



CMVM

*This does not dispense with the need to consult the original Portuguese version published in the Official Gazette*

## Securities Code

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**Title I**  
**General Provisions**

**Chapter I**  
**Scope of application**

**Article 1**  
**Securities**

1. In addition to others qualified as such by the Law, Securities are:
  - a) Shares;
  - b) Bonds;
  - c) Equity instruments;
  - d) Units in collective investment schemes;
  - e) Covered warrants;
  - f) Rights detached from the securities described in a) to d) provided that the same applies to all the issue or series or is described in the issue conditions.
  - g) Other documents representing similar juridical situations provided they may be traded on the market.

**Article 2**  
**Scope of application**

1. The present Code regulates:
  - a) The securities and the public offers relating thereto;
  - b) The money-market instruments, excluding the instruments of payment;
  - c) The derivative instruments for the transfer of credit risk;
  - d) The contracts for differences;
  - e) The options, futures, swaps, forward rate agreements and any other derivative contracts relating to:
    - i) Securities, currencies, interest rates or yields, or other derivative instruments, financial indices or financial measures which may be settled physically or in cash;

ii) Commodities, climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that shall be settled in cash or may be settled in cash at the option of one of the parties;

iii) Commodities, by physical settlement, provided that same is traded on a regulated market or a MTF or, if not for commercial purposes, have similar characteristics to the other derivative financial instruments pursuant to Article 38 Commission Regulation (EC) No. 1287/2006, of 10th August;

f) Any other derivative contracts, namely, relating to any of the particulars stated in Article 39 Commission Regulation (EC) No. 1287/2006, of 10th August, provided that have similar characteristics to the other derivative financial instruments pursuant to Article 38 of the said Regulation;

g) The organised forms of trading financial instruments referred to in the preceding sub-paragraphs, the clearing and settlement of the transactions relating thereto and financial intermediation activities;

h) The supervisory and sanction framework for the instruments and the activities referred to in the preceding sub-paragraphs.

2. The references made in the present Code to financial instruments should be deemed to include the instruments stated in paragraphs a) to f) of the preceding paragraph.

3. The provisions of Titles I, VII and VIII are likewise applicable to assurances linked to investment funds and the individual subscription contract to open-end pension funds.

4. Whenever it pertains to units in collective investment undertakings, any references made in this Code to the issuer should be deemed to be made to the managing entity of the collective investment undertaking.

5. [Repealed]

6. [Repealed]

7. References in this Code to investment units should be understood to encompass shares of collective investment undertakings, unless otherwise resulting from the provision itself.

### **Article 3**

#### **Rules of immediate application**

1. Independently of other law that is applicable, the imperative rules of the present Code are applicable if, and provided that, the situations, activities and the acts to which they refer have a relevant connection to the Portuguese Territory.

2. The following acts and activities are deemed to have relevant connection to the Portuguese Territory:

- a) The orders given to members of regulated markets or MTFs registered with the CMVM and the transactions carried out on said markets or systems;
- b) The activities carried out and acts performed in Portugal;
- c) The disclosure of information accessible in Portugal that refers to situations, activities or acts regulated by Portuguese law.

## **Chapter II Form**

### **Article 4 Written form**

The requirement or the reference to written form, written documents or put in writing, made in the present Code in relation to any legal act executed within the scope of business autonomy or administrative proceedings, is deemed to be fulfilled or verified even when the written paper or signature is substituted by another form or by another means of identification that guarantees equivalent levels of intelligibility, durability and authenticity.

### **Article 5 Publications**

1. In the absence of legal provisions to the contrary, mandatory publications are made by means of mass circulating media existing in Portugal and available to the recipients of the information.
2. The CMVM establishes by regulation the means of communication necessary for each type of publication.

### **Article 6 Language**

1. Information disclosed in Portugal that is capable of influencing the decision of the investors, namely, with regard to public offers, regulated markets, financial intermediation activities and issuers should be drawn up in Portuguese or include a duly sworn Portuguese translation thereto.
2. The CMVM may dispense with, partially or totally, the translation when it considers that the interests of investors are protected.
3. The CMVM and the management entities of regulated markets, settlement systems, clearing house, central securities depository and central counterparties may request the translation into Portuguese of documents drawn up in a foreign language which are submitted in the context of their functions.

## **Chapter III Information**

### **Article 7 Quality of information**

1. Information relating to financial instruments, organized forms of trading, financial intermediation activities, clearing and settling of transactions, public offers of securities and issuers, should be comprehensive, true, current, clear, objective and lawful.
2. The provision in the previous sub-article applies irrespective of the means of disclosure and even if the information is inserted in an advice, a recommendation, an advertisement or a rating notice.
3. The requirement criteria for completion of the information are verified according to the means of publicity used. In advertisements, such criteria are substituted by a reference to a document made available to the readers.
4. The legal framework for advertising is applicable to the advertising relating to financial instruments and the activities regulated in the present Code.

### **Article 8 Audited information**

1. Annual financial information contained in the accounts or prospectuses shall be subject to an audit report prepared by a chartered accountant or a statutory auditor, where said shall be:
  - a) Submitted to the CMVM;
  - b) Published in relation to a request for admission to trade on a regulated market; or
  - c) Concerning collective investment undertakings.
2. The chartered accountant and the statutory auditor are for the purposes of said Code, appointed by an auditor and via auditing of their activity.
3. [Repealed].

**Article 9**  
**Registration of auditors**

[Repealed].

**Article 9-A**  
**Auditor's duties**

[Repealed].

3. Notwithstanding the other disclosure and reporting duties that the auditor is subject to, the auditor should immediately notify the CMVM of any facts that comes to his notice while carrying out his duties and concerns the entity to which services are being provided and any others included in the respective scope of consolidated accounts, which are likely to:

a) Amount to a crime or a very serious administrative infraction envisaged in the law or regulation, and the compliance thereof is subject to supervision by the CMVM;

b) Impair such an entity continuing the pursuit of its activity; or

c) Justify the issue of opinions, refusal to give an opinion, an adverse opinion, or the impossibility of issuing a report.

4. Should also immediately notify the CMVM of any facts, which said auditor becomes aware of in carrying out his duties, that relate to others, and that by its seriousness, are capable of affecting the proper functioning of financial instruments markets.

5. The reporting duties set out by this Article shall prevail over any restriction on disclosure of information, legally or contractually envisaged, and the bona-fide compliance thereof does not imply any responsibility for the respective parties.

6. The breach of duties that the registered auditor is subject to under this Code, supplementary legislation or CMVM regulations may determine the cancellation or suspension of the auditor's registration with the CMVM, in accordance with the CMVM Regulation.

7. The auditors and audit entities from third countries that are registered with the CMVM shall be subject to the duties applicable to auditors, and their registration may be cancelled or suspended pursuant to the provisions of the previous paragraph.

### **Article 10** **Auditors' liability**

1. The following are jointly and severally liable for the damage caused to issuers or third parties due to errors in the report or written opinion prepared:

a) Qualified chartered accountants and other individuals who have signed the report or written opinion;

b) Firms of chartered accountants and other auditing companies provided the audited documents have been signed by one of the partners.

2. Auditors should maintain adequate professional indemnity insurance to guarantee the fulfilment of their obligations.

**Article 11**  
**Information standardization**

1. After consulting with the Accounting Standardization Commission and the Chartered Accountants Association, the CMVM may, by means of regulations, define rules, compatible with the international standards, as to the contents, organisation and presentation of economic, financial and statistical information used in financial reports, as well as the respective auditing rules.
2. The CMVM should establish with the Bank of Portugal and the Portuguese Insurance Institute rules designed to secure the compatibility of the information to be rendered, in terms of the previous sub-article, by financial intermediaries also subject to the supervision of one of these entities.

**Article 12**  
**Risk rating**

1. Risk rating companies should be registered with the CMVM.
2. Only risk rating companies with the human, physical and financial resources necessary to secure their reputation, independence and technical competence may be registered.
3. Risk rating services should be rendered impartially and obey the prevailing classifications according to international custom.

**Article 12-A**  
**Investment recommendations**

1. Investment recommendations shall mean research or any other information produced by an independent analyst, an investment firm, a credit institution, any other person whose main business is to produce recommendations or a natural person working for them that, directly or indirectly, expresses a particular recommendation or suggestion to invest or divest in respect of an issuer of securities, securities or any other financial instruments intended for distribution channels or the public.
2. In respect of other natural or legal persons, investment recommendation shall mean any information produced by them, in the context of their profession or their business, which specifically recommends a decision to invest in or divest from securities or other financial instruments intended for distribution channels or the public.

**Article 12-B**  
**Content of investment recommendations**

1. In investment recommendations, the persons referred to in the preceding Article shall:
  - a) Clearly and prominently disclose their identity, in particular the name and job title of the natural person who prepared the recommendation and the name of the legal person responsible that makes the recommendation;

- b) Clearly distinguish facts from interpretations, estimates, opinions and other types of non-factual information;
  - c) Ensure that all sources are reliable or, where there is any doubt as to whether a source is reliable, clearly so indicate;
  - d) Clearly label all projections, forecasts and price targets as such, with express mention of the material assumptions made in producing them;
  - e) Have available any particulars required to demonstrate that the recommendation is consistent with its underlying assumptions, upon the request of the competent authorities.
2. Where the author of the recommendation is one of the persons referred to in no. 1 of the preceding Article, he shall further include in his recommendation:
- a) The identity of the authority which supervises the investment firm or credit institution;
  - b) All sources of information, that the recommendation has been disclosed to the issuer and whether it has been amended by the issuer before its dissemination;
  - c) Any basis of valuation or methodology used to evaluate the issuer and the financial instrument, or to set the corresponding price target;
  - d) The meaning of any recommendation made to "buy", "hold" or "sell" or equivalent expressions, including the time horizon of the investment to which the recommendation relates, as well as any appropriate risk warning, including a sensitivity analysis of the relevant assumptions;
  - e) The planned frequency of dissemination of the recommendation, as well as any updates thereto and any changes in the coverage policy previously announced;
  - f) The date on which the recommendation was first released for distribution is indicated, as well as the relevant date and time for any financial instrument price mentioned, clearly and prominently;
  - g) Where a recommendation differs from a recommendation concerning the same issuer or financial instrument issued during the 12-month period immediately preceding its release, clearly and prominently indicate this change and the date of the earlier recommendation.

**Article 12-C**  
**Investment recommendations and disclosure of conflict of interest**

1. Together with the recommendation, the persons referred to in Article 12-A shall disclose all relationships and circumstances that may reasonably be expected to impair the objectivity of the recommendation, in particular where relevant persons have a direct or indirect financial interest in one or more of the financial instruments which are the subject of the recommendation, or a conflict of interest with respect to the issuer of the securities to which the recommendation relates.

2. When the author of the recommendation is a legal person, the provisions of the preceding number shall also apply to any legal or natural person working for it, under an employment contract or otherwise, who was involved in preparing the recommendation, including at least the following:

a) Disclosure of any interests or conflicts of interest of the author of the recommendation or of related legal persons that are accessible or reasonably expected to be accessible to the persons involved in the preparation of the recommendation;

b) Disclosure of any conflicts of interest of the author of the recommendation or of related legal persons that, although not involved in the preparation of the recommendation, had or could reasonably be expected to have access to the recommendation prior to its dissemination to clients or the public.

3. When the author of the recommendation is one of the persons referred to in no. 1 of Article 12-A, he shall further include in his recommendation:

a) Any qualifying holdings of the author of the recommendation or any related legal person in the issuer or of the issuer in the author of the recommendation or any related legal person;

b) Other significant financial interests held by the author of the recommendation or any related legal person which, due to their relation to the issuer, are relevant to assess the objectivity of his recommendation;

c) Any market-making or price stabilisation transactions in the financial instruments concerned by the recommendation in which the author of the recommendation or any related legal person has participated;

d) Any syndicated agreement to assist in or place the securities of the issuer in which the author of the recommendation has participated as lead-manager in the 12-month period preceding production of the recommendation;

e) Any agreement between the issuer and the author of the recommendation or any related legal person relating to the provision of investment banking services, provided that this would not entail the disclosure of any confidential commercial information and that the agreement has been in effect over the previous 12 months or has given rise during the same period to the payment of remuneration or to the promise of remuneration;

f) Any agreement between the issuer and the author of the recommendation relating to the production of the recommendation;

g) Any tie between the remuneration of the persons involved in the preparation of production of the recommendation and investment banking transactions performed by the investment firm or credit institution which is the author of the recommendation or by any related legal person in favour of the issuer of the securities analysed.

4. Any natural persons involved in the preparation or production of a recommendation who provide services to the investment firm or credit institution which is the author of the recommendation and who acquire, for free or for a consideration, shares in the issuer before a public offer for distribution shall inform the entity which authored or disseminated the recommendation of the price and date of the relevant acquisition, so that these particulars are also made public, without prejudice to the legal liability system applying to these circumstances.

5. At the end of each calendar quarter, investment firms and credit institutions shall display on their website:

a) The percentage of all recommendations to 'buy', 'hold', 'sell' or equivalent terms in their recommendations as a whole;

b) The percentage of recommendations relating to issuers to which the investment firm or credit institution has supplied material investment banking services over the 12-month period preceding production of the recommendation.

#### **Article 12-D**

##### **Dissemination of investment recommendations produced by third parties**

1. Dissemination of an investment recommendation produced by a third party shall be accompanied by a clear and prominent indication of the identity of the person or entity responsible for such dissemination.

2. Whenever a recommendation produced by a third party is substantially altered, such alteration must be clearly indicated and explained in the recommendation itself, and the addressees of the information shall have access to the identity of the producer of the recommendation, its original content and the disclosure of the producer's conflicts of interest, provided that these elements are publicly available.

3. Whenever a substantial alteration consists of a change in the sense of the recommendation, the duties of disclosure laid down in Articles 12-B and 12-C shall also apply to the disseminator of the altered information, to the extent of the alteration made.

4. In the case of dissemination of a summary of an investment recommendation produced by a third party, the persons disseminating such summary shall ensure that the summary is clear, updated and not misleading, mentions the source document and where the disclosures related to the source document can be accessed by the public, provided that they are publicly available.

5. Where a recommendation is disseminated by an investment firm, credit institution or natural person working for such persons under an employment contract or otherwise, in addition to performing the duties provided for in the preceding numbers, such recommendation shall also identify the entity that supervises the investment firm or credit institution and, if the author of the recommendation has not yet so disclosed, the disseminator shall comply with the provisions of Article 12-C in respect of the author of the recommendation.

6. The provisions of this Article shall not apply to the reproduction by media journalists of verbal opinions of third parties on securities, other financial instruments or issuers.

**Article 12-E**  
**Dissemination by reference**

1. Compliance with the provisions of paragraphs a), b) and c) of no. 2 of Article 12-B and Article 12-C may be replaced by a clear indication of the place where such disclosures can be directly and easily accessed by the public, in the case of non-written recommendations or where the inclusion of such disclosures in a written recommendation would be clearly disproportionate in relation to its length.

2. In the case of non-written recommendations, the provisions of the preceding number shall also apply to compliance with the provisions of paragraphs e), f) and g) of no. 2 of Article 12-B.

**Chapter IV**  
**Public companies**

**Section I**  
**General provisions**

**Article 13**  
**Criteria**

1. The following are considered to be companies open to public investment, hereinafter described as "public company":

a) A company incorporated through an initial public offering for subscription specifically addressed at individuals or entities resident or established in Portugal;

b) A company that issues shares or other securities that grant the right to subscribe or acquire shares that have been the object of a public offer for subscription specifically addressed at individuals or entities resident or established in Portugal;

c) A company that issues shares or other securities that grant the right to their subscription or acquisition and are or have been listed on a regulated market situated or operating in Portugal;

d) A company that issues shares that have been sold by public offer for sale or exchange in a quantity greater than 10% of the company's capital directed specifically at individuals or entities resident or established in Portugal;

e) A company created as a result of the demerger of a public company or a company that incorporates, through merger, all or part of its net equity.

2. The company's bylaws may make the launching of a public offer for sale or exchange of nominal shares that result from the opening of share capital according to paragraph d) of the previous sub-article, subject to a resolution by the General Meeting.

#### **Article 14 Information in external acts**

The status of public company should be mentioned in acts classified as external acts by Article 171 of the Companies Code.

#### **Article 15 Equal treatment**

A public company should ensure equal treatment to the holders of securities that it issues and that belong to the same category.

### **Section II Qualifying holdings**

#### **Article 16 Communication duties**

1. Any entity reaching or exceeding a holding of 10%, 20%, a third, a half, two thirds and 90% of the voting rights in the capital of a public company subject to Portuguese law or reducing its holding to a value lower than any of the above thresholds, should, within 4 trading days of the occurrence of said fact or the knowledge thereof:

a) Inform the CMVM and the company holding the participating interest of said fact;

b) Inform the entities described in the previous paragraph of those situations that determine the granting to the participant of voting rights inherent in securities belonging to third parties, according to Article 20(1).

2. The following is also likewise subject to the duties referred to in the preceding paragraph:

a) Any entity reaching or exceeding a holding of 5%, 15% and 25% of the voting rights in the capital or reducing its holding to a value lower than any of the above thresholds with regard to:

i) A public company, subject to Portuguese Law, that issues shares or other securities granting the right to its subscription or acquisition, listed on regulated markets situated or operating in a EU Member State;

ii) A company, with registered office in another Member State, that issues shares or other securities granting the right to its subscription or acquisition, listed exclusively on regulated markets situated or operating in Portugal;

iii) A company, with head-office outside the European Union, that issues shares or other securities granting the right to its subscription or acquisition, listed on regulated markets situated or operating in Portugal, regarding which the CMVM is the competent authority pursuant to Article 244-A; and

b) Any entity reaching or exceeding a holding of 2% and reducing its holding to a value lower than said percentage of the voting rights in the capital of a public company envisaged in i) of the preceding sub-paragraph.

3. For the purposes of the preceding paragraphs:

a) It is deemed that the participant has knowledge of the determinant fact of the reporting requirements within a period of two trading days of the occurrence of said fact;

b) The voting rights' calculations are based on all the shares with voting rights, with the suspension of the respective exercise being of no consequence to the calculations.

4. The communication carried out in accordance with the preceding paragraphs should include the following:

a) The identification of the entire chain of entities to which the qualifying holding is assigned by Article 20/1, regardless of the law to which same is found to be subject;

b) The percentage of voting rights assigned to the holder of the qualifying holdings, the percentage of equity capital and the number of corresponding shares, and in addition, when applicable, the details of holding per class of shares;

c) The date whereon the holding reached, exceeded or the thresholds reduced as envisaged in paragraphs 1 and 2.

5. In the event of the reporting duty being incumbent on more than one participant, a single communication may be made that would exonerate the participants from the reporting duties in the sense that the communication would be considered done.

6. When the relevant thresholds are exceeded, pursuant to Article 20/1/e), the holding of the financial instruments that confer the right to acquire, on the participant, solely by own initiative, by virtue of an agreement, shares with voting rights, already issued by the issuer whose shares are admitted to trading on a regulated market, the participant should:

a) Include all the instruments that have the same underlying asset in the communication;

b) Issue as many communications as there are issuers for the underlying asset of the same financial instrument;

c) Include in the communication referred to in the preceding paragraph, an indication of the date or period wherein the acquisition rights that the instrument confers may be exercised and the date whereon the instrument lapses.

7. When the relevant thresholds are reduced or exceeded, pursuant to Article 20/1/g), the assignment of discretionary powers to a single General Meeting:

a) Whoever confers discretionary powers, may issue a single communication, at that time, provided that the information required in paragraph 4 as to the beginning and the end of the assignment of discretionary powers for the exercise of the voting rights is made clear;

b) The person, to whom the voting rights are assigned, may issue a single communication, at the point when the discretionary powers are conferred, provided that the information required in paragraph 4 as to the beginning and the end of the assignment of discretionary powers for the exercise of the voting rights is made clear.

8. The duties laid down in the present Article are not applicable to the holdings resulting from the transactions involving members of the European System of Central Banks, acting in the capacity of monetary authorities, within the context of a guarantee, of a repurchase agreement or a similar agreement of liquidity authorized for monetary policy reasons or within the context of a payment system, provided that the transactions are carried out within a short time period and provided that the voting rights inherent to the shares in question are not exercised.

9. The holders of qualifying holdings in the company referred to in paragraph 2/a)/i) should provide the CMVM, at the request of same, information on the origin of the funds used in the acquisition or increase of said holding.

#### **Article 16-A** **Settlement and market making**

1. The provided for in paragraphs 1 and 2 of the previous Article is not applicable to shares that are transacted exclusively for the purposes of clearing and settlement operations in the usual and short settlement cycle, except for the duty to notify the CMVM.

2. For the purposes of the previous paragraph, the usual and short settlement cycle comprises a 3-day trading period as from the time of the transaction.

3. Except for the duty to notify the CMVM, the provided for in paragraphs 1 and 2 of the previous Article is not applicable to the financial intermediary that acts as a market maker, detains holdings that achieve, surpass or become lower than 5% of the voting rights that correspond to the share capital, provided that the latter neither intervenes in the management of the issuer concerned, nor influences the issuer to purchase those shares or favour its price.

4. For the purposes of the previous paragraph, the financial intermediary shall:
- a) Notify the CMVM that it is acting or intends to act as a market maker in respect of the issuer concerned, within the deadline provided for in Article 16/1;
  - b) Inform the CMVM as soon as it decides to cease being a market maker;
  - c) At the request of the CMVM, identify the shares held whilst carrying out the market maker activity, by any verifiable means possible except if it is unable to identify those financial instruments in which case the latter must be kept in a separate account;
  - d) When required by the CMVM, exhibit the market maker contract.

**Article 16-B**  
**Non-transparency of the qualifying holding**

1. In the absence of the notification mentioned in Article 16, and if same does not embrace the provided for in paragraph 4/a of the mentioned Article or, in any case, if there is substantiated doubts as to the identity of the persons to whom the voting rights on a qualifying holding may be ascribed to in accordance with Article 20/1 or, concerning the absolute compliance of the disclosure duties, the CMVM shall notify the interested parties, the Administrative and Supervisory Bodies and the Chair of the General Meeting of the public company in question.
2. The interested parties may show evidence in order to clarify the aspects mentioned in the CMVM notification or take measures with a view to ensuring the transparency of the ownership of the qualifying holdings, 30 days after receipt of the notification.
3. If the elements furnished or the measures taken by the interested parties do not clarify and bring closure to the situation, the CMVM shall inform the market on the lack of transparency regarding the ownership of the qualifying holding in question.
4. As from the moment that the CMVM informs the market under the terms mentioned in the previous paragraph, both the exercise of voting and financial rights are immediately and automatically suspended except for the preference right for the subscription of capital increase regarding the qualifying holding in question, until the CMVM informs the entities referred to in paragraph 1, that the ownership of the qualifying holding is transparent.
5. The financial rights mentioned in the preceding number that the qualifying holding in question is entitled to, shall be deposited in a special account opened at a credit institution that is authorised to accept deposits in Portugal. Debit entries are not allowed during the suspension period.
6. Before adopting the measures established in paragraphs 1, 3 and 4, the CMVM shall inform the Banco de Portugal and the ISP whenever it entails entities that are subject to their supervision.

**Article 16-C<sup>1</sup>**  
**Holdings of public companies**

Pursuant to Article 16, the public companies shall report the holdings held by companies based in a State which is not a European Union Member State.

**Article 17**  
**Disclosure**

1. By the means referred to in Article 244/4, the company holding the participating interest should disclose as soon as possible, all the information received in accordance with Article 16 within three trading days thereof.
2. The company holding the participating interest and the board members and, in addition the management entities of the regulated markets wherein the shares or other securities that confer the right to subscription or acquisition are admitted, should inform the CMVM whenever they are aware or have strong circumstantial evidence of a breach of the disclosure duties laid down in Article 16.
3. The company, with which the company holding the participating interest has a control or group relationship, may comply with the duty to disclose.
4. The disclosure referred to in the present Article may be carried out in a language of current use on the international financial markets if same was utilised in the original communication.

**Article 18**  
**Trading days**

1. For the purposes of the present paragraph, trading days are deemed to be days where the regulated markets, wherein the shares or other securities that confer the right to subscription or acquisition are admitted, are open for trading.
2. The CMVM should disclose on the Information Disclosure System a calendar reflecting the trading days of the regulated markets that are situated or functioning in Portugal.

**Article 19**  
**Shareholders' agreements**

1. Shareholders' agreements, aimed at acquiring, maintaining or reinforcing a qualifying holding in a public company or securing or frustrating the success of a take-over, should be communicated to the CMVM by any of the contracting parties within 3 days of their execution.
2. The CMVM should determine the publication of the agreement, wholly or partially, according to its relevance to the control over the company.

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<sup>1</sup> Amended by Article 6 Decree-Law No. 211-A/2008, of 3<sup>rd</sup> November

3. Company resolutions based on express votes exercised pursuant to agreements that have not been communicated or published according to the terms of the previous sub-articles are voidable, except if it is proved that the resolution would have been taken without those votes.

## **Article 20** **Attribution of voting rights**

1. In the calculation of qualifying holdings consideration should be given, in addition to those attaching to shares of which the participant has ownership or usufruct, the voting rights:

- a) Held by third parties in their own name, but on behalf of the participant;
- b) Held by a company with which the participant is in a control or group relationship;
- c) Held by holders of voting rights with whom the participant has entered into a voting agreement, except if, by virtue of this same agreement, the participant is bound to follow a third party's instructions;
- d) Held, if the participant is a company, by members of its administration and supervisory committees;
- e) That the participant may acquire pursuant to an agreement executed with the respective holders;
- f) Attaching to shares held by way of security or managed by or deposited with the shareholder if the voting rights have been attributed to the shareholder;
- g) Held by holders of voting rights which have granted discretionary powers to the shareholder to exercise them;
- h) Held by persons that have entered into any agreement with a shareholder aimed at either acquiring control of the company or frustrating any changes to its control or otherwise constituting an instrument of concerted exercise of influence over the company in which they own shares;
- i) Attributable to any individual or entity described in one of the previous paragraphs by application, with due adaptations, of the criteria described in any of the other paragraphs.

2. Holders of securities in which inherent voting rights may be attributable to the individual or entity with a qualifying holding should provide such individual or entity with the necessary information for the purposes of Article 16.

3. Voting rights attaching to shares forming part of managed funds or portfolios shall not be considered attributable to the company controlling the investment fund operating entity, the venture capital fund operating entity or a financial institution authorised to provide portfolio management services for the account of third parties and associate companies of pension funds forming part of managed portfolios or funds, provided that the operating entity or financial institution exercises such voting rights independently of the controlling company or associate companies.

4. For the purposes of paragraph h) of no. 1, agreements concerning restrictions on the transfer of shares representing the share capital of the affiliate company are presumed to be instruments of concerted exercise of influence.

5. The presumption referred to in the preceding number may be rebutted before the CMVM by proving that the relationship established with the shareholder is independent of any effective or potential influence over the affiliate company.

#### **Article 20-A<sup>2</sup>**

##### **Attribution of voting rights concerning shares forming part of collective investment undertakings, pension funds or portfolios**

1. For the purposes of no. 3 of the preceding article, a company that controls the operating entity or financial institution and the associate companies in pension funds shall benefit from a derogation of aggregated attribution of voting rights, provided that:

- a) They do not interfere, by means of direct or indirect instructions, in the exercise of voting rights attaching to shares forming part of the investment fund, pension fund, venture capital fund or portfolio;
- b) The operating entity or financial institution shows autonomy in respect of decision-making processes concerning the exercise of voting rights.

2. In order to benefit from the derogation of the aggregated attribution of voting rights, the company that controls the management entity or the financial intermediary should:

- a) Submit an updated list to the CMVM of all the management entities and financial intermediaries controlled thereby, and in the case of entities subject to foreign law, indicate the respective supervisory authorities thereto;
- b) Submit to the CMVM a substantiated statement, concerning each management entity or financial intermediary stating the compliance with the provisions of the preceding paragraph;

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<sup>2</sup> Wording provided by Article 6 Decree-Law No. 52/2010, of 26th May

c) Show clearly to the CMVM, at the request of same, that:

i) The organisational structures of the relevant entities ensure the exercise thereof independently of the voting rights;

ii) The persons who exercise the voting rights, do so independently;  
and

iii) There exists a clear and written mandate, that in the cases wherein the controlling company receives services provided by the controlled entity or holds direct holdings in assets managed by said entity, a contractual relationship between the parties is established in accordance with normal market conditions for similar cases.

3. For the purposes of paragraph c) of the preceding paragraph, the relevant entities should adopt, at the least, written policies and procedures that appropriately prevents the access to the information concerning the exercise of voting rights.

4. In order to benefit from the derogation of aggregated attribution of voting rights, associate companies in pension funds must send the CMVM a substantiated statement declaring that they comply with the provisions of no. 1.

5. In the event of the attribution being due to the holding of financial instruments which confer on the participant the right to acquire, exclusively by own initiative, under a formal agreement, shares with voting rights, already issued by an issuer whose shares are already admitted to trading on a regulated market, it suffices for the purposes of paragraph 2, that the company referred to therein submits to the CMVM the information specified in sub-paragraph a) thereof.

6. For the purposes of paragraph 1:

a) Direct instructions are considered to be those given by the controlling company or other entity controlled by same that requires the manner of how the voting rights are exercised in specific cases;

b) Indirect instructions are considered to be those that, generally or particularly, regardless of form, are transmitted by the controlling company or any entity controlled by same, and restrict the margin of discretion of the management entity, financial intermediary and company associated with pension funds with regard to the exercise of voting rights so as to serve the specific business interests of the controlling company or other entity controlled by same.

7. As soon as it is considered, in the terms of no. 1, that the independence of the operating entity or financial institution that involves a qualifying holding in a publicly traded company is not substantiated, without prejudice to any sanctions applicable thereto, the CMVM shall inform the market and notify this event to the chairman of the shareholders' meetings, the board and the supervisory board of the affiliate company.

8. The CMVM's declaration entails immediate attribution of all voting rights attaching to the shares forming part of the investment fund, pension fund, venture capital fund or portfolio, as long as the independence of the operating entity or financial institution is not demonstrated, with the corresponding consequences, and shall further be notified to the shareholders in or clients of the operating entity or financial institution.

9. The adoption of measures referred to in paragraph 7 is preceded by prior consultation with:

a) The Portuguese Central Bank or the Portuguese Insurance Institute (ISP), where the qualifying holding pertains to public companies that are subject to the supervision of one of the said authorities;

b) The Portuguese Insurance Institute (ISP), where the qualifying holding pertains to the voting rights attached to shares held by pension funds.

### **Article 21 Control and group relationships**

1. For the effects of this Code, control is deemed to exist between a natural or legal individual and a company when, regardless of whether the domicile or headquarters is located in Portugal or abroad, that said individual is capable of exerting, directly or indirectly, a dominant influence over said company.

2. In any case, control exists when a natural or legal individual:

a) Holds the majority of voting rights;

b) May exercise the majority of voting rights, according to the terms of the shareholders' agreement;

c) May appoint or dismiss the majority of the members of the management body or supervisory committee.

3. Companies qualified as such by the Companies Code, regardless of whether their headquarters are in Portugal or abroad, are deemed to be a group for the effects of this Code.

### **Article 21-A Essential equality and interchangeability**

1. The following duties are not applicable to issuers with registered offices in Non-European Member States:

a) Should the applicable Law in Articles 16 and 17, require that the information on qualifying holdings be disclosed within a 7-day trading deadline;

- b) Should the applicable Law, in Articles 20/3 and 20-A/1, oblige the management entities of the investment fund or the financial intermediaries that are authorised to carry out portfolio management activities, to maintain at all times, the independence of the exercise of voting right apropos the controlling company and does not take into account the interests of the controlling company or any other controlled entity by same, whenever conflicts of interest arise.
2. For the purposes of paragraph b) of the preceding paragraph, the controlling company shall:
- a) Comply with the disclosure duties mentioned in Article 20-A/2 and 5;
  - b) State, as regards each of the entities mentioned in paragraph b/ of the preceding paragraph, that the requirements mentioned in Article 20-A/1 have been met;
  - c) Demonstrate, at the request of the CMVM, that the requirements established in Article 20-A/2/c and /3, are complied with.

**Article 21-B<sup>3</sup>**  
**Notice convening meeting**

1. The minimum period between disclosure of the notice convening the General Meeting and the date of the public company's general meeting should be at least 21 days.
2. In addition to the details envisaged in Article 377/5 of the Commercial Companies Code, the notice convening the public company's general meeting should include at least the following:
- a) In the case of an issuer of shares admitted to trading on a regulated market, information on the procedures for participating in general meetings, including the record date and a statement that only those who are shareholders on that date shall have the right to take part and vote at the general meeting;
  - b) Information on the procedures that shareholders should comply with in order to exercise the rights of including items on the agenda, submission of draft resolutions and information at the general meeting, including deadlines for the exercise thereof;
  - c) Information on the procedure for shareholders to comply with in order to be represented at the general meeting, stating where the proxy form is available, or including said proxy form;
  - d) Indication of where and how the full, unabridged text of the documents and draft resolutions to be submitted to the general meeting may be obtained.

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<sup>3</sup> Amended by Article 4 Decree-Law No. 49/2010, of 19th May

3. The information envisaged in sub-paragraphs b) and c) above may be replaced by information on the deadlines for exercising said rights, together with a link to the company's website wherein information is available concerning the content and means of exercising same.

4 – The general meeting of an issuer as a credit institution or a financial company may, by qualified majority of two thirds of the truly expressed votes, pass a resolution for amending the articles of association in order to provide for a shorter period than that which is envisaged in paragraph 1, but not less than 10 days subsequent to the convening date, provided that the following conditions are cumulatively met when:

a) The convening of the general meeting is aimed solely at passing resolution concerning a capital increase;

b) The requirements on applying a corrective intervention measure as provided for in Article 141 of the General Framework on Credit Institutions and Financial Companies have been met;

c) A capital increase is necessary in order to avoid that the requirements for applying a resolution measure as per Article 145/2 of the General Framework on Credit Institutions and Financial Companies, are fulfilled.

5 – Should the previous paragraphs be applicable, then:

a) The deadline in Article 23-B/2 is reduced to three days following publication of the convening notice;

b) The maximum deadline provided for in Article 23-B/3 is reduced to five days before the general meeting, regardless of the convening method.

#### **Article 21-C<sup>4</sup>** **Information prior to the general meeting**

1. In addition to the details envisaged in Article 289/1 of the Commercial Companies Code, the issuer of shares admitted to trading on a regulated market should make the following information available to its shareholders at the company's registered office and website:

a) A notice convening the general meeting;

b) The total number of shares and voting rights as at the date of the notice's publication (including separate totals for each class of shares, if applicable);

c) The forms to be used for voting by proxy and voting by correspondence, where same are not precluded by the memorandum and articles of association;

d) Other documents to be submitted to the general meeting.

2. The issuers of shares admitted to trading on a regulated market should make the information envisaged in the preceding paragraph available, including the information specified in Article 289 of the Commercial Companies Code, on the publication date of the notice and keep this information for at least a year on its website.

3. Where for technical reasons the company does not make the forms envisaged in paragraph 1/c above available on its website, the company should send said forms free of charge to the shareholder who requests it.

### **Section III Corporate resolutions**

#### **Article 22<sup>5</sup> Postal vote**

1. In public companies' General Meetings, the right to vote on matters that have been mentioned in the notice convening the meeting may be exercised by mail.

2. The provision of the previous sub-article may be waived by the company's bylaws, except in relation to an amendment of same and the election of members of the governing bodies.

3. [Repealed]

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<sup>4</sup> Amended by Article 4 Decree-Law No. 49/2010, of 19th May

<sup>5</sup> Wording provided by Article 3 Decree-Law No. 49/2010, of 19th May

4. The company should certify the authenticity of the vote and assure, until the voting takes place, its confidentiality.

**Article 23<sup>6</sup>**  
**Proxy vote**

1. Notwithstanding Article 385 of the Commercial Companies Code, the shareholders of a public company may for each general meeting appoint different representatives with regard to shares held in different securities accounts.

2. As for issuers of shares admitted to trading on a regulated market, the memorandum and articles of association may not preclude the representation of shareholders who submit a proxy to the Chairman of the Presiding Board of the General Meeting within the time period set out in Article 23-B/3 and e-mail may be used for said purpose.

3. In addition to the details referred to in Article 381/1/c) of the Commercial Companies Code, the proxy application for representation at a public company's general meeting, which is made for more than five shareholders or through one of the means of contact with the public set out in Articles 109/2 and 109/3/b), shall include the following:

- a) The voting rights attributable to the applicant pursuant to Article 20/1;
- b) The basis for the way the vote is to be cast by the applicant.

4. The proxy form should be submitted to the CMVM two days before being sent to the shareholders with voting rights.

5. The applicant should provide the shareholders with voting rights all the relevant information that is requested.

**Article 23-A<sup>7</sup>**  
**Right to convene**

1. The shareholder or shareholders of the issuers of shares admitted to trading on a regulated market holding shares that correspond to at least 2% of the equity, may exercise the right to request a summoning for a general meeting in accordance with the provided for in article 375 of the Commercial Companies Code.

2. For issuers of shares admitted to trading on a regulated market, the exercising right to include agenda items, provided for in article 378 of the Commercial Companies Code further included the following provisos:

- a) The request to include agenda items may be presented by a shareholder or shareholders that fulfil the criteria provided for in paragraph 1;
- b) The request includes a resolution proposal for each item for inclusion on the agenda;

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<sup>6</sup> Wording provided by Article 3 Decree-Law No. 49/2010, of 19th May

<sup>7</sup> Amended by Article 4 Decree-Law No. 49/2010, of 19th May

c) The items to be included on the agenda as well as their resolution proposals, are disclosed to the shareholders in like way to that used to disclose the convening notice, as soon as possible and always until the registration date mentioned in article 23-C/1.

#### **Article 23-B <sup>8</sup>**

##### **Inclusion of agenda items and resolution proposals**

1. The shareholder or shareholders that fulfil the requirements in paragraph 1 of the previous article may request inclusion of resolution proposals on issues mentioned in the convening notice or as an addendum thereto, at issuers whose shares are admitted to trading on a regulated market.
2. The request mentioned in the previous paragraph shall be sent, in writing to the Chair of the General Meeting during the five days following the disclosure of the convening notice together with the information to be included in the resolution proposal. Article 378/4 of the Commercial Companies Code is applicable.
3. The resolution proposals accepted as per the previous paragraph and its information are disclosed as soon as possible within the maximum deadline established in article 378/3 of the Commercial Companies Code, to the shareholders in like way to that used to disclose the convening notice.

#### **Article 23-C <sup>9</sup>**

##### **Participating and voting at the general meeting**

1. The issuers of shares admitted to trading on a regulated market are entitled to participate at the general meeting and discuss and vote, on the registration date correspondent to 0 hours (GMT) of the 5th trading day prior to the meeting date, as holders of shares that confer them with at least one vote according to the law and the company contract.
2. The exercising of the rights mentioned in the previous paragraph is neither hampered by share transmission after the registration date nor does it rely on the blocking of same between said date and the general meeting date.
3. Anyone wishing to participate in the general meeting of the issuer of shares admitted to trading on a regulated market, shall do so in writing to the Chair of the General Meeting and to the financial intermediary where the individual registration account is kept, until the day prior do that mentioned in paragraph 1 and may use electronic mail means to do so.
4. The financial intermediary that as per the previous paragraph is informed of its client's wish to participate in the general meeting of the issuer of shares admitted to trading on a regulated market, shall send information on the number of shares registered in its client's name including the date of registration to the Chair of the General Meeting and may use electronic mail means to do so.

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<sup>8</sup> Amended by Article 4 Decree-Law No. 49/2010, of 19th May

<sup>9</sup> Amended by Article 4 Decree-Law No. 49/2010, of 19th May

5. The CMVM may via regulation, define the contents of the information mentioned in the previous paragraph.

6. The shareholders of the issuers of shares admitted to trading on a regulated market that in the course of its duties, hold shares in their own name but on behalf of clients, may vote with their shares disparately provided that and apart from that required in paragraphs 3 and 4, forward to the Chair of the General Meeting within the same deadline and using sufficient and proportional means of evidence:

- a) Identification of each client and the number of shares to be used in voting on own behalf;
- b) The precise voting instructions given by each client for each agenda item;

7. Whoever as per paragraph 3, has declared the wish to participate at the general meeting and has transferred the shares' holdership between the registration date mentioned in paragraph 1 and the date of the conclusion of the general meeting, shall immediately communicate it to the Chair of the General Meeting and to the CMVM.

#### **Article 23-D<sup>10</sup>** **Minutes of the general meeting**

1. Notwithstanding the provision of Article 63/2 of the Commercial Companies Code, the minutes of the general meeting of public companies shall as to each resolution, further include:

- a) The total number of issued votes;
- b) The equity percentage representing the corresponding total number of issued votes;
- c) The number of shares that correspond to the total number of issued votes.

2. The information in subparagraphs a/, b/, d/ and Article 63/2 of the Commercial Companies Code and of the previous paragraph is mandatorily disclosed to shareholders and to whoever is entitled to participate and vote at the meeting concerned, on the company's internet site within 15 days after the conclusion of the meeting or in those situation provided for in Article 384/9/b of the Commercial Companies Code, on the final voting count.

#### **Article 24** **Suspension of a company resolution**

1. The protective measure for the suspension of a company resolution taken by a public company may only be requested by shareholders that, individually or collectively, own shares corresponding at least to 0.5% of the share capital.

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<sup>10</sup> Amended by Article 4 Decree-Law No. 49/2010, of 19th May

2. Any shareholder however, may request, in writing, that the board of directors abstains from carrying out a company resolution it considers invalid, specifying the respective defects.

3. If the resolution is declared null or void, the members of the management body of the company that carry out the resolution without taking into consideration the request presented according to the terms of the previous sub-article, would be liable for the damages caused, and their liability towards the company should not be waived by the provision set out in Article 72(4) of the Companies Code.

### **Article 25** **Share capital increase**

Shares issued by a public company constitute an autonomous category:

- a) For a period of 30 days from the capital increase resolution; or
- b) Until the *transit in rem judicatam* of a judicial decision on an action of annulment or declaration of nullity of a company's resolution proposed within that period.

### **Article 26** **Annulment of a resolution for share capital increase**

1. The annulment of a share capital increase resolution of a public company leads to the cancellation of new shares if these have been admitted to listing on a regulated market.

2. Consideration for the cancellation is due in the amount corresponding to the real value of the shares, as determined, at the company's expense, by a qualified and independent expert designated by the CMVM.

3. Creditors whose rights accrued before the registration of annulment may, within a period of six months from this registration, demand in writing that the company provides adequate guarantees for the performance of unmatured obligations.

4. Payment of the consideration for the cancellation may only be carried out after the time period described above has expired and creditors who have contacted the company in the same period have been paid or guaranteed.

## **Section IV** **Loss of the status of public company**

### **Article 27** **Requirements**

1. A public company loses this status when:

- a) A shareholder has, as a consequence of the takeover, reached a holding of more than 90% of the voting rights calculated according to the terms of Article 20(1);

- b) The loss of such status is decided in a General Meeting of the company by a majority of shareholders representing not less than 90% of the company's capital and in meetings of special shareholders and other securities that grant the right to subscription or acquisition of shares by a majority of shareholders representing not less than 90% of the said securities;
  - c) One year has elapsed since the exclusion of shares from trading on regulated markets, based on the lack of public dispersion.
2. The company, or an offeror in the case of paragraph a) of the previous sub-article, may request the CMVM to cancel its registration as a public company.
3. In the case of sub-article (1) (b) above, the company should propose a shareholder who will undertake to:
- a) Acquire, within the period of three months following the CMVM's granting, the securities owned, at that time, by those that have not voted favourably on any resolutions of the General Meeting;
  - b) Guarantee the obligation described in the previous paragraph by means of a bank guarantee or cash deposit with a credit institution.
4. The consideration for the acquisition described in sub-article 3 is calculated according to the terms of Article 188.

