
Banking, Finance and Capital Markets

Newsletter Portugal

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I – Information Duties of the Financial Intermediaries: SMC Regulation No. 7/2018, of 4 December

The SMC Regulation No. 7/2018 ("**Regulation**"), which amended [SMC Regulation No. 5/2008](#) on Information Duties, was published in the Official Gazette on 4 December 2018. The purpose of the Regulation was, on the one hand, to accommodate the amendments introduced to the Portuguese Securities Code ("**PSC**") by [Decree-Law no. 22/2016](#), of 3 June 2016 ("**DL 22/2016**"), which transposed partially the [Directive no. 2013/50/EU](#) of the European Parliament and of the Council of 22 October (the "**Transparency Directive**") and, on the other hand, to adapt the Portuguese legal framework to [Regulation \(EU\) No 596/2014](#) of the European Parliament and of the Council of 16 April (the "**Market Abuse Regulation**"). At the same time, it has simplified, and estimated to reduce, the costs incurred by issuers and participants whilst complying with the reporting obligations imposed on them.

The changes introduced by the Regulation apply in particular to the following matters:

- Disclosure of facts regarding public companies (such as the obligation to disclose the decision to *go private*);
- Communication of qualified shareholdings;
- The content, term and other conditions related to the disclosure of quarterly financial information; and
- Managers' Transactions and list of all persons discharging managerial responsibilities and persons closely associated with them.

Of these, special attention was paid to those relating to the reporting of qualified shareholdings, quarterly financial information and managers' transactions and list of all persons discharging managerial responsibilities and persons closely associated with them, on which we will focus our analysis.

Communication of qualified shareholdings

- It has been specified that the renewal of the qualified shareholding notice shall only become due whenever there is a change in the basis of the imputation, and that change relates to a percentage of voting rights necessary to maintain the relevant threshold of the qualifying holding previously reported.
- The obligation to report long economic positions on derivative transactions, previously provided for in Articles 2A and 2B of SMC Regulation no. 5/2008, was revoked.

Quarterly Financial Information

- New deadlines and new minimum elements that must be observed in the reporting of quarterly financial information by issuers are defined.



- > Accordingly, issuers must disclose quarterly financial information no later than three months after the expiration of the 1st, 3rd and, if appropriate, 5th quarter of each accounting year to which the information refers.
- > Issuers now have the possibility to choose between using the minimum elements provided for in [IAS 34](#) or, alternatively, the simplified scheme contained in the annex to the Regulation.
- > In view of this new regime, upon lapse of the initial period of two years for the entry into force of the amendments to the PSC, determined by DL 22/2016, issuers who have such option may:
 - cease disclosing quarterly financial information or continue to disclose such information; and
 - if issuers opt to continue to disclose quarterly financial information, they may choose between the simplified regime of the Regulation or that provided for in IAS 34, provided that they will be bound to disclose the quarterly financial information, in accordance with the chosen terms, for a new period of two years.

Managers' Transactions and list of all persons discharging managerial responsibilities and persons closely associated with them

- > The Regulation broadly refers to the Market Abuse Regulation, regarding the communication of managers' transactions.
- > Despite the above, it is worth highlighting the repeal of the duty to communicate to the issuer, on a half-yearly basis, all transactions carried out in the semester by managers and closely related persons, which were to be included in the half-yearly and annual reports.
- > In addition, further to the Market Abuse Regulation, the Regulation reviews the content of the lists of managers and closely related persons to be drawn up and maintained by the issuer. Accordingly, the list must contain in particular the following elements:
 - full name;
 - tax identification number;
 - position in the company;
 - in the case of closely related persons, an indication of the manager in respect of whom such relationship exists; and
 - any and all updates to the above information with reference to the update date.
- > Finally, it should be noted that the Regulation imposes a duty to store the information contained in the list for a period of five years from the date on which the relevant subjects have been removed from the list.



