

CUATRECASAS, GONÇALVES PEREIRA



NEWSLETTER | FINANCE AND CAPITAL MARKETS

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NEWSLETTER FINANCE AND CAPITAL MARKETS

I AMENDMENTS TO THE LEGAL FRAMEWORK APPLICABLE TO CREDIT INSTITUTIONS AND FINANCIAL COMPANIES

Decree-Law no. 157/2014 (the "**Decree-Law**"), which was published on October 24, 2014 and has entered into force on November 23, 2014 (exception made to some particular provisions), has enacted into Portuguese law the Directive no. 2013/36/EU of the Parliament and the Council, of June 26, 2013 (the "**Directive**"), which, together with the Regulation (EU) no. 575/2013 of the European Parliament and the Council (the "**Regulation**"), implements the Basileia III regulatory framework in the European Union.

The transposition has been achieved through a number of amendments and additions to the Legal Framework applicable to Credit Institutions and Financial Companies (*Regime Geral das Instituições de Crédito e Sociedades Financeiras* – "**RGICSF**").

Besides the ones above mentioned, the Decree-Law has also established other changes to the RGICSF that do not directly result from the transposition of the Directive.

Please find below a brief summary of the most relevant amendments.

Firstly, it must be noted the adjustment of the qualifications of "**credit institution**" and "**financial company**" must be noted:

- (i) credit-purchase financial companies cease to exist:
- (ii) investment companies, leasing companies, factoring companies and mutual guarantee companies are no longer qualified as a "credit institution", but rather as a "financial company", with the advantage of not being subject to the same specific prudential regime applicable to credit institutions (as provided for in the Directive and in the Regulation), which will typically be more demanding (and consequently more expensive) than the regime set forth by the Bank of Portugal ("**BoP**") for such financial companies, but with the disadvantage of no longer benefiting from the European passport arrangement that they have benefited so far whilst qualifying as credit institutions.
- (iii) credit financial companies appear as a new type of financial company which may carry out activities similar to those of the credit financial institutions, exception made to the reception of repayable funds from the public, with the financial credit institutions that intend to become a credit financial company benefiting from a simplified procedure of mere notification to the BoP, for a period of one year;
- (iv) a definition of investment company is introduced.

Secondly, it is also worth highlighting the changes in respect of the **adequacy of the members of the management and supervision bodies**:

- (i) new rules and parameters are introduced concerning suitability, professional qualification, independence and availability requirements. The law expressly provides that the suitability assessment shall take into account not only the professional businesses, but also the personal ones;
- (ii) the previous scheme of registration of corporate bodies is replaced by a BoP's authorization scheme;
- (iii) there are now two levels of assessment of the adequacy of the members of the management and supervision bodies – by the credit institution and by the BoP, being credit institutions responsible for primarily making such assessment (in this context, the general meetings of credit institutions must approve an internal policy of recruitment and adequacy assessment of management and supervision bodies and credit institutions must prepare a report on the results of each assessment/reassessment made);
- (iv) from now on most of the rules concerning adequacy of the members of management and supervision bodies will also apply to the holders of positions with a significant influence over the management (e.g. people who are in charge of compliance, internal auditing, risk management and control areas), who must be identified and evaluated by the respective credit institutions.

Pursuant to the Decree-Law, rules on **remuneration policies and practices** - many of them previously included in Decree-Law no. 104/2007, of April 3, 2007 - are also incorporated into the RGICSF. The main innovation in this matter is related to the introduction of specific rules and limits on the variable component:

- (i) it may only be paid if sustainable in face of the financial condition of the institution and justified in face of its performance and the performance of the relevant business unit and employee;
- (ii) in principle, it cannot exceed the amount of the fixed component;
- (iii) at least half of the variable component must consist of own funds instruments, which shall be subject to an unavailability period by retention by the credit institution;
- (iv) a significant part of the variable component must be deferred for at least three to five years.

Also in this respect, credit institutions that are significant in terms of their size, internal organization and the nature, scope and complexity of their activities are now required to create a remunerations' committee.

Also noteworthy is the introduction of a set of provisions regarding strategies, policies and procedures of **risk management**, being credit institutions required to establish a risk-management function that must be independent from the operational functions and the credit institutions that are significant in terms of their size, internal organization and the nature, scope and complexity of their activities additionally being required to create a risks' committee.

The set of **corrective measures** that may be applied by the BoP in case of breach of the rules governing credit institutions activity is reinforced, with the definition of new measures, such as the possibility of BoP requiring the disinvestment in activities representing excessive risks for their soundness.

In respect of **own funds**, it is also worth highlighting the incorporation in the RGICSF of a number of rules and a set of conservation measures regarding own funds, as well as the assignment to the BoP of the power to require credit institutions and certain investment companies to create own funds additional reserves.

