companies;
- Auditors and risk rating companies;
- Risk capital companies and funds;
- Securitization companies and funds and also the managing companies of said funds;
- Other individuals that pursue, professionally or not, activities related with securities.

Whenever credit institutions or financial companies also pursue financial intermediation activities, such entities will also be subject to the supervision of the CMVM.

Both entities are integrated within the European supervisory authorities, the European System of Financial Supervision and, in the case of BoP, the Eurosystem and the European System of Central Banks, the single supervisory mechanism and the single resolution mechanism.

The two financial sectors – securities and banking – are regulated autonomously, being subject to the supervision of different entities; however, they intersect and complement each other as financial entities are subject to both entities' supervision where financial intermediation services are also provided (prudential supervision by the BoP and conduct of business supervision by CMVM).

This intersection has gained form in the setting up of a council between these two supervisory bodies (together with the

Portuguese Insurance and Pension Funds Supervisory Authority supervisory entity) forming the National Council of Financial Supervisors (established in 2000) which presents legislative proposals within the financing regulation, often preceded by public consultation proceedings.

The regulators have legislative and sanctioning powers, issuing regulations and applying penalties in case of breach of the applicable rules, as better detailed below.

Permission to operate

The following activities are regulated activities subject to licensing in Portugal:

- a) Acceptance of deposits and other repayable funds;
- b) Lending, including the provision of security and other undertakings, financial leasing and factoring;
- c) Provision of payment services;
- d) Issue and management of other payment instruments;
- e) Trading of financial instruments;
- f) Participation and placement of securities and provision of related services;
- g) Acting in the inter-banking markets;
- h) Consulting, safe keeping and management of securities portfolios;
- i) Management and consulting services in the management of other portfolios;
- j) Issue of electronic currency;
- k) Other similar operations that the law allows the banks to carry out.

Only authorised credit institutions and financial companies may carry out the activities above described, with the exception of the deposit taking from the public for use in own account which may only be carried out by authorised credit institutions (only banks).

Credit institution definition cover banks (retail and investment banks), saving banks (*caixa económica*), Central Mutual Agricultural Credit Bank and mutual agricultural credit banks, financial credit institution, mortgage finance institution and other institutions that may be legally qualified as such. There is only one state-owned bank (*Caixa Geral de Depósitos*) but the bank crisis led to the Portuguese State becoming owner of shareholdings in other banks.

Financial companies definition cover companies which main activity is to carry out at least one of the banking activities described above, including investment firms, financial leasing firms, factoring firms, investment funds managing companies, amongst others.

To be authorised as a credit institution or financial company the entity must either: (i) be incorporated in Portugal, or (ii) have a branch in Portugal which would be subject to rules regarding conduct of business. In the case of credit institutions incorporated in other European Union member states, such services may also be carried on in Portugal under the freedom to provide services principle, also known as "EU passporting" regime.

Credit institutions not authorised to carry out regulated activities in Portugal may set up a representative office in Portugal, registered with the Bank of Portugal. The activities carried out by the representative will depend on the credit institution it represents, and the scope of activity of the office will be limited to protect the interests of similar institutions in Portugal (representative offices may not carry on the activities of credit institutions, purchase shares in Portuguese companies or real estate assets in Portugal — with the exception of the representative office's own premises).

Authorisation of credit institutions with head office in Portugal

The authorisation for setting up a credit institution in Portugal (as part of the single supervisory mechanism) is of the exclusive competence of the European Central Bank, which decides based upon the proposal of the BoP.

The authorisation for setting up a credit institution must be addressed to the BoP. The request must contain information regarding the type of credit institution to be set-up, its activity program, identification of the shareholders, suitability of the shareholders' structure to the stability of the credit institution, solid corporate governance mechanisms, identification of the members of the board of directors and supervisory corporate body.

The BoP must notify the applicant with the decision of granting or refusing authorisation within 6 months counting from the date when the BoP received the request or after receiving additional information that may have been requested, which should never be more than 12 months after the initial authorisation request. If no decision is notified within this deadline, the request is deemed refused.

Credit institution with head office in an EU member state

Credit institutions with head office in another EU member state may operate in Portugal within the same terms they are authorised to operate in their home country, by setting up a branch in Portugal or providing the services on a cross-border basis

under the freedom to provide services regime (EU passport). In both cases, the home supervisory entity must notify and provide the relevant information on the authorised entity and services to be provided to the BoP.

