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REGULATORY COMPLIANCE:
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Introduction

Financial regulation and supervision in Portugal is carried out by three separate authorities:

- (1) The Bank of Portugal (*Banco de Portugal*);
- (2) The Securities Market Commission (*Comissão do Mercado de Valores Mobiliários*); and
- (3) The Insurance and Pension Funds Supervisory Authority (*Autoridade de Supervisão de Seguros e Fundos de Pensão*).

Financial supervisors are public legal entities with separate legal personality and capacity and vested with certain public powers and tasks. These authorities are governed by their own bylaws established by law, as well as (except for Banco de Portugal) the Legal Framework on independent administrative entities tasked with regulation of economic activity in private, public, and cooperative sectors,¹ which sets forth certain limitations and governance rules applicable to them.

As regulators, they may issue, upon specific authorization granted by law, additional regulation to implement any laws approved by the Parliament or the Government. As supervisors, they shall verify compliance with such laws and regulations and may impose fines and other sanctions to their supervised entities in case of breach of any obligations.

Financial Supervisors

Bank of Portugal

The Bank of Portugal (*Banco de Portugal*) was created in 1846, initially as a private commercial bank and currency issuer. Its powers and tasks

¹ Law on Independent Regulatory Authorities, Law Number 67/2013 of 28 August 2013.

have evolved and increased over time and it is nowadays a key authority within the financial regulatory and supervisory framework in Portugal. The Bank of Portugal is tasked with various responsibilities.² Some of the most important ones concerning financial markets are outlined below.

First, the Bank of Portugal is the Portuguese national central bank, which is part of the European System of Central Banks and of the Eurosystem, and, therefore, contributes to implement Euro Area monetary and exchange policies. Second, it is the macro-prudential authority appointed pursuant to the Recommendation of the European Systemic Risk Board of 22 December 2011 on the macro-prudential mandate of national authorities (ESRB/2011/3).

Under the appointment, it is tasked with identifying, monitoring, and assessing risks to financial stability and with implementing policies to achieve its objective by preventing and mitigating those risks. It is, therefore, responsible, under Law Number 5/98 of 31 January 1998, to promote financial stability and to act as lender of last resort.

Third, the Bank of Portugal is the competent national prudential supervisory authority for credit institutions, payment institutions, electronic money institutions, and other financial companies. The Bank of Portugal also is part of the Single Supervisory Mechanism (SSM), tasked with supervising significant credit institutions pursuant to the SSM Regulation³ and the SSM Framework Regulation.⁴

Fourth, the Bank of Portugal is the national resolution authority tasked with adopting resolution tools and powers to credit institutions when certain conditions are met. The Bank of Portugal also is part of the Single Resolution Mechanism (SRM), tasked with resolution (as directed by the Single Resolution Board) of significant credit institutions and cross-border groups. In terms of the European institutional framework, the Bank of Portugal is part of the European System of Financial Supervision and participates in the European Banking Authority's (EBA) Board of Supervisors.

² Law Number 5/98 of 31 January 1998 and subsequent amendments.

³ Council Regulation (EU) Number 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions.

⁴ Regulation (EU) Number 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities.

Securities Market Commission

The Securities Market Commission (*Comissão do Mercado de Valores Mobiliários*) was created in 1991 when the first Securities Code was put in place in Portugal. The Securities Market Commission regulates and supervises markets in financial instruments,⁵ as well as business conduct of players in those markets, ultimately aiming at protecting investors in such markets.

It also contributes to the development of markets in financial instruments, providing information and receiving any complaints by non-professional investors, as well mediating any conflicts between supervised entities and investors. Supervision of auditing by statutory auditors and audit firms also is conferred upon the Securities Market Commission.

In terms of European institutional framework, the Securities Market Commission is part of the European System of Financial Supervision and participates in the European Securities and Markets Authority's (ESMA) Board of Supervisors.

