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# Iberian Financial Newsletter

Banking and Financial Institutions

July - September 2020



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## SPAIN

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### Banking

#### Legislation

Order ETD/699/2020, of July 24, regulating revolving credit and amending Order ECO/697/2004, of March 11, on the Risk Information Centre (*Central de Información de Riesgos*), Order EHA/1718/2010, of June 11, regulating and controlling advertising of banking services and products, and Order EHA/2899/2011, of October 28, on transparency and protection of customers of banking services (Spanish version). [Access Link](#).

The main purpose of this order is to regulate certain aspects of revolving credits with an undefined term.

It amends Order EHA/1718/2010, of June 11, on the regulation and monitoring of advertising for banking services and products, to include the criteria to be considered in the representative example of advertising for a revolving credit (EUR 1,500 of available credit limit or 4-year repayment term, among others).

Order EHA/2899/2011, of October 28, on transparency and protection of the banking services client, is also modified, as follows.

- (i) To require, when assessing the client's creditworthiness, a specific assessment of whether the client has sufficient capacity to comply with its obligations throughout the life of the credit without incurring an over-indebtedness. Additionally, the annual amount of instalments to be paid will aim to amortize a minimum annual amount of 25% of the credit limit.
- (ii) Along with the standardized European information, the entity will state the payment method clearly in a separate document provided to the client (expressly indicating the term "revolving") and giving a representative example (with two or more alternatives, depending on the minimum fee).
- (iii) Quarterly, the client must be given information on the amount of the disposed credit, the payment method and the estimated date on which the client will repay the total



outstanding debt, taking into account the repayment instalment established at that time.

- (iv) The client will have the right to obtain the above information at any time, as well as information on the amounts paid, the outstanding debt and the repayment schedule.

**Bank of Spain Circular 4/2020 of June 26, on advertising of banking products and services (Spanish version).** [Access Link.](#)

This circular reviews the regulations governing the advertising of banking products and services to adapt them to the development of the advertising sector, as a result of the impact of digital technology.

For more information on this circular, see our legal flash at [link](#) (English version).

## Proposals

**Draft bill amending Royal Legislative Decree 1/2010, of July 2, passing the revised text of the Companies Act, Act 10/2014, of June 26, on the regulation, supervision and solvency of credit institutions, and Act 22/2015, of July 20, on Account Auditing (Spanish version).** [Access Link.](#)

This bill aims to partially transpose Directive (EU) 2019/878 of the European Parliament and of the Council of May 20, 2019, amending Directive 2013/36/EU on exempt entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers, and capital conservation measures, as well as Directive (EU) 2019/2034 of the European Parliament and of the Council of November 27, 2019, on the prudential supervision of investment firms.

Royal Legislative Decree 1/2010, of July 2, passing the revised text of the Companies Act, is amended to exclude credit institutions from the scope of application of article 348 bis of the Companies Act (relating to the shareholder's right to be separated due to the non-distribution of a minimum dividend), to comply with the provisions of Regulation (EU) 575/2013 (CRR).

Amendments were also made to Act 10/2014, of June 26, on the organization, supervision and solvency of credit institutions, which:

- (i) define credit institution to include systemic investment firms that acquire this status as a result of the obligation to seek authorization as such under the terms of Directive 2019/203;
- (ii) add new article 6bis on the authorization of certain investment firms;



- (iii) mean credit institutions from a non-EU Member State with authorization to provide services in Spain without a branch office may not take deposits or other repayable funds from the public;
- (iv) modify the corporate governance and remuneration policy regime: entities must apply a non-discriminatory remuneration policy with respect to gender; likewise, subsidiaries that are not group entities and are already subject to specific and sectorial remuneration requirements under other applicable regulations are exempt from compliance with remuneration requirements on a consolidated basis; and
- (v) amend Chapter III of Title II of Act 10/2014, regarding capital buffers.

Finally, Act 22/2015 is amended to grant the Bank of Spain (*Banco de España*) the authority to require the replacement of credit institutions' statutory auditors when they breach their legal obligations.

The draft was in the public consultation phase until September 21, 2020.

**Draft Royal Decree amending Royal Decree 84/2015 of February 13, implementing Act 10/2014 of June 26 on the organization, supervision and solvency of credit institutions (Spanish version).** [Access Link](#).

This royal decree will complete the transposition of Directive (EU) 2019/878 of the European Parliament and of the Council of May 20, 2019, which amends Directive 2013/36/EU regarding exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures, and powers and capital conservation measures.