#### **Article 28 Publications**

1. The CMVM's decision is published, at the initiative and expense of the company, in the bulletin of the regulated market where the securities were listed and by one of the means described in Article 5.
2. In the case of sub-article 1(b) of the previous Article, the publication should mention the terms of the acquisition of securities and be repeated at the end of the first and second month of the period for exercising the right of disposal.

#### **Article 29 Consequences**

1. The loss of public company status is effective from the publication of a favourable decision by the CMVM.
2. The declaration of loss of public company status implies the immediate exclusion from trading on the regulated market of the company's shares and securities that grant subscription or acquisition rights, their readmission being prohibited for a period of one year.

#### **Article 29-A Deadlines**

The deadlines provided for in this chapter are defined as per CMVM Regulation.

## **Chapter V Investors**

### **Article 30 Qualified investors**

1. Without prejudice to the provisions of the following numbers, the following entities are considered qualified investors:

- a) Credit institutions;
- b) Investment firms;
- c) Insurance companies;
- d) Collective investment institutions and respective managing companies;
- e) Pension funds and respective managing companies;
- f) Other financial institutions authorised or regulated, namely securitisation funds, respective managing companies and other financial companies prescribed in the law, securitisation companies, risk capital companies, risk capital funds and respective managing companies;
- g) Financial institutions of non-European Union Member States that carry out a business similar to any business referred to in the preceding paragraphs;
- h) Entities that trade in financial instruments on commodities;
- i) National and regional governments, central banks and public organisations that manage public debt, international and supranational institutions such as the European Central Bank, the European Investment Bank, the International Monetary Fund and the World Bank.
- j) Persons referred to in Article 289/3/f;
- k) Legal persons whose dimension, according to their last individual annual accounts, meets the following two criteria:
  - i) Equity of two million euros;
  - ii) Total assets of 20 million euros;
  - iii) Net turnover of 40 million euros.
- l) People who have been given this treatment, in accordance with Article 317-B.

2 - [Repealed].

3 - [Repealed].

4. The CMVM, by regulation, may classify as professional investors other entities particularly skilled and experienced in financial instruments, namely, securities issuers, defining the economic and financial criteria allowing said classification.

5 - For the purpose of qualifying the offer and subject to the applicable legislation on personal data protection, financial intermediaries communicate to the issuer, upon the latter's request, the category of their relevant clients.

### **Article 31 Class action**

1. The following have the right to class action for the protection of the homogeneous individual or collective interests of retail investors in financial instruments:

- a) Retail investors;
- b) Associations for the defence of investors that fulfil the requirements detailed in the subsequent Article;
- c) Foundations that have as an objective the protection of investors in financial instruments.

2. The conviction obtained should indicate the entity in charge of the receipt and management of the indemnity due to those shareholders not individually identified, designating, according to the circumstances, sinking funds, associations for the defence of investors or one or various shareholders identified in the action.

3. Indemnities that are not paid, due to prescription or the impossibility of identifying the respective shareholders, should revert to:

- a) The sinking fund relating to the activity giving rise to the indemnity;
- b) In the absence of the sinking fund described in the previous sub-article, the investors' compensation system.

### **Article 32 Associations for the defence of investors**

Without prejudice to the principle of freedom of association, only non-profit associations for the defence of investors, legally incorporated, will benefit from the rights conferred by this Code and supplementary legislation, if they meet the following requirements, verified by registration with the CMVM:

- a) Foundations whose objects, according to the articles of association, include the protection of investors in financial instruments;
- b) Have amongst their associates at least one hundred natural individuals that are not qualified investors;
- c) Effectively carry out the activity for more than one year.

### **Article 33**

#### **Mediation of conflicts**

1. The CMVM organises a service intended for the voluntary mediation of conflicts between retail investors, on the one hand, and financial intermediaries, investment advisers, management entities of regulated markets or MTFs or issuers, on the other.
2. The mediators are designated by the CMVM's Executive Board, which may choose individuals from its own organisation or other individuals of recognised repute and competence.
- 3 - The CMVM shall notify the European Securities and Markets Authority of the service referred to in paragraph 1 and the relevant procedures.

### **Article 34**

#### **Mediation proceedings**

1. Mediation proceedings are defined by the CMVM's regulations and should obey the principles of impartiality, speed and gratuitous.
2. When the conflict concerns homogeneous individuals or collective investor interests, the association for the defence of investors may initiate the mediation and participate in it, as principal or accessory.
3. The mediation proceeding is confidential and the mediator is bound to secrecy in relation to all information obtained during mediation, and the CMVM may not use in any process material knowledge which was acquired exclusively from the mediation proceedings.
4. The mediator may attempt conciliation or propose to the parties a solution that seems more adequate.
5. The agreement resulting from mediation, in writing, has the nature of an extra-judicial settlement.

### **Article 35**

#### **Sinking funds constitution**

1. The management entities of regulated markets, MTFs, and settlement systems, clearing houses or central counterparties may constitute or promote the constitution of sinking funds.
2. The sinking funds aim to indemnify retail investors for the damages suffered as a result of an act by any financial intermediary member of the market or system, or authorised to receive and transmit orders for execution, and the participants in said systems.
3. Participation in the sinking fund is optional, without prejudice to the following number.

4. The management entities referred to in paragraph 1, may determine that participation in a fund constituted or promoted by same is compulsory for the members authorized to execute orders on a third party's behalf and the participants in the systems.

### **Article 36 Management of sinking funds**

1. Sinking funds are managed:

a) By an entity that has such management as its exclusive objective and participates as a partner in one or more of the managing entities described in sub-article 1 of the previous Article; or

b) By the managing entity of the market or settlement system to which the fund is subordinated.

2. In the case of paragraph b) of the previous sub-article, a sinking fund is considered an independent asset.

3. The board of directors of the sinking fund managing entity is responsible for the following:

a) To prepare the fund's regulations;

b) (Repealed)

c) To execute decisions concerning indemnity to be paid by the sinking fund.

d) To decide the dissolution of the sinking fund, in the terms of its regulation.

4. The fund's regulations are approved by the CMVM and define, namely:

a) The minimum amount of the fund's assets;

b) The complaint and decision process;

c) The maximum limit of indemnity;

d) The fund's revenue.

5. The fund's managing entity and the members of the respective governing bodies are subject to registration with the CMVM.

### **Article 37 Sinking funds' revenue**

(Repealed)

### **Article 38 Payment of indemnity by the sinking fund**

(Repealed)

## **Title II Securities**

### **CHAPTER I General provisions**

#### **SECTION I Applicable law**

##### **Article 39 Capacity and form**

The capacity for the issue and the form of securities representation are governed by the individual law of the issuer.

##### **Article 40 Contents**

1. The issuer's individual law regulates the contents of securities, except if, in relation to bonds and other securities; the issue registration determines that another law is applicable.
2. The issuer's individual law is also applicable to the contents of securities that grant rights to subscription, acquisition or sale of other securities.

##### **Article 41 Conveyance and guarantees**

The conveyance of rights and the constitution of guarantees on securities are governed:

- a) In relation to securities integrated into a centralised system, by the law of the State where the management entity of such system is located;
- b) In relation to securities registered or deposited and not integrated in a centralised system, by the law of the State in which the entity where the securities are registered or deposited is located;
- c) In relation to securities not included in the previous sub-paragraphs, by the individual law of the issuer.

##### **Article 42 Material reference**

The designation of a foreign law for the application of the norms of this Section does not include the norms of international private law of the designated law.

## **Section II Issue**

### **Article 43 Issue registration**

1. The issue of securities that have not been detached from other securities is subject to registration with the issuer.
2. The provisions regarding the registration of securities issues apply to those securities issued by entities whose applicable law is the Portuguese law.

### **Article 44 Issue registration details**

1. The registration of issues should mention:
  - a) The issuer's identification, particularly its name, headquarters, corporate number, the register of companies where it is registered along with the respective registration number;
  - b) The complete characteristics of the securities, namely the type, the rights that, in relation to that type, are especially included or excluded, the form of representation and the nominal or percentage value;
  - c) The quantity of securities that make up the issue, the series they refer to and, in the case of continuous issue, the up-dated amount of securities issued;
  - d) The amount and the date of release payments foreseen and carried out;
  - e) The changes that occur in any of the details in the abovementioned sub-articles;
  - f) The date of first registration of ownership or the delivery of the certificates and the identification of the first holder, as well as, if it is the case, the financial intermediary with whom the holder entered into a contract for the registration of the securities;
  - g) The sequence number of certificated securities.
2. The registration of amendments to which sub-article (1) (e) above refers should be carried out within a period of 30 days.
3. The registration of the issue is reproduced, as to the details described in paragraphs a), b) and c) of the previous sub-article, and its amendments are:
  - a) In an account opened by the issuer with the management entity of the centralised system, when the securities are integrated in this system;

b) In an account opened by the issuer with the financial intermediary that renders securities registration services in accordance with Article 63.

#### **Article 45 Category**

The securities that are issued by the same entity and have the same contents constitute one category, although they may belong to different issues or series.

### **Section III Representation**

#### **Article 46 Forms of representation**

1. Securities are book entries or certificates depending on whether they are represented by registrations in an account or by paper documents; in this Code, the latter are also called certificated securities.
2. The securities forming part of the same issue, even when carried out in series, obey the same form of representation, except for the purposes of trading abroad.
3. Securities detached from book entry and certificated securities integrated into a centralised system are registered in a separate account.
4. Securities detached from other certificated securities are represented by coupons physically separated from the certificate from which they arose.

#### **Article 47 Previous formalities**

The registration of securities in individualised accounts or the delivery of the respective certificates require the prior fulfilment of formalities applying to the creation of each type of security, including those relating to the register of companies.

#### **Article 48 Conversion decision**

1. Except for legal or company bylaws prohibition, the issuer may decide on the conversion of securities as to their form of representation, establishing a reasonable period, which should not exceed one year.
2. The decision to convert is subject to publication.
3. Conversion costs are to be paid by the issuer.

**Article 49**  
**Conversion of book entry securities into certificated securities**

1. Book entry securities are considered converted into certificated securities when the certificates become available for delivery.
2. The registration of the converted securities should be rendered invalid or cancelled with reference to the conversion date.

**Article 50**  
**Conversion of certificated securities into book entry securities**

1. Certificated securities are converted into book entry securities by an account entry, after the period determined by the issuer for delivery of the certificates to be converted.
2. The certificated securities to be converted should be delivered to the issuer or deposited with the entity that will render the registration service after the conversion.
3. Certificates relating to securities not delivered within the period determined by the issuer only entitle the holders to request registration in their names.
4. The issuer should ensure the invalidation of converted securities by destruction or other form that demonstrates the conversion.
5. The conversion of certificated securities in centralised deposits in book entry securities occurs by the simple communication of the issuer to the centralised system management entity that invalidates the certificates.

**Article 51**  
**Reconstitution and judicial reform**

1. Book entry and certificated securities that are deposited may, in case of destruction or loss, be reconstituted from available documents and back up registrations.
2. Reconstitution is carried out by the entity in charge of registration or deposit, with the collaboration of the issuer.
3. The reconstitution project should be published and communicated to each possible holder and the reconstitution may only be carried out at least 45 days following the publication and communication.
4. After the publication and communication, any interested party may object to the reconstitution, requesting the judicial reform of the securities lost or destroyed.
5. When all certificates in a centralised deposit are destroyed, without the respective registrations having been affected, it is considered that the same are converted into book entry securities, except if the issuer, within 90 days of communication of the managing entity of the centralised deposit system, requires the judicial reform.

6. The process of reformation of documents regulated by Article 1069 *et seq.* of the Code of Civil Procedure applies to the reform of book entry securities, with the necessary adaptations.

## **Section IV Forms**

### **Article 52 Nominal and bearer securities**

1. Securities are nominal or bearer, depending on whether the issuer has the ability to be constantly informed of the identity of the respective holders.
2. In the absence of bylaws clause or decision of the issuer, securities are considered to be nominal.

### **Article 53 Convertibility**

Except for legal, bylaws or provisions resulting from special conditions established for each issue, bearer securities may, at the holder's initiative and expense, be converted into nominal and vice-versa.

### **Article 54 Modes of conversion**

Conversion occurs:

- a) By entry in the individual registration account of the book entry securities or certificated securities integrated in a centralised system;
- b) By substitution of certificates or amendments to their text, made by the issuer.

## **Section V Legal capacity**

### **Article 55 Legal capacity to sue**

1. Anyone who, in accordance with a registration entry or the certificate, is the holder of rights relating to securities will be considered legally entitled to exercise the rights inherent in such securities.
2. The legal right to exercise the detached rights, by entry in an independent account or separation of coupons, belongs to whoever holds the security in accordance with the registration or the certificate.

3. Rights inherent in securities, in addition to those that result from the legal framework of each type, are:

- a) Dividends, interest and other income;
- b) Voting rights;
- c) The rights to subscription or acquisition of securities of same or a different type.

**Article 56**  
**Legal capacity to be sued**

The issuer that, in good faith, fulfils any obligation in favour of the legal holder by registration or certificate or confers to the same any right would be released and exempt from liability.

**Article 57**  
**Co-holders**

The co-holders of securities exercise the rights inherent in them by means of a common representative, pursuant to the terms applying to shares set out in Article 303 of the Companies Code.

**Article 58**  
**Acquisition from an unlawful entity**

1. The rights of the purchaser of security acting in good faith would not be affected by the unlawfulness of the seller provided the acquisition has been carried out according to the applicable rules of conveyance.

2. The provision of the previous sub-article is applicable to the holder of any rights of guarantee on securities.

**Section VI**  
**Regulation**

**Article 59**  
**Regulation of registration with the issuer and financial intermediary**

1. The Minister of Finance regulates by administrative ruling:

- a) The registration of the issue of securities with the issuer, particularly its contents and backup;
- b) The registration of book entry securities with the issuer according to the terms of Article 64, particularly this entity's duties, the means of conversion of securities and their reconstitution.

2. The CMVM is responsible for regulating the registration of book entry securities that follow the system of Article 63.

**Article 60**  
**Regulation of the centralised system of securities**

The CMVM prepares the necessary regulations for the conceptualisation and development of provisions relating to book entry securities and certificates integrated in the centralised system, after consulting with the management entities, namely in relation to the following aspects:

- a) Accounting systems and rules they should obey;
- b) The exercise of rights inherent in the securities;
- c) Information to be rendered by entities integrated in the system;
- d) Integration of securities in the system and their exclusion;
- e) Conversion of the form of representation;
- f) Link with settlement systems;
- g) Security measures to be adopted relating to the registration of securities registered electronically;
- h) Rendering of securities registration or deposit services by entities established abroad;
- i) Procedures to be adopted in operational relations between centralised systems operating in Portugal or abroad;
- j) The terms in which the presumption described in Article 74(3) may be refuted.

**Chapter II**  
**Book entry securities**

**Section I**  
**General provisions**

**Subsection I**  
**Types of registration**

**Article 61**  
**Registering entities**

The individual registration of book entry securities consists of:

- a) An account opened with a financial intermediary, which is integrated in a centralised system; or
- b) An account opened with a single financial intermediary proposed by the issuer; or
- c) An account opened with the issuer or financial intermediary that represents it.

**Article 62**  
**Integration in a centralised system**

Book entry securities admitted to trading on regulated markets are compulsorily integrated in the centralised system.

**Article 63**  
**Registration with a single financial intermediary**

1. When not integrated in a centralised system, the following securities are compulsorily registered with a single financial intermediary:

- a) Bearer book entry securities;
- b) Securities distributed by public offer and other securities belonging to the same category;
- c) Securities issued jointly by more than one entity;
- d) Units in a collective investment undertaking.

2. The registering financial intermediary is proposed by the issuer or managing entity of a collective investment undertaking, which will bear the costs of any eventual change of registering entity.

3. If the issuer is a financial intermediary, the registration described in this Article is made with another financial intermediary.

4. The financial intermediary adopts all the necessary measures to prevent and, with the issuer's collaboration, correct any discrepancy between the quantity, total and category, of securities issued and the quantity of securities in circulation.

**Article 64**  
**Registration with the issuer**

1. The nominal book entry securities not integrated in a centralised system, nor registered with a single financial intermediary are registered with the issuer.

2. The registration with the issuer may be replaced by a registration of the same value by a financial intermediary acting as representative of the issuer.

**Subsection II**  
**Process of registration**

**Article 65**  
**Registration format**

1. The registrations integrated in a centralised system are made in electronic format, which may consist of codified references.
2. The entities that carry out registrations in electronic format should use appropriate security measures for this type of medium, in particular, back-up copies that should be kept at a different place from that of the registrations.

**Article 66**  
**Compulsory and ex parte registrations**

1. The registrations related to acts in which the registering entity has, in some way, intervened, communicated to them by the managing entity of the centralised system and the acts of judicial seizure that are communicated by the competent entity are considered compulsory registrations.
2. The following individuals have the right to request registration:

- a) The holder of the account where the registration should be made or where the securities should be transferred to;
- b) The usufructuary, the pledge creditor, and the holder of other legal status that burden the securities, as to the registration of the respective legal situations.

**Article 67**  
**Documentary basis of the registrations**

1. The initial and subsequent registrations in registries are made based on the written request from the grantor or in documents sufficient to prove the registration.
2. When the petitioner does not deliver any written document and this is not required to validate or to prove the fact to be registered, the registering entity should provide a written note to justify the registration.

**Article 68**  
**Details in accounts of individual registration**

1. Separate accounts, by category of securities, should be opened in relation to each holder and besides the details mentioned in Article 44(1) (a) & (b), same should contain the following information:
  - a) The identification of the holder and, in case of co-holders, a common representative;

- b) The debit and credit entries of quantities acquired and sold, with identification of the account where the respective debit and credit entries were made;
  - c) The total amount of securities existent at any moment;
  - d) The allocation and payment of dividends, interest and other income;
  - e) The subscription and acquisition of securities, of the same or different type, to which the registered securities confer rights;
  - f) The detachment of inherent rights or securities and, in this case, the account where they are registered;
  - g) The constitution, amendment and end of usufruct, pledge, judicial seizure or any other legal status that burdens the registered securities;
  - h) Blockage of securities and their cancellation;
  - i) Legal actions proposed relating to registered securities or to the registration itself and the respective decisions;
  - j) Other references required by the nature or by the characteristics of the registered securities.
2. The details mentioned in the previous sub-article should include the date of registration and the abbreviated reference of the documents used as its basis.
3. If the securities are issued by entities regulated by a foreign law, the registration is made, in relation to the details equivalent to those mentioned in paragraphs a) and b) of no. 1 of Article 44, based on a declaration by the petitioner, accompanied by the legal opinion set out in no. 1 of Article 231, when required in the terms of this Article.

### **Article 69** **Date and priority of registrations**

1. Compulsory registrations are recorded with the date of the registered fact.
2. Registrations requested by interested parties are recorded with the date of submission of the registration request.
3. If more than one registration refers to the same date, the priority of registration is determined by the time of verification of the fact or submission, depending on whether the registration is compulsory or dependent on submission.
4. Registrations relating to blocked book entry securities should refer to the date the blockage ceased.

5. A provisional registration converted into a definitive registration retains the date of the provisional registration.

6. In the case of refusal, the registration following a complaint or appeal against the registering entity decided in favour of the petitioner is recorded with the date that corresponds to the act refused.

### **Article 70** **Succession of registrations**

Registration of the acquisition of securities, as well as the constitution, amendment or end of usufruct, pledge or other legal situations that burden the registered securities, requires previous registration in favour of the holder.

### **Article 71** **Transfer of book entry securities between accounts**

1. Transfer of book entry securities between accounts belonging to the same or different holders is performed through a debit entry in the account of origin and a credit entry in the destination account.

2. Transfers between accounts in the centralised system are made according to the total values to be transferred, reported by the management entity of the centralised securities system.

### **Article 72** **Blockage**

1. The following book entry securities are compulsorily subject to blockage:

a) In which certificates have been issued to enable the exercise of rights inherent in the securities, during the period indicated on the certificate when the exercise of those rights depends upon maintenance of ownership of the securities until the date such right is exercised;

b) In which a certificate was issued so as to be valid as a writ of execution. In that case, the blockage should apply until the original certificate is returned or until a certificate of the court's final decision on the execution proceeding is presented;

c) Which are subject to attachment or other acts of judicial seizure, while the same remains valid;

d) Which are the object of a public offer for sale or, if they have already been issued, are the consideration of a public offer of exchange, the blockage being maintained until the operation is liquidated or the early end of the offer.

2. Blockage may also take place:

a) By the initiative of the holder, in any situation;

b) By the initiative of a financial intermediary, regarding the securities in relation to which an order or a communication for sale on a registered market was given.

3. The blockage consists of an entry in the proper account, which will indicate the grounds for blockage, its duration and the amount of securities involved.

4. In the course of the blockage, the registering entity is not allowed to transfer the blocked securities.

### **Subsection III Value and defects in registration**

#### **Article 73 Initial entry**

1. Book entry securities are made by entries in individual accounts opened with the registering entities.

2. The initial entry is made based on the relevant information of the issue registration reported by the issuer.

3. If the registering entity has opened subscription accounts, registration is made by conversion of such accounts into individual registration accounts.

#### **Article 74 Effects of the registration**

1. Registration in individual accounts of book entry securities raises the presumption that rights exist and belong to the account holder, as recorded in the respective registrations.

2. Unless otherwise indicated in the account, the shares of each of the co-owners of the same book entry securities account are assumed to be the same.

3. When the compliance with information duties, advertising or issue of public acquisition offers is in discussion, the assumption of ownership arising from the registration may be refuted, for this purpose, before the supervisory authority or by its own initiative.

#### **Article 75 Priority of rights**

The registered rights over the same securities prevail over each other according to the priority of the respective registrations.

**Article 76**  
**Termination of the effects of registration**

1. The effects of registration end by forfeiture or cancellation.
2. The cancellation may be of own motion or at the request of the interested party.

**Article 77**  
**Registration refusal**

1. Registration is refused in the following cases:
  - a) The fact is not subject to registration;
  - b) The registering entity is not competent to perform the registration;
  - c) The petitioner is not legitimate;
  - d) The fact to be registered is obviously invalid;
  - e) The documents presented are evidently inadequate;
  - f) Registration was made provisionally due to doubts that have not been resolved.
2. When it is not refused, the registration may be drafted as provisional because of a lack of documents.
3. Provisional registrations lapse if the reason for their temporary drafting is not resolved within thirty days.

**Article 78**  
**Proof of registration**

1. Registration is proven by a certificate, issued by the registering entity.
2. The certificate proves the existence of registration of ownership of the respective securities and usufruct rights, pledge rights and any other specified legal situations, with reference to the date of issue or the term stated therein.
3. The certificate may be requested by any party which has the right to petition registration.
4. Legally recognised creditors of the holder of the securities may request an affirmative or negative certificate regarding the existence of any situations that burden those securities.

**Article 79**  
**Rectification and dispute of the registration acts**

1. The registrations may be rectified by the registering entity, compulsorily or on the initiative of the interested parties.
2. The rectification is retroactive to the date of the amended registration, without prejudice to the rights of third parties acting in good faith.
3. The registration acts or their refusal are subject to appeal before public courts of law up to 90 days following knowledge of the fact by the contesting party, provided that this occurs within 3 years of the date of registration.

**Subsection IV**  
**Conveyance, constitution and exercise of rights**

**Article 80**  
**Conveyance**

1. Book entry securities are conveyed by entry in the purchaser's account.
2. The purchase of book entry securities on a regulated market grants the buyer, independently of registration and as from the time the operation is carried out, legitimacy for their sale on that market.

**Article 81**  
**Pledge**

1. The pledge of securities is carried out by an entry in the securities holder's account, indicating the amount of securities given as pledge, the obligation guaranteed and the beneficiary's identity.
2. The Pledge may be affected by an entry in the pledge creditor's account, when the accruing voting right has been granted to such creditor.
3. The registering entity where the account of the pledged securities is opened may not perform the transfer of such values to an account opened with another registering entity, without prior communication to the pledge creditor.
4. If not otherwise agreed, the rights inherent in the pledged securities are to be exercised by holder of said securities.
5. The provisions of sub-articles 1 to 3 apply, with the necessary adaptations, to the creation of usufruct and any other legal situations that may burden the securities.

**Article 82**  
**Seizure**

Seizure and other such acts of judicial seizure of book entry securities take place by notice made by electronic means by the court to the registering entity or depository that the securities should remain under its order.

**Article 83**  
**Exercise of rights**

If the rights inherent in the securities are not exercised by the registering entity, they may be exercised by presentation of the certificates described in Article 78.

**Article 84**  
**Writ of execution**

The certificates issued by the registering entities, regarding book entry securities, are valid as writ of execution, if their purpose is mentioned, if they have no time limit and if the signature of the individual representing the registering entity and his powers are recognised by a notary.

**Subsection V**  
**Duties of the registering entities**

**Article 85**  
**Rendering of information**

1. Registering entities of book entry securities should report, in the most adequate way in each given situation, information that may be requested by:

- a) Holders of securities, regarding the details of the accounts opened in their name;
- b) Holders of usufruct rights, pledge rights and other legal situations that burden the registered securities, regarding their respective rights;
- c) Issuers, regarding aspects of nominal securities accounts.

2. The duty of disclosure also covers the contents of documents on which the registrations have been based.

3. If the securities are integrated in a centralised system, requests for information by issuers may be addressed to the entity managing this system, which transmits them to each of the registering entities.

4. The registering entity should send to each registered securities holder:

- a) The statement envisaged in Article 323-C;
- b) Information necessary for the timely compliance with tax obligations.

## **Article 86**

### **Access to information**

In addition to those individuals referred in law or expressly authorised by the owner, the following should have access to information regarding the facts and legal situations stated in registrations and related documents:

- a) The CMVM and the Bank of Portugal, in the exercise of their functions;
- b) Through the CMVM, the supervisory authorities of other States, in the terms established in the CMVM's statutes;
- c) The financial intermediaries to whom an order of disposal of registered securities has been given.

## **Article 87**

### **Civil liability**

1. The registering entities of book entry securities are liable for damage caused to holders of rights over those securities or third parties, arising from omission, irregularity, error, shortcoming or delay in the performance of registrations or their destruction, except if proved that the injured parties are responsible.
2. The registering entities have the right to redress against the centralised system's managing entity for the compensation due according to the sub-article above, whenever the facts on which liability is based be imputed to them.
3. Whenever possible, compensation is fixed in securities of the same category as those to which the registration refers.

## **Section II**

### **Centralised system**

## **Article 88**

### **Structure and functions of the centralised system**

1. Centralised securities systems consist of inter-linked groups of accounts, through which the constitution and transfer of securities is processed and which assume control over the amount of securities in circulation, and their inherent rights.
2. The centralised securities systems may only be managed by entities that fulfil the requirements established by special legislation.
3. The provisions of this Section do not apply to centralised systems directly managed by the Bank of Portugal.

## **Article 89**

### **Operational rules**

1. The operational rules necessary for the functioning of centralised systems are established by the respective managing entity, being subject to registration.

2. The CMVM refuses registration or imposes amendments when it considers the registration inadequate or contrary to legal or regulatory provisions.

### **Article 90** **Integration and exclusion of securities**

1. Integration in a centralised system covers all securities of the same category, depends on request by the issuer and is made by registration in an account opened with the centralised system.

2. The Securities that are not compulsorily integrated in a centralised system may be excluded at the request of the issuer.

### **Article 91** **Integral accounts of the centralised system**

1. The centralised system is constituted by the following accounts, at the least:

- a) Issue accounts, opened by the issuer, according to Article 44(1);
- b) Individual registration accounts, opened by financial intermediaries authorised for this purpose;
- c) Issue controlling accounts, opened by each of the issuers with the system's managing entity, according to Article 44(3) (a);
- d) Accounts for the control of individual registration accounts, opened by financial intermediaries with the system managing entity.

2. If securities have been issued by an entity subject to foreign law, the issue account described in sub-article (1)(a) above may be opened with a financial intermediary authorised to conduct business in Portugal, or be replaced by information provided by another centralised system with which there is adequate co-ordination.

3. The individual registration accounts may also be opened by financial intermediaries recognised by the centralised system managing entity, provided they are organised in conditions of efficiency, safety and control equivalent to those required from financial intermediaries authorised to conduct business in Portugal.

4. The accounts described in sub-article (1)(d) above are global accounts opened in the name of each one of the entities authorised to manage individual registration accounts, and the sum of the respective totals should be, in relation to each category of securities, equal to the sum of the total of each one of the individual registration accounts.

5. The accounts described in sub-article (1) (d) above should separately disclose the amount of securities held by each financial intermediary acting as registering entity and holder.

6. In the cases set out in the CMVM's regulations, individual registration accounts may be opened directly with the centralised system management entity, to which the legal system of accounts of the same nature with financial intermediaries will apply.

7. Specific sub-accounts should be opened with the centralised system's management entity, relating to pledged securities or securities which may not be transferred or, for any other reason, may not fulfil the requirements of trading on a regulated market.

## **Article 92**

### **Control of securities in circulation**

1. The centralised system managing entity should adopt the necessary measures to prevent and correct any discrepancies between the amount, total and category of securities issued and those in circulation.

2. If the accounts described in sub-article (1) of the previous Article refer only to one part of the category, the control over the entire category is ensured through proper co-ordination with other centralised systems.

## **Article 93**

### **Information to be provided to the issuer**

The centralised system managing entity should provide the issuer with information on:

- a) The conversion of book entry securities into certificated securities or the conversion of certificated securities into book entry securities;
- b) The details necessary for the exercise of patrimonial rights inherent in the registered securities and the control of such exercise by the issuer.

## **Article 94**

### **Civil liability**

1. The centralised system managing entity is liable for damages caused to financial intermediaries and issuers as a result of the omission, irregularity, error, shortcomings or delay in performing registrations and in transferring information that it should provide, except if it is the fault of the injured parties.

2. The centralised system management entity has the right to redress against the financial intermediaries for the compensation paid to the issuers, and against these, for the indemnities paid to financial intermediaries whenever the facts on which liability is based are imputable, in either case, to the financial intermediaries or the issuers.

**Chapter III**  
**Certificated securities**

**Section I**  
**Certificates**

**Article 95**  
**Certificates issue and delivery**

It is the issuer's duty to issue and deliver the certificated securities to the initial holder and it should also be responsible for the respective expenses.

**Article 96**  
**Certificates**

Until the issue of securities, the holder's legal situation may be proved by means of certificates provided by the issuer or the financial intermediary involved in the operation.

**Article 97**  
**Certificated securities details**

1. The certificates should contain, in addition to that mentioned in Article 44(1) (a) & (b), the following:

- a) Order number, with the exception of bearer certificates;
- b) The number of rights represented in the securities and, if applicable, their total nominal value;
- c) Identification of the holder, in the case of registered certificates.

2. The securities are signed and sealed, by a representative from the issuer's board of directors.

3. The amendment of any aspect of the security may be made by its substitution or, as long as it is signed, in accordance with the previous sub-article, in the respective text.

**Article 98**  
**Division and concentration of securities**

In relation to securities representing one or more units of the same category of securities, the holder may request the division or concentration of securities, bearing the respective expenses.

## **Section II Deposit**

### **Article 99 Forms of deposit**

1. Deposit of certificated securities is made with:
  - a) An authorised financial intermediary on the initiative of the holder;
  - b) A centralised system, in the cases required by law or at the issuer's initiative.
2. Certificated securities are necessarily deposited with:
  - a) A centralised system, when they are admitted to trade in a regulated market;
  - b) A financial intermediary or centralised system, when the entire issue or series is represented by a single certificated security.
3. The depository entity should keep the registration accounts separated per holder.
4. Registered certificates deposited with a financial intermediary keep their order number.
5. The system of book entry securities registered with a single financial intermediary applies to the securities described in sub-article 2 (b) when they are not integrated in a centralised system.

### **Article 100 Ownership of deposited securities**

1. Ownership of deposited securities is not transferred to the depository, nor may the latter use them for any other means than those set out in the deposit contract.
2. In the case of bankruptcy of the depository, securities may not form part of the bankrupt's estate, with the right of the holders prevailing to demand their separation and restitution.

**Section III**  
**Transfer, constitution and exercise of rights**

**Article 101**  
**Transfer of bearer securities**

1. Bearer securities are transferred by handing over the security to the transferee or the depository indicated by the same.
2. If the securities have already been deposited with the depository indicated by the purchaser, transfer takes place by registration in the latter's account, effective from the date of application for the registration.
3. In the case of transfer due to death, the registration described in the previous sub-article, is made based on documents that prove the right to succession.

**Article 102**  
**Transfer of nominal securities**

1. Nominal securities are transferred by a declaration of transfer, written on the security in favour of the transferee, followed by registration with the issuer or its representing financial intermediary.
2. Declaration of an *inter vivos* transfer is made:
  - a) By the depository, in non-centralised deposited securities, who should accordingly draw up the respective registration in the transferee's account;
  - b) By the competent judicial officer, when conveyance of securities results from judicial sentence or forced sale;
  - c) By the transferor, in any other situation.
3. Declaration of transfer resulting from death is made:
  - a) In case of judicial distribution, as described in the previous sub-article 2(b);
  - b) In the remaining cases, by the head of the family or notary who executed the deed of distribution of the estate.
4. Any of the entities mentioned in sub-articles (2) and (3) above have the right to request registration with the issuer.
5. The transfer comes into effect as from the date of the request for registration with the issuer.
6. Registration with the issuer in relation to the nominal securities is free of charge.

7. The issuer may not, for whatever reason, invoke against the interested party the lack of registration that should have been made pursuant to the terms of the previous sub-articles.

### **Article 103 Usufruct and pledge**

The constitution, amendment or extinction of usufruct, pledge or any legal situations that burden the securities, is carried out in accordance with the same legal procedures stipulated for the transfer of the ownership of securities.

### **Article 104 Exercise of rights**

1. The exercise of rights inherent in bearer securities depends on the possession of the instrument or certificate issued by the depository, according to Article 78(2).
2. The rights inherent in nominal securities not integrated into a centralised system are exercised according to what is stated in the issuer's registration.
3. The certificated securities may have coupons for the purpose of exercising inherent rights.

## **Section IV Certificated securities in a centralised system**

### **Article 105 Applicable system**

The provisions relating to book entry securities in a centralised system apply to certificated securities integrated in a centralised system.

### **Article 106 Integration in a centralised system**

1. After the deposit of the securities in a centralised system, the securities are registered with an account, indicating their inclusion in a centralised system and the corresponding date.
2. The centralised system managing entity may deliver the deposited securities into the custody of a financial intermediary authorised to receive them, with such entity maintaining its obligations and responsibilities to the depositor.

### **Article 107 Exclusion from the centralised system**

The exclusion of certificated securities from the centralised system may only take place after the system's managing entity is assured that the securities reflect the details registered in the centralised system, making reference to the date and fact of its exclusion.

## **Title III Public offers**

### **CHAPTER I Common provisions**

#### **SECTION I General principles**

##### **Article 108 Applicable Law**

1. Without prejudice to the provisions of nos. 2 and 3 of Article 145, the provisions set out in the present title and the supplementary regulations apply to public offers addressed specifically to natural persons resident or established in Portugal, whatever the offeror's and issuer's applicable law or the law applicable to the securities that are the object of the offer may be.

2. The takeover bids contemplated in article 145-A:

a) In respect of the proposed consideration, processing of the offer, the content of the prospectus of the offer and disclosure of the offer, the law of the Member State whose supervisory authority has powers to supervise the offer shall apply;

b) In respect of disclosure to the offeree company's employees, the percentage of voting rights that constitutes control, derogations or waivers of the duty to launch a takeover bid and restrictions to the powers of the board of the offeree company, the personal law of the company issuing the securities concerned by the offer shall apply.

##### **Article 109 Public offer**

1. Offers of securities addressed, wholly or partially, to unidentified recipients are considered as public.

2. The uncertainty of the addressee is not prejudiced by the fact that the offer takes place through multiple standard communications, even if addressed to individually identified addressees.

3. It is also considered public:

a) An offer addressed to all the shareholders of a public company, even if its share capital is represented by nominal shares;

b) An offer that, wholly or partially, is preceded or accompanied by a prospecting or a solicitation for investment's intentions from unidentified addressees or promotional material;

c) An offer addressed to at least 150 people who are retail investors resident or established in Portugal.

### **Article 110 Private offers**

1. The following are always considered private offers:

a) Offers of securities addressed only to qualified investors;

b) The subscription offers addressed by non-publicly held companies to the majority of their shareholders, except for the case described in sub-article 3(b) of the previous Article.

2. Private offers launched by public companies and issuers of securities listed on a market are subject to a subsequent communication to the CMVM for statistical purposes.

### **Article 110-A Voluntary qualification**

[Repealed]

### **Article 110-B Cascading of Public Offers for Distribution**

1 - When, due to Article 109, resale or final placement by a financial intermediary is considered a public offering, the offering financial intermediary may, under the proviso that there is written consent by the issuer or by the person responsible for its preparation, use a previously reported valid prospectus and that is kept up to date in accordance with Article 142.

2 - The consent referred to in the preceding paragraph may be given in the prospectus itself.

3 - The provisions of Articles 112/2, 124/1 and /2, 126 to 130 and 133/3 are not applicable to public offers mentioned in paragraph 1.

### **Article 111 Scope**

1. The following offers are excluded from the scope of application of the present Title:

a) Public offers for distribution of non-equity securities issued by a Member State or by one of a Member State's regional or local authorities and public offers for distribution of securities unconditionally and irrevocably guaranteed by a Member State or by one of a Member State's regional or local authorities;

b) The public offers for distribution of securities issued by the European Central Bank or by the central bank of one of the Member States of the European Community;

c) The offers on securities issued by an open-end collective investment undertaking, made by the issuer or on its behalf;

d) The offers in a regulated market or MTF registered with the CMVM that are presented exclusively through the market's or system's own means of communication and that are not preceded or included with the prospecting or investment's intentions solicitation from unspecified addressees or promotional material;

e) The public offerings for distribution of securities of securities with a par value equal to or greater than € 100,000 or whose subscription or sale price per addressee is equal to or greater than said amount;

f) Public offers for distribution of non-equity securities issued by public international bodies of which one or more Member States are members;

g) Public offers for distribution of securities issued by associations with legal status or non-profit-making bodies, recognised by a Member State, with a view to their obtaining the means necessary to achieve their non-profit-making objectives;

h) Public offers for distribution of non-equity securities issued in a continuous or repeated manner by credit institutions, provided that these securities:

i) Are not subordinated, convertible or exchangeable;

ii) Do not give a right to subscribe to or acquire other types of securities and are not linked to a derivative instrument;

iii) Materialise receipt of repayable deposits;

iv) Are covered by the Deposit Guarantee Fund contemplated in the General Regulations on Credit Institutions and Financial Companies or another deposit guarantee scheme under Directive 94/19/EC of the European Parliament and the Council of 30 May, on deposit-guarantee schemes;

i) public offerings for distribution of securities the value of which is less than £5 million in the EU, calculated on the basis of offers made over a 12 month period;

j) The public offerings for distribution of securities not representing share capital issued in a continuous or repeated manner by credit institutions where the total consideration of the offer in the EU is less than €75 million, calculated on the basis of offers made to over a 12 month period, provided that these securities:

i) Are not subordinated, convertible or exchangeable;

ii) Do not give the right to subscribe to or acquire other types of securities or be associated with a derivative instrument;

l) Public offers for subscription of shares issued in substitution of shares of the same class already issued, if the issue of such shares does not involve any increase in the issued capital.

m) The takeover bids issued by collective investment undertakings;

n) The public offers of debt securities issued for a period of less than a year.

2. For the purposes of paragraphs h) and j) of the preceding number, issued in a continuous or repeated manner shall mean a set of issues involving at least two separate issues of securities of a similar type and/or category over a 12-month period.

3. In the cases contemplated in paragraphs a), b), i) and j) of no. 1, the issuer shall be entitled to draw up a prospectus in accordance with this Code and any supplementary legislation.

4. (Repealed).

### **Article 112 Equality of treatment**

1. Public offers should take place under conditions that ensure equal treatment to the addressees, without prejudice to the possibility set out in Article 124(2).

2. If the total amount of securities that are the object of declarations of acceptance by the addressees is greater than the amount of securities offered, the securities are allocated in proportion to the requested amounts, unless other criteria are legally established or do not merit an objection by the CMVM in approving the prospectus.

3. When, in the terms of this Code, no prospectus is required, material information provided by an issuer or an offeror and addressed to qualified investors or special categories of investors, including information disclosed in the context of meetings relating to offers of securities, shall be disclosed to all qualified investors or special categories of investors to whom the offer is exclusively addressed.

4. Where a prospectus is required to be published, the information referred to in the preceding number shall be included in the prospectus or in a supplement to the prospectus.

### **Article 113 Compulsory intermediation**

1. Public offers relating to securities where a prospectus is required must take place through the intervention of a financial intermediary, which shall provide at least the following services:

- a) Assistance and placement in public offers for distribution of securities;
  - b) Assistance, as from the preliminary announcement and receipt of the declarations of acceptance, in take-overs.
2. The duties described in the previous sub-article may be carried out by the offeror when the same is duly authorised to do so.

**Section II**  
**Approval of the prospectus, registration and advertising**

**Article 114**  
**Approval of the prospectus and prior registration**

1. Prospectuses relating to public offers for distribution shall be subject to approval by the CMVM.
2. All public offers are subject to prior registration with the CMVM.

**Article 115**  
**Examination of application**

1. The application for registration or approval of the prospectus shall be submitted together with the following documents:
  - a) Copy of the resolution to issue the offer taken by the offeror's competent bodies, and the necessary management decisions;
  - b) Copy of the issuer's bylaws;
  - c) Copy of the offeror's bylaws;
  - d) Up-to-date certificate of company registration of the offeror;
  - e) Up-to-date certificate of company registration of the issuer;
  - f) Copy of the management reports and accounts, the opinions of the supervisory bodies and the legal certification of the issuer's accounts in respect of the periods required in the terms of Regulation no. 809/2004/EC of the Commission of 29 April;
  - g) Report or statement from an auditor, prepared according to Articles 8 and 9;
  - h) Identification code of the securities that are the object of the offer;
  - i) Copy of the contract entered into with the financial intermediary assisting in the operation;

- j) Copy of the placing contract and the placing consortium contract, if applicable;
- l) Copy of the market placing contract, stabilisation contract and Greenshoe contract, if applicable;
- m) Draft prospectus;
- n) Pro-forma financial information, when required;
- o) Draft offer announcement, when required;
- p) Experts' reports, when required.

2. The filing of the referred documents may be replaced by the indication that updated versions of the same are already in the CMVM's possession.

3. The CMVM may request the offeror, the issuer or any other person in one of the circumstances set out in no. 1 of Article 20 in respect of the offeror or the issuer to render the supplementary information necessary to assess the offer.

#### **Article 116 Special reports and accounts**

[Repealed]

#### **Article 117 Legality of the offer**

The offeror shall ensure that the offer complies with the applicable legal and regulatory provisions, notably in respect of the lawfulness of its object, the transferability of the securities and, where applicable, their issue.

#### **Article 118 Decision**

1. The approval of the prospectus, registration or its refusal shall be notified to the offeror:

- a) Within eight days, in a take-over;
- b) Within 10 days for public offers for distribution, unless relating to issuers who have not previously held any public offer for distribution or admission to trading on a regulated market in which case the deadline is 20 days.

2. The above mentioned terms are valid as from the date of receipt of the application or supplementary information requested from the offeror or third parties.

3 - The need to provide additional information is disclosed substantially to the offeror within the deadline referred to in paragraph 1.

4. Absence of a decision by the time limit referred to in no. 1 shall constitute an implied rejection of the application.

