



MAY. 19

BANKING AND FINANCE | CAPITAL MARKETS

News - Banking and Finance and Capital Markets 1st quarter of 2019

Below, you will find the issue of our Banking and Finance and Capital Markets newsletter for the 1st quarter of 2019, which compiles the most significant news in this area.

I. Main Portuguese legislation news

**Decree-Law no. 42/2019
of 28 March - Establishes
the simplified rules on bulk
assignment of credits**

The main objective here is to improve the procedures involved in the bulk assignment of credits, in particular, by presenting a simple and rapid response to some of the main uncertainties that arise in these operations. These uncertainties have an impact not only on the overall price of credits, but also, when applicable, on assessing the quality of credits and the corresponding allocation of a rating for the issue associated with their acquisition (in the case of securitisation). The objective is achieved by introducing specific rules on (i) the legal qualification of the transferee, (ii) the form of assignment, and (iii) the applicable registration procedure. The new Decree-Law applies to assignments (i) in which the transferee is a credit institution, financial company or securitisation company; (ii) carried out for a total sale price of at least €50,000 (fifty

thousand euros); and (iii) comprising at least fifty separate credits. The simplified rules on bulk assignment of credits come into force on 1 July 2019.

**Law no. 23/2019 of 13 March
- implements Directive (EU)
2017/2399, the European
Parliament and of the Council
of 12 December 2017 and the
amendment to Decree-Law
no. 345/98 of 9 November, and
the General Rules on Credit
Institutions and Financial
Companies and Decree-Law no.
199/2006, of 25 October**

This Decree-Law establishes new **rules on preference of deposits**, through the allocation of general and special credit privileges to credits for deposits not covered by the Deposit Guarantee Fund. It also defines the requirements for debt instruments to be eligible for the purposes of the minimum TLAC (Total Loss-Absorbing Capacity) and **unsubordinated debt** instruments. This Decree-Law came into force on 14 March.

**Law no. 17/2019 of 14 February
- Rules on mandatory reporting
of financial information.**

This law amends (i) Decree-Law no. 64/2016, which regulates the mandatory automatic exchange of information in the field of taxation, and sets out rules of communication and due diligence by financial institutions with respect to financial accounts, (ii) Decree-Law no. 61/2013 concerning administrative cooperation in the field of taxation, (iii) the General Rules on Tax Infringements, which define the framework of sanctions that apply in cases of breaches, omissions or inaccuracies in the procedures for communication and due diligence, and in other obligations that are imposed on reporting financial institutions as regards the rules on mandatory reporting of information relating to financial accounts whose holders or beneficiaries are resident in Portugal, and (iv) the Supplementary Rules on Tax and Customs Inspection Procedure, which gives the Portuguese Tax and Customs Authority adequate powers to check compliance with the obligations on reporting financial institutions as regards the system of mandatory reporting of information relating to financial accounts whose holders or beneficiaries are resident in Portugal. This Law came into force on 15 February.

**Law no. 15/2019 of 12 February
- Transparency of information
relating to the granting of high-
value credits and strengthening
of parliamentary control over
access to banking and supervision
information**

This law clarifies the powers of the parliamentary committees of inquiry of the Portuguese parliament (*Assembleia da República*) on access to banking and supervision information, with regard to the documentation and information strictly necessary to achieve its objective. It also establishes the duties of transparency and scrutiny that apply to capitalisation, resolution, nationalisation or liquidation operations for credit institutions with direct or indirect use of public funds. This law came into force on 13 February.

**By virtue of being
a sub-type of real estate
investment company, the
SIGI benefits from the
favourable tax regime
applicable to such
companies, both at the
level of the SIGI itself and
at the level of the investor.**

**Decree-law no. 19/2019
of 28 January - Approves the rules
on investment and real estate
management companies (SIGIs)**

Regulates the constitution of SIGIs, the set of activities that are permitted, composition of the portfolio, level of indebtedness, admission to trading, minimum dispersion, mandatory minimum distributions, and the loss of SIGI status and benefits. By virtue of being a sub-type of real estate investment company, the SIGI benefits from the favourable tax regime applicable to such companies, both at the level of the SIGI itself and at the level of the investor. This Decree-Law came into force on 1 February.

