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# Reform of the Portuguese Securities Code

Banking, Finance, and Capital Markets Legal Flash

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**Reform of the Portuguese Securities Code (Law 99-A/2021 of December 31)**



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## I. Law 99-A/2021 of December 31 – Reform of the Portuguese Securities Code

### 1. Introduction

On December 31, 2021, Law 99-A/2021 of December 31 was published, amending a set of laws pertaining to the financial sector.<sup>1</sup>

Because of how important the amended laws are in regulating the financial sector, particularly in the capital markets and investment areas, this legislative amendment constitutes a true reform. Although it covers several important aspects, including securities and the list of public interest entities, the most profound changes are introduced to the Securities Code in the capital markets area.

The aim of the reform is to meet the needs of companies and domestic and international investors by strengthening the competitiveness and development of the Portuguese capital market by simplifying and reducing regulatory burdens and barriers, harmonizing national law with European Union law (reducing gold plating), and promoting a more effective involvement of shareholders in the life of companies.

The Portuguese Securities and Exchange Commission (“CMVM”) issued a circular (accessible [here](#), in Portuguese only) explaining the changes introduced. As such, we summarize below only the main changes.

### 2. Reform of the Securities Code

#### a. Abolition of the *sociedade aberta* concept

The *sociedade aberta* concept, which is a particularity of Portuguese capital markets law, will be abolished, and the regulation of issuers paradigm will now only focus on the admission to trading (listed companies).

Therefore, the rules applicable until now to *sociedades abertas*, such as on mandatory takeover bid or on the transparency of qualifying holdings, will now only apply to companies issuing shares admitted to trading on a regulated market.

This change will allow companies to finance themselves, including by accessing a non-regulated market (e.g., MTF and OTF), by issuing equity instruments in a more accessible and less onerous manner.

#### b. Increase of threshold for transparency of qualifying holdings

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<sup>1</sup> Including the Securities Code, the General Regime of Undertakings for Collective Investment, the bylaws of Statutory Auditors Society, the Legal Regime of Audit Supervision, the bylaws of the Portuguese Securities Market Commission, and the Insolvency and Company Recovery Code.



The threshold of 2% of voting rights currently in force for transparency of qualifying holdings in companies issuing shares admitted to trading on a regulated market will be abolished. Therefore, the first threshold for this purpose will be 5% of voting rights.

### **c. Aggregation of voting rights**

An important clarification of the rules on the aggregation of voting rights will be introduced, clarifying that the voting rights a company holds are aggregated to the company that controls it, but not the opposite. Therefore, the regime will be linked to the possible influence (or lack of influence) that those companies exercise. Consequently, a long-discussed interpretative issue, which is also important for other matters due to cross-references to the aggregation rules, will now be clarified.

### **d. Multiple voting shares**

Also, the possibility of issuing shares with multiple voting rights will now be enshrined in Portuguese law (i.e., the issuance of shares granting the right to more than one vote will now be allowed).

### **e. Public offer concept and threshold for prospectus**

The public offer concept will be amended to ensure it is harmonized and compatible with the regime provided for in the Prospectus Regulation, which has been in force since July 21, 2019. Therefore, the public offer concept will now include offers of securities to the public and takeover bids.

The legislator has also made use of the option granted by European law to set the threshold below which the publication of a prospectus is not required at €8 million (increasing the threshold from the previous €5 million).

### **f. Removal of mandatory assistance and placement in public offers**

Compulsory assistance services (a specific requirement of national law) and placement services in public offers by financial intermediaries will be removed; these will now be voluntary.

### **g. Language and liability for the prospectus**

One of the new features concerns the language of the prospectuses, which, provided the CMVM does not oppose it, can now be drafted in English.

As for liability, it is clarified that only the members of the management and supervisory bodies and the statutory auditor of the offeror and issuer who are in office on the date the prospectus is approved are liable for its content. Also, in line with the amendment to mandatory assistance services, the financial intermediaries assisting the bid will no longer be liable for the prospectus unless they accept this liability in the prospectus.

### **h. Takeover bids**



The revision of the takeover bids regime will include amendments of a substantive nature (e.g., object or derogations to the duty to launch a bid) and of a procedural nature (e.g., abolishment of the bid announcement concept). The most significant changes are the following:

## > **Scope**

The scope of application of the takeover bids regime has been restricted to offers aimed at acquiring shares and securities that carry the right to subscribe or acquire them, eliminating from the regime other types of securities (non-equity securities).

## > **Competing takeover bids**

The regime of competing bids will no longer be based on whether a bid qualifies as a competing bid. Instead, specific duties will be imposed depending on when each of the bids is announced or when each of the bids is registered.

The law also aims to give more flexibility to offerors who subsequently announce their bids, namely by eliminating the legal requirement that the competing bid cannot contain conditions that make it less favorable than a previously announced bid.

## > **Voluntary takeover bid exempting a mandatory takeover bid**

Because of the difficulties arising from interpreting the requirements of the mandatory takeover bid exemption due to a voluntary takeover bid, it will be clarified that this will apply where the consideration is in line with the legal requirements on the date the takeover bid is registered.

## > **Squeeze-out (market exit)**

The double threshold of 90% of the voting rights corresponding to the share capital and of 90% of the voting rights covered by the bid has been eliminated, the fulfilment of the former criterion being sufficient to exercise the right of squeeze-out.

## > **Review of bids**

A new mechanism will be introduced (alongside the already existing change in circumstances regime), allowing the offeror to review the terms and conditions of the bid, which will not be limited to changes to the consideration. To this end, the bid as a whole must not become less favorable to its addressees.

## > **Other aspects**

Amendments will also be introduced to the regimes of (i) conditions and matters precedent to the registration of a takeover bid; (ii) transactions pending a takeover bid; (iii) the target company report; (iv) the duty to launch a bid and the extension of the regime for negative proof of control, even in cases where the 50% threshold is exceeded; and (v) consideration.



### 3. Entry into force

Except for the amendments to the list of public interest entities (which entered into force on January 1, 2022, and which is relevant, notably, for collective investment undertakings), the amendments described above will enter into force on January 30, 2022.

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