Finally, the **sanctioning regime** is also amended, being noteworthy in this respect:

- (i) new rules on prescription;
- (ii) changes in the administrative infraction proceedings;
- (iii) strengthening of fines;
- (iv) establishment of an investigation secrecy scheme; and
- (v) enlargement of the set of facts forming particularly serious infractions.

II LEGISLATION

A. Banking Law: Institutional and Material

Decree-Law no. 157/2014 – Official Gazette no. 206, Series I of 2014-10-24

This Decree-law transposes Directive no. 2013/36/UE, of the European Parliament and of the Council, of 26 June and amends the Legal Framework applicable to Credit Institutions and Financial Companies, approved by Decree-Law no. 298/92, of 31 December and the Securities Code, the Laws no. 25/2008, of 5 June and 28/2009, of 19 June, and Decree-Laws no. 260/94, of 22 October, no. 72/95, of 15 April, no. 171/95, of 18 July, no.

211/98, of 16 July, no. 357.-B/2007 and 357.-C, of 31 October, no. 317/2009, of 30 October and no. 40/2014, of 18 March.

Please, see opening text.

Commission Delegated Regulation (EU) no. 1152/2014 of June 4, 2014

Supplementing Directive 2013/36/UE of the European Parliament and of the Council, of June 26, 2014, with regard to regulatory technical standards on the identification of the geographical location of the relevant credit exposures for calculating institution-specific countercyclical capital buffer rates.

Commission Delegated Regulation (EU) no. 1151/2014 of June 4, 2014

Supplementing Directive 2013/36/UE of the European Parliament and of the Council, of June 26, 2014 with regard to regulatory technical standards on the information to be notified when exercising the right of establishment and the freedom to provide services.

Bank of Portugal Notices

Notice no. 9/2014, which has entered into force on November 3, 2014, regulates options provided for in the Regulation (EU) no. 575/2013, of June 26, 2014, of the European Parliament and of the Council, which set forth the prudential requirements for credit institutions and investments companies and whose exercise is attributed to the competent authorities.

Notice no. 10/2014, which shall entered into force on July 1, 2015, establishes minimum information duties under consumer credit agreements entered into under Decree-Law no. 359/91, of September 21, 1991 and Decree-Law no. 133/2009, of June 2, 2009.

Bank of Portugal Instructions

Instruction no. 22/2014, which has entered into force on November 3, 2014, amends Instruction no. 7/2012, of March 15, 2012, establishing the admissibility requirements of certain short-term debt instruments which do not satisfy the Eurosystem eligibility criteria for marketable assets set out in Annex I of Guideline ECB/2011/14.

Instruction no. 23/2014, which has entered into force on November 17, 2014, amends Instruction no. 3/2009, of February 16, 2009, revising the Regulation of the Interbank Clearing System (*SICOI – Sistema de Compensação Interbancária*) in order to amends the schedules of the close of clearing and financial settlement of Direct Debit subsystem sessions – SEPA CORE and SEPA B2B.

Instruction no. 24/2014, which has entered into force on November 18, 2014, determines the sending of financial and accounting information on an individual basis - individual FINREP - on a quarterly basis.

Instruction no. 25/2014, which has entered into force on December 1, 2014, regulates the reporting of statistics to the Bank of Portugal in order to compile balance sheet statistics and interest rates of monetary financial institutions.

Instruction no. 27/2014, which shall entered into force on December 15, 2014, amends Instruction no. 7/2012, of March 15, 2012, amending the valuation haircut values for the debt instruments.

Bank of Portugal Circular Letters

Circular Letter no. 8/2014/DSP, of October 27, 2014, published on November 17, 2014, communicates that European Central Bank is developing standards of financial and accounting information report on an individual basis – individual FINREP – and the credit institutions and investment companies should to make their report up until the end of transitional period (June 30, 2015) in the templates to be provided by Bank of Portugal.

Circular Letter no. 9/2014/DMR, of November 10, 2014, published on November 17, 2014, clarifies on the new reporting deadlines of the amount of minimum reserves (monthly reporting) as well as the schedule of maintenance periods for 2015 (including the last period of 2014).

Circular Letter no. 9/2014/DSP, of November 21, 2014, published on December 15, 2014, on the implementation of the FINREP-COREP framework, reaffirms the need for credit institutions to adopt certain standards (in particular, the XBRL format) in the submission of reports relating to Implementing Technical Standards (ITS) on supervisory reporting.

Circular Letter no. 102/2014/DSC, of December 10, 2014, published on December 15, 2014, requests credit institutions to fill completely and accurately the Default Legal Framework qualitative assessment questionnaire – which set forth the principles and rules that credit institutions are required to prevent and extrajudicial settlement of a default on credit agreements concluded with private bank customers – available in BPnet website for download.

