

**CREDIT INSTITUTIONS
AND FINANCIAL
COMPANIES:
LEGAL FRAMEWORK**



Banco de Portugal

BANCO DE PORTUGAL

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BANCO DE PORTUGAL

Credit Institutions and Financial Companies: Legal Framework

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The following translation has been prepared
by Banco de Portugal and has no legal value.

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Legal Framework of Credit Institutions and Financial Companies

TITLE I

General Provisions

Article 1

Purpose

1 — This Decree-Law governs the taking up and pursuit of the business of credit institutions and financial companies.

2 — Credit institutions having the legal status of public enterprise become subject to the provisions of this Decree-Law that are not incompatible with their status.

Article 2

Credit institutions

1 — A credit institution is an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account.

2 — A credit institution is also an undertaking which issues means of payment in the form of electronic money.

Article 3

Types of credit institutions

The following are credit institutions:

- a)* Banks;
- b)* Caixas económicas (savings banks);

- c)* Caixa Central de Crédito Agrícola Mútuo (central mutual agricultural credit bank) and caixas de crédito agrícola mútuo (mutual agricultural credit banks);
- d)* Credit financial institutions;
- e)* Investment companies;
- f)* Financial leasing companies;
- g)* Factoring companies;
- h)* Credit purchase financing companies;
- i)* Mutual guarantee companies;
- j)* Electronic money institutions;
- l)* Other undertakings, which, in meeting the definition in the preceding Article, are classified as such according to the law.

Article 4

Activities of credit institutions

- 1 — Banks may carry on the following activities:
 - a)* Acceptance of deposits or other repayable funds;
 - b)* Lending, including the granting of guarantees and other commitments, financial leasing, and factoring;
 - c)* Money transmission services;
 - d)* Issuance and administration of means of payment, e.g. credit cards, travellers' cheques and bankers' drafts;
 - e)* Trading for own account or for account of clients in money market instruments, foreign exchange, financial futures and options, exchange or interest-rate instruments, goods and transferable securities;
 - f)* Participation in securities issues and placement and provision of related services;

- g)* Money broking;
- h)* Portfolio management and advice, safekeeping and administration of securities;
- i)* Management and management consultancy in relation to other assets;
- j)* Advice to undertakings on capital structure, industrial strategy and related questions as well as advice and services relating to mergers and purchase of undertakings;
- l)* Dealings in precious metals and stones;
- m)* Acquisition of holdings in companies;
- n)* Trading in insurance policies;
- o)* Credit reference services;
- p)* Safe custody services;
- q)* Leasing of movable property, under the terms allowed to financial leasing companies;
- r)* Provision of the investment services referred to in Article 199-A, not covered by the preceding subparagraphs;
- s)* Other similar transactions not forbidden by law.

2 — Other credit institutions may only carry out those transactions permitted by the laws and regulations governing their activity.

Article 5

Financial companies

A financial company is an undertaking other than a credit institution, whose principal activity is to carry on one or more of the activities referred to in Article 4 (1) (b) to (i) except for financial leasing and factoring.

Article 6

Types of financial companies

- 1 — The following are financial companies:
 - a)* Dealers;
 - b)* Brokers;
 - c)* Foreign-exchange or money-market mediating companies;
 - d)* Investment fund management companies;
 - e)* Credit card issuing or management companies;
 - f)* Wealth management companies;
 - g)* Regional development companies;
 - h)* (*Revoked*);
 - i)* Exchange offices;
 - j)* Credit securitisation fund management companies;
 - l)* Other companies classified as such by law.

2 — FINANGESTE - Empresa Financeira de Gestão e Desenvolvimento, S.A. (Management and Development Financial Undertaking) is also a financial company.

3 — For the purposes of this Decree-Law, insurance undertakings and pension fund management companies are not considered as financial companies.

- 4 — The activity of pawnbrokers is covered by special legislation.

Article 7

Activity of financial companies

Financial companies may only carry out the transactions permitted by the laws and regulations governing their activity.

Article 8

Principle of exclusiveness

1 — Only credit institutions other than electronic money institutions may receive deposits or other repayable funds from the public for their own account.

2 — Only credit institutions and financial companies may carry on a professional basis the activities referred to in Article 4 (1) (b) to (i) and (r) with the exception of the consultancy activities referred to in (i).

3 — The provisions of paragraph 1 do not prevent the following bodies from receiving repayable funds from the public, according to the applicable laws, regulations or statutes:

- a)* The State, including public funds and institutes having legal status and with administrative and financial autonomy;
- b)* Autonomous regions and local authorities;
- c)* The European Investment Bank and other international organisations of which Portugal is a member and whose legal status allows them to receive repayable funds from the public within the national territory;
- d)* Insurance undertakings, in respect of capitalisation operations.

Article 9

Repayable funds received from the public and credit granting

1 — For the purposes of this Decree-Law, funds raised through the issuance of bonds under the provisions and within the limits of the Company Law are not considered repayable funds received from the public; nor are funds raised through the issuance of commercial paper, under the provisions and within the limits of the applicable legislation.

2 — For the purposes of the foregoing Articles, the following are not considered as granting of credit:

- a) Long-term loans and other forms of loans and advances between a company and its partners;
- b) Credit granted by a company to its workers for social reasons;
- c) Postponement or anticipation of payment agreed between the parties to contracts for the acquisition of goods or services;
- d) Cash facilities, when legally permitted, between companies in a control relationship or which form part of the same group;
- e) The issue of tickets or cards for payment of goods and services supplied by the issuing company.

Article 10

Qualified undertakings

1 — The following undertakings are qualified to carry on the activities referred to in this Decree-Law:

- a) Credit institutions and financial companies having their head office in Portugal;
- b) Branches of financial and credit institutions having their head office abroad.

2 — Credit and financial institutions authorised in other European Community Member States may, under this Decree-Law, provide services in Portugal included in the above-mentioned activities, on condition that they are authorised to provide them in their home country.

Article 11

Truthfulness of company and business names

1 — Only undertakings qualified as credit institutions or financial companies may include in their company or business name, or use in their

activity, expressions which suggest an activity pertaining to credit institutions or financial companies, such as “bank”, “banker”, “credit”, “deposit”, “financial leasing”, “leasing” and “factoring”.

2 — These expressions shall always be used in such a manner as not to mislead the public regarding the scope of the operations which the undertaking is allowed to carry out.

Article 12

Decisions of Banco de Portugal

1 — The lodging of appeals against a decision of Banco de Portugal, taken within the scope of this Decree-Law, shall abide, in all aspects not specifically covered by the latter, by the provisions of the Organic Law of the Banco de Portugal.

2 — Regarding the lodging of appeals mentioned in the foregoing paragraph as well as of appeals against other decisions taken within the scope of specific legislation governing the activity of credit institutions and financial companies, it is presumed, in the absence of evidence to the contrary, that the suspension of enforcement seriously injures the public interest.

3 — Regarding the decisions referred to in this Article, from which result damages to a third party, the personal civil liability of its authors can only be enforced if Banco de Portugal claims the reimbursement from them, save if the respective conduct constitutes a crime.

Article 12-A

Time limits

1 — Unless otherwise provided for by a special rule, the time limits established in this Decree-Law are continuous, notwithstanding the provisions of the following paragraph.

2 — The 30-day or 1-month periods established in this Decree-Law for the exercising of the competencies conferred on the Banco de Portugal are interrupted whenever the Bank requires the parties concerned to provide the information deemed necessary for the preparation of the respective process.

3 — The interruption foreseen in the foregoing paragraph cannot under any circumstances exceed a total of 60 days, continuous or non-continuous.

Article 13

Other definitions

For the purpose of this Decree-Law:

1st Subsidiary shall mean a legal person controlled by another legal person, known as the parent undertaking. Any subsidiary of a subsidiary undertaking shall also be regarded as a subsidiary of the parent undertaking which is at the head of those undertakings;

2nd Control shall mean a relationship between any natural or legal person and an undertaking when:

a) Any of the following applies:

- I) The natural or legal person has a majority of the voting rights;
- II) A shareholder has the right to appoint or remove more than half of the members of the management or auditing boards;

- III) Has the right to exercise a dominant influence over the undertaking, pursuant to a contract entered into or to a provision in the undertaking's articles of association;
 - IV) Is a shareholder and controls alone a majority of the voting rights, pursuant to an agreement with other shareholders;
 - V) Holds a participation in an undertaking, representing 20% or more of the capital, provided that a dominant influence is exercised over the undertaking or where both the dominant body and the undertaking in question are subject to joint management;
- b) For the purposes of I), II) and IV) above, it is considered that:
- I) The voting rights and the rights of appointment or removal of a shareholder are added to the rights of any other dependent on the parent undertaking, or constituting part of the same group, as well as those of any person acting in his own name but on behalf of the parent undertaking or of any other of the undertakings referred to;
 - II) The rights mentioned in I) above must be reduced by the rights attaching to shares held on behalf of a person who is neither the parent undertaking nor a subsidiary thereof, or attaching to shares held by way of security, provided that, the rights in question are exercised in accordance with the instructions received, or held in connection with the granting of loans as part of normal business activities, provided that the voting rights are exercised in the interests of the person providing the security;

- c) For the purposes of (a) I) and IV) the total voting rights in the subsidiary undertaking must be reduced by the voting rights attaching to the shares held by that undertaking itself, by a subsidiary undertaking of that undertaking, or by a person acting in his own name but on behalf of those undertakings;

3rd Undertakings belonging to the same group shall mean undertakings interrelated under the terms of the Company Law, regardless of whether their head office is located in Portugal or abroad;

4th Financial institution shall mean an undertaking other than a credit institution having its head office in another Member State of the European Community, the principal activity of which is to acquire holdings or to carry on one or more of the activities listed in points 2 to 12 of the list annexed to Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000, or which has its head office in a third country, the principal activity or activities of which are equivalent to any of those referred to in Article 5;

5th Branch shall mean a place of business without legal status and which carries out directly all or some of the transactions inherent in the business of the undertaking to which it belongs;

6th Agency shall mean a branch, located in Portugal, of a credit institution or financial company having its head office in Portugal, or a supplementary branch of a credit or financial institution having its head office abroad;

7th Qualifying holding shall mean a direct or indirect holding in an undertaking, joint or separate, which for any reason makes it possible for its holder, by himself or by virtue of any special links with the voting rights of another participant, to exercise a significant influence over the management of the participated entity. For the purposes of this definition, significant influence over the management is presumed whenever the participant holds at least 5% of the capital or of the voting rights of the participated entity. Banco de Portugal can only consider this presumption

as refuted, taking namely into account the information provided by the party concerned, where the holding is lower than 10%. Anyway, the following shall be equivalent to the participant's voting rights:

- a)* Those held by persons or undertakings referred to in Article 447 (2) of the Company Law;
- b)* Those held by other persons or entities in their own or in another's name but on behalf of the participant;
- c)* Those held by an undertaking controlled by the participant;
- d)* Those held by an undertaking belonging to the same group as the participant undertakings;
- e)* Those held by a third party with whom the participant has concluded a written agreement which obliges it to adopt, by concerted exercise of the voting rights it holds, a common policy for the management of the company in question;
- f)* Those held by a third party under a written agreement concluded with the participant or with one of the undertakings referred to in (c) and (d) providing for the temporary transfer of the voting rights in question;
- g)* Those attaching to shares owned by the participant which are posted as collateral, except where the creditor holds these rights and declares his intention of exercising them, in which case they shall be regarded as the latter's voting rights;
- h)* Those attaching to shares of which the participant has the right of usufruct;
- i)* Those to which the participant or one of the other persons or entities mentioned in the foregoing subparagraphs is entitled to acquire, on his own initiative, under a formal agreement;
- j)* Those attaching to shares deposited with the participant and which he can exercise at his discretion in the absence of specific instructions from the respective holders;

8th Joint participation shall mean any participation which is considered to be held by more than one person, due to situations of community or co-ownership of rights, or to the existence of special links which enable a common influence to be exercised over the management of the participated entity;

9th Home country or State shall mean a country or State in which a credit institution, financial company or financial institution has been authorised;

10th Host country or State shall mean a country or State in which a credit institution, financial company or financial institution has a branch or in which it provides services;

11th Authorisation shall mean an instrument issued by the competent authorities by which the right to carry on the business of a credit institution, financial company or financial institution is granted;

12th Ancillary services company shall mean a company the principal activity of which is ancillary to the principal activity of one or more credit institutions, namely the holding or management of real estate or the management of data processing services.

13th Close links shall mean a situation in which two or more natural or legal persons:

a) Are linked by:

a1) Participation, which shall mean the ownership, direct or by way of control, of 20% or more of the capital or the voting rights of an undertaking; or

a2) Control; or

b) Are linked to a third party by way of a control relationship.

TITLE II

Authorisation of credit institutions having their head office in Portugal

CHAPTER I

General principles

Article 14

General requirements

- 1 — Credit institutions having their head office in Portugal shall:
 - a) Correspond to one of the types envisaged in Portuguese law;
 - b) Take the form of a *sociedade anónima* (limited company);
 - c) Have as their sole purpose the activity legally permitted under Article 4;
 - d) Have an initial capital not lower than the legal minimum capital, represented by nominative shares or registered bearer shares;
 - e) Have their head office in Portugal.

- 2 — On the date of setting-up, the initial capital shall be fully subscribed and paid up to the amount of the legal minimum capital.

Article 15

Composition of the management board

- 1 — The management board of a credit institution shall consist of at least three members, with full powers to run the business of the institution.

2 — The day-to-day management of the institution shall be the responsibility of at least two members of the management board.

CHAPTER II

Authorisation procedure

Article 16

Authorisation

1 — Without prejudice to the provisions of paragraph 2 below, the setting-up of credit institutions depends on an authorisation to be granted, on a case-by-case basis, by Banco de Portugal.

2 — It shall be incumbent on the Minister of Finance to authorise the setting-up of credit institutions which are a subsidiary of a credit institution having its head office in a non-EC country, or if they are controlled, or if their capital or corresponding voting rights are in their majority held by natural persons who are not nationals of EC Member States or by legal persons having their head office in non-EC Member States; this competence may be delegated on Banco de Portugal.

3 — The authorisation shall always be notified to the European Commission.

4 — Whenever the credit institution is in the situation referred to in paragraph 2 above, the notification envisaged in the foregoing paragraph must specify the structure of the group to which the credit institution belongs.

5 — The conditions for the authorisation of a credit institution envisaged in the foregoing paragraph cannot give rise to a more favourable treatment than the one from which benefit the remaining credit institutions.

6 — Where the Commission or the Council of the European Union thus decide, in accordance with the provisions laid down in Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000, decisions regarding requests pending at the moment of the decision or future requests for authorisation must be limited or suspended.

Article 17

Application procedure

1 — Applications for authorisation shall be accompanied by the following documents:

- a)* Definition of the type of institution to be set up and a draft of the articles of association;
- b)* Programme of operations, geographical location, internal organisation, material, technical and human resources to be used and prospective accounts for each of the first three business years;
- c)* Identity of the founder members, indicating the number of shares subscribed by each;
- d)* Documentary evidence on the adequacy of the shareholder structure to the stability of the institution;
- e)* Declaration of undertaking to the effect that on the date of setting-up and as a prerequisite of the same, the amount of capital stock required by law has been deposited with a credit institution.

2 — In the case of founder members who are legal persons with qualifying holdings in the institution to be set up, the application shall be further accompanied by:

- a)* Articles of association and a list of the members of the management board;

- b) Balance sheet and accounts for the last three years;
- c) List of the partners of the legal person in question who have a qualifying holding therein;
- d) List of the undertakings in which the legal person in question has a qualifying holding, as well as an explanatory memorandum of the structure of the group to which that legal person belongs.

3 — The presentation of the documents mentioned in the foregoing paragraph may be waived when Banco de Portugal is already aware of them.

4 — Banco de Portugal may request additional information of the applicants and make the inquiries deemed necessary.

Article 18

Subsidiaries of institutions authorised abroad

1 — The authorisation to set up a credit institution which is either a subsidiary of a credit institution authorised abroad, or a subsidiary of the parent undertaking of such a credit institution, is subject to prior consultation with the supervisory authority of the Member State in question.

2 — The provisions of the foregoing paragraph shall also be applicable where the institution to be set up is controlled by the same persons, whether natural or legal, as control a credit institution authorised in another country.

Article 19

Decision

1 — The parties concerned must be notified of the decision within six months of receipt of the application or, where relevant, of receipt of the additional information required from the applicants, but in any case within twelve months of the receipt of the application.

2 — Non-notification within the above-mentioned periods is taken to imply refusal of the application

Article 20

Authorisation refusal

1 — Authorisation shall be refused whenever:

- a) The application for authorisation is not accompanied by all the required information and documents;
- b) The application file contains inaccuracies or false statements;
- c) The institution to be set up does not conform to the provisions of Article 14;
- d) Banco de Portugal is not satisfied as to the suitability of the shareholders, referred to in Article 103;
- e) The credit institution does not have sufficient technical means or financial resources for the type or volume of transactions which it intends to carry out;
- f) The effective supervision of the institution to be set up is prevented due to close links between the credit institution and other natural or legal persons;
- g) The effective supervision of the institution to be set up is prevented by virtue of laws or regulations of a third country governing one or more of the persons with which the credit institution has close links, or of difficulties involved in their enforcement.

2 — If there are deficiencies in the application file, Banco de Portugal shall notify the applicants accordingly, allowing them a reasonable period to rectify the deficiency, before refusing authorisation.

Article 21

Lapsing of the authorisation

1 — The authorisation lapses if the applicants expressly renounce it or if the institution fails to commence its activity within a period of 12 months.

2 — Banco de Portugal may, upon request of those concerned, extend the time limit laid down in the foregoing paragraph for another period of 12 months.

3 — The authorisation also lapses upon the winding-up of the institution, without prejudice to the action required for its liquidation.

Article 22

Withdrawal of authorisation

1 — The authorisation of a credit institution may be withdrawn on the following grounds, as well as on others envisaged by law:

- a) The authorisation was obtained through false statements or any other irregular means, regardless of the applicable penalties;
- b) Any of the requirements set forth in Article 14 ceases to be met;
- c) The activity of the credit institution does not correspond to the authorised statutory purpose;
- d) The institution ceases or curtails its activity to a negligible level for a period over 12 months;

- e) Serious irregularities are committed in the management, accounting procedures, or internal control of the institution;
- f) The institution is unable to comply with its commitments, in particular, it no longer provides security for the assets entrusted to it ;
- g) The institution fails to fulfil the obligations arising out of its participation in the Deposit Guarantee Fund or in the Investor Compensation Scheme;
- h) The institution violates the laws and regulations governing its activity, or fails to observe the instructions of the Banco de Portugal, in such a way as to jeopardize the interests of the depositors and other creditors or the regular operation of the money, financial or foreign exchange market.

2 — The withdrawal of the authorisation granted to an institution which has branches in other EC Member States shall be preceded by consultation with the supervisory authorities of those States. On grounds of urgency, however, this consultation may be replaced by a mere notification of the withdrawal, accompanied by an explanation as to the reason for this simplified procedure.

3 — The withdrawal of authorisation implies the winding-up and liquidation of the credit institution, save if in the case mentioned in paragraph 1 (d) above the winding-up and liquidation are waived by Banco de Portugal.

Article 23

Power of withdrawal and related procedures

1 — The withdrawal of authorisation is the responsibility of the Banco de Portugal.

2 — Reasons must be given for any withdrawal of authorisation and this decision must be notified to the credit institution and reported to the European Commission, as well as to the supervisory authorities of the EC Member States in which the institution has branches or provides services.

3 — Banco de Portugal shall duly publicise the withdrawal decision and shall take the necessary steps to ensure the immediate closure of all the institution's premises, which will remain closed until the liquidators have taken office.

4 — *(Revoked)*.

Article 23-A

Compilation of the application file and withdrawal of authorisation in special cases

The provisions of Articles 17 to 23 are applicable to the credit institutions mentioned in Article 16 (2), with the following adjustments:

- a) The application for authorisation shall be submitted to Banco de Portugal;
- b) The authorisation shall be preceded by an opinion of Banco de Portugal, which may request additional information and make the inquiries that it deems necessary;
- c) Banco de Portugal shall forward its opinion to the Ministry of Finance within a period of three months;
- d) In the case of institutions intending to have their head office in an Autonomous Region, Banco de Portugal shall forward a copy of the application file and of its opinion to the Regional Government, which will have one month to issue its opinion;
- e) Withdrawal of authorisation is the responsibility of the Minister of Finance or, whenever delegated under Article 16 (2), of the Banco de Portugal;

- f) The withdrawal shall be preceded by consultation with Banco de Portugal in case the delegation envisaged in the foregoing subparagraph does not apply, and with the competent Regional Government, if applicable.

Article 24

Scope

(Revoked).

Article 25

Power of authorisation

(Revoked).

Article 26

Application procedure

(Revoked).

Article 27

Special authorisation requirements

(Revoked).

Article 28

Withdrawal of authorisation

(Revoked).

Article 29

Savings banks and mutual agricultural credit banks

The provisions of Article 14 (1) (b) and (d) and of this Chapter do not apply to savings banks and mutual agricultural credit banks.

Article 29-A

Intervention of the Securities Market Commission

1 — Whenever the purpose of a credit institution includes any type of intermediation in transferable securities, Banco de Portugal, before deciding, shall request the Securities Market Commission to provide information on the suitability of the shareholders.