The BoP should notify the supervisory authority of the home member-state within two months after receiving the relevant information from that supervisory authority. From the moment when the supervisory authority of the home member state is notified, or in case the BoP does not act within such time (deemed consent), the branch may start operating in Portugal.

Credit institution with head office in a third country

A credit institution authorised in a non-EU member state may operate in Portugal by setting up a branch. An authorisation request must be addressed to the BoP together with information regarding, notably, the activity program, address, identification of the persons responsible for the branch, equity, solvency ratio and detailed information on the deposit guarantee scheme and investors' guarantee scheme on which the institution participates on and also proof of security of the funds that are trusted to it, the localisation of the branch, provision financial accounts for three years, copy of the bylaws of the institution.

The authorisation is notified by the BoP to the European Commission, the European Banking Authority and the European Banking Committee.

Further to the authorisation of the BoP being granted, the institution must be registered before the BoP within 30 days thereof.

Furthermore, in case where the activity of the credit institution involves the provision of financial intermediation services, the BoP notifies the granting of the authorisation to CMVM. Financial intermediaries must be registered with CMVM for each one of the intermediation services the applicant intends to provide.

The registry is granted by CMVM within 30 days (being possible that this deadline is postponed if further documentation is required by CMVM). If no decision is notified within this deadline, the request is deemed refused. The authorisation request must be sent together with information attesting that the applicant possesses the human, material and technical required for the credit institution to provide the intended services. Specific information will apply differently for each one of the financial intermediation services to be provided by the applicant.

Other authorisations

Payment service providers and electronic money institutions must also be authorised by the BoP, being subject however to a specific legal regime (Legal Framework applicable to the Payment Service Providers and Electronic Money Institutions approved by Decree Law 317/2009, dated October 30, as amended).

The setting up of financial companies, investment firms and collective investment undertaking management companies must also be authorised by the Bank of Portugal, following the above with certain amendments, with certain particularities – such as the fact that these entities are not subject to the requirement on deposit guarantee scheme and in certain cases the notifications are made, or also made, by the home countries to the CMVM.

Capital reserve requirements

In prudential matters, the BoP legal framework reflects, in general, the rules in place in the European Union, which was based on the standards defined by the Basel Committee on Banking Supervision in the Basel II and Basel III Agreements. In this matter, the primary source is the Capital Requirements Regulation (Regulation 575/2013 of the European Parliament and of the Council, dated June 26, 2013, the CRR), directly applicable in Portugal, and the Capital Requirements Directive (Directive 2013/36/EU of the European Parliament and of the Council, the CRD IV).

Under the CRR, institutions must maintain a Common Equity Tier 1 (CET1) capital of at least 4.5 percent of their risk-weighted assets (RWAs), a Tier 1 capital of at least 6 percent of their RWAs and a total capital of at least 8 percent of their RWAs.

The BoP had determined that Portuguese credit institutions and investment firms were only required to have a CET1 ratio not below 7 percent but this transitional arrangement for own funds ended with BoP's Notice 10/2017.

Furthermore, the BoP requires a minimum registered share capital for the incorporation of regulated entities, depending on their nature (Decree 94/95 dated 9 February, as amended from time to time), which sets forth, among others, the following minimum registered share capital:

- Banks: 17,500,000 euros;
- Investment companies: 5,000,000 euros;
- Financial credit institutions: 10,000,000 euros;
- Financial credit companies: 7,500,000 euros;
- Leasing companies: 3,000,000 euros (moveable assets only) / 5,500,000 euros (in all other cases);
- Broker-Dealers: 3,500,000 euros;
- Factoring companies; 1,000,000 euros;
- Brokerage firms: 350,000 euros;
- Asset management companies: 250,000 euros;

- Collective investment undertaking management companies: 125,000.00 euros.

Global legislation applicable to country

As a member of the European Union, the primary source of legislation applicable in Portugal is the European Union legislation – please refer below to "Applicable European legislation".

Applicable European legislation

In general Portuguese Law reflects closely European Law. European Directives are subject to implementation by the Portuguese legislator to be enforceable in Portugal; differently, European regulations are directly applicable to all member-states and thus Portugal.