B. Insurance Law: Institutional and Material

Ordinance no. 200/2014 – Official Gazette no. 191, Series I of 2014-10-03

Setting forth the minimum required value and the conditions of the liability insurance to be concluded by the professionals of non-conventional therapies.

Delegated Regulation (EU) no. 1125/2014, of 19 September

Supplementing Directive 2014/17/EU of the European Parliament and of the Council, of February 4, 2014, with regard to regulatory technical standards on the minimum monetary amount of the professional indemnity insurance or comparable guarantee to be held by credit intermediaries.

Regulation no. 6/2014-R, of 9 October – Official Gazette no. 212, Series II of 2014-11-03

Establishes the principles and methods applicable to the calculation of the adjusted solvency of an insurance company within an insurance group as well as the supplementary supervision of the intra-group transactions, revising the scheme as set out in Regulation no. 23/2002-R, of 5 December.

Regulation no. 7/2014-R, of 23 October – Official Gazette no. 212, Series II of 2014-11-03

Setting forth the indexes to consider in the fire and natural disasters insurance agreements beginning or terminating in the 1st quarter of 2015 for the purposes of the automatic update of value of the houses guaranteed by said insurances.

Authorization no. 3/2014-A, of 30 October - Official Gazette no. 224, Series II of 2014-11-19

Authorizing the establishment of a non-life assistance insurance company with the name "RNA Seguros de Assistência, S.A."

Authorization no. 4/2014-A, of 21 November

Authorization the establishment of a non-life insurance company with the name "Generali – Companhia de Seguros, S.A."

Circular no. 5/2014, of December 12, 2014

Discloses the procedure to be observed by the companies and insurance groups within the preparation for the implementation of Solvency II.

EIOPA – Report on consumer trends in the insurance sector and of the European Pension Fund

European Insurance and Occupational Pensions Authority ("EIOPA") disclosed the third report on consumer trends in the insurance sector and of the European Pension Fund for 2013.

EIOPA – Public Consultation on the Set 2 of the Solvency II Implementing Technical Standards (ITS) and Guidelines

On December 2, 2014 EIOPA releases the second Public Consultation on the proposals of guidelines and implementing technical standards within Solvency II. Comments shall be submitted up until March 2, 2015.

EIOPA – Public Consultation on a proposal for Guidelines on product oversight and governance arrangements by insurance companies

EIOPA releases a Public Consultation document regarding the proposal for Guidelines on product oversight and governance arrangements by insurance companies. The period shall end on January 23, 2015.

EIOPA – Public Consultation no. 64/2014 on the market monitoring and intervention powers on the investment products based on insurances

EIOPA published a Public Consultation document on the powers of EIOPA and national supervisory authorities on market monitoring and intervention powers on the investment products based on insurance. Comments shall be submitted up until February 27, 2015.

C. Securities and Capital Markets

Decree-law no. 157/2014 – Official Gazette no. 206, Series I of 2014-10-24

Making use of the legislative authorization granted by Law no. 46/2014, of July 28, 2014, this Decree-law transposes Directive no. 2013/36/UE, of the European Parliament and of the Council, of June 26, 2013, amending the Securities Code, namely concerning the compliance with fit and proper requirements of members of management bodies, of persons who effectively direct the activity as well as of shareholders with qualifying shares.

Implementing Regulation (EU) no. 1317/2014 of December 11, 2014

Extends by six months the transitional periods related to own funds requirements for exposures to central counterparties in the Regulations (EU) no. 575/2013 and no. 648/2012 of the European Parliament and of the Council.

Regulation (EU) no. 1286/2014 of the European Parliament and of the Council of November 26, 2014

Regulation on key information documents for packaged retail and insurance based investment products (PRIIPs).

Commission Delegated Regulation (EU) no. 1187/2014 of October 2, 2014

Supplementing the Regulation (EU) no. 575/2013 of the European Parliament and of the Council as regards regulatory technical standards for determining the overall exposure to a client or a group of connected clients in respect of transactions with underlying assets.

Portuguese Securities Commission (“CMVM”) Regulations

CMVM Regulation no. 2/2014. Official Gazette no. 213, Series II of 2014-11-04 – Commercial Paper

Revokes CMVM Regulation no. 1/2004, reviewing the scheme applicable to commercial paper and governing the special legal regime set forth in the current version of the Decree-law no. 69/2004, of March 25, 2004.

D. Relevant Court Decisions

Judgment of Court of Auditors no. 1/2014 – Official Gazette no. 193, Series I of 2014-10-07

Establishes that the summons is cause of interruption of the limitation period of the sanctions liabilities procedure.

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