5. The approval of the prospectus is the act that implies the verification of its conformity with the requirements of completeness, accuracy, updating, clarity, objectivity and lawfulness of the information.

6. Registration of a takeover bid shall imply approval of the corresponding prospectus and be based on criteria of legality.

7. Approval of the prospectus and registration do not involve any guarantee as to the contents of the information, the offeror's, the issuer's or the guarantor's economic or financial situation, the feasibility of the offer or the quality of the securities.

8. The CMVM's decisions on approval of prospectuses and registration of takeover bids shall be disclosed through its information disclosure system.

9 - The CMVM's decision to approve the prospect for the public offering, as well as the approval of the addendum or amendment shall be notified to the European Securities and Markets Authority on the same date the decision is notified as the case may be to the offeror, the issuer or the person requesting admission to trading on a regulated market.

10 - The notification referred to in the preceding paragraph includes a copy of the prospectus, addendum or amendment, as the case may be.

#### **Article 119** **Refusal of approval of a prospectus and registration**

1. Registration of the offer is refused only when:

- a) Any of the documents used in the preparation of the request are false or does not conform to the legal or regulatory requirements;
- b) The offer is illegal or *in fraud legis*.

2. Approval of the prospectus shall be refused only in the case contemplated in paragraph a) of the preceding number.

3. Before refusal, the CMVM should notify the offeror to rectify, within a reasonable time, the reparable defects.

#### **Article 120** **Registration forfeiture**

[Repealed]

## **Article 121 Advertising**

1. The advertisements related to public offers should:
  - a) Follow the principles stipulated in Article 7;
  - b) Refer to the existence or future availability of a prospectus and indicate the ways to access the same;
  - c) Correspond with the contents of the prospectus.
2. All advertising material related to the public offer is subject to prior approval by the CMVM.
3. Civil liability for the contents of information divulged for advertising purposes, with any due modifications, is subject to the provisions set out in Article 149 et seq.

## **Article 122 Prior advertising**

When the CMVM, following its preliminary examination of the application, considers the approval of the prospectus or registration of the offer to be viable, it may authorise advertising prior to approval of the prospectus or registration, as long as this does not cause disruption to the addressees or the market.

## **Section III Launching and execution**

### **Article 123 Public offer's announcement**

[Repealed]

### **Article 124 Contents of the offer**

1. The contents of the offer may only be modified in the cases set out in Articles 128, 172 and 184.
2. There is only a single price for the offer, except for the possibility of different prices according to different classes of securities or addressees, fixed in objective terms and legitimate interest of the offeror.
3. The offer may only be subject to conditions that correspond to the offeror's legitimate interest and do not affect the normal functioning of the market.
4. The offer may not be subject to conditions where the verification depends on the offeror.

The period of validity of the offer shall be determined in accordance with its characteristics, defence of the addressees' and issuer's interests and the market's operating requirements.

**Article 126  
Acceptance declarations**

1. The declaration of acceptance of the offer by the addressees is made by an order addressed to a financial intermediary.
2. Acceptance may be revoked by means of a communication to the financial intermediary, received up to five days before the offer's deadline or within a shorter term if stated in the offer documentation.

**Article 127  
Assessment and publication of the offer's results**

1. At the end of the offer's period, the offer's results are immediately assessed and published:
  - a) By a financial intermediary that collects all the acceptance declarations; or
  - b) In a special regulated market session.
2. In the case of a public offer for distribution, parallel to the disclosure of the results, the financial intermediary or the regulated market operator shall inform whether admission to trading of the securities concerned has been requested.
3. [Repealed]

**Section IV  
Vicissitudes**

**Article 128  
Change of circumstances**

In the case of an increase in the risks of an offer due to an unforeseen and substantial change of circumstances, which is known by addressees and upon which the decision to launch the offer is based, the offeror may, within a reasonable period and subject to the CMVM's authorisation, modify or revoke the offer.

**Article 129**  
**Modification of the offer**

1. The modification of the offer leads to the extension of the respective time period, decided by the CMVM on its own initiative or at the request of the offeror.
2. The declarations of acceptance of the offer prior to amendment are considered effective for the modified offer.
- 3 - The amendment shall be immediately disclosed by the same means used for the disclosure of the prospectus or, if this is not required, by means of disclosure determined by the CMVM, by regulation.

**Article 130**  
**Revocation of the offer**

1. A public offer may only be revoked in accordance with Article 128.
2. The revocation shall be disclosed immediately by the same means used to disclose the prospectus or, if a prospectus is not required, by the means of disclosure determined by the CMVM, through regulation.

**Article 131**  
**Withdrawal and prohibition of the offer**

1. The CMVM shall, as the case may be, order the withdrawal of the offer or prohibit its launch if the offer is impaired by any irremediable illegality or breach of a regulation.
2. Decisions on withdrawal or prohibition shall be published by the CMVM, at the expense of the offeror, by the same means used to disclose the prospectus or, if a prospectus is not required, by the means of disclosure determined by the CMVM, through regulation.

**Article 132**  
**Effects of revocation and withdrawal**

The revocation and withdrawal of the offer determines the ineffectiveness of the offer and acts of acceptance prior or subsequent to the revocation or withdrawal, and with the right to restitution of whatever has been delivered.

**Article 133**  
**Suspension of the offer**

1. The CMVM should suspend the offer when any reparable illegality or violation of regulation is discovered.
2. [Repealed].

3. The suspension of the offer confers on the addressees the possibility of withdrawing their declaration until the fifth day following the suspension, with the right to restitution of whatever has been delivered.

4. Each period of suspension of the offer cannot exceed 10 working days.

5. If at the end of the period referred in the previous sub-article the defects that caused the suspension have not been corrected, the CMVM should order the withdrawal of the offer.

## **Section V Prospectus**

### **Subsection I Requirements, format and content**

#### **Article 134 Prospectus requirements**

1. The carrying out of any public offer relating to securities should be preceded by the disclosure of a prospectus.

2. The following public offers are exempted from the requirement described in the previous sub-article:

a) Offers of securities to be allotted in a merger or demerger, to at least 150 shareholders who are not qualified investors, provided a document containing information that the CMVM considers to be equivalent to that of the prospect, is made available at least 15 days prior to the date of the general meeting;

b) Dividends paid out in the form of shares of the same class as the shares in respect of which such dividends are paid, provided that a document is made available containing information on the number and nature of the shares and the reasons for and details of the offer;

c) Offers of securities for distribution to current or former board members or employees by the relevant employer, by a company in a control or group relation with the latter or by a company subject to common control provided the issuer has its registered or actual head-office in the European Union and that a document is made available containing information on the number and nature of the securities and the reasons for and details of the offer;

d) [Repealed]

e) [Repealed]

f) [Repealed]

g) [Repealed]

3. In the cases referred to in the preceding number and paragraphs a), b), f), i) and j) of no. 1 of Article 111, the offeror shall be entitled to draw up a prospectus, in accordance with this Code and any supplementary legislation.

4. Save for the provisions of the preceding number, in public offers where a prospectus is not required, the information referred to in no. 2 shall be sent to the CMVM before the corresponding launch or the circumstances contemplated therein.

5 - Subparagraph c/ of paragraph 2 also applies to securities offers issued by a company established outside the EU whose securities are admitted to trading on a regulated market authorized in the EU or in a third country market provided that in the latter case the following occurs:

a) that appropriate information is provided, including the document referred to in subparagraph c/ of paragraph 2, in at least one language commonly used in international financial markets, and

b) The European Commission has adopted, at the request of the competent authority of a Member State, an equivalent decision regarding the market of the third country concerned.

6 - For the equivalent decision application referred to in b/ above, the applicant shall inform the CMVM by providing relevant information to that purpose, the reasons why it considers that the legal and supervisory framework of the third country concerned should be considered equivalent to the law of the European Union on insider trading and market manipulation, authorisation and operation of regulated markets and disclosure about issuers whose securities are admitted to trading on a regulated market, and are subject to enforcement supervision and control of the regulation in force in that third country.

7 - The information referred to in the preceding paragraph shall allow for the conclusion that the legal and supervisory framework of the third country meets at least the following conditions:

a) The markets in the third country in question are subject to authorisation and are subject to the enforcement supervision and control of effective and permanent regulations;

b) The markets in the third country in question abide by clear and transparent rules regarding the admission of securities to trading so that such securities are traded in a fair, organised, efficient and unrestricted manner;

c) Issuers of securities are required to provide periodic and ongoing information to ensure a high level of investor protection, and

d) Transparency and market integrity are ensured by preventing market abuse in the form of insider trading and market manipulation.

**Article 135**  
**General principles**

1. The prospectus shall contain complete, true, updated, clear, objective and lawful information, necessary to enable the addressees to make an informed assessment of the offer, the securities concerned thereby and the rights attached thereto, its specific characteristics and the assets and liabilities, economic and financial position of the issuer or the guarantor, if any, and the prospects for the business and earnings of the issuer and the guarantor, if any.

2. The business plans and forecasts of the results of the issuer as well as the evolution of the price of the securities that are the object of the offer should be:

- a) Clear and objective;
- b) Comply with the provisions of Regulation no. 809/2004/EC of the Commission of 29 April;
- c) [Repealed]

**Article 135-A**  
**Summary of the prospectus of a public offer for distribution**

1 - Regardless of format, the prospectus of a public offering for distribution shall include a summary that provides key information to investors concisely and in non-technical language.

2. The summary shall refer to the framework laid down in no. 4 of Article 149 and contain a warning that:

- a) It should be read as an introduction to the prospectus;
- b) Any decision to invest in the securities should be based on information from the prospectus as a whole;
- c) Whenever a claim is presented in court pertaining to information contained in a prospectus, the investor may, under the national legislation of Member States, have to bear the costs of translating the prospectus before the legal proceedings are initiated.

3 - For the purposes of paragraph 1, key information is understood to be essential and appropriately structured information to be provided to investors to enable them to:

- a) Understand the nature and risks of the issuer, the guarantor and the securities of the offer; and
- b) Notwithstanding subparagraph b/ above, to decide whether to continue considering the offer.

4 - Considering the offer and the securities concerned, the key information shall include the following information:

- a) A brief description of the risks associated with and essential characteristics of the issuer and of any guarantor, including the assets, liabilities and financial position;
- b) A brief description of the risks associated with and essential characteristics of the investment in the securities in question, including any rights;
- c) The general conditions of the offer, including estimated expenses charged to the investor by the issuer or offeror;
- d) Details of the admission to trading;
- e) The reasons for the offer and allocation of revenues.

5 - The format of the summary and the detailed content of the key information comply with Regulation (EC) No. 809/ 2004 of the Commission of 29 April.

**Article 135-B**  
**Format of the prospectus of a public offer for distribution**

1. A prospectus of a public offer for distribution may be drawn up as a single document or separate documents.
2. A prospectus composed of separate documents shall divide the required information into a registration document, a securities note and a summary.
3. The registration document shall contain the information relating to the issuer and shall be previously submitted to the CMVM for approval or notification.
4. The securities note shall contain the information on the securities concerned by the public offer.
5. An issuer which already has an approved and valid registration document shall be required to draw up only the securities note and the summary in the case of a public offer of securities.
6. In the case referred to in the preceding number, the securities note shall provide information that would normally be provided in the registration document if there has been a significant change or recent development which could affect investors' assessment since approval of the latest updated registration document or any supplement.
7. If the registration document has been previously approved and is valid, the securities note and the summary shall be approved in the context of approval of the prospectus.
8. If the registration document has only been previously notified to the CMVM without approval, the three documents shall be subject to approval in the context of approval of the prospectus.

## **Article 135-C**

### **Base prospectus**

1. A base prospectus, containing information on the issuer and the securities, may be used in public offers for distribution of:

a) Non-equity securities, including warrants issued under an offering programme;

b) Non-equity securities issued in a continuous or repeated manner by credit institutions, where:

i) The sums deriving from the issue of the said securities are placed in assets which provide sufficient coverage for the liability deriving from the securities until their maturity date; and

ii) In the event of the insolvency of the related credit institution, the said sums are intended, as a priority, to repay the capital and interest falling due.

2. For the purposes of the provisions of paragraph a) of the preceding number, offering programme means an offer for distribution of securities having a similar type and/or class in a continuous or repeated manner under a common plan involving at least two issues over a 12-month period.

3. The base prospectus shall be supplemented, if necessary, with updated information on the issuer and on the securities to be offered to the public, by means of a supplement.

4 - When the final terms of the offer are not included in the base prospectus or in an addendum, said shall be disclosed to investors and communicated to the CMVM when said is the competent authority as per Article 145 and communicated by said to the competent authorities of host Member States and to the European Authority of the Securities and Markets, as soon as possible, before the beginning of the offer.

5 - The final conditions contain only information relating to the securities note and shall not be used as an addendum to the base prospectus.

6. The content of the base prospectus and the corresponding final terms and their dissemination shall comply with the provisions of Regulation no. 809/2004/EC of the Commission of 29 April.

## **Article 136**

### **General contents of the prospectus**

The prospectus shall notably contain information on:

a) The individuals who, according to Article 149, are responsible for its contents;

b) The purposes of the offer;

c) The issuer and its activity;

- d) The offeror and its activity;
- e) The issuer's corporate governance structure;
- f) The name of the members of the issuer's and the offeror's governing bodies;
- g) The financial intermediaries that are members of the placing consortium, when such exists.

#### **Article 136-A Incorporation by reference**

1. Information may be incorporated in the prospectus by reference to one or more previously or simultaneously published documents that have been approved by the CMVM or filed with the CMVM in the context of the duties of disclosure impending upon issuers and holders of qualifying holdings in public companies.
2. When information is incorporated by reference, a cross-reference list must be included in the prospectus.
3. The summary of the prospectus cannot contain information incorporated by reference.
4. Incorporation by reference shall comply with the provisions of Regulation no. 809/2004/EC of the Commission of 29 April.

#### **Article 137 Contents of the prospectus of a distribution public offer**

1. The content of the prospectus of a public offer for distribution shall comply with the provisions of Regulation no. 809/2004/EC of the Commission of 29 April.
2. The prospectus of a public offer for distribution shall also include declarations by the persons who are responsible for its content in the terms of Article 149 that, to the best of their knowledge, the information contained in the prospectus is in accordance with the facts and that the prospectus makes no omission likely to affect its import.
3. If the offer affects securities already admitted or expected to be admitted to listing on a regulated market situated or functioning in Portugal or in any other Member State of the European Community, a single prospectus satisfying the requirements of both may be approved and used.
4. [Repealed]

5. For the purposes of the Regulation referred to in No. 1:

a) The model provided for the issue of rights applies to offers of shares of companies whose same-class shares are admitted to trading on a regulated market or on a multilateral trading facility that meets the requirements established therein, provided that the issuer has not restricted or suppressed a preferential right of the shareholders provided for by law;

b) A company has reduced capital when its shares are admitted to trading on a regulated market have an average capitalisation below €100 million based on the closing price of the year in the preceding three calendar years.

### **Article 138** **Contents of the prospectus of a take-over**

1. In addition to what is contemplated in no. 1 of article 183-A, the prospectus of a takeover bid shall contain information on:

a) The consideration offered and its justification;

b) The minimum and maximum amounts of securities that the offeror intends to acquire;

c) The percentage of voting rights that, according to Article 20(1), may be exercised by the offeror in the target company;

d) The percentage of voting rights that, according to Article 20(1), may be exercised by the target company in the offeror company;

e) Any person that, to the best of his knowledge, is in any of the circumstances contemplated in no. 1 of article 20 with regard to the offeror or the offeree company;

f) The securities of the same class as those that are the object of the offer, and have been acquired in the previous six months by the issuer or anyone who is in a relationship as set out in Article 20(1), indicating the acquisition dates, amount and consideration;

g) The offeror's intentions with regard to continuity or alteration of the business of the offeree company and, in so far as it is affected by the bid, the offeror company, and, in the same terms, companies which have group or control relationships with the offeree or offeror companies, with regard to the safeguarding of jobs and terms of employment of their employees and management, in particular the possible repercussions on the locations of the companies' places of business, maintenance of the publicly traded status of the offeree company and trading on a regulated market of the securities concerned by the bid;

h) Possible implications of a successful bid for the financial condition of the offeror and any funding of the bid;

- i) The shareholders' agreements, entered into by the offeror or any entity described in Article 20(1), with significant influence on the target company;
- j) The agreements entered into between the offeror or any entity described in Article 20(1) and the members of the governing bodies of the target company, including any special advantages that may have been stipulated in their favour;
- l) The method of payment of the consideration when the securities that are the object of the offer are also listed on a regulated market located or functioning abroad;
- m) The compensation proposed in the event of removal of rights under the rules laid down in article 182-A, stating the form of payment and method used to calculate its amount;
- n) The domestic legislation shall apply to agreements entered into by the offeror and holders of securities in the offeree company, following acceptance of a bid, as well as the courts having jurisdiction to resolve any disputes resulting therefrom;
- o) Any charges to be borne by the addressees of the bid.

2. If the consideration consists of securities, issued or to be issued, the prospectus should include all the information which would be required if the securities were the object of a public offer for sale or subscription.

### **Article 139 Adaptation of the prospectus in special cases**

Without prejudice to information appropriate to investors, where, exceptionally, certain information required, notably under Regulation no. 809/2004/EC of the Commission of 29 April, to be included in the prospectus is inappropriate to the issuer's sphere of activity or to the legal form of the issuer or to the securities to which the prospectus relates, the prospectus shall contain, where possible, information equivalent to the required information.

### **Article 140 Disclosure**

1. No prospectus shall be published until it has been approved by the CMVM, and the corresponding text and format to be disclosed shall at all times be identical to the original approved version.

2. Upon approval, the final version of the prospectus, mentioning the date of approval or the registration number, shall be sent to the CMVM and made available to the public by the offeror reasonably in advance given the characteristics of the offer and the investors for whom it is intended.

3. The prospectus shall be disclosed:

a) In the event of a public offer for distribution preceded by a negotiation of rights, no later than the working day before the day on which the rights are detached;

b) In all other public offers for distribution, no later than the beginning of the public offer it concerns.

4. In the event of a public offer of a class of shares not yet admitted to trading on a regulated market and which is intended to be admitted to trading on a regulated market for the first time, the prospectus must be available at least six working days before expiry of the offer period.

5. The prospectus shall be deemed available to the public when published either:

a) By insertion in one or more newspapers circulated throughout or widely circulated in the country; or

b) In a printed form to be made available, free of charge, to the public at the offices of the market on which the securities are being admitted to trading, or at the registered office of the issuer and at the offices of the financial intermediaries placing or selling the securities, including paying agents; or

c) In electronic form on the issuer's website or, if applicable, on the website of the financial intermediaries placing or selling the securities, including those responsible for the financial service of the issuer, or

d) In electronic form on the website of the regulated market where admission to trading is sought; or

e) In electronic form on the CMVM's website.

6. If the offeror elects to disclose the prospectus through the forms contemplated in paragraphs a) or b) of the preceding number, it shall also disclose the prospectus in electronic form in accordance with paragraph c) of the preceding number.

7. In the event of the prospectus comprising several documents and/or incorporating information by reference, the documents and information composing the prospectus may be published and circulated separately, provided that the said documents are made available, free of charge, to the public, in accordance with the provisions of the preceding numbers.

8. For the purposes of the preceding number, each document shall indicate where the other constituent documents of the full prospectus may be obtained.

9. Where the prospectus is made available by publication in electronic form, a paper copy must nevertheless be delivered to the investor, upon his request and free of charge, by the issuer, the offeror or the financial intermediaries placing or selling the securities.

10. The CMVM releases the final version of the prospectus via the information disclosure system referred to in Article 367.

11. Disclosure of the prospectus shall comply with the provisions of Regulation no. 809/2004/EC of the Commission of 29 April.

**Article 140-A**  
**Notice of availability of the prospectus**

1. In public offers whose prospectus is made available only in electronic format, in the terms of paragraphs c), d) and e) of no. 5 of the preceding Article, a notice stating that the prospectus has been made available must be disseminated.

2. The content and dissemination of the notice of availability of the prospectus shall comply with the provisions of Regulation no. 809/2004/EC of the Commission of 29 April.

**Article 141**  
**Exemption from the inclusion of matters in the prospectus**

Following the issuer's or the offeror's request, the CMVM may authorise the omission from the prospectus of certain information, provided that:

- a) Disclosure of such information would be contrary to the public interest;
- b) Disclosure of such information would be seriously detrimental to the issuer, provided that its omission would not be likely to mislead the public with regard to facts and circumstances essential for an informed assessment of the issuer, offeror or guarantor, if any, and of the rights attached to the securities to which the prospectus relates; or
- c) Such information is of only minor importance to the offer and is not such as will influence the assessment of the financial position and prospects of the issuer, offeror or guarantor, if any.

**Article 142**  
**Addendum and rectification of the prospectus**

1. If, between the date of approval of the prospectus and the end of the offer period and, if applicable, the date of admission to trading of securities, whichever occurs later, a dearth is detected in the prospectus or a new fact occurs, or if it becomes aware of any fact not considered in previous prospectus, which is relevant for the decision of the recipients, the CMVM's approval is immediately required for the addendum or amendment to the prospectus.

2. The addendum or amendment to the prospectus shall be approved within seven days as from the application date or from the date of the additional information requested of the applicant and shall be disclosed under Article 140.

3. The summary, and any translations thereof, shall also be supplemented or rectified, if necessary, to take into account the new information included in the supplement or rectification.

4 - Investors who have accepted the offer before the disclosure of the addendum or amendment have the right to withdraw its acceptance within not less than two working days after the disclosure of the addendum or amendment, since the dearth, the previous or the new fact referred to in paragraph 1 is detected, known or occurred before the end date of the offer and delivery of the securities.

5 - The addendum shall indicate the final date that investors can exercise the right to withdraw their acceptance.

**Article 143**  
**Validity of the prospectus**

1. The prospectus for a public offer for distribution and the base prospectus are valid for a 12 month period as from the date of its approval and shall be finalized by any addenda required pursuant to the preceding article.

2. In the event of the public offer of non-equity securities referred to in paragraph b) of no. 1 of Article 135-C, the prospectus shall be valid until no more of the securities concerned are issued in a continuous or repeated manner.

3 - The registration document is valid for a 12 month period as from the date of its approval.

**Article 144**  
**Reference prospectus**

[Repealed]

**Subsection II**  
**Prospectus of an international offer**

**Article 145**  
**Competent authority**

1. The CMVM is the competent authority to approve prospectuses of public offers for distribution whose issuers have their registered address in Portugal, in respect of the issue of shares, securities giving the right to acquire any of the aforementioned securities, provided that securities of the latter type are issued by the issuer of the underlying shares or by an entity belonging to the group of the said issuer, and other securities with a denomination per unit of less than 1,000 Euros.

2. The Member State where the issuer has its registered address or where the securities were or will be admitted to trading on a regulated market or offered to the public, at the choice of the issuer or offeror, shall be competent to approve the prospectus of a public offer for distribution of:

a) Non-equity securities with a minimum denomination per unit of 1,000 Euros;

- b) Non-equity securities giving the right to acquire any securities or to receive a cash amount, as a consequence of their being converted or the rights conferred by them being exercised, provided that the issuer of the non-equity securities is not the issuer of the underlying securities or an entity belonging to the group of the latter issuer.
3. The Member State where any securities not mentioned in the preceding number are intended to be offered to the public for the first time or where the application for admission to trading on a regulated market is made for the first time, at the choice of the issuer or the offeror, as the case may be, subject to a subsequent selection by issuers incorporated in a third country if the home Member State was not determined by their choice, shall be competent to approve the prospectus of a public offer for distribution whose issuer is incorporated in a third country.
- 4 - The CMVM may transfer the approval of the prospectus for public offering to the competent authority of another Member State after obtaining prior consent from said Authority and after notification to the European Securities and Markets Authority.
5. The delegation of the powers contemplated in the preceding number shall be notified to the issuer or the offeror within three working days of the CMVM's decision.

**Article 145-A**  
**Competent authority for takeover bids**

1. The CMVM shall have powers to supervise any takeover bids concerning securities issued by companies subject to Portuguese law as their personal law, provided the securities concerned by the bid:
- a) Are admitted to trading on a regulated market situated or operating in Portugal;
  - b) Are not admitted to trading on a regulated market.
2. The CMVM shall further have powers to supervise any takeover bids over securities issued by an offeree company subject to a foreign law as its personal law, provided that the securities concerned by the bid:
- a) Are admitted exclusively to trading on a regulated market situated or operating in Portugal; or
  - b) If not admitted to trading in the Member State where the registered office of the issuer is located, have been first admitted to trading on a regulated market situated or operating in Portugal.
3. If the admission to trading of the securities concerned by the bid is simultaneous in more than one regulated market of several Member States, not including the Member State where the registered office of the issuer is located, the issuer shall, on the first day of trading, choose the competent authority to supervise the bid from among the authorities of such Member States and notify this decision to the regulated markets in question and the corresponding supervisory authorities.

4. Where the CMVM is competent in the terms of the preceding number, the company's decision shall be disclosed via the CMVM's information system.

### **Article 146 EU prospectus**

1. A prospectus approved by the competent authority of a European Union Member State in respect of a public offer for distribution to be made in Portugal and another Member State shall be valid in Portugal, provided the CMVM receives from the competent authority:

a) A certificate of approval attesting that the prospectus has been drawn up in accordance with Directive no. 2003/71/EC of the European Parliament and the Council of 4 November, and justifying, where applicable, the exemption from including information in the prospectus;

b) A copy of the aforementioned prospectus and, where applicable, a translation of the corresponding summary.

2. If there are significant new factors, material mistakes or inaccuracies in the prospectus, the CMVM may draw the attention of the competent authority that approved the prospectus to the need for any new information and consequent publication of a supplement.

3. To use the international prospectus approved by the CMVM, said sends within three days as from the date of application for the purpose of the offeror or the financial intermediary in charge of assisting, or within a day as from the date of approval of the prospectus, if such request is submitted together with the application for approval of same:

a) The documents referred to in paragraph 1 to the competent authority of the other Member States wherein the offer will also be held, and

b) The document referred to in subparagraph a/ of paragraph 1 to the offeror or to the financial intermediary in charge of assistance and to the European Securities and Markets Authority, while the same is notified to the competent authority of the other Member States.

4. The offeror shall be liable for the translation of the summary.

5. The CMVM disclosed the list of approved certificates received pursuant to paragraph 1 and, if applicable, the website wherein the prospectus has been made available in electronic form, via the information disclosure system referred to in Article 367.

6. The list referred to in the preceding paragraph is current and each element is available for a period of at least 12 months.

7. The provisions of the preceding numbers also apply to supplements and rectifications to a prospectus.

**Article 147**  
**Non-Community issuers**

1. The CMVM may approve the prospectus of a public offer for distribution of securities of an issuer having its registered office in a non-European Union Member State drawn up in accordance with the legislation of a non-European Union Member State, provided that:

a) The prospectus has been drawn up in accordance with international standards set by international securities commission organisations, including the International Organisation of Securities Commissions; and

b) The prospectus contains information, including information of a financial nature, equivalent to the requirements under this Code and Regulation no. 809/2004/EC of the Commission of 29 April.

2. The provisions of Article 146 shall also apply to the prospectuses referred to in this Article.

**Article 147-A**  
**Mutual recognition**

1. The prospectus of a takeover bid over securities admitted to trading on a regulated market situated or operating in Portugal and approved by a competent authority of another Member State shall be recognised by the CMVM, provided that:

a) It is translated into Portuguese, without prejudice to the provisions of no. 2 of article 6;

b) A certificate, issued by the competent authority responsible for approval of the prospectus, stating that the prospectus meets the relevant Community and national provisions, accompanied by the approved prospectus, is made available to the CMVM.

2. The CMVM may require that any supplementary information resulting from the specificities of the Portuguese regime concerning formalities relating to payment of the consideration, acceptance of the bid and the tax regime applicable thereto be added.

**Article 148**  
**Co-operation**

The CMVM shall establish forms of cooperation with foreign competent authorities relating to the exchange of information necessary for the supervision of offers carried out in Portugal and abroad, particularly when an issuer having its registered office in another Member State has more than one home competent authority due to its classes of securities, or when approval of the prospectus has been delegated to the competent authority of another Member State.

**Subsection III**  
**Liability for the prospectus**

**Article 149**  
**Scope**

1. The following are liable for damages caused by the non-compliance with the contents of the prospectus in accordance with the provisions of Article 135, except in the case they prove to have acted without fault:

- a) The offeror;
- b) The members of the offeror's management body;
- c) The issuer;
- d) The members of the issuer's management body;
- e) The promoters, in the case of offer for subscription for the incorporation of a company;
- f) The members of the auditing body, accounting firms, chartered accountants and any other individuals that have certified or, in any other way, verified the accounting documents on which the prospectus is based;
- g) The financial intermediaries in charge of assisting with the offer;
- h) Any other entities that accept being appointed in the prospectus as responsible for any information, forecast or study included in the same.

2. Fault is judged according to the highest standards of professional diligence.

3. Liability is excluded if any of the individuals mentioned in sub-article 1 prove that the addressee knew or should have known about the shortcoming in the contents of the prospectus on the date of issue of the contractual declaration or when the respective cancellation was still possible;

4. Liability is excluded even if damages provided for in paragraph 1 result only from the summary of the prospectus, or any translation thereof, unless when read together with the other documents that make up the prospect, it contains misleading, inaccurate or inconsistent references or does not provide key information to allow investors to determine whether and when to invest in the securities in question.

**Article 150**  
**Strict liability**

The following are liable independently of fault:

- a) The offeror, if any individual mentioned in Article 149/1/b/g/ and /h is held responsible;
- b) The issuer, if any individual mentioned in Article 149/d/e and /f is held responsible;
- c) The head of the assistance consortium, if one of the consortium members is responsible, in accordance with paragraph 1/g of the previous article.

**Article 151**  
**Joint liability**

If several individuals are liable for the damage caused, their liability is shared.

**Article 152**  
**Compensatory damages**

1. The compensation should place the injured party in the exact situation it would be in if, at the moment of acquisition or alienation of securities, the contents of the prospectus had been in accordance with the provisions of Article 135.
2. The amount of the compensation is reduced should those liable prove that the damage occurred is also due to reasons other than the lack of information or forecasts contained in the prospectus.

**Article 153**  
**Termination of the right to compensation**

The right to compensation based on the preceding articles shall be exercised within six months from the knowledge of dearth of the prospectus' content and terminates, in any case, within two years from the expiry of the prospect.

**Article 154**  
**Legally binding**

The rules set out in this subsection may not be set aside or modified by any legal transaction.

## **Section VI Regulation**

### **Article 155 Issues to be regulated**

The CMVM prepares the regulations necessary for the completion of the provisions of the present Section, namely on the following matters:

- a) The procedure for subsequent communication of private offers related to securities;
- b) The model for prospectuses of takeover bids;
- c) The minimum amount of securities that may be the object of a public offer;
- d) The place for publication of the public offer's result;
- e) The Greenshoe option;
- f) The investment intention's solicitation, especially as to the contents and disclosure of the preliminary announcement and prospectus;
- g) The prerequisites to be met by the securities that comprise the consideration of a take-over;
- h) The information duties that are ascribed to those who benefit from an exemption from the mandatory obligation to launch a takeover;
- i) Fees owed to the CMVM for registration of public offers for distribution, approval of prospectuses prior to soliciting intentions to invest, registration of takeover bids and approval of advertising material;
- j) The information duties for the distribution by public offer of the securities described in Article 1(g);
- l) The content and form of disclosure of the information referred to in no. 2 of Article 134.
- m) The duties applicable to takeover bids for securities not subject to the rules of this Title;
- n) Cascade takeovers, namely as to the offer price, the term of the bid, determining the offer results and the information disclosure method on the conditions and terms of the offer;
- o) CMVM decision-making deadlines, including rules on the suspension and request for additional information from applicants.

**Chapter II**  
**Public offers for distribution**

**Section I**  
**General provisions**

**Article 156**  
**Feasibility study**

[Repealed]

**Article 157**  
**Provisional registration**

[Repealed]

**Article 158**  
**Distribution of supplementary shares**

[Repealed]

**Article 159**  
**Offer price**

1. Where the final offer price and amount of securities which will be offered to the public cannot be included in the prospectus, this information may be omitted from the prospectus, provided that:

a) The criteria, and/or the conditions in accordance with which the offer price and amount of securities will be determined or, in the case of the price, the maximum price are disclosed in the prospectus; or

b) Acceptances of the purchase or subscription of securities may be withdrawn during a period of no less than two working days after the final offer price and amount of securities which will be offered to the public have been filed.

2. As soon as the same are determined, the final offer price and the amount of securities shall be notified to the CMVM and disclosed in the terms of Article 140.

3. Whenever the securities in the public offer are guaranteed by a Member State, the offeror may omit information regarding this guarantee in case said opts to draw up a prospectus.

**Article 160**  
**Price stabilisation**

[Repealed]

**Article 161**  
**Incomplete distribution**

If the total amount of the securities which are the object of acceptance declarations is less than the amount offered, the offer is effective in relation to the securities effectively distributed, except for any legal provision or offer terms to the contrary.

**Article 162**  
**Disclosure of information**

1. The issuer, the offeror, the financial intermediaries in a public offer for distribution, definitive or proposed, and those who are involved in any of the situations set out in Article 20/1 should, until the information related to the offer is made public:

- a) Limit the disclosure of information related to the offer to what is necessary to fulfil the objectives of the offer, warning the addressees as to the privileged nature of the information issued.
- b) Limit the use of privileged information to such purposes as necessary for the preparation of the offer.

2. The entities described in the previous paragraph that, as from the moment that the offer is made public, release information related to the issuer or the offer should:

- a) Observe the principles the quality of information should comply with;
- b) Ensure that the information provided is consistent with that contained in the prospectus;
- c) Clarify their relations with the issuer or their interest in the offer.

**Article 163**  
**Failure of admission to listing**

1. When a public offer for distribution is accompanied by the information that the securities which are its object are intended to be admitted to listing on a regulated market, the addressees of the offer may cancel the acquisition transaction if:

- a) The admission to listing has not been applied for until the assessment of the offer's result; or
- b) The admission is denied based on a fact triggered by the issuer, offeror, financial intermediary or those involved with them in any of the situations set out in Article 20(1).

2. The decision should be reported to the issuer up to 60 days after the refusal of admission to a regulated market or after the disclosure of the offer's result, if an admission application has not been submitted within this time period.

3. The issuer should return the amounts received within 30 days of the receipt of the decision.

### **Article 163-A Language**

1. The prospectus of a distribution public offer may be written, wholly or partially, in a language commonly used in international financial markets:

- a) If its presentation does not result from a legal requirement;
- b) If it has been prepared as part of an offer submitted to different States;
- c) If the individual law of the issuer is a foreign law.

2. In the cases contemplated in paragraphs b) and c) of the preceding number, the CMVM may require that the summary also be disseminated in Portuguese.

## **Section II Investment intention's solicitation**

### **Article 164 Admissibility**

1. Investment intention's solicitation is permitted to determine the viability of an eventual public offer for distribution.

2. Investment intention's solicitation may only be initiated after the disclosure of the preliminary prospectus.

3. Investment intention's solicitation may not serve as a means of entering into contracts, but may grant to those individuals consulted more favourable conditions in a future offer.

### **Article 165 Preliminary prospectus**

1. The preliminary prospectus to solicit intentions to invest must be approved by the CMVM.

2. The application for approval of the preliminary prospectus must be supported by the documents referred to in paragraphs a) to g) of no. 1 of Article 115, accompanied by the draft preliminary prospectus.

3. The preliminary prospectus shall comply with Regulation no. 809/2004/EC of the Commission of 29 April, all necessary changes being made.

**Article 166**  
**Liability for the prospectus**

The liability for the contents of the preliminary prospectus is subject, with the necessary adaptations, to the provisions of Article 149 et seq.

**Article 167**  
**Advertising**

Advertising is permitted in accordance with the provisions of Articles 121 and 122.

**Section III**  
**Public subscription offers**

**Article 168**  
**Public offers for subscription for incorporation of a company**

In addition to the documents required under paragraphs j) to n) of no. 1 of Article 115, the application for approval of a prospectus of a public offer for subscription for incorporation of a company must be supported by the following particulars:

- a) Identification of the promoters;
- b) Documentation proving the subscription of the minimum share capital by the promoters;
- c) Copy of the draft bylaws;
- d) Provisional company registration certificate.

**Article 169**  
**Successive offers and offers in series**

The launching by the same entity of a new subscription offer of securities of the same kind as those which had been the object of a previous offer or the launching of a new series depends on the prior payment of the full subscription price, or the placing on hold of the write-off subscribers and the accomplishment of the formalities associated with the previous issue or series.

**Section IV**  
**Public offer for sale**

**Article 170**  
**Blocking of securities**

The application for approval of a prospectus of a public offer for sale must be supported by a certificate evidencing the blocking of the securities offered.

**Article 171**  
**Co-operation duty of the issuer**

The issuer of securities distributed in a public offer for sale should provide the offeror, at its own expense, with the information and documentation necessary to prepare the prospectus.

**Article 172**  
**Revision of the offer**

1. The offeror may reduce the price initially announced by at least 2%.
2. The revision of the offer is subject to the provisions of Article 129.

**Chapter III**  
**Take-overs**

**Section I**  
**General provisions**

**Article 173**  
**Object of the offer**

1. The take-over is addressed to all the holders of securities that are the object of the offer.
2. If the takeover does not entail the acquisition of the totality of the shares of the target company and securities issued by the target company, which confer the right to its subscription or acquisition, neither the offeror nor any other individual involved in any of the situations as described in Article 20(1) may accept the offer.
3. The rules on the preliminary announcement, duties of disclosure of transactions made, the issuer's duties, competing bids and mandatory takeover bids shall not apply to takeover bids launched exclusively for securities other than shares or securities giving a right to subscribe or acquire shares.

**Article 174**  
**Confidentiality**

The offeror, the target company, its shareholders, the members of the governing bodies, and all those who render services on a permanent or occasional basis should maintain confidentiality on the preparation of the offer until publication of the preliminary announcement.

**Article 175**  
**Publication of the preliminary announcement**

1. As soon as the decision to launch a take-over is made, the offeror should send the preliminary announcement to the CMVM, target company and managing entities of the regulated markets on which the securities that are the object of the offer or comprise the consideration for the offer are listed, immediately proceeding with the respective publication.
2. The publication of the preliminary announcement obliges the offeror to:
  - a) Launch the offer in terms no less favourable to the addressees than those contained in this announcement;
  - b) Apply for registration of the offer within the term of 20 days, extendable by the CMVM up to sixty days in public offers for exchange;
  - c) Inform the representatives of its employees or, failing these, the employees of the content of the offer documents, as soon as these are made public.

**Article 176**  
**Contents of the preliminary announcement:**

1. The preliminary announcement should contain:
  - a) The name, denomination or trade name of the offeror and its domicile or headquarters;
  - b) The name and headquarters of the target company;
  - c) The securities that are the object of the offer;
  - d) The consideration offered;
  - e) The financial intermediary in charge of assisting with the offer if one has already been designated;
  - f) The percentage of voting rights in the target company held by the offeror and individuals who are involved in one of the situations as described in Article 20, calculated, with the necessary adjustments, according to this Article;
  - g) A summary statement of the offeror's intentions, notably with regard to continuity or alteration of the business of the offeree company and, in so far as it is affected by the bid, the offeror company, and, in the same terms, companies which have group or control relationships with the offeree or offeror companies;
  - h) The status of the offeror in respect of the matters referred to in article 182 and no. 1 of article 182-A.

2. The determination of a maximum or minimum limit of the quantity of securities to be acquired and the encumbrance of the offer to any conditions are only effective if they are contained in the preliminary announcement.

### **Article 177 Consideration**

1. The consideration may consist of cash, securities already issued or to be issued, or a mixture.

2. If the consideration consists of cash, the offeror should deposit the total amount with a financial institution or present an appropriate bank guarantee, before registration of the offer.

3. If the consideration consists of securities, these should have appropriate liquidity and be easy to evaluate.

### **Article 178 Public exchange offer**

1. The securities offered as consideration, which has already been issued, should be registered or deposited to the order of the offeror in a centralised system or with a financial intermediary, thus blocking the same.

2. Preliminary announcements and announcements of launch of a takeover bid whose consideration consists of securities other than securities issued by the offeror shall also include the details concerning the issuer and any securities issued or to be issued by the issuer referred to in article 176 and in no. 1 of article 183-A.

### **Article 179 Registration of the take-over**

In addition to the provisions of Article 115, the application for registration of a take-over submitted to the CMVM, is filed with documents proving the following facts:

a) The submission of the preliminary announcement, the draft public offer's announcement and draft prospectus to the target company and to the management entities of the regulated markets in which the securities are listed;

b) Deposit of the consideration in money or by issue of a bank guarantee that guarantees its payment;

c) Blockage of the securities already issued which comprise the consideration and those described in Article 173/2.

## **Article 180**

### **Transactions during the offer**

1. As from the publication of the preliminary announcement and until the assessment of the offer's result, the offeror and those involved in any of the situations described in Article 20:

a) Securities of the class of those which are the object of the offer or those which comprise the consideration cannot be traded outside regulated markets, except if authorised by the CMVM with a previous opinion from the target company;

b) Should inform the CMVM daily of the transactions carried out by each of them relating to the securities issued by the target company or the class of those which comprise the consideration.

2. The acquisitions of securities of the class of those which are the object of the offer or comprise the consideration, carried out after the publication of the preliminary announcement, are considered in the calculation of the minimum amount which the purchaser proposes to acquire.

3. If any of the acquisitions referred to in the preceding number occur:

a) In the context of voluntary takeover bids, the CMVM may determine a review of the consideration if, as result of such acquisitions, the consideration does not appear to be equitable;

b) In the context of mandatory takeover bids, the offeror must increase the consideration to a price not lower than the highest price paid for the securities thus acquired.

## **Article 181**

### **Duties of the target company**

1. Within eight days of receipt of the draft prospectuses and announcement of the bid and within five days of disclosure of any addenda to the offer documents, the board of the offeree company shall send to the offeror and the CMVM and disclose to the public a report drawn up in the terms of article 7 on the opportunity and terms of the offer.

2. The report referred to in the preceding number shall contain an autonomous and reasoned opinion on at least the following aspects:

a) The type and amount of the consideration offered;

b) The offeror's strategic plans for the offeree company;

c) The repercussions of the bid on the interests of the offeree company, in general, and, in particular, on the interests of its employees and their terms of employment and the locations of the company's places of business;

- d) The intentions of members of the boards who are simultaneously shareholders in the offeree company, in respect of acceptance of the bid.
3. The report shall contain information on possible votes against expressed in the resolution of the board that adopted it.
  4. If, by commencement of the bid, the board receives from the employees, directly or through their representatives, an opinion on the repercussions of the bid on employment, it shall be disseminated as an appendix to the report prepared by the board.
  5. The management body of the target company, from the publication of the preliminary announcement until the assessment of the result of the offer, should:
    - a) Inform the CMVM daily as to the transactions by its members, or individuals involved in any of the situations described in Article 20(1), in securities issued by the target company;
    - b) Supply all the information requested by the CMVM in the ambit of its supervisory functions;
    - c) Inform the representatives of its employees or, failing these, the employees of the content of the offer documents and the report prepared by it, as soon as these are made public;
    - d) Act in good faith, particularly, concerning the accuracy of information and honest behaviour.

**Article 182**  
**Limitation of the powers of the target company**

1. From the moment it has knowledge of the decision to launch a take-over for more than one third of the securities of the respective class, and until the assessment of the result or until the prior termination of the respective process, the management body of the target company may not perform acts that materially affect the net equity of the target company and which may significantly affect the objectives announced by the offeror, apart from the normal day to day management of the company.
2. For the purposes of the previous sub-article:
  - a) The target company has knowledge of the offer's launching upon the receipt of preliminary announcement;
  - b) Material changes in the net asset situation of the target company, particularly, the issue of shares and other securities conferring the right to their subscription or acquisition and the entering into contracts representing the sale of important portions of the company's assets;
  - c) The restriction includes acts enforcing decisions made before the period referred to therein which have not yet been fully or partially enforced.

