

# Portugal

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## **1. GENERAL DESCRIPTION OF THE CAPITAL MARKETS**

The history of the Portuguese capital markets commences in the 18th century, with the creation in 1769 of the Lisbon Exchange. The Porto Exchange was established in 1829.

It was in 1901 that the first specific law relating to the securities market was enacted. Until the 1980s the Portuguese stock market had very little relevance, due to the Portuguese right wing regime and the subsequent 1974 revolution, which drew investors away.

The market was, however, boosted in the late 1980s, with the beginning of the process of privatisation of several state-owned companies. This process began following the accession of Portugal to the European Economic Community, which acted as a strong incentive for the development of the Portuguese economy.

It was in 1991 that the Lisbon and Porto Stock Exchanges were integrated into two private law associations that would manage the respective markets.

The integration of the capital markets led, in 1999, to the merger of the Lisbon and Porto stock exchanges, with the creation of the Lisbon and Porto Stock Exchange (*Bolsa de Valores de Lisboa e Porto* or BVLP).

In 2002, the BVLP merged with Euronext NV, changing its denomination to Euronext Lisbon, following the international trend of consolidation of exchanges.

## **2. LEGISLATIVE AND REGULATORY STRUCTURE**

The Portuguese capital market legislation suffered its last great development following the approval of the new Securities Code (*Código dos Valores Mobiliários* or CVM), by Decree-Law 486/99, last amended by Decree-Law 219/2006. The CVM considerably simplified the text and language of the previous 1991 Securities Market Code and substantially reduced the number of articles in it, as well as adopting in its text several EU Directives. The CVM entered into force on 1 March 2000.

The Securities Code governs, *inter alia*, the public offering of securities, in particular under its Chapter III. Public offers are broadly divided between public distribution offers (which include public sale offers and public subscription offers) and takeovers (which include public exchange offers). Chapter III of the Securities Code has been extensively reviewed as a result of the implementation of the Prospectus Directive 2003/71/CE and of the Takeovers Directive 2004/25/CE and must be analysed in conjunction with EU Regulation 809/2004 which is directly applicable in Portugal.

Article 109 defines public offers as offers of securities addressed, in whole or in part, to unidentified addressees. The uncertainty of the addressee is not prejudiced by the fact that the offer takes place through multiple standard communications, even if addressed to individually identified addressees.

The following offers are always considered public:

- a) an offer addressed to all the shareholders of a public company, even if its share capital is represented by nominative shares;
- b) an offer that, in whole or in part, is preceded or accompanied by promotional material or book-building with unidentified addressees;
- c) offers addressed to, at least, 100 people that are non-qualified investors and who are

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domiciled in Portugal.

The following offers are always considered private:

- offers addressed to institutional investors;
- the subscription offers by non listed companies, addressed to their shareholders, except for those cases described in paragraph b) above.

Institutional investors are defined in article 30 of the CVM as credit institutions, investment firms, collective investment funds and their respective managing companies, insurance companies, pension funds and their respective managing companies, any other authorised or regulated financial institutions of non-EU member states, entities that trade securities on trade goods, state entities, central banks, public entities that administer state debt and supra-national institutions.

The concept of institutional investor may also include other entities with pre-determined characteristics, and the CMVM may qualify other entities as institutional investors if they have particular experience and competence in relation to securities.

Private offers by public companies and by issuers whose securities are publicly traded are subject to a subsequent communication to the CMVM for statistical purposes.

Some types of offers are excluded from the provisions of the CVM, the most relevant being:

- the public distribution offers of debt securities issued by a member state of the EU or by the European Central Bank;
- the offers on securities issued by an open-ended collective investment fund, made by the issuer or on its behalf;
- the offers on or through a market registered with the CMVM that are presented exclusively through the market's own means of communication and that are not preceded or accompanied by promotional material or prospecting or bookbuilding from unspecified addressees;
- public offers of securities with a par value of €50,000 or more or with a subscription or purchase price equal or above such amount; and
- public offers of securities with a total value below €2,500,000 in a twelve month period.