It establishes the following amendments:

- (i) It changes the information to be provided in the authorization process for new credit institutions.
- (ii) Branches of credit institutions with headquarters in non-EU Member States must send a greater volume of information to the Bank of Spain (*Banco de España*) at least once a year.



- (iii) A specific section is added for the authorization of financial holding companies and mixed financial holding companies.
- (iv) It changes the regulation regarding capital buffers.

The draft was in the public consultation phase until September 21, 2020.

**Draft Bank of Spain circular on confidential information on conduct (Spanish version).** [Access Link](#)

This Bank of Spain circular aims to collect specific information from entities on conduct of business, to broaden the sources of information available to the regulator. This information will enable the supervisory activity to be carried out properly and with greater detail of the entities' business model and market trends.

The Bank of Spain considers requesting information on (i) types of banking products and services, including payment services, commercialized by each entity, (ii) sources of interest and fee income, and (iii) complaints submitted to entities.

The deadline for comments was July 17, 2020.

**Draft Bank of Spain circular amending Circular 1/2013 of May 24, of Bank of Spain, on the Central Risk Center (Spanish version).** [Access Link](#)

On September 17, the draft for amending Circular 1/2013 of May 24, on the Risk Information Centre (*Central de Información de Riesgos* ("CIR")), was issued for public consultation, ending on October 1, 2020.

This draft aims to update Circular 1/2013, following the publication of Order ETD/699/2020 on the regulation of revolving credit, which will enter into force on January 2, 2021. Circular 1/2013 will be amended to specify the information that new reporting entities must submit (payment entities and electronic money entities engaged in credit granting activities, including those operating under the freedom to provide services) and to incorporate the remaining changes introduced in the functioning of the CIR (establishing the minimum amount of a customer's accumulated risk at an entity at EUR 1,000 for inclusion in return reports for the assessment of creditworthiness).



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## Securities market and collective investment

### Proposals

**Spanish National Security Market Commission (CNMV) draft circular on advertising investment products and services (Spanish version).** [Access Link](#)

This draft circular aims to implement the criteria applied by the CNMV in its supervisory actions regarding the content of advertising messages, in a context of increased advertising activity on complex financial products.

For more information on this draft circular, see our legal flash at [link](#) (English version).

**Proposal for a technical guide on appointing unregistered persons or entities as advisors to collective investment undertaking (IICs) (Spanish version).** [Access Link](#)

On September 22, the CNMV published a draft technical guide on management companies' appointment of collective investment undertakings (SGIICs) and self-managed open-ended investment companies with variable capital (SICAVs), as advisors of collective investment undertakings, of persons or entities not authorized under the Securities Market Act to carry out investment advisory activities on a regular or professional basis.

The draft sets out the criteria to be followed relating to the requirements for the actions of persons or entities not qualified as advisors on investment matters for collective investment undertakings, as well as the obligations of SGIICs and self-managed SICAVs in this regard.

Among other measures, it establishes that SGIICs or self-managed SICAVs must check that the advisor has sufficient knowledge and experience in investment matters, as well as technical means, and they must keep documentary evidence of these checks.

It must also establish control procedures on the advisor's activity aimed at managing possible conflicts of interest and ensuring that the advisor's recommendations implemented comply with current regulations, the policy set out in prospectuses and the risk limits approved by the board of directors of the SGIIC or self-managed SICAV. In addition, the relationship with the unregistered advisor must be formalized in a written contract. The advisor's recommendations (even those that have been rejected or modified) must be recorded.

The deadline for sending comments is October 15, 2020.



## Supervision criteria

**CNMV technical guide on requirements for considering certain foreign currency derivatives as payments and not as financial instruments (Spanish version).** [Access Link](#)

On September 28, 2020, the CNMV approved a technical guide to determine the requirements for certain foreign currency derivatives to be considered payments instead of financial instruments, under article 10.1.b) of the Commission Delegated Regulation (EU) 2017/565, which supplements Directive 2014/65 (known as MiFID II).

Compliance with the technical guide's conditions and requirements by the corresponding forward foreign exchange contracts (forwards) will mean that these will no longer be subject to MiFID II and the CNMV's supervision, without prejudice to being subject to rules on transparency and customer protection in banking and payment services regulations.

