



30 October 2014

New developments in the portuguese banking regulation

It was enacted the Decree-law no. 157/2014 of 24 October ("**DL 157/2014**"), which amends, among others, the Legal Framework of Credit Institutions and Finance Companies, approved by the Decree-law no. 298/92 of December 31 (the "**Banking Law**"), which can be consulted [here](#).

This Decree-law transposes the Directive no. 2013/36/EU of the European Parliament and of the Council of 26 June 2013 which constitutes, together with the Regulation (EU) no. 575/2013 of the European Parliament and of the Council of 26 June 2013, the basis of the European Union legal framework which regulates the access to the activity of the credit institutions and the supervisory framework and prudential rules applicable to the credit institutions and investment companies.

Among the most significant changes introduced by DL 157/2014 we may find the following provisions:

- > **Concept of Credit Institution:** for the purpose of ensuring a more harmonized implementation at European level of the concept of credit institution it was reduced the list of entities considered as "credit institution" either through the extinction of the current typologies of credit institutions credit, such as the credit-purchase finance companies, or, on the other hand, through the renaming of the majority of the other finance companies, *inter alia* the factoring companies and the leasing companies. It shall be noted that finance companies are not covered by the regulatory framework applicable to credit institutions emerging from the Directive no. 2013/36/EU and the Regulation (EU) no. 575/2013, being only subject to the rules established by the Bank of Portugal ("**BoP**");
- > **Corporate Governance:** it is set forth a set of rules governing the suitability of the holders of managing positions with managing and supervision functions of credit institutions, particularly with regard to suitability, qualifications, work experience, independence and availability. Among these changes shall be stressed the clarification that rests within the credit institutions firstly the responsibility of choosing the suitable persons for the performance of such functions. On the other hand, it is established that the role of the BoP in this area is based on a function of preventive supervision, *inter alia* by assessing the suitability of the management and supervision bodies, which should be performed based on a weighting of all relevant facts related to the usual mode of operation and the exercise of their profession by these persons;

- > **Remuneration Policies:** it is transposed the provisions of the Directive 2006/48/EC through its incorporation in the Banking Law, by which it is determined the obligation to establish and maintain remuneration policies and practices that are consistent with effective risk management thereof, applicable to the employees whose professional activities have a material impact on the risk profile of the institutions, including the introduction of a new set of rules on the structure and composition of the remuneration, particularly its variable component, which are now accommodated in the Portuguese legal regime;
- > **Sanctions Regime:** it is reshaped the sanctions regime foreseen in the Banking Law seeking to make it more suitable and efficient, namely through the streamlining of the misdemeanour proceeding and strengthening of the intervention powers of the BdP, being highlighted in particular the creation of a new ground for the statute of limitation suspension, the establishment of a judicial secrecy regime, the introduction of more severe limits on the production of testimonial evidence, the expansion of the applicability of summary proceedings and the clarification that it is possible to use in the court stage the evidences produced during the misdemeanour proceeding, and that the taking of testimonies in the administrative stage can be performed by the use of phonographic media, without the need for transcription;
- > **Strengthening of the BoP powers:** it are increased the corrective measures that the BoP may impose in the event of non-performance of the legal provisions framing the institutions activity, most notably, the introduction of a more swift and simplified proceeding for the suspension of the activity of persons in management and supervision positions, being granted to the BoP broader powers in this matter. With the aim to preserve the stabilization of the financial system it is also introduced the possibility of the BoP to determine the holding of additional capital reserves by credit institutions and certain investment companies.

This regime will enter into force on 24 November 2014, with the exception of a set of rules on capital requirements, which entrance into force was delayed for on January 1, 2016, January 1 2017 and 1 January 2018, respectively, depending on the applicable legal regime.

It was also enacted the Ministerial Order no. 13051/2014 of the Minister of State and Finance of 28 October 2014, by which it were delegated to the BoP the powers to authorize the establishment of credit institutions which are subsidiaries of credit institutions with their head office and effective management in countries that are not Member States, or which are controlled or whose capital or corresponding voting rights are majority held by individuals not nationals of Member States or by legal persons having their principal and effective office management in countries that are not Member States.

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