### **3. REGISTRATION OF THE ISSUER AND SECURITIES**

There is no need for a foreign company offering or tendering securities in Portugal to be locally registered or licensed, or to have any local formal presence or local agent to accept legal process.

Such foreign company, to the extent that it may be subject to taxation in Portugal resulting from its activities, must obtain a special taxpayer number for foreign entities.

In the case of public offers the foreign issuer has, however, to appoint a financial intermediary to assist in the preparation of the offer and to be responsible for the placement of the offer, in the case of distribution offers and to assist in the preparation of the offer and receive the acceptance declarations in the case of takeovers.

Securities offered in Portugal through a public distribution offer do not need to be registered in Portugal.

In the case of public offers, either of distribution or takeovers, the offeror must disclose a prospectus which (i) may be specifically prepared for the offer in Portugal or (ii) prepared for a pan-European offer and passported into Portugal (see section 5 below).

### **4. SUPERVISORY AUTHORITIES**

The power to supervise the performance of intermediaries in the securities markets was delivered to a supervisory body, the Portuguese Securities Commission (*Comissão do Mercado de Valores Mobiliários* or CMVM).

The CMVM (whose statutes are contained in Decree-Law 473/99), which is an entity of the state sector, with administrative and financial autonomy (although under the supervision of the Ministry of Finance), and has as its main purpose to oversee compliance with the

securities market rules, supervising the capital markets, overseeing the activity of the economic agents, as well as approving regulations and instructions and punishing those who breach market rules.

Regulation and oversight is therefore a purely public administrative activity, carried out by an independent state entity, and is clearly sub-divided between duties of regulation and duties of supervision.

The regulatory duties of the CMVM relate mainly to the development of the broad principles set out in the CVM by means of the issue of regulations (*regulamentos*) which are published in the CMVM bulletin and in the second series of the Official Gazette (*Diário da República*). CMVM rules which are drawn up merely with a view to regulating proceedings of an internal nature of one or more types of entities, are classified as instructions (*instruções*), need not be published in the Official Gazette and are communicated to interested parties.

The CMVM may also issue general recommendations directed to one or more types of entities subject to its supervision and may formulate and publish general legal opinions concerning relevant issues.

The CMVM periodically publishes a bulletin, which is called the '*Boletim da CMVM*'.

The main objectives of the CMVM's supervisory duties have as a guiding principle that the entities subject to the supervision of the CMVM are supervised on an ongoing basis, independently of whether any irregularity has taken place. This ongoing supervision is coupled with inspection duties in the case of any irregularities, in which the CMVM has powers to investigate in order to ascertain if such irregularities have in fact taken place.

The CMVM's supervisory duties also include prudential supervision that has as its main aims: (i) the preservation of the solvency and liquidity of the institutions, as well as the prevention of risks; (ii) the prevention of systemic risk; and (iii) the control of the ethical standards of the members of management bodies and holders of qualifying participations.

The CMVM is an entity subject to state supervision. Therefore the government, through the Ministry of Finance, may define policies relating to the securities markets and exercise, in relation to the CMVM, administrative supervision.

The two other main categories of the financial sector, banking and insurance, have their own regulatory and supervisory authorities:

- the banking sector (which includes investment companies) is overseen by the Bank of Portugal (*Banco de Portugal*), pursuant to the Banking Law (*Regime Geral das Instituições de Crédito e das Sociedades Financeiras*), approved by Decree-Law 298/92;
- the insurance sector is overseen by the Insurance Institute of Portugal (*Instituto de Seguros de Portugal*) pursuant to Decree-Law 94-B/98.

## **5. OFFERING DOCUMENTS**

### **5.1 General rule**

Generally, all public offers must be preceded by the publication of a prospectus.

Certain types of public offers do not require a prospectus:

- offers of securities, as a result of a merger, to at least 100 shareholders who are not qualified investors;
- payment of dividends in the form of shares of the same class as those that granted the right to the dividend;
- offers of securities to management or employees.

