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PORTUGAL

By

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A. THE BANKING SYSTEM

i. Definition of “Bank”

Until the enactment of the banking law reform of 1993 (through Decree-Law Number 298/92 of 31 December 1992), the concept of bank consisted of three categories:

1. The issuing banks;
2. The commercial banks; and
3. The investment banks.¹

This traditional division was to end with the new Portuguese Credit Institutions and Financial Companies Legal Framework² (*Regime Geral das Instituições de Crédito e das Sociedades Financeiras*, the “Banking Law” or

1 Decree-Law Number 41403 of 27 November 1957; Decree-Law Number 42641 of 11 November 1959.

2 Decree-Law Number 298/92 of 31 December 1992, amended by Decree-Law Number 246/95 of 5 December 1995; Decree-Law Number 222/99 of 22 June 1999; Decree-Law Number 250/2000 of 13 October 2000; Decree-Law Number 285/2001 of 3 November 2001; Decree-Law Number 201/2002 of 26 September 2002; Decree-Law Number 319/2002 of 28 December 2002; Decree-Law Number 252/2003 of 17 October 2003; Decree-Law Number 145/2006 of 31 July 2006; and Decree-Law Number 104/2007 of 3 April 2007. Approved by Decree-Law Number 298/92 of 31 December 1992, amended by Decree-Law Number 246/95 of 5 December 1995; Decree-Law Number 222/99 of 22 June 1999; Decree-Law Number 250/2000 of 13 October 2000; Decree-Law Number 285/2001 of 3 November 2001; Decree-Law Number 201/2002 of 26 September 2002; Decree-Law Number 319/2002 of 28 December 2002; Decree-Law Number 252/2003 of 17 October 2003; Decree-Law Number 145/2006 of 31 July 2006; Decree-Law Number 104/2007 of 3 April 2007; Decree-Law Number 357-A/2007 of 31 October 2007; Decree-Law Number 1/2008 of 3 January 2008; Decree-Law Number 126/2008 of 21 July 2008 and Decree-Law Number 211-A/2008 of 3 November 2008.

the “Banking Act”), which provides for the legal framework of the credit institutions and financial companies acting in Portugal.

Complementing the enforcement of European Union (EU) Directive 77/780/EEC and implementing Directives 89/646/EEC and 92/30/EEC, the Banking Act has implemented the concept of “universal bank”, which means that the concept of investment and commercial banks were merged into the more comprehensive concept of bank. Usually, Portuguese banks hold comprehensive licenses covering all forms of investment and banking business, including the acceptance of deposits.

Portuguese banking legislation and doctrine usually recognize banks as the major player in the banking market, and credit institutions are generally referred to as banks, despite banks being only one out of many legal types of credit institutions listed in the Banking Act. Notwithstanding and in accordance with the Banking Consolidation Directive,³ it is generally assumed that the whole regulatory banking system is based on the credit institution definition, notably in regards to the authorization for the incorporation process. Therefore, the definition of credit institution is set out in article 2 of the Banking Act, as follows:

A credit institution is an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account and issuing means of payment in the form of electronic money.

The Banking Act harmonized the Portuguese legislation with EU Directives replacing older rules and establishing a comprehensive regulatory framework.

ii. Types of Banks

a. *In General*

In the past, financial undertakings were divided into credit institutions, para-banking institutions, and ancillary credit institutions. The Banking Act abolished this classification and divided financial undertakings into credit institutions and financial companies.

Now, the types of credit institutions in which banks are included are listed and classified in article 3 of the Banking Act, as follows:

1. Banks;
2. The National Savings Bank (*Caixa Geral dos Depósitos*);
3. Saving banks (*caixas económicas*);

³ Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000, as amended by Directive 2006/48/EC of the European Parliament and the Council of 14 June, relating to the taking up and pursuit of the business of credit institutions.

4. Central Mutual Agricultural Credit Bank (*Caixa Central de Crédito Agrícola Mútuo*) and other mutual agricultural credit banks (*Caixas de Crédito Agrícola Mútuo*);
5. Credit financial institutions (*Instituições financeiras de crédito*);
6. Investment companies;
7. Financial leasing companies;
8. Factoring companies;
9. Credit purchase financing companies (*sociedades financeiras para aquisições a crédito*);
10. Mutual guarantee companies (*sociedades de garantia mútua*);
11. Electronic money institutions; and
12. Other institutions which meet the definition of credit institution.

Only bank entities listed in items 1–5, above, are allowed to accept deposits from the public. Other credit institutions may only carry out those activities which are specifically provided by the laws and regulations governing their specific activity. Therefore, investment companies, financial leasing companies, factoring companies, credit purchase financing companies, and other non-banking credit institutions are not allowed to receive deposits from the public. Additionally, credit financial institutions are allowed to carry out all banking activities, except to accept deposits.

b. The Bank of Portugal

The Bank of Portugal (*Banco de Portugal*) was established by a Royal Charter of 19 November 1846, to act as a commercial bank and issuing bank. It came about as the result of a merger of the *Banco de Lisboa* and the *Companhia de Confiança Nacional*, an investment company specialized in the financing of the public debt.

By 1887, the Bank of Portugal shared the right to issue banknotes with other institutions. With the publication of the Decree-Law of 9 July 1891, the Bank of Portugal became the sole issuer of bank notes for the mainland, the Azores, and Madeira.

Today, the Bank of Portugal, while an integral part of the European System of Central Banks (ESCB), operates in an international and mostly European environment marked by the Economic and Monetary Union (EMU). The Bank of Portugal's Organic Law was enacted in 1998⁴ to integrate the Bank of Portugal in the ESCB.

4 Law Number 5/98 of 31 January 1998, as amended by Decree-Law Number 118/2001 of 17 April 2001; Decree-Law Number 50/2004 of 10 March 2004; and Decree-Law Number 39/2007 of 20 February 2007.

The Bank of Portugal is the central bank of Portugal. It is entrusted with supervisory and regulatory powers over all banks and non-deposit-taking financial institutions operating in Portugal (with the exception of insurance companies and pension funds management companies). The Bank of Portugal has established rules for own funds requirements, reserve requirements, control of major risks, and provisions for specific and general credit risks, and it monitors compliance with these rules through periodic inspections, review of regularly filed financial statements and reports, and continuing assessment of adherence to current regulations. Infringements or violations of applicable regulations may give rise to warnings or penalties.

According to article 15 of the Bank of Portugal's Organic Law, the Bank will be responsible for the guidance and control of the money and foreign exchange markets.

