

INFORMATIVE NOTE



IMPLEMENTATION OF THE DIRECTIVE ON MARKETS IN FINANCIAL INSTRUMENTS AND OF THE TRANSPARENCY DIRECTIVE. ENTERING INTO FORCE ON NOVEMBER 1ST, 2007

Within the announced deadline for the implementation of the so-called Directive on markets in financial instruments ("MiFID") and of the Transparency Directive, on the last October 31st, Decree-Laws no. 357-A/2007, 357-B/2007 and 357-C/2007 were finally published. At the same time, Decree-Law no. 357-D/2007 was also published now governing the marketing to the public of agreements related to investments in tangible assets.

This Informative Note intends to highlight the major amendments introduced by the above mentioned Decree-Laws, considering, in particular, that those involve an overall revision to the Portuguese Securities Code ("Cód.VM") in respect to the regulation of financial intermediation, trading of financial instruments and disclosure obligations related to securities admitted to trading and their issuers.

The expectations and uncertainty around the implementation of these Directives in Portugal is now settled. Nevertheless, we emphasize that, several months after the public consultation, it is not a sound practice the publication of the final version of such huge amendments in the night before

its entering into force. The good news are the maintenance of the key pillars and legal options adopted in the implementing rules, although some surprises were introduced to the previous wording of the Annexes to the Proposal of Authorization Law of the Parliament.

These amendments have entered into force on November 1st. However, particular attention shall be drawn to the transitional provisions foreseen in each Decree-Law. As an example, we highlight that: (i) under MiFID implementation, financial intermediaries are bound to provide to their existing clients information related to their categorization and to their right to require a different treatment; and (ii) under the Transparency Directive implementation, qualifying holdings pursuant to the new regime, and not yet disclosed, shall be duly communicated within two months.

The scope and extension of these amendments naturally requires a more detailed analysis through a different format. As usually, PLMJ will publish a Newsletter on these matters until the end of 2007, collecting the experience of the implementation process during its first months.



Victor Palla
Lisboa, c. 1955
Gelatin silver print
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MiFID Implementation

The expected rules implementing Directive 2004/39/EC, of the European Parliament and of the Council, dated 21st April, 2004, on markets in financial instruments and the Directive 2006/73/EC, of the Commission, dated 10th August, 2006, on organisational requirements and operating conditions for investment firms, were published on October 31st and have entered into force on 1st November, ending another harmonization stage of financial services regulation in the European Union.

This reform brings, among others, significant changes to the Cód.VM, to the General Regime of Credit Institutions and Financial Companies and to the General Regime of Brokerage and Broker-Dealer Companies. In addition, the General Regime governing markets and multilateral trading facilities is amended and a new Regime governing Investment Advice Companies is approved. The detailed and implementing rules on these matters are provided also in EC Regulation 1287/2006, of the Commission, dated 10th August, as well as in the Portuguese Securities Exchange Commission's ("CMVM") regulations entering in force shortly.

The main aspects covered by the abovementioned amendments may be summarised as follows:

- Overall change of the provisions foreseen in the Title IV of the Cód.VM now focused on the trading of financial instruments, in particular: (i) regulated markets and multilateral trading facilities, considering their functional similarity, are regulated through a common set of rules relating to their organization and functioning; (ii) the concentration rule is eliminated; (iii) the systematic internalization is now regulated;
- A new legal framework governing markets and multilateral trading facilities;
- Rules on transparency and integrity of transactions executed over financial instruments, expanding the pre and post trading disclosure duties; amendments to the provisions on the admission to trading, imposing particular requirements for regulated markets with an official listing;
- Extension of the EU passport in what concerns to the list of relevant financial instruments (now including *inter alia* derivatives over commodities and notional assets) and of investment activities and services and ancillary services (namely, qualifying as investment services, the investment advice on financial instruments and the management of multilateral trading facilities);
- Approval of the framework governing companies whose exclusive purpose is the provision of investment advice on financial instruments and the reception and transmission of orders on behalf of third parties over said instruments;
- Clients categorization provisions, broader scope of the qualified investors' definition and new definition of eligible counterparties;
- Expanding the regulation on organisational requirements applicable to financial intermediaries, impacting on its internal structure, outsourcing and tied agent activity, as well as on conflicts of interests' prevention and management;
- Changes to the conduct of business rules imposed to financial intermediaries, from which we point out the rules on best execution, order execution policy, know your customer, appropriateness and suitability and disclosure obligations;
- A substantial set of rules foreseen in the Cód.VM shall apply to insurance agreements linked to investment funds and to standard agreements for the participation in open pension schemes, as well as the strengthen of CMVM's supervisory powers in this respect;
- Simplification of the procedures and relationship between the Bank of Portugal and CMVM, being financial intermediaries now exempted from registration with CMVM of information already filled with the Bank of Portugal.



