VIEIRA DE ALMEIDA & Associados Sociedade de Advogados, SP RL

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# NEWS

## BANKING & FINANCE / CAPITAL MARKETS

Contents



# EDITORIAL

*Pedro Cassiano Santos & Maria Roussal*

A number of noteworthy events struck the political arena of leading players in the global economy, with repercussions on the international markets, while in Portugal life seemed to go on as smoothly as possible, with a second annual state budget approval by the left wing of the Parliament.

The US presidential elections have resulted in the victory of the Republican candidate, Donald Trump. The policies to be implemented by the President-elect and their respective consequences are still to be unveiled; however, the markets have already shown initial reactions and now seem to be experiencing what some call "the Trump-effect": after an initial drop, stocks are returning to positive territory and the exchange rate of the U$ dollar is rising against the €uro. The impact on the day-to-day financial (including prevailing interest rates) and legislative aspects of US-Europe relations – which will naturally also be felt by the Portuguese markets – remains uncertain, with Europe being asked to respond to a changing political environment at a time when elections are fast approaching in key EU countries.

On a mainly European note, but having inevitable effects far beyond the continent: Brexit – the word of order this past semester and the most significant challenge currently (and probably ever) faced by the EU's single market. The following paragraphs outline a brief and general legal structuring of the possible implications of triggering Article 50 of the Lisbon Treaty, in light of the UK-EU legal and financial relations paradigm.

Once the European Council is notified, the exit process should take place within a period of two years. The main concerns relate to trade and free movement and, from a specifically financial perspective, to EU "passporting" rights. As for exit strategy theories, these vary within (i) a soft Brexit (or the Norwegian model), where economic trade and the free movement of EU citizens would remain as is – yet, based on the arguments presented by pro-Brexiters, this does not appear to be the most probable option; (ii) a hard Brexit (or the Turkish model), where Britain would only be part of the Customs Union; or (iii) the Swiss option, which would imply the negotiation of several individual arrangements with the EU and the UK leaving the European Economic Area to become a member of the European Free Trade Association. Subscribing to the opinion of several economists and commentators, it is most likely that given the UK's significance in the Union (which is certainly greater than what could be measured simply based on the size of the British economy) a fourth option will be specifically designed for it.

Having already impacted on the "London bubble", Brexit's consequences will also be felt by banks, financial institutions and other businesses, which amount to around 5,000 UK and 8,000 EU entities operating outside their jurisdiction without any additional local authorisations. This freedom of trade and establishment created a number of economically valuable rights, including the labour rights of individuals, which represented one of the main arguments against Brexit and which must certainly be preserved and not jeopardised.

Foreseeing the complexity of the legislative withdrawal procedure, the European Council may agree to extend the aforementioned two-year period. There is thus no way of assuring the markets or the population of any applicable time limits, which increases the prevailing atmosphere of uncertainty surrounding the players. Also, as recently ruled by the UK High Court, the Government's triggering of Article 50 is subject to previous parliamentary approval – a decision that has in turn produced the theory that Brexit may not even occur on account of the referendum being merely indicative. Nonetheless, one of the fundamental principles of democracy is to respect the people's expressed wishes, and this will certainly be vital to the outcome, but again, without legal certainty being available.

It should also be noted that, since the implementation of the EU single market, the relevant financial and monetary legal frameworks have taken a significant turn towards further development of the regulatory and supervisory fields. Starting with banking supervision, the harmonisation trend soon became a need – or was it the other way around? Either way, legal harmonisation scenarios are rapidly spreading to other branches of Law, such as insurance, reporting duties and capital instruments, it being difficult to envisage an end to these tendencies.

Brexit's consequences are continuing to unfold across the European structure as a whole, Italy having been one of the first countries to suggest a similar referendum, focused specifically on the Euro. This means that 2017 will remain under the expanding and solidifying shadow of this year's key events. But these are certainly remarkable times to live in and to witness, keeping attune with what is most important, namely, the core values for which our society stands. We will all be called upon to play our role; and lawyers and legal professionals around the world, wherever they may practise Law, will certainly play a special part in this process. Let's see if we are up to these challenges.