### **5.2 Information requirements and prospectus structure**

In all cases where a prospectus is required, it must contain complete, true, updated, clear, objective and lawful information, which allows the addressees to make an informed assessment about the offer, the securities which are its object and their inherent rights, on the specific characteristics and on the issuer's assets, economic and financial situation. The business plans and forecasts of the results of the issuer as well as the valuation of the price of

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the securities that are the object of the offer must be clear and objective and obey the provisions of EU Regulation 809/2004.

The prospectus of a public distribution offer must include a summary that refers the essential characteristics of the offer and the risk factors associated with the issuer, the guarantor (if applicable) and the securities object of the offer.

The prospectus of a public distribution offer may be produced as a single document or separate documents (made up of a registration document, a note on the securities and a summary). If the registration document (which includes the information on the issuer) has been approved, then the issuer needs only to prepare the summary and the note on the securities.

The issuer may also prepare a base prospectus (which must be the subject of an addendum whenever updated information is available), for public offers of debt securities, including warrants, issued in the context of a programme and debt securities issued continuously or repeatedly by a credit institution.

The prospectus of a public distribution offer must include the information set out in EU Regulation 809/2004 and include statements of responsibility of those persons who are responsible for its contents.

Issuers may prepare their individual accounts in accordance with the Portuguese accounting plan (POC), but consolidated accounts must be prepared in accordance with the IAS.

If the public distribution offer affects securities already listed or expected to be admitted to trading on a regulated market located in Portugal or in any other EU member state, a single prospectus satisfying the requirements for both effects can be approved and used.

The prospectus for a public distribution offer may, in whole or in part, be written in a language of current use in the international financial markets (this provision clearly includes an English language prospectus, but what other languages would be accepted is as yet unclear), if: (i) the publication of a prospectus is not obligatory; or (ii) the offer is directed towards several different countries; or (iii) the issuer's personal law is not the Portuguese language. In cases (ii) and (iii), the CMVM may require a summary in Portuguese that describes the offering and the risk factors.

The prospectus of a takeover must include additional information as set out in the CVM.

### **5.3 Disclosure of prospectus**

The prospectus may only be disclosed after approval by the CMVM, and must be made available to the public with reasonable prior notice in respect of its potential addressees and the characteristics of the offer. A prospectus is considered to have been made available to the public if it is: (i) disclosed through publication in one or more newspapers of mass circulation throughout the country; (ii) in the form of a brochure to be made available, free of charge, to the public, in particular at the offeror's and issuer's head offices, at the head offices and branches of the financial intermediaries in charge of gathering the addressee's orders, and at the head offices of the operator of the regulated markets in which the securities are or will be listed; or (iii) if it is made available on the internet site of the issuer, the financial intermediaries responsible for underwriting the offer, the regulated market where listing has been sought or the CMVM. If methods (i) or (ii) are used, the prospectus must also be made available in electronic format in one of the sites referred to in (iii).

The prospectus in a public distribution offer and a base prospectus have a validity of 12 months from the date on which they are disclosed to the public (although they must be the subject of an addendum if there is change in any material information).

### **5.4 Competence to approve the prospectus and to supervise takeover offers**

The CMVM is the competent entity to approve a prospectus of public distribution offers when the issuers have their registered offices in Portugal, in the case of shares and other securities with a par value of below €1,000.

The member states where the issuer has his registered office or in which the securities have been or will be listed or offered to the public, at the option of the issuer or the offeror, is competent in relation to offers of debt securities with a par value of over €1,000 and offers of debt securities conferring the right to acquire securities or monies as a result of their conversion or exercise of any rights inherent to it, as long as the issuer of such debt securities is not the issuer of the securities to be obtained nor a company of its group of companies.

The CMVM may delegate its approval powers in relation to a prospectus to an authority in another member state, with the latter's agreement.

The CMVM is the competent entity to supervise a takeover offer when the issuer of the tendered securities is subject to Portuguese law and, to the extent that the securities are listed in a regulated market located in Portugal or are not listed in any regulated market. The CMVM is also the competent entity to supervise a takeover offer in which securities of a company which is not governed by Portuguese law are the subject of such offer provided that such securities are exclusively listed in a regulated market located in Portugal or are not listed in the EU member state in which the issuer has its registered office and have been listed in Portugal in the first place.