Insurance and Pension Funds Supervisory Authority

The Insurance and Pension Funds Supervisory Authority (*Autoridade de Supervisão de Seguros e Fundos de Pensão*) was created in 1982 (called the *Instituto de Seguros de Portugal* until 2015).⁶ The Insurance and Pension Funds Supervisory Authority is the national authority tasked with regulating and supervising insurance, reinsurance, pension funds and their management companies, and insurance mediation, both from a prudential and a business conduct point of view.

The Insurance and Pension Funds Supervisory Authority also is tasked with ensuring the proper functioning of the insurance and pension funds market in Portugal, to contribute to the protection of policyholders, insured persons, members, and beneficiaries.

In terms of the European institutional framework, the Insurance and Pension Funds Supervisory Authority is part of the European System of Financial Supervision and participates in the European Insurance and Occupational Pensions Authority's (EIOPA) Board of Supervisors.

⁵ Decree Law Number 5/2015 of 8 January 2015.

⁶ Decree Law Number 1/2015 of 6 January 2015.

Other Institutions and Bodies

Minister of Finance

The Minister of Finance (*Ministro das Finanças*) (“Minister of Finance”) is generally responsible for overseeing monetary, financial, and exchange markets, in particular by ensuring the coordination between market players and the economic and social policy of the Government.

It also may establish any policies in connection with markets in financial instruments and coordinate supervision and regulation when such matter is entrusted to more than one public entity. In order to perform its oversight and coordination roles, the Minister of Finance engages in information exchange with supervisors, in particular in the Financial Stability National Council, as described below. The Minister of Finance also has specific powers and tasks in connection with supervision (and resolution) of financial institutions, such as:

- (1) Setting the minimum share capital amount for credit institutions and financial companies preceded by the opinion or proposal of the Bank of Portugal;
- (2) Being notified by the Bank of Portugal when a credit institution has failed or is likely to fail and when a resolution tool has been adopted;
- (3) Granting tax exemptions for transfers of assets in the context of resolution measures; and
- (4) Regulating various aspects pertaining to the Resolution Fund’s and the Deposit Guarantee Fund’s activity.

Exceptionally, in case of a disturbance in the monetary, financial, and exchange markets that seriously endangers the national economy, the Government — by a joint decision of the Prime-Minister and the Minister of Finance, preceded by the Bank of Portugal’s opinion — may take any appropriate measures, in particular, temporary suspension of certain markets or operations, or the temporary closure of credit institutions. It also may suspend regulated markets, MTFs or OTFs, settlement systems, central securities depositories, as well as their management entities, and central counterparties.

As the member of the Government in charge of proposing draft decree laws and proposals for law to the Council of Ministers, the Minister of Finance plays an important role in conducting targeted mandatory and voluntary consultations with the market (typically, with public entities and private associations) on draft financial regulations.

Financial Supervisors National Council

The Financial Supervisors National Council (*Conselho Nacional de Supervisores Financeiros*) was created in 2000 as a forum for enhanced coordination among national financial supervisors.⁷ It is not a separate legal entity but rather a coordination forum composed of the three financial supervisors:

- (1) The Bank of Portugal;
- (2) The Securities Market Commission and Insurance; and
- (3) The Pension Funds Supervisory Authority.

Its permanent members comprise the Governor of the Bank of Portugal, who acts as chairperson, the member of the Board of Directors of the Bank of Portugal responsible for supervision, the Chairperson of the Securities Market Commission, and the Chairperson of Insurance and Pension Funds Supervisory Authority. Since 2013, the Financial Supervisors National Council also advises the Bank of Portugal on the definition and implementation of macro-prudential policy regarding the Portuguese financial system.

The Financial Supervisors National Council meets in various forms, depending on whether the issues under discussion are related to micro- or macro-prudential policy. A representative of the Minister of Finance and the member of the Bank of Portugal's Board of Directors responsible for macro-prudential policy also participate in the macro-prudential sessions of the Financial Supervisors National Council meetings, as observers and without voting right.