In view of the trends here outlined, the topics discussed in this issue are informed by two opposing pillars: harmonisation and sovereignty, which have always assumed a prime role in the economic and financial sectors of the EU. Therefore, the first question to be raised still remains unanswered: do we want more or less harmonisation? As the first EU country and one of its singular most significant players votes to leave the Union, the harmonisation and standardisation phenomenon is deemed to have been officially challenged. Even so, the European Banking Authority has released standardised templates for the issuance of Additional Tier 1 capital instruments; financial exchange information continues to be developed and is now mandatory for tax purposes; and insurance and reinsurance companies are bound by new reporting requirements in relation to the Portuguese Insurance and Pension Fund Supervisory Authority – matters which are further discussed in this Newsletter.

The question of how these near simultaneous major political changes around the globe will impact the markets, and whether it will be necessary (or possible) to harvest new financial skills in order to maintain equilibrium and economic growth, remains open.

Thank you for your attention. Should you have any comments or suggestions on these or other topics, please write to us at: fapc@vda.pt.

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# EAPO

*Carlos Couto | Inês Perez Sanchez | Rita Anunciação*

As 2017 rapidly approaches, our attention turns to the new EU regulation scheduled to come into force on 18 January of this coming year. Regulation (EU) no. 655/2014 of the European Parliament and of the Council, of 15 May ("**Regulation 655/2014**") establishes the European Account Preservation Order procedure ("**EAPO**") to expedite cross-border debt recovery in civil and commercial matters.

The EAPO is a protective measure to support pecuniary claims and which will allow creditors to prevent the transfer or withdrawal of funds held in a debtor's bank accounts, across 26 Member States, by submitting a standard form application (established by the Commission Implementing Regulation (EU) 2016/1823, of 10 October) to a court in one of those 26 Member States, upon evidence of a real risk that, without it, the enforcement of the claim will be "impeded or made substantially more difficult". Once submitted, the EAPO will be transmitted from the issuing court to the competent enforcement authority, which will then freeze the relevant account, thus releasing the creditor from the process of making separate national preservation order applications.

In Portugal, no public information is yet available on how the EAPO will be implemented and on the communication to the Commission provided for in Article 50 of Regulation 655/2014, but it has already been confirmed by the Portuguese Ministry of Justice that the Solicitors and Enforcement Agents Bar Association (*Ordem dos Solicitadores e Agentes de Execução*) will undertake the role of Information Authority and, together with the Judicial Courts (the central sections of specialised competence in respect of civil claims above € 50 thousand, as well as the local and general sections of competence in respect of claims of up to € 50 thousand), will jointly act as the Portuguese Competent Authorities for the purposes of EAPO. In this respect, several questions concerning banking entities are already being raised regarding the EAPO's implementation, notably:

1) **How will the information request procedure conducted by the Portuguese Information Authority work?**

   Similarly to the procedure involved in national seizure and preservation orders, after receiving an information request under EAPO, the Solicitors and Enforcement Agents Bar Association will address it to the Bank of Portugal.

   The Bank of Portugal will then convey this information request to the national banking entities in order to collect the relevant data on the accounts in question. Once the banking entities have provided the Bank of Portugal with an answer, the latter will respond to the request initially remitted by the Solicitors and Enforcement Agents Bar Association.

   In this regard, we trust that the bank's disclosure of relevant account information may be considered lawful pursuant to the provisions of Article 79(2)(a) and (f) of the Portuguese Banking Law, which states that "(2) save for the case foreseen in the preceding paragraph [client's consent], the facts and data subject to the duty of secrecy may only be disclosed: (a) to the Bank of Portugal within the scope of its lawful tasks;[...] (f) when there exists another legal provision which expressly limits the duty of secrecy".

   Therefore, considering that the provision of Article 14 of Regulation 655/2014 is directly applicable in Portugal, banks will have legal grounds to disclose the information requested from them under EAPO. Nevertheless, we would expect that a specific framework detailing the procedure to be followed in this respect will be enacted.

2) **Can banks recover the costs incurred under an EAPO procedure?**

   The subject of costs incurred by banks is regulated under Article 43 of Regulation 655/2014, which refers to national law. Banks will be entitled to seek reimbursement of the costs of implementation of the EAPO if they are eligible under the laws of the Member State of enforcement in relation to equivalent national orders. Fees charged by banks to recover costs must take into account the complexity involved in implementing the EAPO and may not exceed the fees charged for equivalent national orders (Article 43(2)).