### **5.5 EU scope of the prospectus and recognition procedure**

A prospectus approved in another member state for a public distribution offer to be made in Portugal is valid in Portugal so long as the CMVM receives an approval certificate from the authority of the other member state asserting that such prospectus has been made in accordance with Directive 2003/71/CE and a copy of the approved prospectus (with a translation of the summary).

A prospectus approved in another member state for a takeover offer to be made in relation to securities listed in a regulated market in Portugal is recognised by the CMVM so long as such prospectus is translated into Portuguese and the CMVM receives a certificate from the authority of the other member state asserting that such prospectus complies with the relevant national and EU legislation. The CMVM can also demand certain information to be added to the prospectus as a result of any Portuguese legal requirement in relation to the consideration of the offer, to the acceptance of the offer and tax regime of the offer.

Issuers not domiciled in the European Community may request the approval of their prospectus with the CMVM so long as the prospectus has been drafted in accordance with international standards and contains the information provided for in the CVM and in EU Regulation 809/2004.

## **6. DISTRIBUTION SYSTEM/CONTROL OF DISTRIBUTOR**

Securities offerings are traditionally distributed by banks, either retail or merchant. These entities distributing the securities the subject of the offer must be registered with the CMVM as financial intermediaries.

All marketing and commercial material related to a public offer must be complete, true, accurate and lawful and should refer to the future existence of a prospectus and adapt itself to the contents of such prospectus. Moreover, such marketing and commercial material is subject to prior approval by the CMVM before it can be released.

The offeror, the members of the offeror statutory bodies, the issuer, the members of the issuer statutory bodies, the financial intermediaries and other persons appearing as responsible for the marketing and commercial materials are liable for any damages caused by the information contained in those materials whenever such information is not complete, true, updated, accurate, objective and lawful.

## **7. LISTING**

### **7.1 Listing requirements**

The CVM stipulates that the issuer seeking listing of its securities shall comply with the following pre-requisites:

- it must be incorporated and functioning in accordance with the law under which it is governed;
- it must have been conducting business for at least three years;
- it must have published its annual financial statements for the prior three years;
- it must prove that its financial and economic situation are compatible with the nature of the securities to be admitted and with the market on which listing is requested.

The application for listing shall include reference to the means by which the issuer is to disclose information to the public and the identification of the member of the settlement system approved by the market operator through which the payment of the rights conferred by the securities to be listed is guaranteed.

Only those shares in relation to which an adequate level of dispersion among the public can be verified and a minimum amount of one million euros of market capitalisation is forecast (or, if such forecast is not possible, when the own funds of the company are at least equal to such amount) shall be admitted to trading. Only those bonds representing a bond financing, or a specific series, with a value equal to or greater than €200,000, shall be admitted to trading. The admission to trading of other securities shall depend upon verification of requirements similar to those referred to in the previous paragraphs, and are defined by the market operator.

### **7.2 Procedure for listing**

The CVM stipulates that requests for admission to trading, together with the necessary information required in order to prove that all pre-requisites have been met, shall be presented to the operator of the regulated market where the securities are to be listed by the issuer or by those parties holding at least 10 per cent of issued securities belonging to the same class, if the issuer is already a public company.

The operator of the regulated market shall provide the CMVM with a copy of the admission application, together with any documents necessary for the approval of the prospectus.

The operator of the regulated market shall decide to authorise the admission of securities or shall refuse the same within 90 days after the submission of the application. Admission shall only be refused in the event of (i) non-fulfilment of requisites set down by law (ii) non-fulfilment, by the issuer, of duties to which it is subject in other markets in Portugal or abroad, where the securities in question are listed, or (iii) if the interests of investors, due to the situation of the issuer, do not recommend listing.

Admission shall be considered denied if the petitioner is not informed of the decision within 90 days of the application.