Please find below a non-exclusive list on the main directives pending implementation and regulations applicable in Portugal within the banking and securities sectors.

Directives

Banking

Directive 2015/2366/EU of the European Parliament and of the Council of November 25, 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC, complemented by Regulation (EU) 2015/751 (PSD II).

Securities

Directive (EU) 2017/828 of the European Parliament and of the Council of May 17, 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement.

Regulations

Banking

- Regulation (EU) 2015/847 of the European Parliament and of the Council of May 20, 2015 on information accompanying transfers of funds;

- Regulation (EU) No 575/2013 of the European Parliament and of the Council, dated June 26, 2013, on prudential requirements for credit institutions and investment firms;

- Council Regulation (EU) No 1024/2013 of October 15, 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions;

- Regulation (EU) No 1092/2010 of the European Parliament and of the Council of November 24, 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board;

- Council Regulation (EU) No 1096/2010 of November 17, 2010 conferring specific tasks upon the European Central Bank concerning the functioning of the European Systemic Risk Board.

Securities

- Regulation (EU) No 600/2014 of the European Parliament and of the Council of May 15, 2014 on markets in financial instruments;

- Regulation (EU) No 596/2014 of the European Parliament and of the Council, dated April 16, 2014 on market abuse (market abuse regulation);

- Regulation (EU) No 1286/2014 of the European Parliament and of the Council, dated November 26, 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs);

- Regulation (EU) No 648/2012 of the European Parliament and of the Council of July 4, 2012 on OTC derivatives, central counterparties and trade repositories;

- Regulation (EU) 2017/1129 of the European Parliament and of the Council of June 14, 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC.

Domestic laws (including proposals before parliament)

The main legal source for banking activity in Portugal is laid in the Legal Framework of Credit Institutions and Financial Companies (approved by Decree Law 389/92, dated December 31, as amended from time to time), which sets forth the rules to access and carry out regulated activity by credit institutions and financial companies, as well as the supervision of these entities, and supervisory powers and instruments.

On its turn, the legal basis for the securities regulation is laid in the Securities Code (approved by Decree Law 486/99, dated November 13, as amended from time to time), which sets forth the rules applicable to the financial intermediaries and the carrying out of financial intermediation over securities.

As referred MIFID II has been implemented in Portugal by Law 35/2018, dated July 20, further to which, inter alia, the Legal Framework of Credit Institutions and Financial Companies and the Securities Code have been amended and new legal regimes were implemented, in particular the legal framework on the creation, marketing and provision of consulting services regarding structured deposits and PRIIPs, together with amendments to the derivatives market.

Furthermore, the rules of the Portuguese Companies Code (approved by Decree Law 262/86, dated September 2) also apply to regulated companies when incorporated as commercial companies, in what is not specially regulated within the specific legislation applicable to them.

Payment service providers and electronic money institutions are regulated in a separate legal regime (Decree Law 317/2009, dated November 3) which is expected to be amended soon further to the implementation of PSD II.

The regulators also have legislative powers which are binding to the entities subject to its supervision. The BoP issues notices (avisos), instructions (instruções) and circulars (cartas circulares) – the latter being of interpretative nature only - and CMVM issues regulations and instructions, which further regulate duties and obligations applicable to these entities.

Finally, Euronext Lisbon (Portuguese regulated market) and Interbolsa (domestic manager of securities settlement systems and centralised securities systems) also issue regulations that apply to their members.

Product specific legislation

Markets

The overall rules regarding markets and trading are contained in the Securities Market, which regulates financial intermediation activity defined as comprising investment services in financial instruments, ancillary services, managing collective investment undertakings, together with the regulations and instructions issued by CMVM.

In addition, specific harmonised rules (Rule Book) applicable to trading are applicable to the members of Euronext Lisbon on trading and exchange rules.

Foreign exchange transactions are regulated in Portugal in Decree-Law 295/2003, dated November 21, as amended. Under Portuguese Law the sale and purchase of foreign currencies and transfers abroad in a foreign currency are considered as foreign exchange transactions.

The sale and purchase of foreign currency comprises, among others, spot and forward exchange contracts, currency swaps, futures and options, as per Notice of the Bank of Portugal 1/99, as amended. Certain foreign exchange transactions are considered as complex financial instruments, such as forward foreign exchange transactions, being subject to a specific legal regime (Regulation 2/2012 of the CMVM, soon to be replaced by a new regulation from CMVM further to the implementation of MIFID II).