2 — Where appropriate, the Commission shall supply the required information within two months.

3 — The withdrawal of authorisation of a credit institution, referred to in paragraph 1, shall be immediately communicated to the Commission.

CHAPTER III

Management and auditing

Article 30

Suitability of the members of the management and auditing boards

1 — Only persons whose suitability and availability ensure sound and prudent management may be members of the management and auditing boards of a credit institution, the same applying also to members

of the general council and to non-executive members of the board, with a view to providing security, in particular, to the funds entrusted to the institution.

2 — In appraising this suitability, account shall be taken of the manner in which the person usually does business or carries on his professional activity, particularly of any aspects which show an inability to make wise and judicious decisions, or a tendency not to meet obligations punctually or to behave in a manner incompatible with the maintenance of market confidence.

3 — Among other relevant facts, lack of suitability will be deemed to exist in cases where the person in question has been:

- a) Adjudged bankrupt or insolvent by a national or foreign court, or considered responsible for the bankruptcy or insolvency of a company controlled by the said person or in which he had been a member of the board, a director or manager;
- b) A member of the board, director or manager of a company whose insolvency or bankruptcy, either in Portugal or abroad, was prevented, suspended or avoided by reorganisation measures or by other preventive or suspensive measures, or the holder of a controlling interest in such a company, in cases where he was deemed by the competent authorities to have been responsible for that situation;
- c) Convicted, in Portugal or abroad, for fraudulent bankruptcy, bankruptcy due to negligence, fraudulent preference, forgery, larceny, theft, fraud, creditors' defrauding, extortion, breach of trust, dishonesty, usury, corruption, issue of uncovered cheques, embezzlement of money or property of the public or co-operative sector, harmful mismanagement in an economic unit of the public or co-operative sector, false declarations, unauthorised taking of deposits or other repayable funds, money laundering, improper use of inside information,

manipulation of the stock market or crimes envisaged in the Company Law;

- d) Convicted, in Portugal or abroad, for infringement of legal rules or regulations governing the activity of credit institutions, financial companies or financial institutions, insurance activity and the stock market, whenever warranted by the seriousness or repetitive nature of the offences.

4 — For the purpose of this Article, Banco de Portugal shall exchange information with the Portuguese Insurance Institute and with the Securities Market Commission.

Article 31

Professional experience

1 — The members of the management board in charge of the day-to-day management of the credit institution and the official auditors belonging to the auditing board shall have appropriate experience to perform their functions.

2 — Appropriate experience is deemed to exist when the person in question has previously held, in a competent manner, positions of responsibility in the financial sector.

3 — The duration of the previous experience and the nature and extent of responsibility of the positions previously held shall be consistent with the characteristics and size of the credit institution in question.

4 — Recognition of appropriate professional experience may be the object of prior consultation with the competent authority.

Article 32

Nonfulfilment of requirements by management or auditing boards

1 — If for any reason the legal or statutory requirements for the regular operation of the management or auditing boards cease to be met, Banco de Portugal shall stipulate a period for the change in the composition of the board in question.

2 — Should the situation not be settled within the stipulated period, authorisation may be withdrawn under the terms of Article 22.

Article 33

Accumulation of posts

1 — Banco de Portugal can oppose that the members of the management board or of the general council of credit institutions occupy managerial posts in other companies, if it deems that the accumulation is liable to hamper the performance of the functions already entrusted to them, in particular, where there are serious risks of conflicts of interest or, in the case of persons responsible for the day-to-day management of the institution, where their availability for management functions is likely to be significantly affected.

2 — The provisions of the foregoing paragraph do not apply to the accumulation of posts in the management board or in the general council of credit institutions or of other entities included in the same perimeter of supervision on a consolidated basis.

3 — In the case of posts to be occupied in an entity subject to registration with Banco de Portugal, the power of opposition shall be exercised within the scope of the registration process governed by Article 69; in the remaining cases, the persons concerned must declare

their intention to Banco de Portugal, with at least 30 days' notice before the date foreseen for the start of the new functions; should Banco de Portugal not issue its decision within this period, it shall be understood that it does not oppose the accumulation of posts.

CHAPTER IV

Statutory changes and winding-up

Article 34

Statutory changes in general

1 — Changes to the articles of association of credit institutions are subject to prior authorisation from the Banco de Portugal in respect of the following:

- a)* Company or business name;
- b)* Purpose;
- c)* Location of the head office, except where it is moved within the same municipality or to an adjoining municipality;
- d)* Capital stock, in cases where it is reduced;
- e)* Creation of types of shares or changes in the existing types;
- f)* Structure of the management or auditing boards;
- g)* Limitation of the powers of the management or auditing boards;
- h)* Winding-up.

2 — Alterations the to purpose implying a change in the type of institution are subject to the regulations prescribed in Chapters I and II of this Title. Other changes are considered authorised if the Banco de Portugal raises no objection within 30 days as of the date of receipt of the application.

Article 35

Merger and splitting

1 — The merger of credit institutions, either among themselves or with financial companies, is subject to prior authorisation from Banco de Portugal.

2 — The splitting of credit institutions is also subject to prior authorisation from Banco de Portugal.

3 — Where relevant, the regulations prescribed in Chapters I and II of this Title shall be applicable.

Article 35-A

Voluntary winding-up

1 — Any project of a voluntary winding-up of a credit institution shall be communicated to Banco de Portugal with at least 90 days' notice from the date of its effectiveness.

2 — The provisions of the foregoing paragraph shall be applicable to projects regarding the closure of branches of credit institutions having their head office in non-EC countries.

TITLE III
**Activity abroad of credit institutions having their
head office in Portugal**

CHAPTER I
Establishment of branches and subsidiaries

Article 36
Requirements for establishment in an EC country

1 — A credit institution having its head office in Portugal wishing to establish a branch within the territory of another EC Member State shall notify Banco de Portugal of this intention in advance, providing the following information:

- a)* The country in which the proposed branch is to be established;
- b)* A programme of operations, setting out, *inter alia*, the types of business envisaged and the structural organisation of the branch;
- c)* The address of the branch in the host country;
- d)* The identity of those responsible for the management of the branch.

2 — The day-to-day management of the branch shall be entrusted to at least two managers, who are subject to all the requirements imposed on the members of the management boards of credit institutions.

Article 37

Appraisal by Banco de Portugal

1 — Banco de Portugal shall, within three months of receipt of the information referred to in the foregoing Article, communicate that information to the supervisory authority of the host country, certifying also that the activities envisaged are covered by the authorisation, and shall inform the institution concerned accordingly.

2 — The amount of the institution's own funds and solvency ratio shall also be communicated, as well as a detailed description of the deposit-guarantee scheme in which the institution participates and which is intended to ensure the protection of depositors in the branch.

Article 38

Refusal of communication

1 — Where there are grounded doubts on the adequacy of the administrative structure or on the financial situation of the credit institution, Banco de Portugal shall refuse to issue the communication.

2 — The refusal shall be justified and notified to the institution concerned.

3 — If Banco de Portugal does not effect the communication within the period established in Article 37 (1) it will be assumed that the communication has been refused.

4 — The European Commission shall be informed of the number and type of cases in which there has been a refusal.

Article 39

Scope of activity

On condition that the provisions of the foregoing Articles are complied with, the branch may carry on in the host country the activities listed as an Annex to Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000, which the institution is authorised to carry on in Portugal and that are mentioned in the programme of operations referred to in Article 36 (1) (b).

Article 40

Change in any of the particulars communicated

1 — In the event of a change in any of the particulars referred to in Article 36 (1) (b), (c) and (d) or in the deposit-guarantee scheme referred to in Article 37 (2) the credit institution shall give written notice of the change in question to Banco de Portugal and to the supervisory authority of the host country, at least one month before making the change.

2 — The provisions of Articles 37 and 38 shall be applicable and the period mentioned in the former shortened to one month.

Article 41

Applicability

The provisions of Articles 36 to 40 shall not be applicable to mutual agricultural credit banks nor to *Caixas Económicas* (savings banks) that do not take the legal form of *sociedades anónimas* (limited companies), except for *Caixa Económica Montepio Geral*.

Article 42

Branches in third countries

1 — A credit institution having its head office in Portugal wishing to establish branches in non-EC countries shall observe the provisions of Article 36 and of this Article.

2 — Banco de Portugal may refuse the application for grounded reasons, namely where the administrative structure and financial situation of the institution are inadequate for the project.

3 — The decision shall be taken within three months, and the lack of a decision shall be considered as a refusal.

4 — Reasons must be given for the refusal, which shall be notified to the institution concerned.

5 — The branch may not carry out transactions which the institution is not permitted to carry out in Portugal or which are not mentioned in the programme of operations referred to in Article 36 (1) (b).

Article 42-A

Subsidiaries in third countries

1 — A credit institution having its head office in Portugal and wishing to establish a subsidiary in a non-EC country shall notify Banco de Portugal of this intention in advance, under the terms to be established by means of a Notice.

2 — Banco de Portugal may refuse the application for grounded reasons, namely where the financial situation of the institution is inadequate for the project.

3 — The decision shall be taken within three months, and the lack of a decision shall be considered as a refusal.

CHAPTER II

Provision of services

Article 43

Provision of services in EC countries

1 — Any credit institution having its head office in Portugal wishing to initiate, in another EC Member State, the provision of services listed as an Annex to Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000, which it is authorised to provide in Portugal and which are not provided by a permanent establishment of that institution in the country of residence of the person for whom such services are intended, shall previously notify Banco de Portugal thereof, specifying the activities which it proposes to carry on in that Member State.

2 — Within one month of receipt of the notification referred to in the foregoing paragraph, Banco de Portugal shall send that notification to the supervisory authority of the host Member State, certifying that the activities envisaged are covered by the authorisation.

3 — The provision of services referred to in this Article shall be carried on in accordance with the regulations governing external and foreign-exchange transactions.

CHAPTER III
Acquisition of qualifying holdings

Article 43-A

Qualifying holdings in companies having their head office abroad

A credit institution having its head office in Portugal and wishing to acquire, directly or indirectly, participations in credit institutions having their head office abroad or in financial institutions representing 10% or more of the capital stock of the participated entity or 2% or more of the capital stock of the participating institution, shall communicate this intention to Banco de Portugal, under the terms to be established by means of a Notice.

TITLE IV
**Activity in Portugal of credit institutions having
their head office abroad**

CHAPTER I
General principles

Article 44
Observance of Portuguese law

The activity within the Portuguese territory of credit institutions having their head office abroad is subject to the Portuguese law, namely the regulations governing external and foreign exchange transactions.

Article 45
Management

The managers of branches or representative offices in Portugal of credit institutions not authorised in other EC Member States are subject to all the suitability and experience requirements established by law for the members of the management boards of credit institutions having their head office in Portugal.

Article 46
Use of company or business name

1 — Credit institutions having their head office abroad and established in Portugal may use the same company or business name that they use in their home country.

2 — If this use is likely to mislead the public as far as the transactions, which the credit institution may carry out, are concerned, or to lead to confusion with other company or business names which enjoy protection in Portugal, then Banco de Portugal shall determine that a specific addition be made to the company or business name in order to avoid such ambiguities.

3 — In their activity in Portugal, credit institutions having their head office in EC countries and not established in Portugal may use their original company or business name, provided that no doubts are raised as to the legal regulations governing them and without prejudice to the provisions of paragraph 2.

4 — *(Revoked)*.

Article 47

Withdrawal and lapsing of the authorisation in the home country

Should Banco de Portugal be informed that the authorisation for a credit institution having a branch or providing services within the Portuguese territory has been withdrawn, or has lapsed in its home country, it shall take the appropriate measures to prevent the institution concerned from initiating new activities and to safeguard the interests of depositors and other creditors.

CHAPTER II

Branches

SECTION I

General regulations

Article 48

Scope

The provisions of this Section shall apply to the establishment in Portugal of branches of credit institutions authorised in other EC Member States and subject to the supervision of the competent authorities of those States.

Article 49

Requirements for establishment

1 — As a prerequisite for the establishment of a branch, Banco de Portugal shall receive, from the supervisory authority of the home country, notification of the following:

- a) The programme of operations setting out, *inter alia*, the types of business envisaged and the structural organisation of the branch, and a certificate stating that such business is covered by the credit institution's authorisation;
- b) The address of the branch in Portugal;
- c) The identity of those responsible for the management of the branch;
- d) The amount of the credit institution's own funds;
- e) The solvency ratio of the credit institution;
- f) A detailed description of the deposit-guarantee scheme in which the credit institution participates and which ensures the protection of depositors in the branch;
- g) A detailed description of the Investor Compensation Scheme in which the credit institution participates and which ensures the protection of investors who are clients of the branch.

2 — The management of the branch shall be entrusted to at least two managers, with appropriate powers to deal with and definitely settle, in Portugal, all matters pertaining to its activity.

Article 50

Organisation of supervision

1 — Within two months of receiving the information mentioned in the foregoing Article, Banco de Portugal shall organise the supervision

of the branch in all matters under its competence, after which it shall inform the credit institution that the latter is now able to establish the branch, and if necessary it will indicate the conditions under which, in the interest of the general good, the branch may carry on its activity in Portugal.

2 — On receipt of a communication from Banco de Portugal, or in the event of the expiry of the period provided for in the foregoing paragraph, the branch may be established and, once duly registered, may commence its activity.

Article 51

Notice of changes

1 — The credit institution shall give written notice to Banco de Portugal at least one month in advance, in the event of a change in any of the particulars referred to in Article 49 (1) (a), (b), (c) and (f).

2 — The provisions of paragraph 1 of the foregoing Article shall be applicable, the period therein provided for being shortened to one month.

Article 52

Permitted activities

As long as the provisions of the foregoing Articles are complied with, the branch may carry on in Portugal the activities listed in the Annex to Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000, that the credit institution is authorised to carry on in its home country and which are included in the programme of operations referred to in Article 49 (1) (a).

Article 53
Irregularities

1 — Where Banco de Portugal ascertains that a branch is not complying with the Portuguese rules governing the supervision of liquidity, the implementation of monetary policy and the compulsory reporting of information on its activities within the Portuguese territory, Banco de Portugal shall require the institution concerned to put an end to the irregularity.

2 — If the branch or the credit institution fail to take the appropriate measures, the Banco de Portugal shall inform the supervisory authority of the home country accordingly and request it to take all appropriate measures, at the earliest opportunity.

3 — If the supervisory authority of the home country does not take the measures requested, or if they prove inadequate and the branch persists in violating the legal rules in force, the Banco de Portugal, after informing the supervisory authority of the home country, may take appropriate measures to prevent or to punish further irregularities, namely to prevent the branch from initiating further transactions in Portugal.

4 — The European Commission shall be informed of the number and type of cases in which measures have been taken under the foregoing paragraph.

5 — Before following the procedure provided for in the foregoing paragraphs, Banco de Portugal may, in emergencies, take any precautionary measures necessary to protect the interests of depositors, investors and others to whom the branch provides services, informing the supervisory authority of the home country and the EC Commission of such measures at the earliest opportunity.

6 — The provisions of the foregoing paragraphs shall not affect the powers conferred on the competent Portuguese authorities to take appropriate measures to prevent or to punish breaches of the legal rules

provided for in paragraph 1, or others adopted in the interest of the general good.

7 — When appeal from a decision is lodged pursuant to this Article, it is presumed, unless it is showed otherwise, that the suspension of its enforcement will seriously injure the public interest.

Article 54

Responsibility for debts

1 — The branch's assets may back any debts assumed in other countries by the credit institution, but only after meeting all debts contracted in Portugal.

2 — Any bankruptcy or liquidation decision taken by foreign authorities in respect of the credit institution shall not be applicable to its Portuguese branches until the provisions of the foregoing paragraph have been complied with, even when such a decision has been examined by the Portuguese courts.

Article 55

Accounting and book-keeping

The credit institution shall keep all accounts of transactions carried out within the Portuguese territory centralised in its earliest-established branch in Portugal, the use of the Portuguese language being compulsory in book-keeping.

Article 56

Business associations

Credit institutions authorised in other EC Member States which have branches in Portugal may be members of Portuguese business associations in the respective sector, under the same terms and with the same rights and obligations as their equivalent bodies having their head office in Portugal, including the right of being appointed to the respective boards.

SECTION II

Special regulations

Article 57

Applicable provisions

The establishment in Portugal of branches of credit institutions not included in Article 48 remains subject to the provisions of this Section, and to those of Articles 16, 17 (3), 19, 21, 22, 23-A (b) to (f), 49 (2), 54 and 55.

Article 58

Authorisation

1 — The establishment of the branch is subject to authorisation to be granted, on a case-by-case basis, by the Minister of Finance; this competence may be delegated on Banco de Portugal.

2 — The application for authorisation shall be submitted to Banco de Portugal, accompanied by the information referred to in Article 49 (1) and, in addition, by the following:

- a)* Evidence of the branch's capacity to provide security for the funds entrusted to it, as well as of the adequate technical means and financial resources for the type and volume of transactions it intends to undertake;
- b)* Indication of the projected geographical location of the branch;
- c)* Prospective accounts for each of the first three business years of the branch;
- d)* Copy of the articles of association of the credit institution;
- e)* Declaration of undertaking that it will effect the deposit referred to in paragraph 2 of the following Article.

3 — Authorisation may be refused in the cases referred to in Article 20 (1) (a), (b) and (e) or if Banco de Portugal deems inadequate the supervisory system to which the credit institution is subject.

Article 59

Earmarked capital

1 — The capital earmarked for operations to be carried out by the branch shall be sufficient to cover those operations and no less than the minimum amount required by the Portuguese law for credit institutions of the same type having their head office in Portugal.

2 — The earmarked capital shall be deposited with a credit institution prior to the registration of the branch with Banco de Portugal.

3 — The branch shall invest in Portugal the amount of capital allocated for operations in Portugal, as well as its reserves, deposits and other locally-raised funds.

4 — The credit institution shall be responsible for transactions carried out by its branch in Portugal.

CHAPTER III

Provision of services

Article 60

Freedom to provide services

The credit institutions referred to in Article 48 and authorised in their home country to provide the services listed in the Annex to Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000, may carry on such activities within the Portuguese territory, even if they are not established in Portugal.

Article 61

Requirements

1 — As a prerequisite for the commencement of the provision of services in Portugal, the supervisory authority of the home country shall notify Banco de Portugal of the activities which the institution intends to carry on in Portugal, and certify that such activities are covered by the authorisation granted in the home country.

2 — Banco de Portugal may instruct the entities referred to in this Section to inform the public as to their legal status, characteristics, major activities and financial situation.

3 — The provisions of Article 53, duly adjusted, shall be applicable.

CHAPTER IV

Representative offices

Article 62

Registration

1 — The establishment and operation in Portugal of representative offices of credit institutions having their head office abroad is subject, notwithstanding the applicability of the relevant legislation on commercial registration, to prior registration with Banco de Portugal, which involves the presentation of a certificate issued by the supervisory authorities of the home country, specifying the legal system governing the credit institution by referring to the law applicable thereto.

2 — The activities of representative offices shall commence within three months of registration with Banco de Portugal; the latter may, if warranted, extend this period for another three months.

Article 63

Scope of activity

1 — The activities of representative offices shall be strictly dependent on the credit institutions which they represent; therefore they can only see to the interests of these institutions in Portugal and provide information on the activities in which they intend to participate.

2 — In particular, representative offices are forbidden to:

- a)* Carry on directly transactions that fall within the scope of activity of credit institutions;
- b)* Acquire shares or holdings in any Portuguese undertaking;
- c)* Acquire real estate other than that required for their installation and operation.

Article 64
Management

The managers of representative offices shall be entrusted with appropriate powers to deal with and definitely settle, in Portugal, all matters pertaining to their activity.

TITLE V
Registration

Article 65
Registration requirement

1 — Credit institutions shall not commence their activity without being subject to a special registration with Banco de Portugal.

2 — The provisions of the foregoing paragraph do not preclude the compulsory registration under the terms of the Securities Market Code.

Article 66
Items subject to registration

The registration of institutions having their head office in Portugal covers the following items:

- a)* Company or business name;
- b)* Purpose;
- c)* Date of setting-up;
- d)* Location of head office;
- e)* Capital stock;
- f)* Paid-up capital;

- g)* Identity of shareholders with qualifying holdings;
- h)* Identity of the members of the management and auditing boards as well as of those who chair the general meeting of shareholders;
- i)* Delegation of management powers;
- j)* Date of commencement of activities;
- l)* Location and date of the setting-up of branches, subsidiaries, and agencies;
- m)* Identity of the managers of branches established abroad;
- n)* Inter-shareholder agreements referred to in Article 111;
- o)* Any alterations which may occur in the above particulars.

Article 67

Institutions authorised abroad

The registration of credit institutions authorised abroad, which have a branch or representative office in Portugal, covers the following items:

- a)* Company or business name;
- b)* Date from which it may establish itself in Portugal;
- c)* Location of head office;
- d)* Location of branches, agencies and representative offices in Portugal;
- e)* Capital earmarked for transactions to be carried out in Portugal, where required;
- f)* Activities which the institution may carry on in the home country and activities which it intends to carry on in Portugal;
- g)* Identity of the managers of the branches and representative offices;
- h)* Any alterations which may occur in the above particulars.

Article 68

Institutions not established in Portugal

Banco de Portugal shall publish a list of credit and financial institutions having their head office in EC countries, not established in Portugal, which are entitled to provide services in the country.