### **7.3 Listing prospectus**

Prior to the admission of securities to trading, the issuer must publish a prospectus approved by the CMVM or by the competent authority of another member state. The listing of certain types of securities does not require a prospectus, in line with the general prospectus exemptions we saw above.

The listing prospectus may, in whole or in part, be written in a language currently used in the international financial markets if: (i) the securities to be listed have a nominal value equal or over €50,000, or in cases where the securities do not have a nominal value, where the unitary subscription or sale price is equal to or over such value; or (ii) the listing was directed at markets in several different countries; or (iii) if the issuer is governed by any law other than Portuguese law, or (iv) it is destined for a market or market segment which, due to its

characteristics, is only accessible to institutional investors. The CMVM may, however, require a summary in Portuguese that describes the offering and the risk factors.

The form and contents of the prospectus, as well as the responsibility for its contents, are very similar to those that were outlined above in relation to the prospectus for public offers.

## **8. INFORMATION OBLIGATIONS**

### **8.1 General rules**

In relation to general duties, the most important provision is article 7 of the CVM, which states that all information relating to securities, public offers, securities markets, financial intermediation activities and to issuers, that can influence the decisions of investors or that is provided to entities supervising the market and to operators of markets, settlement systems and of centralised systems of securities, must be complete, truthful, up-to-date, clear, objective and lawful.

### **8.2 Financial intermediaries**

The financial intermediary must provide, in relation to the services that it offers, that are requested from it or that it effectively renders, all the necessary information to enable an investor to reach a clear and reasoned decision.

The lower the degree of knowledge and experience of the client, the higher the extent and depth of the information that must be provided. All financial intermediaries based in Portugal must report to the operators of the regulated markets those transactions that have as their object shares, bonds or standard forward contracts and options relating to shares when negotiated in a regulated market located in a member state of the EU.

This disclosure must indicate the type, quantity and price of the financial instruments negotiated, as well as the day and time of the operation. The disclosure is made immediately after the carrying out of the operation. When the trading system registers the operations, the disclosure is considered to have been made automatically at the time such registration takes place.

### **8.3 Issuers**

Issuers of securities listed simultaneously on a regulated market situated in Portugal and on a regulated market located in another state must disclose, to the operator of the regulated market located in Portugal and to the CMVM, equivalent information to that which it must provide in such other state.

The issuers of listed securities on the regulated market shall disclose to the CMVM and to the operator of the regulated market a rather extensive list of information, including: (i) periodical reporting duties, which relate mainly to economic and financial information; (ii) management report; (iii) annual accounts; (iv) legal certificate of accounts and other accounting documents required by law; and (v) auditors report.

Documents which make up the annual report and accounts shall be sent to the CMVM and to the operator of the regulated market as soon as they are placed at the disposal of shareholders.

The issuers of listed shares shall publish 'half-year' interim reports. This information shall contain the elements necessary for investors to make a reasonable assessment of the activities and the results of the company from the end of the previous financial year, and, if possible, foreseeable developments for the current financial year.

Listed companies must also provide quarterly information to the CMVM as to their financial and economic situation, which need not be audited.

We also have the reporting requirements that arise from the existence of privileged information. All issuers that have listed securities must immediately disclose (i) all information that directly concerns its securities, which is not public and which if it were made public would affect the price of the same; and (ii) any changes to disclosed information. Privileged

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information includes all facts that have occurred, which exist or which are reasonably predictable, upon which a reasonable investor would base his decision to invest in such securities. Issuers must keep an updated list with all persons that have access to privileged information. Issuers may elect to not disclose such privileged information if such disclosure would prejudice their legitimate interests, if the delay in disclosure does not induce the public in error and the issuer ensures the confidentiality of the information.

The managing persons (ie, directors, members of the internal auditing bodies and persons who participate in the strategic decision-making of the issuer) of issuers of listed securities must also communicate to the CMVM, with five working days, all transactions entered into in their own name (or by a related person or entity) relating to the securities of such issuer.

