



Public Consultation

Preliminary Draft of the Banking Activity Code

**New Rules and the Banking Activity
Compilation are coming to Portugal.**

On October 29th, the Bank of Portugal launched a public consultation on the Initial Draft of the new Portuguese **Code of Banking Activity** (hereinafter "CAB"), which aims to update and systematize the legal framework applicable to the banking activity in Portugal, considering the needs of the current banking system, the Banking Union, the White Paper on Regulation and Supervision of the Financial System, as well as the experience gained and regulatory recommendations of recent years.

"the Code of Banking Activity aims to update and systematize the legal framework applicable to the banking activity in Portugal, considering the needs of the current banking system"

The CAB's Preliminary Draft is intended to:

- **Replace and systematize** the existing General Regime of Credit Institutions and Financial Companies ("**RGICSF**");
- **Aggregate in a single legislative text, several special regimes** that are currently dispersed, facilitating the application of the concerned rules;
- **Transpose the European Directives** known as the "*Banking Package*" (**CRD V** and **BRRD II**) and, partially, the Directive on investment firms (only regarding the transformation into credit institutions of certain systemic investment firms):
 - EU Directive No. 2019/878 of 20/05/2019 amending Directive No. 2013/36/EU, as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures (**CRD V**);
 - EU Directive No. 2019/879 of 20/05/2019 amending Directive No. 2014/59/EU, concerning the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC (**BRRD II**);
 - EU Directive 2019/2034 of 27/11/2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU, and 2014/65/EU.



Among the various new legislative developments, the first one to be highlighted relates to the new CAB systematic approach, which is organized according to the life cycle of a banking institution, as follows:

- **Title I - General part** (object and definitions, general provisions, notifications and administrative procedures);
- **Title II - Access to the activity** (authorization, cross-border activity, registration, qualified holdings and voting rights);
- **Title III - Exercise of the activity** (culture and behavior, the duty of secrecy, administrative and supervisory bodies, assessment of the suitability of the body members and holders of essential functions, internal control system and risk management, remuneration practices and policies, transparency, conflicts of interest and related parties, behavioral rules and inherent internal organization, statutory changes, merger and split and acquisition or disposal of assets and liabilities, recovery plans and intragroup financial support)

- **Title IV - Regulation and supervision** (supervisory process, supervision on a consolidated basis, macro-prudential policy, capital reserves and early intervention);
- **Title V - Deposit guarantee** (deposit guarantee fund and information duties regarding deposit guarantees);
- **Title VI - Resolution** (resolution plans, minimum capital requirements and eligible credits and evaluation of resolvability, powers of reduction or conversion of capital instruments and eligible credits, resolution in particular and resolution fund);
- **Title VII - Termination of activity** (voluntary winding up, revocation of authorization, preliminary liquidation procedure and judicial liquidation);
- **Title VIII - Illegal financial activity and sanctions** (illegal financial activity, criminal and misdemeanor provisions and sanctions).



As far as the **scope** is concerned, with the CAB Preliminary Draft:

(i) credit institutions, credit financial institutions, mortgage credit institutions and credit financial companies will be extinguished as autonomous financial institutions and shall be transformed into financial companies;

(ii) a **single type of financial company** is created, with a differentiated purpose (credit granting and consulting, payment services, investment activities) and minimum share capital, which includes: the current credit financial companies (credit financial companies, investment companies, leasing companies, factoring companies, microcredit financial companies) and the (converted) credit financial institutions;

(iii) investment firms will no longer be classified as financial companies and will be regulated on an autonomous basis, which will cover all investment firms.

It should also be noted the introduction of the **electronic processing**, which is simultaneously reflected in administrative and administrative infractions' proceedings, and which will, in due time, be regulated by Bank of Portugal.

The third major innovation lies in **supervisory measures and transparency** before the supervisor, including the transparency of group participation structures.

Other new relevant developments are related to **corporate governance**:

- (i) revision and strengthening of the adequacy assessment of members of management and supervisory bodies (e.g. the period of adequacy assessment is increased from 30 days to 3 months, the introduction of a regime of prior adequacy assessment in O-SII institutions),
- (ii) internal procedures and remuneration practices and policies are reorganized, reviewed, and prudentially integrated;
- (iii) specific rules on behavior are established.

Another novelty is the introduction of a **regime of transactions with related parties**. The Preliminary Draft of the CAB also proposes the prohibition of self-placement for non-professional investors, as well as the prohibition of granting credit by institutions to all types of investors for the acquisition of their own financial instruments.

In what concerns the **cross-border operations**, the CAB's Preliminary Draft proposes the prohibition of operations with entities headquartered in non-cooperative countries, with institutions being obliged to verify, prior to any operation, that there are no obstacles to the transmission of the necessary information to the Bank of Portugal for its supervision activity. Another proposal under public consultation is the obligation by institutions to ensure that their subsidiaries or branches in third countries have self-sufficient liquidity.

The CAB's Preliminary Draft proposes, with respect to the sale of qualifying holdings, that the Bank of Portugal may inhibit the voting rights of a qualified participant on a provisional basis; as well as determine the sale of qualifying holdings in the event of a risk situation to the institution.

Finally, the CAB's Draft has intensified the rules on combating illicit financial activity, empowering the Bank of Portugal to act in a timely manner to prevent this illicit activity.

The public consultation will be open until December, 4th 2020 (contributions must be sent to regulacao@bportugal.pt, through the template of Annex III file), after which the Bank of Portugal will publish a summary report on the results and present a revised draft of CAB to the Government.



The public consultation document is available for consultation [here](#).

The full version of the Preliminary Draft of the Banking Activity Code is available for consultation [here](#).

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