3. Exceptions to the provisions of the previous sub-articles are:
- a) The acts resulting from the fulfilment of obligations assumed before the knowledge of the offer launch;
  - b) Acts authorised by a shareholders' meeting called exclusively to such end during the period referred to in no. 1;
  - c) Acts intended to seek competing offerors.
4. During the period referred to in no. 1:
- a) The period to disseminate the notification of a shareholders' meeting is reduced to 15 days in advance of the meeting;
  - b) The resolutions of the shareholders' meeting contemplated in paragraph b) of the preceding number, as well as any resolutions on early distribution of dividends and other income, can only be adopted by the majority of votes required to amend the articles of association.
5. The offeror is responsible for the damages incurred due to the decision to launch a take-over, taken with the main objective of placing the target company in the situation set out in this Article;
6. The regime laid down in this article shall not apply to takeover bids conducted by offeror companies which are not subject to the same rules or are controlled by a company not subject to the same rules.
7. In respect of companies which adopt the model referred to in paragraph c) of no. 1 of article 278 of the Commercial Companies Code, nos. 1 to 6 shall apply, all necessary changes being made, to the executive board, the general council and the supervisory council.

#### **Article 182-A**

#### **Voluntary suspension of the effectiveness of restrictions on transfers and voting rights**

1. Companies subject to Portuguese law as their personal law may provide in their articles of association that:
- a) The restrictions, contemplated in their articles of association or shareholders' agreements, on the transfer of shares or other securities carrying rights to acquire shares will be suspended, producing no effects on transfers resulting from acceptance of a bid;
  - b) The restrictions, contemplated in their articles of association or shareholders' agreements, concerning the exercise of voting rights will be suspended, producing no effects in shareholders' meetings called in the terms of paragraph b) of no. 3 of the preceding article;

- c) Where, following a takeover bid, at least 75% of the share capital carrying voting rights is achieved, the restrictions on transfers and voting rights referred to in the preceding paragraphs shall not apply to the offeror, and no extraordinary rights to appoint or replace members of the board of the offeree company can be exercised.
2. The articles of association of publicly traded companies subject to Portuguese law as their personal law which do not fully exercise the option referred to in the preceding number cannot provide that changes to or removal of restrictions on transfers or voting rights are conditional upon a favourable vote of more than 75% of all votes cast.
3. The articles of association of publicly traded companies subject to Portuguese law as their personal law which exercise the option referred to in no. 1 may provide that the regime foreseen does not apply to takeover bids conducted by offeror companies not subject to the same rules or controlled by a company not subject to the same rules.
4. The offeror shall be liable for any damages caused by the suspension of effectiveness of shareholders' agreements fully disclosed up to the date of publication of the preliminary announcement.
5. The offeror shall not be liable for damages caused to shareholders that voted in favour of the amendments to the articles of association for the purposes of no. 1 and any persons in the circumstances contemplated in article 20 with regard to the offeror.
6. Any approval of amendments to the articles of association for the purposes of no. 1 by companies subject to Portuguese law as their personal law and issuers of securities admitted to trading on a regulated market shall be notified to the CMVM and, in the terms of article 248, to the public.
7. Any clauses in the articles of association concerning suspension of the effectiveness of restrictions on transfers and voting rights referred to in no. 1 cannot be in effect for a period in excess of 18 months, but may be renewed through a new resolution of the shareholders' meeting, adopted in the terms laid down in the law to amend the articles of association.
8. The provisions of this article shall not apply in the event of a Member State being a holder of securities in the offeree company conferred with special rights.

### **Article 183**

#### **Offer period**

1. The offer period may vary between two and ten weeks.
2. The CMVM, on its own initiative or at the request of the offeror, may extend the offer in case of revision, launching of a competing offer or when the protection of the interests of the addressees so justifies.

**Article 183-A**  
**Offer announcement**

1. In takeover bids, an offer announcement describing the essential components for the formation of the agreements it refers to must be published, including notably the following:

- a) Identification and registered office of the offeror, the issuer and financial intermediaries in charge of assisting in or placing the offer;
- b) Characteristics and amount of the securities concerned by the offer;
- c) Type of offer;
- d) Capacity in which the financial intermediaries act in the offer;
- e) Price and overall amount of the offer, nature and terms of payment;
- f) Offer period;
- g) Allotment criteria;
- h) Conditions precedent to effectiveness of the offer;
- i) Percentage of voting rights in the company held by the offeror and any persons related to the offeror as provided for in Article 20, calculated in the terms of such Article;
- j) Places of dissemination of the prospectus;
- l) Entity responsible for determining and disclosing the outcome of the offer.

2. The offer announcement shall be published simultaneously with disclosure of the prospectus, in a widely-distributed medium in Portugal or an information disclosure medium designated by the operator of the regulated market where the securities are admitted to trading.

**Article 184**  
**Revision of the Offer**

1. The offeror may review the consideration as to its nature and amount up to five days before expiry of the bid period.

2. A reviewed bid cannot contain conditions making it less favourable and its consideration must be at least 2% greater than the preceding offer as to its amount.

3. Article 129 is applied to the revision of the offer.

## **Article 185**

### **Competing offer**

1. As from the publication of the preliminary announcement of the take-over for securities listed on a regulated market, any other take-over of securities of the same class may only be carried out through a competing offer launched according to the terms of this Article.
2. Competing bids shall be subject to the general rules applicable to takeover bids, with the amendments contained in this article and articles 185-A and 185-B.
3. Any person that is in any of the circumstances contemplated in no. 1 of article 20 with regard to the initial offeror or a competing offeror cannot launch a competing bid, except if authorised by the CMVM, provided that the situation that leads to the attribution of voting rights ceases before registration of the bid.
4. Competing bids cannot relate to a lower quantity of securities than that concerned by the initial bid.
5. The consideration for the competing offer shall be greater than the previous one in at least 2% of the value and may not contain conditions that make it less favourable.
6. The effectiveness of a competing bid cannot be conditional upon a higher percentage of acceptances by holders of securities or voting rights than that contained in the initial bid or a preceding competing bid, except if, for the purposes of the preceding number, such percentage is justified as a result of the voting rights in the offeree company already held by the offeror and any person that is in any of the circumstances contemplated in no. 1 of article 20 with regard to the offeror.
7. The offeree company shall ensure that all offerors are treated equally as to the information supplied to them.

## **Article 185-A**

### **Procedures for competing bids**

1. A competing bid must be launched no later than 5 days before expiry of the period of the initial bid.
2. Publication of a preliminary announcement at a time that does not make it possible to meet the deadline referred to in the preceding number shall not be permitted.
3. Upon the launch of a competing bid in time, the bid periods must coincide, and each competitive takeover bid must observe the minimum period of time laid down in no. 1 of article 183.
4. A request for registration of a competing bid shall be rejected by the CMVM if it concludes, on the basis of the date of submission of the request for registration of the bid and the examination of such request, that it is impossible to make a decision in time to launch the offer, pursuant to the provisions of no. 1.

5. Where the preliminary announcement of a competing bid is published after registration of the initial bid or prior competing bids, the periods of time set out in paragraph b) of no. 2 of article 175 and in no. 1 of article 181 shall be reduced to eight days and four days, respectively.

6. In the event of competing bids, acceptances may be withdrawn up to the last day of the acceptance period.

#### **Article 185-B Rights of prior offerors**

1. The launch of a competing bid and the review of any competing bid shall entitle any offeror to review the terms of its offer, irrespective of having already done so or not under article 184.

2. If it wishes to exercise the right contemplated in the preceding number, the offeror shall notify its decision to the CMVM and publish an announcement within four working days of the launch of the competing bid or the review of the bid. Failing such publication, the terms of the offer are deemed to have been maintained.

3. The provisions of no. 5 of article 185 shall apply to the review of a bid in the case of competition.

4. The launch of a competing bid shall be a ground to withdraw voluntary bids in the terms of article 128.

5. The decision to withdraw a bid must be published as soon as it is made, but in no event later than four days following the launch of the competing bid.

#### **Article 186 Succession of offers**

Except for express authorisation granted by the CMVM for the protection of the interests of the target company or the addressees of the offer, neither the offeror nor any of the individuals involved in any of the situations described in Article 20(1) may, within twelve months following the publication of the assessment of the offer's result, launch directly, by means of a third party or on the account of a third party, any take-over for securities pertaining to the same class of those that were the object of the offer or that grant the right to their subscription or acquisition.

#### **Section II Mandatory takeovers**

##### **Article 187 Duty of launching a take-over**

1. Anyone whose holding in a public company exceeds, directly or in accordance with Article 20(1), one third or a half of the voting rights attributable to the share capital, has the obligation of launching a take-over for the totality of shares and other securities issued by the company that granted the right to their subscription or acquisition.

2. The launching of an offer is not required when, exceeding the limit of one third, the entity proves before the CMVM that it neither has the control of the target company nor is involved with it in a group relationship.

3. Any entity proving that which is referred in the previous sub-article is obliged to:

a) Communicate to the CMVM any change in the percentage of voting rights resulting in an increase greater than one percent in relation to the previously communicated situation; and

b) Launch a takeover as soon as it acquires a position allowing it to exercise a dominant influence over the target company.

4. The limit of one third described in sub-article (1) may be eliminated by the bylaws of publicly held companies that do not have shares or securities granting the right to their subscription or acquisition listed on a regulated market.

5. For the purposes of this Article the restraint of voting rights set out in Article 192 is irrelevant.

### **Article 188 Consideration**

1. The consideration for a mandatory take-over may not be less than the highest of the following amounts:

a) The highest price paid by the offeror or by any individuals involved in some of the situations described in Article 20(1), for the acquisition of securities of the same class, in the six months immediately prior to the date of publication of the preliminary announcement of the offer;

b) The average price of these securities verified in a regulated market during the same period.

2. If the consideration may not be calculated by reference to the criteria described in sub-article 1 or if the CMVM understands that the consideration, in cash or securities, proposed by the offeror is not duly justified or equitable, is insufficient or excessive, the minimum consideration will be calculated, at the offeror's expense, by an independent auditor nominated by the CMVM.

3. A consideration, in cash or securities, proposed by the offeror, shall be presumed to be inequitable in the following circumstances:

a) If the highest price has been set by means of an agreement between the purchaser and the seller through private negotiation;

b) If the securities in question have low liquidity with reference to the regulated market on which they are admitted to trading;

- c) If such consideration was determined on the basis of the market price of the securities in question and this market price or the regulated market on which the securities are admitted to trading has been affected by extraordinary events.
4. The CMVM's decision concerning the appointment of an independent auditor to determine the minimum consideration, as well as the amount of the consideration determined in this way, shall be made public without delay.
5. The consideration may consist of securities, provided that these securities are of the same type as those concerned by the bid and are admitted or are of the same class of demonstrably liquid securities admitted to trading on a regulated market, and provided that the offeror and any person that is in any of the circumstances contemplated in no. 1 of article 20 with regard to the offeror have not acquired any shares representing the offeree company's share capital for a consideration in cash in the six-month period preceding the preliminary announcement, in which case an equivalent consideration in cash must be offered.

### **Article 189 Exemptions**

1. The provisions of Article 187 do not apply when the limit of the voting rights relevant to the terms of that provision has been exceeded due to:
- a) The acquisition of securities by a take-over launched over the totality of securities described in Article 187 issued by the target company, without any restriction relating to the quantity or maximum percentage of securities to be acquired and in compliance with the requirements set out in the previous Article;
  - b) The execution of a financial recovery plan within the scope of one of the types of recovery prescribed by law, including applying resolution measures and exercising powers of resolution, reduction or conversion of own fund instruments into credit institutions or financial companies as per the law;
  - c) The merger of companies, if the resolution of the general Meeting of the issuing company of securities in relation to which the offer would be launched, expressly specifies that the operation would result in the duty to launch a take-over.
2. The exemption of the duty to launch an offer is the object of a declaration by the CMVM, requested and immediately published by the interested party.

### **Article 190 Suspension of duty**

1. The duty to launch a takeover bid shall be suspended if the person under such a duty, immediately upon occurrence of the events giving rise to such duty and by means of a written notice addressed to the CMVM, undertakes to cause such events to cease within the following 120 days.

2. Within this period the interested party should sell, to those who, in relation to the same, are not involved in any of the situations set out in Article 20(1), securities sufficient for their voting rights to be reduced below the limits described in Article 187.

3. During the period of suspension, the voting rights may not be exercised according to Article 192(1) (3) & (4).

### **Article 191 Compliance**

1. Publication of the preliminary announcement of the bid must be effected immediately upon occurrence of the events giving rise to the duty to launch a bid.

2. The individual so obliged may be substituted by another in the compliance of such obligation.

### **Article 192 Restraint of rights**

1. The failure to fulfil the obligation of launching take-over results in the immediate restraint of the voting rights and dividends relating to the shares that:

a) Exceed the limit from which a launch would be mandatory;

b) Have been acquired by the exercise of rights inherent in the shares referred in the previous paragraph or in other securities granting the right to their subscription or acquisition;

2. The restraint is in force for five years, ceasing:

a) Totally, with the publication of a preliminary announcement of a take-over by a consideration not less than would be demanded if the duty had been accomplished in due time;

b) In relation to each share described in the previous sub-article, at the time of its sale to individuals not involved in any of the situations described in Article 20(1).

3. The restraint covers, firstly, the shares directly held by the individual obliged to launch the offer and, successively, to the extent necessary, those held by the individuals described in Article 20(1), according to the order of the respective clauses and in relation to those described in the same article, in the proportion of the shares held by each of them.

4. The deliberations of the shareholders that would have not been approved without the restrained votes are annulable.

5. The dividends that have been the object of restraint revert to the company.

**Article 193**  
**Civil liability**

The transgressor is liable for the damages caused to the holders of securities on which a take-over should have been launched.

**Section III**  
**Acquisition for the purpose of total control**

**Article 194**  
**Compulsory takeover**

1. Any person that, following the launch of a general takeover bid over an offeree which is a publicly traded company subject to Portuguese law as its personal law, achieves or exceeds, directly or in the terms of no. 1 of article 20, 90% of the voting rights corresponding to the share capital up to the determination of the outcome of the bid and 90% of the voting rights covered by the bid may, in the subsequent three months, acquire the remaining shares for a fair consideration, in cash, calculated in the terms of article 188.

2. If an offeror, as a result of acceptance of a general voluntary takeover bid, acquires at least 90% of the shares representing the share capital and carrying voting rights covered by the bid, it shall be presumed that the consideration for the bid corresponds to a fair consideration for acquisition of the remaining shares.

3. The controlling shareholder who makes the decision for a compulsory takeover should immediately publish a preliminary announcement and submit same to the CMVM for registration.

4. The provisions of Article 176(1) (a) to (e) apply to the contents of the preliminary announcement, with the necessary adaptations.

5. The publication of the preliminary announcement obliges the controlling shareholder to deposit the consideration with a credit institution, to the order of the holders of the remaining shares.

**Article 195**  
**Consequences**

1. The acquisition becomes effective upon publication, by the interested party, of the registration with the CMVM.

2. The CMVM relays to the centralised system management entity or registering entity of the shares, the information necessary for the transfer between accounts.

3. If the shares held are certificated and not integrated in a centralised system, the company may proceed with the issue of new certificates representative of the acquired shares and the old certificates will only be used to legitimise the receipt of the consideration.

4. The acquisition shall immediately imply loss of the publicly traded status of the company and exclusion from trading on a regulated market of the shares in the company and securities carrying rights to shares, and their readmission shall not be permitted for one year.

### **Article 196 Compulsory sale**

1. Every holder of the remaining shares may, in the three-month period following the determination of the outcome of the takeover bid referred to in no. 1 of article 194, exercise his right to sell-out, to which end he must address a written invitation to the controlling shareholders to make a proposal to acquire his shares within eight days.

2. In the lack of the proposal described in the previous sub-article or if the same is not considered satisfactory, any holder of the remaining shares may take the decision for a compulsory sale by means of a declaration before the CMVM submitted with:

a) A document proving the deposit or the blockage of shares to be sold;

b) Indication of the consideration calculated in the terms of nos. 1 and 2 of article 194;

3. Once the sale requirements have been verified by the CMVM, the sale is effective from the date of notification by that authority to the controlling shareholder.

4. The certificate of the notification constitutes a writ of execution.

### **Article 197 Equality of treatment**

In compulsory acquisitions, equal treatment to holders of shares of the same class should be assured, in particular with regard to the calculation of the consideration.

## **Title IV Trading**

### **CHAPTER I General Provisions**

#### **Article 198 Organised Forms of Trading**

1. The following organised forms of trading of financial instruments are allowed in Portugal, notwithstanding the others that the CMVM has stipulated by regulation:

- a) Regulated markets;
  - b) MTF;
  - c) Systematic internalisation.
2. [Repealed]

#### **Article 199 Regulated Markets**

1 – Regulated markets are systems that, having been authorised as such by any EU Member State, are multilateral and function regularly for the purpose of bringing together interests in financial instruments in a way that results in contracts on said instruments.

2 – The regulated markets authorised in accordance with Article 217 shall comply with the requirements established in Chapter II of the present Title.

#### **Article 200 Multilateral Trading Facilities - MTF**

1. MTFs are systems that act as such and allow the interests in financial instruments to be brought together in a way that results in contracts on said instruments.

2. The MTFs shall comply with the requirements established in Section I of Chapter II of the present Title and Article 221/1 to /9.

3. The provisions of Article 224/1 to /4 and Article 225/1 & /2 are applicable to the MTFs.

#### **Article 201 Systematic Internalisation**

1. Systematic internalisation is the trading of financial instruments for own account by a financial intermediary, by executing client orders outside a regulated market and a MTF in an organised, frequent and systematic basis.

2. Systematic internalisation of shares admitted to trading on a regulated market shall comply with the requirements established in Chapter II of the present Title.

3. [Repealed]

4. [Repealed]

## **Chapter II Regulated Markets & Multilateral Trading Facilities**

### **Section I Common Provisions**

#### **Article 202 Registration with the CMVM**

1. The regulated markets and the MTFs, and in addition, the rules relating thereto, are subject to registration with the CMVM.

2. [Repealed]

3. [Repealed]

#### **Article 203 Management Entity**

1. The regulated markets and MTFs are managed by a management entity that meets the requirements established by a specific law and, with respect to only MTFs, also by a financial intermediary, in accordance with the framework.

2. [Repealed]

3. [Repealed]

4. [Repealed]

5. [Repealed]

6. [Repealed]

7. [Repealed]

**Article 204**  
**Object of Trading**

1. The following may be the object of organized trading:
  - a) Fungible securities, freely transferable, fully paid and not subject to pledge or any other encumbrances, unless with respect to the requirements envisaged in Articles 35 and 36 Commission Regulation (EC) No. [1287/2006](#), of 10th August;
  - b) Other financial instruments, namely derivative financial instruments whose design allows for orderly pricing.
2. For the purposes of organised trading, fungible securities are securities that belong to the same class, follow the same form of representation, objectively subject to the same tax system and wherefrom no separate rights have emanated.
3. [Repealed]

**Article 205**  
**Admission and Selection for Trading**

1. The admission to trading on a regulated market and the selection for trading on a MTF depends on the decision of the respective management entity.
2. The securities admitted to trading on a regulated market may be traded subsequently in other regulated markets and MTF without the issuer's consent thereto.
3. Should there be any trading subsequent to that referred to in the preceding paragraph, the issuer is not required to provide any additional information on account of trading in said other markets or MTFs.
4. [Repealed]
5. [Repealed]
6. [Repealed]

**Article 206**  
**Members**

1. The trading of financial instruments on a regulated market and a MTF is carried out by the respective members.
2. Financial intermediaries may be admitted as members and, in addition, other persons who:
  - a) Are fit and professionally proper;

- b) Have a sufficient level of trading ability and competence;
  - c) Have, where applicable, appropriate organisational mechanisms; and
  - d) Have sufficient resources for the role they are to perform.
3. The admission of members is incumbent on the respective management entity in accordance with the principles of lawfulness, equality and respect for the rules of sound and fair competition.
4. An intervention by members may be the mere registration of transactions.

### **Article 207 Transactions**

1. The list of the transactions to be carried out in each regulated market and MTF is defined by the respective management entity.
2. The transactions on the financial instruments referred to in Article 2/1/e) & /f) are carried out according to the standard contractual clauses, wherein is standardized the object, amount, transaction period, frequency of adjustments to profits and losses, and the type of settlement, drawn up by the management entity and subject to the following:
- a) Prior notification to the CMVM; and
  - b) Approval by the *Banco de Portugal*, if the underlying assets are exchange and money-market instruments.
3. The carrying-out of transactions on a regulated market or MTF on financial instruments laid down in Article 2/1/e)/ii) & iii) and /f) depends on the authorisation in accordance with the provisions established by the Ministerial Order of the Minister of Finance and the Minister of the respective sector, preceding an opinion from the CMVM and *Banco de Portugal*.
4. The management entity adopts effective procedures in order for efficient and timely clearing and settlement of the transactions carried out through its systems to take place and clearly informs the members of some of the respective responsibilities for the settlement of transactions.
5. The members of the regulated market and MTF may designate a settlement system for the transactions carried out by same in said market or system if:
- a) Such links and arrangements between the designated settlement system and any other system or facility as are necessary in order to ensure the efficient and economic settlement of the transaction in question; and

b) The CMVM does not object to the consideration that the technical conditions for the settlement of transactions concluded on the market or facility, through a settlement system other than that designated by the management entity of said market or facility so as to allow the smooth and orderly functioning of financial markets.

### **Article 208 Trading Systems**

1. The transactions of the regulated market and MTFs shall be carried out through trading systems appropriate as to the correct formation of the prices of the financial instruments traded on same and market liquidity, in order to ensure, namely, the transparency of the transactions.
2. For the proper execution of orders accepted by same, the members of a regulated market or MTFs shall introduce said offers in the trading system, in the most appropriate form and at the most appropriate time
3. Trading in financial instruments directly between interested parties registered with the system through one of its members may be treated as regulated market transactions, in accordance with the rules approved by the management entity.

### **Article 209 Rules**

1. For each regulated market or MTF, the management entity shall approve transparent and non-discriminatory rules, based on objective criteria, that ensure the smooth functioning of same, namely with regard to:
  - a) Requirements for the admission to trading or selection for trading and the respective procedure;
  - b) Admission to membership;
  - c) Transactions and offers;
  - d) Trading and execution of orders; and
  - e) Obligations applicable to the respective members.
2. The rules referred to in the preceding paragraph are subject to registration with the CMVM, whereby the appropriateness, suitability and lawfulness of same is confirmed.
3. The approval or the amendment of rules that do not require the prior confirmation laid down in the preceding paragraph should be communicated to the CMVM.
4. After registration with the CMVM, the management entity discloses the rules adopted, including those that come into force on the disclosure date or another specified date.

5. [Repealed]

### **Article 210 Rights**

1. The patrimonial rights inherent in the securities sold belong to the buyer as from the date of the transaction.
2. The buyer pays the seller the price and in addition, the interest and other income corresponding to the time period from the last maturity date until the settlement date of the transaction.
3. The provisions of the preceding paragraphs do not exclude a different system of the allocation of rights inherent in the traded securities, provided that said system has already and clearly been published pursuant to the rules of regulated markets or the MTFs.

### **Article 211 Transaction Monitoring**

1. The management entity shall adopt efficient mechanisms and procedures in order to oversee whether the respective members are complying with the rules of same systems and the control of the operations carried out within those same systems, so as to identify violation of those rules, abnormal trading conditions and behaviour that is likely to hamper the regular functioning, transparency and credibility of the market.
2. The management entity shall immediately notify the CMVM should any of the previously mentioned situations occur, by furnishing all relevant information for the investigation at hand, as well as situations on the relevant non-compliance of rules on the functioning of the market or the system.

### **Article 212 Information to the Public**

1. For each regulated market or MTF, the management entity should provide information to the public on:
  - a) The financial instruments admitted to trading or selected for trading;
  - b) The transactions carried out and respective price.
2. In the case of a MTF, the duty established in sub-paragraph a) of the preceding paragraph is considered to be complied with if the management entity verifies that there is access to the information in question.
3. The contents, the means and the frequency of information provided to the public should be appropriate to the characteristics of each system, to the level of knowledge and nature of the investors, and the composition of the various interests involved.

4. The CMVM may require an amendment to the rules on information when same is considered not to be sufficient enough to protect the investors.

5. The management entity should disclose the following in writing:

- a) A bulletin on the days whereon normal sessions take place;
- b) Statistical information on the markets or systems managed by it, without prejudice to the provisions on matters of secrecy;
- c) The updated text of the rules governing the management entity, the markets or systems managed by it and the transaction therein carried out.

### **Article 213**

#### **Suspension and Exclusion from Trading in a Regulated Market**

1. The managing entity of the regulated market may suspend or exclude financial instruments from trading, unless such measure is susceptible of causing serious damage to investors' interests or to the regular functioning of the market.

2. Suspension is justifiable under the following circumstances:

- a) When the requirements for admission are no longer met or the relevant non-compliance of other market rules is present, provided the fault may be remedied;
- b) When circumstances that are susceptible of occurring with reasonable likelihood and that may hamper the normal progress of the trade;
- c) When the situation of the issuer implies that the trade may harm the investors' interests.

3. There are grounds for exclusion from trading when:

- a) The requirements for admission are no longer met or the relevant non-compliance of other market rules is present, provided the fault may be remedied;
- b) The problems that reasoned the suspension are still present and have not been remedied as such.

4. The exclusion of securities, whose trading is a condition for the admission of other securities, implies the exclusion of the latter.

5. The management entity of the regulated market makes public the final decision on the trading suspension or exclusion and notifies the CMVM on the relevant information, without prejudice to notifying directly both the issuer and the management entity of the other markets, as to where the financial instruments are traded or are the underlying asset for the financial derivatives.

6. The CMVM informs the competent authorities of the other Member States after notifying the management entity of the regulated market as mentioned in the previous paragraph.

7. Regarding operations mentioned in Article 207/2:

a) The decision to suspend trading shall be immediately communicated to the CMVM, who then informs the *Banco de Portugal* on whether the transactions are included in Article 207/2/b;

b) The exclusion decision is preceded by communication to the CMVM, who informs *Banco de Portugal* on whether the operations are included in Article 207/2/b.

#### **Article 214 Powers of the CMVM**

1. The CMVM may:

a) Order the management entity of the regulated market or the MTF to suspend the financial instruments from trading when the position of the issuer implies that the trading is prejudicial to the interests of the investors or, in the case of the management entity of the regulated market not having done so timeously;

b) Order the management entity of the regulated market or the MTF to exclude the financial instruments from trading when the breach of the applicable laws or regulations is proved;

c) Extend the suspension or exclusion to all the regulated markets and MTFs where financial instruments of the same class are traded.

2 - Immediately after an order of suspension or exclusion from trading on a regulated market is issued under the preceding paragraph, the CMVM discloses the relevant decision to the public and informs the European Securities and Markets Authority and the competent authorities of other EU Member States.

3. [Repealed]

4. [Repealed]

5. The CMVM may order that the managing entity of the regulated market or of the multilateral trading system, suspends or excludes financial instruments from trading when such is requested by Banco de Portugal as provided for by law.

**Article 215**  
**Effects of Suspension and Exclusion**

1. The decision of suspension or exclusion produces immediate effects.
2. The suspension shall be maintained as long as it is strictly necessary to regularise the situation that led to it, provided each suspension period may not be greater than 10 business days.

3. The suspension from trading does not release the issuer from complying with the information duties to which it is subject.

4. If it does not obstruct the urgency of the decision, the management entity of the regulated market shall notify the issuer to submit an opinion as to the suspension or exclusion within the time period established for same.

5. When informed by the competent authority of the other EU Member State of the respective decision of the suspension or exclusion of a financial instrument from trading on a regulated market in said Member State, the CMVM shall order the suspension or exclusion from trading of said financial instrument on a regulated market or MTF registered in Portugal, except when it may cause significant damage to the investors' interests or the orderly functioning of the markets.

### **Article 216 Regulation**

1. The CMVM draws up the necessary regulations in order to give effect to the provisions in the present Title, namely, on the following:

a) Process for the registration of regulated markets and MTFs, and the rules relating thereto;

b) Process for the communication of rules that do not require verification of the lawfulness, suitability and appropriateness;

c) Information to be submitted to the CMVM by the management entities of regulated markets and MTFs;

d) Information to be provided to the public by the management entities of the regulated markets and MTFs, and by the issuers of securities admitted to trading, namely, as to the contents of the information, the means and the time periods wherein same should be provided or published;

e) Compulsory disclosures in the Bulletin of the regulated market and MTFs.

2. [Repealed]

3. [Repealed]

4. [Repealed]

**Section II**  
**Regulated markets**

**Subsection I**  
**General Provisions**

**Article 217**  
**Authorisation**

1. The establishment and cessation of regulated markets depends on the authorisation requested by the respective management entity and granted by the Minister of Finance, by means of a Ministerial Order and after consultation with the CMVM.
2. The CMVM notifies the Member States and the European Securities and Markets Authority of the updated list of regulated markets registered pursuant to Article 202.

**Article 218**  
**Agreements between Management Entities**

1. The management entities of regulated markets located or operating in Portugal may agree on any mutual information or operational systems required for the sound functioning of the markets managed by same and the interests of the investors advised.
2. The management entities of regulated markets located or operating in Portugal may enter into agreements with counterpart entities of other States, providing for the following, namely:
  - a) That in each one the financial instruments admitted to trading on the other may be traded;
  - b) That the members of each regulated market may operate in the other.
3. The agreements referred to in the preceding paragraphs shall first be communicated to the CMVM who may raise an objection thereto within 15 days following the communication. In the case of paragraph 2, if the regulated market located or operating in a Non-EU Member State does not impose requirements similar to the regulated market located or operating in Portugal as to the admission of financial instruments to trading, disclosure of information to the public and other requirements in order to protect the investors.

**Article 219**  
**Regulated Market Structure**

1. Any market segments that may prove to be necessary may be created in each regulated market, taking into account namely, the characteristics of the transactions, the financial instruments traded, the entities that issue same, the trading systems and the quantities to be traded.

2. [Repealed]

3. [Repealed]

4. [Repealed]

## **Article 220 Regulated Market Sessions**

1. Regulated markets shall function in public sessions, which may be normal or special.

2. Normal regulated market sessions shall be held at the times and on the days determined by the management entity of the regulated market for current trading in financial instruments admitted to trading.

3. Special sessions shall be held in accordance with a court decision or following a request by the interested parties, a decision of the management entity of the regulated market.

4. Special sessions shall take place in accordance with the rules established by the management entity of the regulated market, and the transactions therein may pertain to financial instruments admitted or not admitted to trading in normal sessions.

## **Article 221 Information on Offers and Transactions on a Regulated Market**

1. The management entity of the regulated market should disclose to the public, on a continuous basis throughout normal trading hours, the bid and offer price of the shares and the amount of offers pending thereto.

2. The CMVM may dispense with the compliance of the disclosure duty referred to in the preceding paragraph, taking into account the market model or the type and quantity of offers in question.

3. The management entity of the regulated market should disclose the following information to the public:

a) The price, quantity, the time and other details concerning each share transaction;

b) The total quantity of shares traded.

4. The CMVM may authorise the deferred disclosure of the information referred to in sub-paragraph a) of the preceding paragraph taking into account the type and the quantity of transactions in question.

5. The information referred to in paragraphs 1 and 3 are made available on reasonable commercial terms.

6. The following are defined in Articles 17 to 20, 27 to 30 and 32 of the Commission Regulation (EC) No. 1287/2006, of 10th August:

- a) Particular information whose disclosure is required pursuant to paragraphs 1 and 3;
- b) The time periods, conditions and means of information disclosure envisaged in paragraphs 1 and 3;
- c) The conditions for the exemption or deferment of compliance with the disclosure duty referred to in paragraphs 2 and 4, respectively.

7. The management entity of the regulated market shall disclose to the market members and the investors, in general, the mechanisms to be utilized for the deferred disclosure referred to in paragraph 4, after obtaining authorisation from the CMVM as to the utilisation of same.

8. If the prices are not expressed in a currency legally recognised in Portugal, the information as to the currency used should be clear.

9. The CMVM shall define, by regulation, the contents, means and frequency of the information to be provided to the public concerning other financial instruments traded on a regulated market.

10. The management entity of the regulated market may give access, on reasonable commercial terms and on a non-discriminatory basis, to the mechanisms used for the disclosure of information envisaged in the present Article to management entities of MTFs and financial intermediaries.

## **Article 222** **Listing price**

1. When the law or an agreement refers to a listing price on a certain date, this shall mean the reference price defined by the management entity of the regulated cash market.

2. The management entity of the regulated market shall disclose the reference price, which is calculated in accordance with the market rules, for the transactions carried out in each session.

3. If the financial instruments are admitted to trading on more than one regulated market located or operating in Portugal, the price to be taken into account for the purposes of the preceding paragraph shall be the price applied on the regulated market located or operating in Portugal considered to be the most representative, according to the provisions to be established by the CMVM.

**Article 223**  
**Admission of Members**

1. Admission as a member of a regulated market and the maintenance of this capacity shall be conditional upon, in addition to the requirements laid down in Article 206, the compliance with the requirements established by the respective management entity, emanating from:

- a) The constitution and administration of the regulated market;
- b) The rules relating to the transactions on said market;
- c) Professional standards imposed on the staff of the entities that are operating on the market;
- d) The rules and procedures for the clearing and settlement of transactions carried out on said market.

2. Members of regulated markets which only carry out trading functions may only be admitted after having entered into an agreement with one or more members which guarantee settlement of the transactions traded by same.

3. The management entity of a regulated market may not limit the maximum number of its members.

4. Membership of a regulated market shall not be conditional upon ownership of any shareholding in the management entity.

5. The management entity of a regulated market should communicate to the CMVM a list of the respective members, with the frequency of said communication to be established by the CMVM Regulation.

**Subsection II**  
**Members**

**Article 224**  
**Remote Access to Authorised Markets in Portugal**

1. The rules on membership of a regulated market shall enable the remote access to same by investment firms and credit institutions authorised in other EU Member States, unless the trading procedures and systems in question require a physical presence for conclusion of transactions on same.

2. The management entity of a regulated market registered in Portugal may provide, in the territory of other Member States, appropriate mechanisms so as to facilitate access to that market and trading on same by remote members established in said territory of other Member States, and in addition to this end should communicate to the CMVM the Member State wherein it intends providing said mechanisms.

3. Within a period of a month, as from the date of the communication referred to in the preceding paragraph, the CMVM shall communicate said intention to the competent authority of the Member State wherein the management entity intends providing said mechanisms.

4. At the request of the competent authority referred to in the preceding paragraph, the CMVM shall inform same, within a reasonable period, of the identity of the remote members of the market authorised in Portugal and established in said Member State.

5. In the provisions envisaged in Article 16 Commission Regulation (EC) No. [1287/2006](#), of 10th August, the CMVM establishes with the competent authority of the Member State, wherein the mechanism was provided, a cooperation agreement seeking an appropriate supervision of the regulated market in question.

### **Article 225** **Remote Access to Authorised Markets Abroad**

1. The provision, in national territory, of appropriate mechanisms to facilitate the access to and trading on the regulated market authorised in another EU Member State, by remote members established in Portugal, depends on the communication to the CMVM, by the competent authority of the State wherein the regulated market was authorised:

a) The intention of the management entity providing said mechanisms in Portugal; and

b) The identity of the members of said market that is established in Portugal, on the request of the CMVM.

2. The CMVM may authorise the provision, in national territory, of appropriate mechanisms so as to facilitate access to and trading on the market authorised in a Non-EU Member State provided that same is subject to comparable legal and supervision requirements.

3. In the provisions laid down in Article 16 Commission Regulation (EC) No. [1287/2006](#), of 10th August, the CMVM establishes with the competent authority of the Member State, wherein the mechanism was provided, a cooperation agreement seeking an appropriate supervision of the regulated market in question.

### **Article 226** **Members Duties**

1. The members of regulated markets should:

a) Comply with the decisions made by the boards of the management entity of a regulated market within the scope of the legal and regulatory provisions applicable to the market wherein same operate; and

- b) Provide the management entity of a regulated market with any information necessary for the sound management of the markets, even if said information is subject to professional secrecy.
2. Each regulated market member shall appoint a member from its Board of Directors or a duly empowered representative to act as a liaison before the management entity of a regulated market and the CMVM.
3. [Repealed]

**Subsection III**  
**Admission to Trading**

**Article 227**  
**Admission to Trading on a Regulated Market**

1. Only securities whose contents and form of representation are in accordance with the law applicable to them and which have already been, overall, issued in harmony with the prevailing law of the issuer may be admitted to listing.
2. In Articles 35 to 37 Commission Regulation (EC) No. [1287/2006](#), of 10th August, the characteristics of the different types of financial instruments that should be taken into consideration by the management entity of a regulated market in evaluating if same was issued under terms that will allow the admission to trading.
3. The issuer should comply with the following requirements:
- a) Has been constituted and is functioning in accordance with its respective law;
  - b) Proves that it has a financial and economic position compatible with the nature of the securities to be admitted and the market where the admission is applied.
4. In the application for admission the following should be mentioned:
- a) The means to be used by the issuer to provide information to the public;
  - b) The identification of the participant in a settlement system accepted by the managing entity through which it guarantees the payment of the equity rights inherent in the securities to be admitted and other amounts due.
5. Within 90 days after admission, the issuer has the duty to request the admission of shares that belong to the class already admitted.
6. The shares may be admitted to trading after the final registration of the company's constitution or capital increase in the Commercial Registry Office, even though the respective publication has not yet been carried out.

7. The management entity of a regulated market establishes and maintains efficient mechanisms for:

- a) Ascertaining if the issuers of securities admitted to trading on the regulated market complies with the reporting obligations applicable;
- b) Enabling the regulated market members to access the information that has been disclosed to the public by the issuers;
- c) Regularly ascertaining if the securities that are admitted to trading on a regulated market continue to comply with the admission requirements.

**Article 228**  
**Admission to the Official Listed Market**

1. In addition to the provisions of paragraph 3 of the preceding Article, the issuer of securities to be traded on an official listed market should comply with the following requirements:

- a) Has been carrying on business for at least three years;
- b) Has disclosed, as provided by law, the management reports and annual accounts for the three years prior to applying for admission.

2. If the issuer company has resulted from a merger or demerger, the requirements referred to in the preceding paragraph are considered fulfilled if so verified by one of the merged companies or by the demerger company.

3. The CMVM may dispense with the requirements referred to in paragraph 1, when the interests of the issuer and investors so advise and when the requirement of paragraph 3/b) of the preceding Article, on its own, allows investors to make a clear assessment on the issuer and securities.

4. [Repealed]

5. [Repealed]

6. [Repealed]

7. [Repealed]

**Article 229**  
**Admission of Shares to Trading on the Official Listed Market**

1. Shares may only be admitted to trading on the official listed market in relation to which:

- a) An adequate level of dispersion amongst the public may be ascertained;
- and

- b) The market capitalisation of, at least, one million Euro, or, if the market capitalization is not able to be determined, the net equity of the company, including the results of the last financial year, is at least one million Euro.
2. It is deemed that there is an adequate level of dispersion when the shares that are the object of the application to be admitted to trading are dispersed amongst the public in a proportion of, at least, 25% of the share capital subscribed, represented by said class of shares or when, due to the high number of shares of the same class and the level of dispersion amongst the public, a regular functioning of the market is ensured with a lower proportion.
3. In the case of an application for shares of the same class of shares already listed, the adequacy of the dispersion amongst the public should be assessed in view of the total number of listed shares.
4. The provisions of paragraph 1/b) do not apply to the admission to trading of shares of the same class as the shares already listed.
5. The management entity of a regulated market may require a market capitalisation above that set out in paragraph 1/b) if there is another national regulated market, in which the requirements for this purpose are the same as referred to in said paragraph.
6. [Repealed]
7. [Repealed]
8. [Repealed]

**Article 230**  
**Admission of Bonds to Trading on the Official Listed Market**

1. Only bonds pertaining to a debenture loan or any of its series whose amount is equal to or greater than €200,000 may be admitted to trading on a regulated market.
2. The admission of bonds convertible into shares or with the right to subscription of shares on a regulated market depends on a prior or simultaneous admission of the shares to which the right is conferred, or shares belonging to the same class.
3. The requirement of the preceding paragraph may be dispensed with by the CMVM, if same is permitted by the law of the issuer and the same clearly shows that the bondholders have the necessary information to make a reasonable assessment on the value of the shares into which the bonds are convertible.
4. The admission of bonds convertible into shares or with a right to subscribe shares already admitted to trading on a regulated market situated or operating in a EU Member State where the issuer has its head-office shall depend upon prior consultation with the authorities of the said Member State.

5. The provisions of Article 227/3/b) and Article 228/1 do not apply to the admission of bonds:

- a) Representative of foreign or national public debt;
- b) Issued by the Autonomous Regions and Portuguese Municipalities;
- c) Issued by public institutes and national public funds;
- d) Jointly and unconditionally guaranteed by the Portuguese State or a foreign State;
- e) Issued by international public companies and international financial institutions.

### **Article 231**

#### **Special Provisions on the Admission of Securities subject to Foreign Law**

1. Except in cases in which securities are admitted to trading on a regulated market situated or operating in an EU Member State, the CMVM may require the issuer to submit a legal opinion attesting the requirements of Article 227/1, 227/2 & 227/3/a).
2. The admission of securities subject to the law of a Member State of the European Community may not be subordinated to a previous admission in a regulated market located or operating in this State.
3. When the law of the State governing the securities to be admitted does not permit their direct admission to a market located or operating outside that State, or the admission of these securities appears to be operationally difficult, certificates evidencing the registration or deposit of such securities may be admitted to trading on regulated markets located or operating in Portugal.

### **Article 232<sup>11</sup>**

#### **Consequences of the admission to listing**

1. The admission of securities that have been the object of a public offer is only effective after the closure of the offer.
2. The management entity may authorise business deals on securities, issued or to be issued, object of public offer for distribution to which the application for admission relates, in a short time period prior to the admission on market provided that subject to the condition that the admission becomes effective.
3. The admission to listing includes all securities of the same category.

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<sup>11</sup> Wording provided by Article 3 Decree-Law No. 49/2010, of 19 May

4. Excluded from the provisions of the preceding sub-Article are the shares of the same class of shares for which admission to trading is sought to be part of lots aimed at keeping control of the company, provided that this does not impair the interests of other holders of shares for which admission to trading is sought and the applicant releases information to the market concerning the reason for the refusal and the

#### **Subsection IV Admission process**

#### **Article 233 Application for admission**

1. The application for admission to trading, supported with the particulars required to evidence that the necessary requirements are fulfilled, shall be submitted to the regulated market operator on whose market the securities will be traded:

- a) The issuer;
- b) The holders of, at least, 10% of the issued securities, belonging to the same category, if the issuer is already a public company;
- c) The Public Credit Management Institute, if it relates to bonds issued by the Portuguese State.

2. The regulated market operator shall send the CMVM a copy of the application for admission together with the documents necessary for approval of the prospectus.

3. The application for admission to listing may be submitted before all the necessary requirements have been met, provided that the issuer indicates how and when they will be met.

4. The issuer of securities admitted to trading on a regulated market, at the moment it requests the admission, should appoint a representative with appropriate powers for liaison with the market and the CMVM.

#### **Article 234 Admission decision**

1. The managing entity decides on the admission of securities to listing or their refusal up to 90 days after the submission of the application and the decision should be immediately notified to the petitioner.

2. The decision for admission to listing does not involve any guarantee concerning the contents of the information, the economic and financial situation of the issuer, its viability and the quality of the securities admitted.