II – Legislation: Institutional and Material Banking Law

National law

Decree-Law No. 122/2018, of 28 December – Official Journal No. 250/2018, Series I of 28-12-2018

Amends the transitory provision provided for in the context of the legal framework establishing the requirements for the taking up and pursuit of the credit intermediaries activity and the provision of consulting services.

Decree-Law No. 91/2018, of 12 November – Official Journal No. 217/2018, Series I of 12-11-2018

Approves the new Legal Framework of Payments Services and Electronic Money, implementing into national law Directive (EU) 2015/2366, revoking the former legal framework on this subject set forth in Decree-Law No. 317/2009, of 30 October 2009.

Decree-Law No. 87/2018, of 31 October – Official Journal No. 210/2018, Series I of 31-10-2018

Simplifies the filling of annexes A and I of the Simplified Business Information, ensuring the pre-filling by the Tax Authorities of all information required in said annexes which can be provided by the reporting made by the taxpayers in the context of SAF-T (Standard Audit File for Tax Purposes).

Order No. 310/2018, of 12 December – Official Journal No. 238/2018, Series I of 11-12-2018

Regulates article 45 of Law No. 83/2017, of 18 August 2017, which establishes the measures of preventive and repressive nature on the prevention of money laundering and terrorist financing, in respect of the systemic communications of transactions to the competent authorities by the obliged entities.

Community law

Commission Implementing Regulation (EU) 2018/1889, of 4 December 2018 – JOUL-309, of 05-12-2018

On the extension of the transitional periods related to own funds requirements for exposures to central counterparties set out in Regulations (EU) No 575/2013 and (EU) No 648/2012 of the European Parliament and of the Council.

Regulation (EU) 2018/1672 of the European Parliament and of the Council, of 23 October 2018 – JOUL-284, of 12-11-2018

On controls on cash entering or leaving the Union and repealing Regulation (EC) No 1889/2005.



Commission Implementing Regulation (EU) 2018/1627, of 9 October 2018 – JOUL-287, of 09-11-2018

Amending Implementing Regulation (EU) No 680/2014 as regards prudent valuation for supervisory reporting.

Commission Implementing Regulation (EU) 2018/1624, of 23 October 2018 – JOUL-277, of 07-11-2018

Laying down implementing technical standards with regard to procedures and standard forms and templates for the provision of information for the purposes of resolution plans for credit institutions and investment firms pursuant to Directive 2014/59/EU of the European Parliament and of the Council, and repealing Commission Implementing Regulation (EU) 2016/1066.

Commission Delegated Regulation (EU) 2018/1620, of 13 July 2018 – JOUL-271, of 30-10-2018

Amending Delegated Regulation (EU) 2015/61 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for credit institutions.

Commission Delegated Regulation (EU) 2018/1619, of 12 July 2018 – JOUL-271, of 30-10-2018

Amending Delegated Regulation (EU) 2016/438 as regards safe-keeping duties of depositaries.

Commission Delegated Regulation (EU) 2018/1618, of 12 July 2018 – JOUL-271, of 30-10-2018

Amending Delegated Regulation (EU) No 231/2013 as regards safe-keeping duties of depositaries.

Directive (EU) 2018/1673 of the European Parliament and of the Council, of 23 October 2018 – JOUL-284, of 12-11-2018

On the prevention of money laundering through criminal law.

Bank of Portugal Regulations

Regulation No. 3/2018 – Official Journal No. 251/2018, Series II of 31-12-2018

Transposes into the regulatory framework of the Bank of Portugal the «Guidelines specifying the conditions for group financial support» of the European Banking Authority (EBA/GL/2015/17) which detail the requirements provided for in paragraphs b), d), e), f), h), i) and j) of article 116-V of the LFCIFC, approved by Decree-Law No. 298/92, of 31 December.