Moreover, article 17 of the same Law outlines the Bank of Portugal competences; notably, in accordance with the legal rules on financial supervision, the Bank will be responsible for the supervision of credit institutions, financial companies, and other bodies legally subject to the Bank, by issuing Directives to guide their action.

c. *Banks*

Banks are the main players in the Portuguese banking market and the first type of credit institution to be listed in article 3 of the Banking Act. Banks are a special form of limited liability company (*sociedade anónima*) which, once authorized by the Bank of Portugal and registered with the Special Register for Credit Institutions at the Bank of Portugal, may undertake the activities statutorily contemplated for credit institutions.

As stated above, the model is the “universal” bank. However, the Banking Act does not prohibit banks to become specialists in either investments or commercial or retail banking, provided that they maintain the main activities of accepting deposits and lending.

d. *National Savings Bank*

The National Savings Bank was incorporated on 10 April 1876.⁵ It was at the forefront of Portuguese economic and social development over the last 132 years. It also has been a benchmark operator in the banking sector in terms of its support to households, companies, and domestic institutions.

Although operating as a universal bank, the National Savings Bank also is an example of a financial group which has specialized financial services credit institutions, such as a financial credit institution. Notwithstanding the fact

5 Charter of Law of 10 April 1876.

that the National Savings Bank is a bank whose operations are based on laws regulating the private sector, it is a state-owned financial institution and the only type of Portuguese bank with this type of equity structure. The National Savings Bank's legal framework is contained in Decree-Law Number 287/93 of 20 August 1993, which also includes its by-laws.

e. *Saving Banks*

The legal framework for saving banks is found in Decree-Law Number 136/79 of 18 May 1979⁶ and the Banking Act. Although they are non-profit entities, such as charitable institutions, they can carry on credit activities (with some limitations) as a business and under almost the same conditions as "universal" banks.⁷ Saving banks are private entities which carry on the following objectives:

1. Accepting deposits or other repayable funds; and
2. Lending, almost exclusively directed to the regional economy.

f. *Central Mutual Agricultural Credit Bank and Other Mutual Agricultural Credit Banks*

The Central Mutual Agricultural Credit Bank was incorporated on 20 June 1984 and is an active part of the cooperative credit sector. Among its major objectives, the Central Mutual Agricultural Credit Bank carries on lending and promotes and organizes the integrated mutual agricultural credit system, which is composed of the Central Mutual Agricultural Credit Bank and mutual agricultural credit banks.

The mutual agricultural credit banks' legal framework is provided by Decree-Law Number 24/91 of 11 January 1991. The mutual agricultural credit banks are credit institutions under the cooperative form and carry on agricultural credit functions for their members. They also may carry on other banking activities, inherent to the banking sector, as long as their legal framework does not prohibit it.

Mutual agricultural credit banks are considered as private entities of public utility, and they may be part of the integrated mutual agricultural credit system. A mutual agricultural credit guarantee fund was created by Decree-Law Number 182/87 of 21 April 1987, which was repealed by Decree-Law Number 345/98 of 9 November 1998.

6 Decree-Law Number 136/79 of 18 May 1979, as amended by Decree-Law Number 106/2007 of 3 April of 2007.

7 Decree-Law Number 136/79 of 18 May 1979, as amended by Decree-Law Number 319/97 of 21 November 1997 and Decree-Law Number 188/2006 of 11 May 2006, sets forth some corporate object limitations.

iii. Permissible Activities

As noted above, the Banking Act is the main legal framework regulating the activities of Portuguese banks and foreign banks established in Portugal, as well as other financial institutions. The Banking Act has harmonized Portuguese legislation with European Directives, replacing older rules and establishing a comprehensive regulatory framework.

Pursuant to Annex I of the Banking Consolidation Directive, article 4 of the Banking Act provides that banks may engage in:

1. Acceptance of deposits or other repayable funds;
2. Credit operations, including the granting of guarantees and other commitments, financial leasing, and factoring;
3. Money transmission services;
4. Issuance and administration of means of payment, e.g., credit cards, traveler's checks, and banker's drafts;
5. Trading for own account or for account of clients in money market instruments, foreign exchange, financial futures and options, exchange or interest-rate instruments, goods, and transferable securities;
6. Securities issues and placement and provision of related services;
7. Money broking;
8. Portfolio management and advice and safekeeping and administration of securities;
9. Management and management consultancy in relation to other assets;
10. Advisory services to undertakings on capital structure, industrial strategy, and related questions as well as advice and services relating to mergers and purchase of undertakings;
11. Dealings in precious metals and stones;
12. Acquisition of holdings in companies;
13. Trading in insurance policies;
14. Credit reference services;
15. Safe-custody services;
16. Leasing of movable property, under the terms allowed to financial leasing companies;
17. Provision of investment services as set forth by law, not covered by the preceding subparagraphs; and
18. Other similar transactions not forbidden by law.

iv. Types of Business*a. In General*

Banks are allowed to carry out all types of banking activities. Banks also may deal with issuing and underwriting securities, investing in equity and bond markets, advances on home loans, as well as holding business or personal accounts.

However, saving banks have some limitations regarding the allowed types of business. Saving banks may generally engage in the reception of reimbursable funds, lending, exchange operations, and rendering of services. Saving banks may carry on other operations, providing that they are authorized by the Bank of Portugal (on a case-by-case basis) and depending on the financial resources and structure of the saving bank. The business of mutual agricultural credit banks is similar to that of saving banks.

The Central Mutual Agricultural Credit Bank is authorized by law to carry on other types of business, including the reception of reimbursable funds, lending, payments intermediation and funds transfers, investment services, exchange operations, and agency agreements.

b. Protection of Depositors

A deposit guarantee fund was created⁸ as a public law legal person with administrative and financial autonomy, with the purpose of guaranteeing the repayment of deposits with credit institutions which are members thereof.

The fund is managed by a management committee and has several financial resources, including initial contributions from member credit institutions, periodic and special contributions, borrowed funds, and endowments. The fund covers, in full, the value of the cash credit balances of each depositor, when the value does not exceed 25,000.

A special law governs the guarantee of deposits taken by the mutual agricultural credit banks to the integrated mutual agricultural credit scheme.⁹ An indemnity investor's scheme was created¹⁰ with the purpose of guaranteeing the credits of non-institutional investors with participant entities which are not able to repay funds allocated to investment operations.

v. Business Form

Credit institutions having their head office in Portugal must meet certain legal requirements, one of them being the adoption of the form of public

8 Decree-Law Number 246/95 of 14 September 1995, implementing Directive 94/19/EC and amending the Banking Act (articles 154–173).