Under the technical guide, these derivatives must be aimed at making or receiving payments in foreign currency for specific goods, services or direct investments by the person contracting them, so their amount and terms must correspond to the commercial operations or direct investments made by the customer. Entities must verify these conditions, either by obtaining the corresponding information from the customer or by obtaining an express statement from the customer (if the entity is already aware of the customer's activity).

It also establishes that entities will have to carry out *ex-post* quarterly reviews on representative samples of transactions, to verify that the transactions were intended to facilitate the payment of identifiable goods, services or direct investments. If non-compliance with the conditions is detected, entities will be required to apply the MiFID rules to the new transactions with the customer (unless the requirements are checked on a case-by-case basis).



# PORTUGAL

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## Banking

### Legislation

#### **Decree-Law 78-A/2020, of September 29, 2020**

Amends (i) Decree-Law 10-J/2020, of March 26, 2020, amended by Law 8/2020, of April 10, 2020, by Decree-Law 26/2020, of June 16, 2020, and by Law 27-A/2020, of July 24, 2020, which establishes exceptional measures concerning the protection of credits from families, companies, private social security institutions and other social economy entities, which will apply for an additional six-month period, until September 30, 2021; (ii) Decree-Law 20-F/2020, of May 12, which establishes an exceptional and temporary framework on insurance agreements, which will apply until March 31, 2021; and (iii) Decree-Law 37/2020, of July 15, which establishes social measures under the Economic and Social Stability Program (*Programa de Estabilização Económica e Social*).

#### **Decree-Law 63/2020, of September 7, 2020**

Promotes the merger by incorporation of PME Investimentos - Sociedade de Investimento, S. A., and IFD - Instituição Financeira de Desenvolvimento, S. A. into SPGM - Sociedade de Investimento, S. A., which changes its corporate name to Banco Português de Fomento, S. A. (“BPF”). It regulates the activity and functioning of BPF and approves the respective bylaws.

#### **Law 58/2020, of August 31, 2020**

Transposes into Portuguese law (i) Directive (EU) 2018/843 of the European Parliament and of the Council, which amends Directive (EU) 2015/849 of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and (ii) Directive (EU) 2018/1673 of the European Parliament and of the Council on combating money laundering under criminal law. It amends several laws.

#### **Law 57/2020, of August 28, 2020**

Establishes rules for the protection of consumers of financial services in banking commissions, housing credit and consumer credit, relating to duties of information and limits on the collection of commissions, amending (i) Decree-Law 133/2009, of June 2, 2009, on consumer credit agreements, (ii) Law 66/2015, of July 6, 2015, and (iii) Decree-Law 74-A/2017, of June 23, 2017, on consumer credit agreements relating to residential housing.

#### **Law 53/2020, of August 26, 2020**

Establishes rules to protect consumers of financial services in banking commissions and when using payment applications operated by third parties, amending Decree-Law 3/2010, of January





5, 2010, which prohibits the collection of charges for the provision of payment services and for carrying out operations at ATMs.

### **Law 44/2020, of August 19, 2020**

Amends Decree-Law 27-C/2000, of March 10, 2000, which created the system for access to minimum banking services, now including transfers made through payment applications operated by third parties in the operations classified as minimum banking services.

### **Bank of Portugal Regulation 4/2020, of July 16, 2020**

Amends, regarding the models and frequency of reporting, Regulation 2/2016, which regulates the reporting to the BoP of financial information, on an individual basis, for supervisory, statistical and macro-prudential risk analysis purposes.

### **Bank of Portugal Regulation 3/2020, of July 15, 2020**

Regulates the governance and internal control systems and determines the minimum standards on which the organizational culture of the entities subject to the BoP's supervision must stand. It revokes Regulations 5/2008 and 10/2011, as well as Instruction 20/2008.

### **Bank of Portugal Instruction 25/2020, of September 24, 2020**

Approves, within the prevention of money laundering and financing of terrorism framework ("**ML/FT**"), the reporting on activities carried out in national territory by financial entities from other Member States of the European Union operating in Portugal under the freedom to provide services regime.

### **Bank of Portugal Instruction 24/2020, of September 9, 2020**

Discloses the maximum rates to be applied to consumer credit agreements, under Decree-Law 133/2009, of June 2, 2009, in the fourth quarter of 2020.

### **Bank of Portugal Instruction 22/2020, of July 16, 2020**

Amends, regarding the subjective scope and Annexes I (*Financial Information*) and II (*Information on own funds and own funds requirements*), Instruction 5/2017, which regulates the reporting of information for the purposes of supervision, on an individual basis, of certain entities subject to the BoP's supervision.