Article 69

Registration of members of the management and auditing boards

1 — Registration of members of the management and auditing boards, including members of the general council and non-executive directors, shall be made, following their appointment, by means of an application on the part of the institution.

2 — The credit institution or the parties concerned may request a provisional registration prior to the appointment, in which case the conversion into definitive registration must be applied for within 30 days of appointment, after which the registration will lapse.

3 — Provisional or definitive registration with Banco de Portugal is a prerequisite for the performance of the functions referred to in paragraph 1 above.

4 — In the event of re-appointment, this fact will be added to the registration, upon request by the credit institution.

5 — The lack of suitability, experience or availability on the part of the members of the management or auditing boards will result in refusal of registration.

6 — Refusal of registration on the grounds of lack of suitability, experience or availability of members of the management or auditing boards will be communicated to the interested parties and to the credit institution.

7 — Failure to register does not invalidate acts practised by the person in question in the exercise of his duties.

8 — The provisions of the foregoing paragraphs apply, with the required adjustments, to the managers of the branches and representative offices referred to in Article 45.

9 — Whenever the purpose of a credit institution includes any type of intermediation activity in transferable securities, Banco de Portugal, before deciding, shall request the Securities Market Commission to provide information, and where appropriate, the Commission shall supply the required information within 15 days.

Article 70

Supervenient facts

1 — On becoming aware of them, credit institutions shall inform Banco de Portugal of the developments referred to in Article 30 (3), which are supervenient to registration of the appointment, and which involve any of the persons referred to in Article 30 (1).

2 — Facts are said to be supervenient whether they occurred after registration or before registration but only came to light after the latter took place.

3 — The obligation set out in paragraph 1 is considered to have been met where Banco de Portugal is informed of such facts directly by the persons concerned.

4 — If Banco de Portugal comes to the conclusion that the suitability and experience requirements for the post are not met, it will cancel the registration and inform the persons concerned and the credit institution thereof, which will provide for their immediate removal from office.

5 — Registration shall be cancelled whenever it is found out that it was obtained by means of false statements or other irregular ways, regardless of the applicable legal penalties.

6 — The provisions of this Article apply, with the required adjustments, to the managers of branches and representative offices referred to in Article 45.

7 — The provisions of Article 69 (6) and (7) shall be applicable.

Article 71

Time limits, supplementary information and certificates

1 — Save for the provisions laid down in the following paragraph, the time limit to apply for any registration is 30 days from the date on which the facts to be registered occurred.

2 — The initial registration of credit institutions, the registration of the application for the establishment in Portugal of entities having their head office abroad and the registrations mentioned in Article 69, as well as any others without whose effectiveness the carrying on of the activity or functions in question is not allowed, shall not be subject to time limits.

3 — When the application or documentation presented contains insufficiencies or irregularities which can be remedied by the interested parties, these will be given notice that they are required to do so within a reasonable time limit, failing which they will be refused registration.

4 — Registration is considered to have been made if Banco de Portugal raises no objection within 30 days of the date on which the application was properly filed or, if it asked for supplementary information, within 30 days of receipt thereof.

5 — Certificates of registration will be issued to whoever shows a legitimate interest.

Article 72

Registration refusal

In addition to other reasons provided for by law, registration will be refused in the following cases:

- a)* When it is apparent that the fact to be registered is not mentioned in the documents presented;
- b)* When it comes to light that the fact reported in the document is already registered or is not subject to registration;
- c)* When any legally required authorisation is lacking;
- d)* When the nullity of the fact is obvious;
- e)* When it is shown that any of the requirements of the necessary authorisation for the constitution of the institution or for the pursuit of the business is not met, namely on the grounds of lack of suitability and experience on the part of the members of the management or auditing boards, or when there are grounds for opposition under the terms of Article 33 and in the case envisaged in Article 105 (10).

TITLE VI

Rules of conduct

CHAPTER I

General duties

Article 73

Technical competence

Credit institutions shall treat their clients with high levels of technical competence in all the activities which they carry on, providing their business organisation with the human and material resources required to ensure appropriate conditions of quality and efficiency.

Article 74

Relationship with clients

In their relations with clients, the members of the board and the staff of credit institutions shall act with diligence, impartiality, loyalty and discretion, and with scrupulous regard for the interests entrusted to them.

Article 75

Obligation to provide information

1 — Credit institutions shall inform their clients of the remuneration they offer for funds received and of charges for services provided and other costs borne by clients.

2 — Banco de Portugal shall regulate, by means of a Notice, the minimum requirements which credit institutions must meet when disclosing to the public the conditions under which they provide services.

Article 76

Diligence

Members of the management board of credit institutions, as well as persons performing managerial or equivalent posts are expected to act with the diligence of a discerning and methodical manager, in accordance with the principle of risk-sharing and safe investment, and taking into account the interests of the depositors, investors and other creditors.

Article 77

Codes of conduct

1 — Banco de Portugal may establish, by means of Notices, whatever rules of conduct it considers necessary to supplement and expand on those set out in this Decree-Law.

2 — Codes of conduct prepared by associations representing credit institutions shall be subject to the approval of Banco de Portugal.

3 — Banco de Portugal may, whenever deemed appropriate, order the associations representing the institutions concerned to prepare codes of conduct and may, in the same way, issue guiding instructions for the purpose.

4 — Once approved, codes of conduct shall be forwarded by Banco de Portugal for publication in “*Diário da República*” (Official Gazette), Series II, and shall enter into force after publication, within the periods therein specified for the purpose.

CHAPTER II
Professional secrecy

Article 78

Obligation of professional secrecy

1 — Members of the management or auditing boards of credit institutions, their employees, representatives, agents and other persons providing services to them on a temporary or permanent basis shall not divulge or use information on facts or data regarding the activity of the institution or its relations with clients which come to their knowledge solely as a result of the performance of their duties or the provision of their services.

2 — The names of clients, deposit accounts and their movements as well as other bank operations are in particular subject to professional secrecy.

3 — The obligation of professional secrecy shall not end with the termination of functions or services.

Article 79

Exceptions to the obligation of professional secrecy

1 — Facts or data regarding relations between a client and an institution may be disclosed upon the client's authorisation, transmitted to the institution.

2 — With the exception of the case envisaged in the foregoing paragraph, the facts and data subject to secrecy may only be disclosed:

- a) To Banco de Portugal, within the scope of its duties;
- b) To the Securities Market Commission, within the scope of its duties;

- c) To the Deposit Guarantee Fund and to the Investor Compensation Scheme, within the scope of their duties;
- d) Under the terms laid down in the criminal law and in the law of penal procedure;
- e) When any other legal provision expressly limits the obligation of professional secrecy.

Article 80

Obligation of professional secrecy on the part of supervisory authorities

1 — All persons performing or who have performed duties within Banco de Portugal, as well as those providing or who have provided services to it on a temporary or permanent basis, shall be bound to secrecy regarding the information which has come to their knowledge exclusively in the course of their duties or during the provision of those services, and may not divulge or use the information obtained.

2 — Facts and data subject to secrecy may only be disclosed when permission for this has been transmitted to Banco de Portugal by the interested party, or under the terms laid down in the criminal law and in the law of penal procedure.

3 — Exception shall be made of the disclosure of confidential information within the scope of extraordinary reorganisation measures or liquidation procedures of credit institutions, save for information regarding persons who have taken part in the institution's financial reorganisation plan.

4 — For statistical purposes, data may be divulged, in abridged or aggregated form, such that individual institutions or persons cannot be identified.

Article 81

Cooperation with other bodies

1 — Notwithstanding the provisions of the foregoing articles, Banco de Portugal may exchange information with the Securities Market Commission, the Portuguese Insurance Institute, the Caixa Central de Crédito Agrícola Mútuo, authorities, organisations, and persons performing functions, which are equivalent to those of these bodies in other EC Member States, as well as with the following bodies belonging to a Member State of the European Community:

- a)* Bodies which administer deposit-guarantee or investor protection schemes, as regards the information necessary to the exercise of their functions;
- b)* Bodies involved in the liquidation of credit institutions, financial companies, financial institutions and authorities responsible for the supervision of these bodies;
- c)* Persons responsible for carrying out statutory audits of the accounts of credit institutions, financial companies, insurance undertakings, financial institutions and authorities responsible for the supervision of these persons;
- d)* Supervisory authorities of EC Member States, regarding the information prescribed in Community Directives applicable to credit institutions and financial companies;
- e)* Within the scope of cooperation agreements concluded by Banco de Portugal, on a reciprocity basis, supervisory authorities of non-EC Member States, regarding the information required for both non-consolidated or consolidated supervision of credit institutions having their head office in Portugal and of their equivalent bodies having their head office in those Member States;

- f)* Central banks and other bodies with a similar function, in their capacity as monetary authorities, and other authorities responsible for overseeing payment systems.

2 — Banco de Portugal may also exchange information with authorities, organisations and persons performing duties similar to those of the entities mentioned in the body of the foregoing paragraph and in subparagraphs (a) and (d) of the same paragraph in non-EC Member States, the provisions of subparagraph (e) above being applicable.

3 — All authorities, organisations and persons referred to in the foregoing paragraphs are bound to professional secrecy.

4 — Information received by Banco de Portugal under this article may only be used:

- a)* To check the conditions governing the taking-up of the business of credit institutions and financial companies;
- b)* To supervise on a non-consolidated or consolidated basis, the activities of credit institutions, in particular with regard to the monitoring of liquidity, solvency, large exposures and other own funds adequacy requirements, administrative and accounting procedures and internal control mechanisms;
- c)* To impose sanctions;
- d)* Within the scope of appeals against decisions of the Minister of Finance or of the Banco de Portugal, taken pursuant to the provisions applicable to the bodies subject to the latter's supervision;
- e)* For the purposes of monetary policy and operation or oversight of payment systems.

5 — Banco de Portugal shall only disclose the information that originates from a body in another Member State of the European Community with the express agreement of such body.

Article 82

Cooperation with third countries

The cooperation agreements referred to in subparagraph (e) of paragraph 1 and in paragraph 2 of the foregoing article may only be concluded if the information to be disclosed is subject to guarantees of secrecy at least equivalent to those established in this Decree-Law and whose purpose is the performance of supervisory functions entrusted upon the bodies in question.

Article 83

Information on risks

Regardless of what has been established with regard to the Credit Risks Centralisation Service, credit institutions may, under the obligation of secrecy, set up a reciprocal information system in order to ensure the security of transactions.

Article 84

Violation of professional secrecy

Without prejudice to other penalties applicable, violation of professional secrecy is punishable under the criminal code.

CHAPTER III

Conflict of interests

Article 85

Credit to board members

1 — Without prejudice to the provisions of paragraphs 5, 6 and 7 below, credit institutions shall not grant credit, in any form or type, including the provision of guarantees, either directly or indirectly, to members of their management or auditing boards, nor to companies or other collective bodies directly or indirectly controlled by them.

2 — The indirect nature of credit granting shall be presumed when the beneficiary is married, related by consanguinity or by affinity in the first degree, to any member of the management or auditing boards, or a company directly or indirectly controlled by one or more of these persons.

3 — For the purposes of this Article, the acquisition of shareholdings in companies or other collective bodies referred to in the foregoing paragraphs is considered to be equivalent to credit granting.

4 — The provisions of the foregoing paragraphs shall not apply to transactions of a social nature or purpose, or arising out of the personnel policy.

5 — Without prejudice to the provisions of the following paragraph, the provisions of paragraphs 1 to 4 above shall not apply to members of the general council, to non-executive members of the board of credit institutions and to companies or other collective bodies controlled by them.

6 — Banco de Portugal may provide for the application of the provisions of Article 109 to the entities referred to in the foregoing paragraph, to the members of other bodies, which are deemed by Banco de Portugal to perform equivalent functions and to companies or other collective bodies controlled by them.

7 — The provisions of paragraphs 1 to 4 above shall not apply to credit granting operations, the beneficiaries of which are credit institutions, financial companies or holding companies included in the perimeter of supervision on a consolidated basis to which the credit institution in question is subject, nor to pension fund management companies, insurance undertakings, brokers and insurance mediating companies controlling or being controlled by any entity included in the same perimeter of supervision.

8 — Members of the management or auditing boards of a credit institution shall not participate in the appraisal and decision about whether or not to grant credit to companies and other collective bodies not included in paragraph 1, of which they are managers or in which they have a qualifying holding, nor in the appraisal and decisions concerning operations covered by paragraphs 5 and 7 above. In all these situations, the approval by at least two thirds of the remaining members of the management board as well as the favourable opinion of the auditing board shall be required.

Article 86

Other operations

Members of the management boards, directors and other employees, advisers and representatives of credit institutions shall not intervene in the appraisal and taking of decisions on operations in which they, their spouses, relatives by consanguinity, or persons related to them by affinity in the first degree, as well as companies or other collective bodies directly or indirectly controlled by any of these persons or bodies, are directly or indirectly the parties concerned.

CHAPTER IV
Protection of competition and advertising

Article 87
Protection of competition

1 — The activities of credit institutions, as well as of their business associations, are subject to the legislation governing the protection of competition.

2 — Legitimate agreements between credit institutions as well as concerted practices whose purpose is the carrying out of the following operations are not considered as restraining competition:

- a)* Participation in the issuance and placement of transferable securities or similar instruments;
- b)* Granting of credit or other large-scale financial support to an undertaking or a group of undertakings.

3 — In the application of the legislation governing the protection of competition to credit institutions and their business associations, account shall always be taken of the commercial usages of their activity, particularly with respect to risk or solvency.

Article 88
**Collaboration of Banco de Portugal
and of the Securities Market Commission**

In the proceedings initiated for competition-restraining practices against credit institutions or their business associations, the opinion of Banco de Portugal shall compulsorily be requested and forwarded to the Competition Council; in cases involving intermediation in transferable

securities, the opinion of the Securities Market Commission is also required.

Article 89

Advertising

1 — Advertising by credit institutions and their business associations shall be subject to the general law and, in relation to intermediation in transferable securities, to the provisions of the Securities Market Code.

2 — The use in advertising of references to the guarantee of deposits or to the compensation of investors shall be restricted to a merely factual reference and shall not contain any value judgement nor make comparisons with deposit-guarantee or investor compensation schemes of other institutions.

3 — Credit institutions authorised in other EC Member States may advertise their services in Portugal under the same terms and conditions as institutions having their head office in Portugal.

4 — *(Revoked)*.

5 — *(Revoked)*.

Article 90

Intervention by Banco de Portugal

1 — In relation to advertising which does not respect the law, Banco de Portugal may:

- a) Order the changes necessary to put an end to such irregular situations;
- b) Order the suspension of the advertising in question;

c) Order the immediate publication, by the responsible party, of an appropriate rectification.

2 — In the event of noncompliance with the provisions of subparagraph c) of the foregoing paragraph, Banco de Portugal may, without prejudice to any penalty applicable, carry out the action in the transgressor's stead.

TITLE VII

Prudential rules and supervision

CHAPTER I

General principles

Article 91

Oversight

1 — The oversight of the money, financial, and foreign exchange markets, and in particular the coordination of the activities of market operators with the Government's economic and social policy, shall be the responsibility of the Minister of Finance.

2 — Whenever a disturbance arises on the money, financial and foreign exchange markets, which seriously jeopardizes the domestic economy, the Government may, by joint executive order of the Prime Minister and the Minister of Finance, upon consultation with Banco de Portugal, require that appropriate action be taken, namely the temporary suspension of certain markets or of certain types of transactions, or even the temporary closure of credit institutions.

Article 92

Functions of Banco de Portugal as a central bank

Pursuant to its Organic Law, Banco de Portugal shall be responsible for:

- a)* The guidance and control of the money and foreign exchange markets, regulation, oversight and promotion of the smooth operation of payment systems, particularly within the scope of its participation in the European System of Central Banks;
- b)* The collection and compilation of the monetary, financial, foreign exchange and balance of payments statistics, particularly, within the scope of its cooperation with the European Central Bank.

Article 93

Supervision

1 — The supervision of credit institutions, and in particular their prudential supervision, including that of their activities abroad, shall be incumbent on Banco de Portugal, in accordance with its Organic Law and with this Decree-Law.

2 — The provisions of the foregoing paragraph shall not prejudice the supervisory powers conferred by the Securities Market Code on the Securities Market Commission.

CHAPTER II

Prudential rules

Article 94

General principle

Credit institutions shall invest their available funds in such a way as to ensure appropriate levels of liquidity and solvency at all times.

Article 95

Capital

1 — The Minister of Finance shall establish, by executive order, after hearing Banco de Portugal or under its proposal, the minimum capital stock of credit institutions.

2 — The initial capital of credit institutions set up as a result of alterations to the purpose of a company, or of a merger of two or more credit institutions, or of a splitting, shall not be less than the minimum prescribed in accordance with the provisions of the foregoing paragraph. Likewise, their own funds shall not be less than the minimum capital.

Article 96

Own funds

1 — Banco de Portugal shall establish by means of a Notice the items which may be included in the own funds of credit institutions and of the branches referred to in Article 57, defining their characteristics.

2 — The own funds may not fall below the amount of the initial capital required pursuant to Article 95.

3 — Should the own funds fall below the level prescribed, Banco de Portugal may, where the circumstances justify it, allow the institution a limited period in which to remedy the situation.

Article 97

Reserves

1 — A fraction of not less than 10% of the net profits of a credit institution for each fiscal year shall be earmarked for the building up of a legal reserve, up to an amount equal to the capital stock or to the sum of its set up free reserves or the carried forward results, if higher.

2 — Credit institutions shall also build up special reserves to strengthen their net worth or to cover losses that their profit and loss account cannot support.

3 — Banco de Portugal may establish through Notices general or specific criteria for the building-up and investment of the reserves mentioned in the foregoing paragraph.

Article 98

Security of credit granting

(Revoked).

Article 99

Relations and prudential limits

It shall be the responsibility of Banco de Portugal to establish by means of a Notice the relations to be observed, on a non-consolidated or consolidated basis, between balance-sheet items and to establish prudential

limits to the carrying out of operations which credit institutions are authorised to conduct, and in particular:

- a) Relations between own funds and total assets and off-balance sheet items, weighted or not by risk coefficients;
- b) Limits to the underwriting of transferable securities issues for indirect subscription or to the guarantee of placement of the issues of such securities;
- c) Limits and forms of coverage of resources from third parties and of any other liabilities towards third parties;
- d) Limits to the concentration of risks;
- e) Minimum limits to provisions for the cover of credit risks and of any other risks or liabilities;
- f) Time limits and methods for the depreciation of premises and equipment, of setting-up or assignment of lease costs, and other costs of a similar nature.

Article 100

Relationship between holdings and own funds

1 — No credit institution may hold a qualifying holding in the capital of a company which exceeds 15% of the former's own funds.

2 — The overall amount of qualifying holdings in companies shall not exceed 60% of the own funds of the participant credit institution.

3 — For the purpose of calculating the limits laid down in the foregoing paragraphs, the following shall not be taken into account:

- a) Shares temporarily held during the normal course of underwriting and within the limits laid down in the foregoing Article.
- b) Shares or other holdings in the institution's own name but on behalf of a third party, without prejudice to the limits laid down in Article 99.

4 — The limits laid down in paragraphs 1 and 3 shall not apply when 100% of the amounts by which holdings exceed the above limits are covered by own funds and the latter are not included in the calculation of the solvency ratio and of other ratios or limits which have own funds as a reference.

5 — In the event of amounts exceeding both of the limits referred to in the foregoing paragraph, the amount to be covered by own funds shall be the highest of those excess amounts.

6 — The provisions of this Article shall not apply to shareholdings in other credit institutions, financial companies, financial institutions, pension fund management companies or insurance undertakings.

Article 101

Relationship between shareholdings and participated companies

1 — Without prejudice to the provisions of paragraph 4 below, credit institutions shall not hold, directly or indirectly, for a continuous or non-continuous period of more than three years, shares giving them more than 25% of the voting rights corresponding to the capital of the participated company.

2 — Indirect holding means the holding of shares or other equity capital by persons or under any of the conditions considered as conferring parallel voting rights for the purpose of a qualifying holding.

3 — The limit established in paragraph 1 above shall not apply to shareholdings by a credit institution in other credit institutions, financial companies, financial institutions, ancillary services companies, credit securitisation companies, insurance undertakings, subsidiaries of insurance undertakings held according to the law applicable to the latter, brokers and insurance mediating companies, pension fund management companies, risk capital companies and holding companies which only hold stakes in the companies referred to above.

4 — The period established in paragraph 1 above is five years for indirect participations held through risk capital companies.

Article 102

Communication of qualifying holdings

1 — Any natural or legal person who proposes to hold directly or indirectly a qualifying holding in a credit institution shall first inform Banco de Portugal of his intention.

2 — Acts involving increases in a qualifying holding must be previously communicated to Banco de Portugal, whenever from them may result, depending on the situations, a proportion reaching or exceeding 5%, 10%, 20%, 33% or 50% of the capital or of the voting rights held in the participated institution, or when the latter becomes a subsidiary of the acquiring entity.

3 — The communication mentioned in the foregoing paragraphs shall be made whenever the initiative or set of initiatives intended by the person in question may result in any of the situations mentioned, even if the result is not a foregone conclusion.

4 — Without prejudice to the provisions of paragraph 1 above, the acts or facts resulting in the acquisition of a shareholding which amounts at least to 2% of the capital or of the voting rights held in the participated institution shall be communicated to Banco de Portugal within a period of 15 days as of occurrence.