   Under Portuguese law, banks may seek remuneration for services provided in connection with the seizure of amounts held in bank accounts, due under Article 780(12) of the Portuguese Civil Procedure Code and Article 5(1) of Ordinance (*Portaria*) no. 202/2011, of 20 May.

   In addition, banks may also charge a fee to cover the costs of providing account information, which should not be higher than the costs actually incurred and the fees charged for equivalent national orders (Article 43(3)).

# PROMOTERS VS. BANKS: BANK WINS LEGAL BATTLES

*Ana Falcão Afonso | Sofia Neves Taveira | Ricardo Neto Galvão*

**Summary**

Legal battles launched by promoter companies against a leading bank, which extended over approximately 9 years and with values varying from € 1 to 5 million, have finally come to a close with three full acquittals of the bank in question.

**The Case**

Last October, the third and last legal defeat suffered by a number of promoter companies ("**Promoters**") in lawsuits launched against a leading banking institution ("**Bank**") concerning alleged pre-contractual and contractual liability has occurred. These rulings – already transited in *res judicata*, i.e., with no further possibility of ordinary appeal or claim – have confirmed a tendency among Portuguese courts to reject the litigating intent of a small group of promoters, when these sought to blame the relevant bank for their own business failures. The legal proceedings pertained to a project implemented by the Bank in Portugal as an alternative channel for the distribution of its products on the retail market ("**Promoters' Project**"), in light of the Bank of Portugal Notice no. 11/2001, of 15 June ("**BoP Notice**").

Contrary to the allegations of the Promoters, in none of the three cases was it proved that the Bank had omitted relevant information in the negotiation stage with respect to the Promoters' conditions of integration within the bank's network, nor to their image and duties. Careful examination of their contractual relationship has, indeed, confirmed that the Bank paid all commissions due and always supported the Promoters' activities, fulfilling its duties of cooperation and clarification, and also considering that their success with clients was in the Bank's interest. The cases here detailed, given their broad scope and the diverse forms of evidence in play, provided Portuguese courts with privileged insight into the relationship between a bank and its network of promoters, an expert examination of the Bank's computer and accounting systems having even been performed in one case. The Bank in question has maintained its Promoters' Project for 15 years now, and, despite the challenges naturally associated with the launch of innovative projects, it revealed to be a success, by associating third parties in the distribution of banking products, beyond the activity of a bank's own branches.

**Points of Relevance**

The following was proved in these legal proceedings:

1) **Before the execution of the contracts:** during negotiations, there was no violation by the Bank of any of the duties of good faith, information or reliability, nor was there any subversion of the Promoters' Project – which otherwise could give way to pre-contractual liability;
2) **During execution of the contracts:** (i) the Bank did not violate the duties of good faith, protection and reliability, (ii) the Bank did not reveal faulty compliance, (iii) the Bank paid all commissions due, and (iv) it was not proved that the Bank had engaged in acts of unfair competition, notably for offering different, and allegedly more advantageous, conditions through its own branches to the detriment of the Promoters' centres – which otherwise could give way to contractual liability;
3) **Nature of the contracts:** the courts concluded that the contracts executed between the Bank and the Promoters were for the provision of services, having no parallel with agency or franchising agreements;
4) **"Who's clientele?":** in light of the nature of the contract, the customers belong to the Bank, not to the Promoters, there thus being no room for "clientele compensation" (*indemnização de clientela*) (a claim founded on the nature of the contract allegedly being that of a commercial agency agreement). The Promoters are responsible solely for promoting, recommending and negotiating the Bank's products and services, upon commissioning;
5) **Bank's collaboration with the Promoters:** the Bank always interacted with the Promoters on a basis of true partnership, never having sought to hinder their activity, but rather to boost it. The courts emphasised, however, that the Bank cannot guarantee business results and also that the Promoters cannot demand from the Bank means equivalent to those that would be available if they were direct employees of the Bank – i.e., Promoters must be exposed to the risk of their own activity. It was thus confirmed that no employment relationship existed.

