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BANKING & FINANCE

CREDIT INTERMEDIATION AND THE PROVISION OF CONSULTANCY SERVICES

Decree-Law no. 81-C/2017, of 7 July, approved the regime governing Access to and Exercise of Credit Intermediary Activities and the Provision of Consultancy Services, which regulates the conditions, across the board, for the exercise of such activities in relation to any consumers in Portugal, regardless of the type and scope of credit agreement in question, having even transcended the reach of Directive no. 2014/17/EU on consumer credit agreements relating to residential immovable property, which it also partially transposed into Portuguese law.

The exercise of these activities now depends on the fulfilment, by natural or legal persons professionally dedicated to their development, of the conditions established by law, which include the need to obtain authorisation from and to register with the Bank of Portugal. This requirement is not, however, applicable to credit institutions, financial companies and payment institutions, which may carry out financial intermediation in relation to credit agreements where they do not participate as lenders without the need for a special license, seeing as this activity is considered to be included in their existing licenses.

As for credit intermediaries based in other Member-States, the Decree-Law allows these to also develop their activity in Portugal, under the free provision of services or through a branch, provided certain conditions are met.

Credit Intermediation

Credit intermediation should be understood as including the activity of (i) presenting or proposing credit agreements to consumers, (ii) assisting with matters related to credit products, or (iii) executing credit agreements on behalf of lending institutions legally authorised to grant credit on a professional basis.

Taking into account the broad context in which this activity may be carried out and the importance of adapting the national legal body to its specificities, the Decree-Law distinguishes between tied credit intermediaries (which act on behalf, and under the full and unconditional responsibility, of the lender entity under a binding contract), suppliers of goods and services acting as credit intermediaries in an ancillary capacity (also under binding contracts, with a view to selling the goods or providing the services they offer) and untied credit intermediaries.

Consultancy on Credit Agreements

Distinct from credit intermediation, the provision of consultancy services with respect to credit agreements involves the delivery of personalised recommendations on consumer credit agreements. Considering the impact these recommendations may potentially have, specific information obligations must be observed when providing this consultancy service and, even if performed with strict respect for the customer's interests, must always be duly informed about the customer's financial situation, preferences and objectives.

Supervision by the Bank of Portugal

The Bank of Portugal is responsible, within its supervisory role, for authorising the exercise of these activities, as well as for their monitoring, and also for sanctioning any violations, thus ensuring full compliance with this legal regime.

Entry into Force and Transitional Regime

The Decree-Law will enter into force on 1 January 2018, after which credit intermediaries will become immediately obliged to observe the duties of conduct, information and of assistance set forth therein. Entities carrying out credit intermediation on that date, and which are obliged to request authorisation from the Bank of Portugal, will be granted 12 months to regularise their status. Once this period has expired, those that have failed to secure the necessary authorisation and registration will be forbidden from exercising this activity.

Furthermore, in line with Law no. 15/2017, of 3 May, limited liability companies with bearer shares which carry out credit intermediation must ensure the conversion of those shares representative of their share capital into nominative shares, under the terms and within the deadline to be set in a government ordinance.

REMOTE OPENING OF ACCOUNT – CUSTOMER IDENTIFICATION BY VIDEO CONFERENCE

In view of recent technological developments, and in order to allow their application to the customer identification process when opening bank deposit accounts using means of distance communication, the Bank of Portugal proceeded to amend no. 2 of Article 14 and no. 5 of Article 18 of Notice no. 5/2013, of 18 December ("**Notice**"). It was within this context that the Notice, which regulates the conditions of financial institutions' compliance with the preventive anti-money laundering and terrorist financing obligations set forth in Chapter II of Law no. 25/2008, of 5 June, was amended through Notice no. 3/2017, of 3 July.

In line with the amendments introduced to the Notice, Instruction no. 7/2017, of 3 July ("**Instruction**"), established the possibility of identifying customers by means of video conference and also set forth the specific requirements underpinning its use as an alternative to the procedures traditionally followed. The use of video conferencing has become admissible not only within the context of deposit account opening operations using means of distance communication, but also whenever financial institutions intend to establish business relations other than the opening of bank accounts.

The use of video conferencing, "a means of remote communication (…) which consists of an interactive form of communication that allows the transmission and recording of audio and visual data in real time", is limited by the fulfilment of pre-requisites concerning customers, human and material resources, and the conditions to be observed during the video conference session.

Please note that the use of videoconferencing is dependent on the performance of a risk analysis inherent to this procedure and of effectiveness and security tests, it also being necessary to obtain a preliminary opinion from the officer responsible for compliance. It is only admissible in the identification of natural persons who, given the use of this alternative mechanism, must carry out their initial deposit through traceable means.

Lastly, video conferencing should always be conducted by employees with proper training in anti-money laundering and the combating of terrorist financing, whose identity must be registered, together with the date of the respective proceedings. Video conferences carried out in compliance with these regulatory requirements, in terms of the technical means and conditions and the procedures regularly established, must also be archived.