9 Decree-Law Number 345/98 of 9 November 1998.

10 Decree-Law Number 222/99 of 22 June 1999, implementing Directive 97/9/EC.

limited-liability company or share company (*sociedade anónima*). The basic legal characteristics and requirements of credit institutions may be summarized as follows:

1. They must correspond to one of the types envisaged in the Banking Act;
2. They must be incorporated as a share company;
3. They must have as exclusive social purpose the banking activity;
4. They must have a minimum capital stock, represented by nominative shares or registered bearer shares and fully paid up;
5. They must have a minimum of five shareholders,¹¹ and the identity of all shareholders having more than five per cent shareholding or voting rights must be disclosed and approved by the Bank of Portugal;
6. The managing of credit institutions must be conducted by a board of directors with a minimum of three directors, the day-to-day business can be delegated to a minimum of two directors, and all members of the board must be reputable persons with the necessary expertise and experience for the office;
7. The head office of credit institutions and effective administration must be located in Portugal;
8. They must present a corporate governance comprising solid procedures, including a clear structural organization, with well defined, transparent, and coherent responsibility guidelines;
9. They must organize effective strategies of identification, management, control, and communication of the risks that are or might be exposed; and
10. They must have adequate internal control mechanisms, including solid administrative and accounting procedures.

vi. Acquisition of Bank Ownership

Pursuant to the Banking Consolidation Directive, the Banking Act provides a special regime regarding the acquisition of bank ownership.¹²

To adapt Portuguese legislation to EC requirements, the Banking Act requires that any natural or legal person who proposes to hold, directly or indirectly, a

¹¹ Companies Code, article 488.

¹² Banking Act, articles 13(7) and 102–109.

qualifying holding¹³ in a credit institution must first inform the Bank of Portugal of his intention.

In addition, a Bank of Portugal notice is required when, from increases in a qualifying holding, there may result a proportion reaching or exceeding five per cent,¹⁴ 10 per cent, 20 per cent, 33 per cent, or 50 per cent of the capital or the voting held in the participated institution, or when the latter becomes a subsidiary of the acquiring entity.

The notice must be made when the initiative or set of initiatives intended by the person in question may result in any of the situations mentioned above, even if the result is not immediately assured. If the interested party fails to provide prior notice, the acquisition or increase in a qualifying holding may give rise to a ban on the exercise of voting rights, as set forth in article 105 of the Banking Act.

The failure to provide information also is sanctioned with an administrative fine of 249.40 to 14,963.94 or 748.20 to 74,819.68, depending on whether the offender is an individual or a collective body. The ban on the exercise of voting rights can be removed if the interested party subsequently provides notice and the Bank of Portugal does not oppose the plans. The Bank of Portugal must make a decision within three months from the date of notice.

vii. Authorization of Other Types of Financial Institutions

a. In General

As mentioned, the banking system encompasses credit institutions (banking and non-banking) and financial companies. Non-banking credit institutions types include:

1. Credit financial institutions (*Instituições financeiras de crédito*);
2. Investment companies;
3. Financial leasing companies;
4. Factoring companies;

13 A qualifying holding is defined in the Banking Act, article 13(7), as a direct or indirect holding in an undertaking, joint or separate, which for any reason makes it possible for its holder, by himself or by virtue of any special links with the voting rights of another participant, to exercise significant influence over the management of the participated entity. For purposes of the definition, significant influence over the management is presumed when the participant holds five per cent of the capital or of the voting rights of the participated entity. The Bank of Portugal may only consider this presumption as refuted, taking into account the information provided by the party concerned, where the holding is less than 10 per cent.

14 It may be lower if the Bank of Portugal deems that there is significant influence over the management; Banking Act, article 102(4).

5. Credit purchase financing companies (*sociedades financeira para aquisições a crédito*);
6. Mutual guarantee companies (*sociedades de garantia mútua*);
7. Electronic money institutions; and
8. Any other institutions that meet the definition of credit institution.¹⁵

Financial companies are undertakings which pursue one or more of the activities referred in article 4(1)(b)–(i) of the Banking Act, except for financial leasing and factoring. The types envisaged by the law are dealers and brokers, foreign-exchange or money-market mediating companies, investment fund managing companies, and credit card issuing or managing companies.

b. Non-Banking Credit Institutions

An amendment to the Banking Act was made by Decree-Law Number 201/2002 of 26 September 2002. The Decree-Law made certain changes to the banking rules due to the implementation of European regulations, and it amended a governing framework for credit and financial institutions that was in force since 1993.

One of the key changes was the addition of two new types of credit institution to the exhaustive list set out in article 3 of the Banking Act, i.e., electronic money institutions and financial credit institutions.

To implement Directive 2000/28/EC, article 3 of the Banking Act was revised to include electronic money institutions as a recognized form of credit institution. These are defined as banking entities with the exclusive corporate purpose of issuing means of payment in the form of electronic currency. The specific regime applicable to electronic money institutions is set out in Decree-Law Number 42/2002. The Decree-Law defines the object and scope of their corporate purpose and specifies the prudential requirements which apply to all financial institutions in relation to own funds and market risk.

Decree-Law Number 186/2002 of 21 August 2002 added financial credit institutions to the list of credit institutions set out in article 3 of the Banking Act. Article 1 of Decree-Law Number 186/2002 defines financial credit institutions as credit institutions having as their corporate object the same activities performed by banks, with the exception of taking deposits and other repayable funds from the public. These activities include:

1. Entering into financing agreements, including the provision of guarantees;
2. Leasing and factoring;

¹⁵ Non-banking credit institutions are subject to the same authorization procedures as banks, notably the incorporation process.

3. Issuing and managing credit cards, traveler's checks, and letters of credit;
4. Conducting monetary and currency exchange operations;
5. Conducting securities issuance operations;
6. Operating in inter-bank markets;
7. Advising and managing securities portfolios; and
8. Providing business consulting.

This new type of banking structure allows the performance of several banking activities that previously had to be conducted by various individual credit institutions. Thus, several companies within the same group can be merged into a new credit institution with a broader corporate purpose.¹⁶

c. Financial Companies

Article 5 of the Banking Act sets out the definition of financial company as the company which is not a credit institution but whose principal activity is to carry out one or more of the following financial activities (except for financial leasing and factoring):

1. Lending;
2. Offering money transmission services;
3. Issuing and administering means of payment, e.g., credit cards, traveler's checks, and banker's drafts;
4. Trading for own account or for account of clients in money market instruments, foreign exchange, financial futures and options, exchange or interest-rate instruments, goods, and transferable securities;
5. Participating in securities issues and placement and providing related services;
6. Engaging in money broking;
7. Offering portfolio management and advice, safekeeping, and administration of securities; and
8. Providing management and management consultancy in relation to other assets.

According to article 6 of the Banking Act, the types of financial companies include:

1. Dealers;
2. Brokers;
3. Foreign-exchange or money-market mediating companies;

¹⁶ As of June 2007, there were 17 financial credit institutions established in Portugal.