Bank of Portugal Instructions

Instruction No. 34/2018 – Official Bulletin No. 12/2018, 2nd Supplement, of 26-12-2018

Establishes the reporting of the interest rate exposure resulting from activities not included in the negotiation portfolio and from the results of the standard shock assessed by the supervisor.

Instruction No. 33/2018 – Official Bulletin No. 12/2018, Supplement, of 19-12-2018

Establishes that credit institutions and financial companies shall communicate to the Bank of Portugal information regarding the characteristics of the credit agreements governed by Decree-Law No. 74-A/2017, of 23 June 2017, the respective collateral and income(s) of the borrower(s), as well as information on the early repayments, total or partial, and on the renegotiations occurred in those credit agreements.

Instruction No. 28/2018 – Official Bulletin No. 12/2018, of 17-12-2018

Adopts the Guidelines from the European Banking Authority on the concept of connected clients, established in article 4(1)(39) of Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms.

Instruction No. 27/2018 – Official Bulletin No. 11/2018, 2nd Supplement, of 12-12-2018

Discloses, for the 1st quarter of 2019, the maximum rates which may be applied in credit agreements for consumers within the scope of Decree-Law No. 133/2009, of 2 June 2009.

Instruction No. 26/2018 – Official Bulletin No. 11/2018, Supplement, of 20-11-2018

Amends Instruction No. 54/2012, published in Official Bulletin No. 1/2013, of 15 January 2013, regarding the regulation of TARGET2-PT, trans-European automated real-time gross settlement express transfer system.

Instruction No. 25/2018 – Official Bulletin No. 10/2018, 5th Supplement, of 08-11-2018

Reviews the Regulation of the Interbank Clearing System (SICOI), set forth in Instruction No. 8/2018, of 22 March 2018, aiming at increasing the maximum limit of the transactions processed by set-off in the subsystems of cheques, direct debits and credit transfers.

Instruction No. 23/2018 – Official Bulletin No. 10/2018, 4th Supplement, of 05-11-2018

Determines the elements to be presented by institutions whilst requesting the authorization request for the exercise of functions by members of the management and supervisory boards, establishing the form of presentation of the same.



Bank of Portugal Circular Letters

Circular Letter No. CC/2018/00000064 – Official Bulletin No. 11/2018, Supplement, of 20-11-2018

Informs about the notification due-dates on the amount of minimum reserves (monthly and quarterly reporting), as well as about the maintenance periods calendar for 2019.

Circular Letter No. CC/2018/00000062 – Official Bulletin No. 11/2018, of 15-11-2018

Discloses the understanding of the Bank of Portugal in respect of the reference criteria for the measurement of anticipated credit losses in the context of the application of IFRS 9 “Financial Instruments”. Replaces Circular Letter No. 2018/00000006, of 24 January, published on Official Bulletin No. 2/2018, of 15 February 2018.

Circular Letter No. CC/2018/00000060 – Official Bulletin No. 11/2018, of 15-11-2018

Discloses the understanding of the Bank of Portugal in respect of the interpretation and application of the prudential regimes provided for in articles 114, 115 and 116 of Regulation (EU) No. 575/2013, of the European Parliament and of the Council, of 26 June 2013, regarding the own funds requirements for credit risk.

III – Legislation: Institutional and Material Insurance Law

Community law

Commission Implementing Regulation (EU) 2018/1699, of 9 November 2018 – JOUL-285, of 13-11-2018

Laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 30 September 2018 until 30 December 2018 in accordance with Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance.

Regulatory standards of the Insurance and Pensions Funds Supervisory Authority

Standard No. 7/2018-R, of 21 November – Official Journal No. 241/2018, Series II, Part E, of 31-12-2018

Establishes the quarterly indices of capital updates for the policies of the fire and forces of nature class of insurance with beginning or maturity date in the first quarter of 2019.