The Financial Supervisors National Council conducts public consultations on draft financial regulations, which are typically open to any current and prospective market players.

Financial Stability National Council

The Financial Stability National Council (*Comité Nacional de Estabilidade Financeira*) was created in 2007 as a high-level forum for information exchange on financial stability and crises prevention matters. It is governed by a memorandum of understanding executed between the Minister of Finance, the Bank of Portugal, the Securities Market Commission and Insurance, and the Pension Funds Supervisory Authority.

⁷ Decree Law Number 228/2000 of 23 September 2000.

Members of the Financial Stability National Council comprise the Minister of Finance, the Governor of the Bank of Portugal, the Chairperson of the Securities Market Commission, and the Chairperson of the Insurance and Pension Funds Supervisory Authority.

The Financial Stability National Council aims at strengthening coordination on assessment of financial stability risks and coordination in relation to any measures to be adopted on an ongoing basis as well as in connection with any systemic crisis that may affect supervised institutions, financial groups and conglomerates, or financial system infrastructures, such as payment systems.

Securities Market National Council

The Securities Market National Council (*Conselho Nacional do Mercado de Valores Mobiliários*) is a consultative forum for the Minister of Finance in respect of markets in financial instruments, aiming at promoting discussion with stakeholders on the Government policy and the situation and evolution of such markets, including on any draft regulations that may impact it.

It comprises the Minister of Finance, the competent Deputy Minister, the Governor of the Bank of Portugal, the Chairperson of the Securities Market Commission, the Chairperson of the Insurance and Pension Funds Supervisory Authority, the Treasury Director-General, the Chairperson of the Treasury and Debt Management Agency, and representatives from listed companies, investment companies, insurance companies, pension fund managers, non-professional investors associations, and up to three experts in the field. Currently, this forum is seldom called.

The Audit Supervision General Council

The Audit Supervision General Council (*Conselho Geral de Supervisão de Auditoria*) is a consultative body created by the legal framework on audit supervision.⁸

The Audit Supervision General Council comprises a president appointed by the Minister of Finance, the member of the Securities Market Commission's management board in charge of audit supervision, a member of the Bank of Portugal's Board of Directors, a member of the Insurance and Pension Funds Supervisory Authority's Board of Directors, and a representative from the Minister of Finance's General-Inspectorate.

⁸ Law Number 148/2015, enacted on 9 September 2015.

The President of the Audit Supervision General Council also may invite any appropriate person in light of the matters to be resolved at each meeting. The Audit Supervision General Council is tasked with monitoring audit supervision and its legal framework, issuing opinions on audit supervision as foreseen by law or upon request by the Securities Market Commission and issuing opinions on any regulation that may affect third parties.

Resolution Fund

The Resolution Fund (*Fundo de Resolução*) was created in 2012 to provide financial support to any resolution measures to be adopted by the Bank of Portugal as the Portuguese national resolution authority. Although it is primarily financed by cash contributions by certain market players, it is a public institution and it exercises its activity within the Bank of Portugal. As such, despite its mere financing role and no supervisory tasks, it is a relevant player within the financial regulation and supervision institutional framework.

The Resolution Fund may guarantee any assets or liabilities of a resolved institution, any of its affiliates, a bridge institution, or an asset management vehicle, provide loans to such entities, acquire assets from a resolved institution, acquire shares in a bridge institution or an asset management vehicle, replace any financing gap arising out of liabilities that have been excluded from bail-in, and pay damages to shareholders and to any creditors of the resolved institution or to the Deposit Guarantee Fund. The Resolution Fund is managed by a management board comprising three members:

- (1) A member of the Bank of Portugal's Board of Directors, as President;
- (2) A member appointed by the Minister of Finance; and
- (3) A member jointly appointed by the Bank of Portugal and the Minister of Finance.