5 — In the case foreseen in the foregoing paragraph, Banco de Portugal shall inform the interested party, within 30 days, if it considers the holding acquired as a qualifying holding.

6 — Where Banco de Portugal, in the cases envisaged in paragraphs 4 and 5 above, considers that the holding is not a qualifying holding, it can at any time request from the respective holder a prior or subsequent communication of any act or fact from which, depending on the situation,

may result or has resulted the holding of a percentage equal to or higher than 3% or 4% of the capital or of the voting rights held in the participated institution.

7 — The communications envisaged in this Article shall specify the juridical acts or facts from which has resulted or may result the holding of the participation, the identity of the counterpart in such acts, where determinable, and the amount of the holding in question.

Article 102-A

***Ex officio* declaration**

1 — Banco de Portugal may, at any time and irrespective of the enforcement of other measures envisaged by law, declare the qualifying nature of any participation in the capital or in the voting rights of a credit institution, whenever it comes to its knowledge that relevant actions or facts have occurred in relation to such holdings, whose communication to the Bank has been omitted or incorrectly made by the respective holder.

2 — Banco de Portugal may also, at any time, declare the qualifying nature of any participation in the capital or in the voting rights of a credit institution, whenever it comes to its knowledge that some actions or facts are susceptible of changing the influence exercised by the respective holder on the management of the participated institution.

3 — The appraisal mentioned in the foregoing paragraph may be carried out on the initiative of the parties concerned. In this case, the decision of the Banco de Portugal shall be taken within 30 days as of receipt of the request.

Article 103

Suitability of owners of qualifying holdings

1 — The Banco de Portugal shall have a maximum of three months from the date of the communication referred to in Article 102, to oppose such a plan if it is not satisfied that the person in question or the characteristics of the plan are in the proper conditions to ensure sound and prudent management of the credit institution.

2 — Without prejudice to other situations examined by Banco de Portugal under the terms of the foregoing paragraph, such conditions are considered not to exist in any of the following circumstances:

- a)* If the manner in which the person in question habitually does business or if the nature of his professional activity indicates a marked tendency to take excessive risks;
- b)* If the financial and economic situation of the person concerned is inadequate in relation to the amount of the proposed holding;
- c)* If the Banco de Portugal has reason to doubt the legality of the origin of the funds used to acquire the holding, or the true identity of the holder of those funds;
- d)* If the structure and characteristics of the business group in which the credit institution would be included do not permit adequate supervision;
- e)* If the person in question refuses to meet the conditions required for the financial reorganisation of the credit institution which have been previously established by Banco de Portugal;
- f)* If the person in question has been, within the past five years, the object of the penalty envisaged in Article 212 (1) (d);
- g)* In the event of a natural person, if it comes to light that any of the facts indicating lack of suitability, according to Article 30, are applicable.

3 — Before issuing its decision, Banco de Portugal may temporarily oppose the acquisition or increase which has been the object of a prior communication in accordance with the terms of the foregoing Article.

4 — If the party concerned is a credit institution authorised in another EC Member State or the parent undertaking of a credit institution authorised in another Member State, or a natural or legal person controlling a credit institution authorised in another Member State and if, as a result of that transaction, the institution in which the acquirer proposes to hold a holding would become a subsidiary, Banco de Portugal shall, in assessing the proposal, request the opinion of the supervisory authority of the home Member State.

5 — When Banco de Portugal does not oppose, it may set a reasonable time limit for the carrying out of the proposed transaction, which shall be one year except as otherwise provided for.

6 — Banco de Portugal shall inform the European Commission whenever a holding is acquired in a credit institution and the shareholder is a natural person who is not a national of an EC Member State, or a legal person having its head office in a non-EC country, and as a result of the holding the institution becomes its subsidiary.

7 — Banco de Portugal shall determine, by means of a Notice, the information to be provided by the parties concerned for the preparation of the procedure regulated in this Article, without prejudice, at any moment, of claiming any other it deems necessary for its appraisal.

8 — Whenever the purpose of a credit institution includes any type of intermediation activities in transferable securities, Banco de Portugal, before deciding under the terms of paragraph 1, shall request the Securities Market Commission to provide information on the suitability of the owners of qualifying holdings, and where applicable, the Commission shall supply the required information within one month.

Article 104

Subsequent communication

The acts, which result in the acquisition of a qualifying holding, or in its increase, which are subject to prior communication under the terms of Article 102, shall be notified to Banco de Portugal within 15 days of their occurrence.

Article 105

Prohibition to exercise voting rights

1 — Whenever the Banco de Portugal gains knowledge of the acquisition of a qualifying holding or of its increase, without the party concerned having made the communication mentioned in Article 102, notwithstanding the applicable sanctions and save for the provisions laid down in the following paragraph, the Bank can provide for the prohibition to exercise the voting rights corresponding to such a holding in the participated credit institution, as deemed appropriate to prevent the exercising of influence over the management, obtained through the non-communicated fact.

2 — If in the situations referred to in the foregoing paragraph the missing communication is made before the prohibition to exercise voting rights is decided, Banco de Portugal must act in accordance with the powers entrusted to it by Article 103; if the same communication is made after the decision of prohibition to exercise voting rights, such prohibition will terminate if Banco de Portugal raises no objection.

3 — In the event of an acquisition of a qualifying holding or of its increase to which Banco de Portugal has raised a definitive or provisional objection, Banco de Portugal, without prejudice to the applicable sanctions, shall provide for the prohibition to exercise the voting rights corresponding

to such a holding, as appropriate for the particular situation which led to the objection.

4 — In any of the events foreseen in the foregoing paragraphs, Banco de Portugal may, as an alternative, stipulate that the prohibition shall be applicable to the entity which directly or indirectly has voting rights in the participated credit institution, if this measure is deemed adequate to ensure sound and prudent management conditions and does not involve serious restriction to the carrying on of other economic activities.

5 — Banco de Portugal shall also stipulate the extent to which the prohibition covers the voting rights of the participated institution in other credit institutions, which it directly or indirectly controls.

6 — The decisions taken under the provisions of the foregoing paragraphs shall be notified to the person concerned, under the general terms, and communicated to the management board of the participated credit institution and to the chairman of the shareholders meeting and, regarding the latter, together with the decision that he shall act in such a way as to hamper the exercise of the prohibited voting rights, according to the provisions laid down in the following paragraph. Whenever the object of the credit institution includes any type of intermediation in transferable securities, the decisions taken under the foregoing paragraphs shall also be communicated to the Securities Market Commission. Whenever the party concerned is an entity subject to the supervision of the Portuguese Insurance Institute (*Instituto de Seguros de Portugal*), the decisions taken under the foregoing paragraphs shall also be communicated to this Institute.

7 — The chairman of the shareholders meeting, to whom the decisions referred to in the foregoing paragraph are communicated, must ensure, in the performance of his functions, that the prohibited voting rights are not exercised, under any circumstances, in the shareholders meeting.

8 — If, notwithstanding the provisions of the foregoing paragraph, it is verified that the prohibited voting rights have been exercised, the decision taken can be annulled, save if there is evidence that it would have been taken and would have been similar even if the said rights had not been exercised.

9 — The possibility of annulment may be pleaded under the terms of the general law, or by Banco de Portugal.

10 — If the exercise of the prohibited voting rights has been a determining factor in the election of the management or auditing boards, Banco de Portugal shall, while the proceedings to annul the decision are pending, refuse the relevant registrations.

Article 106

Prohibition on account of facts that subsequently come to light

1 — Banco de Portugal, on the basis of relevant facts, which come to its knowledge after the acquisition of a qualifying holding or its increase, and which give rise to grounded fears that the influence exercised by its holder can prejudice the sound and prudent management of the participated credit institution, can provide for the prohibition to exercise the voting rights corresponding to the said holding.

2 — The decisions taken pursuant to paragraph 1 above shall be subject to the provisions of paragraphs 4 and following of Article 105, duly adjusted.

Article 107

Reduction of the shareholding

1 — Any natural or legal person, who intends to dispose of his qualifying holding in a credit institution, or to reduce it so that the

proportion of the voting rights or of the capital held by him would fall below any of the threshold limits of 5%, 10%, 20%, 33% or 50%, or so that the institution would cease to be his subsidiary, shall give prior notice to Banco de Portugal, stating the new size of his holding.

2 — Where there is a reduction of a shareholding to a threshold limit below 5% of the capital or the voting rights of the participated institution, Banco de Portugal shall communicate to its holder, within 30 days, whether it considers the resulting shareholding as a qualifying holding.

3 — The situations envisaged in this Article shall be subject to the provisions of Article 104, duly adjusted.

Article 108

Notification by credit institutions

1 — On becoming aware of any changes falling under the provisions of Articles 102 and 107, credit institutions shall inform Banco de Portugal thereof.

2 — In April of each year, credit institutions shall also inform Banco de Portugal of the identity of their qualifying shareholders and of the size of their holdings.

Article 109

Credit to owners of qualifying holdings

1 — The amount of credit granted, in any form or type, including the provision of guarantees, to a person who owns, directly or indirectly, a qualifying holding in a credit institution or to companies directly or indirectly controlled by such a person, or belonging to the same group as such a person, shall not exceed, on the whole and at any time, 10% of the institution's own funds.

2 — The total amount of credit granted to all owners of qualifying holdings and to the companies referred to in the foregoing paragraph shall not exceed, at any time, 30% of the credit institution's own funds.

3 — The transactions referred to in the foregoing paragraphs shall depend on the approval by a qualified majority of at least two thirds of the members of the credit institution's management board and on the favourable opinion of its auditing board.

4 — The provisions of Article 85 (2) and (3) are applicable, with the required adjustments, to the transactions referred to in the foregoing paragraphs. The presumption mentioned in Article 85 (2) is only refutable in the cases of relatives by consanguinity or related by affinity in the first degree, or of judicially separated couples.

5 — The provisions of this Article shall not apply to the granting of credit to credit institutions, financial companies, or holding companies which are included in the perimeter of supervision on a consolidated basis to which the credit institution in question is subject, nor to pension fund management companies, insurance undertakings, brokers and insurance mediating companies that control or are controlled by any entity included in the same perimeter of supervision.

6 — The amounts of credit referred to in this Article and in Article 85 (5) shall always be aggregated for the purposes of calculating the relevant limits.

Article 110

List of shareholders

1 — A list of shareholders indicating their participation in the capital stock shall be published, at least five days before the date set for the shareholders meetings, in two of the most widely read newspapers of the area where the credit institution has its head office.

2 — The list must only include those shareholders whose holdings exceed 2% of the capital stock.

3 — The provisions of the foregoing paragraphs shall not apply to meetings held under Article 54 of the Company Law.

Article 111

Registration of inter-shareholder agreements

1 — Inter-shareholder agreements involving shareholders of credit institutions and relating to the exercise of voting rights shall be registered with Banco de Portugal; otherwise they will be considered null and void.

2 — Registration may be applied for by any of the parties to the agreement.

Article 112

Acquisition of real estate

1 — Credit institutions shall not, except with the authorisation of Banco de Portugal, acquire real estate other than that required for their setting-up and operation or for the pursuance of their business purpose.

2 — Banco de Portugal shall lay down the rules, particularly as regards accounting, which must be complied with by the credit institution in the acquisition of real estate.

Article 113

Fixed assets ratio and acquisition of shareholdings

Banco de Portugal may set, by means of a Notice, the limits of the value of the fixed assets of credit institutions, as well as of the total value

of shares and other equity capital of any companies not included in the above assets that credit institutions may hold.

Article 114

Acquisitions in repayment of own credit

The limits envisaged in Articles 100 and 101 may be exceeded and the restriction imposed under Article 112 may be disregarded as a result of acquisitions in repayment of the institution's own credit. The resulting situations shall be remedied within a period of two years, which may, when duly warranted, be extended by Banco de Portugal, under the conditions established by this Bank.

Article 115

Accounting and publication rules

1 — It shall be incumbent on Banco de Portugal, without prejudice to the functions of the Portuguese Accounting Standards Board (*Comissão de Normalização Contabilística*) and to the provisions of the Securities Market Code, to set forth accounting rules to be applied to institutions subject to its supervision, as well as to define the data which the same institutions shall submit to the Bank and those which they shall publish.

2 — Credit institutions shall draw up consolidated accounts according to the provisions of the applicable legislation.

3 — The institutions subject to the supervision of Banco de Portugal shall publish their accounts under the terms and with the frequency defined in a Notice of the Banco de Portugal, which may require the respective legal certification.

CHAPTER III
Supervision

SECTION I
Supervision in general

Article 116
Supervisory procedures

1 — In the performance of its supervisory functions, it shall be in particular incumbent on Banco de Portugal to:

- a)* Monitor the activity of credit institutions;
- b)* Oversee the compliance with the rules governing the activity of credit institutions;
- c)* Issue recommendations to put an end to any irregularities detected;
- d)* Take extraordinary reorganisation measures;
- e)* Impose penalties on infractions.

2 — Banco de Portugal may require the carrying out of special audits by independent entities appointed by it, at the expense of the audited institution.

Article 117
Holding companies

1 — Holding companies shall be subject to the supervision of Banco de Portugal when their holdings, either directly or indirectly, confer on them a majority of the voting rights in one or more credit institutions or financial companies.

2 — Banco de Portugal may also subject to its supervision the holding companies which, albeit not covered by the provisions envisaged in the foregoing paragraph, hold a qualifying holding in a credit institution or financial company.

3 — The provisions of the foregoing paragraph shall not apply to the holding companies that are subject to the supervision of the Portuguese Insurance Institute.

4 — The provisions of Article 43-A shall be applicable to the holding companies referred to in paragraph 1 of this Article.

Article 117-A

Relevant companies for payment systems

1 — Banco de Portugal may subject to its supervision the entities that have as their purpose to carry on, or that actually carry on, activities especially relevant for the operation of the payment systems, specifying the rules and duties applicable to them, from amongst those envisaged in this Decree-Law for financial companies.

2 — The entities carrying on any activity within the scope of the payment systems shall communicate that fact to Banco de Portugal and supply all and any information required by the latter.

3 — For the purposes of paragraph 1 above, the management of an electronic network for the carrying out of payments is considered especially relevant for payment systems.

Article 118

Sound and prudent management

1 — If the conditions under which a credit institution carries out its activities do not comply with the rules for sound and prudent management,

Banco de Portugal may grant it a period in which to take the appropriate steps to restore or strengthen the financial equilibrium, or to rectify its management procedures.

2 — Whenever it is deemed that the carrying out of a transaction by a credit institution may imply the violation or the aggravation of the violation of applicable prudential rules, or is liable to non-compliance with prudent and sound management rules, the Banco de Portugal may notify that institution to abstain from carrying out such transaction.

Article 119

Duties of the shareholder

Whenever warranted by the financial situation of a credit institution, Banco de Portugal may recommend that shareholders provide it with adequate financial support.

Article 120

Reporting requirements

1 — Credit institutions shall provide Banco de Portugal with whatever information it deems necessary to monitor:

- a)* Their degree of liquidity and solvency;
- b)* The risks they take;
- c)* The compliance with the laws and regulations governing their activity;
- d)* Their administrative organisation;
- e)* The effectiveness of their internal control;
- f)* The data-processing security and control procedures;
- g)* The permanent compliance with the conditions set forth in Articles 14, 15 and 20 (1) (f).

2 — Credit institutions will facilitate on-the-spot verification by Banco de Portugal of their premises and examination of their books, along with all other data which the Bank considers relevant for the verification of the aspects mentioned in the foregoing paragraph.

3 — Banco de Portugal may take copies and transcriptions of all the relevant documentation.

4 — Entities not covered by the foregoing paragraphs which own qualifying holdings in the capital of credit institutions shall supply Banco de Portugal with all the data and information which it considers relevant for the supervision of the institution in which they own holdings.

5 — Credit institutions shall maintain at the disposal of Banco de Portugal, over a period of five years, the relevant information on transactions regarding investment services provided in other EC Member States on instruments negotiated on a regulated market, even if such transactions were not carried out on a regulated market.

6 — Banco de Portugal may require that credit institutions provide progress reports related to prudential supervision, carried out by an entity duly authorised and accepted by the Bank for that purpose.

Article 121

Official accountants and external auditors

1 — Official accountants at the service of a credit institution and external auditors who, by legal requirement, supply audit services to a credit institution shall have a duty to report promptly to Banco de Portugal, any fact concerning that institution, of which they may have become aware while carrying out their tasks, whenever such facts may:

- a) Constitute a material breach of the laws or regulations which lay down the conditions governing authorisation or which specifically govern the pursuit of activities of credit institutions; or

- b) Affect the continuous functioning of the credit institution; or
- c) Lead to refusal to certify the accounts or to the expression of reservations.

2 — The duty provided for in the foregoing paragraph is also applicable to the facts, which come to the knowledge of the persons referred to in the foregoing paragraph in the exercise of a similar task, but in an undertaking having close links resulting from a control relationship with the credit institution within which the above mentioned task is carried out.

3 — The reporting requirement provided for in this Article prevails over any restriction imposed by contract or by any legislative provision on the disclosure of information and shall not involve such persons in liability of any kind.

Article 122

Credit institutions authorised in other EC countries

1 — Credit institutions authorised in other EC Member States which carry on activities in Portugal are not subject to prudential supervision by Banco de Portugal, provided they are subject to supervision by their home authorities.

2 — Banco de Portugal is however responsible, in cooperation with the competent authorities of the home Member States, for the supervision of the liquidity of branches of the credit institutions mentioned in the foregoing paragraph.

3 — Banco de Portugal shall cooperate with the competent authorities of home Member States to ensure that the institutions referred to in paragraph 1 take the appropriate steps to cover risks arising out of open positions where such risks result from transactions carried out on the Portuguese financial market.

4 — The aforesaid institutions are subject to any decisions and other measures that the Portuguese authorities may take within the scope of the monetary, financial and exchange-rate policy, and to rules applicable in the interest of the general good.

Article 123

Duties of institutions authorised in other EC countries

1 — For the purposes of the foregoing Article, the institutions mentioned therein shall notify Banco de Portugal of any information which the latter requires.

2 — The provisions of Article 120 (2) and (3) are applicable.

Article 124

On-the-spot verification by authorities of the home country

1 — In the exercise of their prudential supervisory functions, the competent authorities of other EC Member States may, after having first informed Banco de Portugal, carry out, themselves or through the intermediary of persons they appoint for that purpose, on-the-spot verification of branches, which credit institutions authorised in those Member States have established within the Portuguese territory.

2 — The verifications referred to in the foregoing paragraph may also be carried out by Banco de Portugal, at the request of the authorities referred to in the same paragraph.

Article 125

Representative offices

The activities of representative offices of credit institutions having their head office abroad are subject to the supervision of Banco de Portugal, which may be carried out on the spot and include the inspection of accounting books and any other data deemed necessary.

Article 126

Unauthorised entities

1 — Where there is a well-grounded suspicion that some form of activity only authorised to credit institutions has been or is being carried on by an unauthorised entity, Banco de Portugal may require it to produce the information required for the clarification of the situation, and may also carry out verifications on the spot on which such activity appears to have been or is apparently being carried on, or where it suspects that elements may be found which will shed light on that same activity.

2 — Without prejudice to the powers conferred by the law on other entities, Banco de Portugal may sue for the winding-up and liquidation of any company or other collective body which, without being authorised, carries on activities only authorised to credit institutions.

Article 127

Assistance of other authorities

The police shall provide whatever assistance Banco de Portugal requests in the performance of its supervisory functions.

Article 128

Seizure of documents and valuables

1 — In the course of the verifications referred to in Article 126 (1), Banco de Portugal may seize any documents or valuables which may constitute the object, instrument or proceeds of an infraction or which prove to be necessary for the inquiry into the case.

2 — The provisions of Article 215 (1) apply to the seized items.

Article 129

Appeals

(Revoked)

SECTION II

Supervision on a consolidated basis

Article 130

Competence and definitions

1 — Banco de Portugal shall supervise credit institutions on a consolidated basis, under the terms of this section.

2 — For the purposes of this Section:

- a) Entities similar to credit institutions shall mean financial companies referred to in Article 6 (1) as well as any legal person, other than a credit institution or a financial company, the principal activity of which is to acquire holdings or to carry on any of the activities referred to in nos. 2 to 12 of the list annexed to Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000, and also

those institutions permanently excluded by Article 2 of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000, save for central banks of EC Member States;

- b)* Financial holding company shall mean any of the entities comparable to credit institutions, the subsidiary undertakings of which are exclusively or mainly credit institutions or comparable entities, one at least of such subsidiaries being a credit institution;
- c)* Mixed-activity holding company shall mean any parent undertaking, other than a financial holding company or a credit institution, the subsidiaries of which include at least one credit institution;
- d)* Participation shall mean the direct or indirect ownership of 20% or more of the voting rights or capital of a company;
- e)* Subsidiary shall mean a legal person which another legal person, known as the parent undertaking, dominates in any of the forms mentioned in Article 13 (2) (a), I) to IV), or over which, in the opinion of the supervisory authorities of credit institutions, it effectively exercises a dominant influence.

Article 131

Scope

1 — Without prejudice to supervision on a non-consolidated basis, credit institutions having their head office in Portugal and possessing one or more credit institutions or entities similar to credit institutions as subsidiaries or holding a participation in such institutions or entities, are subject to supervision on the basis of their consolidated financial situation.