The regular purchase and sale of foreign currency with the intent of profit is deemed undertaking foreign exchange trade business. Only credit institutions or financial entities duly authorised to carry on foreign exchange trades are entitled to

undertake such activity in Portugal.

In Portugal the legal regime applicable to short selling is set forth in the Securities Code and European regulation 236/2012 on short selling and certain aspects of credit default swaps, as amended by Regulations (EU) 827/2012, of June 29, 918/2012 and 919/2012, July 5.

As a general rule, in Portugal short selling is possible provided that the issuer of the sale order guarantees the acquisition of the securities until the order is issued. Furthermore, restrictions are applicable in shares and sovereign debt, and short positions in sovereign CDS are banned (although it might be lifted under certain conditions).

These restrictions apply to any European market concerning any investor (regardless of their residence or the order's place of issue), including intraday short sale transactions (those wherein the investor plans to buy back securities in the session). No investor may carry out short selling without obtaining prior guarantees of the securities (e.g. on loan) or without at least a duly qualified third entity (financial intermediary that meets specific requirements) confirming the allocation of shares that are to be sold (known as "locate rule"). The investors should obtain and retain proof of obtaining the preliminary allocation statement.

The rules on trading derivatives are primarily set forth within the Securities Code, which defines them by referring to MIFID II. Services and investment activities over financial instruments, including derivatives, is deemed a regulated activity which may only be pursued by an entity duly licensed as financial intermediary.

In addition, reporting, clearing and portfolio reconciliation measures are regulated within the European regulation EMIR (European Markets Infrastructure Regulation, Regulation 648/2012, dated July 4, as now amended by MIFID II). Further to this regulation, Portugal has enacted the Decree Law 40/2014, dated March 18, which assures the enforceability of EMIR, naming the supervisory authorities (which are the BoP, the CMVM and the Insurance Supervisory Authority, depending on the regulated entity) and sets forth the sanctioning framework, as now amended pursuant to the implementation of Law 35/2018 (implementing the MIFID II).

The Securities Code also regulates bonds (included in the definition of securities). Public offer and private placement of bonds must comply with the rules set forth therein, which follows European Law and in particular the Prospectus Directive (Directive 2003/71/EC, of the European Parliament and of the Council, dated November 4, on the prospectus to be published when securities are offered to the public or admitted to trading, and Directive 2010/73/EU of the European Parliament and of The Council, dated November 24, 2010, amending the Directive 2003/71/EC).

Public offer is defined as an offer of securities aimed at undetermined recipients, as well as an offer to an all shareholders of a listed company, when such offer is preceded of prospection or intention gathering before undetermined investors or by marketing or an offer that is offered to more than 150 not professional investors.

When issued by a commercial company, the issue of bonds must also comply with the rules set forth in the Companies Code.

Banking / Credit institutions

Mortgages

The two most common types of security interests which may be created under Portuguese law are:

(i) the mortgage, which entitles the beneficiary, in the event of default of an obligation, to be paid with preference to non-secured creditors from the proceeds of the sale of immovable assets (such as land) or rights relating thereto or of movable assets subject to registration (such as automobiles, ships, planes); and

(ii) the pledge, which confers rights similar to those of the mortgage but is created in respect of moveable (non-registered) assets or credits.

Portuguese rules on mortgage loans for consumers relating to immovable property have been amended dated as of January 1, 2018, pursuant to Decree-Law no. 74-A/2017, dated June 23, which partially implemented Directive 2014/17/EU of the European Parliament and of the Council, dated February 4, 2014, also known as the Mortgage Credit Directive (the rules for credit intermediaries and credit intermediary activity was transposed by Decree Law 81-C/2017, dated July 7).

Mortgage loans are defined as loan agreements for the acquisition or construction of own house, secondary or for renting; loan agreements for the acquisition or maintain property rights over existing fields or buildings and loan agreements that, irrespective of the purpose, are secured by a mortgage or equivalent security usually used over immovable assets or secured by a right respecting property.