This is without prejudice to the tasks and role of the Single Resolution Fund, established by the SRM Regulation⁹ that, pursuant to the Inter-governmental Agreement executed by the participating Member States,

⁹ Regulation 806/2014, of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) 1093/2010.

is financed by contributions in national compartments gradually mutualized at the level of the European Union.

Specific Tasks by Financial Supervisors

Credit Institutions

The Capital Requirements Directive IV¹⁰ was transposed into Portuguese law by Decree Law Number 157/2014 of 24 October 2014 by amending the Legal Framework of Credit Institutions and Financial Companies, approved by Decree Law Number 298/92 of 31 December 1992, as amended.

The legal framework establishes the conditions concerning the taking-up and pursuit of the activity of credit institutions (and other financial companies) in Portugal and designates the Bank of Portugal as their competent supervisory authority to exercise the duties and tasks foreseen therein and in the Capital Requirements Regulation.¹¹

Notwithstanding direct supervision entrusted to the European Central Bank in the context of the SSM when a significant institution or group, as defined in the SSM Framework Regulation under the legal framework, the Bank of Portugal actively supervises the following prudential and conduct matters in relation to credit institutions:

- (1) Authorization and registration procedures;
- (2) Suitability assessment of qualifying shareholders;
- (3) Assessment of suitability and professional qualifications of the members of management bodies and key function holders;
- (4) Rules and prudential limits, in particular on capital buffer requirements imposed by the Bank of Portugal;
- (5) Rules of conduct and relationship with clients;
- (6) Corrective measures and other preventive tools;
- (7) Deposit guarantee fund; and
- (8) Infringement sanctions framework.

¹⁰ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

¹¹ Regulation (EU) 575/2013, of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) 648/2012.

Prudential supervision of credit institutions (and other financial companies) headquartered in Portugal, as well as banking conduct supervision of any credit institution operating in the country (e.g., under freedom to provide services or via a branch), is therefore entrusted to the Bank of Portugal.

Markets in Financial Instruments

The Markets in Financial Instruments Directive II¹² was transposed into Portuguese law by Law Number 35/2018 of 20 July 2018, which has republished the Securities Code, approved by Decree Law Number 486/99 of 13 November 1999, as amended.

Under the Securities Code, the Securities Market Commission is the competent authority to supervise the conduct of business by any firms providing in Portugal investment services in connection with financial instruments to third parties on a professional basis, such as credit institutions, brokers, broker-dealers, wealth management companies, investment advice companies, and any other companies whose regular occupation or business is the provision of one or more investment services to third parties and/or the performance of one or more investment activities on a professional basis.

The Securities Market Commission also is tasked with prudential supervision, under Markets in Financial Instruments Directive II's framework, of investment advisory firms, managers of regulated markets, MTFs or OTFs, and data-reporting services providers. In conducting its tasks, the Securities Market Commission may:

- (1) Have access to any document or other data in any form that it considers relevant for the performance of its duties;
- (2) Require or demand the provision of information from any person and if necessary summon and question a person with a view to obtaining information;
- (3) Carry out on-site inspections or investigations;
- (4) Require existing recordings of telephone conversations or electronic communications or other data traffic records held by an investment firm;
- (5) Require the temporary prohibition of professional activity;
- (6) Refer matters for criminal prosecution;

¹² Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

- (7) Require the temporary or permanent cessation of any practice or conduct that it considers to be contrary to the provisions of markets in financial instruments regulation and the securities code;
- (8) Suspend the marketing or sale of financial instruments in the cases foreseen by law;
- (9) Require the removal of a natural person from the management board of an investment firm or market operator; and
- (10) Initiate infringement proceedings against any entity under its supervision and apply any corresponding sanctions.