2 — Without prejudice to supervision on a non-consolidated basis, credit institutions having their head office in Portugal, the parent undertaking of which is a financial holding company having its head office in another EC Member State, are subject to supervision on the basis of the consolidated financial situation of the financial holding company.

3 — Banco de Portugal may decide to bring a credit institution under supervision on a consolidated basis in the following cases:

- a) Where a credit institution exercises a significant influence over another credit institution or over an entity similar to a credit institution, even without holding a participation therein;
- b) Where two or more credit institutions or entities similar to credit institutions are placed under single management, even when this is not stipulated by contract or in the articles of association;
- c) Where two or more credit institutions or entities similar to credit institutions have management or auditing boards with the same persons constituting a majority.

4 — Ancillary services companies shall be included under supervision on a consolidated basis whenever the conditions envisaged in paragraphs 1 and 2 apply.

5 — Banco de Portugal shall establish, by means of a Notice, the conditions under which credit institutions, entities similar to credit institutions or ancillary services companies may be excluded from supervision on a consolidated basis.

Article 132

Special rules of competence

1 — Banco de Portugal shall exercise supervision on a consolidated basis if a financial holding company has its head office in Portugal and is

the parent undertaking of credit institutions having their head office in Portugal and in another or other EC Member States.

2 — Where a financial holding company has a subsidiary in Portugal which is a credit institution, and has its head office in an EC Member State in which none of its subsidiary credit institutions is authorised, Banco de Portugal shall be responsible for the supervision in the following cases:

- a)* When the supervisory authorities of the aforesaid subsidiaries and the supervisory authority of credit institutions of the Member State in which the financial holding company has its head office agree to confer such responsibility on Banco de Portugal and also agree to cooperate with the Bank and to communicate whatever information is necessary for the carrying out of supervision on a consolidated basis;
- b)* In the absence of such agreement, when the credit institution having its head office in Portugal has the highest balance sheet total in relation to the other subsidiary credit institutions; if all balance-sheet totals are equal, when the subsidiary having its head office in Portugal was the first to be granted authorisation.

3 — Banco de Portugal may come to an agreement with the supervisory authorities of credit institutions of the other Member States concerned, on the redistribution of responsibilities for supervision on a consolidated basis.

Article 133

Other rules

It is incumbent on Banco de Portugal to establish, by means of a Notice, the appropriate rules governing supervision on a consolidated basis, namely:

- a) Rules defining the areas in which the supervision is to take place;
- b) Rules on the form and extent of consolidation;
- c) Rules on internal control procedures of companies covered by supervision on a consolidated basis, namely those necessary to ensure the information which may be relevant for the purposes of supervision.

Article 134

Provision of information

1 — Institutions covered by the provisions of the foregoing Articles are bound to submit to Banco de Portugal all the data required for the supervision and relating to companies in which they hold participations.

2 — Companies in which institutions hold participations are obliged to provide those institutions with whatever information may be necessary for compliance with the provisions of the foregoing paragraph.

3 — When the parent undertaking of one or more credit institutions is a financial holding company or a mixed-activity holding company, these and their subsidiaries are obliged to supply Banco de Portugal with all the information which may be relevant for the supervision.

4 — Institutions subject to supervision by Banco de Portugal and in which credit institutions having their head office abroad hold participations are authorised to provide those participating institutions with all the information necessary for supervision on a consolidated basis by the competent authorities.

5 — Banco de Portugal may, whenever deemed necessary for the supervision on a consolidated basis of credit institutions, carry out or commission verifications and expert examinations in financial holding companies or in mixed-activity holding companies and their subsidiaries, as well as in ancillary services companies.

Article 135

Collaboration of supervisory authorities of other EC countries with Banco de Portugal

1 — Banco de Portugal may request the supervisory authorities of EC Member States where companies in which participations are held have their head office, the information required for supervision on a consolidated basis.

2 — Banco de Portugal may also request the following authorities to provide whatever information may be necessary for supervision on a consolidated basis:

- a) Competent authorities of EC Member States in which financial holding companies or mixed-activity holding companies have their head office and that are parent undertakings of credit institutions having their head office in Portugal;
- b) Competent authorities of EC Member States in which credit institutions, that are subsidiaries of the above financial holding companies, have their head office.

3 — In addition, Banco de Portugal may, for the same purpose, request the above authorities to check information, which it has obtained about companies in which participations are held, or to authorise that Banco de Portugal may proceed to the checking of such information, by itself or through the intermediary of a person or entity appointed for that purpose.

Article 136

Cooperation of the Portuguese Insurance Institute

When a credit institution, a financial holding company or a mixed-activity holding company controls one or more subsidiaries subject to the

supervision of the Portuguese Insurance Institute, this Institute shall supply Banco de Portugal with the information required for supervision on a consolidated basis.

Article 137

Collaboration with other supervisory authorities of EC countries

1 — For the purpose of supervision on a consolidated basis of the financial situation of credit institutions having their head office in other EC Member States, Banco de Portugal shall supply the competent supervisory authorities with whatever information it possesses or may obtain in respect of the institutions which it supervises and in which those institutions have participations.

2 — When, for the purpose mentioned in the foregoing paragraph, the supervisory authority of another EC Member State requests the checking of information relating to institutions which are subject to Banco de Portugal's supervision and have their head office within the Portuguese territory, Banco de Portugal shall carry out this check or allow it to be carried out by the authority which requested it, either directly or through the intermediary of a person or entity appointed for that purpose.

Article 138

Collaboration with supervisory authorities of third countries

The collaboration referred to in Articles 135 and 137 may likewise take place with the supervisory authorities of non-EC Member States, within the scope of reciprocal co-operation agreements, which may have been concluded, and without prejudice to the provisions of Article 82.

TITLE VIII

Financial reorganisation

Article 139

Purpose of reorganisation measures

1 — In order to protect the interests of depositors, investors and other creditors and to safeguard the normal operation of the money, financial and foreign exchange markets, Banco de Portugal may, in relation to credit institutions having their head office in Portugal, take the extraordinary measures referred to in this Title.

2 — The general law relating to preventive bankruptcy measures and to measures related to the reorganisation of undertakings and protection of creditors does not apply to credit institutions.

Article 140

Communication requirement

1 — When a credit institution is unable to fulfil its obligations or runs the risk of being unable to fulfil them, the management or auditing board shall forthwith inform Banco de Portugal.

2 — The members of the management and auditing boards are individually responsible for the communication referred to in the foregoing paragraph, and are obliged to carry it out themselves, should the board to which they belong neglect to do so.

3 — The communication shall be accompanied or immediately followed by an explanation of the reasons which have brought about the situation and by a list of the major creditors, indicating their addresses.

Article 141

Extraordinary reorganisation measures

When a credit institution is in a financially unbalanced situation, involving, namely, a reduction of its own funds to a level below the legal minimum or the non-compliance with the solvency or liquidity ratios, Banco de Portugal may require that, within a period which it shall set, any or all of the following financial reorganisation measures be taken:

- a)* Presentation by the institution in question of a financial reorganisation plan, under the terms of Article 142;
- b)* Restrictions on the exercise of specific types of activity;
- c)* Restrictions on the granting of credit and the investment of funds in specific types of assets, especially in relation to transactions with subsidiaries, with any entity which is the parent undertaking of the institution or with subsidiaries of the parent undertaking;
- d)* Restrictions on the taking of deposits, according to their type and remuneration;
- e)* Compulsory building-up of special provisions;
- f)* Prohibition or limitation of the distribution of dividends;
- g)* Submission of certain transactions or activities to the prior approval of Banco de Portugal.

Article 142

Financial recovery and reorganisation plan

1 — In any of the situations referred to in the foregoing Article, Banco de Portugal may require the institution in question to prepare a financial recovery and reorganisation plan, to be submitted to the Bank for approval within a period set by the latter.

2 — Banco de Portugal may lay down the conditions it deems fit for the acceptance of the financial recovery and reorganisation plan, in particular a capital increase or reduction, and the disposal of shareholdings and other assets.

3 — If the measures envisaged in the foregoing paragraphs are not approved by the shareholders or involve such large amounts that their implementation may be jeopardized, and if a serious risk exists that the institution may not be able to fulfil its commitments, especially regarding the security of the funds entrusted to it, the Banco de Portugal may present an intervention programme. This programme may, inter alia, define the necessary capital increase and, should it be the case, determine that it should be preceded by the absorption of the losses of the institution by the relevant positive items of its own funds.

4 — The measures envisaged within the framework of the intervention programme shall include the financial recovery and reorganisation plan envisaged in paragraph 1, under the conditions set forth by the Banco de Portugal, as well as the time frame of such intervention and a reshuffle of the respective corporate bodies, if deemed adequate.

5 — Within the framework of the intervention programme envisaged in the foregoing paragraph, Banco de Portugal may invite the Deposit Guarantee Fund or other institutions to cooperate in the reorganisation process, in particular, through the granting of adequate monetary or financial support, or of their participation in the capital increase defined in paragraph 3 above, being incumbent upon the Bank to direct and define this cooperation in terms of time frame.

6 — In the course of the reorganisation process, Banco de Portugal may, at any time, call a general meeting of shareholders, at which it may present proposals.

7 — Should the conditions set by Banco de Portugal or the proposals, which it presents, not be accepted, authorisation for the exercise of the institution's activity may be withdrawn.

Article 143

Appointment of interim members of the board

1 — Banco de Portugal may appoint one or more interim members of the board to the credit institution in the following instances:

- a)* When the institution is at risk of suspending payments;
- b)* When the institution is in a situation of financial distress which, on account of its size or duration, poses a serious risk to solvency;
- c)* When, for whatever reason, the administration fails to provide guarantees of prudent activity, seriously jeopardizing the interests of creditors;
- d)* When inadequacies in the organisation of accounting or in internal control procedures are so serious as to render impossible a proper assessment of the institution's financial situation.

2 — The members of the board appointed by Banco de Portugal shall, in addition to the powers and duties conferred by law and by the articles of association upon members of the management board, have the following powers and duties:

- a)* To veto decisions of the general meeting and, where relevant, of the bodies referred to in paragraph 3 of this Article;
- b)* To call the general meeting;
- c)* To draw up, as rapidly as possible, a report on the financial situation of the institution and on its causes and to submit it to Banco de Portugal, accompanied by the opinion of the auditing commission, if one has been appointed.

3 — With the appointment of the interim members of the board, Banco de Portugal may suspend, in whole or in part, the management board, the general council and any other bodies with similar functions.

4 — The interim members of the board shall remain in office for a period set by Banco de Portugal, no longer than one year and renewable once for an equal period.

5 — The remuneration of the interim members of the board will be paid by the institution in question and shall be fixed by Banco de Portugal.

Article 144

Appointment of the auditing commission

1 — In any of the situations provided for in Article 141 or in Article 143 (1), Banco de Portugal, in parallel with the appointment of the interim members of the board or not, may appoint an auditing commission.

2 — The auditing commission shall be comprised of:

- a) An official accountant nominated by Banco de Portugal, who will be the chairman;
- b) A person nominated by the general meeting;
- c) An official accountant nominated by the Portuguese Statutory Auditor Institute (*Ordem dos Revisores Oficiais de Contas*).

3 — Failure to appoint the person mentioned in subparagraph b) of the foregoing paragraph will not prevent the auditing commission from carrying on its activity.

4 — The auditing commission will have the powers and duties conferred by law or by the articles of association upon the audit council or upon the official accountant, depending on the structure of the company. These powers and duties shall be suspended as long as the auditing commission remains in office.

5 — The auditing commission shall be in office for a term set by Banco de Portugal, no longer than one year and renewable once for an equal period.

6 — The remuneration of the members of the auditing commission shall be fixed by Banco de Portugal and will be paid by the institution in question.

Article 145

Other measures

1 — With the appointment of the interim members of the board, Banco de Portugal may adopt the following extraordinary measures:

- a) Temporary waiving of compliance with the rules on prudential control or monetary policy;
- b) Temporary waiving of the timely fulfilment of obligations contracted previously;
- c) Temporary closure of counters and other premises where transactions with the public take place.

2 — The provisions of subparagraph (b) of the foregoing paragraph do not prejudice the creditors' claims on guarantors or co-obligors.

3 — The provisions of this Article shall have a maximum duration of one year, renewable only once for an equal period.

Article 146

Duration of extraordinary measures

The extraordinary measures envisaged in this Title shall only prevail as long as the situation which gave rise to them persists.

Article 147

Suspension of enforcement and time limits

The adoption of the extraordinary measure involving the appointment of interim members of the board, and as long as it lasts, determines the suspension of enforcement of all proceedings, including the fiscal ones, against the institution or involving its property, without exception for those aimed at the collection of preferential or privileged claims, as well as the interruption of the prescription or caducity opposable by the institution.

Article 148

Appeals

(Revoked).

Article 149

Application of penalties

The adoption of extraordinary reorganisation measures does not preclude, in cases of infraction, the application of the penalties provided for by law.

Article 150

Lifting and replacement of execution carried out by Revenue Offices

The provisions of Article 300 (1) of the Tax Proceedings Code are applicable, with the required adjustments, in the event and for the duration of the extraordinary measures involving the appointment of

interim members of the board, Banco de Portugal being entitled to exercise the option assigned to the judicial administrator in that Article.

Article 151

Subsidiaries referred to in Article 18

1 — The adoption of extraordinary reorganisation measures in relation to the subsidiaries mentioned in Article 18 shall be subject to prior consultation with the supervisory authorities of the home country.

2 — In emergencies, the supervisory authorities of the home country shall be promptly informed of the measures which were adopted and of the essential stages of the reorganisation process.

Article 152

Liquidation regulations

If, despite the extraordinary measures adopted, it proves impossible to rescue the institution, the authorisation to exercise its activity shall be withdrawn and the liquidation regulations shall be applied, as established in the relevant legislation.

Article 153

Branches of non-EC institutions

The provisions of this Title are applicable, with the required adjustments, to branches of credit institutions not covered by Article 48.

TITLE IX
Deposit Guarantee Fund

Article 154

Creation and nature of the Fund

1 — A Deposit Guarantee Fund is created, hereinafter called the “Fund”, as a public-law legal person, with administrative and financial autonomy.

2 — The Fund has its head office in Lisbon, on the premises of Banco de Portugal.

Article 155

Purpose

1 — The purpose of the Fund is to guarantee the repayment of deposits with credit institutions which are members thereof.

2 — The Fund can also cooperate, on a temporary basis, in actions intended to restore the solvency and liquidity conditions of the said institutions, within the framework of the intervention programme prescribed in Article 142.

3 — For the purposes of this Title, deposit shall mean any credit balance which a credit institution must repay under the legal and contractual conditions applicable and which results from funds left in an account or from temporary situations deriving from normal banking transactions.

4 — The provisions of the foregoing paragraph cover funds represented by certificates of deposit issued by the credit institution, but not those represented by other debt securities issued by the same institution nor liabilities arising out of own acceptances nor promissory notes in circulation.

Article 156
Member institutions

1 — The following institutions shall compulsorily be members of the Fund:

- a) Credit institutions having their head office in Portugal and authorised to take deposits;
- b) Credit institutions having their head office in non-EC Member States, in relation to deposits taken by their branches in Portugal, unless these deposits are covered by a guarantee scheme in the home country under terms deemed equivalent by the Banco de Portugal to those of the Fund and without prejudice to any bilateral agreements on the matter;
- c) Until 31 December 1999, credit institutions listed in Annex III to Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994, in relation to deposits taken by their branches in Portugal.

2 — In order to supplement the home country guarantee scheme, credit institutions having their head office in other EC Member States may also be members of the Fund, in relation to deposits taken by their branches in Portugal, if the level or scope of that guarantee is lower than the one offered by the Fund.

3 — Credit institutions referred to in the foregoing paragraph shall be subject to the legal rules and regulations governing the Fund.

4 — The Banco de Portugal shall establish, by means of a Notice and in compliance with the principles embodied in Articles 160 to 162, the conditions according to which the credit institutions referred to in paragraph 2 above may be members of and excluded from the Fund.

5 — If one of the credit institutions referred to in paragraph 2 above is excluded from the Fund, deposits made with its branches before the date of exclusion shall continue to be guaranteed by the Fund until the date on which they fall due.

6 — A specific law governs the guarantee of deposits taken by mutual agricultural credit banks belonging to the Integrated Mutual Agricultural Credit Scheme.

Article 157

Reporting requirement

1 — Credit institutions that take deposits in Portugal shall make available to the public all the pertinent information on guarantee schemes on the deposits taken by them, including the amount, the scope of cover offered, and the maximum repayment term.

2 — The information shall be made available at the branches, in a well identified place and in a readily comprehensible manner.

Article 158

Management committee

1 — The Fund is managed by a management committee comprised of three members, the chairman being a member of the board of Banco de Portugal, appointed by the Bank, another member being appointed by the Minister of Finance, and a third member appointed by the association representing in Portugal the participating credit institutions which, on the whole, hold the largest volume of deposits covered by the guarantee.

2 — The chairman of the management committee shall have the casting vote.

3 — The Fund shall be legally committed by the signatures of two of the members of the management committee.

4 — The members of the management committee shall remain in office for renewable terms of three years.

Article 159

Financial resources

- 1 — The Fund shall have the following financial resources:
 - a)* Initial contributions from member credit institutions;
 - b)* Periodical and special contributions from member credit institutions;
 - c)* Borrowed funds;
 - d)* Income from investment of resources;
 - e)* Endowments;
 - f)* Proceeds of fines exacted from credit institutions.

2 — In an urgent situation, namely if systemic stability aspects are at stake, the Banco de Portugal may, under the conditions laid down in its Organic Law, grant temporarily to the Fund the financial resources required to meet its immediate needs.

Article 160

Initial contributions

1 — Member credit institutions shall pay to the Fund, within 30 days as of the registration of the commencement of their activity, an initial contribution whose amount shall be fixed by a Notice of the Banco de Portugal, on a proposal of the Fund.

2 — Credit institutions resulting from merger, splitting or transformation operations shall be exempt from the initial contribution.

Article 161

Periodical contributions

1 — Member credit institutions shall pay an annual contribution to the Fund up to the last working day of April.

2 — The amount of the annual contribution of each credit institution shall be based on the average amount of monthly credit balances of deposits over the previous year, not considering those excluded under Article 165.

3 — Banco de Portugal shall, in consultation with the Fund and the associations representing member credit institutions, fix the brackets of annual contributions and their upper limits, and may take into account regressivity criteria and the state of solvency of the institutions.

4 — Up to a limit of 75% of the annual contribution and under the terms to be defined in the notice referred to in the foregoing paragraph, member credit institutions may be exempt from making the relative payment within the time limit established in paragraph 1 of this article, provided they commit themselves irrevocably and through the collateralisation of transferable securities to pay to the Fund, at any time as required by the latter, in full or in part, the amount of the contribution that was not paid in cash.

Article 162

Special contributions

1 — When the Fund's resources are insufficient for the fulfilment of its obligations, the Minister of Finance may establish, by executive order and on a proposal of the management committee, that member credit institutions make special contributions, and may set the amounts, instalments, time limits and other conditions of these contributions.

2 — The overall value of a credit institution's special contributions shall not exceed, in each fiscal year of the Fund's activity, the value of its annual contribution.

3 — The Minister of Finance, on a proposal of the Fund, may exempt new member institutions, with the exception of those referred to in Article 160 (2), from the obligation to make special contributions for a period of three years.

Article 163

Investment of resources

Without prejudice to the provisions laid down in Article 167-A, the Fund shall invest its available resources in financial operations, according to an investment plan agreed with Banco de Portugal.

Article 164

Deposits covered by the guarantee

The Fund guarantees, up to the limits laid down in Article 166, the repayment of:

- a)* Deposits taken in Portugal or in other EC Member States by credit institutions having their head office in Portugal, without prejudice to the fact that until 31 December 1999 the guarantee of those taken in these Member States by branches of the aforementioned institutions have as limit the level and scope of cover offered by the host Member State guarantee scheme, if they are lower than those provided by the Fund;
- b)* Deposits taken in Portugal by the branches referred to in Article 156 (1) (b) and (c);

- c) Deposits taken in Portugal by branches of credit institutions having their head office in other EC Member States that voluntarily participate in the Fund, in the part that exceeds the guarantee offered by the home country scheme.

Article 165

Deposits excluded from the guarantee

The following deposits shall be excluded from any repayment by guarantee schemes:

- a) Deposits made on their own name and for their own account by credit institutions, financial companies, financial institutions, insurance companies, pension fund management companies or general government bodies;
- b) Deposits arising out of transactions in connection with which there has been a final criminal conviction for money laundering;
- c) Deposits by investment funds, pension funds or other collective investment undertakings;
- d) Deposits by members of the management or auditing boards of the credit institution, its qualifying shareholders, official accountants at the service of the institution, external auditors responsible for carrying out the audits of the institution or depositors of similar status in other companies in the same group or holding a controlling interest in the institution;
- e) Deposits by the spouse, relatives by consanguinity or persons related by affinity in the first degree or third parties acting on behalf of the depositors referred to in subparagraph (d);
- f) Deposits by other companies in the same group or holding a controlling interest in the institution;

- g) Deposits for which the depositor has, on an individual basis, unjustifiably obtained from the same credit institution, rates or other financial concessions which have helped to aggravate its financial situation.

Article 166

Limits of the guarantee

1 — The Fund covers in full the value of the cash credit balances of each depositor, whenever that value does not exceed € 25,000.