4. Investment fund management companies;
5. Credit card issuing or management companies;
6. Wealth management companies;
7. Regional development companies;
8. Capital risk societies;
9. Exchange offices;
10. Credit securitization fund management companies; and
11. Other companies classified as such by law.

Financial companies may only carry out the transactions permitted by the laws and regulations governing their activity. The establishment of financial companies with head office in Portugal depends on an authorization granted, on a case-by-case basis, by the Bank of Portugal.

A financial company must be one of the types envisaged in by law, pursue one or more of the activities referred to in article 4(1)(b)–(i) of the Banking Act, except for financial leasing and factoring, and have its legal minimum capital stock fully subscribed and paid at the time of incorporation.

viii. Banking Operations Abroad

a. Opening a Subsidiary Abroad

The opening of a subsidiary of a Portuguese credit institution in the EU is regulated by the Banking Consolidation Directive. Article 12 of the Banking Consolidation Directive specifies that approval to establish a subsidiary of an EU member state credit institution in another EU member state requires prior consultation with the central bank of the home member state (the Bank of Portugal).

A credit institution, having its head office in Portugal and wishing to open a subsidiary in a non-EU country, must notify the Bank of Portugal of its intention in advance. The Bank of Portugal may refuse the application when the financial situation of the institution is inadequate for the project. The decision must be taken within three months, and the lack of a decision will be considered as a refusal.

b. Establishing a Branch Abroad

Article 13(1) of the Banking Consolidation Directive enables credit institutions duly authorized in an EU member state to establish branches in another EU member state, provided that required proceedings are fulfilled.

Article 20 of the Banking Consolidation Directive and articles 36–42 of the Banking Act provide the legal framework for the activities of Portuguese

credit institution branches in other EU member states. A credit institution having its head office in Portugal and wishing to establish a branch in another EU member state must notify the Bank of Portugal of this intention in advance, providing the following information:

1. The member state within which it plans to establish a branch;
2. The program of operations, setting out the types of business envisaged and the structural organization of the branch;
3. The address of the branch in the host member state; and
4. The identity of those responsible for the managing of the branch.

The day-to-day management of the branch must be entrusted to at least two managers who are subject to all the requirements imposed on the members of the management boards of credit institutions. Under article 37(2) of the Banking Act, the amount of the credit institution's own funds and solvency ratio also must be provided, with a detailed description of the deposit guarantee system to which the institution contributes and which is intended to ensure the protection of the depositors in the branch.

The Bank of Portugal must, within three months of receipt of the information referred previously, communicate that information to the supervisory authority of the host country, certifying that the activities envisaged are covered by the authorization, and it must inform the institution concerned accordingly.

When there are doubts on the adequacy of the administrative structure or on the financial situation of the credit institution, the Bank of Portugal will refuse to issue the communication. Otherwise, the supervisory authority of the host country will notify the credit institution of its ability to establish the branch and indicate any special conditions which will govern the branch's activities in the host state.

The decision of the supervisory authority of the host country must be notified to the requesting credit institution within two months; otherwise, the Portuguese credit institution is allowed to open the branch in the host state. The branch may not carry out transactions which the institution is not permitted to carry out in Portugal or which are not mentioned in the program of operations required when the notification is done.

To establish a branch in non-EU states, the credit institution must follow the same procedures established for branches in an EU state. The Bank of Portugal may refuse the application when the administrative structure and financial situation of the institution are inadequate for the project. The decision must be taken within three months, and the lack of decision will be considered as a refusal. Reasons must be given for the refusal.

B. ESTABLISHMENT OF BANKS

i. Establishment of Credit Institutions

a. In General

The establishment of a credit institution depends on an authorization granted on a case-by-case basis by the Bank of Portugal.

The authorization must be notified to the European Commission. The following legal steps are applicable to banking and non-banking credit institutions.

b. Approval from the Bank of Portugal

As noted, the establishment of a credit institution is subject to the prior approval from the Bank of Portugal on a case-by-case basis.¹⁷

However, a special regime is applicable to the establishment of subsidiaries of EU and/or non-EU countries in Portugal. The establishment of an EU member state subsidiary must comply with the same requirements of any Portuguese credit institution. The taking up of a subsidiary means the establishment of a new entity, which has legal personality. Therefore, article 18 of the Banking Act, taking into consideration the duties set forth in article 12 of the Banking Consolidation Directive, specifies that the approval to establish a subsidiary of a credit institution of another EU member state in Portugal is dependent on prior consultation with the central bank of the home state. Prior consultation applies to three different circumstances, namely:

1. Establishment of a subsidiary of a credit institution authorized in another member state;
2. Establishment of a subsidiary of the parent undertaking of a credit institution authorized in another member state; and
3. Establishment of a subsidiary controlled by the same persons, whether natural or legal, that control a credit institution authorized in another member state.

If the credit institution to be established is a subsidiary of a credit institution having its head office in a non-EU state, the establishment authorization is incumbent on the Minister of Finance. This competence may be delegated to the Bank of Portugal.

¹⁷ Banking Act, article 6.

The application to the Bank of Portugal to obtain approval must include documents and information as indicated in article 17 of the Banking Act.¹⁸

The final decision from the Bank of Portugal must be reached and notified to the applicant within six months from the date when the application was filed, or from the date when additional information was submitted, but not exceeding 12 months from the date of application. If no decision is notified to the applicant in the required term, the application will be deemed as not accepted.

ii. Establishment Formalities

If the establishment of the credit institution is authorized, the following formalities must be fulfilled:

1. The subsidiary must be registered with the Companies National Registration Department (*Registo Nacional de Pessoas Colectivas*);
2. After the name certificate has been obtained and, on the Bank of Portugal approval, the credit institution must be incorporated by means of a public deed;
3. A statement for commencement of activities must be filed before the tax authorities;
4. The subsidiary must be registered in the Commercial Registry Department;

18 The documents and information to be provided to the Bank of Portugal are as follows: (a) identification of the type of financial institution to be incorporated and draft articles of association, (b) program of activities to be conducted by the credit institution, geographical location of such activities, organizational chart, human resources and other means involved in the operations, and forecast of accounts for the first three years of activity, (c) identification of shareholders, including the number of shares subscribed, (d) memo on the adequacy of the shareholding structure and the stability of the credit institution, (e) statement that the full amount of the initial share capital (10-million) must be deposited in a credit institution prior to the incorporation of the credit institution, (f) identification of a corporate governance comprising solid procedures, including a clear structural organisation, with well defined, transparent, and coherent responsibility guidelines, (g) organisation of adequate proceedings of identification, management, control, and communication of the risks that the credit institutions are or may be exposed, and (h) having effective internal control mechanisms, including solid administrative and accounting procedures. The following information must be provided in relation to a corporate entity having a qualified shareholding (more than five per cent shareholding or voting rights) in the share capital of the credit institution: (a) articles of association and identification of the members of the board of directors, (b) accounts for the last three years, (c) list of shareholders having a qualified shareholding, and (d) list of companies where shareholders of the subsidiary have qualified holdings and memo on the group structure.