Circulars of the Insurance and Pensions Funds Supervisory Authority

Circular No. 3/2018, of 14 November

Transfers of retirement savings plans (PPR), education savings plans (PPE) and education/retirement savings plans (PPR/E), financed by savings funds in the form of



pension funds or of autonomous fund of a type of insurance of the Life Class – Execution time of the information duties.

Circular No. 1/2018, of 25 October

Information to the clients on the impact of the exit of the United Kingdom from the European Union and the adoption of contingency measures.

IV – Legislation: Institutional and Material Capital Markets Law

Community law

Commission Implementing Regulation (EU) 2018/1557, of 17 October 2018 – JOUL-261, of 18-10-2018

Amending Implementing Regulation (EU) 2016/1368 establishing a list of critical benchmarks used in financial markets pursuant to Regulation (EU) 2016/1011 of the European Parliament and of the Council.

Regulations and Circulars of the Securities Market Commission (SMC)

SMC Regulation No. 11/2018 – Official Journal No. 251/2018, 1st Supplement, Series II of 31-12-2018

Provision of information by the managing entities of negotiation platforms which negotiate derivative financial instruments on goods or issue licenses and its derivatives by the financial intermediaries who execute transactions in the counter market on those instruments (article 257-G of the PSC).

SMC Regulation No. 10/2018 – Official Journal No. 251/2018, 1st Supplement, Series II of 31-12-2018

Provision of information over the detailed data relative to the controls of the management of positions by the managing entities of negotiation platforms which negotiate derivative financial instruments on goods (article 257-F of the PSC).

SMC Regulation No. 8/2018 – Official Journal No. 246/2018, Series II of 21-12-2018

Marketing and informative duties relative to PRIIPs.

SMC Regulation No. 6/2018 – Official Journal No. 232/2018, Series II of 03-12-2018

Regulation regarding the Investment Consulting Companies.

SMC Regulation No. 5/2018 – Official Journal No. 225/2018, Series II of 22-11-2018

Establishes in a separate regulation the rules currently provided for in SMC Regulation No. 4/2007 which are applicable to the managing entities of securities



centralized systems and securities settlement systems, regulating specific aspects of the legal framework of CSD, articulating the same with the CSDR, the legal framework of CSD and the related European regulation.

Decisions of the European Securities and Markets Authority (ESMA)

ESMA Decision (EU) 2018/2064 of 14 December 2018 – JOUL-329, of 27-12-2018

The ESMA has decided to renew the temporary prohibition on the marketing, distribution or sale of binary options to retail clients.

ESMA Decision (EU) 2018/1636 of 23 October 2018 – JOUL-272, of 31-10-2018

The ESMA has decided to renew and amend the temporary restriction in Decision (EU) 2018/796 on the marketing, distribution or sale of contracts for differences to retail clients.

V – Relevant case-law

Decision of the Supreme Court of Justice, of 11 October 2018 (process No. 2339/16.4T8LRA.C2.S1)

The financial intermediary is bound to comply with the rules governing its activity, in particular in respect of the information duties provided for in articles 304 to 312 of the Portuguese Securities Code which, regardless the above, are of “*variable geometry*”, varying in their intensity according to the contractual type in question and to the specific customer’s profile. Without prejudice, the duty to provide information burdening the financial intermediary does not discharge the investor of its responsibility to adopt a diligent behavior aiming at ensuring its full enlightenment.

Notwithstanding the legal assumption on the financial intermediary’s guilt whenever the damage is caused in the context of the contractual or pre-contractual relationship established between him and his clients and, in any case, whenever it is caused by the breach of its information duties, under the terms of article 304-A, paragraph 2, of the Portuguese Securities Code, said assumption cannot be deemed as entailing the unlawfulness assumption of the financial intermediary’s action nor a cause/effect between such action and the damages suffered by the clients.

The court has further ruled that functions of financial intermediaries do not comprehend the undertaking to reimburse their clients by investments made by them in products issued by other entities which are traded by the financial intermediary.



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