Payment Services

The activity of payment institutions in Portugal is governed by the legal framework for payment institutions (and electronic money institutions) approved by Decree-Law Number 91/2018 of 12 November 2018. The Decree Law transposes Payment Services Directive II.¹³

Under the aforementioned legal framework, the Bank of Portugal shall supervise from a prudential and conduct point of view the activity undertaken by payment institutions in Portugal. The Bank of Portugal is therefore tasked with:

- (1) Approving applications for authorization to set up payment institutions and withdrawing such authorization in the cases foreseen by law;
- (2) Supervising compliance by payment institutions with the legal framework;
- (3) Issuing regulations which are necessary to apply the legal framework;
- (4) Deciding on any complaints submitted by any payment service users; and
- (5) Initiating infringement proceedings and applying sanctions.

In exercising its tasks as supervisor, the Bank of Portugal may:

- (1) Require payment service providers to provide any information that is deemed needed to monitor compliance of any obligations set forth in the legal framework;

¹³ Directive EU 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC, and 2013/36/EU and Regulation (EU) 1093/2010, and repealing Directive 2007/64/EC.

- (2) Carry out on-site inspections at the payment service providers, at any agent or branch providing payment services under the responsibility of the payment institution, or at any entity to which any material operational activities are outsourced; and
- (3) Issue any recommendations and binding administrative provisions.

Insurance Sector

The Solvency Directive II¹⁴ was transposed into Portuguese law by Law Number 147/2015 of 9 September 2015, which approves the legal framework on the take-up and exercise of insurance and reinsurance activities. Such legal framework sets forth a comprehensive regime governing the insurance sector.

Under the aforementioned legal framework, the Insurance and Pension Funds Supervisory Authority is the competent supervisor from a prudential and conduct perspective of the activity undertaken by insurance and reinsurance companies, pension funds and their management entities, and insurance intermediation.

In exercising its tasks as supervisor, the Insurance and Pension Funds Supervisory Authority must verify the solvency position, technical provisions, assets, and eligible own funds of insurance and reinsurance companies, as well as their accounting framework, internal governance structures, and business conduct towards policy holders, insured persons, beneficiaries and injured parties, and any rules applicable to insurance and reinsurance groups. The Insurance and Pension Funds Supervisory Authority must:

- (1) Verify technical, financial, accounting, and legal compliance of any supervised insurance and reinsurance companies;
- (2) Request detailed information on the situation and activities of insurance and reinsurance companies, in particular through collection of data, request of any documents, and on-site inspections;
- (3) Adopt any preventive or corrective measures in relation to insurance and reinsurance companies, insurance holding companies, mixed holding companies, as well as any members of the management and audit boards in order to ensure their activities consistently comply with any applicable legal, regulatory, and administrative provisions, and avoid or suppress any irregularity

¹⁴ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast).

that may damage the position of policy holders, insured persons, and beneficiaries;

- (4) Develop any quantitative tools, besides calculation of solvency capital requirements, and require stress tests in order to assess capacity by insurance and reinsurance companies to deal with any negative events or potential changes to economic conditions; and
- (5) Ensure an effective supervision and application of the above-mentioned measures, if needed by recourse to courts.

Supervision is based on a prospective and risk-based approach and implies the constant verification of sound exercise of insurance and reinsurance activities and shall have as ultimate goal the protection of policyholders, insured persons, and beneficiaries.

Investment Funds

Undertakings for Collective Investment in Transferable Securities Directive V has been partially transposed into Portuguese law by Law Number 104/2017 of 30 August 2017 as regards functions of depositaries, remuneration policies, and sanctions. It amended the Securities Code and the General Framework of Undertakings for Collective Investments, approved by Law Number 16/2015 of 24 February 2015.

However, in aspects other than those referred to above, Portuguese law is still reliant on UCITS IV.¹⁵ In turn, the Alternative Investment Fund Managers Directive has been partially transposed into Portuguese law by Law Number 16/2015 of 24 February 2015. It approved the above-mentioned General Framework.