Issuers of listed securities must also, at least once a year, disclose a document that contains or refers to all the information published or made available by such issuer during the previous 12 months. This requirement is not applicable to issuers that issue debt securities with nominal values of over €50,000.

Finally, listed companies also have reporting requirements in relation to their statutory activities, such as proposed amendments to the company by-laws, calling of general meetings, modification of the rights of bondholders which result, specifically, from changes to the conditions of the loan or of the interest rate, and the issue of other shares and of other bonds.

The publication of information required in the previous paragraphs may be waived by the CMVM when the disclosure of such information would be contrary to public interest and seriously detrimental to the issuer, provided that such omission is not likely to mislead the public with regard to essential facts and circumstances relating to the assessment of the securities in question.

### **8.4 Disclosure for qualified participants**

Whoever reaches or exceeds a holding of 10 per cent, 20 per cent, one-third, one-half, two-thirds and 90 per cent of the voting rights in the share capital of a public company and whoever reduces their holding to a value below any of those limits, must, within three days after the occurrence of such fact inform the CMVM, the participated company and the operators of the regulated markets in which the trading of securities issued by this company is admitted.

Those who reach or exceed a holding of two per cent and of five per cent of the voting rights corresponding to the capital of a public company that issues shares which are listed on regulated markets situated or operating in Portugal, and those who reduce their holding to a value below those limits, are also subject to the reporting requirement referred to above. The participated company must publish immediately any disclosure communication received.

The CMVM may exempt entities from the disclosure requirements in relation to holdings of two per cent and five per cent of the voting rights, if the respective entity is a member of a regulated market situated in a member state of the EU, holds the shares temporarily with a view to their sale, and declares that, with the acquired voting rights, it does not intend to exert influence over the management of the company.

Shareholders agreements that aim at acquiring, maintaining or reinforcing a qualified holding in a public company or to secure or frustrate the success of a takeover must be disclosed to the CMVM by any of the contracting parties within three days of their execution.

Company resolutions based on express votes exercised pursuant to agreements that have not been disclosed or published are voidable, except if it is proved that the resolution would have passed without those votes.

## **9. CORPORATE GOVERNANCE**

A Portuguese company can adopt one of three corporate governance models. The first model is composed of a board of directors and of an audit board, the second model is composed of a board of directors divided into an audit committee and a chartered



accountant and the third model is composed of an executive board of directors, a supervisory board and a chartered accountant.

In some cases provided for in the law, instead of a board of directors or an executive board of directors there can be only one director and instead of an audit board there can be a sole auditor.

The supervision of the companies that elect the first corporate governance model is made either by a sole auditor or by an audit board and a sole auditor. An audit board and a sole auditor is a legal requirement for (i) companies that are issuers of securities listed in a regulated market and (ii) companies that surpass for two consecutive years certain thresholds.

Issuers of shares listed in a regulated market should disclose, in a special chapter of the annual management report, information concerning their corporate governance structure and practices.

## **10. INSIDER TRADING AND MARKET MANIPULATION**

Whoever holds privileged information due to (i) its capacity as member of a corporate body of an issuer or as shareholder; (ii) its profession or public function; (iii) having otherwise obtained the information illicitly, and transmits this information to someone outside the regular scope of their functions or, based on this information, trades or advises someone to trade in these securities, shall be punished by imprisonment for a maximum of three years or by a fine.

Privileged information is defined as being all non-public information that, being accurate and with respect to any issuer or securities, would be capable, if it were given publicity, of influencing in a sensitive manner their price in the market.

Whoever discloses false, incomplete, exaggerated or biased information, carries out operations of a fictitious nature or executes other fraudulent practices capable of altering artificially the regular functioning of the securities market, shall be punished by imprisonment for a maximum of three years or by a fine.

All financial intermediaries domiciled in Portugal and any statutory authority that has knowledge that a crime against the market has been committed must immediately notify the CMVM.

Once the facts that may be qualified as crimes against the securities or other financial instruments market have been established, the executive board of the CMVM may determine the commencement of preliminary investigation proceedings. The process of investigation is initiated and directed by the executive board of the CMVM.