2 — For the purposes of the foregoing paragraph, the credit balances to be considered shall be those existing on the date on which the deposits became unavailable.

3 — In the calculation of the value referred to in paragraph 1, the following criteria shall be observed:

- a) Account shall be taken of all the deposits held by the party concerned with the institution in question, regardless of their type;
- b) Interest due and payable up to the date mentioned in paragraph 3 above shall be included in the credit balances of deposits;
- c) The credit balances of deposits denominated in foreign currency shall be converted into escudos at the exchange rate prevailing on the same date;
- d) Except where otherwise provided for, the credit balances of joint accounts, whether jointly or jointly and solidarily held, shall be considered as belonging in equal parts to the holders;
- e) Where the holder of the account is not entitled to the sums held in an account, the person who is absolutely entitled shall be covered by the guarantee, provided that that person has been identified or is identifiable before the date on which the competent authorities decide that deposits become unavailable;

- f) If several persons are entitled, pursuant to the provisions of subparagraph (d) above, the share of each shall be taken into account when the limits provided for in paragraph 1 of this Article are calculated;
- g) Deposits in an account to which two or more persons are entitled as members of an association or a special committee, without legal personality, shall be aggregated and treated as if made by a single depositor and shall not be taken into account in the calculation of the limits applicable to each of these persons and provided for in paragraph 1 of this Article.

Article 167

Repayment procedures

1 — Repayment shall take place within a maximum period of three months as of the date on which deposits became unavailable; in exceptional circumstances and on a case-by-case basis, the Fund may apply to the Banco de Portugal for a maximum of three further extensions of the time limit, neither of which shall exceed three months.

2 — Without prejudice to the period of limitation set forth in the general law, the expiry of the time limit prescribed in the foregoing paragraph does not affect the depositors' right of compensation.

3 — Where the depositor or any person entitled to or interested in sums held in an account has been charged with an offence arising out of or in relation to money laundering, the Fund may suspend any payment pending the final judgement of the court.

4 — Unavailability of deposits is considered to exist when:

- a) The deposit-taking credit institution, for reasons which are directly related to its financial circumstances, has not repaid the deposits under the legal and contractual conditions applicable, and the Banco de Portugal has verified, at the

latest 21 days after first becoming aware of that fact, that the credit institution concerned appears to be unable for the time being to repay the deposits and has no current prospect of being able to do so in the forthcoming days; or,

- b) The Banco de Portugal makes public the decision through which it revokes the authorisation of the deposit-taking institution, if publication is prior to the occurrence mentioned in subparagraph (a) above; or,
- c) In relation to deposits in branches of credit institutions having their head office in other EC Member States, the supervisory authority of the home country has sent a declaration stating that the deposits taken by that institution are unavailable.

5 — The deposit-taking institution is bound to provide the Fund with a full account of the depositor's claims, together with whatever information the Fund requires to meet its obligations, the Fund having the option of examining the institution's books and collecting on the institution's premises any other relevant information.

6 — The Fund shall be subrogated to the rights of the depositors to the extent of the repayments it has effected.

Article 167-A

Assistance rule

1 — The Fund may participate in operations deemed adequate to put an end to situations of financial distress involving member credit institutions.

2 — The Fund shall confine its financial support operations to the situations in which financial distress is most likely to come to an end within a short period of time; when the objectives are clearly set and defined; and when the way how the Fund's support will end is ensured.

3 — The execution of the financial support operations referred to in the foregoing paragraphs shall depend on the unanimous decision of the members of the Fund's management committee, on a favourable opinion of the association mentioned in Article 158 (1) and on the opinion of Banco de Portugal that such operations are adequate to the resolution of the situations in question.

Article 168

Services

Banco de Portugal shall ensure the technical and administrative services required for the smooth operation of the Fund.

Article 169

Fiscal years

The Fund's fiscal years shall correspond to the calendar years.

Article 170

Chart of accounts

The Fund's chart of accounts shall be drawn up in such a manner as to permit the clear identification of its assets composition and its operation and to record all the transactions carried out.

Article 171

Auditing

The Board of Auditors of Banco de Portugal shall monitor the Fund's activities and the observance of the applicable laws and regulations and shall issue its opinion on the annual accounts.

Article 172

Report and accounts

No later than 31 March, the Fund shall submit for approval to the Minister of Finance its report and accounts as at 31 December of the previous year together with the opinion of the Board of Auditors of Banco de Portugal.

Article 173

Regulations

1 — The Minister of Finance shall approve, by executive order and on a proposal from the management committee, the regulations governing the Fund's activity.

2 — Likewise, it shall be incumbent on the Minister of Finance to set the remunerations of the members of the management committee.

TITLE X
Financial companies

CHAPTER I
**Authorisation of financial companies having their
head office in Portugal**

Article 174
General requirements

1 — Financial companies having their head office in Portugal shall meet the following requirements:

- a)* Correspond to one of the types envisaged by Portuguese law;
- b)* Have as their purpose one or more of the activities referred to in Article 5, or any other envisaged by special law;
- c)* Have a capital stock not below the legal minimum.

2 — On the date of setting-up, the capital stock shall be fully subscribed and paid up to the amount of the legal minimum capital.

Article 175
Authorisation

1 — The setting-up of financial companies having their head office in Portugal depends on the authorisation to be granted on a case-by-case basis by Banco de Portugal.

2 — The provisions of Articles 17, 18, 19 and 20 (2) shall be applicable to the authorisation and to the corresponding application.

Article 176

Refusal of authorisation

Authorisation for the setting-up of financial companies shall be refused whenever:

- a)* The application for authorisation is not accompanied by all the required information and documents;
- b)* The application file contains inaccuracies or false statements;
- c)* The company to be set up does not conform to the requirements provided for in Article 174;
- d)* Banco de Portugal is not satisfied that all shareholders meet the requirements set out in Article 103;
- e)* The company does not have sufficient technical means or financial resources for the type and volume of transactions which it intends to carry out.

Article 177

Lapsing of the authorisation

1 — The authorisation lapses if the applicants expressly renounce it, or if the company fails to commence its activity within a period of 12 months.

2 — Banco de Portugal may, at the request of the parties concerned, extend the period mentioned in the foregoing paragraph for an equal period.

3 — The authorisation also lapses upon the winding-up of the company, without prejudice to the action required for its liquidation.

Article 178

Withdrawal of authorisation

1 — The authorisation of a financial company may be withdrawn on the following grounds, as well as on others envisaged by law:

- a)* The authorisation was obtained through false statements or any other irregular means, regardless of the applicable penalties;
- b)* Any of the requirements set forth in Article 174 ceases to be met;
- c)* The activity of the financial company does not correspond to the authorised statutory purpose;
- d)* The company ceases or curtails its business activity to a negligible level for a period of over 12 months;
- e)* Serious irregularities are committed in the management, accounting procedures, or internal control of the company;
- f)* The company is unable to meet its commitments, in particular, if it no longer provides security for the assets entrusted to it;
- g)* The firm violates the laws or regulations governing its activity, or fails to observe the instructions of Banco de Portugal, in such a way as to jeopardize the interests of the investors and other creditors or the regular operation of the money, financial or foreign exchange market;
- h)* The company fails to meet the obligations arising out of its participation in the Investor Compensation Scheme.

2 — The withdrawal of authorisation implies the winding-up and liquidation of the company, except if, in the case envisaged in subparagraph (d) of the foregoing paragraph, the winding-up and liquidation are waived by Banco de Portugal.

Article 179

Power of withdrawal and related procedures

Power of withdrawal and related procedures are governed by the provisions of Article 23.

Article 180

Special Regulations

(Revoked)

Article 181

Investment fund management companies

Investment fund management companies shall be subject to the provisions of Article 29-A.

Article 182

Management and auditing

Save as otherwise provided for in special legislation, Articles 30 to 33 are applicable, with the required adjustments, to financial companies.

Article 183

Statutory changes

Changes in the articles of association, as well as the merger and splitting of financial companies are subject to prior authorisation by Banco de Portugal, under Articles 34 and 35.

CHAPTER II
**Activity abroad of financial companies having their
head office in Portugal**

Article 184
**Branches of subsidiaries of credit institutions
in EC countries**

1 — The provisions of Articles 36, 37 (1) and 38 to 40 apply to the establishment, in EC Member States, of branches of financial companies having their head office in Portugal, when these financial companies, in turn, are subsidiaries of one or more credit institutions governed by the Portuguese law, are included under a legal framework which permits them to carry on one or more of the activities referred to in nos. 2 to 12 of the list annexed to Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000, and fulfil each of the following conditions:

- a) The parent undertaking or undertakings are authorised as credit institutions in Portugal;
- b) The activities in question are actually carried on within the Portuguese territory;
- c) The parent undertaking or undertakings hold 90% or more of the voting rights attaching to the subsidiary's capital;
- d) The parent undertaking or undertakings satisfy Banco de Portugal regarding the prudent management of the subsidiary and declare, with the consent of the same Bank, that they jointly and severally guarantee the commitments entered into by the subsidiary;
- e) The subsidiary is effectively included for the activities in question, in particular, in the consolidated supervision of the parent undertaking or of each of the parent undertakings, in

particular, for the calculation of the solvency ratio, for the control of large exposures and for purposes of the limitation of holdings in other companies;

f) The subsidiary is also subject to non-consolidated supervision.

2 — The notification referred to in Article 37 (1) shall include the amount of own funds of the financial company and the consolidated solvency ratio of the credit institution which is its parent undertaking.

3 — If a financial company benefitting from the provisions of this Article cease to fulfil any of the above conditions, Banco de Portugal shall communicate this fact to the supervisory authorities of the countries where the company has established branches.

Article 185

Branches of other companies abroad

Financial companies having their head office in Portugal and not covered by the foregoing Article which intend to establish branches in a foreign country shall comply with the provisions of Article 42.

Article 186

Intervention of the Securities Market Commission

Whenever the purpose of a financial company intending to establish a branch abroad includes intermediation activities in transferable securities, Banco de Portugal shall request the Securities Market Commission to give its opinion, the provisions of Article 181 (2) being applicable.

Article 187

Provision of services in other EC Member States

1 — The provision of services in another EC Member State by a financial company fulfilling the requirements referred to in Article 184 (1) shall comply with the provisions of Article 43 and the notification by Banco de Portugal envisaged therein shall be accompanied by documentary evidence of fulfilment of those requirements.

2 — Article 184 (3) shall be applicable, with the required adjustments.

CHAPTER III

Activity in Portugal of financial institutions having their head office abroad

Article 188

Branches of subsidiaries of EC credit institutions

1 — The establishment in Portugal of branches of financial institutions subject to the law of other EC Member States is governed by the provisions of Articles 44, and 46 to 56 whenever such institutions are subsidiaries of a credit institution or jointly-owned subsidiaries of two or more credit institutions, benefit from a system which allows them to exercise one or more of the activities referred to in nos. 2 to 12 of the list annexed to Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000, and fulfil each of the following conditions:

- a) The parent undertakings are authorised as credit institutions in the Member State by the law of which the subsidiary is governed;

- b) The activities in question are actually carried on within the territory of the same Member State;
- c) The parent undertakings hold 90% or more of the voting rights attaching to the subsidiary's capital;
- d) The parent undertakings satisfy the supervisory authorities of the home Member State regarding the prudent management of the subsidiary and declare, with the consent of the same authorities, that they jointly and severally guarantee the commitments entered into by the subsidiary;
- e) The subsidiary is effectively included for the activities in question, in particular, in the consolidated supervision of the parent undertaking or of each of the parent undertakings, in particular, for the calculation of the solvency ratio, for the control of large exposures and for purposes of the limitation of holdings in other companies;
- f) The subsidiary is also subject to non-consolidated supervision by the authorities of the home Member State, under the provisions set forth in the EC legislation.

2 — As a condition of establishment, Banco de Portugal shall receive, from the supervisory authority of the home Member State, a notification including the information mentioned in Article 49 (1) (a), with the required adjustments, (b) and (c), as well as the amount of the financial institution's own funds, the consolidated solvency ratio of the credit institution which is its parent undertaking and a certificate, issued by the supervisory authority of the home country, attesting compliance with the requirements referred to in the foregoing paragraph.

3 — If a financial institution ceases to fulfil any of the conditions provided for in paragraph 1 of this Article, its branches which have been established within the Portuguese territory shall become subject to the system set forth in Articles 189 and 190.

4 — The provisions of Articles 122 (1), (3) and (4), 123 and 124 shall be applicable, with the required adjustments, to the subsidiaries referred to in this Article.

Article 189

Other branches

1 — The provisions of Articles 44 to 47 and 57 to 59 govern the establishment in Portugal of branches of financial institutions having their head office abroad not covered by the foregoing Article and corresponding to one of the types prescribed in Article 6.

2 — The provisions of Article 181 apply to the establishment of the branches referred to in the foregoing paragraph, whenever they propose to carry on in Portugal any intermediation activity in transferable securities.

Article 190

Scope of activity

Authorisation for the establishment in Portugal of the branches referred to in the foregoing Article shall not be granted in such terms as to permit those branches to carry on a wider range of activities than that permitted to institutions of a similar nature having their head office in Portugal.

Article 191

Provision of services

The provisions of Articles 60 and 61 apply to the provision of services in Portugal by financial institutions fulfilling the conditions referred to in Article 188, and the notification mentioned in Article 61 (1) shall be accompanied by a certificate issued by the supervisory authority of the home Member State attesting the fulfilment of the conditions referred to in Article 188 (1).

Article 192

Representative offices

The establishment and operation in Portugal of representative offices of financial institutions having their head office abroad is governed, with the required adjustments, by Articles 62 to 64 and 125.

Article 193

Intervention by the Securities Market Commission

Should the purpose of the financial institutions referred to in the foregoing Article include the exercise of intermediation activities in transferable securities, the provisions of Article 181 (1) and (2) shall be applicable, with the required adjustments.

CHAPTER IV
Other provisions

Article 194

Registration

1 — Financial companies shall not commence their activities without being filed in a special register with Banco de Portugal.

2 — The provisions of Articles 65 to 72, duly adjusted, shall be applicable.

Article 195

Rules of conduct

Except where otherwise provided for by special law, financial companies shall be subject, with the required adjustments, to the rules set forth in Articles 73 to 90.

Article 196

Prudential rules

1 — Except where otherwise provided for by special law, financial companies shall be subject to the provisions of Articles 94 to 97, 99 and 115.

2 — Acquirers of participations equal to or in excess of 10% of the capital or of the voting rights of a financial company not covered by Title X-A shall communicate that fact to the Banco de Portugal, under the terms laid down in Article 104, and the Banco de Portugal may require the information envisaged in Article 103 (7) and use the powers laid down in Article 106.

Article 197
Supervision

1 — Except where otherwise provided for by special law, Articles 93, 116, 118 to 121 and 125 to 128, shall apply with the required adjustments, to financial companies.

2 — When a financial institution having its head office abroad and providing services or having a representative office in Portugal, carries on intermediation activity in transferable securities in Portugal, this activity shall likewise be subject to the supervision of the Securities Market Commission.

Article 198
Financial reorganisation

1 — Except where otherwise provided for by special law, Articles 139 to 153 shall apply, with the required adjustments, to financial companies and to their branches established in Portugal.

2 — In the case of financial companies exercising some intermediation activity in transferable securities, Banco de Portugal shall keep the Securities Market Commission informed of whatever measures it takes under the Articles referred to in the foregoing paragraph and, wherever possible, shall consult it before taking any of the measures or decisions provided for in Articles 141 to 145 and 152.

Article 199
References

In all that does not conflict with the provisions of this Decree-Law, financial companies shall be governed by the special legislation applicable.

TITLE X-A
Investment services, investment firms and securities
investment fund management companies

CHAPTER I
General provision

Article 199-A
Definitions

For the purposes of this Title the following shall mean:

1st Investment service:

- a) Reception and transmission, on behalf of investors, of orders in relation to one or more of the instruments listed in paragraph 2 of this Article;
- b) Execution, other than for own account, of orders in relation to one or more of the financial instruments listed in paragraph 2 of this Article;
- c) Dealing, for own account, in any of the financial instruments listed in paragraph 2 of this Article;
- d) Managing of portfolios of investments in accordance with mandates given by investors on a discretionary, client-by-client basis where such portfolios include one or more of the financial instruments listed in paragraph 2 of this Article;
- e) Placing, with or without underwriting, of any of the financial instruments listed in paragraph 2 of this Article;

2nd Financial instrument: any of the instruments listed in Section B of the Annex to Council Directive 93/22/EEC of 10 May 1993;

3rd Investment firm: firm whose regular activity includes the provision of investment services for third parties and which is subject to the own funds requirements provided for in Council Directive 93/6/EEC of 15 March 1993, save for the credit institutions and the undertakings mentioned in Article 2 (2) of Council Directive 93/22/EEC of 10 May 1993;

4th Securities Investment Fund Management Company: any company, the principal activity of which consists in the management of securities investment funds or securities investment companies complying with the provisions laid down in Directive 85/611/EEC of the Council of 20 December.

Article 199-B

Legal system

1 — Investment firms and securities investment fund management companies shall be subject to all the provisions of this Decree-Law and, in particular, to the provisions of this Title.

2 — The provisions of Article 199-E (e) and (f) shall also be applicable to credit institutions, within the framework of the provision of investment services.

CHAPTER II

Authorisation of investment firms having their head office in Portugal

Article 199-C

Authorisation of investment firms having their head office in Portugal

Title II shall be applicable, with the required adjustments, to investment firms having their head office in Portugal, with the following changes:

- a) Article 14 (1) (b) shall not be applicable;
- b) The capital of investment firms that take the legal form of *sociedades anónimas* (limited companies) shall be represented by nominative shares or registered bearer shares;
- c) Article 16 (3) to (5) shall only be applicable where the investment firm is a subsidiary of a parent undertaking having its head office in a non-EC country;
- d) The provisions of Article 18 shall also be applicable where the firm to be set up is a subsidiary of an investment firm authorised in another country, or a subsidiary of the parent undertaking of an investment firm under these conditions, or controlled by the same natural or legal persons who control an investment firm authorised in another country;
- e) In Article 16 (6), the reference made to Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 shall be replaced with reference to Council Directive 93/22/EEC of 10 May 1993;
- f) Article 33 shall be applicable without prejudice to the provisions of a special law.

CHAPTER III

Activity in the European Community of investment firms having their head office in Portugal

Article 199-D

Activity in the European Community of investment firms having their head office in Portugal

1 — The establishment of branches and the provision of services in other EC Member States by investment firms having their head office in Portugal shall be governed, with the required adjustments, by the provisions of Articles 36, 37 (1), 38 to 40, and 43, with the following changes:

- a)* The notifications referred to in Article 36 (1) and Article 43 (1) shall also be sent to the Securities Market Commission;
- b)* The communications and the certifications referred to in Article 37 (1) and in Article 43 (2) can only be sent to the supervisory authority of the host Member State if the Banco de Portugal and the Securities Market Commission approve the application;
- c)* The communication referred to in Article 37 (1) shall be accompanied by the required explanations on guarantee schemes, intended to ensure the protection of the branch's clients, of which the investment firm is a member;
- d)* In Articles 39 and 43, the reference made to the operations referred to in the list annexed to Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 shall be replaced with reference to the investment and non-core services referred to in the list annexed to Council Directive 93/22/EEC of 10 May 1993;

- e) Banco de Portugal or the Securities Market Commission shall inform the supervisory authority of the host Member State of the changes introduced in the guarantee schemes referred to in c) above;
- f) The communication referred to in Article 40 (1) shall also be sent to the Securities Market Commission;
- g) In the event of a change in the programme of operations referred to in Article 43 (1), the investment firm shall give written notice of the change in question to the Banco de Portugal, to the Securities Market Commission, and to the supervisory authority of the host Member State, before making the change.

2 — The responsibilities provided for in (b), (c) and (e) of the foregoing paragraph shall be incumbent upon Banco de Portugal in relation to the host Member States in which the addressee authority has been entrusted with powers to supervise credit institutions, and upon the Securities Market Commission in the remaining instances.

CHAPTER IV

Activity in Portugal of investment firms having their head office in other EC Member States

Article 199-E

Activity in Portugal of investment firms having their head office in other EC Member States

The establishment of branches and the provision of services in Portugal by investment firms having their head office in other EC

Member States shall be governed, with the required adjustments, by the provisions of Articles 44, 46 to 56, 60 and 61, with the following changes:

- a) The responsibilities incumbent upon the Banco de Portugal pursuant to Articles 46, 47, 49, 50, 51, 53 and 61 shall be entrusted to the Securities Market Commission;
- b) Article 49 (1) (d), (e) and (f) shall not be applicable;
- c) *(Revoked)*;
- d) In Articles 52 and 60, the reference made to the operations referred to in the list annexed to Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 shall be replaced with reference to the investment and non-core services listed in Section A and Section C of the Annex to Council Directive 93/22/EEC of 10 May 1993;
- e) The rules referred to in Article 53 (1) are: the rules of conduct, the rules governing the form and contents of advertising, the rules governing the carrying out of operations on regulated markets, the rules defining the conditions of access to these markets and the statute of their members as well as the rules on reporting, declaration and publication requirements;
- f) In so far as these procedures are required for the exercise of the powers of the supervisory authorities of the home Member States and, at their request, the Securities Market Commission shall keep them informed of all and any provisions adopted under Article 53 (6);
- g) In the event of a change in the programme of operations referred to in Article 61 (1), the investment firm shall give written notice of the change in question to the Securities Market Commission, and the latter, where applicable, shall indicate to the firm any change or supplement required to the information communicated in accordance with Article 50 (1).