3. The regulated market operator shall disclose its decision in respect of admission and notify it to the CMVM, identifying the securities admitted, describing their characteristics and the way to access the prospectus.

4. When the management entity of a regulated market admits securities to trading without the consent from the respective issuer, in accordance with Article 205/2, same should be informed of said fact.

### **Article 235 Refusal of admission**

1. The admission to listing may only be refused if:

a) The requirements as demanded by law, regulations or rules of the respective market are not fulfilled;

b) The issuer has not met the obligations to which he is subject in other markets, located or operating in Portugal or abroad, where the securities are listed.

c) It is not advisable to proceed with the admission, in the interests of investors and in view of the issuer's situation.

2. The managing entity should notify the petitioner to amend the reparable defects within a reasonable period to be fixed.

3. Admission is considered as refused if the decision is not notified, to the petitioner, within 90 days following the admission application.

### **Subsection V Prospectus**

#### **Article 236 Requirements**

1. Prior to admission of any securities to trading, the applicant shall disseminate, in the terms of Article 140, a prospectus approved:

a) By the CMVM, in the case of admission of the securities referred to in no. 1 of Article 145;

b) By the competent authority, following application of the criteria set out in nos. 2 and 3 of Article 145, all necessary changes being made.

2. A prospectus shall not be required for the admission of:

a) The securities referred to in Article 111/1/a), /b), /c), /d), /f), /g), /h), /i), /j), /l) & /n) and Article 134/2/a), with the conditions envisaged therein;

b) Shares offered, allotted or to be allotted free of charge to existing shareholders, and dividends paid out in the form of shares of the same class as the shares in respect of which such dividends are paid, provided that the said shares are the same class as the shares already admitted to trading on the same regulated market and a document is made available containing information on the number and nature of the shares and the reasons for and details of the offer;

c) Securities that are offered, allotted or that are to be allotted to current or former board members or employees, by the employer, by a company in a control or group relation or by a company subject to common control provided the mentioned securities have the same class as those that have already been admitted to trading on the same regulated market and a document is made available containing information on the number and nature of the securities and the reasons for and details of the offer;

d) Shares representing, over a 12-month period, less than 10% of the number of shares of the same class already admitted to trading on the same regulated market;

e) Shares resulting from the conversion or exchange of other securities or from the exercise of rights conferred by other securities, provided that the said shares are of the same class as the shares already admitted to trading on the same regulated market;

f) Securities already admitted to trading on another regulated market, on the following conditions:

i) That these securities, or securities of the same class, have been admitted to trading on that other regulated market for more than 18 months;

ii) That, for securities admitted to trading on a regulated market for the first time, the admission to trading on the other regulated market was associated with the dissemination of a prospectus in conformity with Article 140;

iii) That, except where the provisions of paragraph ii) above apply, for securities first admitted to trading after 30 June 1983, the prospectus was approved in accordance with the requirements of Directive no. 80/390/EEC of the Council of 27 March or Directive no. 2001/34/EC of the Council of 28 May.

iv) That the ongoing obligations for trading on the other regulated market have been fulfilled;

v) That the person seeking admission under this exemption makes a summary document available to the public in a language accepted by the CMVM;

vi) That the summary document referred to in paragraph v) above is made available to the public; and

vii) That the contents of the summary document shall comply with Article 135-A. Furthermore, the document shall state where the most recent prospectus can be obtained and where the financial information published by the issuer pursuant to his ongoing obligations of disclosure is available.

3. In the cases contemplated in paragraphs a), b), i) and j) of Article 111, the applicant is entitled to draw up a prospectus, which shall be subject to the provisions of this Code and any supplementary legislation.

### **Article 237**

#### **Mutual recognition and co-operation**

[Repealed]

### **Article 237-A**

#### **Language**

1. The admission prospectus may be written, wholly or partially, in a language commonly used in international financial markets:

a) If the securities to be admitted have a nominal value equal or greater than €100,000 or, for securities with no par value, if the initial value for admission is equal to or greater than that amount;

b) If it has been prepared as part of an admission request to be submitted to the markets of different States;

c) If the individual law of the issuer is a foreign law;

d) If it is intended for a market or market segment that, by its characteristics, is only accessible to qualified investors.

2. The provisions of no. 2 of Article 163-A shall apply to the cases contemplated in paragraphs b) and c) of the preceding number.

3. The periodical information on the issuers of securities admitted to listing in the situations described in Article 163-A may be written in a language commonly used in international financial markets.

### **Article 238**

#### **Framework on the prospectus for admission**

1. Articles 118, 134/3, 135, 135-A, 135-B, 135-C, 136/a, c/, e/, f/ and g/, 136-A, 137, 139, 140, 140-A, 141, 142, 143, 145, 146, 147 and 159/3 shall apply, *mutatis mutandis*, to the prospectus for admission to securities on a regulated market.

2. A summary is not required to be presented in the case where the prospect for admission to trading on a regulated market of securities that do not have a share capital with a par value of at least €100,000.

**Article 239**  
**General criteria for exemption from the prospectus**

[Repealed]

**Article 240**  
**Total or partial exemption from the prospectus**

[Repealed]

**Article 241**  
**Partial exemption from the prospectus**

[Repealed]

**Article 242**  
**Regulation**

[Repealed]

**Article 243**  
**Liability for the contents of the prospectus**

The provisions of Articles 149 to 154, with the necessary adaptations, together with the following specific conditions apply to the liability for the contents of the prospectus:

- a) The individuals described in Article 149(1) (c) (d) (f) (h) are liable.
- b) The right to indemnity should be exercised within the period of six months from the knowledge of the shortcoming in the prospectus or its amendment and termination, in any case, two years counting from the disclosure of the admission prospectus or the amendment that contains the defective information or forecast.

**Subsection VI**  
**Information relating to securities admitted to listing**

**Article 244**  
**General Rules**

1. The following entities shall submit the documents and information referred to in the Articles below to the CMVM, by not later than publication of same if no other time limit has been specifically laid down:

- a) The issuers, subject to Portuguese law, of shares and debt securities with a par value of less than €1 000.00, admitted to trading on a regulated market located or operating in Portugal or another Member State;
- b) The issuers, with registered offices in another EU Member State, of securities referred to in the preceding paragraph exclusively admitted to trading on a regulated market located or operating in Portugal;

- c) The issuers, with registered offices located outside the European Union, of securities referred to in sub-paragraph a), admitted to trading on a regulated market located or operating in Portugal or another Member State, provided that, in the latter case, the CMVM is the respective competent authority;
  - d) The issuers of securities, not covered by the preceding sub-paragraphs, admitted to trading on a regulated market located or operating in Portugal or another Member State, provided that, the CMVM is the respective competent authority.
2. The persons who have applied for the admission to trading of the securities referred to in the preceding sub-paragraphs without the consent from the respective issuer, shall always submit the information referred to in the following Articles to the CMVM simultaneously whenever same is disclosed.
3. The issuers of securities admitted to trading on a regulated market located or operating in Portugal and regulated market located or operating in a Non-EU Member State shall submit to the CMVM any supplementary information, which being material for assessing the securities, are required to be provided to the authorities of said State within the time period stipulated by the applicable legislation.
4. The information required in the following Articles are:
- a) Disclosed in a manner ensuring that the investors from all over the European Community have fast access, within the time periods specifically stipulated and without any specific costs, to said information on a non-discriminatory basis; and
  - b) Submitted to the system envisaged in Article 367.
5. For the purposes of sub-paragraph a) in the preceding paragraph, the entities referred to in paragraph 1 should:
- a) Convey the information in unedited full text, being able to, with regard to the information referred to in Articles 245, 246 and 246-A, be limited to disclosing a notice announcing the availability of said information and indicating the Internet websites, in addition to the mechanism envisaged in Article 367, where the information may be obtained;
  - b) Ensuring that the transmission of information is carried out securely, reducing the risk of data corruption and non-authorized access, and ensuring the authenticity of the information source;
  - c) Guaranteeing the security of reception by means of the immediate correction of any error or interruption in the transmission of information;
  - d) Ensuring that the information transmitted is identifiable as information required by law and that allows for the clear identity of the issuer, purpose of the information and, the date and time of transmission;

- e) Communicate to the CMVM, on request, the name of the person who transmitted the information, data on the validation of security mechanisms utilised, date, time and means whereby the information was transmitted and if applicable, data on the prohibition placed on the disclosure of information.
6. Concerning the information whose disclosure is mandatory, the CMVM may:
- a) Disclose same at the expense of the entities that are required to do so, in the event of said entities refusing to comply with the orders that were given, pursuant to the law;
  - b) Decide to make same public by means of the system envisaged in Article 367.
7. Issuers of securities admitted to trading on a regulated market shall place and maintain on the website for one year, with the exception of any other time periods specifically laid down, all the information that is required to be made public pursuant to the present Code, regulations and relevant legislation.
8. The information referred to in the preceding number must be accessible separately from non-mandatory information, notably of an advertising nature.

**Article 244-A**  
**Selecting the Competent Authority**

1. For the purposes of paragraph 1/c/d of the previous Article, CMVM's competence results from:
- a) The admission to trading only on a regulated market situated or operating in Portugal or the fact that the first application for trading in the European Union is made in this regulated market;
  - b) Choosing Portugal as the competent Member State from the one where the issuer has its registered office at and those territories wherein the regulated markets in which the securities in question are admitted to trading, are situated or functioning at.
2. The selection provided for in sub-paragraph b/ of the previous paragraph is made by the issuer and is binding for at least a three-year period.
3. The selection made under the previous number shall be disclosed in accordance with Article 244/3.

## **Article 245**

### **Annual Report and Accounts**

1. The entities referred to in Article 244/1 shall disclose, within four months as from the close of the financial year and be publicly available for five years:

a) The management report, the annual accounts, the audit report and other accounting documents required by law or regulation, even though same has not yet been submitted for approval at the General Meeting;

b) The auditor's report;

c) Statements from each of the responsible persons of the issuer, whose names and positions should be clearly indicated, and wherein is averred that, to the best of their knowledge, the information envisaged in paragraph a) was drawn up in accordance with the applicable accounting standards, reflecting a true and fair view of the assets and liabilities, financial position and results of the issuer and the companies included in the consolidation as a whole, when applicable, and that the management report faithfully states the trend of the business, the performance and position of the issuer and companies included in the consolidation as a whole, contains a description of the principal risks and uncertainties faced.

2. The report referred to in sub-paragraph b) of the preceding paragraph is disclosed verbatim, including:

a) An opinion relating to progress forecasts of business and financial and economic situation mentioned in the documents to which sub-article (1)(a) refers;

b) Details corresponding to the legal certification of accounts as per the terms and purposes provided for in the Commercial Companies Code, if not required by another legal rule.

3. The issuers required to draw up consolidated accounts shall disclose the information referred to in paragraph 1, individual accounts, drawn up in accordance with national legislation, and consolidated accounts, drawn up in accordance with Regulation (EC) No. [1606/2002](#).

4. The issuers that are not required to draw up consolidated accounts shall disclose the information referred to in paragraph 1 individually, drawn up in accordance with national law.

5. If the annual report does not provide an exact picture of the net assets, financial situation and results of the company, the CMVM may order the publication of supplementary information.

6. The documents that comprise the annual report and accounts shall be submitted to the CMVM as soon as same are available to the shareholders.

**Article 245-A<sup>12</sup>**  
**Annual Information on Corporate Governance**

1. Issuers of shares admitted to trading on a regulated market, situated or functioning in Portugal shall disclose, as a chapter of their annual management report specifically drawn for said purpose or as an appendix, a detailed report on the corporate governance structure and practices. Said report shall contain at least the following information:

- a) The structure of their capital, including shares which are not admitted to trading, with an indication of the different classes of shares and, for each class of shares, the rights and obligations attaching to it and the percentage of share capital that it represents;
- b) Any restrictions on the transfer of shares, such as clauses on consent for disposal, or restrictions on the ownership of shares;
- c) Qualifying holdings in the company's share capital;
- d) Identification of any shareholders that hold special rights and a description of such rights;
- e) The system of control of any employee share scheme where the voting rights are not exercised directly by the employees;
- f) Any restrictions on voting rights, such as limitations on the voting rights of holders of a given percentage or number of votes, deadlines for exercising voting rights, or systems whereby the financial rights attaching to securities are separated from the holding of securities;
- g) Shareholders' agreements among shareholders which are known to the company and may result in restrictions on the transfer of securities or voting rights;
- h) The rules governing the appointment and replacement of board members and amendment of the articles of association;
- i) The powers of the board, notably in respect of resolutions to increase equity;
- j) Any significant agreements to which the company is a party and which take effect, alter or terminate upon a change of control of the company following a takeover bid, as well as the effects thereof, except where their nature is such that their disclosure would be seriously prejudicial to the company; this exception shall not apply where the company is specifically obliged to disclose such information on the basis of other legal requirements;

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<sup>12</sup> Amended by Article 6 Decree-Law No. 185/2009, of 12 August

- l) Any agreements between the company and members of the management body or employees providing for compensation if they resign or are made redundant without valid reason or if their employment ceases because of a takeover bid;
  - m) Core information on the internal control and risk management systems implemented in the company regarding disclosure of financial information.
  - n) Compliance with the Corporate Governance statement to which the issuer is subject to by virtue of legal or regulatory provision. The issuer shall also specify those parts of said code that deviate and the reasons therefore;
  - o) Compliance with the Corporate Governance statement to which the issuer voluntarily abides by and shall specify those parts of said code that deviate and the reasons therefore;
  - p) Location as to where the public may find the Corporate Governance Code to which the issuer is subject to in accordance to the previous subparagraphs;
  - q) Content and description of the way the issuer's corporate bodies' function as well as the Committees created therein;
2. Issuers of shares admitted to trading on a regulated market subject to Portuguese law as their personal law shall disclose information on their corporate governance structure and practices in the terms laid down in a regulation of the CMVM, which shall include the information required under the preceding number.
3. The board of issuers of shares admitted to trading on a regulated market subject to Portuguese law as their personal law shall annually submit to the shareholders' meetings a report explaining the matters referred to in no. 1.
4. The issuers whose securities, apart from shares, are admitted to trading on a regulated market situation or functioning in Portugal, shall annually disclose the information referred to in paragraph 1/c/d/f/h/i/ and m/, except for when said shares are traded in a multilateral trading system, in which case all the information referred to in paragraph 1 shall be disclosed.
5. The detailed report on the corporate governance structure and practices may not contain referral clauses, except for the annual management report.

## **Article 246**

### **Half-yearly information**

1. Within two months of the end of the first six months of the financial year, the issuers of shares and debt securities referred to in Article 244/1 shall disclose the following with regard to the activity for the said period, and keep same available to the public for five years:
- a) The condensed set of financial statements;
  - b) An interim management report;

- c) Statements by the persons responsible within the issuer, whose names and functions shall be clearly indicated, wherein is averred that, to the best of their knowledge, the information envisaged in sub-paragraph a) has been prepared in accordance with the accounting standards applicable, gives a true and fair view of the assets and liabilities, financial position and, results of the issuer and the companies included in the consolidation as a whole, when applicable, and that the interim management report includes a fair review of the information required pursuant to paragraph 2.
2. The interim management report shall include, at least, an indication of important events that have occurred during the said period, and the impact on the respective financial statements, together with a description of the principal risks and uncertainties for the remaining six months.
3. The issuers required to prepare consolidated accounts:
- a) Should prepare the financial statements in accordance with the international accounting standards applicable to the interim financial reporting adopted pursuant to Article 6 Regulation of the European Parliament and of the Council (EC) No [1606/2002](#) of 19th July;
  - b) The information referred to in the preceding paragraph shall only be disclosed in a consolidated format unless the individual accounts contain important information;
  - c) The issuers of shares should also include information on the major related parties transactions carried out in the first six months of the financial year that has significantly influenced its financial position or performance together with any changes to the information included in the preceding annual report capable of having a significant effect on its financial position or performance in the first six months of the current financial year.
4. Where the issuer is not required to prepare consolidated accounts, the condensed set of financial statements shall include, at least, a balance sheet and a condensed profit and loss account, prepared in accordance with the principles for recognizing and measuring applicable to the preparing of annual financial reports and explanatory notes on said accounts.
5. In the cases envisaged in the preceding paragraph:
- a) The condensed balance sheet and condensed profit and loss account should reflect all the items and sub-totals included in the last annual financial statements of the issuer, with the additional necessary items being inserted, if, due to omission, the half-yearly financial statements reflected a misleading image of the assets, liabilities, financial position and results of the issuer;
  - b) The balance sheet should include comparative information referring to the end of the immediate preceding financial year;
  - c) The profit and loss account should include year-over-year comparative information with the preceding financial year;

- d) The explanatory notes should include enough information in order to ensure the comparability of condensed half-yearly financial statements with the annual financial statements and the correct understanding, by the users, of any significant changes in the amounts and trends in the half-yearly period in question reflected on the balance sheet and financial statements;
- e) The issuers of shares should, at least, include information on the major related parties transactions carried out in the first six months of the financial year referring, namely, to the amount of said transactions, the nature of the relevant relationship and any other information necessary for the understanding of the issuer's financial position if said transactions were relevant and had not been concluded under normal market conditions.
6. For the purposes of sub-paragraph e) of the preceding paragraph, the major related parties' transactions may be accrued according to the nature, unless the said information is necessary for the understanding of the implications of the transaction in the issuer's financial position.

**Article 246-A**  
**Quarterly Information and Interim Information**  
**from Senior Management**

1. Issuers subject to Portuguese Law are obliged to disclose quarterly information, on shares admitted to trading on a regulated market that surpass two of the following limits during two consecutive years:
- a) Total balance sheet - Euro 100 000 000;
  - b) Total on net sales and other proceeds - Euro 150 000 000;
  - c) Average number of employees during the financial year - 150.
2. The issuers of shares mentioned in Article 244/1 that are not obliged to disclose the information provided for in the preceding number, shall disclose a statement from the Administrative Body during the first and second half-year of the financial year on the period as from the beginning of the half-year and the date of the statement and shall further contain the following information:
- a) An explanatory description of relevant events and transactions carried out during the related period and its impact on the financial position of the issuer and companies controlled by the latter during the related period; and
  - b) An overall description of the financial position and performance of the issuer and companies controlled by the latter during the related period.
3. The statement mentioned in the preceding number shall be drawn up during the end of the first 10 weeks and the last 6 weeks of the half-year in question.
4. The disclosure of quarterly information replaces the duty to disclose interim information from Senior Management.

## **Article 247 Regulation**

By regulation the CMVM, shall establish:

- a) The form of the information described in the previous Articles when the issuers of securities admitted to listing are not companies;
- b) The documents to be presented in compliance with the provisions of Article 245/1 to /4 and Article 246;
- c) The necessary adaptations when the requirements of Article 246/1/a and b/ are in disagreement with the company's activity;
- d) The half-yearly information to be rendered when the first financial year of the companies that adopt an annual financial year different from the calendar year has duration greater than 12 months;
- e) The contents and time period for the disclosure of quarterly information and the contents of interim information from management;
- f) The organisation by the market management entities, of information systems that are available to the public and that contain current information on each of the issuers of securities that are admitted to trading;
- g) The information duties for admission to listing of the securities described in Article 1/g;
- h) The terms and conditions wherein the information concerning the transactions contemplated in Article 248-B, namely, the possibility of said communication being made in aggregate form in line with a certain amount and a specific time period, is to be communicated and made available.
- i) The information shall be made available on the issuers' website, provided for in Article 244/7 and /8.

## **Article 248 Inside information on issuers**

1. Any issuers which have securities admitted to trading on a regulated market or have requested their admission to such a market must promptly disclose:

- a) Any information that directly concerns them or the securities issued by them which is of a precise nature and has not been made public and, if it were made public, would be likely to have a significant effect on the prices of such securities, their underlying instruments or related derivatives;
- b) Any significant changes concerning information publicly disclosed in the terms of the preceding paragraph, through the same channel as that used for public disclosure of the original information.

2. For the purposes of this law, inside information covers a set of circumstances which exists or may reasonably be expected to come into existence or an event which has occurred or may reasonably be expected to do so, regardless of its degree of materialisation, which a reasonable investor would be likely to entirely or partially use, should he know the same, as a basis for his investment decisions, since it would be likely to have a significant effect on the prices of securities or financial instruments.

3. Issuers shall ensure that the disclosure of inside information is synchronised as closely as possible among all categories of investors and regulated markets in all European Union Member States in which those issuers have their securities admitted to trading or have requested such approval.

4. Without prejudice to possible criminal liability, any natural person or entity that holds information with the characteristics referred to in nos. 1 and 2 shall be prohibited from disclosing such information to any other person before the same is publicly disclosed, unless such disclosure is made in the normal course of the exercise of his employment, profession or duties.

5. The prohibition contemplated in the preceding number shall not apply to trading in own shares in "buy-back" programmes, provided such trading is carried out in accordance with the terms provided for under the law.

6. Issuers, or persons acting on their behalf or for their account, shall draw up and regularly update a list of those persons working for them, under an employment contract or otherwise, who have regular or occasional access to inside information, and shall inform these persons that their names have been included in the said list and of the legal consequences attaching to misuse or improper circulation of such information.

7. The list contemplated in the preceding number shall contain the identity of the persons, the reasons why such persons are on the list, the date on which the list of insiders was created and updated, and be kept by issuers for at least five years after being drawn up or updated and, further, be immediately sent to the CMVM whenever requested by the latter.

#### **Article 248-A** **Delayed disclosure of information**

1. The issuers referred to in no. 1 of the preceding Article may delay the public disclosure of the information referred to therein, if, cumulatively:

- a) Immediate disclosure would be likely to prejudice their legitimate interests;
- b) Such delay is not likely to mislead the public;
- c) The issuer demonstrates that the confidentiality of such information is ensured.

2. Disclosure of inside information is likely to prejudice the legitimate interests of the issuer notably in the following circumstances:

a) Decisions taken or contracts made by the management body of an issuer which need the approval of another body of the issuer in order to become effective, provided that public disclosure of the information before such approval, even if made together with the simultaneous announcement that this approval is still pending, would jeopardise the correct assessment of the information by the public;

b) Negotiations in course, or related elements, where the outcome or normal pattern of those negotiations would be likely to be affected by public disclosure.

3. In the event that the financial viability of the issuer is in danger, although not within the scope of the applicable insolvency law, public disclosure of information may be delayed for a limited period where such public disclosure would seriously jeopardise the interests of existing and potential shareholders by undermining the conclusion of specific negotiations designed to ensure the financial recovery of the issuer.

4. In order to ensure the confidentiality of information whose disclosure is delayed and to prevent any misuse thereof, the issuer shall take at least the following measures:

a) Restrict access to such information only to persons who require it for the exercise of their functions within the issuer;

b) Make sure that any person with access to such information acknowledges the inside nature of the information, the duties and prohibitions resulting from such knowledge and is aware of the sanctions attaching to the misuse or improper circulation of such information;

c) Has measures in place which allow immediate public disclosure in case of breach of confidentiality.

5. If an issuer or a person acting on its behalf or for its account transmits, in the normal course of their business, profession or duties, inside information to a third party not subject to a duty of secrecy, such information shall simultaneously be made public, if its communication was intentional, or immediately, if its communication was unintentional.

#### **Article 248-B**

#### **Notification of transactions**

1. Persons discharging managerial responsibilities within an issuer of securities admitted to trading on regulated markets or a company controlling such issuer, as well as any persons closely associated with them, shall notify the CMVM, within five working days, of any transactions made for their own account, for the account of third parties or by third parties for their account in respect of the shares of the relevant issuer or financial instruments related thereto.

2. The notification contemplated in the preceding number shall indicate the following in respect of the transaction:

- a) Its nature;
- b) The date;
- c) The place;
- d) The price;
- e) The amount;
- f) The issuer;
- g) The financial instrument in question;
- h) The reason for the responsibility to notify;
- i) The amount of shares in the issuer that the person discharging managerial responsibilities holds after the transaction.

3. For the purposes of the provisions of no. 1, a person discharging managerial responsibilities shall mean any person who is a member of the management or supervisory bodies of the issuer and a senior executive who is not a member of the aforementioned bodies, having regular access to inside information and participating in decisions affecting the issuer's management and negotiation strategy.

4. For the purposes of the provisions of no. 1, a person closely associated with a person discharging managerial responsibilities shall mean:

- a) The spouse of a person discharging managerial responsibilities, or any partner of that person considered by national law as equivalent to the spouse, dependent children and other relatives who have shared the same household as that person for at least one year;
- b) Any legal person that is directly or indirectly controlled by such person, or that is set up for the benefit of such person, or in which such person also discharges managerial duties.

5. The provisions of the preceding numbers apply to persons discharging managerial duties within issuers having their registered office in Portugal or which, not having their registered office in a European Union Member State, are bound to provide the CMVM with information on their annual accounts.

**Article 248-C**  
**Document consolidating annual information**

[Repealed]

**Article 249<sup>13</sup>**  
**Other information**

1. The entities referred to in Article 244/1 shall submit to the CMVM and the management entity of a regulated market:

- a) Notice convening the meetings of holders of listed securities, the inclusion of items on the agenda and the tabling of draft resolutions;
- b) Extract of the minutes containing the resolution regarding the amendment of the by-laws, within 15 days following the resolution.

2. The entities referred to in Article 244/1 shall immediately inform the public of:

- a) Notices convening General Meetings of the holders of listed securities;
- b) Changes, allotment and payment or the exercise of any rights inherent to the securities admitted to trading or the shares to which same gives the right, including an indication of the procedures applicable and the financial institution through which the shareholders may exercise the respective financial rights;
- c) Alteration of the rights of the bondholders that result, specifically, from amendment of the conditions of the loan or interest rate;
- d) Issue of shares and bonds, with an indication of beneficial privileges and guarantees, including information on any procedures for the allotment, subscription, cancellation, conversion, exchange or repayment;
- e) Amendments to the details that have been required for the admission to trading of securities;
- f) The acquisition or disposal of own shares, whenever as a result thereof the proportion of same exceeds or falls below the thresholds of 5 % and 10 %;
- g) The resolution by the General Meeting concerning the financial statements.

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<sup>13</sup> Wording provided by Article 3 Decree-Law No. 49/2010, of 19 May

3. The issuers of shares in Article 244/1 shall disclose the total number of voting rights and capital at the end of each calendar month wherein the increase or decrease of said number has taken place.

4. The notice convening the meeting of the holders of debt securities admitted to trading on a regulated market should comply with the provisions of Article 23/1.

### **Article 250 Exemption from disclosure of information**

1. With the exception of the provisions of Articles 245 to 246-A, Article 249/1/a) to d) and Article 249/2/f) and Article 249/3, the CMVM may waive the disclosure duties required in the preceding Articles when same would be contrary to the public interest or seriously detrimental to the issuer, provided that the omission would not be likely to mislead the public with regard to the facts and circumstances essential for assessing the securities.

2. The exemption is considered granted if the CMVM does not communicate any decision up to 15 days after the receipt of the application for exemption.

3. [Repealed]

### **Article 250-A Scope of Application**

1. The provisions in Articles 245, 246 and 246-A are not applicable to:

a) States, Regional and Local Authorities, International Public Bodies of which at least one is a Member State, European Central Bank, Member State National Central Banks;

b) Issuers of debt securities admitted to trading on a regulated market whose par value is, at least €100,000 or equivalent on the date of issuance.

2. The provided for in Article 249/2/b and /d and 249/4, is not applicable to States and their Regional and Local Authorities.

3. This section does not apply to debt securities issued for a period of under a year, except where specific legislation stipulates otherwise.

**Article 250-B**  
**Essential Equality and Interchangeability**

1. Without prejudice to the duty to provide the CMVM and the provisions of Article 244/3 and 4/, the issuers with registered offices in non-EU Member States are not required to comply with the following disclosure duties:

a) As regards Article 245/1/a on the management report, if the applicable Law complies the issuer to include in its annual management report, at least the following: an appropriate study on the business progress, the performance of the issuer, a description on the main risks and uncertainties that the issuer has come up against so that the report demonstrates a balanced and complete picture of the progress and performance of the issuer's business and position according to the size and complexity of the activity that is carried out, and an indication of the main events that took place after the closing of the year and further indications on the likely future evolution of the issuer;

b) As regards Articles 245/1/c and 246/1/c, if the applicable Law complies the issuer to have one or more persons that are responsible for financial information and particularly, on financial results conforming with the entire applicable accounting standards and the adequacy of the management report;

c) As regards Article 245/3, albeit the disclosure of information in an individual format is not compulsory, if the applicable Law complies the issuer to include in their consolidated accounts information on the minimum social capital, information on own capital and liquidity requirements and additionally for the issuers of shares, information on the dividend calculations and the indication on the ability to pay out dividends;

d) As regards Article 245/4, albeit the disclosure of information in a consolidated format is not compulsory, if the applicable Law complies the issuer to draw up individual accounts according to the International Accounting Standards approved in Article 3 of Regulation (EC) No. [1606/2002](#) of the European Parliament and of the Council of 19 July 2002, or with the National Accounting Standards of a third country that are considered to be equivalent to those standards.

e) As regards Article 246/2, if the applicable Law complies the issuer to disclose a set of abbreviated financial results that includes at least, an interim management report with the period under analysis, data on the issuer's progress during the remaining six months of the financial year and additionally for issuers of shares, the main transactions between the related parties, should these not be disclosed on a continual basis;

f) As regards Article 246-A, if the applicable Law complies the issuer to disclose quarterly financial statements;

g) As regards Article 249/2/a, if the applicable Law complies the issuer to at least disclose information on the location, calendar and agenda items of the meeting;

- h) As regards Article 249/2/f, if the applicable Law complies the issuer that is entitled to hold a maximum of 5% of own shares, to inform the public whenever this threshold is reached or surpassed and for those issuers entitled to hold a maximum of between 5% and 10% of own shares, to inform the public whenever this threshold is reached or surpassed;
- i) In Article 249/3, if the applicable Law complies the issuer to disclose the total number of voting rights and capital within a 30-day period, after either an increase or decrease in the total number of the voting rights.
2. For the purposes of subparagraph a/ of the preceding paragraph, the analysis therein includes, as deemed necessary for ensuring an understanding of the evolution, the performance or position of the issuer which indicates the financial and if need be, the non-financial performance that is essential for the carried out activity.
3. For the purposes of paragraph 1/c, the issuer shall per request, provide the CMVM with additional audited information on the individual accounts that is pertinent to the requested information and may submit that information according to the accounting rules of a third country.
4. For the purposes of paragraph 1/d, individual accounts shall be audited and if they are not drawn up according to the rules referred therein, they should be submitted as reformulated financial information.
5. The CMVM notifies the European Securities and Markets Authority the waiver of compliance with the duties to provide information under this Article.

### **Article 251 Civil Liability**

The provisions of Article 243 apply, with the necessary adaptations, to civil liability for the contents of information published by the issuers in accordance with the previous articles.

### **Chapter III Systematic Internaliser**

#### **Article 252 Systematic Internalisers**

1. Article 21 Commission Regulations (EC) No. [1287/2006](#), of 10th August regulates:
- a) The requirements for a financial intermediary to be considered a systematic internaliser;
  - b) The procedure for ceasing to be a systematic internaliser.
2. The financial intermediary should in advance communicate to the CMVM the financial instruments wherein it exercises the activity of systematic internalisation.

## **Article 253**

### **Information on Quotes**

1. The systematic internalisers should disclose firm quotes in shares admitted to trading on a regulated market for which there is a liquid market whenever the size is not above the standard market size.
2. With regard to the shares for which there is not a liquid market, the systematic internalisers should disclose quotes to clients on request.
3. The shares shall be grouped in classes based on the arithmetic average value of the orders executed in the market.
4. Each bid and offer price shall include a firm quote for one or more sizes which could be up to standard market size for the class of shares to which the share belongs.
5. The price shall reflect the prevailing market conditions for said share.
6. The public disclosure envisaged in paragraph 1 should take place in a manner which is easily accessible, on a regular and continuous basis during normal trading hours, and on a reasonable commercial basis.
7. In Articles 22, 23, 24 and 29 to 32 Commission Regulation (EC) No. [1287/2006](#), of 10th August and the CMVM Regulations, the following are defined:
  - a) The liquid market concept;
  - b) The standard market size for each class of shares;
  - c) The conditions whereby the prices comply with the provisions of paragraph 4;
  - d) The time period and means of disclosing the quotes.
8. The CMVM may define, by mean of regulation, the contents, the means and the frequency of information to be provided to the CMVM and the public concerning the internalization of financial instruments in addition to that referred to in paragraph 1.

## **Article 254**

### **Class of shares**

1. When the Portuguese market is considered the most relevant market in terms of liquidity as regards a certain share, the CMVM shall annually determine, disclose and report to the European Securities and Markets Authority, the class of shares that said share belongs to, as defined in article 3 of the previous Article.

2. The determination contemplated in the preceding paragraph should be based on:
  - a) The concept of the most relevant market in terms of liquidity defined in Article 9 Commission Regulation (EC) No. [1287/2006](#), of 10th August;
  - b) The indicators for liquidity envisaged in Article 9 Commission Regulation (EC) No. [1287/2006](#), of 10th August.

**Article 255**  
**Update and Withdrawal of Quotes**

At any time, the systematic internalisers may update quotes but may only withdraw under exceptional market conditions.

**Article 256**  
**Access to Quotes**

1. The systematic internalisers should draw up clear rules, based on commercial policy and objective and non-discriminatory criteria, concerning the investors to whom access was given to the quotes.
2. Without prejudice to the provisions of Article 328, the systematic internalisers may:
  - a) Refuse to enter into or discontinue business relationships with investors on the basis of commercial considerations such as the financial position of the investor, the counterparty risk and the final settlement of the transaction.
  - b) Limit, in a non-discriminatory manner, the number of orders from the client it undertakes to execute in accordance with the published conditions in order to reduce the risk of being exposed to multiple transactions from the same client;
  - c) Limit, in a non-discriminatory manner, the total number of simultaneous transactions from different clients where the number or volume of orders sought by clients exposes it to undue risk, in accordance with the provisions of Article 25 Commission Regulation (EC) No. [1287/2006](#), of 10th August;
3. The mechanisms aimed at ensuring a non-discriminatory treatment is governed by Article 25/3 Commission Regulation (EC) No. [1287/2006](#), of 10th August.

**Article 257**  
**Execution of Orders and Changes in the Quoted Price**

1. Systematic internalisers should execute the orders received from their clients in the shares for which they are systematic internalisers at the price disclosed at the time of reception of the order.

2. The systematic internalisers may execute orders received from a client that is a professional investor at a better price, provided that:

a) The new price falls within a range, disclosed to the public and close to the market conditions; and

b) The orders are of a size bigger than the size customarily undertaken by a retail investor, as defined in Article 26 Commission Regulation (EC) No. [1287/2006](#), of 10th August.

3. The systematic internalisers may execute orders received from their professional clients at prices different from the quoted prices without having to comply with the conditions established in the preceding paragraph, in respect of transactions where execution in several securities is part of one transaction or in respect of orders that are subject to conditions other than the current market price as stated in Article 25 Commission Regulation (EC) No. [1287/2006](#), of 10th August.

4. Where a systematic internaliser, who quotes only one quote or whose highest quote is lower than the standard market size, receives an order from a client of a size greater than its quotation size but lower than the standard market size, it may decide to execute that part of the order which exceeds its quotation size, provided that it is executed at the quoted price or other, with the latter being allowed in accordance with paragraphs 2 and 3.

5. Where the systematic internaliser is quoting in different sizes and receives an order between said sizes that it chooses to execute, it should execute the order at one of the quoted prices or other, with the latter being allowed in accordance with paragraphs 2 and 3.

## **Title V Central Counterparty, Clearing & Settlement**

### **CHAPTER I Central Counterparty**

#### **Article 258 Scope**

1. The provisions of this Chapter applies to all the transactions wherein a central counterparty is involved.
2. Notwithstanding the following Articles and any other applicable legislation, the authorisation and pursuit of the central counterparties activity comply with the provisions of Regulation (EU) No. 648/2012 of the European Parliament and of the Council of 4 July 2012, and the respective delegated acts and implementing acts.
3. Transactions where a central counterparty is involved becomes effective before said entity following registration with same.
4. In addition to the transactions envisaged in Regulation (EU) No. 648/2012 of the European Parliament and of the Council of 4 July 2012, the carrying-out of transactions on a regulated market or MTF on financial instruments referred to in Article 2/1/e) & /f) requires clearing by a central counterparty.

#### **Article 259 Management of Transactions**

1. The central counterparty should ensure the sound management of transactions.
2. [Repealed]
3. The open positions in the instruments referred to in Article 2/1/e) and /f) may be closed out, before the maturity date of the contract, by opening opposite positions.
4. The clearing members are responsible to the central counterparty for compliance with the obligations from the transactions undertaken, on own account or on behalf of clearing members before whom had assumed the function of clearing the transactions.

#### **Article 260 Minimize Risk**

1. The central counterparty should take the appropriate prevention and risk management measures, namely, credit, liquidity and operational and also suitable measures for the proper functioning of the adopted mechanisms and protection of markets.
2. The central counterparty should have solid governance mechanisms that enable the sound and prudent management thereof.

3. [Repealed]
4. [Repealed]
5. [Repealed]
6. [Repealed]
7. [Repealed]

### **Article 261** **Margins and other Collateral**

1. The risk exposure of the central counterparty and members should be covered by guarantees, designated margins, and other collateral, unless based on the nature of the transaction, same is dispensed with in cases and terms to be established by the CMVM regulations.
2. The central counterparty should define the margins and other collateral to be provided by the members based on the risk parameters which should be subject to regular review.
3. The clearing members are responsible for the constitution, increase or substitution of the guarantee.
4. The guarantee should be provided by means of:
  - a) The financial collateral contract laid down in Decree-Law No. 105/2004, of 8th May, on financial instruments of low risk and high liquidity, free from any onus, or on a cash deposit in an authorised institution;
  - b) Bank guarantee.
5. Other collateral may not be constituted on securities provided as guarantee.
6. The clearing members should adopt procedures and measures in order to adequately cover the risk exposure, and shall require the clients or trading members before whom clearing functions have been assumed, to submit margins and other collateral, in accordance with the terms set out in the contract signed.

### **Article 262** **Extrajudicial Enforcement of Collateral**

1. The financial instruments provided as guarantee may be sold extrajudicially in order to comply with the obligations arising from the guaranteed transactions as a result of the close of positions by the members that had provided the guarantee.
2. The extrajudicial enforcement of guarantees should be carried out by the central counterparty, through the financial intermediary, whenever same is not the latter.

**Article 263**  
**Asset Segregation**

1. The central counterparty should adopt an accounting structure that would allow for the appropriate asset segregation between the financial instruments of its members and that belonging to the clients of the latter.
2. [Repealed]
3. [Repealed]

**Article 264**  
**Participants**

1. The central counterparty should define the access conditions for the clearing members and the obligations arising therefrom, in order to ensure the high levels of solvency and the limitation of risk, namely requiring that appropriate financial resources are pooled and equipped with a strong operational capacity.
2. The central counterparty shall monitor, on a regular basis, the compliance with the access requirements of members, adopting the necessary procedures for that purpose.

**Article 265**  
**Registration of the Central Counterparty Rules**

1. [Repealed]
2. Rules of the central counterparty that ensure the proper pursuit of their activity, in particular those relating to its governance, functioning, risk management, segregation, portability, entry and maintenance of clearing members, are subject to registration with the CMVM, whereby the appropriateness, suitability and lawfulness thereof is verified.
3. [Repealed]
4. [Repealed]

**Chapter II**  
**Settlement System**

**SECTION I**  
**General Provisions**

**Article 266**  
**Scope**

1. The settlement systems of financial instruments are established by written agreement wherein the common rules and standard procedures for the execution of transfer orders, between the participants, of financial instruments or the rights detached thereto, are established.

2. The agreement should be executed by three or more participants, apart from special participants.

3. The cash transfers related to the transfers of financial instruments or rights inherent thereto and the collateral concerning the transactions in financial instruments form an integral part of the settlement systems.

### **Article 267 Participants**

1. The following entities may be participants in a settlement system, regardless of being a member of its managing entity:

a) Credit institutions, the investment firms and the institutions with corresponding functions that are authorized to carry out the activity in Portugal;

b) Public entities and companies that benefit from State guarantees.

2. There is indirect participation whenever an institution, central counterpart, settlement agent, clearing house or a system's operator establishes a contractual relationship with a participant in a system that executes transfer of orders, whilst allowing the indirect participant within that contractual relationship, the ability to execute transfer orders via the system.

3. In addition to the previous number, direct participation relies on whether the indirect participant is known to the system's operator.

4. The contractual relationship mentioned in the previous number shall be notified to the system's operator as per the operator's rules, and thus the indirect participant is able to execute transfer orders via the same system.

5. The participant is still responsible for inserting the transfer orders in the system.

### **Article 268 Special participants**

1. Also considered participants in settlement systems are:

a) Clearing houses on which it is incumbent to calculate the net positions of the participants in the system;

b) Central counterparts acting as exclusive counterparts of the participants of the system, regarding transfer orders placed by these;

c) Settlement agents providing the participants and the central counterpart or only the latter with settlement accounts by which the transfer orders given within the system are carried out, and that may grant credit for settlement purposes.

2. The following entities may act as clearing houses:
  - a) Credit institutions authorised to carry out this activity in Portugal;
  - b) Management entities of the regulated markets, MTFs and settlement systems;
  - c) Management entities of clearing house; and
  - d) Central counterparties.
3. [Repealed]
4. The following entities may fulfil the functions of settlement agents:
  - a) Credit institutions authorised to carry out this activity in Portugal;
  - b) Securities centralised systems.
5. In accordance with the rules of the system, the same participant may only act as a settlement agent or clearing house, or carry out both these functions.
6. The rules of clearing houses are subject to registration with the CMVM, whereby the appropriateness, suitability and lawfulness thereof is verified, and these should be made public.
7. The Bank of Portugal may carry out the functions described in the previous sub-articles.

**Article 269**  
**Rules of the system**

1. The organisation, functioning and operational proceedings relating to each settlement system consist of:
  - a) The constitutive agreement and changes thereto approved by all the participants; and
  - b) The rules approved by the managing entity.
2. The rules referred to in the preceding paragraph are subject to registration with the CMVM, whereby the appropriateness, suitability and lawfulness of same is verified.
3. After registration with the CMVM, the management entity of the settlement system should disclose the rules adopted, including those that come into force on the disclosure date or another specified date.

**Article 270**  
**Right to information**

Any individual with a legitimate interest may request each participant described in Article 267 to inform about the settlement systems in which it participates and the essential rules of functioning of these systems.

**Article 271**  
**Recognition**

1. The settlement systems of the financial instruments, except for those that are managed by the *Banco de Portugal*, are recognized by means of registering with the CMVM.
2. The CMVM is the competent authority to notify the European Securities and Markets Authority of the systems that it approves, giving notice of same to the Portuguese Central Bank.
3. The Portuguese Central Bank notifies the CMVM of the securities settlement systems that is managed. The CMVM shall notify the European Securities and Markets Authority of same.

**Article 272**  
**Registration**

1. Only those settlement systems that satisfy, cumulatively, the following requirements may be registered with the CMVM:
  - a) That has, at least, one participant with effective headquarters in Portugal;
  - b) Whose managing entity, when it exists, has effective headquarters in Portugal;
  - c) To which Portuguese law applies in accordance with an express clause of the respective constitutive agreement;
  - d) Have adopted rules compatible with this Code, the CMVM's regulations and the Bank of Portugal.
2. The following updated information is required upon registration:
  - a) The participants' agreement;
  - b) The identification of the participants in the system;
  - c) Identification data of the managing entity, when existing, including the respective bylaws and the identification of the members of the company's governing bodies and the holders of qualifying holdings;
  - d) The rules approved by the managing entity.

