



CAPITAL MARKETS

PROSPECTUS AND TRANSPARENCY

IMPLEMENTATION OF THE NEW RULES INTO PORTUGUESE LAW

On 6 February, Decree-Law no. 18/2013 was published. It proceeds with the implementation of two European directives into Portuguese Law, with particular emphasis given in this Note to the implementation of the Directive 2010/73/EU, of the European Parliament and of the Council, of 24 November 2010, which in turn amended the Prospectus Directive and the Transparency Directive (“Directive”).

I. INTRODUCTION

On 6 February, Decree-Law no. 18/2013 was published. It proceeds with the implementation of two European directives into Portuguese Law, with particular emphasis given in this Note to the implementation of the Directive 2010/73/EU, of the European Parliament and of the Council, of 24 November 2010, which in turn amended the Prospectus Directive¹ and the Transparency Directive² (“Directive”).

Decree-Law no. 18/2013 entered into force on 7 February. As mentioned in the recitals of said decree-law, the Directive implemented therein intends to put in practice in Portuguese Law the aim of contributing to the reduction of the costs arising from the obligation of disclosure of a prospectus in the event of a public offer of distribution of securities (“public offer”) or its admission to trading on a regulated market.

¹ Directive 2003/71/EC, on the prospectus to be published when securities are offered to the public or admitted to trading.

² Directive 2004/109/EC, on the harmonization of transparency requirements in relation to information about issuers which securities are admitted to trading on a regulated market.

The most relevant amendments introduced by Decree-Law no. 18/2013 into the Portuguese Securities Code³ (“Securities Code”), concerning prospectuses and transparency duties of companies with securities admitted to trading on a regulated market (“Issuers”), will be analyzed in the following sections.

II. CATEGORIZATION OF INVESTORS

Concerning the categorization of investors, a single concept of “qualified investor” is now laid down, which is applicable for the purposes of the public offer legal framework and the rules on conduct of business of financial intermediaries, thus eliminating the inconsistencies arising from the previously existing legal framework, in which different concepts of “qualified investor” applied to each one of the abovementioned subjects.

Furthermore, it is now established that, within the qualification of an offer as public or private, and upon the Issuer’s request, the financial intermediaries will inform the former of the categorization of their clients.

³ Decree-Law no. 486/99, of 13 November, as amended.

III. QUALIFICATION OF A SECURITIES OFFER AS A PUBLIC OFFER

Concerning the qualification of an offer as a public offer, the Securities Code previously laid down that an offer addressed to a minimum number of 100 persons/entities categorized as non-qualified investors, with residence or establishment in Portugal, would correspond to a public offer. Decree-Law no. 18/2013 amended said provision, in order to increase the minimum number of relevant non-qualified investors from 100 to 150.

IV. EXCEPTIONS TO THE APPLICABILITY OF THE PUBLIC OFFER LEGAL FRAMEWORK

Decree-Law no. 18/2013 has introduced amendments to the list of offers qualified as public that are exempt from the applicability of the public offer legal framework and corresponding duty of disclosure of a prospectus, which can be summarized as follows:

1. The denomination per unit or the exercise or minimum sale price of securities that exempts a public offer from the applicability of the corresponding legal framework is increased from EUR 50,000 to EUR 100,000, which corresponds to a reduction of the scope of this exception;
2. The minimum global consideration of a public offer that triggers the applicability of the corresponding legal framework is increased from EUR 2,500,000 to EUR 5,000,000, calculated by reference to the offers carried out over a period of 12 months, and the basis for the calculation of said minimum consideration corresponds now to the global consideration of an offer in the European Union;
3. Furthermore, the minimum global consideration of a public offer of certain non-equity securities issued in a continuous or repeated manner by credit institutions, relevant for the purposes of the applicability of the public offer legal framework, was increased from EUR

50,000,000 to EUR 75,000,000, calculated by reference to the offers carried out over a period of 12 months, and the basis of its calculation corresponds now to the consideration of the offer in the European Union;

4. Finally, the subjective scope of the exception laid down for public offers of securities issued by collective investment undertakings was widened, given that said exception was formerly limited to collective investment undertakings of a corporate type.

V. EXEMPTIONS FROM THE PROSPECTUS REQUIREMENT

The exemption from the requirement to disclose a prospectus applicable to public offers of securities to be allotted within a merger was now extended to spin-offs.

Additionally, the exemption applicable to offers of securities to members of the management bodies or employees of the Issuer (or of companies in a

control or group relationship or under common control) was extended, as the formerly existing requirement of the Issuer having securities admitted to trading on a regulated market was eliminated, and thus it now sufficient that its registered office or head office is located in the European Union and that a document containing information on the number and nature of the securities and the motives and details of the offer is made available.

In the event that there is a public offer carried out by an Issuer that is not based in the European Union, the same may benefit from the exemption, subject to the fulfillment of certain prerequisites of information and equivalence.

VI. PUBLIC RETAIL CASCADE OFFERS

It is now permitted to a financial intermediary, who proceeds with the offer of securities qualified as a public offer, to use a previously approved prospectus that has been disclosed in the preceding 12 months from the date of its approval, provided that



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the prospectus is still updated and that the written consent of the Issuer or person responsible for preparing the prospectus is granted, which may occur in the initial prospectus.

Such resale or final placement offers shall be subject to regulation by the Portuguese Securities Exchange Commission ("CMVM"), notably concerning the offer price, its period and the means of disclosure of the information regarding the conditions and terms of the offer.

VII. SUMMARY, CONTENT AND SUPPLEMENT TO THE PROSPECTUSES

Concerning the summary to be mandatorily included in public offer prospectuses, the amendments to the legal framework intend to guarantee, through a more detailed regulation, that the summary provides the essential information to the investors, in a clear, summarized and harmonized form within the European Union, thus enabling the comparison of summaries of similar products and the appropriate knowledge by the investors of all essential information.

Regarding the subject of the supplement to a prospectus, it is now possible that the same is published until the end of the offer period or, as the case may be, the date of admission of the securities to trading on a regulated market, whichever occurs later. The supplement shall contain a reference to the final date until which the investors that have accepted the offer may exercise the right to withdraw their acceptance, such exercise being now subject to the prerequisite that the fact or inaccuracy at stake have been detected, acknowledged or occurred before the end of the offer period and the transfer of the securities.

VIII. ELIMINATION OF DUTY TO DISCLOSE A DOCUMENT OF ANNUAL CONSOLIDATION OF INFORMATION

By virtue of the elimination of the previously existing article 248-C of the Securities Code, the Issuers are no longer obliged to disclose a document of annual consolidation of information.

IX. EXTENSION OF THE LIST OF ENTITIES SUBJECT TO CMVM'S SUPERVISION

Finally, and following the publication of Regulation (EU) no. 236/2012, of the European Parliament and Council, of 14 March 2012, on short selling and certain aspects of credit default swaps, the holders of relevant short positions over shares and sovereign debt and the purchasers of protection in sovereign credit default swaps are now subject to CMVM's supervision.

X. CONCLUSION

Further to the implementation of the Directive through Decree-Law no. 18/2013, the Portuguese legal system is entirely in line with the European Law rules in force concerning prospectuses and transparency, and therefore the General Opinion of the CMVM, of 13 July 2012, concerning the direct effect of the Directive after 1 July 2012, which was fixed by the same as deadline for its implementation in the national law of the Member States of the European Union, does not apply anymore.

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