5. The articles of association of the credit institution must be published in the *Official Gazette (Diário da República)*; and
6. The subsidiary must be registered with the Social Security Department.

iii. Registration with the Bank of Portugal

To commence its activities in Portugal, the credit institution must be registered with the Bank of Portugal within 30 days from the date of execution of the public deed of incorporation.¹⁹ The appointment of the board of directors and the audit board of the company also is subject to registration with the Bank of Portugal. To register the credit institution with Bank of Portugal, it is necessary to demonstrate that the company has already applied for registration with the Commercial Registry Department.

When authorizing the establishment of a credit institution, the Bank of Portugal is guided only by technical criteria. Pursuant to article 9 of the Banking Consolidation Directive, the Bank of Portugal may not require the application for authorization to be examined in terms of economic needs of the market. The Bank of Portugal may request additional information from the applicant and make the inquiries as deemed necessary. This is the only discretionary power of the Bank of Portugal during the establishment of credit institutions.

iv. Refusal or Withdrawal of Authorization

The powers of the Bank of Portugal to restrict, revoke, or withdraw the authorization are provided in the Banking Act. In addition, the authorization itself may lapse due to various causes. Article 20 of the Banking Act provides that authorization will be refused when:

1. The application for authorization is not accompanied by all the required information and documents;
2. The application file contains inaccuracies or false statements;
3. The institution to be established does not conform with its general requirements (see text, above);
4. The Bank of Portugal is not satisfied as to the suitability of the shareholders (owning qualifying holdings), if the person in question is not in the proper condition to ensure sound and prudent management of the credit institution;
5. The credit institution does not have sufficient technical means or financial resources for the type or volume of transactions which it intends to carry out;

¹⁹ Banking Act, article 65.

6. The effective supervision of the institution to be established is prevented due to close links, or difficulties involved in their enforcement; or
7. The effective supervision of the institution to be established is prevented by virtue of laws or regulations of a third country governing one or more of the persons with which the credit institution has close links, or due to difficulties involved in their enforcement.

The Bank of Portugal must allow applicants a reasonable period to rectify deficiencies in the application, before refusing authorization. The authorization lapses if the applicants expressly renounce it or if the institution fails to commence its activity within 12 months. This limit can be extended for another 12 months by the Bank of Portugal.

The authorization also lapses with the winding-up of the institution, without prejudice to the action required for its liquidation. Finally, the authorization of a credit institution also may be withdrawn by the Bank of Portugal on the following grounds:

1. The authorization was obtained through false statements or any other irregular means, regardless of the applicable penalties;
2. One or more of the credit institution's basic requirements cease to be met;
3. The activity of the credit institution does not correspond to the authorized statutory purpose;
4. The institution ceases or curtails its activity to a negligible level for more than 12 months;
5. Serious irregularities are committed in the management, accounting procedures, or internal control of the institution;
6. The institution is unable to comply with its commitments, in particular in providing security for the assets entrusted to it;
7. The institution fails to fulfill the obligations arising out of its participation in the Deposit Guarantee Fund or the Investor Compensation Scheme; or
8. The institution violates the laws and regulations governing its activity, or fails to observe the instructions of the Bank of Portugal, in such a way as to jeopardize the interests of the depositors and other creditors or the regular operation of the money, financial, or foreign exchange market.

The withdrawal of the authorization granted to an institution which has branches in other EU member states must be preceded by consultation with the supervisory authorities of those states. On grounds of extreme urgency, however, this consultation may be replaced by a mere notification of the withdrawal, accompanied by an explanation as to the reason for this simplified

procedure. The withdrawal of authorization implies the winding-up and liquidation of the credit institution, save the case when the institution ceases or curtails its activity to a negligible level for more than 12 months if the Bank of Portugal so allows.

v. Insolvency Proceedings

Decree-Law Number 200/2004 of 18 August 2004, which provides insolvency and reorganization proceedings (*Código da Insolvência e da Recuperação de Empresas*), excludes credit institutions when its application is incompatible with the special regime of credit institutions.²⁰

Portugal has implemented Directive 2001/24/EC on credit institutions' financial reorganization and winding-up by Decree-Law Number 199/2006 of 25 October 2006 (the "Winding-up Act"), which expressly repeals Decree-Law Number 30.689, of 27 August 1940.

The Winding-Up Act establishes that the Bank of Portugal is the sole authority with the exclusive power to implement reorganization measures for credit institutions authorized in Portugal, as well as for their branches established in other member states, and to decide on the withdrawal of the banking license and the subsequent winding-up of such institutions. The implementation of reorganization measures or the commencement of winding-up proceedings decided by the competent judicial or administrative authorities of another member state must be recognized by a Portuguese court without the need to review or confirm such decision.

The Act recognizes the exclusive jurisdiction of judicial or administrative authorities of a member State in relation to reorganisation measures and/or winding-up proceedings opened against credit institutions authorised in that state.

The Banking Act also provides for a special regime for the financial reorganization of credit institutions.²¹ According to the prudential rules set forth in the Banking Act, credit institutions must invest their available funds in such a way as to ensure appropriate levels of liquidity and solvency at all times. When a credit institution is in a financially unbalanced situation, involving, namely, a reduction of its own funds to a level below the legal minimum or non-compliance with solvency or liquidity ratios, financial reorganization measures will be designated by the Bank of Portugal.

One of the measures is the elaboration of a financial recovery and reorganization plan which must be submitted for Bank of Portugal approval. The Bank

²⁰ Decree-Law Number 200/2004, article 2(2)(b).

²¹ Banking Act, articles 139–153.

of Portugal is responsible for the approval of the plan and may establish conditions connected with capital increase or reduction and the disposal of shareholdings and other assets. It also may establish an intervention program. The Bank of Portugal also may appoint one or more interim members of the board of a credit institution when:

1. The institution is at risk of suspending payments;
2. The institution is in a situation of financial distress which, on account of its size or duration, poses a serious risk to solvency;
3. For whatever reason, the administration fails to provide guarantees of prudent activity, seriously jeopardizing the interests of creditors; and
4. Inadequacies in the organization of accounting or in internal control procedures are so serious as to render impossible a proper assessment of the institution's financial situation.