Without taking into account any arguments that might result from an attempt to conceal the professional or business failings of certain Promoter companies, the courts refused to be influenced by the media pressure surrounding these cases.

# SIMPLE, TRANSPARENT AND COMPARABLE SECURITISATIONS - - BASEL COMMITTEE'S FINAL REVISED FRAMEWORK

*Hugo Moredo Santos | Benedita Aires*

The Basel Committee on Banking Supervision ("**BCBS**") has published the final set of revisions to the Securitisation Framework, a document finalised in December 2014 and reviewed in July 2016, which essentially corresponds to the Committee's "Basel III" capital rules for securitisation transactions. The framework, which will come into force on 1 January 2018, is intended to strengthen the capital standards for securitisation exposures held in the banking book.

Furthermore, in July 2015, the Basel Committee and the International Organization of Securities Commissions ("**IOSCO**") jointly issued criteria for simple, transparent and comparable securitisations ("**STC**"). Subsequently, the Committee deliberated on how to incorporate these criteria into the securitisation capital framework and it now presents additional criteria for capital purposes and guidance on the STC criteria, providing final standards for capitalising securitisation exposures. In a nutshell, the additional criteria applicable to STC securitisations fall under the categories of asset risk, structural risk, and servicer and fiduciary risk. We highlight a few key requirements of the criteria (the extensive list may be found in the link below):

**(a) Nature of the assets:** certain principles of homogeneity should be taken into account, leading investors to assess the portfolio on the basis of common risk drivers;

**(b) Asset performance history:** the originator must have sufficient experience (during a suitably long period of time) in originating exposures similar to the ones securitised;

**(c) Payment status:** the originator will be required to verify, prior to the closing date, the credit history of the obligors and certain limitations on adverse credit history or risk of default will apply, such as at least one payment having being made;

**(d) Consistency of underwriting:** all receivables / credits shall be originated based on sound and prudent underwriting criteria, with the obligor having the "ability and volition to make timely payments" (also applicable to third party's underwriting policies);

**(e) Asset selection and transfer:** requirement for an independent third party legal opinion to support true sale and transfer of assets enforceability.

Finally, it is important to note that the European Commission is currently finalising a separate framework for "Simple, Transparent and Standardised" ("**STS**") securitisations, which does not entirely match the Basel Committee proposals; for instance, the latter does not extend to short-term deals. Also, the Basel Committee clarifies that it is up to investors (and not originators) to assess compliance with the STC securitisations criteria in determining the capital treatment of their exposures, even though originators should ensure sufficient disclosure, while the STS framework places the onus on the originator to confirm a transaction's compliance. We will see how these matters progress.

Basel Committee, Revisions to the Securitisation Framework, July 2016 http://www.bis.org/bcbs/publ/d374.htm

# SIGNIFICANT SUBSIDIARIES AND SPECIAL REGISTRY WITH THE BANK OF PORTUGAL

*Tiago Correia Moreira | Francisco Mendonça e Moura | Manuel Castro Pereira*

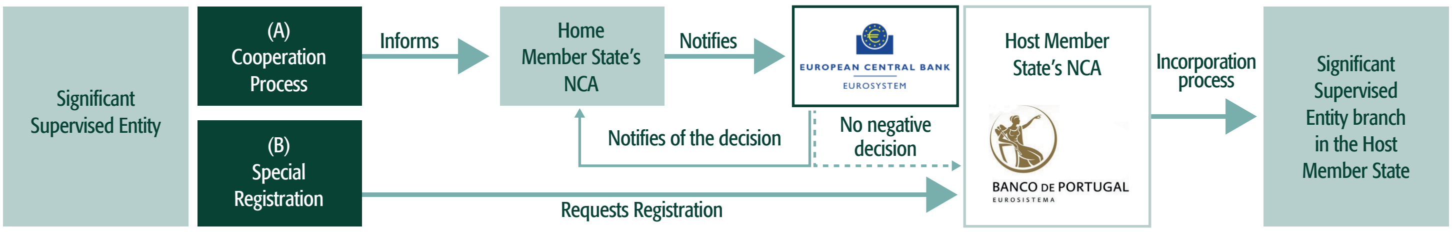
The Portuguese legal system now provides for significant subsidiaries by means of amendments introduced by Decree-Law no. 140-A/2010, of 30 December, to the Portuguese Banking Law. Given their nature, procedures relating to subsidiaries' right of establishment and freedom to provide services are envisaged in Regulation (EU) no. 468/2014 of the European Central Bank, of 16 April 2014, which establishes the framework for cooperation within the scope of the Single Supervisory Mechanism between the European Central Bank and national competent authorities, and with national designated authorities ("**SSM Framework Regulation**").