## **11. MUTUAL FUNDS**

Collective investment funds (*organismos de investimento colectivo* or OIC) are divided into two main categories: mutual funds (*fundos de investimento mobiliário* or FIM) and real estate funds (*fundos de investimento imobiliário* or FII). All FIM's and FII's may be open or close-ended.

Investment funds domiciled in Portugal are regulated by the CMVM.

All domestic funds must legally be managed by companies limited by shares in accordance with a Fund Regulation (*Regulamento de Gestão*): Open-ended funds must be managed by companies specially constituted for this purpose, *Sociedades Gestoras de Fundos de Investimento* (SGFI), while close-ended funds may also be managed by authorised credit institutions (with the exception of real estate funds). Operators are not allowed to carry out certain operations, most importantly of which the purchase of units in the funds they manage.

The CMVM must grant prior authorisation for the constitution of mutual funds. The managing entity must present, jointly with the request, the drafts of the proposed fund regulation, simplified prospectus and complete prospectus and the agreements to be signed with the proposed custodian credit institution and marketing agents. If in the six months after the date of issue the fund does not yet have at least 100 subscribers holding 25 per cent of the units or a minimum value of €1,250,000, the CMVM may revoke its authorisation.

A simplified and completed prospectus must also be presented and updated by the

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managing entities, and a copy must be available wherever it is possible to subscribe to the fund. The CMVM must approve the original and any amendments made to this prospectus.

For the marketing of UCITS from other EU countries in Portugal, it is necessary to communicate this intention to the CMVM, including in the communication the certificate proving that the fund is set up in accordance with the UCITS directive, the fund regulation (or articles of association), the complete and simplified prospectus, the last annual accounts and the proposed marketing plan for Portugal. The foreign-based managing entity may market the fund two months after the communication, unless the CMVM has raised any objection to the proposed marketing plan (normally, objections will only arise if the proposed marketing agent in Portugal is not officially recognised or registered).

Foreign investment funds that are not harmonised in accordance with the UCITS directive (including close-ended funds and real-estate funds), must be authorised by the CMVM prior to marketing. The authorisation will only be granted if the fund and its proposed marketing plan offer the same protection and guarantees to participants that an analogous domestic fund would offer.

It is also important to note that foreign funds marketed in Portugal must make available to any prospective Portuguese participants a Portuguese language version of all the necessary information that must be legally publicised.

## **12. SECURITIES INSTITUTIONS**

Financial intermediaries are regulated, institutionally, by the Banking Law. The Banking Law does not include a definition of financial intermediary, as this qualification arises from the actual practice of financial intermediation services.

The CVM defines the types of institutions that may carry out financial intermediation services:

- licensed credit institutions and investment firms;
- licensed managing entities of collective investment funds;
- entities with functions that correspond to those referred to in the previous items that are authorised to exercise any financial intermediation activities in Portugal.

Financial intermediation services include reception, transmission and execution of orders on a third party's behalf, management of portfolios on a third party's behalf, placement of public distribution offers and the management of collective investment funds.

The publicity, promotion and prospecting of investors directed to the execution of intermediation agreements or to the collection of information as to current or potential clients are included in the intermediation activity to which they refer, and may only be implemented by financial intermediaries.

In accordance with the CVM, the professional exercise of any financial intermediation activity depends on: (i) authorisation to be granted by the competent authority (for example, the Bank of Portugal for credit institutions); and (ii) pre-registration with the CMVM. The CMVM organises a list of credit institutions and investment firms that carry out independent financial intermediation activities in Portugal.

## **13. TAKEOVERS**

### **13.1 Voluntary takeovers**

Takeovers must be addressed to all the holders of securities that are the subject of the offer. As soon as the decision to launch a takeover is made, the offeror shall send the preliminary announcement to the CMVM, to the target company and to the operators of the regulated markets, immediately proceeding with the respective publication.

The publication of the preliminary announcement obliges the offeror to launch the offer in terms no less favourable to the addressees than those contained in this announcement, and to apply for registration of the offer within the term of 20 days (extendable by the CMVM).

