



BANKING AND FINANCE | CAPITAL MARKETS

News - Banking and Finance and Capital Markets 3rd quarter of 2019

Below, you will find the issue of our Banking and Finance and Capital Markets newsletter for the 3rd quarter of 2019, which compiles the most significant news in this area.

I. Main Portuguese legislation news

- o **Decree-Law 147/2019 of 30 September** – approves contingency measures to be applied in the event of the United Kingdom’s exit from the European Union without agreement (no-deal Brexit). For providers of investment service and activities to benefit from this transitional framework, they must: (i) send a notification of provision of services and engagement in activities to the CMVM, in the case of a provider of services and investment activities or a provider of services relating to CIUs (collective investment undertakings); or to Banco de Portugal in the case of a credit institution; and (ii) within three months of the date of the United Kingdom’s exit from the European Union, the entity must inform the CMVM if it intends to terminate the ongoing contracts or to request authorisation to continue its activity in Portugal.

If the entity requests authorisation to continue to operate in Portugal, the application for authorisation by the entity must be submitted to the competent authority within six months of the date of the United Kingdom’s exit from the European Union. In the case of retail clients, until the request for authorisation referred to above is made, the entities may only act to terminate the contracts they have with those clients.

- o The above applies to service providers in relation to CIUs, with the requirement that for CIUs domiciled in the United Kingdom to be able to continue to sell in Portugal, they must meet the following conditions: (i) the CMVM receives a notification from the FCA for the sale of CIUs in Portugal before Brexit; and (ii) within three months of Brexit, the managing entity of the CIU in question sends the CMVM the documents corresponding to Annex III of the Decree-law.

"Approved contingency measures to be applied in the event of the United Kingdom’s exit from the European Union without agreement."

In the context of banking activity, deposit agreements or other repayable funds, credit operations, payment and issuance of electronic (digital) currency subject to the supervision of Banco de Portugal and concluded under the freedom of establishment and of provision of services will remain in force, and no new contracts may be made after the Brexit, provided that the entities notify Banco de Portugal within three months of the date of entry into force of the Decree-Law. Finally, at the end of the transitional period enshrined in Decree-law, entities with their seat in the United Kingdom will be considered third-country entities.

- **Decree-law 144/2019 of 23 September** - Transfers of supervisory powers (both prudential and behavioural) over investment fund management companies and securitisation funds to the Securities Market Commission. It amends various pieces of legislation, including the General Rules on Collective Investment Undertakings, the Legal Rules on Venture Capital, Social Entrepreneurship and Specialised Investment, the General Rules on Credit Institutions and Financial Companies, the Legal Rules on Securitisation, and the Securities Code. The main highlight of this Decree-Law is the creation of credit funds (OIAE - Specialised Alternative Investment Undertakings - for credit), that can provide credit, with the restrictions laid down in article 5-C of the Decree-law. They can also acquire credits (including NPLs) held by banks.
- **Law 69/2019 of 28 of August** - ensures the implementation into Portuguese law of Council Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017, which lays down a general framework for securitisation and creates a specific framework for simple, transparent and standardised securitisation (securitisation known as STS). Securitisations not covered by this Regulation because they have only one tranche will continue to be governed by Portuguese rules that applied previously.

- **Decree-law 106/2019 of 12 of August** - Transfers deposit guarantees from the Crédito Agrícola Mútuo Guarantee Fund to the Deposit Guarantee Fund. It amends the General Rules on Credit Institutions and Financial Companies, approved by Decree-Law 298/92 of 31 December and repeals Decree-Law 345/98 of 9 November and Decree 854/87 of 5 November, with effect from 1 January 2020.
- **Law 97/2019 of 4 September** - First amendment for consideration by Parliament to Decree-Law 19/2019 of 28 January, which approves the rules on real estate investment and management companies. Our analysis of the legal rules on these companies (SIGIs) is available [here](#).
- **Law 98/2019 of 4 September** - Amends the Personal Income Tax Code in respect of impairments of credit and other financial institutions, the General Rules on Tax Infringements and the special arrangements applicable to deferred tax assets.

BANKING AND FINANCE

I. Other regulatory developments

Highlights

- **Instruction 13/2019** - Defines the **procedures for communication** to Banco de Portugal under Council Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 July.
- **Instruction 17/2019** - Regulates the reporting of statistical information to Banco de Portugal to compile securities statistics, in respect of securities portfolios of financial groups.

- **Ministerial Order 228/2019 of 22 July** – Lays down the terms for the registration referred to in article 5 of Decree-Law 42/2019 of 28 March, which creates simplified arrangements for bulk assignment of credits.
- **Ministerial Order 239/2019 of 30 July** – Regulates the provisions of article 37 of the Legal Rules on Payment Services and Digital Currency, approved by Decree-Law 91/2018 of 12 November (abbreviated to RJSPME in Portuguese). This Order defines the terms and conditions of the exemption from the application of part of the procedural requirements on which the authorisation of payment institutions depends.

II. Other major news (Banco de Portugal):

- **Instruction 14/2019** – Amends Instruction 7/2012, which establishes the temporary measures relating to the eligibility criteria for collateral assets for Eurosystem credit operations.
- **Instruction 15/2019** – Amends Instruction 3/2015 published in Official Bulletin no. 5 of 15-05-2015, which lays down uniform rules for the implementation of monetary policy.
- **Instruction no. 16/2019** – Releases, for the second quarter of 2019, the maximum rates to be used in consumer credit agreements under Decree-Law 133/2009 of 2 June.
- **Circular Letter CC/2019/00000061** – Recommends that credit institutions supervised by Banco de Portugal adopt the measures necessary to comply with the guidelines on the management of non-performing and forborne exposures (EBA/GL/2018/06), which came into force on 30 June 2019.

- **Ministerial Order 219/2019 of 16 July** – Regulates the structure and content of the file to be used to comply with the communication obligation provided for in article 10-A of Decree-Law 64/2016 of 11 October.

CAPITAL MARKETS

I. regulatory developments

Highlights

- **CMVM Regulation 686/2019** – Regulations on the Specific Duties to Prevent and Combat Money Laundering and Terrorist Financing of the Entities Managing Platforms for Donation- or Reward-Based Crowdfunding.
- **CMVM Regulation 6/2019** – Provision of information by entities qualified to engage in internal settlement (article 9 (2) / 1 CSDR, RTS 2017/391 and ITS 2017/393).

II. Other major news (CMVM):

- **Circular of 1 August 2019** – Circular concerning the entry into force of Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending the EMIR - EMIR Refit (1 August 2019).
- **Circular of 29 August 2019** – Circular concerning the disclosure of the auditor's opinion in the situations provided for in articles 60 and 62 of the General Rules on Collective Investment Undertakings (RGOIC).