As such, significant supervised entities wishing to establish a branch within the territory of another participating Member State must notify this intention to the National Competent Authority ("**NCA**") of the participating Member State where the significant supervised entity has its head office (Article 11 of the SSM Framework Regulation). The notification should specify, *inter alia*, the Member State where it plans to establish a branch, the types of transactions envisaged and the organisational structure of the branch. Upon receipt of the aforementioned notification, the Home Member State's NCA shall immediately inform the European Central Bank ("**ECB**"), which must then decide on the matter within a period of two months. In the absence of a negative decision, the branch may be established and commence its activities. The ECB is also responsible for communicating all relevant information to the NCA of the Host Member State where the branch is to be established.

Furthermore, it should be noted that authorised foreign credit institutions wishing to establish branches in Portugal are subject to special registry with the Bank of Portugal (Article 67 of the Portuguese Banking Law).

Therefore, in the context of the procedures pertaining to the right of establishment and freedom to provide services within the SSM Framework Regulation, the commencement of activities in Portugal of a significant supervised entity branch is also subject to prior registration with the Bank of Portugal.

**Procedure for the incorporation of a Significant Supervised entity branch in Portugal:**




# NEW RULES FOR THE ISSUANCE OF AT1 INSTRUMENTS

*Orlando Vogler Guiné | Sandra Cardoso*

On 10 October 2016, the European Banking Authority ("**EBA**") announced the second update to its report on Additional Tier 1 capital instruments ("**AT1 instruments**"), as well as the main novelty, standardised templates for AT1 instruments. In addition to republishing EBA's prior understandings, this report clarifies some important matters regarding the structuring of new issuances, among which we highlight:

- The **issuer may only purchase AT1 instruments under the conditions** foreseen in Articles 77 and 78 of Capital Requirements Regulation (EU) no. 575/2013, of 26 June ("**CRR**"), in particular, the established minimum time limit of 5 years from the date of issue of the instrument in question. It is further clarified that "Liability Management Exercises" are not admissible prior to this minimum time limit;
- The **guarantee** provided by an institution for the issuance by a subsidiary should comply with certain requirements, such as subordination, and its scope of application should be restricted to specific events, such as a restructuring or a merger;
- As regards **new instruments or features to be incorporated in AT1 instruments** – for instance, instruments with a write-down option and with a conversion option to be exercised by the holder of the instrument, in the event that the price of the issuer's shares is above a specified value – EBA's analysis does not expressly conclude that these features are not admissible, but rather that they should be examined on a case-by-case basis, underlining certain relevant difficulties.

Standardised templates are not legally binding, thus allowing the issuers of AT1 instruments to use other structures or text. They contain two sections: a first part, which outlines the terms and definitions considered essential (including those common to all AT1 instruments, regardless of their features, and terms only applicable to instruments with a write-down or conversion mechanism); and a second part, which outlines optional provisions not mandatory for the purpose of instrument eligibility.

We note that the most recent issuances of these instruments, including those carried out by Portuguese issuers, contain provisions very similar to those found in the standardised templates now released, which is why no major changes are foreseen as regards future issuances.

We also recall that the European Central Bank / Joint Supervisory Team ("**JST**") now demands an *ex-post* notification of issuances occurred, rather than the *ex-ante* notification previously required, including a legal and financial evaluation (which may entail the presentation of a legal opinion).

Finally, the amendments to the applicable tax regime included in the Portuguese State Budget proposal for 2017 are positive, allowing for the tax deductibility of income paid under AT1 instruments within the scope of Corporate Income Tax. It is also anticipated that Decree-Law no. 193/2005, of 7 November, will be amended with a view to exempting the distribution of income on AT1 instruments from withholding tax in Portugal. On the downside, we note that these proposed changes do not cover AT1 instruments with a conversion mechanism.