According to the General Framework of Undertakings for Collective Investments, the Securities Market Commission is the financial supervisor mainly responsible for the supervision of activities of undertakings for collective investment and alternative investment funds, in particular as to:

- (1) The supervisory and capital requirements for depositaries;
- (2) The delegation of the sub-custody function, with a view to preventing conflicts of interest;
- (3) The remuneration rules for the management entity; and

¹⁵ Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations, and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).

- (4) The framework on infringement proceedings and sanctions without prejudice to the Bank of Portugal's responsibility in relation to entities subject to its supervision.

The Securities Market Commission also may, in exceptional circumstances, provided they may affect the normal functioning of undertakings for collective investments, order any undertaking and its management entity, the depositary, or any marketing entity to comply with obligations other than those foreseen in the General Framework with a view to safeguard legitimate interests of investors. The Securities Market Commission also may require any auditors or experts to perform any *ad hoc* verifications and inspections.

In addition, the Securities Market Commission may issue regulations in relation to a wide array of matters, such as conditions for organization, functioning and management of undertakings for collective investment, information requirements, and admission to trading. However, the Bank of Portugal is responsible for some tasks in relation to undertakings for collective investment and alternative investment funds, notably:

- (1) Authorization and prudential supervision of any management companies and third-country managing entities when Portugal is the reference Member State; and
- (2) Assessment of information in order to verify any accumulation of systemic risks in the financial system, risks of disruption in the markets, or risks to the long-term growth of the economy.

The Securities Market Commission and the Bank of Portugal shall exchange information and cooperate with each other and with the European Securities Market Authority in performing their duties and tasks under the General Framework.

Banking Resolution

The Banking Recovery and Resolution Directive¹⁶ was transposed into Portuguese law by Law Number 23-A/2015 of 26 March 2015 by

¹⁶ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU, and 2013/36/EU, and Regulations (EU) Number 1093/2010 and (EU) Number 648/2012 of the European Parliament and of the Council.

amending the Legal Framework of Credit Institutions and Financial Companies, approved by Decree Law Number 298/92 of 31 December 1992, as amended.

Portugal has had in place since 2012 a resolution toolbox based on the draft Banking Recovery and Resolution Directive, which has been further expanded and improved during the following years. The Bank of Portugal has been designated as the national resolution authority tasked with applying resolution tools and exercising resolution powers in relation to credit institutions where certain conditions are met and in order to achieve certain objectives, such as preserving financial stability. Under the abovementioned legal framework, the Bank of Portugal may:

- (1) Declare that an institution is failing or likely to fail;
- (2) Apply any resolution tools that are considered adequate on a case-by-case basis, such as transfer of assets and liabilities to an acquirer (purchase and assumption), transfer of assets and liabilities to a bridge institution, transfer of assets and liabilities to an asset management company, and/or bail-in;
- (3) Write down or convert any capital instruments of a failing institution;
- (4) Re-transfer back any assets and liabilities previously transferred from a resolved institution;
- (5) Replace the management of the failed credit institution and appoint temporary administrators;
- (6) Impose a temporary moratorium on the payment of claims by the credit institution; and
- (7) Address or remove impediments to resolvability.

As mentioned above, such tasks are without prejudice to the responsibility of the Single Resolution Board to decide on the application of resolution tools to significant credit institution and cross-border groups.

Anti-Money Laundering

The Fifth Anti-Money Laundering Directive¹⁷ has been only recently published in the *Official Journal of the European Union* and must be transposed by Member States by 10 January 2020. The Directive has not yet been transposed by Portugal.

¹⁷ Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018, amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU.