**Decree-Law no. 37/2019
of 15 March - Clarifies the
transitional rules on supervision
of mutual associations**

This Decree-Law clarifies, in particular, the powers of the ASF to assess the good repute, professional qualifications, independence, availability and capacity of the members of the governing bodies of mutual associations covered by the transitional period laid down in Article 6 of Decree-Law no. 59/2018 of 2 August ("DL 59/2018"), which approved the Code of Mutual Associations. The main highlight of DL 37/2019 is the amendment of article 6(5)(f) of DL 59/2018 concerning the power of the ASF to analyse the system of governance and risks of mutual associations. This Decree-Law came into force on 21 March.

II. Banking – Other regulatory developments

Highlights

- [Notice no. 1/2019](#) - Updates the regulatory framework of Banco de Portugal on the **elements of provision of accounts**. Repeals Banco de Portugal Notices nos. 6/2003 and 12/91. Also repeals Instruction no. 19/2006.
- [Instruction no. 5/2019](#) - Defines the **requirements of information to be reported periodically to Banco de Portugal** by entities subject to its supervision in the area of the prevention of money laundering and terrorist financing (ML/TF).
- [Circular Letter no. CC/2019/00000025](#) - Communicates that credit institutions and investment companies must comply with the requirements set out in the **Recommendations of the EBA concerning outsourcing to providers of cloud computing services** and that they must notify Banco de Portugal if they contract such services in relation to activities considered material. Reporting is through the BPnet website.
- The EBA publishes versions in Portuguese of the guidelines on the interpretation and harmonised application of the STS securitisation criteria. [Saiba mais aqui](#)
- [Draft Law no. 190/XIII of 20 March 2019](#) - Presented the proposal for a government law on the amendment of the rules on financial supervision in Portugal, including the creation of a National System of Financial Supervision, to strengthen the coordination between the national supervisory authorities for the different sectors (Banco de Portugal, CMVM and ASF).

Other important news (Banco de Portugal)

- [Instruction no. 1/2019](#) - Regulates the duty of reporting of incidents of a serious nature relating to the provision of payment services under the **DSP2**.
- [Instruction no. 2/2019](#) - Defines the procedures for the process of **self-assessment of adequacy of internal liquidity** (ILAAP) and establishes the **ILAAP reporting templates**.
- [Instruction no. 3/2019](#) - Defines the procedures relating to the process of **self-assessment of internal capital** (ICAAP) and establishes the **reporting forms** for sending ICAAP information. Repeals Instruction no. 15/2007.
- [Instruction no. 4/2019](#) - Amends Instruction no. 15/2014 concerning the decentralised deposit and withdrawal of Euro notes and coins.
- [Instruction no. 5/2019](#) - Defines requirements of information to be reported periodically to Banco de Portugal by entities subject to its supervision in the area of the prevention of money laundering and terrorist financing.
- [Instruction no. 6/2019](#) - Releases, for the second quarter of 2019, the **maximum rates** for to be used in consumer credit agreements in the context of DL no. 133/2009 of 02-06.
- [Circular Letter no. CC/2019/00000003](#) - Releases the names of the cash transport companies and their cash handling centres that maintain the conditions to qualify to engage in the activity of recirculation of Euro banknotes and coins.

- [Circular Letter no. CC/2019/00000022](#) - Releases, in accordance with paragraph 9 of Instruction no. 18/2015 of 15-01-2016, the reporting forms for Financing and Capital Plans, the description of the macroeconomic and financial scenario and other guidelines necessary to implement the exercise and provision of information by the institutions.

- [Prospectuses - ESMA publishes list of thresholds below which an EU prospectus is not necessary.](#) [Saiba mais aqui](#)
- [Prospectuses - ESMA publishes Q&As to clarify the applicability the Transparency and Prospectus Directives in case of a no-deal Brexit.](#) [Saiba mais aqui](#)
- [PRIIPS - ESMA publish recommendations on amendments to the key information document.](#) [Saiba mais aqui](#)
- [ESMA publishes report on accepted market practices under the Market Abuse Regulation.](#) [Saiba mais aqui](#)

III. Capital Market - Other regulatory developments

Highlights

- [Public Consultation no. 3/2019](#) - Draft CMVM Regulation on preventing money laundering and terrorist financing.
- [Public Consultation no. 2/2019](#) - Draft Regulation that restricts the marketing, distribution and sale of contracts for difference (CFDs), and prohibits the marketing, distribution and sale of binary options in Portugal to non-professional investors.
- [CMVM Regulation no. 3/2019 - Complaints and dispute resolution.](#) The first amendment to CMVM Regulation no. 2/2016 of 18 July, introducing changes to the rules on the handling of complaints by financial intermediaries and by the CMVM. It also makes changes to the rules on dispute resolution by the CMVM.
- [Sustainable finances \(public consultation\)](#) - Public consultation on the reflection and consultation document on **Sustainable Finance** (submitted for public consultation until 30 April).
- [Prospectuses - ESMA publishes the first Q&A on prospectus regulation.](#) [Saiba mais aqui](#)

The first amendment to CMVM Regulation no. 2/2016 of 18 July, introducing changes to the rules on the handling of complaints by financial intermediaries and by the CMVM. It also makes changes to the rules on dispute resolution by the CMVM.