# VENTURE CAPITAL AND SOCIAL ENTREPRENEURSHIP: STATUS AND IMPACT ON THE PORTUGUESE MARKET

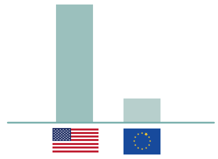
*Mariana Padinha Ribeiro | Maria Carrilho | Maria Roussal*

On 14 July 2016, the European Commission presented its proposed amendments to Regulation (EU) no. 345/2013, of 17 April, on European venture capital funds ("**EuVECA**") and to Regulation (EU) no. 346/2013, also of 17 April 2013, on European social entrepreneurship funds ("**EuSEF**"), within the context of the Capital Markets Union ("**CMU**") Action Plan ("**Proposal**"). This Proposal aims to diversify the sources of financing available to small and medium-sized companies, as well as to long-term projects, and to make the cross-border commercialisation of these funds cheaper and more accessible through a reduction of costs and a simplification of the EuVECA and EuSEF registration processes. These measures have been taken in a bid to create a more competitive European market, taking into consideration the venture capital investment on a global level.

Among the proposed amendments, we highlight the minimum investment amount of € 100 thousand by both professional and non-professional investors, the broader range of investment managers eligible to manage assets above € 500 million and the greater choice of companies that may be the object of this investment.

**Impact of European regulation on the Portuguese market**

How might the Proposal here discussed affect the EuVECA and EuSEF markets in Portugal? The 2015 Venture Capital Annual Report, published by the Portuguese Securities Market Commission ("**CMVM**"), indicates that on 31 December 2015 the amounts under management, with respect to venture capital investments, totalled € 4 010.9 million. On this same date, there were 85 venture capital funds and 37 venture capital companies operating in Portugal, which respectively held under management € 3 806.5 and € 204.4 million. In addition, net investment in venture capital registered an increase of over 50% (equivalent to € 54.6 million) when compared to 2014.



The venture capital market is about five times bigger in the US than in the EU
(in terms of amounts invested)

Venture capital investment in Portugal continues to present a growth trend, having reached € 4.2 billion in 2015, while in the field of social investment there is no real news. No social entrepreneurship or EuSEF fund has been established to date and although the European regulations have been transposed and CMVM Regulation no. 3/2015, of 15 October, is in force, the current rules on this matter continue to make reference to concepts not yet implemented or tested on the Portuguese market, such as "social enterprise" or "quantifiable positive social impact". Even at the European level, according to information made available by the European Commission, only 4 EuSEFs are registered in ESMA's database, in contrast with 70 EuVECAs. The marked difference that still exists between these two realities is largely due to the limited number of funds, managers and pool of investors, associated with disproportional costs (own funds and supervision costs).

The Portuguese Government has maintained the commitment undertaken since 2009 of encouraging and reinforcing venture capital investments; and given the success of the "*Linha de Financiamento a Investidores Informais em Capital de Risco*" programme (Line of Financing for Informal Venture Capital Investors), a second co-financing line, now involving business angels, is currently being implemented with a budget of € 15 million.

The "Portugal Social Innovation" initiative has, in turn, given a fresh impetus to the subject of social investment, acting since its creation with the goal of supporting projects dedicated to innovation and social entrepreneurship, which have a social mission and promote economic sustainability. It remains to be seen how the Proposal may come to be applied in fulfilment of these objectives.

## INFORMATION DUTIES – RECENT DEVELOPMENTS

### REPORTING DUTIES TO THE CMVM

*Francisco Mendonça e Moura*

CMVM Regulation no. 3/2016, of 21 July ("**Regulation**"), on reporting duties to the Portuguese Securities Market Commission ("**CMVM**"), partially entered into force on 2 September 2016. This Regulation intends to gradually consolidate the existing regime governing the reporting of information by persons and entities subject to the supervision of the CMVM, thus simplifying the reporting regime and avoiding the replication of rules. Reports of infringements and irregularities are, however, excluded from the Regulation.

Documents shall now be exclusively submitted through the CMVM's Extranet as computer files (PDF or ASCII), in accordance with the applicable rules. Access permissions, requested in writing by means of a new form, are now limited to a maximum of three users, one of which is designated as the interlocutor responsible for the quality of the information provided to the CMVM. Before access to the platform is granted, the necessary information must be sent to the following email address: cmvm@cmvm.pt.