CHAPTER V
Other provisions

Article 199-F
Registration

The registration and the list referred to in Articles 67 and 68 shall be the responsibility of the Securities Market Commission.

Article 199-G
Reference

The provisions of Articles 35-A, 42-A and 102 to 111 shall also be applicable to investment firms and to investment fund management companies, as well as to the acquisition of holdings in those investment firms.

Article 199-H

1 — The provisions of Articles 122 to 124 shall be applicable to all investment firms authorised in other EC Member States and the Securities Market Commission shall be entrusted with the powers therein conferred to the Banco de Portugal, being understood that the scope of the powers provided for in Article 122 (2) regards the matters mentioned in Article 199-E (f).

2 — The Banco de Portugal may require the investment firms authorised in other EC Member States, which have set up a branch in Portugal, to submit periodically, for statistical purposes, reports on the operations carried out by them in the Portuguese territory and, within the

scope of its responsibility in terms of monetary policy, the Banco de Portugal may require them to produce the information that, for the same purposes, may be required from investment firms having their head office in Portugal.

Article 199-I

Legal system governing securities investment fund management companies

1 — The provisions laid down in this Title are applicable to securities investment fund management companies, with the specific features described below.

2 — Title II is applicable, with the required adjustments, to securities investment fund management companies having their head office in Portugal, with the following changes:

- a)* Article 16 (3) and (5) are only applicable when the managing institution is a subsidiary of a parent undertaking having its head office in a non-Member State of the European Community;
- b)* The provisions laid down in Article 18 are also applicable when the managing company is:
 - i)* a subsidiary of a managing company, investment firm, credit institution or insurance company authorised in another country; or
 - ii)* a subsidiary of the parent undertaking of a managing company, investment firm, credit institution or insurance company authorised in another country; or
 - iii)* controlled by the same persons, whether natural or legal, who control a managing company, investment firm, credit institution or insurance company authorised in another country;

- c) In Article 16 (6), the reference to Directive 2000/12/EC of the European Parliament and of the Council of 20 March shall be replaced with reference to Directive 93/22/EEC of the Council of 10 May;
- d) Article 33 is applicable, without prejudice to the provisions laid down in special legislation.

3 — Without prejudice to the period stipulated in Article 38 (3), the grounds for the refusal shall be notified to the institution concerned within two months.

4 — In Articles 39 and 43, the reference to the operations appearing in the list annexed to Directive 89/646/EEC of 15 December shall be replaced with reference to the activities and services listed in Article 5 (2) and (3) of Directive 85/611/EEC, with the changes introduced by Directive 2001/107/EC of the European Parliament and of the Council of 21 January 2002.

5 — In Articles 52 and 60, the reference to the operations appearing in the list annexed to Directive 89/646/EEC of the Council of 15 December shall be replaced with reference to activities and services listed in Article 5 (2) and (3) of Directive 85/611/EEC, with the changes introduced by Directive 2001/107/EC of the European Parliament and of the Council of 21 January 2002.

6 — The rules referred to in Article 53 (1) are the rules of conduct that govern the form and the contents of advertising initiatives and those governing the trading of securities investment fund units, as well as those on reporting, statement and publication requirements.

TITLE XI

Penalties

CHAPTER I

Penal provision

Article 200

Illicit taking of deposits and other repayable funds

Whoever exercises any activity consisting in taking from the public, on his own account or on behalf of a third party, deposits or other repayable funds, without the relevant authorisation, save for any of the situations envisaged in Article 8 (3), shall be liable to imprisonment for a term not exceeding three years.

CHAPTER II

Mere breaches of regulations

SECTION I

General provisions

Article 201

Area of application

The provisions of this Title shall apply, regardless of the agent's nationality, to the following acts constituting offences under Portuguese law:

- a) Acts committed within the Portuguese territory;
- b) Acts committed on foreign territory by credit institutions or financial companies having their head office in Portugal and operating there through branches or by providing services, as well as by individuals who, in relation to such entities, fall into any of the situations envisaged in Article 204 (1);
- c) Acts committed on board of Portuguese ships or aircraft, except as otherwise provided for by treaty or convention.

Article 202 **Responsibility**

Natural or legal persons, even if irregularly constituted, and associations without legal personality may be held responsible, jointly or not, for the practice of the offences referred to in this Chapter.

Article 203 **Responsibility of collective bodies**

1 — Legal persons, even if irregularly constituted, and associations without legal personality are responsible for offences committed by members of their boards and by holders of executive, supervisory or managerial posts acting in the performance of their functions, as well as by representatives of the collective body acting in its name and on its behalf.

2 — The legal invalidity and ineffectiveness of the acts on which the relation between the individual agent and the collective body is founded, do not hinder the application of the provisions of the foregoing paragraph.

Article 204

Responsibility of individual agents

1 — Responsibility of the collective body does not preclude the individual responsibility of members of the respective boards, of shareholders, of those occupying executive, supervisory or managerial posts, or of those acting legally or voluntarily on its behalf.

2 — When the legal definition of the offence requires the existence of certain personal requirements which are only present in the person of the represented entity, or requires the act to have been committed in the agents' own interest, while the representative in question acted for the interest of the represented entity, these circumstances do not preclude the responsibility of individual agents acting on behalf of the represented entity.

Article 205

Attempted offences and negligence

1 — Attempted offences and negligence shall always be punishable.

2 — The penalty for the attempted offence shall be as for the consummated act, especially attenuated.

3 — In the event of negligence, the upper and lower limits of the fine shall be reduced by half.

4 — When the responsibility of the individual agent is attenuated under the foregoing paragraphs, the penalty applicable to the collective body shall be mitigated correspondingly.

Article 206

Graduation of penalty

1 — The fine and additional penalties shall be determined according to the objective and subjective seriousness of the offence, taking into account the individual or collective nature of the agent.

2 — The seriousness of offences committed by collective bodies shall be evaluated according, namely, to the following circumstances:

- a)* Danger or harm caused to the financial system or to the national economy;
- b)* Occasional or repeated nature of the offence;
- c)* Acts of concealment, insofar as they obstruct the discovery of the offence or the effectiveness of the applicable penalty;
- d)* Acts on the defendant's own initiative aimed at repairing the damage or counteracting the inconveniences caused by the offence.

3 — As regards individual agents, in addition to the circumstances listed in the foregoing paragraph, the following factors shall also be taken into consideration:

- a)* Level of responsibility and sphere of action in the collective body in question;
- b)* Benefit or intended benefit of the defendant, his spouse or his relatives by consanguinity or related by affinity up to the third degree;
- c)* Special obligation not to commit the offence.

4 — In determining the penalty to be applied, as well as the seriousness of the offence the following shall be taken into consideration:

- a)* The economic standing of the defendant;
- b)* The previous conduct of the defendant.

5 — Attenuation stemming from reparation of harm or reduction of risk, when effected on the collective body's initiative, extends to all individual agents, even if they have not personally contributed to such actions.

6 — The fine should, wherever possible, exceed any economic benefit, which the defendant or any person whom the defendant intended to benefit, may have gained as a result of the offence.

Article 207

Fulfilment of neglected duties

1 — Whenever the offence is a result of failure to perform a duty, the application of the penalty and the payment of the fine do not exempt the offender from performing the said duty, if this is still possible.

2 — The offender may be given an injunction by the Banco de Portugal to fulfil the obligation in question.

Article 208

Concurrent offences

If, for the same action, a person is answerable for both criminal offences and mere breach of regulations, the general legal system shall apply, but separate proceedings shall be instituted before the criminal court and Banco de Portugal, the latter being responsible for the enforcement, where applicable, of the additional penalties envisaged in this Decree-Law.

Article 209
Prescription

1 — Legal proceedings for mere breaches of regulations provided for in this Decree-Law shall be barred by statute of limitation within five years.

2 — The term of limitation of penalties is five years as of the end of the period for judicial appeal against the decision to impose the penalty or as of the date when the court decision has become absolute.

SECTION II
Offences in particular

Article 210
Fines

The following offences are punishable by a fine of 150,000 to 150,000,000 escudos or of 50,000 to 50,000,000 escudos, depending on whether the fines are applied to a legal or to a natural person:

- a) Exercise of activity without observing the rules of registration with Banco de Portugal;
- b) Violation of the rules governing the subscription or paying up of the capital stock, as to the time limit, amount and form of representation;
- c) Violation of the rules on the use of company and business names set forth in Articles 11 and 46;
- d) Non-observance of ratios and prudential limits determined by law, by the Minister of Finance or by Banco de Portugal in the exercise of their powers;

- e)* Neglect to issue the compulsory publications within the prescribed periods;
- f)* Non-observance of the accounting rules and procedures set forth by law or by Banco de Portugal, when this does not seriously jeopardize the awareness of the financial and balance-sheet situation of the entity in question;
- g)* Violation of advertising rules and non-compliance with the specific instructions issued by Banco de Portugal under Article 90 (1);
- h)* Failure to provide Banco de Portugal with the required information and communications within the established time limits, and the provision of incomplete information;
- i)* Violation of the precepts of this Decree-Law and of the specific legislation governing the activity of credit institutions and financial companies, not provided for in the foregoing subparagraphs and in the following Article, as well as of regulations issued by the Minister of Finance or by Banco de Portugal, in compliance with or for the execution of the aforementioned precepts.

Article 211

Particularly serious offences

The following offences are punishable by a fine of 500,000 to 500,000,000 escudos or of 200,000 to 200,000,000 escudos, depending on whether the fines are applied to a legal person or to a natural person:

- a)* Non-authorized practice, by any individual or entity, of transactions only authorized to credit institutions or to financial companies;
- b)* Exercise by credit institutions or by financial companies of activities not included in their statutory purpose, as well as

- the carrying out of non-authorized transactions or which have been specifically forbidden to them;
- c)* Fraudulent paying up of the capital stock;
 - d)* Introduction in the articles of association of the changes envisaged in Articles 34 and 35, when not preceded by authorisation of Banco de Portugal;
 - e)* Performance of any duties or functions in a credit institution or financial company, violating legal prohibitions or against the express opposition from Banco de Portugal;
 - f)* Non-observance of a prohibition to exercise voting rights;
 - g)* Fraudulent accounting and lack of organised accounting, as well as the non-observance of other applicable accounting rules laid down by law or by Banco de Portugal, when this non-observance seriously jeopardizes awareness of the financial situation and net worth of the entity in question;
 - h)* Non-observance of the ratios and prudential limits prescribed in Article 96 (2), without prejudice to paragraph 3 of the same Article, as well as in Articles 97, 98, 100, 101, 109, 112 and 113, or of other ratios and prudential limits provided for in a general rule of the Minister of Finance or by Banco de Portugal under Article 99, when this results or may result in serious harm to the financial equilibrium of the entity in question;
 - i)* Infringement of the provisions of Articles 85 and 86 on conflict of interests;
 - j)* Violation of the rules on credit to owners of qualifying holdings prescribed in Article 109 (1), (2) and (3);
 - l)* Fraudulent mismanagement, to the detriment of depositors, investors and other creditors, practised by members of the management and auditing boards;

- m)* Practice by owners of qualifying holdings, of acts which seriously hinder or obstruct the sound and prudent management of the entity in question;
- n)* Failure to report promptly to Banco de Portugal that a credit institution or financial company is, or incurs the risk of being, unable to fulfil the commitments entered into, as well as the reporting of such facts, omitting the information required by law;
- o)* Unlawful non-compliance with specific instructions of the Banco de Portugal, issued under the terms of the law for the specific case in question, as well as the practice of acts subject by law to prior approval by Banco de Portugal, when the latter has voiced its opposition;
- p)* Refusal or obstruction to the carrying out of inspections by Banco de Portugal;
- q)* Failure to report to Banco de Portugal the facts provided for in Article 30 (3), which are subsequent to the registration of the appointment of members of the management or auditing boards of credit institutions or financial companies, as well as failure to take the measures on the removal from office referred to in Articles 69 (5) and 70 (4);
- r)* Providing Banco de Portugal with false information, or with incomplete information, which may lead to erroneous conclusions with the same or similar effect that false information on the same matter would have caused;
- s)* Non-compliance with the obligations to contribute to the Deposit Guarantee Fund.

Article 212

Additional penalties

1 — In addition to the fines provided for in Articles 210 and 211, the following penalties may be applied to offenders:

- a) Seizure and loss of the object of the infraction, including the proceeds thereof, in compliance with the provisions of Articles 22 to 26 of Decree-Law No. 433/82 of 27 October;
- b) Publication by Banco de Portugal of the final decision;
- c) Where the defendant is a natural person, prohibition from being member of the management or auditing boards as well as from holding corporate, managerial and supervisory posts in a specified credit institution or financial company or in any credit institution or financial company, for a period from 6 months to 3 years, in the cases provided for in Article 210, or from 1 year to 10 years, in the cases provided for in Article 211;
- d) Suspension of the exercise of voting rights conferred on shareholders in credit institutions, financial companies and holding companies subject to supervision by Banco de Portugal, for a period from 1 year to 10 years.

2 — The publications referred to in the foregoing paragraph shall be disclosed in “*Diário da República*” (Official Gazette), Series II, or in one of the most widely read newspapers of the area where the defendant has its head office or permanent establishment or, if the defendant is a natural person, of the area of his residence.

SECTION III
Legal proceedings

Article 213
Competence

1 — Banco de Portugal is the authority responsible for legal proceedings against mere breaches of regulations provided for in this Decree-Law and for the enforcement of the applicable penalties.

2 — The verdict shall be given by the Board of Directors of Banco de Portugal.

3 — In the course of the inquiry, Banco de Portugal may request from the police or any other public services or authorities whatever collaboration or help it deems necessary for the achievement of the purpose of the proceedings.

Article 214
Stay of the proceedings

1 — Where the offence is a remedial irregularity, which does not significantly harm or seriously or immediately jeopardize the rights of depositors, investors, shareholders or other parties concerned and does not cause important damage to the financial system or to the national economy, the Board of Directors of Banco de Portugal may stay the proceedings, requiring the offender to remedy the irregularity within a specified time limit.

2 — Failure to remedy the irregularity within the specified time limit shall result in the resumption of proceedings.

Article 215

Seizure of documents and valuables

1 — Whenever required for the inquiry, any documents and valuables shall be seized on the premises of credit institutions, financial companies or other collective bodies; the valuables shall be deposited with Caixa Geral de Depósitos, Crédito e Previdência to the order of Banco de Portugal, as collateral for the payment of whatever fines or costs the defendant may be sentenced to pay.

2 — House seizures and searches shall be the object of judicial warrants.

Article 216

Preventive suspension

If the defendant is any of the individuals mentioned in Article 204 (1), the Board of Directors of Banco de Portugal may order the preventive suspension of his functions, whenever this proves to be necessary for an effective inquiry or for the protection of the financial system or of the interests of depositors, investors and other creditors.

Article 217

Notifications

Notifications shall be served by registered letter with a form for acknowledgement of receipt, or in person, if necessary through the police.

Article 218

Obligation to appear

1 — Witnesses and experts who fail to appear on the day, at the time and in the place appointed for the proceedings, without justifying their absence either at that time or within the next five working days, shall be liable to a fine applied by Banco de Portugal, ranging between a fifth and the double of the monthly national minimum wage in force on that date.

2 — Payment must be made within 10 working days as of notification, under penalty of compulsory collection.

Article 219

Prosecution and defence

1 — Once the inquiry is concluded, the charge will be dropped if there is no evidence of infringement, otherwise an accusatory procedure will take place.

2 — The accusation shall include the name of the offender, the acts of which he is accused and the respective circumstances of time and place, as well as the law which prohibits and punishes them.

3 — The defendant or his defence counsel, if there is one, will be notified of the charge, and granted a reasonable period of time to produce a written defence and to provide evidence.

4 — The period for the defence shall be fixed between 10 and 30 working days, taking into account the place of residence, head office or permanent establishment of the defendant and the complexity of the case.

5 — The defendant cannot call more than five witnesses for each offense.

6 — Notice of the accusation shall be effected under the provisions set forth in Article 217 or, when the defendant is not found or refuses to receive it:

- a) By announcement published in a newspaper of the defendant's last known area of residence, head office or permanent establishment or, failing this, in one of the most widely read newspapers of that area;
- b) By announcement published in one of the Lisbon daily newspapers, in cases where the defendant does not have a residence, head office or permanent establishment within the national territory.

Article 220

Verdict

1 — After the inquiries and investigation procedures required for the defence, the case shall be submitted to the entity responsible for passing the verdict, together with an opinion on the offences which are considered proven and the penalties applicable thereto.

2 — The defendant shall be informed of the verdict, by means of a notification effected in accordance with the provisions of paragraph 6 of the foregoing Article.

Article 221

Non-appearance

Failure to appear on the part of the defendant does not hinder, at any stage, the course of the proceedings or the passing of a verdict.

Article 222

Requirements of the verdict

- 1 — The sentence imposing any penalty shall contain:
- a) The identity of the defendant and any other co-participants;
 - b) The description of the charges and evidence, as well as of the violated and punishing rules;
 - c) The penalty or penalties applied, mentioning the factors which gave rise to their determination;
 - d) The indication of the terms of its judicial appealability and of its enforceability;
 - e) The indication that, in case of judicial appeal, the judge may rule in open court or, when the defendant, the Public Prosecutor's Office, or Banco de Portugal do not object, by means of a simple order;
 - f) The indication that the principle of the prohibition of *reformatio in pejus* does not apply;
 - g) The costs payable and an indication of the person or persons compelled to pay them;

2 — The notification shall contain, in addition to the terms of the sentence and the amount of costs, notice that the fine must be paid within 15 working days as of the day when the sentence becomes absolute, under penalty of compulsory collection.

Article 223

Stay of execution

1 — The Board of Directors of Banco de Portugal may suspend, in full or in part, the execution of the sentence.

2 — The suspension may be conditional on the fulfilment of certain obligations, in particular those considered necessary to remedy illegal situations, to compensate for damages or to prevent risks.

3 — The period of suspension shall range between two and five years, as of the end of the time limit for appeal against the conviction.

4 — The suspension does not include costs.

5 — If within the period of suspension the defendant does not commit any of the criminal offences or mere breaches of regulations provided for in this Decree-Law, and does not violate any injunctions which have been set, the conviction shall be of no effect; otherwise the sentence will be executed.

Article 224

Costs

1 — In case of conviction, costs will be paid by the convicted party under the general terms of the law.

2 — The order to pay costs is always made on an individual basis.

Article 225

Payment of fines and costs

1 — The payment of fines and costs shall be made by means of a payment form, at the Revenue Office of the place of the convicted party's residence, head office or permanent establishment or, if this place is outside the national territory, at any Revenue Office in Lisbon.

2 — After paying, the convicted party shall, within eight working days, forward to Banco de Portugal a copy of the payment form so that it may be added to the records of the case.

3 — The proceeds of fines revert fully to the State except as otherwise provided for in the following paragraphs.

4 — The proceeds of fines exacted from credit institutions revert fully to the Deposit Guarantee Fund, irrespective of the stage in which the conviction becomes final.

5 — The proceeds of fines exacted from investment firms and securities investment fund management companies participating in the Investor Compensation Scheme revert fully to this Scheme, irrespective of the stage in which the conviction becomes final.

Article 226

Responsibility for payment

1 — Legal persons, even when irregularly constituted, and associations without legal personality shall be jointly and severally liable for the payment of any fines and costs which their directors, employees or representatives may be sentenced to pay for the practice of offences punishable under this Decree-Law.

2 — Members of management boards of legal persons, even when irregularly constituted, and of associations without legal personality, who, being able to do so, failed to oppose the practice of the offence, should be answerable individually and subsidiarily for the payment of any fines and costs which those legal persons or associations have been sentenced to pay, even if, by the date of the sentence being passed, those legal persons or associations have been wound up or have gone into liquidation.

Article 227

Enforceability of the judgement

1 — Without prejudice to the provisions of the following paragraph, the judgement becomes enforceable if it is not judicially appealed.

2 — A decision to apply any of the penalties provided for in Article 212 (c) and (d) becomes immediately enforceable and its enforceability only ends with a court decision definitely revoking it.

3 — The provisions of the foregoing paragraph are also applicable to decisions taken under Articles 215 and 216.

SECTION IV

Appeals

Article 228

Court appeal

1 — Any appeals against a decision imposing a penalty shall be lodged with the head office of Banco de Portugal within 15 working days as of the date the decision came to the knowledge of the defendant.

2 — Once the application has been received, Banco de Portugal shall forward it to the Public Prosecutor's Office within 15 working days, the Bank having the option of adding whatever allegations, elements or other information it deems relevant to the decision, as well as of supplying evidence.

Article 229

Competent court

The competent court to adjudge any appeal, to undertake a reappraisal or to execute decisions taken by Banco de Portugal in proceedings on mere breaches of regulations instituted under this Decree-Law, or of any other measures taken by the same Bank within the same proceedings and legally appealable is the Judicial Court of the Lisbon Jurisdiction.

Article 230

Judicial decision by order

The judge may give a ruling if he does not consider a public hearing necessary and if the defendant, the Public Prosecutor's Office or Banco de Portugal raise no objection to this procedure.

Article 231

Intervention by Banco de Portugal at the appeal stage

1 — Banco de Portugal may always participate in the hearing through a representative.

