



## CAPITAL MARKETS

# AMENDMENTS TO THE LEGAL REGIME OF TRANSPARENCY AND PROSPECTUSES

*Decree-Law no. 22/2016 of 3 June was published in the Official Gazette, partially implementing in Portugal the Directive 2013/50/UE, of the European Parliament and of the Council, of 22 October 2013, which notably amends the Transparency Directive and the Prospectuses Directive.*

Decree-Law no. 22/2016 of 3 June was published in the Official Gazette (*Diário da República*, the “DR”), partially implementing in Portugal the Directive 2013/50/UE, of the European Parliament and of the Council, of 22 October 2013, which notably amends the Transparency Directive<sup>1</sup> and the Prospectuses Directive<sup>2</sup>.

This Decree-Law, which entered into force on the day following its publication in the DR (hence, 4 June), is particularly relevant for publicly traded companies and issuers of securities admitted to trading on a regulated market located in Portugal and, to a certain extent, for holders of qualified holdings, especially in relation to: (i) transparency of qualified holdings and long economic holdings, (ii) disclosure of financial information, and (iii) some aspects of the regime of prospectus and offers, in relation to which the language regime stands out.

We hereby briefly note some aspects worthy of more attention.

### A. TRANSPARENCY OF QUALIFIED HOLDINGS AND LONG ECONOMIC HOLDINGS

The communication of qualified holdings shall now be made “as soon as possible”, both to the company and to “*Comissão do Mercado de Valores Mobiliários*” (“CMVM”), i.e. the Portuguese Securities Market Regulator, while the four trading day term is no longer the rule as it becomes a maximum term for the purposes of communication.

The content of the communication becomes more demanding: in addition to all the information previously required, a breakdown of the number of voting rights in relation to each ground for the attribution of voting rights shall now be included.

*The communication of qualified holdings shall now be made “as soon as possible”, both to the company and to “Comissão do Mercado de Valores Mobiliários” (“CMVM”).*

<sup>1</sup> Directive no. 2004/109/CE, of the European Parliament and of the Council, which shall be read together with Directive no. 2007/14/CE, of the Commission, which sets forth the implementing rules of certain provisions of the former.

<sup>2</sup> Directive no. 2003/71/CE, of the European Parliament and of the Council, on the prospectus to be published when securities are offered to the public or admitted to trading.

Special attention must be given to long economic holdings<sup>3</sup> and, consequently, to the holding of financial instruments:

- (i) that give the holder the unconditional right to acquire or the discretion as to his right to acquire, by means of a binding agreement, shares to which voting rights are attached, already issued, of an issuer which shares are admitted to trading on a regulated market;
- (ii) with physical settlement, not included in item (i) above, but which are indexed to shares referred to in that item and with economic effect similar to that of the holding of shares or financial instruments referred to in that item; and
- (iii) with financial settlement, which are referenced to shares referred to in (i) above and with economic effect similar to that of the holding of shares or financial instruments referred to in items (i) and (ii) above,

given that under these cases, the participant should, under the law and in addition to the information which previously had to be disclosed, indicate the percentage of voting rights attributed in relation to each type of financial instrument and depending on whether there is physical settlement, as well as, renew the communication in case there is a change to the ground under which the voting rights are attributed. Furthermore, the holding of this type of instruments is also relevant for the purposes of verification of the limits which once exceeded lead to a duty to launch a mandatory takeover bid.

Among the exemptions to communication duties, we highlight that the financial intermediary which holds shares in its trading portfolio does not have to comply with communication duties, as long as:

- (i) voting rights which are held in a trading portfolio do not exceed 5% of the voting rights correspondent to share capital of the issuer; and
- (ii) voting rights attached to the shares held in the trading portfolio are not exercised nor used in any other way to interfere with the management of the issuer.

#### **B. DISCLOSURE OF FINANCIAL INFORMATION**

The annual and half-yearly financial information shall now be made available for a period of ten years (twice the period previously demanded).

The half-yearly financial information shall be disclosed "as soon as possible" and up to three months after the term of the first semester (which contrasts with the two months term previously set forth).

The biggest innovation refers to the quarterly financial information, which disclosure is no longer mandatory (except for credit institutions and financial companies).

Without prejudice to the above, an issuer of shares admitted to trading in a regulated market may choose to disclose the quarterly information. In that case – and until CMVM regulates this topic-, it shall be done under the same terms as previously demanded, being the issuer obliged to disclose quarterly financial information for two years as of the date of the first voluntary disclosure.

*The biggest innovation refers to the quarterly financial information, which disclosure is no longer mandatory (except for credit institutions and financial companies).*

#### **C. OFFERS AND PROSPECTUSES**

Two brief final remarks in this particular:

- The incorporation or establishment in Portugal is no longer a criterion to ascertain whether an offer is public or private. The criterion is wider given that the offer is now public where aimed at a minimum of 150 non-qualified investors, by Member State. Let's wait and see the construction and application of this provision.
- There was a loosening of the language regime: hereinafter, the rule – without prejudice to some particularities to consider on a case by case basis – is that the disclosure of regulated information (including for the purposes of disclosing a qualified holding or in relation to offering or admission prospectuses) can be made in a language accepted by CMVM. Once again, it is important to see whether CMVM will issue a formal opinion on the languages accepted for such purposes.

<sup>3</sup> Under the terms of CMVM Regulation no. 5/2008 (Disclosure Duties), as amended, the long economic holding already included "contracts or financial instruments with similar economic effects to the holding of shares which do not lead independently to the attribution of voting rights". A regulatory development following these legislative changes is then awaited.

This Informative Note is intended for general distribution to clients and colleagues and the information contained herein is provided as a general and abstract overview. It should not be used as a basis on which to make decisions and professional legal advice should be sought for specific cases. The contents of this Informative Note may not be reproduced, in whole or in part, without the express consent of the author. If you should require further information on this topic, please contact **Marisa Larginho** ([marisa.larginho@plmj.pt](mailto:marisa.larginho@plmj.pt)) or **Sara Lemos Meneses** ([sara.lemosmeneses@plmj.pt](mailto:sara.lemosmeneses@plmj.pt)).

Iberian Law Firm of the Year  
*The Lawyer European Awards, 2015-2012*

Portuguese Law Firm of the Year  
*Who's Who Legal, 2016, 2015, 2011-2006*  
*Chambers European Excellence Awards, 2014, 2012, 2009*

Top 5 - Game Changers of the last 10 years  
Top 50 - Most Innovative Law Firm in Continental Europe  
*Financial Times - Innovative Lawyers Awards, 2014-2011*