

INFORMATIVE NOTE



FINANCIAL SUPERVISION

QUALIFIED HOLDINGS IN THE FINANCIAL SECTOR

Decree-law no. 52/2010 of 26 May came into force on the 27th of May, thereby implementing Directive 2007/44/EU of 5 September concerning procedural rules and criteria for the prudential assessment of projects for the acquisition of and increase in qualified holdings in institutions in the financial sector - that is, banking, insurance and securities institutions – with a view to increasing harmonisation of the rules in this field. This new piece of legislation introduces changes to the legal frameworks for credit institutions, insurers, managing companies of regulated markets and investment consulting companies. It introduces new rules on the calculation of qualified holdings for the purposes of authorisation by the regulatory authorities, on the updating of evaluation and control criteria for the acquisition of qualified holdings, on the periods and grounds for opposition by the supervisory authorities and on strengthening the cooperation between Portugal's regulators and those of other Member States. The following is a presentation of the most relevant changes.

Acquisition of a qualified holding in a credit institution

In accordance with the Directive, the new legislation introduces a relevant change to the concept of qualified holding by increasing the threshold from which a holding in

a credit institution is automatically considered to be qualified from 5% to 10% of the capital or the voting rights of the credit institution. On a practical level, this change only impacts operations for the acquisition of a qualified holding in a credit institution, since the advance submission of the *acquisition* project to the Bank of Portugal and, consequently, the possibility of the Bank to oppose the acquisition, is now only required in situations where the project involves the acquisition of a holding of 10% or more, as opposed to the previous 5% or more holdings. However, it should be noted that the law still provides for the Bank of Portugal to be able to consider any holding in a credit institution to be *qualified*, even if it is lower than 10% or even 5%, whenever it considers that specific facts or events show that holding allows its holder to exercise a *significant influence* over the management of the credit institution.

Acquisition of a holding of 5% or more in a credit institution

As a result of the change in the threshold from which a holding in a credit institution is automatically considered to be qualified, the new legislation has introduced the obligation to present a *subsequent communication* of the events or facts that resulted in the acquisition of a holding of 5% or more, with a view to enabling the Bank of

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"Corporate Law Firm of the Year - Southern Europe"
ACQ Finance Magazine, 2009

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Clients Choice Award - International Law Office, 2008, 2010

"Best Portuguese Tax Firm of the Year"
International Tax Review - Tax Awards 2006, 2008

Mind Leaders Awards TM
Human Resources Suppliers 2007

In any case it should be noted that the intended harmonisation is immediately harmed by the difference in content of the concept of “relationship of control” provided for in the Portuguese Securities Code and the content of the same concept in the General Framework for Credit Institutions and Financial Companies.

Portugal to make an assessment, even though a *posteriori*, of whether or not the holding acquired is a qualified one.

Period for opposition

Also, in relation to projects for the acquisition of a qualified holding in a credit institution, the new legislation reduces the *period* granted to the Bank of Portugal to decide on the project from 90 to 60 days, thereby increasing the speed of acquisition processes.

Reduction in qualified holding

In turn, advance notifications of reductions in a qualified holding now only have to be sent to the Bank of Portugal when the reduction causes the holding to drop below the threshold of 20%, one third or 50%, so notification is no longer necessary for the thresholds of 5% and 10%.

Attribution of voting rights

Also meriting attention is the fact that the new legislation seeks to harmonise the rules on attribution of voting rights, as well as the specific rules on shares which are part of undertakings for collective investments, pension funds or portfolios, by adopting the criteria that are currently contained in articles 20 and 20 -A of the Portuguese Securities Code even though the choice has been to make express provision for those criteria instead of incorporating them by reference to the existing provisions. In any case it should be noted that the intended harmonisation is immediately harmed by the difference in content of the concept of “relationship of control” provided for in the Portuguese Securities Code and the content of the same concept in the General Framework for Credit Institutions and Financial Companies.

Acquisition of a qualified holding in an insurance company

In the insurance sector, in addition to the harmonisation of the rules on the attribution of voting rights relevant to the calculation of qualified holdings and, similarly to what was done in relation to credit institutions, the new legislation introduces wider criteria for the purposes of confirming the controlling relationship. Additionally, it is established that the advance communications of the acquisition of or increase or decrease in a qualified holding are now to be sent to the Portuguese Insurance Institute and not the Ministry of Finance. The criteria for assessing projects by the Portuguese Insurance Institute as the supervisory authority have also been improved.

Managing Companies of Regulated Markets

As far as the changes introduced to the frameworks for managing companies of regulated markets and for investment consulting companies are concerned, we wish to draw attention to the fact that acquisitions of qualified holdings in these companies are now dependent on the approval of the Portuguese Securities Commission as a prudential assessment. Changes to the rules on the attribution of voting rights relevant for the calculation of the qualified holdings and to the procedures for prior and subsequent assessment of the respective projects are introduced in relation to these companies. This is similar to what was done in relation to other entities in the financial sector and also extends the application of the rules that establish whether or not a controlling relationship exists to these types of companies.

Transitional Provisions

As a transitional regime, holdings that are considered to be qualified under the new rules must be notified to the appropriate supervisory authority within 60 days of the entry into force of the new law.

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