2 — Withdrawal of the charge by the Public Prosecutor's Office depends on the Banco de Portugal's agreement.

3 — Banco de Portugal has the right to appeal against decisions taken on appeals, where this is admissible.

SECTION V
Subsidiary law

Article 232
Application of the general law

The general law governing mere breaches of regulations shall be subsidiarily applicable to the infractions provided for in this Chapter, as long as they do not conflict with the provisions of the same chapter.

Annex

- Decree-Law No. 298/92 of 31 December
- Decree-Law No. 201/2002 of 26 September.

Decree-Law No. 298/92
of 31 December

The establishment of an integrated financial services area is an essential milestone for the achievement of the European Community's single market.

Financial integration relies on five pillars: freedom of establishment of financial undertakings; freedom to provide services by those undertakings; harmonisation and mutual recognition of national regulations; free capital movements; and economic and monetary union.

Throughout the last decade the national financial system has undergone profound and gradual structural changes, which correspond to sweeping changes in its legal and institutional framework, as well as in its competition system.

The rapid and sustained economic growth observed in recent years has created particularly favourable conditions for the expansion and increased soundness of private and public credit institutions, as well as for the development and sophistication of financial intermediation.

Following the liberalisation of the internal market and the favourable response of credit institutions to the increased competition, 1992 marks the entry of the external liberalisation process into a maturity stage.

Portugal's commitment to full participation in the process of European economic and monetary union was embodied in the Programme of the 12th Constitutional Government, approved by Parliament on 14 November 1991. With the entry of the escudo in the exchange rate mechanism of the European Monetary System last April and the announcement of the full liberalisation of capital movements as of the end of the current year, the necessary steps have already been taken for the achievement of two of the above-mentioned pillars.

This Decree-Law provides for the remaining requirements.

Indeed, the reform of the general regulations governing the Portuguese

financial system, except for the insurance and pension fund sectors, implies also the transposition into Portuguese law of the following Community directives:

Council Directive 77/780/EEC of 12 December 1977: the part which, under the agreed derogations, had not yet been transposed into national legislation;

Council Directive 89/646/EEC of 15 December 1989 (Second Banking Co-ordination Directive);

Council Directive 92/30/EEC of 6 April 1992 on the supervision of credit institutions on a consolidated basis.

This Decree-Law includes the following main solutions:

Financial undertakings are now divided into credit institutions and financial companies, thereby abandoning the previous tripartite classification into credit institutions, quasi-banking institutions and auxiliary credit institutions. The classification of financial undertakings is redefined on the basis of the new criteria adopted, with the former categories of special credit institutions now incorporating investment companies, financial leasing companies, factoring companies and credit purchase financing companies (Article 3).

In defining the purpose or scope of banks' activity, the universal bank model (Article 4) was adopted, in its near entirety. In this respect, stock market transactions are the exception, as they continue to be governed by the Securities Market Code.

Titles II, III and IV deal with and govern various situations related to the licensing of credit institutions. Special mention should be made of the granting to the Banco de Portugal of the power to authorise the establishment of credit institutions whenever the authorisation must be given on the basis of technical and prudential criteria, save for any economic convenience criteria (Article 16). As to the establishment of branches and the provision of services, the system laid down in this Decree-Law is designed in such a way as to extend to Portugal the

so-called “Community passport” mechanism envisaged in the Second Banking Co-ordination Directive.

The various Chapters in Title VI contain a set of rules of conduct to guide credit institutions, their members of the board and employees in dealing with customers. Chapter I defines the general rules of conduct to be observed by credit institutions and their representatives, while the subsequent chapters focus on specific sets of rules of conduct, namely those relating to professional secrecy, protection of competition, and advertising.

The concern to ensure that the activities of credit institutions and other financial undertakings are increasingly based on principles of professional ethics and on rules that effectively protect the rights of the “consumer” of financial services is not only shown in the express embodiment of the mentioned general rules of conduct and other procedures, but is also behind the proposed incentive to the preparation of deontological codes of conduct by associations representing the interested bodies (Article 77 (2) to (4)). Thus, the existing guidelines included in the Securities Market Code therein confined to intermediation in transferable securities, are extended to the other activities carried on by credit institutions and other financial undertakings.

Prudential rules are set out chiefly in Chapter II of Title VII.

The guidelines of the previous legislation remain in force with regard to the Banco de Portugal’s extensive powers to issue technical regulations on this matter (Article 99).

However, this Decree-Law envisages and defines several explicit prudential rules, of which it is to highlight those on the control of the suitability of owners of qualifying holdings in credit institutions (Articles 102 and 103) and those which seek to ensure the suitability, experience, independence and availability of the members of the management board of these institutions (Articles 30, 31 and 33).

In line with the guiding principles, which have been followed in this country, the supervision of credit institutions and financial companies, in

particular, their prudential supervision, continues to be entrusted to the Banco de Portugal, except for the auditing and supervisory powers conferred on the Securities Market Commission as regards intermediation in transferable securities.

As to the supervision of credit institutions established in Portugal and in one or more other EC Member States, this Decree-Law embodies the principle of supervision by the authorities of the home Member State.

Articles 130 and following provide for the legal bases required for the supervision of credit institutions on a consolidated basis according to Council Directive 92/30/EEC of 6 April 1992.

A special system relating to the reorganisation of credit institutions continues to exist.

The new system has several differences vis-à-vis the one previously in force, namely the authority responsible for the prudential supervision of credit institutions is now entrusted with powers to take the initiative for and to oversee the reorganisation measures. The new law also contains a far broader range of intervention measures, permitting a much better adjustment to the reorganisation requirements of each case. Indeed a distinction is made between milder measures, which do not involve direct intervention in the institution and are designed to solve less serious financial difficulties or crises, and measures involving direct intervention in the management of the credit institution, particularly the appointment of provisional administrators (with or without an auditing commission).

Article 154 and following of Title IX provide for the setting-up and regulation of a deposit guarantee fund, in which membership shall be compulsory for all credit institutions which take deposits covered by the guarantee, except for mutual agricultural credit banks belonging to the Integrated Mutual Agricultural Credit Scheme, which will continue to participate in their specific fund (Article 156 (3)).

This measure is of the utmost importance for the protection of small depositors, and hence for the stability of the financial system.

Title X sets out the general legal system governing financial companies. Given the wide diversification of these companies, such a system shall obviously be supplemented by special legislation (Article 199).

Among others, the following aspects are of particular importance:

- a)* As regards the authorisation of financial companies or of subsidiaries of their foreign-based counterparts, this Decree-Law follows the same procedures as those applicable to credit institutions;
- b)* The Second Banking Co-ordination Directive is transposed into Portuguese law, which ensures the “Community passport” to financial companies and their EC-based counterparts which are subsidiaries at least 90% controlled by credit institutions and meet the remaining legal requirements (Articles 184 and 188);
- c)* The system to control the suitability of the owners of qualifying holdings is extended to financial companies, which is already provided for in the Securities Market Code for the so-called “financial intermediaries”;
- d)* The Securities Market Commission shall have an important role in all matters relating to intermediation in transferable securities.

Finally, Title XI provides for the sanctions system. The unauthorised taking of deposits or other repayable funds from the public, on one’s own account or on behalf of a third party, constitutes a crime punishable with a maximum sentence of three years’ imprisonment. As to administrative infractions, the prevention and repression of irregular conduct is carried out under the system applicable to mere breaches of regulations, duly adjusted to the requirements and characteristics of the financial sector.

The Regional Governments of the Autonomous Regions of Madeira and the Azores have been consulted.

Therefore:

In use of the legislative powers granted by Law No. 9/92 of 3 July, and according to subparagraphs a) and b) of paragraph 1 of Article 201 of the Constitution, the government decrees the following:

Article 1 — Approval is hereby given to the Legal Framework of Credit Institutions and Financial Companies, hereinafter referred to as the Legal Framework, which is an integral part of this Decree-Law.

Article 2 — The Legal Framework takes effect on 1 January 1993.

Article 3 — 1 — Credit institutions must bring the shares representing their capital into line with the provisions of Article 14(1)(d) of the Legal Framework by 31 December 1993.

2 — Existing situations on 1 January 1993 of non-compliance with the provisions of Article 100 (1) and (3) and of Article 113 (1) and (2) of the Legal Framework shall be resolved within one year as of that date.

3 — As to credit institutions which on the date of publication of this Decree-Law hold a stake higher than that mentioned in Article 101 (1) of the Legal Framework, the period of three years stipulated in that provision is replaced with a period of five years starting on that date.

4 — As to the offences envisaged in Articles 210 and 211 of the Legal Framework, committed prior to the entry into force of this Legal Framework and already punishable under the terms of the legislation hereby repealed, the provisions of Articles 201 to 232 are applicable, without prejudice to the application of the most favourable law.

5 — As to proceedings pending on 1 January 1993, the previous substantive and processual legislation continues to be enforceable, without prejudice to the application of the most favourable law.

Article 4 — Foreign-exchange or money-market mediating companies which on the date of entry into force of the Legal Framework are registered with the Banco de Portugal under the terms of paragraph 1 of Article 4 of Decree-Law No. 164/86 of 26 June, as worded by

Decree-Law No. 229-G/ 88 of 4 July, are considered authorised for the purpose of Articles 174 and subsequent Articles of the said Legal Framework.

Article 5 — 1 — As of the date of coming into effect of the Legal Framework, the legislation related to matters covered by it is repealed, namely:

Decree-Law No. 41403 of 27 November 1957;
Decree-Law No. 42641 of 12 November 1959;
Decree-Law No. 46302 of 27 April 1965;
Decree-Law No. 46492 of 18 August 1965;
Decree-Law No. 46493 of 18 August 1965;
Decree-Law No. 47413 of 23 December 1966;
Decree-Law No. 205/70 of 12 May;
Decree-Law No. 119/74 of 23 March;
Decree-Law No. 540-A/74 of 12 October;
Decree-Law No. 76-B/75 of 21 February;
Decree-Law No. 183-B/76 of 10 March;
Decree-Law No. 353-S/77 of 29 August;
Decree-Law No. 372/77 of 5 September;
Decree-Law No. 2/78 of 9 January;
Decree-Law No. 23/86 of 18 February;
Decree-Law No. 24/86 of 18 February;
Decree-Law No. 25/86 of 18 February;
Decree-Law No. 318/89 of 23 September;
Decree-Law No. 91/90 of 17 March;
Decree-Law No. 333/90 of 29 October;
Executive Order No. 23-A/91 of 10 January;
Decree-Law No. 186/91 of 17 May;
Decree-Law No. 149/92 of 21 July.

2 — Articles 1 and 3 of Decree-Law No. 28/89 of 23 January are repealed as of the date of coming into effect of the executive order to be published under the terms of Article 95 (1) of the Legal Framework.

3 — Decree-Laws Nos. 207/87 of 18 May and 228/87 of 11 June cease to apply to credit institutions and financial companies as of the date of entry into force of the Legal Framework.

4 — References to repealed provisions hereby become references to the corresponding provisions of the Legal Framework.

Examined and approved by the Council of Ministers on 5 November 1992.- *Aníbal António Cavaco Silva - Mário Fernando de Campos Pinto - Artur Aurélio Teixeira Rodrigues Consolado - Jorge Braga de Macedo - Álvaro José Brilhante Laborinho Lúcio.*

Promulgated on 31 December 1992.

Let it be published.

The President of the Republic, *MÁRIO SOARES.*

Countersigned on 31 December 1992.

The Prime Minister, *Aníbal António Cavaco Silva.*

Decree-Law No. 201/2002
of 26 September

More than nine years have elapsed since the entry into force of the Legal Framework of Credit Institutions and Financial Companies, approved by Decree-Law No. 298/92 of 31 December, and notwithstanding the occasional changes that have been introduced, experience gathered from its practical application, as well as developments in both financial activity and its regulatory framework (arising from Community legislation or inspired by the “Basel Committee”) have shown the need for a relatively widespread revision. Changes have been introduced in the aspects of a more substantive nature, regulated by the above-mentioned Decree-Law, although several other aspects have also been revised, some in articulation with them, others of a more formal nature.

First, mention should be made of a revision of the types of credit institutions and financial companies. In both cases, the set of provisions of the general law is explicitly mentioned in references to entities created by subsequent legislation: mutual guarantee companies and electronic money institutions as credit institutions, and credit securitisation fund management companies as financial companies. In addition, an express reference to Caixa Geral de Depósitos, S. A., is no longer made, since it is deemed that this institution is included in the concept of bank, notwithstanding the functions beyond the banking activity, that are specifically entrusted to it by law.

However, the most important changes are not only the taking into consideration of the above-mentioned electronic money institutions as credit institutions – in this particular regard, Directive 2000/28/EC of the European Parliament and of the Council of 18 September 2000 was transposed into Portuguese law – but also the creation of another type of credit institution, the so-called credit financial institutions, whose name

has recently been established after due consideration, and which are characterised by their multifunctional purpose, and are governed by special legislation. On the other hand, the legal scope no longer includes group purchase management companies – whose role has become redundant with the modernisation of the national domestic system – under financial companies, although the scope of this measure is only envisaged for the future, i.e. safeguarding the application of the former juridical system by means of a relevant transitional legal provision.

Another innovation regards the authorisation regime for the establishment of credit institutions and financial companies. On the one hand, from a formal point of view, the provisions specifically applicable to entities having their head office or residence outside the European Union are simplified. On the other hand, the reference to the so-called economic need criterion is suppressed, which is virtually non-existent in the current stage of economic development.

In parallel, mention should be made of the compulsory prior communication to the Banco de Portugal of the voluntary winding-up of entities subject to supervision as well as of both the setting-up of subsidiaries in third countries and the acquisition of qualifying holdings in companies having their head office abroad.

The third area of revision worthy of mention has a somewhat wider scope and relates in general to prudential and supervisory rules. Overall, an attempt was made at tightening the control of the operating conditions of regulated entities, taking namely into account the fact that it is of the public interest to ensure not only prudent and sound management but also the solvability and liquidity of the said entities.

First, the more numerous changes are of a legislative nature and relate to the control of the suitability of the holders of qualifying holdings. For this purpose, the concept of qualifying holding was reworded, in particular in terms of a qualitative criterion; second, while maintaining the absolute presumption of a significant influence in the management of a company, where the holding is equal to or higher than 10% of the capital

or of the voting rights, a refutable presumption is added, whenever the share reaches 5%.

In addition, reporting requirements to the Banco de Portugal are reworded as regards the situations or projects that may induce the above-mentioned significant influence, by differentiating between prior and subsequent reporting requirements; the latter involves, for the first time, the acquisition of a shareholding between 2% and 5%, in the case of a credit institution, or higher than 10%, in the case of financial companies that are not investment firms. Moreover, the Banco de Portugal is entrusted with the power to declare unofficially the qualifying nature of the holdings.

In the appraisal of the projects regarding the acquisition of qualifying holdings, the Banco de Portugal has been granted the possibility of applying a provisional opposition measure, in order to prevent the carrying out of operations that require this type of urgent intervention. The consequence of the Bank's opposition, as in the former legal framework, is the possible prohibition of the voting rights of the holder of the qualifying holding, if it has actually been acquired. However, the prohibition, which up until now was automatic, is thenceforth the object of a decision of the Banco de Portugal, on a case-by-case basis, and it shall also determine the incidence of the prohibition effects in the societary relationships involving the credit institution. It should also be stressed in this regard that the Banco de Portugal has been granted the powers to determine at any time the prohibition of the voting rights, based on facts that may come to its knowledge after the opposition period has elapsed.

The adjustments made to the provisions related to the members of the management bodies, as well as to the prevention of potential conflicts of interest are also included in the context of the objectives mentioned above.

Mention should also be made of the modification of the registration regime at the Banco de Portugal of the members of the management bodies of entities subject to supervision. After the entry into force of this

Decree-Law, no one elected or appointed for that purpose can exercise functions without the Banco de Portugal deciding to make the registration effective.

With respect to the supervisory powers, the duty to cooperate with the respective authority is extended, the latter being recognised the power to demand special audits or specific reports. Adjustments are also made to several provisions related to prudential ratios and limits.

Another aspect is that insurance undertakings shall be treated as credit institutions and financial companies within the context of the precepts regulating credit operations with holders of qualifying holdings, with members of management bodies, and with entities controlled by both of them.

Also noteworthy is the strengthening of the effectiveness of supervisory powers, not only by submitting to them situations that had not been envisaged by law, but also by generalising rules, which until now had only a specific nature, and fostering larger autonomy in the decision-making process, in line with internationally agreed supervisory principles.

Finally, and highlighting only the most relevant aspects of this legislative revision, mention should be made of the change introduced in the financial reorganisation process, namely by creating the conditions for a faster and more efficient intervention in the situations in question on the part of the Banco de Portugal, the Deposit Guarantee Fund and of other financial system entities.

This Decree-Law was prepared after hearing the European Central Bank, the Banco de Portugal, the Securities Market Commission, the Portuguese Insurance Institute, the associations representing the sector, and the associations representing the consumer.

Thus,

Pursuant to the provisions laid down in subparagraph a), of paragraph 1 of Article 198 of the Constitution, the Government decrees the following, having force of general law of the Republic:

Article 1

**Changes to the Legal Framework of Credit Institutions and
Financial Companies**

(See consolidated text)

Article 2

**Addition to Title I of the Legal Framework of Credit Institutions
and Financial Companies**

A new Article 12-A is added to Title I of the Legal Framework of Credit Institutions and Financial Companies.

(See consolidated text)

Article 3

**Change introduced in Chapter II of Title II of the Legal
Framework of Credit Institutions and Financial Companies**

Chapter II of Title II of the Legal Framework of Credit Institutions and Financial Companies ceased to be divided into Section I “General regulations” and Section II “Special regulations”.

Article 4

**Addition to Chapter II of Title II of the Legal Framework of
Credit Institutions and Financial Companies**

A new Article 23-A is added to Chapter II of Title II of the Legal Framework of Credit Institutions and Financial Companies.

(See consolidated text)

Article 5

**Change and addition to Chapter IV of Title II of the Legal
Framework of Credit Institutions and Financial Companies**

Chapter IV of Title II of the Legal Framework of Credit Institutions and Financial Companies thenceforth shall be called “Statutory changes and winding-up”, Article 35-A being added to it.

(See consolidated text)

Article 6

**Change and addition to Chapter I of Title III of the Legal
Framework of Credit Institutions and Financial Companies**

Chapter I of Title III of the Legal Framework of Credit Institutions and Financial Companies thenceforth shall be called “Establishment of branches and subsidiaries”, Article 42-A being added to it.

(See consolidated text)

Article 7

**Addition to Title III of the Legal Framework of Credit
Institutions and Financial Companies**

A Chapter III is added to Title III of the Legal Framework of Credit Institutions and Financial Companies, named “Acquisition of qualifying holdings”, comprised of a new Article 43-A.

(See consolidated text)

Article 8

**Renumbering of Title IV of the Legal Framework of Credit
Institutions and Financial Companies**

Title IV of the Legal Framework of Credit Institutions and Financial Companies, named “Prudential rules and supervision” is renumbered as Title VII.

Article 9

**Addition to Chapter II of Title VII of the Legal Framework of
Credit Institutions and Financial Companies**

A new Article 102-A is added to Chapter II of Title VII of the Legal Framework of Credit Institutions and Financial Companies.

(See consolidated text)

Article 10

**Addition to Chapter III of Title VII of the Legal Framework of
Credit Institutions and Financial Companies**

A new Article 117-A is added to Chapter III of Title VII of the Legal Framework of Credit Institutions and Financial Companies.

Article 11

**Addition to Title I of the Legal Framework of Credit Institutions
and Financial Companies**

A new Article 167-A is added to Title IX of the Legal Framework of Credit Institutions and Financial Companies.

(See consolidated text)

Article 12

**Substitution of references to the Legal Framework of Credit
Institutions and Financial Companies**

The references made in the Legal Framework of Credit Institutions and Financial Companies to the Securities Market Code, to the Chamber of Official Accountants, to the Commission of the European Community and to Directives 77/780/EEC and 89/646/EEC are replaced respectively with references to the Securities Code, the Association of Official Accountants, the European Commission and Directive 2000/12/EC.

Article 13

Transitional provision for group purchase management companies

Group purchase management companies existing on the date of entry into force of this Decree-Law, albeit undergoing an winding-up procedure, continue to be considered financial companies, being subject to the Legal Framework of Credit Institutions and Financial Companies.

Article 14

Revocations in the Legal Framework of Credit Institutions and Financial Companies

Articles 24 to 28, 98, 129, 148 and 180 of the Legal Framework of Credit Institutions and Financial Companies are revoked.

Article 15

Changes to the Legal Framework of Mutual Agricultural Credit and Mutual Agricultural Companies

Article 69 (9) of the Legal Framework of Mutual Agricultural Credit and Mutual Agricultural Companies, approved by Decree-Law No. 24/91 of 11 January shall be reworded as follows:

«9 – Proceeds of fines revert fully to the Mutual Agricultural Credit Fund irrespective of the stage in which the conviction becomes final».

Examined and approved by the Council of Ministers on 1 August 2002.

José Manuel Durão Barroso – Maria Manuela Dias Ferreira Leite.

Promulgated on 9 September 2002.

Let it be published.

The President of the Republic, *JORGE SAMPAIO.*

Countersigned on 13 September 2002.

The Prime-Minister, *José Manuel Durão Barroso.*