3. The provisions for the registration of the management entities of regulated markets and MTFs shall apply, *mutatis mutandis*, to the registration process, including the refusal and cancellation thereof.

### **Article 273 Regulation**

1. The CMVM prepares the necessary regulations in order to achieve the following objectives:

- a) Recognition and registration of the settlement systems;
- b) Security rules to be adopted by the system;
- c) Collateral to be provided in favour of the central counterparty;
- d) Management, prudential and accountancy rules, necessary to guarantee asset separation.

2. With respect to the systems used in the settlement of transactions of the regulated market or MTFs, the CMVM, on a proposal from or a prior hearing with the management entity of the systems in question, defines or implements, through regulation:

- a) The periods in which the settlement should take effect;
- b) The proceedings to be adopted in case of non-compliance by the participants;
- c) The order of operations to be cleared and settled;
- d) The registration of operations carried out by the system and their accounting.

3. The *Banco de Portugal* regulates the systems managed by it.

## **Section II Transactions**

### **Subsection I General Provisions**

#### **Article 274 Transfer Orders**

1. Transfer orders are entered into the system by the participants or by delegation, by the management entity of the regulated market or MTF where the financial instruments were traded, by the entity that assumes the functions of clearing house or by the central counterparty concerning the transactions carried out on said market or system.

2. Transfer orders are irrevocable, produce effects between participants and are valid before third parties from the time in which they are introduced into the system.

3. The time and the form of introduction of the orders into the system are determined in accordance with the rules of the system.

#### **Article 275 Forms of Execution**

The execution of the transfer orders consists of making available to the beneficiary, in an account opened with a settlement agent:

- a) The gross amount indicated in each of the transfer orders, or
- b) The net balance obtained by bilateral or multilateral clearing.

#### **Article 276 Clearing**

Clearing carried out within the context of the settlement system is definitive and is carried out by the system itself or by an entity that assumes the functions of a clearing house participating in same.

#### **Article 277 Invalidity of Underlying Trades**

The invalidity or inefficiency of legal acts underlying transfer orders and cleared obligations does not affect the irrevocability of the orders nor definitive character of the clearing.

### **Subsection II Settlement of Regulated Market Trades**

#### **Article 278 Principles**

1. The settlement of transactions of the regulated market or MTF should be organised in accordance with the principles of efficiency, reduction of the systemic risk and simultaneous delivery and payment of financial instruments and cash.

2. [Repealed]

#### **Article 279 Obligations of the Participants**

1. The participants make available to the settlement system, in the period indicated in the rules of the system, the securities or the money necessary for the good settlement of the operations.

2. The duty referred to in the preceding paragraph is incumbent on the participant that entered the transfer order in the system or that has been indicated by the management entity of the regulated market or the MTF where the transactions to be settled were carried out or by an entity that assumes the functions of a clearing house or by the central counterparty concerning said transactions.

3. The participant indicated for the settlement of an operation may, in its turn, indicate another participant in the system to perform it, but is not released from the obligation if the other participant refuses the indication.

4. The refusal of the indication is ineffective if it is excluded by a contract executed between the participants and disclosed to the system.

### **Article 280** **Non-compliance**

1. The non-compliance of the obligations described in the previous Article, during the specified period, constitutes a definitive breach.

2. Once the breach is verified, the managing entity of the system should immediately set in motion the necessary proceedings of substitution to assure the good settlement of the operation.

3. The procedures of substitution are described in the rules of the system, and should set out, at least, the following:

- a) Lending of securities to be settled;
- b) Repurchase of undelivered securities;
- c) Resale of securities that have not been paid for.

4. Where there is a central counterparty, it is the central counterparty that sets in motion the procedures envisaged for cases of default.

5. The substitution procedure is not set in motion when the creditor declares, timeously, that it is no longer interested in the settlement, except when otherwise determined by a rule approved by the management entity of the system or the central counterparty, if applicable.

6. The rules referred to in the preceding paragraph assure that the mechanisms for substitution adopted will make it possible to deliver the financial instruments to the creditor within a reasonable period of time.

**Article 281**  
**Connection with other systems and institutions**

1. Systems used to settle transactions of the regulated market or MTF should establish the links necessary for the proper settlement of said transactions, creating a network with, namely:

- a) The management entities of the regulated markets or MTFs where the transactions to be settled are carried out;
- b) Entities that undertake the role of a clearing house or central counterparties;
- c) Management entities of central securities depository;
- d) The *Banco de Portugal* or credit institutions, if the managing entity of the system is not authorised to receive deposits in cash;
- e) Other settlement systems;

2. The interconnection agreements should be communicated in advance to the CMVM.

**Article 282**  
**Civil liability**

Except in the case of unavoidable and unforeseen circumstances, each of the participants is liable for the damages caused by the breach of its obligations, including the cost of the substitution procedures.

**Section III**  
**Insolvency of the participants**

**Article 283**  
**Transfer and clearing orders**

1. The opening of proceedings for the insolvency, recovery of the company or reorganization of any participant does not have retroactive effects on the rights and obligations resulting from its participation in the system or related thereto.

2. The opening of the proceedings described in the previous sub-article does not affect the irrevocability of the transfer orders nor their validity against third parties nor the definitive character of clearing, provided that the orders had been introduced into the system:

- a) Before the opening of such proceedings; or
- b) Following the opening of the proceedings, if the orders have been executed the day that they were introduced and if the clearing house, the settlement agent or the central counterpart prove that they did not have, nor should have, knowledge of the opening of the proceedings.

3. The moment of the opening of the proceedings referred to in the present Chapter is when the competent authority hands down the decision declaring the insolvency, the continuation of the action for the recovery of the company or decision similar thereto.

4. As regards interoperable systems, the moment of the insertion of orders in the system, is defined by each system, and the coordination of the interoperable system shall be ensured by all the operators of same system.

5. In interoperable systems, the rules of each system regarding the time the transfer orders are inserted are not affected by the rules of other systems which the former is interoperable with, except if the rules of all the systems participating in the interoperable systems involved, provide for so explicitly.

6. The non-retroactive effects of the insolvency proceedings of the guarantor entity provided for in the current section, is applicable to the rights and duties of the participants of the interoperable systems or to the operators of the interoperable systems who are not participants.

#### **Article 284 Collateral**

1. Without prejudice to the provisions in Decree-Law No. 105/2004, of 8th May, the collateral for the obligations resulting from the functioning of a settlement system are not affected by the opening of proceedings for insolvency, recovery of the company or reorganization of the guarantor entity, with only the balance, which is ascertained after compliance with the collateral obligations, reverting to the insolvent estate or the company in recovery or reorganisation.

2. The provisions of the previous sub-article apply to the collateral provided to central banks of the Member States of the European Community and the European Central Bank, acting as such.

3. For the purposes of the present Article, pledge and rights deriving from repo and other similar contracts are deemed to be collateral.

4. If the financial instruments provided as collateral, in accordance with the present Article, are registered or deposited with a central securities depository located or functioning in an EU Member State, the determination of the rights of the beneficiaries of the collateral is governed by the legislation of said Member State, provided that the collateral has been registered with the same central securities depository.

5. If the operator of the settlement system has provided collateral guarantees to another operator in connection with an interoperable system, the rights of the system operator that provided the guarantees are not affected by possible insolvency proceedings concerning the system operator that received it.

## **Article 285 Applicable law**

With the commencement of proceedings of bankruptcy, recovery of a company or reparation of a participant, the rights and the obligations of this participation or associated to it are governed by the law applicable to the system.

## **Article 286 Notifications**

1. Any decision to begin insolvency, corporate recovery or restructuring proceedings concerning any participant shall be immediately notified to the CMVM and the Portuguese Central Bank by the courts or administrative authority making the decision.
2. As regards the systems managed by the CMVM and the Portuguese Central Bank, both entities shall immediately notify the other EU Member States, the European Systemic Risk Board and the European Securities and Markets Authority of the decision referred to preceding paragraph and the CMVM shall ensure the transmission of the notification to the European Securities and Markets Authority.
3. The CMVM is the competent authority to receive notification of the decisions referred to in paragraph 1 when such decisions are passed by a judicial or administrative authority of another Member State of the European Union.
4. The CMVM and the Bank of Portugal immediately notify the managing entities of the settlement systems registered with them, of the decisions described in sub-article 1, and any notice received from a foreign state relating to the bankruptcy of a participant.

## **Section IV Management**

### **Article 287 System**

1. Systems used to settle transactions of a regulated market or MTF may only be managed by a company meeting the requirements laid down by special law.
2. The remaining settlement systems, with the exception of those managed by the Bank of Portugal, may also be managed by the participants collectively.

### **Article 288 Civil liability**

1. According to the terms of Article 94, the managing entity of the settlement system is answerable to the participants in the same way as the managing entity of a centralised system of securities is answerable to financial intermediaries.
2. If the system is managed directly by the participants, they are answerable jointly and severally for the damages that the managing entity would be responsible.

## **Title VI Intermediation**

### **CHAPTER I General provisions**

#### **SECTION I Activities**

#### **Article 289 Notion**

1. Financial intermediation activities are:
  - a) Financial instruments investment services and activities;
  - b) Ancillary services to investment services and activities;
  - c) Management of the following collective investment undertakings:
    - i) Undertakings for collective investment in transferable securities;
    - ii) Undertakings for alternative investment in transferable securities;
    - iii) Real-estate investment undertakings;
    - iv) Venture capital undertakings, social entrepreneurship undertakings and specialised alternative investment undertakings; and
    - v) Loan securitisation funds;
  - d) The depository duties of the financial instruments that are part of the assets of the collective investment undertaking mentioned in the previous subparagraph.
2. Only financial intermediaries are allowed to perform, on a professional basis, financial intermediation activities.
3. The provisions of the preceding paragraph are not applicable to:
  - a) The members of the European System of Central Banks, exercising the functions, and the State and other national entities within the scope of the management of the public debt and State reserves;
  - b) Persons who provide investment services exclusively for the controlling company, subsidiary of same or own subsidiary;

c) Persons providing investment advice as a complementary service and are not specifically remunerated from the profession which is different to the provision of investment services;

d) Persons whose sole investment activity is dealing on own account provided that said persons are not market makers or entities that deal on own account outside a regulated market or a MTF on an organised, frequent and systematic basis by providing a system accessible to third parties in order to engage in dealings with same;

e) Persons who provide, exclusively or in conjunction with the activity described in paragraph b), investment services in the management of employee-participation schemes;

- f) Persons who provide investment services or carry out investment activities, which consist exclusively in dealing on own account in futures or cash markets, the latter for the sole purpose of hedging positions on derivatives markets, or deal or make prices on behalf of other members of said markets and which are guaranteed by a clearing member of the same markets, where responsibility for ensuring the performance of contracts is assumed by one of said members;
- g) Persons whose main business consists of dealing on own account in commodities and/or commodity derivatives, provided that said persons are not part of a group whose main business is the provision of other investment services or banking services;
- h) Persons dealing on own account in financial instruments, or providing investment services in commodity derivatives or derivative contracts referred to in Article 2/1/e)/ii) & /iii) and /f), provided that said activity is an ancillary activity, when considered on a group basis, and that the main business is not the provision of investment services or banking services;
- i) Persons whose main business consists of some of the services listed in Article 291/c), /d) & /g), provided that said persons are not part of a group whose main business is the provision of investment services or banking services;
4. The provisions of Articles 294-A to 294-D, 306/3-10, 306-A to 306-D, 309-D, 314 to 314-D, 317 to 317-D and chapters II and III shall not apply to the activity of investment management of collective investment institutions.
5. Without prejudice to the preceding paragraph, the provisions of Articles 305-A, 305-B, 305-C, 305-D/3, 305-E, 307 to 307-B, 308 to 308-C, 309-G and 310 to 316, shall not apply to securities investment companies and real estate investment companies managed by other bodies.

## **Article 290**

### **Investment Services and Activities**

1. Investment services and activities in financial instruments are:
- a) Reception and transmission of orders on a third party's behalf;
  - b) Execution of orders on a third party's behalf;
  - c) Management of portfolios on a third party's behalf;
  - d) Underwriting and the placing of a public offer for distribution with or without a firm commitment basis;
  - e) Dealing on own account;
  - f) Investment advice;

- g) Management of MTF.
2. Reception and transmission of orders on behalf of others include the bringing together of two or more investors with the objective of bringing about a transaction.
3. [Repealed]

### **Article 291 Ancillary services**

Ancillary services to investment services and activities are:

- a) The registration and deposit of financial instruments and, in addition, the services related with the custodianship such as cash/collateral management;
- b) Granting credits, including securities loan, for the carrying out of transactions on financial instruments wherein the entity granting the credit is involved;
- c) Drawing up of investment research, financial analysis or other general recommendations relating to transactions in financial instruments;
- d) Advice on capital structure, industrial strategy and related areas, as well as mergers and acquisitions;
- e) Assistance relating to public offer of securities;
- f) Foreign exchange services and rental of safety deposit boxes linked to the rendering of investment services;
- g) The services and activities stated in Article 290/1, when related to the underlying of the financial instruments mentioned in Article 2/1/e)/ii) & /iii) and /f).

### **Article 292 Advertising and Prospecting**

Advertising and prospecting aimed at the signing of financial intermediation contracts or the collection of information on current or potential clients may only be carried out by:

- a) A financial intermediary authorised to carry out the activity in question;
- b) A tied agent, pursuant to Articles 294-A to 294-D.

**Article 293<sup>14</sup>**  
**Financial Intermediaries**

1. Financial intermediaries of financial instruments are:
  - a) Credit institutions and investment firms authorised to exercise financial intermediation activities in Portugal;
  - b) Managing entities of collective investment undertakings authorised to exercise this activity in Portugal;
  - c) Entities with functions correspondent to those described in the previous paragraphs that are authorised to exercise any financial intermediation activities in Portugal.
  - d) Securities investment companies and real estate investment companies.
  
2. Investment firms of financial instruments are:
  - a) Broker companies;
  - b) Broker-dealer companies;
  - c) Asset managing companies;
  - d) The intermediary firms of money markets and foreign exchange markets;
  - e) The investment advice firms;
  - f) The management entities of MTFs;
  - g) Others that are defined as such by law, or that, not being credit institutions, are persons whose regular and professional business consists of providing investment services to third parties or in carrying out investment activities.

**Article 294**  
**Investment Advice**

1. Investment advice is the provision of personal recommendations to a client in the capacity of actual or potential investor, either on request of same or at the initiative of the investment adviser, in respect of the transactions relating to securities or other financial instruments;

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<sup>14</sup> Wording provided by Article 8 Decree-Law No. 71/2010, of 18 June

2. For the purposes of the preceding paragraph, a personal recommendation exists when a recommendation is made to a person, in his capacity as an actual or potential investor, which is presented as suitable for said person, or based on a consideration of the circumstances of said person, with the objective of making an investment decision.

3. A recommendation is not a personal recommendation in the case where it is issued exclusively through distribution channels or to the public.

4. Investment advice may be carried out by:

a) Financial intermediary authorised to pursue said activity, in respect of any financial instruments;

b) Investment advisers, in respect of securities.

5. Furthermore, the investment advisers may also provide the service of reception and transmission of orders in securities provided that:

a) The transmission of orders is directed at the financial intermediaries referred to in Article 293/1;

b) Not holding funds or securities belonging to clients.

6. The general rules laid down for financial intermediation activities, *mutatis mutandis*, are applicable to investment advisers.

#### **Article 294-A Tied Agent and Limits to its Activity**

1 – The financial intermediary may be represented by a tied agent when providing the following services:

a) Client prospecting at a professional level, without prior request by the investors, outside the establishment of the financial intermediary, aimed at canvassing clients for any financial intermediation activity; and

b) Reception and transmission of orders, placement and advice on financial instruments or on services provided by the financial intermediary.

2 – The activity is carried out, outside the establishment, namely when:

a) Distance communication is made directly to the residence or working place of any persons, either by means of post, telephone, electronic mail or fax;

b) There is direct contact between the tied agent and the investor anywhere, outside the financial intermediary's establishments.

3 – The tied agent is banned from carrying out the following:

- a) Acting on behalf and for the account of, more than one financial intermediary except for when a control or group relation exists between them;
- b) Delegating the powers that were conferred by the financial intermediary to other persons;
- c) Establish any contracts in the financial intermediary's name, without prejudice to the provisions of paragraph 1/b;
- d) Receiving or delivering money, except for when the financial intermediary authorises it;
- e) Acting or decision-making on behalf or for the account of investors;
- f) Receiving any type of remuneration from investors.

4 – As regards investor relations, the tied agent shall:

- a) Identify himself and the financial intermediary to the investors for whom the former is acting on behalf and for the account of.
- b) Provide a written document containing complete information on the restrictions that the tied agent is subject to during his activity.

#### **Article 294-B Exercise of the Activity**

1. The exercise of the tied agent's activity relies on the writing up of a contract between the tied agent and the financial intermediary, which stipulates the ascribed duties, namely those provided for in paragraph 1/b of the preceding Article.

2. Without prejudice to the provided for in Article 294-D, the tied agent's activity is carried out by:

- a) Natural persons that are established in Portugal and are not included in the organisational structure of the financial intermediary;
- b) By commercial companies with registered offices in Portugal which do not find themselves in a control or group relationship with the financial intermediary.

3. The tied agent shall be of good repute and hold appropriate qualifications and professional experience.

4. The financial intermediary is responsible for verifying the requirements mentioned in the preceding paragraph.

5. In what is provided for in paragraph 2/b:

a) Fitness and propriety is assessed regarding the company, the members of the management body and natural persons that carry out the tied agent activity;

b) Adequate qualifications and professional experience is assessed regarding natural persons that carry out the tied agent activity.

6. Commencement of the tied agent activity is only allowed after the identification of the tied agent has been communicated to the CMVM, for public disclosure by the financial intermediary.

7. Termination of the contract between the financial intermediary and the tied agent shall be communicated to the CMVM within a five-day period.

### **Article 294-C Liability and Duties of the Financial Intermediary**

1. The financial intermediary:

a) Is liable for any acts or omissions committed by the tied agent during the exercise of the duties that the tied agent has been entrusted with;

b) Shall control and oversee the activity of the tied agent, who is subject to the internal procedures of the financial intermediary;

c) Shall adopt the necessary measures for avoiding that an activity different from the provided for in Article 294-A/1 that is carried out by the tied agent, might adversely affect the other.

2. Should the financial intermediary authorise the tied agents to carry out reception of orders, the former shall inform the CMVM beforehand on:

a) The procedures that have been adopted for ensuring whether the applicable rules on that particular service have been complied with;

b) The written information to be provided to investors concerning the conditions of the reception of orders by tied agents.

### **Article 294-D Tied Agents that are not established in Portugal**

The provisions of Articles 294-A and 294-C are applicable to persons established in a EU Member State that does not allow for the appointment of tied agents and that intend to carry out a tied agent activity in that Member State, on behalf or for the account of a financial intermediary with head-office in Portugal.

## **Section II Register**

### **Article 295 Qualification requirements**

1. The professional performance of any financial intermediation activity depends on:
  - a) Authorisation to be granted by the competent authority;
  - b) Prior registration with the CMVM.
2. The registration of the financial intermediaries whose activity consists exclusively of the management of the MTFs is governed by the provisions of Decree-Law No. 357-C/2007, of 31st October.
3. The CMVM organises a list of the credit institutions and investment firms that carry out independent financial intermediation activities in Portugal.
4. The CMVM informs the European Securities and Markets Authority on the following:
  - a) The registration of investment companies and credit institutions that provide services or carry out investment activities;
  - b) The registration of managing companies of securities investment funds and real-estate investment companies that manage undertakings for collective investment in transferable securities; and
  - c) On a quarterly basis, the registration of managing entities of alternative investment undertakings and of corporate self-managed alternative investment undertakings and the decisions for registration cancellation concerning said entities and undertakings.

### **Article 296 Function of the registration**

The registration with the CMVM has the function of assuring the prior control of the requirements for the exercise of each financial intermediation activity and permitting the organisation of supervision.

### **Article 297 Information to be registered**

1. The registration of financial intermediaries includes each financial intermediation activity that the financial intermediary intends to pursue.
2. The CMVM prepares and discloses a list containing the designation of the financial intermediaries registered in accordance with Articles 66 and 67 Legal Framework for

Credit Institutions and Financial Companies, and the financial intermediation activities registered in accordance with the preceding paragraph.

### **Article 298 Registration procedure**

1. The registration application should include the documents necessary to show that the financial intermediary has the essential human, material and technical means in order to pursue the activity in question.
2. By means of inspection, the CMVM may ascertain the existence of the means referred to in the preceding paragraph.
3. Registration may only be made after communication by the competent authority, certifying that the financial intermediary is authorised to pursue the required activities.
4. The presentation of documents that already are at the CMVM or that this entity may obtain in official publications or within the national authority that granted the authorisation or to whom the authorisation was communicated is not required, as long as they have been updated.
5. The shortcomings and irregularities verified in the application or documentation may be resolved in the period established by the CMVM.

### **Article 299 Tacit Refusal**

The registration is deemed to be refused if the CMVM does not grant same within a period of 30 days as from:

- a) The communication of the authorisation; and
- b) The date of the reception of the request or supplementary information that has been requested.

### **Article 300 Refusal of Registration**

1. The registration is refused if the financial intermediary:
  - a) Is not authorised to perform the financial intermediation activity to be registered;
  - b) Does not appear to possess the ability and essential resources to guarantee the efficient and secure performance of the activities;
  - c) Has made false statements;

d) Does not remedy shortcomings and irregularities in the procedures within the time period established by the CMVM.

2. The refusal of registration may be total or partial.

**Article 301**  
**Investment Advisers**

1. The carrying out of the activity of investment adviser depends on registration with the CMVM.

2. The registration is only granted to suitable natural persons who are in possession of professional qualifications and competency, in accordance with high standards, suitable for pursuing the activity and have sufficient material resources, including professional indemnity insurance, or legal persons that comply with the same requirements.

3. Where registration is granted to legal persons:

a) The suitability and material means are conferred on the legal person, members of the management body and employees that pursue the activity;

b) The appropriateness of professional qualifications and competency are conferred on the employees that pursue the activity;

c) The professional indemnity insurance is required for each employee that pursues the activity.

4. The minimum conditions for the professional indemnity insurance laid down in the preceding paragraphs are established by regulatory rules of the ISP (*Instituto de Seguros de Portugal*), after consultation with the CMVM.

### **Article 302 Suspension of the registration**

When the financial intermediary does not satisfy those essential resources to guarantee the rendering of any financial intermediation activities efficiently and securely, the CMVM may suspend the registration for a period not longer than 60 days.

### **Article 303 Cancellation of the registration**

1. Grounds for cancellation of the registration by the CMVM are:

a) The verification of circumstances that would impede the registration, if said circumstances has not been remedied within the period established by the CMVM;

b) The revocation or the forfeiture of the authorisation;

c) The termination of the activity or the non-conformity between the object and the activity effectively performed.

2. The decision to cancel which is not based on the withdrawal or lapse of the authorisation should be preceded by a favourable opinion from the Banco de Portugal, to be issued within 15 days, with the exception of investment advice firms.

3. The cancellation decision is communicated to the Bank of Portugal, the competent authorities of the EU Member States where the financial intermediary has branches or carries out activity under the freedom to provide services, and to the European Securities and Markets Authority.

4. The CMVM announces the cancellation of the registration for a period of five years, via the information disclosure system referred to in Article 367.

### **Section III Organisation and Activity**

#### **Subsection I General Provisions**

##### **Article 304 Principles**

1. Financial intermediaries should conduct their activity so as to protect the legal interests of their clients and efficiency of the market.
2. In their relations with all the intermediaries in the market, financial intermediaries should observe the rule of good faith, in accordance with high standards of diligence, loyalty and transparency.
3. In so far as is necessary for the compliance of its duties in providing service, the financial intermediary should be informed of the client's knowledge and experience as to the specific type of financial instrument or service offered or sought, and in addition, if applicable, as to the client's financial position and investment objectives.
4. Financial intermediaries shall be subject to a duty of professional secrecy in the terms set out for bank secrecy, without prejudice to the exceptions contemplated in the law, notably compliance with the provisions of Article 382.
5. The principles and the duties referred to in the following articles are applicable to the members of the management body of the financial intermediary and the persons that effectively direct the business of the financial intermediary or the tied agent and the employees of the financial intermediary, tied agent or outsourcing entities, involved in the pursuing or supervising of financial intermediation activities or the operational functions that are essential for the provision of continual services under the conditions of quality and efficiency.

##### **Article 304-A Civil Liability**

1. The financial intermediaries are liable for damages caused to any persons due to breach of the duties concerning the organisation and exercise of its activity which have been imposed by Law or Public Authority Regulation.
2. The financial intermediary is liable for damages caused in contractual and pre-contractual relations and always, when disclosure duties have been breached.

##### **Article 304-B Professional Ethic Codes**

The CMVM shall be informed of the codes of conduct that are approved by the professional associations of financial intermediaries within a 15 day period.

### **Article 304-C Auditor Disclosure Duties**

1. The auditors that provide a service to a financial intermediary or a company with which the former is in a control or group relation, or in which it holds either directly or indirectly, at least 20% of the voting rights of the company's capital, shall immediately notify the CMVM of such facts in respect of that financial intermediary or company that have come to be aware of, during the exercise of their duties, when such facts are prone to:

- a) Constituting a crime or an administrative infraction establishing the authorisation conditions or that specifically regulate the financial intermediation activity; or
- b) Influencing the stability of the financial intermediary's activity; or
- c) Justifying the refusal to audit the accounts or the in proviso thereof.

2. The disclosure duty imposed by the present Article prevails over any restrictions to information disclosure provided for either legally or contractually, and its good faith compliance does not include liability for the parties involved.

3. Should the facts mentioned in paragraph 1 constitute inside information in accordance with Article 248, the CMVM and *Banco de Portugal* should coordinate supervisory objectives to be followed by each authority.

4. The auditors referred to in paragraph 1 shall annually submit to the CMVM, a report that confirms the propriety of the procedures and measure that have been adopted by the financial intermediary pursuant to the provisions of subsection iii of the current section.

### **Article 305 General Requirements**

1. The financial intermediary should keep its business organisation equipped with the necessary human, material and technical resources in order to render services under the appropriate conditions of quality, professionalism and efficiency, and thereby avoiding incorrect procedures, by, namely:

- a) Adopting an organisational structure and decision-making procedure which specify the reporting lines and allocates functions and responsibilities;
- b) Ensuring that the persons referred to in Article 304/5 are aware of the procedures to be followed for the proper discharge of their responsibilities;
- c) Ensuring the compliance with the procedures adopted and the steps taken;
- d) Employing personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them;
- e) Adopting effective reporting and communication of internal information;

- f) Maintaining records of the business and internal organisation;
  - g) Ensuring that the performance of several functions by the persons referred to in Article 304/5 does not prevent said persons from discharging any particular function soundly, honestly, and professionally;
  - h) To adopt appropriate systems and procedures to safeguard the security, integrity and confidentiality of information, including electronic data processing;
  - i) Adopting a continuity policy aimed at ensuring, in the case of an interruption to the systems and procedures, the preservation of essential data and functions, and the maintenance of financial intermediation activities, or, where that is not possible, the timely recovery of said data and functions and the timely resumption of said activities;
  - j) Adopting an accounting procedure that will enable the delivery in a timely manner of the financial reports which reflect a true and fair view of the financial position and which comply with all the applicable accounting standards and rules, particularly, asset segregation.
  - k) To have adequate internal control procedures, including rules on personal transactions of its employees or for the holding or management of investments in financial instruments for own account.
2. For the purposes of sub-paragraphs a) to g) of the preceding paragraph, the financial intermediary should take into account the nature, scale and complexity of the business, and in addition, the type of financial intermediation activities provided.
3. The financial intermediary should regularly monitor and evaluate the adequacy and effectiveness of the systems and procedures, established for the purposes of paragraph 1, and take the appropriate measures to address any possible shortcomings.

### **Article 305-A Compliance Control System**

1. The financial intermediary shall adopt proper policies and procedures for detecting any risks leading to the non-compliance of duties that it is subject to, and should thus apply measures to minimize and correct them in order to avoid future occurrences, allowing the competent authorities to carry out their duties.
2. The financial intermediary shall establish and keep an independent compliance control system that covers, at least, the following:
- a) The regular monitoring and assessment of the adequacy and efficiency of the measures and procedures that have been adopted to detect and any type of risk of non-compliance of the duties that the financial intermediary is subject to, as well as the measures taken for correcting possible deficiency in the compliance of same;

b) Providing advice to the persons referred to in Article 304/5 that are responsible for carrying out financial intermediation activities for the purposes of compliance with the duties provided for in the current Code;

c) Identifying transactions on financial instruments that might be involved in money laundering and terrorist financing and those covered in Article 311/3;

d) Providing the Administrative Body with any evidence leading to the breach of the duties foreseen for in the standard mentioned in Article 388/2 that may incur the financial intermediary or the persons referred to in Article 304/5, in a serious or very serious administrative infraction;

e) Keeping a record of the breaches and the proposed and adopted measures under the terms of the previous subparagraph;

f) Compiling and submitting a report to the Supervisory Body with at least annual frequency, on the compliance control system and the breaches that occurred and the measures adopted for correcting possible deficiencies;

3. In order to secure the adequacy and independency of the compliance control system, the financial intermediary shall:

a) Appoint a person who will be responsible for the system and for any information that is provided on same and shall further confer the person with the necessary powers to be able to undertake such duties in an independent manner, namely as regards to accessing material information;

b) Provide them with adequate technical means and capacity;

c) Ensure that the persons referred to in Article 304/5 who are involved in the compliance control system, are not simultaneously involved in the providing services and activities that are controlled by them;

d) Ensure that the method used for determining the remuneration of those persons referred to in Article 304/5 which are involved in the compliance control system, does not interfere with the former's objectivity.

4. The duties provided for in subparagraphs c/ and d/ of the preceding paragraph are not compulsory should the financial intermediary show that its compliance is redundant for ensuring the independency of that system, taking into account the nature, size and complexity of the financial intermediary's activities as well as the type of financial intermediation activities that are provided.

### **Article 305-B Risk Management**

1. The financial intermediary shall adopt and manage policies and procedures for pinpointing risk management related to its activities, procedures and systems, taking into account the tolerated level of risk.

2. In the case of the management of collective investment institutions, the risk management policy includes the following:

a) Necessary procedures to allow the financial intermediary to assess, for each independent asset compartment or managed institution, the exposure to market, liquidity and counterparty risks, as well as exposure to all other risks that may be significant, particularly operational risks and shall cover the following elements:

i) Procedures, tools and mechanisms that enable it to fulfill its obligations for risk assessment and management, and the calculation of the exposure of the collective investment undertaking;

ii) Distribution of responsibilities for risk management within the financial intermediary;

b) Conditions, content and regularity of the communication of information between the risk management department and the board of directors and, if applicable, the monitoring of the financial intermediary responsible for the management.

3. For the purposes of the preceding paragraph, the financial intermediary takes into account the nature, scale and complexity of its activities and the collective investment institutions that it manages.

4. The financial intermediary shall monitor the adequacy and effectiveness of the adopted policies and procedures pursuant to paragraphs 1 and 2, the compliance of the former by the persons referred Article 304/5 and the adequacy and effectiveness of measures taken to address any deficiencies thereof.

5. The financial intermediary shall establish a risk management service responsible for:

a) Ensuring that the policy and procedures referred to in paragraph 1 are applied; and

b) Providing advice to the Administrative Body and drawing up and submitting a report to the Administrative Body and to the Supervisory Body, at least on annual basis, on the management risks as well as whether adequate measures were taken to correct any possible deficiencies.

6. In the case of the management of collective investment institutions, the service referred to in the preceding paragraph is also responsible for:

a) Ensuring compliance with the risk control system of institutions, including the legal limits of overall exposure and counterparty risk;

b) Submit regular reports to the members of the board and members of the supervisory board concerning:

i) The consistency between the levels of risk incurred by each managed collective investment institution and the risk profile agreed for the institutions concerned;

ii) The compliance with the risk limit system for each managed collective investment institution;

c) Provide reports that describe the current level of risk incurred by each managed collective investment institution and any actual or anticipated breaches of such limits to the board members on a regular basis, and at least annually, to ensure that accordingly, adequate measures are taken swiftly and adequately;

d) Review and strengthen when necessary, mechanisms and procedures for assessing derivatives traded outside regulated markets and multilateral trading facilities.

7. The risk management service is independent whenever appropriate and comparable, taking into account the nature, scale and complexity of the activities, as well as the type of financial intermediation activities provided.

8. The financial intermediary who according to the criteria set out in the preceding paragraph, does not adopt an independent risk management service, shall ensure that the policies and procedures adopted meet the requirements of Paragraphs 1, 2 and 4.

9. The financial intermediary shall be able to demonstrate that appropriate precautions were adopted with regard to the prevention of conflicts of interest, so that independent risk management of the activities may be carried out.

10. The risk management service shall have the means and skills necessary for the adequate performance of the relevant duties.

11. The financial intermediary shall notify the CMVM of any significant changes made to the risk management procedure.

### **Article 305-C Internal Audit**

1. The financial intermediary shall establish an independent internal audit service, responsible for:

a) Adopting and maintaining an audit plan for examining and assessing the adequacy and efficiency of the systems, procedures and rules that are a basis for the financial intermediary's internal control system;

b) Issue recommendations based on assessment results and verify its compliance; and

c) Draw up and submit a report to the administrative body and supervisory body, at least on an annual basis, on issues concerning auditing, by indicating and identifying the recommendations that were followed.

2. The duty provided for in the preceding paragraph is always applicable whenever adequate and proportional, taking into account the nature, size and complexity of the activities as well as the type of financial intermediation activities undertaken.

#### **Article 305-D** **Duties of the Members of the Administrative Board**

1. Without prejudice to the supervisory board's duties, the members of the administrative board shall ensure that the duties in the current Code are complied with.

2. The members of the administrative board shall periodically assess the efficiency of the policies, procedures and internal rules for the compliance with the duties referred to in Articles 305-A and 305-C and take adequate measures for correcting possible deficiencies in order to prevent future occurrences.

3. In the case of the management of a collective investment institution, board members of the financial intermediary are yet responsible for fulfilling the duties prescribed in the relevant legislation and specifically concerning:

a) Implementation of the general investment policy as described in the articles of association;

b) Approval of investment strategies;

c) Regularly ensuring and checking that the general investment policy, investment strategies and risk limits are applied and enforced appropriately and effectively, albeit the risk management duty is carried out by third parties.

4. For the purposes of the preceding paragraph, a report on the implementation of investment strategies and internal procedures for making investment decisions shall be drawn up and submitted to the board of directors at least annually.

#### **Article 305-E** **Investor Complaints**

1. The financial intermediary shall maintain efficient and transparent procedures to adequately and swiftly handle retail investor complaints, and should provide at least for the following:

a) The reception, forwarding and handling of the complaint by a different employee than the one mentioned in the complaint;

- b) Definite procedures to be adopted for complaints handling;
  - c) Maximum deadline for response.
2. The financial intermediary shall keep a record of all complaints for a five-year period. The following information must be included in the records:
- a) The complaint, the identification of the claimant and the date in which the complaint was received;
  - b) The identification of the financial intermediation activity in question and the date in which the facts occurred;
  - c) The identification of the employee that carried out the claimed act;
  - d) The assessment made by the financial intermediary, the measures taken to resolve the issue and the date of the communication sent to the claimant.
3. Investors may submit complaints free of charge, and access to response thereto is also cost-free.

### **Subsection III Safeguarding of Client Assets**

#### **Article 306 General Provisions**

1. In all acts performed, as well as in accounting and operations records, the financial intermediary should maintain a clear distinction between its assets and the assets of each one of its clients.
2. The opening of proceedings for the insolvency, recovery of the company or reorganization of the financial intermediary does not have effects on actions carried out by the financial intermediary on behalf of its clients.
3. The financial intermediary may not utilise, for its own or a third party's benefit, the clients' financial instruments or exercise the rights inherent thereto, unless the holders have agreed thereto.
4. The investment firms may not use the cash received from the clients for its own or a third party's benefit.
5. For the purposes of the preceding paragraphs, the financial intermediary should:
  - a) Maintain records and accounts that are necessary so that at any time and without delay, assets held for one client may be distinguished from assets held for any other client, and also, from their own assets;

b) Maintain records and accounts in such a way that the accuracy, and in particular, the correspondence with the financial instruments and clients' money is ensured;

c) Conduct, as often as is necessary and at least once a month, reconciliations between the records of the clients' internal accounts and those opened with third parties, for the deposit or registration of said clients' assets;

d) Take the necessary steps so as to ensure that any client's financial instruments deposited or registered with a third party, are separately identifiable from the financial instruments belonging to the financial intermediary, by means of accounts opened in the client's name or the financial intermediary's name with a reference thereon indicating that it is the client's account, or other similar measures that achieve the same level of protection;

e) Take the necessary steps so as to ensure that the clients' money is held in an account or accounts separately identifiable from any accounts used to hold the money belonging to the financial intermediary; and

f) Introduce organisational arrangements in order to minimise the risk of the loss or diminution of clients' assets, or of rights relating thereto, as a result of misuse of the assets, fraud, poor management, inadequate record-keeping or negligence.

6. If, due to the applicable law, including, in particular, the law relating to property or insolvency, the steps taken by the financial intermediary in compliance with the provisions of paragraph 5, are not sufficient to comply with the requirements set out in paragraphs 1 & 2, the CMVM shall prescribe the steps that need to be taken in order to comply with said obligations.

7. If the applicable law of the jurisdiction wherein the client's property is held prevents the financial intermediary from complying with paragraph 5/d) or/e), the CMVM shall prescribe the requirements with an equivalent effect in terms of safeguarding the clients' rights.

8. In accordance with paragraph 5/c), whenever any discrepancy is detected, same must be resolved as soon as possible.

9. If the discrepancies referred to in the preceding paragraph persist for longer than a month, the financial intermediary should immediately inform the CMVM of the said incident.

10. The financial intermediary shall immediately report to the CMVM, any facts capable of affecting the security of the property belonging to the assets of the clients or generate risk for the other financial intermediaries or the market.

**Article 306-A**  
**Registration and Deposit of Clients' Financial Instruments**

1. The financial intermediary that wishes to register or deposit clients' financial instruments in either one or more bank accounts at a third party shall:

a) Observe the protection duties and employ high standards of professional diligence in the selection, appointment and in the periodic assessment of the third party, taking into consideration its technical capability and market reputation; and

b) Consider the legal or regulatory requirements and market practices regarding financial instruments which are held, registered and deposited by those third-parties and which are prone to adversely affect clients' rights.

2. Whenever the registration and deposit of financial instruments is subject to regulation and supervision in the State in which the financial intermediary intends to register and deposit the financial instruments at a third party, the financial intermediary may not register or deposit them at an entity that is not subject to that regulation and supervision.

3. The financial intermediary shall not register or deposit clients' financial instruments at an entity that is established in a State that does not regulate the registration and deposit of financial instruments on behalf of a third party, unless:

a) The nature of the financial instruments or the investment services related to those financial instruments require so; or

b) The financial instruments are to be registered or deposited on behalf of a professional investor who has requested so in writing.

**Article 306-B**  
**Use of Clients' Financial Instruments**

1. Should the financial intermediary require the use of financial instruments that are registered or deposited in the client's name, the financial intermediary shall ask for explicit and prior permission to do so and in the case of a retail investor, the permission must be confirmed by the retail investor's signature or by a similar alternative mechanism.

2. If the financial instruments are registered or deposited in an omnibus account and the financial intermediary wishes them to be made available to him, he should:

a) Request prior and assured authorisation from all those clients whose financial instruments are jointly registered or deposited in that omnibus account;

b) Ensure that systems and controls are in place and ensure that only those financial instruments of clients that have previously given authorisation, are used under the terms referred to in paragraph 1.

3. The financial intermediary's registrations shall include information on the client that authorised the handling of the financial instruments, the conditions of that handling and the amount of financial instruments handled belonging to each client, in order to determine possible losses.

### **Article 306-C Deposit of Clients' Monies**

1. Money that is given over by clients to investment companies is immediately:

a) Deposited in one or more bank accounts at either the Central Bank, a Credit Institution that is authorised in the European Union to receive deposits or a bank that is authorised to do so in a third country; or

b) Invested in a money market fund, should the client not oppose it, although the client is aware of the generic terms of that possibility.

2. The account mentioned in the preceding paragraph is opened in the name of the investment company on behalf of a client or clients.

3. When the investment company does not deposit clients' money at the Central Bank, it should:

a) Act with due care and diligence in selecting, appointing and periodically assessing the depository and must take into consideration its technical capacity and market repute; and

b) Consider the legal and regulatory requirements and market practices concerning the holding of clients' money by entities that might impair clients' rights.

4. Investment companies shall establish written procedures for the reception of clients' money, in which the following is defined:

a) The acceptable means of payment for bank account provision;

b) The department or the employees that are authorised to receive money;

c) The type of confirmation document that the client is provided with;

d) Rules concerning the location where same are stored until its deposit or investment as well as filing of documents;

e) Measures for preventing money laundering and terrorist financing.

5. For the purposes of paragraph 1/b, a 'money market fund' is a CIU (Collective Investment Undertaking) or is subject to supervision and where applicable, is authorised by a EU Member State authority, provided that:

a) Its main investment goal is that of keeping the liquid value of the assets of the CIU at par or at the initial capital value added to the proceeds;

b) With a view to undertaking the main investment objective, invests exclusively in high level instruments of the money market with maturity or residual maturity not higher than 397 days or with return adjustments carried out in conformity with that maturity and its weighted average maturity is 60 days, while that objective may also be reached through additional investment in bank deposits; and

c) It provided liquidity via liquidity on the same or the following day.

6. A money market instrument is of high quality if it has been risk-rated by a competent risk-rating company and it has received the highest available risk-rating by all the competent risk-rating companies that have rated that instrument.

7. For the purposes of the previous paragraph, a risk-rating company is competent provided that it:

a) Issues risk-ratings on money market funds on a regular and professional basis;

b) Is an eligible risk rating company within the meaning of Article 81/1 of the EC Directive No. 2006/48/EC of the European Parliament and Council of 14 June 2006 concerning the taking up and pursuit of the business of credit institutions.

#### **Article 306-D Bank Account Transactions**

1. The financial intermediary shall provide the clients with the financial instruments or money that are due for any transactions on financial instruments, including the concept on interest, dividends and other earnings:

a) On the same day in which the financial instruments or the amounts in question are made available in the financial intermediary's account;

b) Until the following working day, provided that the transaction settlement system rules are incompatible with the provision of the previous subparagraph.

2. Investment companies are allowed to handle the accounts (debit) referred to in paragraph 1 of the previous Article for the following:

- a) Payment of the subscription price and acquisition of financial instruments for clients;
- b) Payment of fees and costs by clients; or
- c) Transfers requested by clients.

#### **Subsection IV Records and Document Retention**

##### **Article 307 Accounting and Records**

1. The financial intermediary's accounting records should daily reflect the credit or debit balance in cash and financial instruments for each client.

2. Accounting for the management of collective investment institutions shall be maintained so that the assets and liabilities of same can be directly identified at any given time.

3. In the case of a collective investment institution with independent asset compartments, separate accounts for each of the asset compartments shall be kept.

4. In the case of managing a UCITS authorised in another Member State, the financial intermediary shall adopt accounting policies and procedures, in accordance with the accounting rules of that Member State in order to ensure that the calculation of the net asset value of each UCIT is made accurately and that the orders and redemption can be properly executed based on the net value of the calculated investment unit.

5. The financial intermediary keeps a daily and sequential record of the transactions that it carries out, on own account and for the account of each one of the clients, indicating the entries of financial instruments and cash.

6. The record of each entry shall include or allow the identity of:

- a) The client and account thereof;
- b) The entry date and respective value date;
- c) The nature of the entry, debit or credit;
- d) A description of the entry or the transaction that caused same;
- e) The quantity or amount;
- f) The opening balance and the balance after each entry.