The new rules introduced amendments in the information to be provided to the consumer, contractual proposal and reflexion period granted to the consumer and guarantor and to the commission's calculation, preventing the application of floors to the applicable interests (relevant in the current context of negative interest rates). In addition, Law 32/2018, dated July 18 has implemented the obligation of the banking entities to reflect entirely the decrease of the Euribor rate (or other indexes used) in these contracts, amending said Decree-Law 74-A/2017, matter that has been under discussion following the variable component of some interest rates reaching a negative value that is higher than the contractually agreed margin (in case of variable interest rates).

Securities firms

Enforcement and investigation

The breach of rules under the Securities Code and related legislation may qualify as a crime or administrative offence.

In case of criminal offences, CMVM must notify the public attorney (ministério público) which has the jurisdiction to conduct the criminal proceeding (e.g., insider trading and market manipulation).

In case of administrative offences the competence is of the CMVM, which may investigate and apply penalties to the offender. Sanctioning powers of CMVM have been revised by Law 28/2017, dated May 30, pursuant to the implementation of the Directive 2014/57/EU of the European Parliament and of the Council, dated April 16, including the Commission Implementing Directive (EU) 2015/2392 dated December 17 on Regulation (EU) No 596/2014 of the European Parliament and of the Council as regards reporting to competent authorities of actual or potential infringements of that Regulation.

In accordance to the current framework, fines are applicable to the offender, which may range between 5,000 euros and 5,000,000 euros depending if the offender is a natural or legal person and on the severity of the offence.

The maximum limits may be increased in the following cases (i) to the triple of the economic benefit obtained; (ii) in the specific case of very serious offences, to an amount corresponding to 10 percent of the total annual turnover, if higher, according to the last available accounts and (iii) in case of usage or channelling of privileged information and market manipulation, to an amount corresponding to 15% of the total annual turnover.

Ancillary penalties may also apply, which comprise loss of the gains obtained with the infraction, interdiction applicable to carrying out of certain management functions, publishing of the decision, amongst others.

Complaints and redress

CMVM has a department for the relation with the investor (*Departamento de Relação com o Investidor e Desenvolvimento do Mercado*), which receives and analyses complaints filed by non-professional investors regarding the activity, operations of entities subject to its supervision or regarding the financial instruments in general. CMVM also provides mediation services to investors.

Further to the evaluation conducted by CMVM an opinion is issued which is sent to the envisaged entity. In case of suspect of breach of the applicable rules, CMVM may open an investigation against such entity. In case such breach is confirmed, the envisaged entity may be obliged to compensate the investor.

In case of insufficiency of assets of the financial intermediary, non-professional investors may benefit of the investors' protection scheme (SII) to which all authorised financial intermediaries are participants.

Creditor hierarchy

Insolvency

Regulation (EU) 848/2015 of the European Parliament and of the Council of May 20, 2015 (the EU Insolvency Regulation 2017), which became effective as of June 26, 2015, but which applies to insolvency proceedings opened after June 26, 2017 (the EU Insolvency Regulation remaining applicable to insolvency proceedings opened before that date) applies directly to Portugal as a EU member state.

Insolvency proceedings available in Portugal are regulated by the Portuguese Insolvency and Recovery Code (CIRE) approved by Decree-Law no. 53/2004 and most recently amended by Decree-Law no. 79/2017.

As a general rule insolvency proceedings governed by the CIRE are applicable to all persons and entities, subject to certain exceptions, such as public entities, state-owned companies and insurance companies, credit institutions, financial companies, investment companies, which render services related with the holding of funds or securities on behalf of third parties, and collective investment schemes to the extent that the submission to the insolvency proceeding would be

contradictory/incompatible with the special legal frameworks of such entities.

These proceedings may lead either to the restructuring of the business (by the approval of an insolvency plan) or to the liquidation of the assets of the debtor.

Upon a filing for insolvency proceedings, the court issues an insolvency declaration, and the creditors of the insolvent debtor (including secured creditors) have to claim the acknowledgement of all debts owed to them by the debtor, providing documentation to justify such debts, within a period of up to 30 days.