If, despite the extraordinary measures adopted, it proves impossible to rescue the institution, the authorization to exercise its activity will be withdrawn, and the winding-up regulations will be applied, as established by Decree-Law Number 199/2006 of 25 October 2005.

C. FOREIGN BANKING LICENSES

The principle of the mutual recognition set forth in the Banking Consolidation Directive (as per the EU Second Banking Directive)²² means that the establishment of credit institutions branches authorized in other EU member states does not require prior authorization from the Bank of Portugal. The process amounts to mere notification from the home member state to the Bank of Portugal.

The activities comprised in the list of activities subject to mutual recognition, as provided in Annex I of the Banking Consolidation Directive, are almost the same as those provided in the list of activities of the Banking Act. These include:

1. Receiving deposits and reimbursement funds;
2. Lending;
3. Financial leasing;
4. Money transmission services;
5. Issuing and administering means of payment;
6. Issuing guarantees and commitments;

22 Council Directive 89/646/EEU of 15 December 1989, amended by Directive 95/26/EC.

7. Trading for own account or for accounts of customers;
8. Participating in share issues and providing services related to such issues;
9. Advising undertakings on capital structure, industrial strategy, and related questions and providing advice and services relating to mergers and the purchase of undertakings;
10. Engaging in money broking;
11. Offering portfolio management and advice;
12. Offering safekeeping and administration of securities;
13. Providing credit reference services; and
14. Offering safe custody services.

The authorization of a subsidiary of a credit institution with its head office in a non-EU country, or controlled, or with capital or corresponding voting rights held by a majority by natural persons who are not nationals of EU member states or by legal persons having their head office in non-EU states, usually requires a decision from the Minister of Finance. However, this competence may be delegated to the Bank of Portugal. The application must specify the structure of the group to which the credit institution belongs.

Contrary to the mutual recognition principle among EU member states, the establishment of branches of a credit institution with its head office in a non-EU country requires previous authorization from the Minister of Finance or the Bank of Portugal.

D. ESTABLISHMENT OF FOREIGN BRANCH

The establishment of a branch in Portugal requires that the credit institution be authorized in another EU member state and be subject to the supervision of the competent authorities of the home member state.

The process for establishing a branch in Portugal is the same as that for establishing a branch abroad (see text, above). The competent authority in the home country must send, to the Bank of Portugal, a notification with information and documents as to the types of business envisaged and the structural organization of the branch, and a certificate stating that such business is covered by the credit institution's authorization; the address of the branch in Portugal; the identity of those responsible for the management of the branch; the amount of the credit institution's own funds and the solvency ratio of the credit institution; and detailed descriptions of the deposit-guarantee and the investor compensation schemes in which the credit institution participates.

The management of the branch must be entrusted to at least two managers, with appropriate powers to deal with and settle, in Portugal, all matters connected to its activity. After having received the information, the Bank of Portugal has two months to organize the supervision of the branch in all matters under its competence, after which it must inform the credit institution that the latter is now able to establish the branch and, if necessary, the conditions under which the branch must carry on its activity in Portugal.

E. TAKE-OVERS AND MERGERS

In Portugal, mergers and demergers among credit institutions require prior authorization by the Bank of Portugal.²³

Since a merger usually represents a concentration act, a reference to the concept of concentration is made. “Concentration” is defined by the Competition Legal Framework²⁴ (*Lei da Concorrência*) as the merger of two or more previously independent undertakings or parts of undertakings.

A concentration act must be notified to the Authority of Competition (*Autoridade da Concorrência*) when it creates or reinforces a quota of more than 30 per cent in the national market of a certain good or service, or in a significant part of it, or the companies involved in the concentration in the last exercise represent a turnover of more than 150-million produced in Portugal.

Portuguese competition law cannot be applied if the competition achieves a Community dimension, unless Community Law²⁵ allows. A concentration with a Community dimension will be deemed to exist where the aggregate turnover of the undertakings concerned exceeds given thresholds. Council Regulation 139/2004 defines “Community dimension” as the combined aggregate worldwide turnover of all the undertakings concerned with more than 500-million and the aggregate Community-wide turnover of each of at least two of the undertakings concerned of more than 250-million, unless each of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover within the same member state.

Even if a concentration does not reach the thresholds, it can have a Community dimension if (a) the combined aggregate worldwide turnover of all the undertakings concerned is more than 250-million, (b) in each of at least three member states, the combined aggregate turnover of all the undertakings concerned is more than 100-million, (c) in each of at least three

23 Banking Act, article 35.

24 Law Number 18/2003 of 11 June 2003, as amended by Decree-Law Number 219/2006 of 2 November 2006.

25 Council Regulation 139/2004.

member states included for the purpose of point (b), the aggregate turnover of each of at least two of the undertakings concerned is more than 25-million and the aggregated Community-wide turnover of each of at least two of the undertakings concerned is more than 100-million, unless each of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover within one member state.

F. BANKING REGULATION AND SUPERVISION

i. In General

a. Types of Supervision

In Portugal, the supervision of credit institutions is done by the Bank of Portugal and, to a limited extent, the Securities Market Commission (*Comissão do Mercado de Valores Mobiliários*).

Under Portuguese law, one must distinguish between supervision in general and prudential supervision. Supervision in general aims to control the compliance of any legal obligations of the credit institutions, while prudential supervision intends to verify compliance with prudential rules.

b. General Supervision

In the performance of its supervisory functions in general, the Bank of Portugal monitors the activities of credit institutions and oversees compliance with the rules governing the credit institution's activities. The Bank of Portugal may issue recommendations to end any irregularities detected, take extraordinary reorganization measures, and impose penalties for infractions.

To enable the Bank of Portugal to perform its supervisory duties, credit institutions must provide the Bank of Portugal with whatever information it deems necessary to monitor:

1. Liquidity and solvency;
2. Risks;
3. Compliance with applicable laws and regulations;
4. Administrative organization;
5. Internal control procedures; and
6. Data processing security and control procedures.

Credit institutions must facilitate on-the-spot verification by the Bank of Portugal of their premises and examination of their books, along with all other data which the Bank of Portugal may consider relevant. It is commonly accepted that all credit institutions and financial institutions

operating in Portugal having their head office in Portugal (subsidiaries or non-subsidiaries) or having their head office abroad (by way of a branch or providing services) are subject to the general supervision of the Bank of Portugal.

c. Prudential Supervision

In General Prudential supervision aims to verify compliance with prudential rules, basically those found in articles 94–115 of the Banking Act, to ensure that credit institutions maintain appropriate levels of liquidity and solvency.

Own Funds The composition and limits of a credit institution's own funds are defined by a Regulation of the Bank of Portugal.²⁶ Own funds may not fall below the amount of the minimum share capital required by law.