7. The orders and decisions to deal are recorded pursuant to Article 7 Commission Regulation (EC) No. [1287/2006](#), of 10th August.

8. Registration of orders for subscription or redemption of investment units in collective investment institutions includes the following data:

- a) The relevant collective investment institution;
- b) A person who gives or transmits the order;
- c) The person receiving the order;
- d) The date and time of the order;
- e) The conditions and payment method;
- f) The type of order;
- g) The order execution date;
- h) The total number of units subscribed or redeemed;
- i) The unit price of subscription or redemption;
- j) The total value of subscription or redemption of the investment units;
- l) The gross amount of the order including subscription fees or the net amount after redemption fees.

9. The details that should be recorded by the financial intermediary after the execution or reception of the confirmation of the execution of an order is laid down in Article 8 Commission Regulation (EC) No. [1287/2006](#), of 10th August.

10. The financial intermediary shall take appropriate measures with regard to the electronic systems needed to allow prompt and appropriate record of every movement of the portfolio or order.

### **Article 307-A Client Registration**

The financial intermediary shall keep a record of the client, namely current information on the rights and duties of both parties in financial intermediation contracts which shall be contained in the supporting documents.

**Article 307-B**  
**Term and Storage Method**

1. Without prejudice to the more thorough legal and regulatory requirements, the financial intermediaries shall store the documents and records concerning the following:

a) Transactions in financial instruments, including orders received, for five years after the completion of the transaction;

b) Client contracts for the supply of services, stating the conditions in which the financial intermediary provides services to the client, stored for a five-year period after termination of the clientele relation.

2. The duty specified in paragraph a) above is still applicable with respect to a collective investment institution, in case of withdrawal of authorisation of the financial intermediary responsible for managing same for the remainder of the five years.

3. If the financial intermediary responsible for managing the collective investment institution transfers its responsibilities in relation to the same to another intermediary, said must ensure that the records of the last five years are available for this financial intermediary.

4. At the request of the competent authorities or the clients, financial intermediaries should issue certificates of the records concerning transactions wherein said intermediaries acted.

5. The records should be kept in a medium that allows for the storage of information in an accessible manner for future reference by the CMVM so that:

a) Each essential stage of all transactions can be back traced:

b) Any corrections and changes as well as to the contents of the records prior to such corrections and changes, can be easily verified; and

c) Records may not be manipulated or changed in any way.

4. The financial intermediary shall keep an audible record of the orders given by telephone and shall inform the client of that record beforehand.

## **Subsection V Outsourcing**

### **Article 308 Scope**

1. The outsourcing to third parties of financial intermediation activities or for the performance of operational functions which are critical for the provision of continuous, quality and competent services, presupposes the adoption by the financial intermediary of the necessary steps so as to avoid undue additional operational risk derived from same and may only be undertaken if it does not impair the internal control to be carried out by the financial intermediary nor the ability of the competent authority to monitor the compliance of said intermediary of the duties that are imposed by law or regulations emanating from public authority.
2. An operational function shall be regarded as essential to the provision of investment services on a continual basis and under conditions of quality and efficiency, if a failure in its performance would materially impair the compliance, by an outsourcing financial intermediary, with the conditions to which it is subject, its financial performance, or the continuity of its investment services and activities.
3. The following, in particular, is excluded from the preceding paragraph:
  - a) The provision to the financial intermediary of advisory services, or other services which do not form part of the financial intermediation business, namely, legal advice services, the training of employees, billing services, advertising and security;
  - b) The purchase of standardised services, namely, market information services and the provision of price feed.

### **Article 308-A Principles applicable to Outsourcing**

1. Outsourcing obeys the following principles:
  - a) Shall not result in the delegation by senior management of its responsibilities;
  - b) Maintenance by outsourcing financial intermediary, of the control over the outsourced activity and functions, as well as, the responsibility towards its clients, namely as regards disclosure duties;
  - c) Non-depletion of the outsourcing financial intermediary's activities;
  - d) Maintaining the relationship and duties of the outsourcing financial intermediary regarding its clients, particularly concerning disclosure duties;
  - e) Maintaining the requirements for the authorisation and registration of the outsourcing financial intermediary.

2. The provided for in subparagraph /d of the previous paragraph, implies that the outsourcing financial intermediary:

a) Defines the management policy and makes the principal decisions, if the services, activities and outsourcing duties imply management powers of any kind;

b) Maintain exclusive relations with the client, including payment to be made by or to the client.

### **Article 308-B Outsourcing Requirements**

1. The outsourcing financial intermediary shall take due care and employ high standards of professional diligence in the entering into, management or termination of any outsourcing contract.

2. The outsourcing financial intermediary shall ensure that the service provider:

a) Holds the qualifications, capacity and authorisation, if required by Law, to carry out the outsourced activities and duties in a trustworthy manner;

b) Efficiently provides the outsourced activities and duties;

c) Controls the outsourced activities and functions and manages the risks associated with the outsourcing;

d) Has all the necessary information for complying with the outsourcing contract;

e) Informs the outsourcing financial intermediary on facts that might influence its capacity to exercise the outsourced activities and duties, in compliance with the applicable legislative and regulatory requirements;

f) Cooperates with supervisory authorities concerning the outsourced activities and duties;

g) Authorises entry to their business premises, as well as access to the information on the activities and duties of the service provider, by the outsourcing financial intermediary, the respective auditors and supervisory authorities.

h) Diligence in protecting any confidential information on the outsourcing financial intermediary or its clients;

3. Apart from the duties provided for in the previous paragraph, the outsourcing financial intermediary shall:

a) Be technically capable of supervising the outsourced activities and duties and managing risks associated to outsourcing;

- b) Establish methods for assessing the performance level of the service provider;
  - c) Take adequate measures should there be suspicion that the service provider may not be able to provide the outsourced activities and duties in an efficient manner and in compliance with the applicable legal and regulatory requirements;
  - d) Be entitled to terminate the outsourcing contract, whenever deemed fit, without prejudice to the continuity and quality of the services provided to the clients;
  - e) Include the necessary data on the outsourced activities and duties and its terms, in their annual reports.
4. Whenever necessary and taking into account outsourced activities and duties, the outsourcing financial intermediary and the service provider shall implement a contingency plan and carry out periodic testing of the backup facilities.
5. If the outsourcing financial intermediary and the service provider are members of the same group of companies, the former may, for the purposes of the previous paragraphs of Article 308-C, take into account the extent to which it controls the service provider or the influence it has over its shares and its inclusion in the consolidated supervision of the group.
6. Outsourcing is official via written contract and shall mention the rights and obligations for both parties pursuant to the preceding Articles and paragraphs.
7. The outsourcing contract shall be submitted to the CMVM within a five-day period, as from the signing of the contract.

#### **Article 308-C**

#### **Outsourcing of Portfolio Management Services in Companies located in Third Countries**

1. Besides the compliance with the requirements foreseen for in Article 308-A and 308-B, a financial intermediary may outsource a portfolio management service for retail investors to a service provider located in a Non-EU Members State, provided that:
- a) The service provider is authorised to provide that service and is subject to prudential supervision in its home country; and
  - b) A cooperation agreement exists between the CMVM and the supervisory entity of the service provider.
2. When none of the conditions provided for in the preceding paragraph are met, a financial intermediary may outsource to a service provider located in a non-EU Member State, provided the CMVM does not object to same, within a 30-day period after it has been notified of the outsourcing contract.

3. Under the terms of Article 367, the CMVM discloses the following:

a) A list of the supervisory authorities of non-EU Member States with which it has cooperation agreements for the purposes of paragraph 1/a;

b) A policy statement that includes examples of situations in which the CMVM would not object to the outsourcing, even though one of the conditions foreseen for in paragraph 1 was not met, including a clear explanation on the reasons for which, in these cases, would not jeopardize the compliance of the requirements provided for in Articles 308-A and 308-B.

## **Subsection VI Conflicts of Interest and Personal Transactions**

### **Article 309 General Principles**

1. The financial intermediary should be organised so as to be able to identify possible conflicts of interest and act in order to avoid or reduce the risk of same to a minimum.

2. In a situation of conflicts of interest, the financial intermediary should act so as to assure its clients of transparent and equal treatment.

3. The financial intermediary should give preference to the interests of the client, both in respect of its own interests or the companies with which it is in a control or group relationship, and in respect of the interests of its Board members or those of the tied agent and the employees of both.

4. Whenever the financial intermediary carries out transactions pursuant to clients' orders, the said intermediary should make the financial instruments available to same at the same price by which it was acquired.

### **Article 309-A Policy concerning Conflicts of Interest**

1. The financial intermediary shall adopt a policy on conflicts of interest, in writing and shall be adequate to the size, organisation, nature, size and complexity of its activities.

2. Whenever the financial intermediary is part of a group of companies, the policy must take into consideration any circumstances that are or should be known to those prone to causing a conflict of interest due to the commercial structure and activities of other companies within the group.

3. The policy on conflicts of interest, shall:

a) Identify the circumstance that constitute or may originate a conflict of interest regarding the specific financial intermediation activities provided for or on behalf of the financial intermediary;

b) Specify the procedures to be followed and the measures to be taken in order to manage those conflicts.

4. The procedures and measures provided for in subparagraph b/ of the previous paragraph must be designed so as to ensure that the persons referred to in Article 304/5 that undertake different activities and that imply a conflict of interest of the kind stipulated in subparagraph a/ of the preceding paragraph, shall undertake the mentioned activities with a level of independence which is appropriate to the size and activities of the financial intermediary and of the group that it belongs to and the importance of the risk of damage to the clients' interests.

5. As deemed necessary for ensuring the required independency, the following should be included:

a) Efficient procedures for avoiding or controlling the exchange of information among the persons referred to in Article 304/5 that undertake those activities that involve conflicts of interest, whenever those may hamper the interests of one or more clients;

b) A different supervisory action which is distinct from the persons mentioned in Article 304/5 and whose main duties include providing activities on behalf of clients or the provision of services to the later clients, when their interests may be in conflict or when they present different interests that may conflict, including those of the financial intermediary;

c) Eliminating any direct relation between the remuneration of the persons mentioned in Article 304/5 undertaking an activity and the remuneration or revenues generated by the persons referred to in Article 304/5, undertaking another activity, inasmuch as a conflict of interest may occur in those activities;

d) The adoption of measures aimed at deterring or restricting any person from inadequately influencing the way in which the person referred to in Article 304/5 provides financial intermediation activities;

e) The adoption of measures aimed at deterring or controlling the simultaneous or sequential involvement of a person referred to in Article 304/5 within different financial intermediation activities when such involvement may hinder the proper management of the conflicts of interest.

6. Should any of the procedures or measures provided for in the preceding paragraph, not ensure the required level of independence, the CMVM may require that the financial intermediary adopts alternative or additional measures that are necessary or adequate for the same purposes.

**Article 309-B**  
**Conflicts of Interest that may be harmful to the Client**

1. Identifying conflicts of interest for the purposes of the policy on conflicts of interest, shall obligatorily contemplate those situations that due to the undertaking of financial intermediation activities or due to other circumstances, the financial intermediary, a person in a control relationship with the former or a person mentioned in Article 304/5:

- a) Might obtain financial gain or avoid financial loss, to the client's disadvantage;
- b) Has an interest in the outcome as a consequence of the service provided to the client or from a transaction undertaken on behalf of the client that clashes with the client concerning same outcome;
- c) Receives a financial profit or of another nature to benefit the interests of the other client over the interests of the client in question;
- d) Undertakes the same activities as those of the client;
- e) Receives or will receive from a person that is not a client, an inducement regarding a service that has been provided to the client, either as monies, goods or services other than the standard commission or fee for that service.

2 - For the purposes of paragraph d) above, within the scope of managing collective investment institutions, the issue pertains to the situation wherein the financial intermediary carries out the same activities for the collective investment institution as too for another client.

3 - In identifying the types of conflict of interest, the financial intermediary responsible for managing collective investment institutions shall take the following into consideration:

- a) Their own interests, including those arising from belonging to a group or the provision of services and activities, the clients' interests and the duties in relation to the institution that it manages;
- b) The interests of two or more institutions that are managed.

**Article 309-C**  
**Record-keeping of the activities prone to causing conflicts of interest**

1. The financial intermediary shall maintain records and regularly update them concerning all types of financial intermediation activities that have been undertaken directly by himself or on his behalf, which may cause conflicts of interest entailing a material risk of damage to the interests of one or more clients or, in the case of on-going activities that may arise.

2. The intermediary shall draw up a list of persons that have had access to the information, in situations when the intermediary provides services concerning public offers or other services that result from the knowledge of material information.

### **Article 309-D Investment Advice**

1. The financial intermediary who, outside the scope of the investment advice activity, draws up investment recommendations as defined in Article 12-A, for disclosure or for likely disclosure, under its responsibility or that of the company of the same group, as investment recommendations to its clients or to the public, shall comply with the provisions mentioned in Article 309-A/5 concerning the persons involved in the drawing up of the recommendations.

2. The persons involved in the drawing up of recommendations shall not undertake personal transactions contrary to what is recommended on financial instruments covered by the recommendation or by the related financial instruments, except under exceptional circumstances and are thus authorised by the competent department of the financial intermediary.

3. Analysts and other persons referred to in Article 304/5 who are aware of the likely timing of the disclosure of the recommendation or its contents, shall not carry out transactions neither for own account nor on behalf of third parties on the financial instruments covered by the recommendation or the related financial instruments before the recipients of the recommendation have had access to it and the opportunity to make investment decisions according to its contents, except for during the normal exercise of the duty as market maker or when executing a non-solicited order from a client.

4. For the purpose of the preceding paragraphs, a financial instrument is considered to be related to another financial instrument when a financial instrument's price is susceptible of being influenced by the price fluctuation of another financial instrument.

5. The financial intermediary, analysts or other persons mentioned in Article 304/5 that are involved in the drawing up of recommendation, shall not:

a) Accept any illegal inducements, from persons who have a significant interest in the recommendations, as per Article 313;

b) Promise a favourable assessment to the issuers to whom the recommendations refer.

6. The financial intermediary shall only allow the access to the contents of the recommendations to the analysts that are involved in their drawing up, until it has been communicated to the recipients.

7. The financial intermediary shall adopt procedures that ensure compliance with the provisions mentioned in paragraphs 2 to 6.

8. The financial intermediary is allowed to disclose to both the public and the clients, the investment recommendations drawn up by third parties, provided that Article 12-D is complied with, and that those persons that have drawn up the recommendations have fulfilled equivalent requirements as per the current Code regarding the drawing up of recommendations or has established an internal policy that provides for them.

### **Article 309-E Transactions carried out by Relevant Persons**

1. The financial intermediary shall adopt procedures that will avoid that those persons referred to in Article 304/5 undertaking activities that are prone to causing conflicts of interest or that have access to material information or to other confidential information, carry out personal transactions, advise or order third parties to carry out a transactions on financial instruments:

- a) In breach of Article 248/4 and Article 378;
- b) That implies the unlawful use or undue disclosure of confidential information;
- c) In breach of any financial intermediary's duty provided for in the current Code.

2. The procedures adopted by the financial intermediary shall ensure, in particular, that:

- a) All the persons referred to in Article 304/5 and covered by paragraph 1 of the same Article, are aware of the restrictions and procedures regarding personal transactions;
- b) The financial intermediary is immediately informed of all personal transactions that have been carried out; and
- c) Records be kept on each personal transaction, including indications on any authorisation or refusal on same transaction.

3. For the purposes of subparagraph b) of the previous paragraph, if certain activities are carried out by subcontractors, the financial intermediary shall ensure that the subcontractor keeps a record of personal transactions and provides this information to the intermediary immediately when said is requested.

### **Article 309-F Personal Transactions**

For the purposes of Articles 309/d and e/, a personal transaction is a transaction on a financial instrument carried out by a person referred to in Article 304/5 or on its behalf, provided that:

- a) The person referred to in Article 304/5 acts outside the scope of the functions that it undertakes in that capacity;

b) The transaction is carried out on behalf of:

- i) The person referred to in Article 304/5;
- ii) Persons with whom the person referred to in Article 304/5 have a relationship in accordance with Article 248-B/4;
- iii) The company with which the person referred to in Article 304/5 holds, directly or indirectly, at least 20% of the voting rights or capital;
- iv) The company with a group relationship with the controlling company referred to in Article 304/5; or
- v) The person whose relationship with the person referred to in Article 304/5 is such that there exists, a direct or indirect material interest in the transaction outcome, besides the remuneration or commission fees charged for the undertaking of same.

### **Article 309-G Asset management**

1 – When the situation pertains to the management of collective investment institutions, the financial intermediary shall structure and organise itself in order to reduce risking the interests of the collective investment institution or that clients be undermined due to the conflicts of interest between the intermediary and its clients, among clients, between one of its clients and a collective investment institution or among collective investment institutions.

2 - Where the authorisation of the financial intermediary includes both the management of collective investment institutions as well as discretionary portfolio management, the intermediary cannot invest all or part of a client's portfolio in units of a collective investment institution under its management, except when prior consent has been specified by the client and which can be given in general terms.

### **Subsection VII Market Protection**

#### **Article 310 Excessive intermediation (churning)**

1. The financial intermediary should refrain from encouraging clients carrying out repetitive transactions on financial instruments or carrying same out on behalf of the clients, when said transactions has as principal objective the collection of commission or any other objective contrary to the interests of the client.

2. In the operations described in the previous sub-article are included the concession of credit for carrying out operations.

3. In addition to civil liability and administrative offence that may be applicable to the operations described in the previous sub-articles, no commissions, interest and other fees are due.

### **Article 311 Protection of the Market**

1. The financial intermediaries and other market members should behave with the utmost integrity, refraining from taking part in transactions or carrying out other actions capable of putting the market's orderly functioning, transparency and credibility at risk.

2. Especially susceptible to placing at risk the regularity of the functioning, transparency and credibility of the market are:

a) The carrying out of operations allocated to the same portfolio whether for purchase or sale;

b) The apparent, feigned or fictitious transfer of financial instruments between different portfolios;

c) The execution of orders intended to defraud or significantly restrict the consequences of the auction, apportionment or other form of financial instruments allocation;

d) The carrying out of market-making transactions not communicated in advance with the CMVM or price stabilisation transactions not carried out in the conditions legally allowed.

3 – The entities referred to in no. 1 shall further carefully and diligently examine orders and transactions, particularly when the same are likely to lead to the following situations:

a) Execution of orders to trade or transactions undertaken by persons with a significant buying or selling position in a financial instrument or that represent a significant proportion of the daily volume of transactions in the relevant financial instrument and which, as result thereof, are likely to lead to significant changes in the price of the financial instrument or related derivative or underlying asset;

b) Execution of orders to trade or transactions undertaken concentrated within a short time span in the trading session which are likely to lead to significant changes in the price of the financial instrument or related derivative or underlying asset and which are subsequently reversed;

c) Execution of orders to trade or transactions undertaken at or around a sensitive time when reference prices, settlement prices or other prices calculated at times determinant for valuation are calculated and which are likely have an effect on such prices and valuations;

d) Execution of orders to trade which alter the normal characteristics of the order book for a certain financial instrument and which are cancelled before they are executed;

e) Execution of orders to trade or transactions undertaken preceded or followed by dissemination of false, incomplete, exaggerate, biased or misleading information by the economic beneficiaries of the transactions or persons linked to;

f) Execution of orders to trade or transactions undertaken preceded or followed by the production or dissemination of research or investment recommendations containing false, incomplete, exaggerated, biased or misleading information, or information demonstrably influenced by material interest when the persons that have given such orders or undertaken such transactions, or any persons linked to them, have participated in the production or dissemination of such research or investment recommendations.

## **Subsection VIII Reporting to Investors**

### **Division I General Principles**

#### **Article 312 Disclosure Duties**

1. The financial intermediary should provide, with regard to the services that is offered or requested from it or that is effectively rendered, all the necessary information in order for a clear and justified decision to be made, including the following, namely:

a) The financial intermediary and the services provided;

b) The nature of the retail or professional investor or eligible counterparty, to the possible right of requesting a different treatment and any restriction on the level of protection that such implies;

c) The source and the nature of any interest that the financial intermediary or persons who act on behalf of same have in the services to be provided, whenever the organisational measures introduced by the intermediary pursuant to Articles 309 et seq are not sufficient to ensure with reasonable confidence that the risk of the clients' interests being prejudiced shall be avoided;

d) The financial instruments and the proposed investment strategies;

e) The specific risks involved in the transactions to be carried out;

- f) The order execution policy and, if applicable, provides for the possibility that clients' orders may be executed outside a regulated market or MTF;
  - g) The existence or non-existence of any guarantee scheme or similar protection that covers the provision of services;
  - h) The costs of the provision of services.
2. The less the degree of knowledge and experience of the client, the greater the extent and depth of the information to be provided.
3. The insertion of informative details in the rendering of advice, under any Title, or in a promotional or advertising message does not exempt the financial intermediary from the observance of the requirements and rules applicable to information in general.
4. The information envisaged in paragraph 1 should be provided in writing and in a standard format.
5. Whenever, in the present subsection, it is established that the information should be provided in writing, the information should be provided in a paper format unless:
- a) The provision of information in another format is appropriate to the context of the current or future relationship between the financial intermediary and the investor; and
  - b) The investor has expressly chosen the provision of information in a format other than paper.
6. It is deemed that the provision of information through electronic communication is appropriate to the context of the relationship between the financial intermediary and the investor when same has indicated an e-mail address for contacts.
7. The information laid down in Articles 312-C to 312-G may be provided through a website, if the investor has expressly consented thereto and provided that:
- a) The provision in said format is appropriate to the context of the current or future relationship between the financial intermediary and the investor;
  - b) The investor has been electronically notified of the website's address and the place on same where the information may be accessed;
  - c) It is continuously accessible, for such period of time as the investor may reasonably need to consult same.

**Article 312-A**  
**Quality of Information**

1. The information disclosed by the financial intermediary to retail investor shall:
  - a) Include the name of the company;
  - b) Not emphasize any possible benefits of a financial intermediation activity or of a financial instrument without equally providing for a correct and clear indication of any relevant risks thereto;
  - c) Be presented in a manner which is likely to be understood by the average recipient.
  - d) Be presented in a manner which does not conceal or undervalue data, statements or important warnings.
2. The comparison of financial intermediation activities, financial instruments or financial intermediaries shall focus on relevant aspects and shall specify the facts and assumptions on which the sources are based upon.
3. Indications of past results pertaining to a financial instrument, a financial index or a financial intermediation activity, shall:
  - a) Not constitute the most prominent feature of the communication;
  - b) Include appropriate performance information which covers the immediately preceding five years, or the entire period for which the financial instrument was offered if less than five years but more than one year, or for a longer period that the financial intermediary had decided on and which is based, and in every case, on complete 12-month periods.
  - c) Mention the reference period and the source of the information;
  - d) Contain a prominent warning stating that the data refers to past information and that past performance is not a reliable indicator of future results;
  - e) Indicate the currency and a warning stating that the client's return may increase or decrease due to currency fluctuations, whenever it relies on information on a different currency than the State where the retail investor resides; and
  - f) Indicate the commissions, fees and other charges, whenever they are based on gross performance.

4. Simulated past performance shall only refer to financial instruments and financial indexes and shall:

- a) Be based on real results that have occurred in the past concerning one or more financial instruments or financial indexes that are identical or are associated to the financial instrument in question;
- b) Fulfil the condition provided for in subparagraphs a/, c/, e/ and f/ of the previous paragraph concerning past performance; and
- c) Contain a prominent warning stating that the data refers to simulated past performance and that past performance is not considered as a reliable indicator of future performance.

5. The indication of future results:

- a) Shall not be based using a model of past results;
- b) Shall be based on reasonable assumptions and backed by concrete data;
- c) If based on gross performance, the results of commissions, fees and other charges must be disclosed; and
- d) Shall contain a prominent warning stating that it cannot be considered as a reliable indicator of future performance;

6. Reference to a specific tax treatment, shall indicate in highlight, that it depends on the individual circumstances of each client and that it may be subject to changes.

7. Reference to any competent authority suggesting that it endorses or approves financial instruments or services of the financial intermediary, is not allowed.

#### **Article 312-B Moment in Time for providing Information**

1. The financial intermediary shall provide the retail investor, in good time and before the retail investor is bound by any contract for financial intermediation or before the provision of those services, with the following information:

- a) The terms of such a contract;
- b) The information required in Articles 312-C and 312-G on the contract or the financial intermediation activity.

2. The financial intermediary is entitled to provide the information mentioned in the previous paragraph immediately after the commencement of the service, provided that:

a) At the request of the client, the contract has been signed by using a long-distance communication medium which has hindered it from providing the information according to paragraph 1; or

b) Provide the information referred to in Article 15 of Decree-Law 95/2006 of 29 May, as if the investor were a 'consumer' and the financial intermediary a 'supplier of financial services' within the meaning of the current code.

3. The financial intermediary shall provide professional investors with the information provided for in Article 312/2/f in good time before carrying out the requested service.

4. The financial intermediary notifies the client in good time, regardless of whether the client is a retail or professional client, on any significant change to the information provided under Articles 312-C and 312-G, via the same means as previously used.

#### **Article 312-C Financial Intermediary Information and Services Provided**

1. The financial intermediary shall provide the retail investor with the following information:

a) The name, nature and address of the financial intermediary's company and the necessary contact details for the client to be able to effectively communicate with the financial intermediary;

b) The languages in which the client may communicate with, and receive documents and other information, from the financial intermediary;

c) The communication methods to be used between the financial intermediary and the client, and if need be, for sending and receiving orders;

d) A statement certifying that the financial intermediary is authorised to carry out financial intermediation activities, the authorisation date and identification of the supervisory authority that provided the authorisation and its contact details;

e) When a financial intermediary acts through a tied agent, a statement must identify the EU Member State in which the tied agent is listed in its public register;

f) The nature, regularity and periodicity of the reports on the performance of the service to be provided by the financial intermediary to the client;

g) Should the financial intermediary hold clients' financial instruments or money, a summarised description is required on the measures taken to ensure its protection, namely, an outline of information relating to the investor compensation or deposit guarantee schemes that apply to the financial intermediary by virtue of its activities in a EU Member State;

h) A description, albeit as a summary, of the policy on conflicts of interest followed by the financial intermediary according to Article 309-A and additional information on that policy, as per client's request;

i) The existence and the method of functioning of the financial intermediary's service aimed at receiving and handling the investor complaints as well as indicating that complaining at the supervisory authority, is possible;

j) Submit a document that reflects the following information: the nature, the general and specific risks, namely on liquidity, credit or market and the associated implications of the service to be provided that require the necessary knowledge for the investor to make a decision, taking into account the type of service to be provided and the knowledge and experience shown.

2. When the client is a professional investor, the provisions in the previous paragraph only apply, provided the former specifically requests for the information contained in the paragraph, and the financial intermediary shall expressly inform the client of that same right.

#### **Article 312-D** **Additional Information regarding Portfolio Management**

1. Besides the information required in the preceding Article, the financial intermediary that offers or actually provides portfolio management services to a retail investor, shall inform same of the following:

a) The method and regularity with which the financial instruments in the clients' portfolio are assessed;

b) Any such outsourcing of the discretionary management of the total or partial amount of the financial instruments or money in the client's portfolio;

c) The specification of any benchmark against which the performance of the client's portfolio will be compared or any other assessment method that is mentioned in paragraph 2;

d) The type of financial instruments that might be included in the client's portfolio and the type of transaction that might be undertaken on those financial instruments, including possible restrictions;

e) The management objective, the level of risk reflected in the discretionary exercise of the manager and any specific constraints of that discretion.

2. In order for the client to be able to assess the portfolio performance, the financial intermediary shall establish an adequate method for assessing, through the setting of a reference price, which shall be based on the client's investment objectives and on the types of financial instruments included in the portfolio.

### **Article 312-E Information on Financial Instruments**

1. The financial intermediary shall inform investors on the nature and the risks of the financial instruments with sufficient detail on the nature and risks of the type of financial instrument in question.

2. Risk description shall include:

a) The risks associated to the financial instrument, including an explanation of the leverage impact and the risk of forfeiting the entire investment;

b) The price fluctuations of the financial instrument and possible restrictions that exist in the market in which the instrument is traded;

c) The fact that the investor may, due to transaction results on the financial instrument, take on financial commitments and additional obligations besides the acquisition cost of same;

d) Any requirements regarding matters related to margins or similar obligations, applicable to financial instruments of that type.

3. The information provided to a retail investor regarding a financial instrument subject to a public offer, shall include information on the location where the respective prospectus may be consulted at.

4. Whenever the risks linked to a financial instrument that is composed of two or more instruments or financial services that might be greater than the risks associated with any of the components, the financial intermediary shall provide a description of how its interaction increases the risk.

5. In the case of financial instruments that include a third-party guarantee, the information on the guarantee shall include sufficient data on the guarantor and the guarantee, so as to be properly assessed by the retail investor.

6. In case of UCITS, the document on the key investor information is considered adequate for the purposes of Article 312/1/d.

**Article 312-F**  
**Information requirements on the Safekeeping of Client Assets**

1. Whenever financial instruments or money belonging to retail investors are held or intend to be held by a financial intermediary, the latter shall inform them of the following:

a) The possibility of the financial instruments or money being held by a third party on behalf of the financial intermediary and the responsibility derived thereof, by force of the applicable Law, regarding any such acts or omissions by the third party, and the consequences for the client due to third party insolvency;

b) The prospect of the financial instruments being held by a third party in an omnibus account, if allowed by the applicable Law, and the issue of a prominent warning on the risks resulting there from;

c) Due to the applicable Law, the prospect of separately identifying the clients' financial instruments held by a third party from those financial instruments owned by that third party or by the financial intermediary, and the issue of a prominent warning on the risks resulting there from;

d) The fact that accounts that contain financial instruments or money belonging to the client are or may be subject to foreign law, and thus indicate that the clients' rights may differ accordingly;

e) The existence and the terms of securities interest or lien that a third party holds or may hold over the client's financial instruments or money, or any right of set-off that it holds in relations to those financial instruments or money.

2. The financial intermediary shall provide the professional investor with the information mentioned in subparagraphs d/ and e/ of the preceding paragraph.

3. Prior to entering into securities financing transactions, the financial intermediary shall, as defined in Article 2 of the EC Regulation 1287/2006 of 10 August, concerning financial instruments belonging to a retail investor or before using them for own account or on behalf of third parties, inform the client in writing with due forewarning concerning the financial instruments to be used, the obligations and responsibilities due to the use of the financial instruments, the terms for their restitution and the risks involved in that use.

**Article 312-G**  
**Information on Fees Charged**

1. The financial intermediary shall provide retail investors with information regarding fee costs and, whenever pertinent with:

a) The total price to be paid by the investor on the financial instrument or on the financial intermediation activity, as well as all remunerations, detailed commission fees, related charges and expenses and all taxes payable via the financial intermediary or, should the exact price not be indicated, the calculation basis of the total price, so that the investor may confirm it;

b) The indication of the currency involved and the applicable currency conversion rates and costs, whenever any part of the total price is to be paid in or represents an amount in foreign currency;

c) Informing the client on the charging of any other costs, including taxes related to transactions on the financial instrument or on the financial intermediation activity that are not paid directly via the financial intermediary;

d) Payment arrangements or other possible formalities.

2. The information containing the costs mentioned in the previous paragraph shall be clearly disclosed in all public communication channels and shall be given to the investor at the time of opening a bank account and whenever the latter undergoes unfavourable alterations for the investor, before they come into effect.

3. In the case of UCITS, the document on the key investor information is considered adequate for the purposes of Article 312/1/h, in respect of costs related to the collective investment undertaking, including subscription and redemption fees.

**Subsection IX  
Illegal Gains**

**Article 313  
General Prohibition and Disclosure Duties**

1. The financial intermediary may not, in relation to the provision of financial intermediation service to the client, offer to third parties or receive from same any fees, commissions or any non-monetary benefits, other than the following:

a) The existence, nature and amount of the fees, commissions or non-monetary benefits, or, where the amount cannot be ascertained, the method of calculating said amount, were clearly disclosed to the client, in a manner that is comprehensive, accurate and understandable, prior to the provision of the financial intermediation service in question; and

b) The payment of the fees or commissions, or the provision of the non-monetary benefits enhance the quality of the service provided to the client and not impair compliance with the duty to act in the sense of protecting the client's lawful interests;

c) The payment of proper fees, such as custody costs, settlement and exchange fees, regulatory levies or legal fees, which enable or are necessary for the provision of the financial intermediation service.

2. The financial intermediary may, for the purposes of sub-paragraph a) of the preceding paragraph, disclose the information on fees, commissions or non-monetary benefits in summary form, provided that it undertakes to disclose further details at the client's request.

3. [Repealed]

4. [Repealed]

5. [Repealed]

6. [Repealed]

7. [Repealed]

**Subsection X  
Assessment of Suitability**

**Article 314  
General Principles**

1. The financial intermediary should request from the client information as to his knowledge and experience on investment matters concerning the type of financial instrument or service considered, that would enable same to determine whether the client understands the risks involved.

2. If, based on the information received under the preceding paragraph, the financial intermediary decides that the considered transaction is not appropriate for that client, said intermediary should warn the client thereof in writing.
3. In the event of the client refusing to furnish the information referred to in paragraph 1 or not furnish sufficient information, the financial intermediary may warn the client, in writing, that said decision does not allow for assessing the appropriateness of the considered transaction to the circumstances.
4. The warnings referred to in paragraphs 2 & 3 may be made in standard format.

**Article 314-A**  
**Portfolio Management and Investment Advice**

1. Within the ambit of providing services for portfolio management and investment advice, the financial intermediary shall obtain from the investor, besides the information mentioned paragraph 1 of the preceding Article, information regarding the investor's financial situation and investment objectives.
2. The financial intermediary shall obtain the necessary information in order to be able to understand the essential facts pertaining to the client and taking into account the nature and scope of the service to be provided, is able to note that:
  - a) A specific transaction to be recommended or initiated corresponds to the investment objectives of the client in question;
  - b) The client is able to financially sustain any inherent investment risks in consistency with its investment objectives; and
  - c) The client's nature guarantees that it has the necessary experience and knowledge to understand the risks involved in the transaction or in the management of its portfolio.
3. If the financial intermediary does not obtain the necessary information for the transaction, it will not be able to recommend it to the client.
4. When providing investment advice to a professional investor, the financial intermediary may presume for the purposes of paragraph 2/b that, the investor is capable of financially assuming any risk resulting from any potential investment loss.
5. The provided for in the previous paragraph is not applicable to clients who have previously requested treatment as professional investors.

**Article 314-B**  
**Necessary Information Contents**

1. The information on the client's knowledge and experience should include the following:
  - a) The types of services, transactions and financial instruments with which the client is familiar;
  - b) The nature, volume, and frequency of the client's transactions in financial instruments and the period during which same has been carried out;
  - c) The level of education, and profession or relevant former profession of the client.
2. The information referred to in the preceding paragraph takes into consideration the nature of the investor, the nature and extent of the service to be provided and the type of financial instrument or transaction envisaged, including the complexity and the risks inherent to same.
3. Whenever the financial intermediary provides an investment service to a professional client, it is deemed that, with respect to financial instruments, transactions and services which for said purposes are treated as such, said client has the necessary level of experience and knowledge, namely, for the purposes of paragraph 2/c) of the preceding Article.
4. The information regarding the financial position of the client includes, where relevant, information on the source and amount of regular income, assets, including liquid assets, investments and real estate, and regular financial commitments.
5. The information regarding the investment objectives of the client includes, where relevant, information on the length of time for which the client wishes to hold the investment, preferences regarding risk taking, risk profile, and the purposes of the investment.

**Article 314-C**  
**Provision of Information**

1. The financial intermediary may not encourage a client not to provide the information required in the preceding Article.
2. The financial intermediary may rely on the information provided by the clients unless it has knowledge or is aware that the information is out of date, inaccurate or incomplete.
3. The financial intermediary that receives instructions from another financial intermediary to provide investment services on behalf of the latter's client may rely on:
  - a) Information on the client that was transmitted by the financial intermediary that hired same;

- b) Recommendations concerning the service or transaction that was transmitted to the client by the other financial intermediary.
4. The financial intermediary that transmits instructions to the other financial intermediary should ensure the adequacy and the veracity of the information transmitted on the client and the appropriateness of the recommendations or the advice regarding the service or transaction that had been provided by the client to same.

**Article 314-D**  
**Reception and Transmission or Execution of Orders**

1. The provisions of Article 314 is not applicable to the exclusive provision of the services for the reception and transmission or execution of the client's orders, even though followed by the provision of ancillary services, provided that:

- a) The subject matter of the transaction are shares admitted to trading on a regulated market or equivalent market, bonds, excluding those that incorporate derivatives, units in harmonised collective investment undertakings, money market instruments and other non-complex financial instruments;
- b) The service is provided at the initiative of the client;
- c) The client has been warned, in writing and in a standard format, that, in providing this service, the financial intermediary is not obliged to assess the appropriateness of the considered transaction to the client's circumstances; and
- d) The financial intermediary complies with the duties regarding the conflict of interests envisaged in the present Code.

2. For the purposes of sub-paragraph a) of the preceding paragraph, a financial instrument is not complex, provided that:

- a) Is not covered by Article 1/c), /e), /f) & /g) and Article 2/1/c) to /f);
- b) There are frequent opportunities to dispose of, redeem, or otherwise realise at prices that are publicly available to market participants and that correspond to either market prices or prices made available by valuation systems independent of the issuer;
- c) Does not imply any assuming of liability by the client that exceeds the cost of acquiring the financial instrument;
- d) Adequate information on its characteristics is publicly available so as to enable the average retail investor to make an informed assessment whether to enter into a transaction in that financial instrument.

**Subsection X1  
Transaction Reporting**

**Article 315  
Information for the CMVM**

1. The financial intermediaries with head-office in national territory and the financial intermediaries with head-office in other EU Member States and established in Portugal by means of a branch, and in the latter concerning the transactions carried out from same, shall communicate to the CMVM the transactions carried out on the financial instruments admitted to trading on a regulated market situated or operating in an EU Member State, as soon as possible and not later than one business day following the carrying out of the transaction.
2. The communication referred to in the preceding paragraph should be transmitted pursuant to the provisions of Articles 12 & 13 Commission Regulation (EC) No. 1287/2006, of 10th August and the CMVM Regulation.
3. The financial intermediary may comply with the reporting requirements contemplated in paragraph 1 by a third party acting on its behalf or by a transaction reporting system approved by the CMVM.
4. The CMVM may, by regulation, prescribe that the information envisaged in the preceding paragraphs is communicated to the CMVM by the management entity of the regulated market or the MTF wherein the transaction was completed.
5. In the case referred to in the preceding paragraph, the financial intermediary may be exempted from the reporting requirements envisaged in paragraph 1.
6. When the CMVM receives the information stipulated in the present Article from the branch, it shall transmit same to the competent authority of the EU Member State that has authorized the investment firm to which the branch belongs, unless said firm decides not to receive said information.
7. The information received pursuant to the present Article is transmitted by the CMVM to the competent authority of the most relevant market in terms of liquidity for the financial instruments of the transaction reported, as defined in Article 9 Commission Regulation (EC) No. 1287/2006, of 10th August.
8. The CMVM should draw up the necessary regulations for the implementation of the provisions of the present Article.

**Subsection XII**  
**Information on Transactions in Shares admitted to Trading on a Regulated Market**

**Article 316**  
**Information on Transactions carried out Outside a Regulated Market or MTF**

1. The provisions of Article 221/3 to/6 is applicable to financial intermediaries with regard to transactions executed on shares admitted to trading on a regulated market, for own account or on behalf of the clients, outside a regulated market or MTF.
2. [Repealed]

**Section IV**  
**Categorisation of Investors**

**Article 317**  
**General Provisions**

1. The financial intermediary should establish, in writing, an internal policy that would allow said intermediary, at any time, to get to know the nature of each client, as retail investor, professional investor or eligible counterparty, and introduce the necessary procedures for the implementation of same.
2. The financial intermediary may, on own initiative, treat:
  - a) Any professional investor as a retail investor;
  - b) An eligible counterparty, thus classified in accordance with Article 317-D/1 as a professional investor or a retail investor.
3. [Repealed]

**Article 317-A**  
**Procedure for Request to be treated as a Retail Investor**

1. The treatment as a retail investor to be conferred on a professional investor pursuant to Article 30 depends on the written agreement between the financial intermediary and the client that requested same, and who should require in a clear manner the context specifying the services, financial instruments and transactions applicable thereto.
2. In the absence of stipulations envisaged in the preceding paragraph, the said agreement is deemed to be effective over all the services, financial instruments and transactions.
3. By a written communication, the client may terminate the agreement referred to in paragraph 1, at any time.

**Article 317-B**  
**Requirements and Procedures for Request to be treated as a Professional Investor**

1. The retail investor may request treatment as a professional investor from the financial intermediary.
2. Compliance with the request formulated in accordance with the previous paragraph depends on a preliminary assessment, to be carried out by the financial intermediary, of the client's knowledge and experience, whereby is ensured that same has the capacity to make its own investment decisions and is aware of the risks that is incurred, and assesses the nature of the services, financial instruments and transactions contracted.
3. For purposes of the assessment envisaged in the previous paragraph, the client should, at least, comply with two of the following requirements:
  - a) It has carried out transactions, of a significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters;
  - b) Has a financial instrument portfolio, defined as including cash deposits that exceeds EUR 500 000;
  - c) Works or has worked in the financial sector for at least one year in a position, which requires knowledge of the services or transactions in question.
4. In the cases wherein the request has been submitted by a legal person, an assessment envisaged in paragraph 2 and concerning the requirement mentioned in sub-paragraph c) of the preceding paragraph are carried out in respect of the person in charge of the investment business of the applicant.
5. The request to be treated as a professional investor shall follow the following procedure:
  - a) The client submits the request in writing to the financial intermediary to be treated as a professional investor specifying the services, financial instruments and transactions;
  - b) After carrying out the assessment envisaged in the preceding Article, the financial intermediary should inform the client, in writing, of the request's approval and the consequences resulting therefrom and point out that said option amounts to a reduction in the protection that is conferred by law or regulation on same;
  - c) On receipt of said information, the client should state in writing in a separate document, that he is aware of the said option's consequences.

**Article 317-C**  
**Responsibility and Appropriateness of the Classification**

1. It is incumbent on the client, who has requested to be treated as a professional investor, to keep the financial intermediary informed of any changes capable of affecting the classification preconditions.
2. The financial intermediary, which becomes aware of a client that does not meet the requirements envisaged in the preceding Article, should inform the client that if meeting the requirements is not justified within a certain period, said client shall be treated as a retail investor.

**Article 317-D**  
**Eligible Counterparties**

1. The entities stated in Article 30/1/a) to /i), with the exception of regional governments, are eligible counterparties of the financial intermediary with which same relates thereto.
2. The treatment as an eligible counterparty may be removed, with regard to any type of transaction or specific transactions, by a written agreement between the financial intermediary and the client that requested it.
3. If, in the request referred to in the preceding paragraph, the eligible counterparty:
  - a) Does not expressly request treatment as a retail investor, the same is treated as a professional investor;
  - b) Expressly requests treatment as a professional investor, may, at any time, request treatment as a retail investor in accordance with Article 317-A.
4. The financial intermediary may also treat as eligible counterparties, legal persons mentioned in Article 30/1/k, provided that such treatment has been expressly accepted in writing in respect of a type of operation or to specific transactions.
5. The recognition of the articles of association of the eligible counterparty by the financial intermediary in respect of the legal person referred to in the preceding paragraph, whose head office is in another State, depends on the enshrinement of said articles of association in the respective framework.
6. The compliance of the duties envisaged in Articles 312 to 314-D, 321 to 323-C and 328 to 333 is not required from the financial intermediary for the execution of one or several services or activities envisaged in Article 290/1/a), b) and e), whenever at issue is the carrying out of transactions between the financial intermediary and an eligible counterparty or the provision of ancillary services related thereto.