Until then, anti-money laundering and countering of the financing of terrorism legal measures in Portugal are mainly governed by Law Number 83/2017 of 18 August 2017, which establishes measures to combat money laundering and terrorism financing, and Law Number 89/2017 of 21 August 2017, which approves the Legal Regime of the Central Register of Beneficial Ownership, together with various implementing regulations. These laws transpose into Portuguese law the Fourth Anti-Money Laundering Directive.¹⁸

Pursuant to the above legislation, the Bank of Portugal is designated as the national authority that conducts preventive supervision of anti-money laundering and combatting terrorist financing measures implemented by credit institutions, financial companies, payment institutions, electronic money institutions, branches established in Portugal, and entities providing postal services as well as financial services. Supervised institutions are required to comply with several duties, such as:

- (1) Apply customer identification and due diligence;
- (2) Maintain documents and records on customers and operations;
- (3) Apply scrutiny and reporting of suspicious operations; and
- (4) Adopt and implement internal control systems that are adequate to the risk related to each institution.

For the purposes of verifying if the supervised institutions comply with the required duties, the Bank of Portugal may:

- (1) Request from supervised entities any information deemed necessary to understand the general risk management and control practices of the institution, the effectiveness of its internal control system, and its administrative organization model;
- (2) Require supervised entities to submit reports or opinions in connection to prevention of money laundering and terrorist financing;
- (3) Order special audits in the field of prevention of money laundering and terrorist financing by an independent entity designated by the Bank of Portugal at the expense of the supervised entity;
- (4) Issue regulations to implement the current legal framework; and
- (5) Initiate infringement proceedings and apply sanctions when there is any violation of the rules.

¹⁸ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

Under its regulatory powers, the Bank of Portugal issued Notice of the Bank of Portugal Number 2/2018 of 26 September 2018, which sets out detailed conditions, mechanisms, and procedures needed for effective compliance with AML/CFT obligations.

Auditing

The Audit Directive was transposed into Portuguese law by Law Number 148/2015 of 9 September 2015, which approves the Legal Framework on Audit Supervision.¹⁹ The legal framework provides for strengthened public oversight of the audit profession and confers upon the Securities Market Commission the task to supervise statutory auditors and audit firms operating in Portugal as well as their activity.

While the auditor profession is organized under a professional association (*Ordem dos Revisores Oficiais de Contas*, OROC) which possesses some supervision powers in relation to auditors, the Securities Market Commission is exclusively tasked with:

- (1) Ensuring control and inspection measures and systems of statutory auditors and audit firms in relation to any auditors who audit the accounts of any public-interest entities;
- (2) Assessing the performance of any audit boards of public-interest entities;
- (3) Issuing regulations — after consultation with OROC — needed to effectively conduct its supervision; and
- (4) Collect evidence and impose any sanctions in case of breach by supervised persons or entities.

The Securities Market Commission also is the national authority designated under the relevant EU Regulation on statutory audit of public-interest entities.²⁰

Proposed Changes to Institutional Framework

In January 2017, and following the Parliamentary Enquiry Commission Report on the management of Banco Espírito Santo and Grupo Espírito

¹⁹ Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014, amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts.

²⁰ Regulation (EU) Number 537/2014, of the European Parliament and of the Council, of 16 April 2014.

Santo, the Government has created a Working Group tasked with reviewing the current financial supervision institutional framework and with presenting specific proposals in order to improve any matters identified. The Working Group proposed to:

- (1) Keep a sectorial approach with three separate authorities — the Bank of Portugal, the Securities Market Commission, and the Insurance and Pension Funds Supervisory Authority, while reinforcing coordination between them and some adjustments in the allocation of tasks and responsibilities;
- (2) Create new institutionalized structures — the Supervision and Financial Stability Council (*Conselho de Supervisão e Estabilidade Financeira*, CSEF) and the Financial Policy Council (*Conselho Superior de Política Financeira*, CSPF), which would concentrate the current coordination role performed by the Financial Supervisors National Council and the Financial Stability National Council; and
- (3) Suppress the Financial Supervisors National Council, the Financial Stability National Council, and the Securities Market National Council.