Based on the documentation provided by the creditors and documentation held by the debtor, the insolvency administrator draws up a list of acknowledged creditors and classifies them according to the categories established under law:

- (a) Secured credits: credits secured by in rem guarantees (*garantias reais*) including special statutory liens (*privilégios creditórios especiais*), e.g.:
  -Real estate special statutory liens (e.g.: state credits related with real estate property tax *IMI*)

  -Third parties credits (e.g. mortgage, income assignment, pledge)

  -Movable assets special statutory liens (e.g. credits resulting of justice expenses incurred in the interest of the creditors

- (b) Privileged credits: credits secured by general statutory liens (*privilégios creditórios gerais*) over assets integrated in the insolvency estate up to the amount corresponding to the value of the assets granted in guarantee or the general statutory liens, e.g.:

  -Labor, tax and social security debts;

  -Real estate general statutory liens.

- (c) Common credits: all credits not included in any other category.

- (d) Subordinated credits: (classified as such by virtue of the underlying credit agreement or pursuant to law). Subordinated credits include, among others, credits held by parties in special relationships with the debtor, such as, in the case of an individual, credits held by his/her relatives; in the case of a legal entity, credits held by the administrators, group companies and controlling shareholders or shareholders in a group relationship. Certain subordinated creditors are not entitled to vote on the restructuring arrangement and usually subordinated creditors have very limited chances of collection, as a result of the ranking established by law.

The payment will be performed according to the credit ranking, being firstly paid the secured credits, followed by privileged credits (in the event of liquidation, they are the first to collect payment against the assets on which their debt is secured or over which they have privileges in the order established by law), common credits and finally subordinated credits. If the assets of the

insolvency estate are insufficient to fully pay all creditors, the payment to common creditors will be made by apportionment amongst all creditors and in proportion of their credits. The payment of subordinated credits will only take place after full payment of common credits.

Credit institutions and financial companies with head office in Portugal and its branches set up in another member state have a special regime of liquidation and recovery procedures established in Decree Law 199/2006, dated October 25, which implemented in Portugal Directive 2001/24/CE of the European Parliament and of the Council, dated April 4.

Banking resolution

Banking resolution rules are set forth in the Legal Framework of Credit Institutions and Financial Companies and follow in general the EU Banking Recovery and Resolution Directive, the BRRD (Directive 2014/59/EU of the European Parliament and of the Council dated May 15, 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms was implemented in Portugal in 2015 (Law 23-A/2015, dated March 26).

The BoP may apply resolution measures whenever the supervised entities may need to cease to be duly authorised for the pursuit of a banking activity or present a 'serious risk' of non-compliance.

According to the "no creditor worse-off principle", no creditor can be put in a worse situation resulting from a resolution measure than it would be in a winding-up procedure.

The resolution measures applicable under Portuguese Law are (i) the transfer, in full or partial, of the activity of the entity in distress; (ii) the transfer, in full or partial, of the activity of the entity in distress to a bridge bank; (iii) segregation and partial transfer of the activity of the entity in distress to an asset management vehicle and (iv) internal recapitalisation of that entity.

On August 3, 2014 the BoP applied for the first time a resolution measure pursuant to the legal regime which entered into force in 2012. Pursuant to the resolution measure applied by the Bank of Portugal to Banco Espírito Santo, S.A., the major part of the banks' assets (the "good" assets) was transferred to a bridge bank (Novo Banco).

The BoP may apply corrective measures over the entity in financial distress – not necessarily having to apply a resolution measure as a measure of first instance.

This may happen in case of a credit institution that is undercapitalized and may consist – among a vast array of corrective tools available to the Bank of Portugal - of a restructuring plan presented by the credit institution, setting out recovery measures such as (i) a share capital increase, a reduction thereof or the disposal of shareholdings or other assets; (ii) the suspension or replacement of one or more members of its management and supervisory corporate bodies; or (iii) performing certain transactions under the approval of the BoP.

Data protection

CNPD (*Comissão Nacional de Proteção de Dados*) is the Portuguese Data Protection Authority, an independent body endowed with the powers to regulate, supervise and monitor compliance with the laws and regulations regarding personal data protection,

mainly the General Data Protection Regulation (GDPR) and the Portuguese data protection Act, throughout the national territory.

The CNPD has investigative powers, having access to any data processing activities and powers of authority, particularly those of ordering the restriction, erasure, or imposing a temporary or permanent ban on the processing of personal data, as well as powers to impose fines for any violation of data protection laws.

Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data - General Data Protection Regulation (GDPR) is applicable in Portugal as of May 25, 2018.