Consideration for the securities that are the subject of the offer can consist of cash,

securities, or a mixture of both. If the consideration consists of cash, the offeror must deposit the total amount in a financial institution or present an adequate bank guarantee, before registration of the offer. If the consideration consists of securities, they must have adequate liquidity and must be easy to evaluate.

Securities offered as consideration that have already been issued, shall be registered or deposited to the order of the offeror, and must be frozen.

The application for registration of takeovers submitted to the CMVM should include documents proving the submission of the preliminary announcement, the draft public offer announcement and the draft prospectus to the target company and to the competent authorities of the regulated markets.

As from the publication of the preliminary announcement and until the assessment of the offer's result, the offeror cannot trade, outside the regulated market, securities of the class of those which are the object of the offer or of those which comprise the consideration, except if authorised by the CMVM, and shall inform the CMVM daily of the transactions carried out by each of them relating to the securities issued by the target company or of the class of those which make up the consideration offered.

The CMVM may, in case of voluntary takeovers, determine the review of the consideration if, due to the acquisitions referred to above, the initial consideration does not appear reasonable. In case of mandatory takeovers the offeror must increase the consideration to a price, not inferior to the highest price paid for the securities acquired after the publication of the preliminary announcement.

From the moment it has knowledge of the decision to launch a takeover for more than one-third of its share capital, and until the assessment of the result or until the termination of the respective process, the management body of the target company cannot carry out any acts that materially affect the net asset situation of the target company and which can significantly affect the objectives announced by the offeror, excluding the normal day to day management of the company.

The offer period for the takeover can vary between two and ten weeks. The CMVM, at its discretion or at the request of the offeror, can extend the offer period in case of modifications, launches of competing offers or when the protection of the interests of the addressees so justifies.

The public offer announcement must be published, at the same time the prospectus is disclosed, in a communications media with wide circulation in the country and in a communications media indicated by the operator of the regulated market where the securities are listed.

Until five days before the end of the term of the offer, the offeror may revise the consideration, in relation to its type or amount. The revised consideration must be at least two per cent greater in value than the previous one. The declarations of acceptance of the offer prior to the revision are considered effective for the revised offer.

As from the publication of the preliminary announcement of the takeover, any other takeover of the same class of securities may only be carried out through a competing offer. Except with the express authorisation granted by the CMVM for the purposes of protection of the interests of the target company or of the addressees of the offer, neither the offeror nor any connected entity may, within 12 months following the publication of the results of a takeover, launch a new takeover for the same securities.

### **13.2 Mandatory takeovers**

If a party acquires (directly or indirectly) more than a third or half of the voting rights in a public company (unless he proves that the one-third percentage does not give it control over the company), it will be obliged to launch a public offer for the remainder of the shares.

The consideration for the shares must be the higher of the following two prices (i) the highest price paid by the offeror for acquisition of shares in the six months prior to the

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launching of the offer; (ii) the average price of those securities on the listed market during the same period.

A mandatory takeover need not be launched when the exceeding of the relevant limit of the voting rights results from the acquisition of securities through a takeover launched over all the securities issued by the target company, results from the execution of a financial recovery plan within the scope of one of the types of rehabilitation or recovery plans foreseen in the law, or results from the merger of companies.

The obligation to launch a mandatory takeover is suspended if, through written communication directed to the CMVM, the relevant party undertakes to resolve the situation within the following 120 days. During this period, the party's voting rights are suspended.

The publication of the preliminary announcement of the offer must take place immediately after the fact that gives rise to such obligation. The offeror must send the preliminary announcement to the CMVM, to the company and to the operator of the regulated market, and must at the same time request prior registration of the offer within 20 days of the preliminary announcement. Before registration, the offeror must deposit the consideration, or present a bank guarantee.

The failure to fulfill the obligation of launching a takeover results in the immediate inhibition of the voting rights and dividends relating to those shares that exceed the thresholds from which a launch would be mandatory. All such dividends during the inhibition period revert to the company.