### **Bank of Portugal Instruction 21/2020, of July 15, 2020**

Regulates the participation in the electronic communication system called "*BPnet*," including the access to the infrastructure and the subscription and availability of services within the scope of that system. It revokes Instruction 5/2016 on the "*BPnet*" system.

### **Bank of Portugal Instruction 20/2020, of July 15, 2020**

Amends Instruction 2/2017, which regulates the credit assessment internal system ("**CAIS**"), to provide for the use of CAIS (i) with the intervention of an analyst for credit rights portfolios, and



(ii) without the intervention of an analyst, when the assessment of the credit quality of non-financial companies is made through a statistical process.

### **Bank of Portugal Instruction 18/2020, of July 15, 2020**

Regulates the reporting duties relating to the conduct and organizational culture and governance and internal control systems that entities subject to Regulation 3/2020 must comply with, on the conduct and organizational culture and governance and internal control systems.

### **Bank of Portugal Circular Letter CC/2020/00000055, of September 18, 2020**

Discloses the template applicable to communications made by payment services providers to the BoP, in compliance with article 70 (7) of Regulation 2/2018, on the aspects required to ensure compliance with the ML/FT preventive duties, within the scope of activities of financial entities subject to the BoP's supervision.

### **Bank of Portugal Circular Letter CC/2020/00000042, of July 16, 2020**

Publishes the reporting templates for the financing and equity plans ("FEP"), the description of the macroeconomic and financial scenario and other guidelines necessary for institutions to carry out the exercise and provide information, according to no. 9 of Instruction 18/2015, on the regulatory framework for implementing FEPs.

### **Bank of Portugal Circular Letter CC/2020/00000040, of July 15, 2020**

Discloses BoP's understanding of the prudential treatment of exposures originated through credit intermediation platforms, in terms of own funds requirements, large risks and ML/FT's preventive duties.

### **Bank of Portugal Circular Letter CC/2020/00000044, of July 8, 2020**

Recommends a set of good practices applicable to the marketing of retail banking products and services (mainly bank deposits, credit products, payment services and e-money) through digital channels (online or mobile), based on the set of recommendations issued by the European Banking Authority to increase the transparency of information in those digital channels.



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## Capital markets

### Legislation

#### **Law 50/2020, of August 25, 2020**

Transposes Directive (EU) 2017/828 of the European Parliament and of the Council, on the rights of shareholders of publicly traded companies regarding the encouragement of long-term shareholder engagement ("**Shareholders Directive II**"). It amends (i) Decree-Law 486/99, of November 13, 1999, approving the Portuguese Securities Code ("**PSC**"); (ii) Law 16/2015, of February 24, 2015, approving the Legal Framework for Collective Investment Undertakings ("**LFCIU**"); and (iii) Decree-Law 298/92, of December 31, 1992, approving the Legal Framework of Credit Institutions and Financial Companies. It revokes Law 28/2009, of June 19, 2009, which reviews the sanctioning framework in the financial sector in criminal and misdemeanor matters.

#### **Law 25/2020, of July 7, 2020**

Amends, with respect to sanctioning frameworks, (i) the LFCIU; (ii) Law 18/2015, of March 4, 2015, approving the Legal Framework of Venture Capital, Social Entrepreneurship and Specialized Investment; (iii) Decree-Law 453/99, of November 5, 1999, approving the Legal Framework of Credit Securitization; and (iv) the PSC.

#### **Portuguese Securities and Exchange Commission Circular, of July 29, 2020**

Clarifies the requirements regarding the application of the valuation criteria of financial instruments not traded on a trading or similar type of venue, and which are part of collective investment undertakings portfolios.

#### **Portuguese Securities and Exchange Commission Guidelines on suitability assessment procedures, of September 9, 2020**

Provides guidelines on the assessment of the suitability for the performance of regulated functions and of the holders of qualifying shareholdings, to develop, harmonize and clarify the criteria, techniques and procedures for assessing suitability in line with national and international practices, applicable since September 9, 2020.

#### **Corporate Governance Portuguese Institute (IPCG) Corporate Governance Code, of September 18, 2020**

Amends the 2018 Corporate Governance Code, introducing recommendations on remuneration and related-party transaction matters, according to the Shareholder Rights Directive II.



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