Minimum Share Capital The minimum share capital for each type of credit institution is established by the Minister of Finance after hearing the Bank of Portugal. Minister of Finance Notice Number 95/94 of 9 February 1994 fixed the minimum share capital for each type of credit institution and financial institution.²⁷

Reserves The legal reserve corresponds to the part of the annual net profits that cannot be distributed to the shareholders. In accordance with article 97 of the Banking Act, at least 10 per cent of the credit institution net profits must

26 Bank of Portugal Notice Number 12/92 of 12 December 1992, as amended by Notice Number 7/95, Notice Number 8/96, Notice Number 10/2001, Notice Number 4/2001, Notice Number 2/2005, Notice Number 12/2006, Notice Number 2/2006, Notice Number 4/2007, Bank of Portugal Notice Number 12/92 of 12 December 1992, as amended by Notice Number 7/95, Notice Number 8/96, Notice Number 10/2001, Notice Number 4/2001, Notice Number 2/2005, Notice Number 12/2006, Notice Number 2/2006, Notice Number 4/2007, Notice Number 6/2008, Notice Number 8/2008, and Notice Number 9/2008.

27 Pursuant to Minister of Finance Notice Number 95/94 of 9 February 1994, the minimum share capital for each type of credit institution and financial institution is: (a) banks, 17.5-million, (b) Central Mutual Agricultural Credit Bank, 7.5-million, (c) mutual agricultural credit banks, 50,000 or 2.5-million, depending on whether they become part of the integrated mutual agricultural credit system, (d) credit financial institutions, 10-million, (e) investment companies, 7.5-million, (f) financial leasing companies, 7.5-million, (g) factoring companies, 1-million, (h) credit purchase financing companies, 2.5-million, (i) dealers, 2.5-million, (j) brokers, 250,000, (k) foreign-exchange or money-market mediating companies, 50,000 or 500,000, (l) investment fund management companies, 250,000 or 375,000, (m) credit card issuing or management companies, 500,000, (n) wealth management companies, 250,000, (o) regional development companies, 3-million, (p) capital risk societies, 3-million, and (q) exchange offices, 100,000. The minimum share capital of electronic-money institutions is 1-million, and the minimum share capital of credit securitization fund management companies is 2.5-million.

be earmarked to build a legal reserve up to an amount equal to the credit institution's share capital.

Solvency Ratio Under article 99 of the Banking Act, it is the responsibility of the Bank of Portugal to establish, by means of a Regulation, the relationship between own funds and total assets and off-balance sheet items, weighted or not by risks coefficients. The solvency ratio cannot be less than eight per cent.

Large Exposures Under Bank of Portugal Notice Number 6/2007, as amended by Notice Number 6/2008, there is a large exposure when the credit institution exposure to a client or a group of connected clients is equal or exceeds 10 per cent of its own funds. Large exposures are subject to two limits.

Each large exposure cannot exceed 25 per cent (20 per cent where the client is the parent undertaking or a subsidiary) of the credit institution's own funds, and the aggregate amount of large exposures cannot exceed eight times the value of the own funds.

Limits on Non-Financial Qualifying Holdings Under article 100 of the Banking Act, a credit institution may not have a qualifying holding which exceeds 15 per cent of own funds; the overall amount of qualifying holdings may not exceed 60 per cent of own funds.

In addition, article 101 of the Banking Act does not allow credit institutions to hold for more than three years' shares corresponding to more than 25 per cent of the voting rights. However, the Banking Act provides for several exceptions to these limits.

Provisions Under article 99 of the Banking Act, it is the responsibility of the Bank of Portugal to establish by means of a Regulation²⁸ the "minimum limits to provisions for the cover of credit risks and any other risks or liabilities". Basically, there are mandatory provisions for general risks of credit, specific risks of credit, pension liabilities, capital losses, and country risk. There are several other prudential rules addressing issues such as:

1. Acquisition of qualifying holdings;
2. Credit limits for owners of qualifying holdings;
3. Limits for the underwriting of securities for indirect subscription or to the guarantee of placement of such securities;
4. Limits for the acquisition of real estate;

28 Bank of Portugal Notice Number 3/95 of 30 June 1995, as amended by Notice Number 2/99, Notice Number 3/99, Notice Number 7/2000, Notice Number 4/2002, Notice Number 8/2003, Notice Number 9/2003, and Notice Number 3/2005.

5. Fixed-assets ratio and shareholding acquisition; and
6. Issues related to supervision on a consolidated basis.²⁹

ii. Credit Institutions Authorized in Other European Union States

a. *Subsidiary*

In General Subsidiaries, as any other credit institution incorporated under Portuguese law (having head office in Portugal), are subject to the general and prudential supervision of the Bank of Portugal.

To enable the Bank of Portugal to fulfill its obligations as the supervision authority, a subsidiary (as any other credit institution with its head office in Portugal) must comply with information and reporting duties.

Reporting and Information Duties A subsidiary must report to the Bank of Portugal the following accounting information:

1. On a monthly basis, the analytical situation regarding the global activity of the credit institution;
2. On a quarterly basis, the analytical situation regarding the activity of the credit institution in Portuguese territory;
3. On a bi-annual basis, the inventory regarding securities and financial participations; and
4. On an annual basis, the analytical situation as of before and after the ascertainment of results and the annual accounts report.

In addition, pursuant to Bank of Portugal Regulation Number 23/2007, the applicable prudential ratios must be reported by a subsidiary to the Bank of Portugal's Banking Supervisory Department on a monthly basis.

The subsidiary must publish its annual accounts on the official website of Bank of Portugal and on or in one of the following:

1. The website of the institution;
2. The *Official Gazette*;
3. A major public newspaper.

The procedure also must be accomplished by the subsidiary for publishing its balance sheet and for reporting the provisional results, as of the end of each

²⁹ Bank of Portugal Notice Number 8/94 of 2 November 1994, as amended by Notice Number 6/2001 and Notice Number 6/2005.

of the first three quarters of the year.³⁰ A subsidiary also must provide, to the Bank of Portugal, information deemed necessary to monitor:

1. Its liquidity and solvency;
2. The risks taken, whether they comply with the laws, and regulations governing their activity;
3. Its administrative organization; and
4. The effectiveness of its internal controls.

b. Branches and Freedom to Provide Services

In General In accordance with article 122 of the Banking Act, credit institutions authorized in other EU member state which carry on activities in Portugal, either by a branch or under the freedom to provide services regime, are not subject to the prudential supervision of the Bank of Portugal, provided that they are subject to the supervision of the authorities of the home member state.

