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BANKING & FINANCE

TRANSITIONAL REGIME APPLICABLE TO THE PROVISION OF FINANCIAL SERVICES BY UNITED KINGDOM BASED ENTITIES

On 23 December 2020, the Portuguese Government enacted Decree-Law no. 106-/2020, approving the transitional regime applicable to the provision of financial services by United Kingdom based entities. The regime enters into force on 1 January 2021 if, on that date, no agreement (or equivalent decision) has been reached between the European Union and the United Kingdom of Great Britain and Northern Ireland, regulating the matters covered therein (“**Decree-Law**”).

The Decree-Law approves several important novelties in this regard, namely the following:

PROVISION OF INVESTMENT SERVICES AND ACTIVITIES AND ANCILLARY SERVICES IN PORTUGAL

- Credit institutions and investment firms authorised in the United Kingdom to provide ancillary services and investment services and activities, operating in Portugal under the right of establishment and the freedom to provide services, may continue to provide such services to investors in the Portuguese territory after the end of the transitional period provided for in the exit agreement, which at this moment corresponds to 31 December 2020 (“**Expiry Date**”).
- For this purpose, interested entities shall, within 3 months from the Expiry Date, submit to the CMVM (*Comissão do Mercado de Valores Mobiliários*) the elements contained in Annex I to the Decree-Law, indicating if they intend to (i) terminate the existing agreements; or (ii) request authorisation to maintain their activity in Portugal.
- Entities who intend to request authorisation to maintain their activity in Portugal shall submit such authorisation request to the competent authority within 6 months from the Expiry Date.

PROVISION OF SERVICES IN RELATION TO COLLECTIVE INVESTMENT UNDERTAKINGS IN PORTUGAL

- Management entities authorised in the United Kingdom to provide services relating to collective investment undertakings (CIUs) and operating in Portugal under the right of establishment and the freedom to provide services may continue to provide those services to investors in Portuguese territory after the Expiry Date.

- For this purpose, the relevant entities shall, within 3 months from the Expiry Date, submit to the CMVM the elements contained in Annex II to the Decree-Law, indicating if they intend to (i) terminate the existing agreements; or (ii) request authorisation to maintain their activity in Portugal.
- Entities who intend to request authorisation to maintain their activity in Portugal shall submit such authorisation request to the competent authority within 6 months from the Expiry Date.
- CIUs domiciled in the United Kingdom which are marketed in Portugal on the Expiry Date may continue to be marketed in Portuguese territory provided that, within 3 months from such Expiry Date, the respective management entity submits to the CMVM the information set out in Annex III to the Decree-Law.

BONDHOLDERS' COMMON REPRESENTATIVE DOMICILED IN THE UNITED KINGDOM

- An entity authorised to provide investor representation services in the United Kingdom, which has been appointed in accordance with the Portuguese legislation, may continue to act as common representative of bondholders in Portugal until the maturity of the issue or the issuance programme, provided that (i) the issue or the issuance programme have a fixed term at the time of the entry into force of the Decree-Law; and (ii) their appointment as common representative took place before the Expiry Date.
- Yet, if the issuer decides to extend the term of the issue or the issuance programme, the provisions referred to above do not apply.

INSURANCE AGREEMENTS

- Insurance agreements executed with an insurance company established in the United Kingdom benefiting from an authorisation to conduct insurance activities in Portugal, and that were executed before the Expiry Date and cover risks located on Portuguese territory or for which Portugal is the Member State of the commitment, remain in force until the date of termination provided for in the agreement, without prejudice to their possible early termination in general terms. The insurance agreements may not be extended after the Expiry Date (see article 9 no. 1 and 2 of the Decree-Law).
- Within 2 months from the Expiry Date, insurance companies shall send to the Insurance and Pension Funds Supervisory Authority (*Autoridade de Supervisão de Seguros e Fundos de Pensões*) information on insurance agreements covering risks located on Portuguese territory or for which Portugal is the Member State of the commitment and which are held in portfolio after the Expiry Date (see article 11 no. 2 of the Decree-Law).

BANKING ACTIVITIES, PAYMENT SERVICES AND ISSUANCE OF ELECTRONIC MONEY

These rules apply to the provision, in Portuguese territory, of:

- Deposit taking and lending operations by credit institutions based in the United Kingdom and not established in Portugal; and
- Payment and issuance of electronic money services by credit institutions, payment institutions and electronic money institutions based in the United Kingdom and not established in Portugal.

The novelties introduced by the Decree-Law in this regard are as follows:

- After the Expiry Date, credit institutions, payment institutions and electronic money institutions established in the United Kingdom and operating in Portugal under the right of establishment and the freedom to provide services may execute agreements or carry out new transactions in Portugal relating to taking deposits, granting credit, payment services and the issue of electronic money, only if they have obtained prior authorisation from Banco de Portugal under the regime applicable to third country entities.
- However, entities covered by the preceding paragraph are still entitled to perform the necessary acts for the execution of (and compliance with) the agreements relating to such services or activities which have been concluded up to the Expiry Date. This provision shall also apply to the provision of services of an ancillary or instrumental nature to a pre-existing master agreement entered into by a client resident in Portugal and which do not constitute new operations or new agreements.
- Within 3 months from the Expiry Date, entities covered by these provisions shall send to Banco de Portugal the information set out in Annex V to the Decree-Law.