Victor Palla
 Lisboa, c. 1990
 Gelatin silver print
 38 x 58 cm
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Transparency Directive Implementation

Decree-Law no. 357-A/2007 has also implemented Directive 2004/109/EC of the European Parliament and of the Council, of December 15th, on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (“Transparency Directive”) and the Directive 2007/14/CE of the Commission, of March 8th, establishing the implementing rules of certain provisions set forth in Directive 2004/109/EC.

This amendment to the Cód.VM is essentially focused on the following matters:

- Changes to the rules governing the communication of qualifying holdings; in particular, introducing new thresholds upon which the duty to communicate a qualifying holding is triggered when the holder achieves, exceeds or reduces 15% and 25% of the voting rights in a public company issuer of shares or securities granting the right to subscribe or acquire shares, both if such company is subject to Portuguese law or to a foreign law and provided that, *inter alia*, those securities are admitted to trading on a regulated market located or functioning in Portugal;
- By contrast with the draft decree laws previously disclosed, the 2% threshold was maintained in regard to qualifying holdings in all companies incorporated under Portuguese laws that are issuers of shares or securities granting the right to subscribe or acquire shares admitted to trading on a regulated market located or functioning in Portugal (and not only for companies which by-laws include voting caps);
- The disclosure of qualifying holdings shall be made within a new deadline – four trading days as of the occurrence or awareness of the triggering event – and in accordance with detailed rules regarding its minimum content;
- CMVM is now expressly permitted to require information about the source of the funds used in the acquisition or increase of a qualifying holding in a public company subject to Portuguese law issuer of shares or securities granting the right to subscribe or acquire shares admitted to trading on a regulated market located or functioning in Portugal;

- The rules on attribution to a dominant company of a managing entity or a financial intermediary of voting rights attached to shares held by its managed funds or portfolios are again amended, thus detailing the derogation of such voting rights aggregation rules whenever it is evidenced that the manager entity or the financial intermediary exercise those rights on an independent manner *vis a vis* the dominant company;
- The issuers of securities shall disclose its annual accounts within a four-months-term, after the end of each financial year, irrespectively of its approval by the competent corporate body; in addition, they must disclose the voting outcome of the resolution approving said accounts;
- Relevant amendments to the format, minimum content and deadline for the disclosure by issuers of annual and interim financial information, continuing in place, as official information storage mechanism, the current CMVM’s disclosure system;
- The quarterly financial information is now restricted to large companies - as defined under the criteria set forth in Article 413(2) of the Portuguese Companies Code - admitted to trading on a regulated market;
- Statements on the veracity and compliance of financial reporting are required from the persons responsible for the information within the issuer.



Manuel Costa Martins/Victor Palla
 S/ título (da série Lisboa, Cidade Triste e Alegre
 Gelatin silver print
 50 x 50 cm
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New framework governing public offering or marketing of agreements related to investments in tangible assets

Decree Law no. 357-D/2007 governs the public offering or marketing of agreements related to the investment in tangible assets – such as stamps, precious stones, works of art and antiquities. CMVM becomes responsible for the supervision of the companies engaging in those marketing activities. In this field, we highlight the following new rules:

- Pre and post contractual disclosure obligations and written agreements to be entered into with clients are now imposed;
- Clients are entitled to a “right to terminate” the agreements, within 14 days as of its execution, including also credit agreements eventually entered into between the client and third parties, further the agreement of the marketing entity, in order to invest in tangible assets;
- The segregation of clients’ assets from those belonging to the marketing entity, including the duty to deposit cash in bank accounts opened in the clients’ name;
- The segregation of the assets held for the clients’ account in case of insolvency of the marketing entity;
- The marketing is limited to joint stock companies, which share capital is represented by nominative shares and that are obliged to maintain organised accounting and financial statements attested by an auditor registered with CMVM;
- Imposition of a strengthened supervisory model to the companies referred in the previous paragraph, including, alternatively, one of the following structures: (a) a fiscal board and a separate chartered accountant, (b) an audit committee within the board of directors and a chartered accountant, or (c) a supervisory board independent from the executive board and a chartered accountant; any of those supervisory bodies shall immediately communicate to CMVM *inter alia* any events that might be deemed as an irregularity;
- A list of operations and references are forbidden when pursuing said companies’ investment policy;
- Registration of the marketing entities within CMVM’s disclosure system and several disclosure obligations before CMVM are imposed to those entities, to be further detailed in regulations approved by said supervisory authority.

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