Other major news (CMVM)

- [CMVM Regulation no. 1/2019](#) - Markets, systems and services managing entities. Amends CMVM Regulations nos. 4/2007 and 5/2007.
- [CMVM Regulation no. 2/2019](#) - Companies for Securities Investment to Stimulate the Economy (SIMFE).
- [CMVM Regulation no. 4/2019](#) - Regulated Markets and Organised Multilateral Trading Facilities. Amendment to CMVM Regulation no. 3/2007.
- [CMVM opinion on the Draft Law that creates the National System of Financial Supervision.](#)
[Saiba mais aqui](#)
- [Circular of 14 March 2019](#) - Circular concerning the possibility for an **OII (property collective investment undertaking) to assume the position of tenant** in a property leasing agreement. [Saiba mais aqui](#)
- [Circular of 11 February 2019](#) - Circular concerning the information to **issuers** of securities admitted to trading on a regulated market: supervision prospects for 2019. [Saiba mais aqui](#)

CMVM opinion on the Draft Law that creates the National System of Financial Supervision.

IV. European Union - main news

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- [Regulation \(EU\) 2019/518](#) of the European Parliament and of the Council of 19 March 2019 amending Regulation (EC) no 924/2009 as regards certain charges on **cross-border payments** in the Union and currency conversion charges (Text with EEA relevance.)
- [Commission Implementing Regulation \(EU\) 2019/439](#) of 15 February 2019, which amends Implementing Regulation (EU) 2016/2070 of the Commission as regards benchmark portfolios, reporting templates and reporting instructions to be applied in the Union for the reporting referred to in **Article 78(2) of Directive 2013/36/EU** of the European Parliament and of the Council (Text with EEA relevance). [Saiba mais aqui](#)
- [Commission Delegated Regulation \(EU\) 2019/411](#) of 29 November 2018 supplementing Directive (EU) 2015/2366 of the European Parliament and of the Council with regard to regulatory technical standards setting technical requirements on development, operation and maintenance of the electronic central register within the field of payment services and on access to the information contained therein (Text with EEA relevance.). [Saiba mais aqui](#)
- [Commission Delegated Regulation \(EU\) 2019/348](#) of 25 October 2018 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria for assessing the **impact of an institution's failure on financial markets**, on other institutions and on funding conditions (Text with EEA relevance.). [Saiba mais aqui](#)

- [Regulation \(EU\) 2019/452](#) of the European Parliament and of the Council of 19 March 2019 establishing a framework for the **screening of foreign direct investments** into the Union.
- [Anti-money laundering: Q&A on the EU list of high-risk third countries](#).

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- [Commission Implementing Regulation \(EU\) 2019/482](#) of 22 March 2019 amending Commission 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 (Text with EEA relevance.). [Saiba mais aqui](#)
- [Commission Delegated Regulation \(EU\) 2019/361](#) of 13 December 2018 amending Delegated Regulation (EU) no 151/2013 with regard to access to the data held in **trade repositories** (Text with EEA relevance.). [Saiba mais aqui](#)
- [Commission Regulation \(EU\) 2019/412](#) of 14 March 2019 on amending Regulation (EC) no 1126/2008 adopting certain **international accounting standards** in accordance with Regulation (EC) no 1606/2002 of the European Parliament and of the Council as regards International Accounting Standards 12 and 23 and International Financial Reporting Standards 3 and 11 (Text with EEA relevance.). [Saiba mais aqui](#)
- [Delegated Regulation \(EU\) 2019/397](#) of 19 December 2018, amending Delegated Regulation (EU) 2016/2251, supplementing Regulation (EU) 648/2012 of the European Parliament and of the Council as regards the date until which counterparties may continue to apply their risk-management procedures for certain OTC derivative contracts not cleared by a CCP.