The GDPR seeks the strengthening and setting out in detail of the rights of natural persons related to their personal data (e.g., rights to information, data portability, access to and rectification or erasure of data), determines the legal grounds for the processing and the obligations of those who gather, process and control the processing of personal data, as well as equivalent powers for monitoring and ensuring compliance with the rules for the protection of personal data and equivalent sanctions for infringements in the Member States.

The Ministry of Presidency and Administrative Modernization set up a working group with the purpose of preparing Portuguese legislation for the application of the GDPR. The Council of Ministers approved a Draft Bill No. 120/XIII that will ensure the implementation of the GDPR in Portugal. This draft bill is still subject to changes as it will have to be approved by the parliament. The first discussion of the draft bill in parliament was held on May 3, 2018, where it was heavily criticized by several parties

Whilst the implementing law of the GDPR is not approved, the Portuguese Data Protection Act (Law 67/98, of 26 October) remains applicable in the matters not regulated by the GDPR, e.g. criminal liability arising from illegal data processing activities.

The SC includes sector specific data protection rules, mainly reverting to the rules stipulated in the Data Protection Act and the GDPR, namely, the information regarding the categorization of investors, systems of notice and registry of infractions or non-compliance, as well as information concerning complaints or claims lodged with this market authority,

Financial promotion

The promotion of any banking or security activity or services in Portugal will be qualified as marketing and an unlicensed activity (unless already licensed in Portugal). Please note however that article 42 of MIFID II has been pretty much reflected into domestic law and therefore, in case the activity or service is requested at the own exclusive initiative of the prospect, a licensing exemption shall apply.

Publicity of financial products and services are subject to a special regime set forth by Notice 10/2008, applicable to the credit institutions and financial companies in marketing material respecting financial products and services subject to the supervision of the BoP. The regime imposes to the entities duties of information and transparency, determining fixed minimum requirements irrespective of the mean of communication used.

Furthermore, rules on marketing on funds distribution may be found in the Legal Regime applicable to Collective Investment Undertakings, approved by the Law 16/2015 dated February 24 and related Regulation 2/2015, which defined marketing as any activity aimed to investors with the purpose of advertising subscription or to offer subscription of participation units in a collective

investment undertaking, by any mean of advertising or communication.

General rules on publicity (set forth in the Publicity Code, approved by Decree Law 330/90, dated October 23) are also applicable to the marketing of regulated products, in what it is not specially regulated in specific legislation.

Market Abuse

The Securities Code sets forth the prohibition of market manipulation and the use and transmission of privileged information, including the applicable safe harbours, by reference to the Regulation (EU) 596/2014/EU of the European Parliament and Council of April 16, repeals and replaces the Market Abuse Directive (2003/6/EC) and implementing legislation, directly applicable in Portugal.

In addition, CMVM imposes several information duties in the context of the prevention of market abuse (notably Regulation 5/2008 regarding the information on relevant facts by the listed companies, including voting rights) publishing guidelines on what is considered as acceptable or not acceptable market practices.

Corporate governance

Remuneration and bonuses

Portuguese legislation, as in the other matters, follows closely the European rules on corporate governance matters.

In particular, in the banking sector, it implemented Directive 2013/36/EU of the European Parliament and of the Council of June 26, 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (through Decree-law 157/2014, dated October 24) following the international guidelines issued on the matter – in particular of the European Banking Authority and Committee of European Banking Supervisors Guidelines on Remuneration Policies and Practices.

The Legal Framework of Credit Institutions and Financial Companies sets forth the general rules applicable to corporate governance, in particular the rules on the separation of functions within the corporation and the avoidance of the conflict of interests and remuneration policy, in particular, the legal framework includes the provisions of the Capital Requirements Regulation (CRR) and the Capital Requirements Directive of June 26, 2013 (CRD IV) in what concerns putting in place remuneration policies that are consistent with their risks.