Liquidity Supervision The Bank of Portugal has legal capacity, in cooperation with the competent authorities of the home member state, to supervise the liquidity of branches operating in Portugal.

General Supervision Branches of EU credit institutions in Portugal are subject to the general supervision of the Bank of Portugal. Branches are subject to the decisions and other measures that the Portuguese authorities may take within the execution of monetary, financial, and foreign exchange policy, as well as to provisions applicable due to reasons of general interest.

Branches must observe the Portuguese law, i.e., all the regulations governing banking activity. The Bank of Portugal has the power and the obligation to supervise compliance by branches with the rules governing their activity. Branches are obliged to provide all information and facilitate on-the-spot verification of their premises and examination of their books for the verification of all the aspects under the scope of the general supervision.

The Bank of Portugal must cooperate with the competent authorities of home member states to ensure that branches will take appropriate measures to cover risks arising out of open positions where such risks result from transactions carried out on the Portuguese financial market. When the Bank of Portugal ascertains that a branch is not complying with the Portuguese rules governing the supervision of liquidity, implementation of monetary policy, and compulsory reporting of information on its activities within Portugal,

³⁰ Bank of Portugal Notice Number 6/2003, as amended by the Notice Number 9/2005, Notice Number 4/2006, and Notice Number 11/2007.

the Bank of Portugal will require the credit institution to end the irregularity and take, if necessary, appropriate measures to prevent or to punish further irregularities.

Reports and Information Duties In order for the Bank of Portugal to exercise its powers regarding general supervision of EU credit institutions operating in Portugal through a branch, the Bank of Portugal must receive relevant data and information.

The general rule is that branches of EU credit institutions not subject to the Bank of Portugal's prudential supervision must submit all the information that the Bank of Portugal may deem appropriate. Such information normally refers to the interest rates which are employed by the branch in its credit operations so as to ascertain compliance with consumer credit regulations.

There is a legal obligation³¹ for branches of EU credit institutions not subject to Bank of Portugal prudential supervision to publish, in the Portuguese language, the annual accounts and the management report of the credit institution to which they belong, the consolidated accounts,³² the consolidated report, and the reports of the person who has the control over such accounts.

Accounting and Documentation Requirements According to article 55 of the Banking Act, all books and accounting documents relating to operations carried out in Portugal must be kept in the branch in the Portuguese language.

The Corporate Income Tax Code establishes that branches must keep accounts organized according to Portuguese commercial and tax laws as to operations carried out in Portugal. Accounting books, other registers, and respective supporting documents (which include the agreements executed by the branch) must be kept in good order for 10 years and at the earliest-established branch in Portugal.

G. BANKING SYSTEM REFORMS AND INTERNATIONAL BANKING STANDARDS

As noted, the last extensive banking law reform in Portugal occurred in 1992 to implement the European Banking Market and the mutual recognition principle in the EU Banking Directives.

The next banking reform occurred when the Bank of Portugal Organic Law was amended on 31 January 1998 to integrate Portugal into the European

31 Bank of Portugal Notice Number 12/91, as amended by Notice Number 11/95 and Notice Number 2/2008.

32 Regulation Number 1606/2002/EC.

System of Central Banks (ESCB). The Banking Act was amended by Decree-Law Number 201/2002, which added two new types of credit institution (electronic-money institutions and credit financial institutions) to the list set out in the Banking Act, changed prudential rules concerning disclosure of qualified holdings in the share capital of credit institutions, and revised rules relating to the registration requirements.

Following enactment of the EU International Accounting Standards (IAS) Regulation,³³ the Bank of Portugal issued various Regulations³⁴ which require certain companies under the bank's supervision, to prepare their consolidated and annual accounts in conformity with IAS adopted pursuant to article 6(2) of the IAS Regulation.

The new Regulations also have amended existing banking regulations on the following matters:

1. Companies' own funds;
2. Solvency ratios;
3. Large exposures;
4. Liabilities of pension schemes; and
5. Supervision on a consolidated basis.

Pursuant to the IAS Regulation, for each financial year starting on or after 1 January 2005, credit institutions, under determined conditions, must prepare their consolidated accounts in conformity with IAS. Finally, EU member states also may permit or require public companies to prepare their annual accounts and other types of companies to prepare their consolidated accounts and/or annual accounts in conformity with IAS.

The Banking Act also was amended by Decree Law Number 145/2006 of 31 July 2006, which implements into national law Directive 2002/877/EC

33 Regulation Number 1606/2002/EC.

34 Regulation Number 1/2005, as amended by Regulation Number 13/2005, on Regulation of Annual Financial Statements (by which the Bank of Portugal exercised the option granted by the IAS Regulation and imposed on credit institutions and financial companies, and holding companies whose subsidiaries are mainly credit institutions and investment firms, the duty to prepare consolidated and annual accounts in conformity with IAS adopted by the European Union, whether or not such institutions qualify as public companies); Regulation Number 2/2005, as amended by Regulation Number 14/2005, on Accounting Value of Own Funds (which inserted prudential filters in the regulation of own funds of credit institutions); Regulation Number 3/2005 on New Provisioning Requirements (which amended the regulation requiring IAS eligible institutions to create specific provisions for certain purposes), Regulation Number 4/2005 on Liabilities of Pension Schemes (which amended a previous regulation issued by the Bank of Portugal on the same matter); Regulation Number 6/2005 on Supervision on Consolidated Basis.

of the European Parliament and of the Council of 16 December, on the complementary supervision of credit institutions, insurance undertakings, and investment firms in a financial conglomerate.³⁵

The ninth amendment to the Banking Act was performed by Decree Law Number 104/2007 of 3 April 2007, which transposes into national law Directive 2006/48/EC, relating to the taking up and pursuit of business of credit institutions.³⁶

35 The Bank of Portugal issued Notice Number 12/2006, which amends Regulation Number 12/92, that is adjusted to the regulation of the complementary supervision of credit institutions, insurance undertakings, and investment firms in a financial conglomerate.

36 The Bank of Portugal issued Notice Number 5/2007, as amended by Notice Number 14/2007 and Notice Number 8/2008, (defines the obligation of the credit institution and investment companies towards the own funds level and the credit risks limits); Notice Number 6/2007, as amended by Notice Number 8/2008, (establishes the limits to concentration risks of credit institutions and financial companies with head office in Portugal, and of branches in Portugal of credit institutions with head office in a non-member state of the European Union); Notice Number 7/2007, as amended by Notice Number 8/2008, (establishes the regulatory framework, for prudential purposes, on securitisation operations); Notice Number 8/2007 (inserts provisions about own funds of credit institutions and investment companies for covering market risks); and Notice Number 9/2007 (determines the own funds requirements for covering operational risks).