The CMVM has come to clarify some practical aspects such as, for instance, submission via the Extranet of information on collective investment undertakings (CMVM Regulation no. 9/2012). It is now clear that, after submitting this information, the user must confirm (i) that the same has not been "rejected" (i.e., that the entity sending the information is the correct one and that the registration number does not contain any errors) and (ii) that it has not been "refused" (which happens in the case of violations of the reporting procedures, notably, of the rules on form and content).

We note that it may continue to be difficult to verify the information sent due to the incompatibility of certain common software programmes with some of the links provided in the Extranet; however, we understand that these matters are being dealt with and should be resolved soon.

### AUTOMATIC EXCHANGE OF INFORMATION: IMPLEMENTATION OF THE DIRECTIVE

*Alexandre Oliveira | Rita Anunciação*

Decree-Law no. 64/2016, of 11 October, approving the legal framework for the mandatory automatic exchange of information in the field of taxation (the "**Decree-Law**"), has been published in the Portuguese Official Gazette. The approval of this diploma allows for both the implementation of Council Directive no. 2014/107/EU, of 9 December, as well as fulfilment of the commitments undertaken by the Portuguese State with its signing of the OECD's Multilateral Convention on Mutual Assistance in Tax Matters, a multilateral agreement for the automatic exchange of tax information.

The Decree-Law generally seeks to strengthen the available mechanisms for combating fraud and tax evasion, money laundering and the financing of organised crime and terrorism. Pursuant to the new legal framework, a set of financial institutions classified as "Reporting" are required to provide financial information to the Portuguese Tax and Customs Authority regarding not only relevant categories of income (interest, dividends and other similar income), but also bank balances and the results of the sale of financial assets, provided these are held by persons subject to reporting duties or entities controlled by them.

The Decree-Law further considers that reporting duties are applicable to holders of bank accounts held with financial institutions based in Portugal, if they are: residents of EU countries, residents of other countries that comply with the OECD's Common Reporting Standard, American citizens residing in Portugal, residents in the US and Portuguese citizens with US residence permits.

This reporting legal framework is not, however, applicable to financial institutions classified as "Non-Reporting", nor to accounts classified as "excluded" due to their low risk of being used for tax avoidance purposes and which meet regulatory requirements and/or have been added to the list of excluded accounts, as defined at the national level by the State's Government member in charge of finance (provided that this classification does not jeopardise the objectives of the Decree-Law).

### PROVISION OF INFORMATION TO THE INSURANCE AND PENSION FUND SUPERVISORY AUTHORITY

*Catarina Pinho | Rafael Dias Almeida*

Regulation no. 8/2016-R ("**Regulation 8/2016-R**"), pertaining to the provision of information by insurance and reinsurance companies to the Portuguese Insurance and Pension Fund Supervisory Authority ("**ASF**"), was published on 16 August 2016, having entered into force the following day.

This Regulation 8/2016-R reflects the obligations under Pillar 3 of the Solvency II Directive and is based on the principles of assessment of that regime. It fulfils a need foreseen in Article 81, no. 1, of the Portuguese Legal Framework for the Access and Exercise of Insurance and Reinsurance Activity ("**RJASR**") approved by Law no. 147/2015, of 9 September, under which these new information and reporting requirements were established.

Regulation 8/2016-R requires that insurance and reinsurance companies subject to the supervision of the ASF ("**Companies**") provide this entity with information of an accounting, statistical or behavioural nature, in accordance with the RJASR.

This regime is applicable to Companies with registered offices in Portugal, to holding companies in the insurance sector and to mixed financial companies that provide information to the ASF under the RJASR. Branches of insurance companies with registered offices in another EU Member State, but which pursue their activity in Portuguese territory under free provision of services, are also obliged to provide the information detailed under Title III of the Regulation.

Finally, we note that the Companies must provide periodic quantitative information within seven weeks of the end of the reference period foreseen in Regulation 8/2016-R, any additional information for the purposes of financial stability under Title II of said rule, as well as periodic qualitative information according to Annex IV of the diploma.

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