In general terms, the remuneration policy must comply with the following principles in a manner and to the extent that is appropriate to its size, internal organisation and the nature, scope and complexity of their activities:

- a) To promote sound and effective risk management and not to encourage risk-taking that exceeds the level of tolerated risk of the institution;

- b) To be in line with the business strategy, objectives, values and long-term interests of the institution, and to incorporate measures to avoid conflicts of interest;

- c) Staff engaged in control functions to be independent from the business units they oversee, have appropriate authority, and be remunerated in accordance with the achievement of the objectives linked to their functions, independent from the performance of the business areas they control;

- d) To establish that the remuneration of the senior officers in the risk management and compliance functions is directly overseen by the remuneration committee or, if such a committee has not been established, by the management body in its supervisory function;

- e) To make a clear distinction between criteria for setting basic fixed remuneration, which should primarily reflect relevant professional experience and organisational responsibility as set out in an employee's job description as part of the terms of employment, and variable remuneration, which should be based on sustainable and risk-adjusted performance as well as fulfilment of tasks beyond what is required as part of the terms of employment.

Credit institutions that are significant in terms of their size, internal organisation and the nature, scope and complexity of their activities shall establish a remuneration committee composed of members of the board of directors who do not perform any executive function.

This committee is responsible for preparing decisions regarding remuneration, including the decisions implying risk and risk management in respect to the credit institution. When performing the aforementioned tasks, the remuneration committee must observe the long-term interests of the shareholders, of the investors and other stakeholders of the credit institution, as well as public interest.

In particular, the determination of the variable remuneration, it should be taken into the account the following rules:

- a) The total amount of remuneration is based on a combination of the assessment of the performance of the individual, taking into account financial and non-financial criteria, and of the business unit concerned and of the overall results of the credit institution;

- b) The assessment is set in a multi-year framework to ensure that the assessment process is based on longer-term performance and that the actual payment of performance-based components of remuneration is spread over a period which takes account of the underlying business cycle of the credit institution and its business risks;

- c) The measurement of performance used to calculate variable remuneration components includes an adjustment for all types of current and future risks and takes into account the credit institution's cost of capital and liquidity required.

The remuneration policy must be subject to approval of the general meeting of shareholders on an annual basis. Furthermore, the remuneration committee must revise the implementation of such policy at least on an annual basis.

Members of the management and supervisory boards, senior management and key function employees must comply with the requirements set forth in the Legal Framework of Credit Institutions and Financial Companies, and the regulations issued by the BoP on suitability, professional qualification, independence and availability. Additionally, members of the management and supervisory boards of credit institutions that are significant in size may not hold more than four non-executive positions simultaneously, or one executive position with two non-executive positions, with the exception of positions in management and supervisory boards of entities included in the same banking supervision consolidated scope.

In addition to the above, general rules on corporate governance set forth in the Companies Code are also applicable if the entity is set up in the form of a commercial company.

In the securities market, the CMVM and the IPCG (the Portuguese Institute of Corporate Governance) entered into a cooperation protocol, further to which it has been implemented a corporate governance code that entered into force in January 2018.

Together with the new corporate governance code CMVM has established mechanisms of monitoring in order to assess the level of compliance of the issuers with the corporate governance code. The principle comply or explain is applicable herein, whereby the regulated companies that do not comply with the code must explain their reasons for not doing so.

The code will be updated on an annual basis in order to be updated with the best market practices in place.

The transposition of MIFID II also introduced changes to the organizational duties of financial intermediaries, in particular with respect to matters of governance and approval or production and/or distribution of financial instruments produced directly or by third parties (product governance), with the financial intermediaries that provide such investment services or activities required to identify, prior to the marketing and/or distribution of such services or activities, the risks associated with such market and their suitability to the characteristics of customers for which the product is intended. Additionally, a more restrictive regime to the benefits, remuneration and commissions (inducements) received from third parties, namely under portfolio management or investment advice services.

The following rules have now been included in the Securities Code with respect to the duties of conduct on the part of financial intermediaries:

- a) The provisions that define the list of instruments considered as non-complex for purposes of the "simple execution" regime, which expands the range of situations in which verification of the operation's suitability for the customer's profile is required.

- b) The provisions governing the possibility of a financial intermediary offering to or receiving non-pecuniary remuneration, commission or benefit (inducements) from third parties relating to the provision of a financial intermediation activity are amended, strengthening the duties to inform customers and establishing requirements for a benefit not to be considered illegitimate.

- c) Duties to inform customers and the public about best execution needs include the requirement of annual disclosure of the five mostly commonly used trading venues and the results obtained.

- d) Financial intermediaries must ensure that employees who provide financial intermediation services have the necessary professional qualifications and experience and that their remuneration and evaluation policy is defined in order to safeguard the duty to act in the interest of their customers.

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