

Portugal

Vieira de Almeida & Associados
Lisbon

Acquisitions of holdings in the financial sector

The National Council of Portuguese Financial Supervisors (NCFS), comprising the Bank of Portugal (BP), the Portuguese Securities Market Commission (CMVM) and the Portuguese Insurance Institute (ISP), has been focused on better regulation measures aimed at improving transparency and control over qualifying holdings within the Portuguese financial sector.

In this context NCFS has published a preliminary draft proposal for the implementation into Portugal of Directive 2007/44/EC of the European Parliament and of the Council, of September 5 2007, referring to the procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector (Directive).

The envisaged implementation directly targets credit institutions, insurance companies and investment companies and, therefore, will trigger amendments to the respective existing legal frameworks.

In strict compliance with the Directive, the proposal deals with the prudential assessment by supervisory authorities of acquisitions and increases of qualifying holdings.

For such purpose, the Proposal establishes disclosure obligations for the proposed acquirer whenever, by virtue of an intended acquisition or increase of qualifying holdings in a financial institution, the proportion of the voting rights or of the capital held reaches or exceeds 10%, 20%, 1/3 or 50% or the financial institution becomes its subsidiary.

While assessing qualifying holdings, supervisory authorities shall, in order to ensure the sound and prudent management of the financial institution in which an acquisition is proposed – and having regard to the likely influence of the proposed acquirer on such financial institution – appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition. In this regard the following criteria should be taken into account: (i) reputation of the proposed acquirer; (ii) reputation and experience of any person that will direct the business as a

result of the proposed acquisition; (iii) the financial soundness of the proposed acquirer; (iv) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing, is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof. Additionally, and in what concerns the likely influence of the proposed acquirer, Portuguese supervisors are expected to provide general guidance on when a holding would be deemed to result in significant influence.

In order to determine whether the criteria for a qualifying holding are met, the voting rights as well as the conditions regarding aggregation thereof that are already laid down in Article 20, 20A and 21 of the Portuguese Securities Code shall now be imported into the legal frameworks of all financial undertakings, thus allowing an essential harmonisation of criteria, not only among financial sector players, but also among the issuers of shares admitted to trading on a regulated market.

Ana Rita Almeida Campos