

## **Decree-Law No 211-A/2008**

**of 3 November**

This Decree-Law strengthens the reporting and transparency obligations that must be fulfilled, within the scope of the financial sector, towards both the supervisory authorities and the clients of financial institutions.

Simultaneously, this Decree-Law increases from € 25,000 to € 100,000 the limit of the coverage provided by the Deposit Guarantee Fund and the Mutual Agricultural Credit Guarantee Fund, and reduces significantly the repayment period. This change is the result of a transitional commitment, at European level, taking into account the international market environment.

In addition, this Decree-Law endows the Securities Market Commission (*Comissão do Mercado de Valores Mobiliários*) with flexible regulatory mechanisms to adapt to the current market circumstances the legal requirements applicable to collective investment undertakings and real estate investment funds. The Securities Market Commission is thus given special one-off powers to act, enabling it to demand compliance with additional requirements by funds, managing entities, deposit-taking institutions or marketing entities, as well as to exempt them from certain requirements or duties. These special powers shall be exercised by the Securities Market Commission with a view to contributing to a balanced market and to ensure that the interests of participants are protected.

Financial stability shall also be strengthened through information to be reported by financial institutions to supervisory authorities, namely to measure the level of exposure of financial institutions to different types of financial instruments, the risk management and control practices they are subject to, as well as the methodologies adopted to assess their assets, in particular those that are not traded in markets with high liquidity and transparency.

This Decree-Law also seeks to standardise the reporting requirements on complex financial products by requiring comprehensive and clear information which enables the public to fully understand the features and risks of those products. In particular, investors shall disclose information in a clear, concise and understandable manner, expressly identifying the product as a complex financial product. Furthermore, advertising relating to these products shall now be subject to the approval of the supervisory authorities. Without prejudice to this, a special act shall define the legal regime applicable to the issuance and trading of complex financial products.

In relation to consumer credit, institutions authorised to grant this type of credit shall provide their clients, before the signature of loan contracts, with adequate information on credit conditions and total cost, and shall ensure that credit mediating companies provide such information.

At the same time, financial institutions and publicly traded corporations (*sociedades abertas*) shall now communicate to the Securities Market Commission their holdings in corporations having their head office in a non-EC country. Likewise, financial intermediaries are now subject to reporting to the Securities Market Commission any participating interests they may hold or which are managed by an entity having its head office in a non-EC country.

In terms of responsibility, legal persons are now also responsible for infractions committed by persons without executive positions where there is a breach of due diligence duties by the persons holding these positions.

This Decree-Law also strengthens the powers of the National Council of Financial Supervisors, particularly as regards the coordination of joint actions by the supervisory authorities in matters of common concern. In addition, exchanges of information shall be effectively enhanced among supervisors and between the latter and the Ministry of Finance and Public Administration, in the case of relevant information to financial stability.

Finally, this Decree-Law introduces an amendment to the credit securitisation framework adapting it to recent legislative changes regarding the removal of obstacles to the renegotiation of credit conditions. This allows the replacement of renegotiated loans when the latter no longer satisfy the conditions foreseen at the time of their assignment, in accordance with the terms to be established in a regulation by the Securities Market Commission.

The National Council of Financial Supervisors has been heard.

Therefore:

Pursuant to Article 198 (1) (a) of the Constitution, the Government decrees the following:

#### Article 1

##### **Purpose**

1 - This Decree-Law has the purpose of strengthening financial stability, amending:

(b) Decree-Law No 345/98 of 9 November, as amended by Decree-Law No 126/2008 of 21 July, regulating the functioning of the Mutual Agricultural Credit Guarantee Fund;

#### Article 4

##### **Amendment to Decree-Law No 345/98 of 9 November**

Article 14 of Decree-Law No 345/98 of 9 November, as amended by Decree-Law No 126/2008 of 21 July, regulating the functioning of the Mutual Agricultural Credit Guarantee Fund, shall be replaced by the following:

«Article 14

**[...]**

1 - Repayment shall take place within the following time limits:

a) A share of up to € 10,000 of all deposits covered within a maximum period of seven days;

b) The remainder up to the amount fixed in Article 12 (1), within a maximum period of one month.

2 - The time limit mentioned in the foregoing paragraph shall be counted as of the date on which deposits became unavailable, and the Fund, in exceptional circumstances and on a case-by-case basis, may apply to Banco de Portugal for a maximum of three further extensions of the time limit, neither of which shall exceed a maximum period of one month.

3 - (Former paragraph (2))

4 - (Former paragraph (3))

5 - (Former paragraph (4))

6 - (Former paragraph (5))

7 - (Former paragraph (6))»

## Article 12

### **Transitional regime**

1 - Until 31 December 2011, the limit of the guarantee set out in Article 166 (1) of the Legal Framework of Credit Institutions and Financial Companies and in Executive Order No 1340/98 (Series II) of 12 December shall be increased from € 25,000 to € 100,000.

2 - Until the date set out in the foregoing paragraph, the financial resources of the Deposit Guarantee Fund, set out in Article 159 of the Legal Framework of Credit Institutions and Financial Companies, as well as the financial resources of the Mutual Agricultural Credit Fund, set out in Article 7 of Decree-Law No 345/98 of 9 November, may still be supplemented by Treasury transfers or loans.

## Article 13

### **Entry into force**

This Decree-Law entered into force on 12 October 2008.

Examined and approved by the Council of Ministers of 13 October 2008. - *José Sócrates Carvalho Pinto de Sousa - Fernando Teixeira dos Santos - Alberto Bernardes Costa - Jaime de Jesus Lopes Silva.*

Promulgated on 29 October 2008.

Let it be published.

The President of the Republic, Aníbal Cavaco Silva.

Countersigned on 31 October 2008.

The Prime Minister, *José Sócrates Carvalho Pinto de Sousa.*