The proposals would entail fundamental changes to the financial supervision institutional framework, not only by adding (and removing) certain players, but also by reshuffling the current allocation of tasks and responsibilities. We outline below some details concerning the most important changes proposed.

One objective has been ensuring a more balanced participation by all three financial supervisors in the management board of the CSEF *vis-à-vis* current participation in the Financial Supervisors National Council. Another new feature would be the creation of executive roles in the CSEF, which would be performed by full-time representatives of each financial supervisor.

Business conduct supervision would be further segregated from prudential supervision. This would be attained either by creating a new Conduct Supervision Committee within the CSEF to be coordinated by the Securities Market Commission or by granting outright responsibility to the Securities Market Commission over conduct supervision of any banking and insurance products and services in addition to the current investment services conduct supervision that is already performed by such entity.

The macro-prudential mandate would be removed from the Bank of Portugal and granted instead to the CSEF. Notwithstanding, a committee within the CSEF for macro-prudential policy would be created and

coordinated by the Bank of Portugal. This proposal aims at ensuring a participation by all three financial supervisors in the macro-prudential mandate.

The national resolution authority role, designated under the Banking Recovery and Resolution Directive, would be spun-off from the Bank of Portugal and granted instead to the CSEF. An autonomous department within the CSEF would be set up, which would be responsible for adopting and executing any national resolution tools and powers. This proposal aims at curbing any potential conflicts of interest of tasking the same institution with supervision and resolution mandates, which is foreseen in the Banking Recovery and Resolution Directive only as an exceptional situation.

The CSPF would be created, comprising the Ministry of Finance, the Bank of Portugal, the Securities Market Commission, and the Insurance and Pension Funds Supervisory Authority and would serve as a coordination forum among entities responsible for financial supervision, economic policy, and monetary policy entities.

The Working Group has proposed certain governance changes within financial supervisors, in particular, changes regarding appointment of management board members, appointment of non-executive members, and internal segregation of roles and tasks. Although the Working Group has presented its report including the above-mentioned proposed changes to the Government at the end of 2017, no additional information has so far been made public as to whether such changes will go forward or not. It will surely be relevant to monitor these developments.

Conclusion

Amid and following an era of financial crises, regulatory initiatives put forward by global standard-setting entities and European and Portuguese legislators have, in recent years, entrusted financial supervisors with more powers and responsibilities. Furthermore, whilst specific targeted rules have been put in place to define the scope and limits of supervisory roles, most regulations allow (and some enhance) a certain degree of discretion in applying supervisory rules.

This trend has deepened the importance of market players understanding the activity performed by public entities vested with financial supervising powers. Indeed, authorization applications analysis, shareholding control procedures, and fit and proper scrutiny of members of the board of directors, among others, are relevant examples

of necessary involvement by financial supervisors for reasons of public interest that may impact institutions and their investment decisions.

In Portugal, the financial regulation and supervision institutional framework has been evolving over time, and more intensely in the last years. In this respect, it has kept up with the general international trend: more regulation and more complex, and enhanced supervisory powers.

Financial regulation is in line with EU standards, and the three financial supervisors in Portugal have tasks and responsibilities under the main European legislative pieces, such as Capital Requirements Directive IV, Markets in Financial Instruments Directive II, Payment Services Directive II, Solvency Directive II, and the Banking Recovery and Resolution Directive. However, past events have prompted a public debate as to the role of financial supervisors in Portugal and the institutional framework in which they operate, notably concerning coordination and exchange of information among public institutions.

A proposal presented to the Government by an expert Working Group seems to have focused on levelling powers and responsibilities of financial supervisors and on enhancing their coordination on cross-sectorial matters, such as banking and investment services or capital markets. It also seems to propose a material change in topics such as resolution of banks, where a closer involvement by the Ministry of Finance has been proposed. Current and prospective stakeholders in the Portuguese market should therefore pay close attention to any potential developments in the financial supervision institutional framework.