**Section V  
Regulation**

**Article 318  
Financial intermediation organisation**

1. The CMVM creates the regulations necessary to establish the provisions of the present Section on financial intermediary organisation, particularly, as regards the following:

- a) Registration of financial intermediation activities;
- b) Communication to the CMVM by the person responsible for the compliance monitoring system;
- c) Requirements relating to human, material and technical resources demanded for the rendering of each of the financial intermediation activities;
- d) Registration of operations and rendering of information to the CMVM, taking into account the control and supervision of various activities;
- e) The minimum requirements for the retention of records;
- f) Organisation measures to be adopted by the financial intermediary that carries out more than one financial intermediation activity, taking into account its nature, dimension and risk;
- g) Functions that should be the object of segregation, in particular those that, being managed or effected by the same individual, might originate errors difficult to detect or present an excessive risk to the financial intermediary or its clients;
- h) The internal policies and procedures of the financial intermediaries concerning the categorisation of investors and the evaluation criteria for the purposes of classification;
- i) The circumstances that should be considered for the purpose of implementing the requirements concerning the compliance monitoring systems, risk management and internal audit, taking into account the nature, scale and complexity of the financial intermediation business, and in addition, the type of financial intermediation activities provided.
- j) Contents of the report to be drawn up by the auditor on safeguarding the clients' assets;
- l) Terms and conditions whereby the financial intermediaries should provide information to the CMVM on the policies and procedures introduced for the compliance of requirements for the internal organisation and pursuit of activities.

2. The *Banco de Portugal* should be consulted on the drawing up of the regulations referred to in sub-paragraphs c), f), g), i) & j) of the preceding paragraph.

### **Article 319**

#### **Financial intermediation activities**

The CMVM creates the regulations necessary to substantiate the provisions of the present Section on the performance of financial intermediation activities, particularly, the following:

- a) Opening, movement, utilisation and control of deposit accounts of the money provided to investment firms by their clients or by third parties on their behalf;
- b) The pursuit of the tied agent activity, namely, concerning the information required by the financial intermediary, evaluation criteria of good repute, appropriate training and professional experience, contents of the contract for carrying out the activity and procedures concerning the receipt and deposit of clients' monies.

### **Article 320**

#### **Investment Advisers**

The CMVM shall draw up the necessary regulations for the implementation of the provisions of the present Title on the pursuit of investment adviser activity, namely, as to the following:

- a) Information required for proving the necessary requirements for the registration of the pursuit of activity;
- b) Internal organisation;
- c) Frequency and contents of the information to be provided by the investment advisers to the CMVM.

**Chapter II**  
**Intermediation Contracts**

**Section I**  
**General Rules**

**Subsection I**  
**Signing of Intermediation Contracts**

**Article 321**  
**Contracts with Retail Investors**

1. The financial intermediation contracts concerning the services envisaged in Article 290/1/a) to /d) and Article 291/a) & /b) and entered into with retail investors shall be in writing and only same may invoke the nullity resulting from the failure to comply therewith.
2. The financial intermediation contracts may be based on standard contractual clauses.
3. The framework for standard contractual clauses is applicable to the financial intermediation contracts, where for said purpose the retail investors are comparable to consumers.
4. The standard contractual clauses concerning the provision of services laid down in Article 290/1/c) and Article 291/a) & /b) are communicated in advance to the CMVM.
5. In intermediation contracts entered into with retail investors resident in Portugal to execute transactions in Portugal, the application of the competent law cannot result in depriving the investor of the protection assured under the provisions of this chapter and Section III of Chapter I as to information, conflict of interests and segregation of assets.

**Article 321-A**  
**Minimum Content for Contracts**

1. The financial intermediation contracts signed with retail investors should at least contain:
  - a) The parties' complete identification, address and contact telephone numbers;
  - b) An indication that the financial intermediary is authorised to provide the financial intermediation activity and the respective registration number at the supervisory authority;
  - c) General description of the services to be provided and the identification of the financial instruments which are subject to the provision of services;

- d) An indication of the rights and obligations of the parties, namely the legal nature and respective format for compliance, and in addition, the consequences resulting from the non-compliance of the contract attributable to any party;
  - e) Indication of the law applicable to the contract;
  - f) Information on the existence and the functioning of the financial intermediary service for receiving the investors' complaints and also the possibility of a complaint with the supervisory entity.
2. The information referred to in sub-paragraph a) of the preceding paragraph may be received from other financial intermediaries that provide services to the client, by prior authorisation from same and without prejudice to the duty of professional secrecy envisaged in Article 304/4.

### **Article 322**

#### **Contracts executed outside the establishment of the financial intermediary**

1. Orders to trade and portfolio management agreements issued or closed by a retail investor outside the offices of a financial intermediary, without there being a prior client relationship with such financial intermediary and without the investor having solicited such orders or agreements, shall only become effective three working days after issue of the order or execution of the contract by the investor.
2. Within this period, the investor may submit a retraction to the financial intermediary.
3. Previous client relations exist when:
  - a) There is a portfolio management contract between the financial intermediary and the investor; or
  - b) The financial intermediary frequently receives orders issued by the investor; or
  - c) The financial intermediary shall be responsible for recording or depositing the investor's financial instruments.
4. It is presumed that the contract executed by the financial intermediary has not been solicited when there is no previous client relation between the financial intermediary and the investor.
5. The investment adviser may not contact retail investors that have not requested said contact.

**Subsection II**  
**Contractual Information**

**Article 323**  
**Reporting Duties for the Execution of Orders**

1. The financial intermediary that receives a client order should:
  - a) Promptly inform the client in writing of the execution of same;
  - b) In the case of a retail investor, send an order execution report, confirming the execution of the order, as soon as possible and by not later than one business day following the execution or, in the event that the confirmation is to be received by a third party, not later than the first business day following the reception of said confirmation, by the financial intermediary.
2. In the case of an order on bonds issuance within the context of mortgage loans granted to clients that issued the order, the execution information should be transmitted together with a statement concerning the mortgage loan, by no later than a month after the execution of the order.
3. On the client's request, the financial intermediary should provide same with information as to the status of the order.
4. In the case of orders from a retail investor that focus on investment units and are executed periodically, the financial intermediary shall send the notice referred to in subparagraph b) of paragraph 1 or provide the client at least on a half-yearly basis with the information mentioned in the subsequent paragraph.
5. The order execution report referred to in paragraph 1/b) shall include, if applicable, the following:
  - a) Reporting financial intermediary identification;
  - b) Client identification;
  - c) Trading day;
  - d) Trading time;
  - e) The type of order;
  - f) Venue identification;
  - g) Financial instrument identification;
  - h) Buy/sell indicator;
  - i) The nature of the order if not a buy/sell order;

- j) Quantity;
- l) Unit price, including interest;
- m) Total consideration;
- n) The total sum of commissions and expenses charged and, on the retail investor's request, an itemised breakdown;
- o) The client's responsibilities with regard to the settlement of the transaction, including the time limit for payment or delivery and, in addition, the appropriate account details where said information has not previously been communicated to the clients;
- p) In the case of the client's counterparty being the financial intermediary itself or any other entity in the same group or another client of same, the mention of said fact unless the order was executed through a trading system that facilitates anonymous trading.

6. For the purposes of sub-paragraph l), where the order is executed in tranches, the financial intermediary may provide the client with information about the price of each tranche or the respective average price, in the latter, without prejudice to the client's right to request information on the price of each tranche.

7. The financial intermediary may provide the client with the information referred to in paragraph 5 using standard codes if it also provides an explanation of the codes used.

8. Each order execution report makes reference to a single day and is in duplicate, with the original for the instructing client and the duplicate for mandatory filing with the financial intermediary.

### **Article 323-A** **Reporting Duties for Portfolio Management**

1. The financial intermediary should send to each client a periodic statement, in writing, on the portfolio management activities carried out on behalf of said client.

2. The periodic statement for retail investors should include:

- a) The name of the financial intermediary;
- b) The designation of the client's account;
- c) The contents and value of the portfolio, including details of each financial instruments held, the respective market value or fair value, if the market value is not available, the cash balance at the beginning and at the end of the period concerned and the portfolio's performance during same;

d) The total amount of fees and charges incurred during the period concerned, itemising, at least, total management fees and total costs associated with the execution, and including information that a more detailed breakdown will be provided on request;

e) A comparison of performance during the period concerned with the investment performance benchmark agreed between the financial intermediary and the client;

f) The total amount of dividends, interest and other payments received during the period concerned in relation to the client's portfolio;

g) Information about other financial intermediary's activities conferring rights in relation to the financial instruments held in the portfolio;

h) For each transaction executed during the period concerned, the information referred to in Article 323/5(c) to /m), unless the client elects to receive information about executed transactions on a transaction-by-transaction basis, in which case paragraph 5 shall apply.

3. In the case of retail investors, the periodic statement may be sent every six months, except when:

a) Provided quarterly, where the client so requests;

b) Where paragraph 5 applies, should be provided at least annually except with regard to transactions in financial instruments included in Article 1(c), /e) & /f) and Article 2/1(c) to /f);

c) Provided, at least monthly, where the client authorises leveraged transactions.

4. The financial intermediary should inform retail investors of the right to make requests for the statement to be provided quarterly.

5. If the client elects to receive information about executed transactions on a transaction-by-transaction basis, the financial intermediary should promptly provide the essential information in respect of same to the client after the execution of each transaction.

6. If intended for a retail investor, the notice referred to in the previous paragraph should contain the information envisaged in Article 323/5 and sent by no later than the first business day following that transaction execution or, if the confirmation is received by a third party, no later than the first business day following receipt of the said confirmation.

7. The provisions of the preceding paragraph shall not apply where the information to be provided is identical to the information that should be provided to the client by another intermediary.

**Article 323-B**  
**Additional Reporting Duties**

1. The financial intermediary that provides portfolio management transactions or operates client accounts that include an uncovered open position should report to the retail investor any losses exceeding any predetermined threshold, agreed to between same and each client.
2. The notice referred to in the preceding paragraph should be conveyed by no later than the end of the business day in which the threshold was exceeded or, in the case where the threshold was exceeded on a non-business day, the beginning of the next business day.

**Article 323-C**  
**Statement of Client Assets**

1. The financial intermediary should send to the client, in writing, a periodic statement regarding the assets belonging to the client's portfolio.
2. The statement referred to in the preceding number should include:
  - a) The amount of financial instruments and cash held for the client at the end of the period covered by the statement, indicating the entries carried out and the respective dates;
  - b) The amount of financial instruments and cash of the client that has been the subject of financing transactions in financial instruments;
  - c) The amount of any gains that has accrued to the client by virtue of participation in any financing transactions in financial instruments, and the facts that gave rise thereto.
3. In cases where the portfolio of a client includes the proceeds of one or more unsettled transactions, the information referred to in subparagraph (a) of the preceding paragraph may be based on the trade date or the settlement date, provided that the same basis is applied consistently to all the information in the statement.
4. The statement referred to in paragraph 1 should be sent to:
  - a) The retail investors, monthly or if agreed to in writing by the client, quarterly or every six months, in the latter case when there are no entries;
  - b) The professional investors, annually.
5. The financial intermediary that provides the portfolio management service to a client may include the statement referred to in paragraph 1 in the periodic statement sent to said client pursuant to Article 323-A/1.
6. The duty envisaged in paragraph 1 is applicable to credit institutions only with regard to statements concerning financial instruments.

### **Article 323-D**

#### **Details relating to the execution of subscription and redemption orders**

1. Notwithstanding Article 323, whenever an order for subscription of the redemption of investment units in collective investment institutions is executed, the financial intermediary responsible for managing said orders shall notify the participant, in a long-lasting form, confirming the execution of the order until the first business day following the execution.
2. The disclosure duty does not apply when the relationship with the participant is ensured by the marketing entity, in which case said is obliged to promptly provide such information, in accordance with Article 323/1/b.
3. For the purposes of the preceding paragraph, the financial intermediary responsible for management shall provide the marketing entity with the necessary information in order to comply with the inherent disclose.
4. If the financial intermediary responsible for management receives the information regarding the execution of the subcontracted entity, the order execution is confirmed to the participant until the first business day following receipt of said confirmation.
5. The notice referred to in the previous paragraphs includes, in addition to the information required under Article 232/5, the following:
  - a) The date and time when the order was received and the payment method;  
and
  - b) The reference value date.

### **Article 324**

#### **Contractual responsibility**

1. Any clauses excluding the responsibility of the financial intermediary for acts performed by its representative or agent are deemed void.
2. Except for fraud or serious misconduct, the responsibility of the financial intermediary for business transactions it has influenced, prescribes two years from the date on which the client became aware of the conclusion of the business transaction and respective terms.

## **Section II Orders**

### **Article 325 Reception**

As soon as an order is received for the execution of a transaction on financial instruments, the financial intermediaries should:

- a) Verify the legitimacy of the entity placing the order;
- b) Adopt the necessary measures that allow, without any doubt, the establishment of the time of receipt of the order.

### **Article 326 Acceptance and refusal**

1. The financial intermediary should refuse an order when:

- a) The entity placing the order does not provide all the necessary information for good execution;
- b) It is evident that the operation is contrary to the intentions of the entity placing the order, unless the entity confirms the order in writing;
- c) The financial intermediary is not in a position to supply the entity placing the order all the information for execution of the order;
- d) The entity placing the order does not give the guarantee required by law for carrying out the operation;
- e) The entity placing the order is not allowed to accept a public offer.

2. The financial intermediary may refuse to accept an order when the entity placing the order:

- a) Does not prove the availability of the financial instruments to be disposed;
- b) Did not block the financial instruments to be disposed of, when required by the financial intermediary;
- c) Does not make available the amount necessary for the settlement of the operation;
- d) Does not confirm the order in writing, if requested.
- e) [Repealed]

3. Except in the cases described in the previous sub-articles, the financial intermediary may not refuse an order placed by an individual with whom it had a previous client relationship.
4. The refusal to accept an order should be immediately transmitted to the entity placing the order.
5. [Repealed]

### **Article 327 Form**

1. Orders may be given orally or in writing.
2. The orders given orally may be reduced to writing by the receiver and, if in person, endorsed by the instructing client.
3. The financial intermediary may replace the reducing of the orders to writing by a chart listing the offers in the trading system, provided that the recording of the information listed in Article 7 Commission Regulation (EC) No. [1287/2006](#), of 10th August, is ensured.

### **Article 327-A Validity Period**

1. The orders are valid for a period defined by the instructing client, but may not exceed a year, as from the day following the date that the order is received by the financial intermediary.
2. The financial intermediary may define periods less than the maximum period envisaged in the preceding paragraph, and shall inform the clients of the periods of validity which are exercised. Said periods may vary according to the trading structures where the order may be executed or the type of financial instruments.
3. If the instructing client does not define the period of validity, the orders shall be valid until the end of the day on which same were issued.

### **Article 328 Handling of Client Orders**

1. When the financial intermediary may not execute an order, it should transmit said order to another financial intermediary capable of executing it.
2. The transmission should be immediate and respect the priority of reception, except when otherwise indicated by the entity placing the order.
3. The financial intermediaries should ensure the possibility of reconstituting the internal circuit that the orders have followed until its transmission or execution.

4. On the execution of orders, the financial intermediary should:

a) Register the orders and proceed with the execution thereof sequentially and promptly unless the characteristics of the order or prevailing market conditions render it impossible, or if such does not allow for the client's interests to be protected.

b) Immediately inform the retail investor about any specific difficulty in the proper carrying out of orders.

5. Unless expressly instructed to the contrary by the instructing client, the orders with a specified or more favourable price limit and for a certain volume, concerning the shares admitted to trading on a regulated market which are not immediately executable, should be disclosed pursuant to Article 30 Commission Regulation (EC) No. [1287/2006](#), of 10th August.

6. The CMVM may waive the duty to disclose as envisaged in the preceding paragraph if the size of the order is large in scale compared to the normal market size as defined in Article 20 Commission Regulation (EC) No. [1287/2006](#), of 10th August.

#### **Article 328-A** **Aggregation of Orders and Allocation of Transactions**

1. A financial intermediary that purports to aggregate, in a single order, several clients' orders or the decisions to deal on own account, should:

a) Ensure that the aggregation is not overall disadvantageous to any instructing client;

b) Preliminarily inform the clients, whose orders are to be aggregated, of the possibility that the effect of aggregation may be disadvantageous to a particular order;

2. The instructing client may oppose the aggregation of his order.

3. The financial intermediary should adopt a policy on clients' order allocation and the decisions to deal on own account that provides for the fair allocation and point out, in particular:

a) The manner in which the volume and price of orders and decisions to deal on own account relates to allocations;

b) Procedures intended to avoid the reallocation, in a disadvantageous manner to the clients, of the decisions to deal on own account, executed together with clients' orders.

4. The order allocation policy is applicable even if the aggregated order is only partially allocated.

**Article 328-B**  
**Allocation of Transactions for Own Account**

1. The financial intermediary that has aggregated decisions to deal for own account with one or more client orders, may not allocate the related transactions in a way that is detrimental to the clients.
2. Without prejudice to the provisions of the following paragraph, whenever the financial intermediary aggregates a client order with a decision to deal for own account and the aggregated order is partially executed, it should allocate the related trades to the client in priority.
3. The financial intermediary may allocate the transaction proportionally if it is able to demonstrate on reasonable grounds that without the combination it would not have been able to carry out the client's order on such advantageous terms.

**Article 329**  
**Revocation and amendment**

1. Orders may be revoked or modified, provided that the revocation or modification is communicated to those who should execute them prior to execution.
2. Changes to an order to be executed on a regulated market or MTF constitute a new order.

**Article 330**  
**Best Execution**

1. Orders should be executed in the conditions and at the time indicated by the entity placing the order.
2. In the absence of specific instructions from the instructing client, the financial intermediary should, in the execution of orders, take all reasonable steps in obtaining the best possible result for the clients, with regard to the price, costs, speed, likelihood of execution and settlement, size, nature or any other relevant factor thereto.
3. The provisions of the preceding paragraph cover the execution of decisions to trade on behalf of the clients.
4. The financial intermediary should adopt an order execution policy that:
  - a) Allows it to obtain the best possible result and includes, at least, trading venues that repeatedly allows for said result to be obtained;
  - b) As to each type of financial instrument, includes information on the different trading venues and the determining factors for the choice.

5. The financial intermediary should inform the client of its execution policy, not being able to provide services before said client consents thereto.
6. The material changes to the execution policy should be conveyed to the client.
7. The execution of clients' orders outside a regulated market or MTF depends on the client's express consent thereto either in the form of a general agreement or in respect of individual transactions.
8. The financial intermediary, at the client's request, shall show that the orders have been executed in accordance with the execution policy that was transmitted to same.
9. The financial intermediary should assess the execution policy, namely, concerning the trading venues contemplated:
  - a) Annually, so as to identify and, if necessary correct the possible shortcomings;
  - b) Whenever a material change takes place, capable of affecting the capacity of continuing to obtain the best result possible, consistently, using the trading venues included in its execution policy.
10. The orders may be partially executed, except for an indication to the contrary by the entity placing the order.

### **Article 331** **Best Execution Criteria**

1. For the purposes of determining the relative importance of the factors referred to in paragraph 2 of the preceding Article, the financial intermediary should take the following characteristics into consideration:
  - a) The client's, including the nature of the investor as retail or professional;
  - b) Client order;
  - c) Financial instruments that are the object of the order;
  - d) Trading venues to which that order may be directed.
2. Trading venue is deemed to be the said venues envisaged in Article 198 or a market maker or other liquidity provider or an entity that performs a similar function in a Non-EU Member State to the functions performed by any of the abovementioned entities.
3. Whenever a financial intermediary executes an order on behalf of a retail investor, it is deemed that the best possible result shall be represented by the total consideration, determined by the price of the financial instrument and the execution costs. The latter includes all expenses incurred by the client and are directly related to the execution of the order, such as trading venue fees, clearing and settlement fees and any other fees paid to third parties involved in the execution of the order.

4. Where an order may be executed in more than one trading venue, the intermediary, in order to assess the best conditions, should consider its own commissions charged to the client and other costs for executing the order in each of the trading venues.

5. The financial intermediary may not structure or charge its commissions in such a way so as to unfairly discriminate between trading venues.

### **Article 332** **Execution Policy Information for Retail Investors**

1. The financial intermediary should provide clients, who are retail investors, with the following details on the execution policy in good time prior to the provision of the service:

a) A description of the relative importance that the financial intermediary assigns, in accordance with the criteria specified in paragraph 1 of the preceding Article, to the factors referred to in Article 330/2, or the process by which the financial intermediary determines the relative importance of said factors;

b) A list of trading venues which the financial intermediary considers that allows for the obtaining, on a consistent basis, the best possible result for the execution of client orders;

c) A clear warning that any specific instructions from a client may prevent the financial intermediary from obtaining the best possible result, in accordance with the execution policy, in respect of the information covered by said instructions.

2. The provision of information envisaged in the preceding paragraph is applicable to the provisions of Article 312/7.

### **Article 333** **Transmission for Best Execution**

1. The financial intermediary should, in the provision of portfolio management services or the reception and transmission of orders, take all the necessary steps in order to obtain the best possible result for the clients by taking into account the factors referred to in Article 330/2 and the criteria referred to in Article 331.

2. The duty laid down in the preceding paragraph is not applicable when the financial intermediary follows the specific instructions from the client.

3. In order to ensure the compliance of the duty envisaged in paragraph 1, the financial intermediary should:

a) Adopt a policy that shall identify, in respect of each type of financial instruments, the financial intermediaries to which the orders are transmitted, with said entities having the resources available that will enable the transmitting entity to comply with said duty.

- b) Provide the clients with information on the policy adopted in accordance with the provisions of the preceding paragraph;
  - c) Monitor the effectiveness of the policy adopted in accordance with subparagraph a) and, in particular, the execution quality of the orders carried out by financial intermediaries identified therein, and, changing said policy if any error was detected that would impair the compliance of the duty envisaged in paragraph 1.
4. The financial intermediary should annually evaluate the policy referred to in subparagraph a) of the preceding paragraph and also, whenever a material change occurs that is capable of affecting the financial intermediary's ability in obtaining the best possible result.

**Article 334**  
**Accountability to the Instructing Clients**

1. The financial intermediaries shall be accountable to the instructing clients for the following:
- a) Delivery of the financial instruments acquired and payment of the disposed financial instruments;
  - b) Authenticity, validity and regularity of the acquired financial instruments;
  - c) Lack of any defects or legal positions that encumber the acquired financial instruments.
2. When the order is to be executed in a regulated market or MTF, any contractual clause that is contrary to the provisions of the preceding paragraph is null and void.

**Section III**  
**Portfolio Management**

**Article 335**  
**Scope**

1. By a personalised portfolio management contract, the financial intermediary undertakes to:

- a) Carry out all the acts conducive to an appreciation of the portfolio;
- b) Exercise all the inherent rights to the financial instruments that compose the portfolio.

2. The provisions of the present Title are applicable to the management of financial instruments even if the portfolio comprises of assets of a different nature.

**Article 336**  
**Binding Orders**

1. Even if same is not envisaged in the contract, the client may issue binding orders to the manager concerning the transactions to be carried out.

2. The provisions of the preceding paragraph are not applicable to the contracts that guarantee the portfolio a minimum yield.

**Section IV**  
**Assistance and placement**

**Article 337**  
**Assistance**

1. Contracts of technical, economic and financial assistance in a public offer include the rendering of the necessary services for the preparation, launching and execution of the offer.

2. The following assistance services should be rendered by a financial intermediary:

- a) Preparation of the prospectus and the public offer's announcement;
- b) Prepare and present the application for the approval of the prospectus or preliminary registration with the CMVM;
- c) Assessment of the declaration of acceptance except in those cases described in Article 127(1) (b).

3. The financial intermediary responsible for the assistance in public offers should advise the offeror on the terms of the offer, particularly regarding time schedules and price, and assure compliance with the legal and regulating provisions, especially regarding the quality of the information transmitted.

### **Article 338 Placement**

1. By the placing contract, a financial intermediary is obliged to use its best efforts to distribute the securities which are the object of the public offer, including receipt of subscription or acquisition orders.

2. The placing contract may be executed by a financial intermediary different from the one who renders services of assistance in the offer.

### **Article 339 Underwriting**

1. By the underwriting contract, the financial intermediary is obliged to acquire the securities that are the object of the public offer of distribution and place them for its account and risk in the terms and the time period agreed upon with the issuer or disposer.

2. The borrower should transfer to the final acquirers, all the patrimonial rights inherent in the securities constituted after the date of the underwriting.

3. The underwriting does not affect the rights of preference in the subscription or acquisition of the securities, with the borrower being responsible for advising the respective individual on their exercise in terms equivalent to those which would be applicable without the underwriting.

### **Article 340 Guarantee of placement**

In the contract of placement, the financial intermediary may oblige itself to acquire, wholly or partially, for itself or a third party, the securities not subscribed or acquired by the addressees of the offer.

### **Article 341 Assistance or placement consortium**

1. The consortium contract between financial intermediaries for assistance or placement should have the agreement of the offeror and expressly reflect the head of the consortium, the quantity of securities to be placed by each financial intermediary and the rules that will regulate the relationship between the members.

2. It is incumbent on the head of the consortium to organise the constitution and structure, and represent the members of the consortium before the offeror.

**Article 342**  
**Investment intention solicitation**

The contracts executed to solicit investment intention are described in Article 164 et seq and regulated by Articles 337 and 338, with the necessary adaptations.

**Section V**  
**Registration and deposit**

**Article 343**  
**Contents**

1. The contract should stipulate the framework for exercising the inherent rights to the financial instruments registered or deposited.
2. [Repealed]
3. [Repealed]
4. [Repealed]

**Article 344**  
**Form and standardisation**

[Repealed]

**Article 345**  
**Obligations of the independent investment adviser**

[Repealed]

**Chapter III**  
**Transactions for own account**

**Article 346**  
**Acting as counterpart of the client**

1. A financial intermediary authorised to act for its own account may execute contracts as a counterpart of the client, provided said client has, in writing, authorised or confirmed the business transaction.
2. The authorisation or confirmation referred to in the preceding number shall not be required when the counterparty is a qualified investor or the transactions are to be made on a regulated market, through centralised trading systems.

**Article 347**  
**Conflicts of interest**

1. The financial intermediary should abstain from:
  - a) Acquiring any financial instruments for itself when the clients have requested said instruments for the same or a higher price;
  - b) Dispose of own financial instruments instead of the financial instruments whose disposal thereof had been ordered by its clients for the same or a lower price.
  - c) [Repealed]
2. Operations executed contrary to the provision of the previous sub-article are ineffective before the client if not ratified by the same within eight days of the notification by the financial intermediary.

**Article 348**  
**Market making**

1. The transactions involving market making aim at establishing the conditions for regularity in the marketing of a certain class of securities or financial instruments, namely, liquidity increase.
2. Market making operations should be preceded by a contract established between the market managing entity and the financial intermediary.
3. When market making operations are related to securities and as prescribed by law, regulations or rules of the market in question, the contract mentioned in the previous sub-article is established with the issuer of the securities whose trading is intended to be increased.
4. The contracts referred to in paragraphs 2 & 3 or the contractual clauses of said contracts, if in existence, should be communicated to the CMVM in advance.

**Article 349**  
**Price stabilisation**

Transactions likely to produce stabilising effects on the prices of a certain type of securities shall only be permitted when carried out in the terms laid down in Regulation No. [2273/2003/EC](#) of the Commission of 22 December.

## **Article 350 Securities lending**

1. Lent securities are transferred to the borrower, except for contractual provision to the contrary.
2. Securities lending to settle regulated market trades shall not be regarded as financial intermediation when carried out by the market operator or the settlement system or the central counterparty elected by the latter.

## **Article 350-A<sup>15</sup> Information for the CMVM**

The financial intermediary authorised to act for own account shall notify the CMVM of all the assets held by same, or by a company controlled by same, which is domiciled or managed by an entity based in a State which is not a European Union Member State.'

## **Article 351 Regulation**

1. Concerning the transactions involving market making, the CMVM defines, by regulation, the information that should be submitted and, in addition, the information that should be disclosed to the market by the entities referred to in Article 348/2.
2. In relation to securities lending operations, the CMVM, by regulation, with the prior opinion of the Bank of Portugal, defines the following:
  - a) The time period and quantity of securities lent;
  - b) The requirements for guarantees for operations executed outside the regulated market;
  - c) The rules for registration of the securities lent and accounting of the operations;
  - d) The information to be provided to the CMVM and market by the financial intermediaries.
3. By means of regulation, the CMVM defines the contents and the manner whereby the information envisaged in accordance with Article 350-A is to be provided.<sup>16</sup>
4. [Repealed]

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<sup>15</sup> Amended by Article 6 Decree-Law No. 211-A/2008, of 3 November

<sup>16</sup> Amended by Article 5 Decree-Law No. 211-A/2008, of 3 November

## **Title VII Supervision and regulation**

### **CHAPTER I General provisions**

#### **Article 352 Government Responsibilities**

1. By the Finance Ministry, the Government may:
  - a) Establish policies relating to the markets in financial instruments and, generally, matters regulated by the present Code and supplementary legislation;
  - b) Carry out, in relation to the CMVM, the administrative supervision conferred by the bylaws of said entity;
  - c) Coordinate the supervision and regulation relating to financial instruments when the competence belongs to more than one public entity.
  
2. When a disturbance in the markets in financial instruments puts the national economy at serious risk, the Government, may by means of a Ministerial Order by the Prime Minister and the Minister of Finance, impose the necessary measures, namely, the temporary suspension of the regulated markets or MTFs, certain categories of transactions or activities of the management entities for regulated markets, MTFs, settlement systems, clearing house, central securities depositories and central counterparties.

#### **Article 353 The CMVM's Responsibilities**

1. The CMVM's responsibilities in addition to those established in its legal framework are:
  - a) The supervision of organised trading of financial instruments, public offers of securities, clearing and settlement of the transactions relating thereto, central securities depository and the entities referred to in Article 359;
  - b) The regulation of the markets in financial instruments, the public offers of securities, the activities carried out by entities subject to the CMVM's supervision and other matters envisaged in the present Code and supplementary legislation;
  - c) The supervision and regulation of the conduct of business duties by entities that intend to conclude or act as an agent of assurances linked to investment funds or the marketing of individual subscription contract to open-end pension funds.

2. During its performance and within the scope of its responsibilities, the CMVM co-operates with other national and foreign authorities that carry out supervisory and regulatory functions of the financial system, and international organisations of which the CMVM is a member.

3. Concerning the contracts set out in paragraph 1/c), the CMVM should:

a) Adopt the necessary regulations on the provision of information, advice, advertising, prospecting, marketing and mediation, including the processing and retention of said records, after consultation with the ISP;

b) Establish with the ISP rules aimed at coordinating supervision procedures and ensuring the compatibility of the applicable rules to the entities subject to the supervision by both authorities.

#### **Article 354** **Duty of secrecy**

1. The CMVM's bodies and their members, employees and the individuals who provide any service, directly or indirectly, permanently or occasionally, are subject to professional secrecy as to the facts or details of which they have knowledge in the performance of their functions or rendering of services, and are prohibited from disclosing said information either for individual or third party gain, directly or indirectly.

2. The duty of secrecy persists even after the cessation of functions or services rendered.

3. The facts or details subject to secrecy may only be revealed by authorisation of the interested individual, transmitted to the CMVM, or in other circumstances set out in law.

4. The duty of secrecy does not cover facts or details disclosed by the CMVM whether imposed or permitted by law.

#### **Article 355** **Exchange of information**

1. When necessary to the performance of its functions, the CMVM may exchange information as to facts and details subject to the duty of secrecy with the following entities, which are also equally subject to the duty of secrecy:

a) The Bank of Portugal and the Portuguese Insurance Institute;

b) The management entities of regulated markets and MTFs;

c) The management entities of settlement systems, clearing house, central securities depositories and central counterparties;

d) Authorities intervening in processes of insolvency or recuperation of the entities described in Article 359(1) (a) & (b);

- e) Managing entities of sinking funds and investor compensation schemes;
  - f) Auditors and authorities with supervisory capacity.
2. The CMVM may also exchange information, although subject to secrecy, with the following entities:
- a) The European Securities and Markets Authority, the European Banking Authority and the European Insurance and Occupational Pensions Authority;
  - b) The European Systemic Risk Board;
  - c) The European Central Bank and the European System of Central Banks;
  - d) The supervisory authorities of the member states of the European Union or entities therein, carry out functions equivalent to those referred to in the preceding paragraph.
3. The CMVM may also exchange information with supervisory authorities of Non-EU Member States or the entities that therein carry out the functions similar to that referred to in paragraph 1, if, and in so far as is necessary for the supervision of the markets in financial instruments and for the individual and consolidated supervision of the financial intermediaries.

### **Article 356** **Handling of information**

1. The information received by the CMVM according to the terms of the previous article may only be used:
- a) To examine the conditions of access to the financial intermediation activity;
  - b) For the individual or consolidated supervision of financial intermediaries and the supervision of markets in financial instruments;
  - c) For the instruction of processes and application of penalties;
  - d) In the scope of appeals against the decisions of the Minister of Finance, the CMVM, the Bank of Portugal or the Portuguese Insurance Institute, taken in accordance with the provisions applicable to the entities subject to the respective supervision;
  - e) For the performance of the legal duty to collaborate with other entities or for the development of co-operative actions;
  - f) Within the scope of the conflict mediation procedure envisaged in Articles 33 & 34.
2. The CMVM may only communicate to other entities, information that has been received from the entities described in paragraph 2 of the previous article with the express consent of those entities.

3. The entities, which in accordance with the preceding paragraph receive information from the CMVM, become subject to the secrecy duty with the contents envisaged in Article 354.

4. Disclosure of information in summary or aggregate form, that does not permit individual identification, is legal.

### **Article 357 The CMVM's Bulletin**

The CMVM publishes, periodically, a Bulletin containing:

- a) Its regulations and instructions;
- b) Recommendations and general legal opinions;
- c) Authorisation decisions;
- d) The registration decision, if same is made public.

## **Chapter II Supervision**

### **Article 358 Principles**

The supervision carried out by the CMVM should comply with the following principles:

- a) Investor protection;
- b) Efficient and orderly functioning of the markets in financial instruments;
- c) Information control;
- d) Systemic risk prevention;
- e) Prevention and repression of actions contrary to law or regulation;
- f) Independence before any entity, whether under its supervision or not.

**Article 359**  
**Entities subject to the CMVM's supervision**

1. Within the scope of the activities relating to financial instruments, the following entities are subject to the CMVM's supervision, without prejudice to the powers conferred on other authorities:

a) Management entities of regulated markets, MTFs, settlement systems, clearing house, central securities depositories and central counterparties;

b) Financial intermediaries and investment advisers;

c) Security issuers;

d) The qualified investors referred to paragraphs a) to f) of no. 1 of Article 30 and holders of qualifying holdings;

e) Sinking funds and investor compensation schemes and their respective managing entities;

f) Auditors and risk rating companies, registered with the CMVM;

g) Securitisation firms;

h) Venture capital firms, social entrepreneurship undertakings and specialised alternative investment undertakings;

i) Within the scope of said activities, the entities that intend to conclude or act as an agent of assurances linked to investment funds or the marketing of individual subscription contract to open-end pension funds;

j) Holders of short positions on relevant shares and sovereign debt and acquiring protection swaps in sovereign credit default;

k) Other persons whose main or secondary activity, relates to the issue, distribution, trading, registration or deposit of financial instruments or, generally, with the organisation and functioning of the markets in financial instruments.

2. Individuals or entities that carry out transnational activities are subject to the CMVM's supervision provided said activities have some relevant connection to the regulated markets, MTFs, transactions or financial instruments subject to Portuguese law.

3. The entities under the CMVM's supervision should provide it with the requested collaboration.

**Article 360**  
**Supervision proceedings**

1. Within the scope of its responsibilities, the CMVM may adopt, in addition to others laid down by law, the following actions:

- a) Monitor the activity of entities subject to its supervision and the functioning of the markets in financial instruments, financial instruments settlement systems, clearing house, central counterparty and central securities depositories;
- b) Supervise the compliance with the law and regulations;
- c) Approve acts and grant authorisations laid down by law;
- d) Effect registrations laid down by law;
- e) Provide information for claims and punishment of offences within the CMVM's jurisdiction;
- f) Give orders and formulate concrete recommendations;
- g) Disseminate information;
- h) Publish studies;
- i) Regularly assess and disclose, after consulting with the relevant stakeholders, the market practices that may be accepted or not, reassessing the same whenever necessary, as well as their characteristics, terms and conditions in conformity with the principles laid down in Article 358 and the other applicable legal and regulatory framework, transmitting the respective decision to the Committee of European Securities Regulators.

2. The powers, described in sub-article (1)(e) above, are carried out in relation to any individual, even when not included within the scope of Article 359(1).

3. For the purposes of the provisions of paragraph i) of no. 1, the CMVM shall notably take into account the principles contained in Article 358, the possible effects of the practices in question on the market's liquidity and efficiency, their transparency and adequacy to the nature of the markets and trading mechanisms adopted, the national and international interplay of the various markets and the various risks inherent therein.

## **Article 361 Supervision**

1. During supervision, the CMVM will take all the necessary steps to assure the effectiveness of the principles described in Article 358, safeguarding, as much as possible, the autonomy of the entities subject to its supervision.
2. During supervision, the CMVM may adopt the following procedures:
  - a) Request any details and information, examine books, registers and documents, whereby the supervised entities may not invoke professional confidentiality;
  - b) Hear any individual, summoning them when necessary;
  - c) Require that the parties responsible for the premises, where instructions for claims or other proceedings are issued, makes same available to its agents for the execution of said tasks, in suitable condition;
  - d) Request the cooperation from other persons or entities, including the police authorities, when such is shown to be necessary or appropriate for performing its functions, namely, in the event of opposition to the said performance or based on technical expertise of the matters in question;
  - e) Replace management entities of the regulated markets, MTFs, settlement systems, clearing house, central securities depositories and central counterparties when same does not adopt the necessary measures to regularise anomalies that put at risk the regular functioning of the market, activity carried out or the investors' interests;
  - f) Replace supervised entities in their duty to inform;
  - g) Publicly disclose the fact that an issuer is not performing its duties.
3. In the situations envisaged in paragraph 1 and paragraph 2/a), /b) & /c), the natural or legal persons in question become subject to the duty of not disclosing the contents or the occurrence of the action to clients or third parties.
4. In the appeals against decisions made by the CMVM, the exercise of its powers of supervision, it is presumed, until proven to the contrary, that the suspension of the said decision will cause serious damage to public interest.

## **Article 362 Continuous supervision**

The CMVM will continuously accompany the activity of the entities that are under its supervision, even when there exists no suspicion of irregularity.

## **Article 363**

### **Prudential supervision**

1. The following entities are subject to the CMVM's prudential supervision:
  - a) The management entities of the regulated markets, MTFs, settlement systems, clearing house, central securities depositories and central counterparties;
  - b) Collective investment undertakings;
  - c) The managing entities of sinking funds and investors compensation schemes.
  
2. Prudential supervision should be guided by the following principles:
  - a) Preservation of the solvency and liquidity of the institutions, as well as the prevention of risks;
  - b) Prevention of systemic risk;
  - c) Control of the suitability of the members of the management boards, persons who effectively direct the business and holders of qualifying holdings, in accordance with the criteria defined in Article 30-D Legal Framework for Credit Institutions and Financial Companies, *mutatis mutandis*.
  - d) Control of other requirements concerning members of the management boards and persons who effectively run the business, namely professional qualifications and availability, as required pursuant to respective supplementary legislation.
  
3. For the purposes of the preceding paragraph, the entities referred to in paragraph 1 are obliged to provide the CMVM with the information that same deems to be necessary for the ascertainment, namely, of its degree of liquidity and solvency, risks incurred, including the level of exposure to different types of financial instruments, the management practices and risk control to which it is or may become subject and the methodologies adopted in evaluating its assets, particularly those that are not traded on markets of great liquidity and transparency.<sup>17</sup>
  
4. By means of regulation, the CMVM shall implement the provisions of the preceding paragraphs.

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<sup>17</sup> Amended by Article 5 Decree-Law No. 211-A/2008, of 3<sup>rd</sup> November

## **Article 364 Inspection**

1. During the course of inspection the CMVM should:
  - a) Effect the inspections it considers necessary of the entities under its supervision;
  - b) Carry out inquiries in order to investigate offences of any nature committed within the scope of the markets in financial instruments or that effect the normal functioning thereof;
  - c) Carry out any actions required to comply with the principles laid down in Article 358, particularly in respect of the transactions described in Article 311.
2. The CMVM will inform the competent entities of an offence, which comes to its notice and that occurs outside the CMVM's competence.

## **Article 365 Registrations**

1. Registrations carried out by the CMVM aim at controlling the legality and conformity with the regulation of facts or details subject to registration and supervision organisation.
2. Registrations carried out by the CMVM are public, except when the law provides to the contrary.
3. The documents used to affect registrations are public, except when containing any individual information that does not form part of the registration or when the registration was made within the scope of a proceeding of administrative offence or an investigation still in course, or that, for any other reason whatsoever, should remain secret.
4. The CMVM will define, by regulation, the basis for the public access to the registrations and documents described in the previous sub-articles.
5. The CMVM will maintain a record of the major and secondary sanctions imposed by administrative offence proceedings which are not accessible to the public.
6. The registrations carried out by the CMVM may be included in computer programmes, provided the legal limitations regarding the protection of individual information are respected.

**Article 366**  
**Supervision concerning Advertising and Standard Contractual Clauses**

1. It is incumbent on the CMVM to monitor the implementation of legislation concerning the advertising and the standard contractual clauses relating to matters regulated in this Code, commencing administrative infraction proceedings and imposing the respective sanctions.
2. With regard to illegal advertising material, the CMVM may demand:
  - a) The necessary amendments to correct the illegality;
  - b) The suspension of the advertising act;
  - c) The immediate publication of the appropriate rectification by the responsible party.
3. Each period of suspension of the advertising action shall not exceed 10 working days;
4. In the event of any failure to comply with the order referred to in paragraph c) of no. 2, the CMVM may perform the action in lieu of the defaulting party, without prejudice to any applicable sanctions.

**Article 367**  
**Disclosure of information**

1. The CMVM shall organise a computerised information disclosure system available to the public which may include, among other aspects, particulars contained in its records, decisions of interest to the public and any other information notified to or approved by the CMVM, notably inside information in the terms of Article 248, qualifying holdings, accounts and prospectuses.
2. The prospectuses referred to in the preceding number shall be available for at least one year.

**Article 368**  
**Publication expenses**

The declaration by the CMVM's Executive Board, attesting that expenses have been incurred in publications that, according to the law, may be promoted at the expense of entities subject to its supervision, is considered a writ of execution.

## **Chapter III Regulation**

### **Article 369 The CMVM's regulations**

1. The CMVM shall draw up regulations on the matters covered by its duties and powers.
2. The CMVM's regulations should observe the principles of legality, necessity, clarity and advertising.
3. The CMVM's regulations are published in the second edition of the Portuguese Official Gazette ("Diário da República"), taking effect on the date of the same or five days after publication.
4. The CMVM's regulations, which include matters relating to a certain regulated market or MTF or financial instruments traded therein, shall also be published in the Bulletin of said market or MTF.
5. The CMVM's regulations that only regulate proceedings of an internal nature of one or more types of entities are called instructions; these instructions are not published in accordance with the above sub-articles; they are communicated to the respective addressees and take effect five days after notification or on the date of same.

### **Article 370 Recommendations and general legal opinions**

1. The CMVM may issue general recommendations directed at one or more types of entities subject to its supervision.
2. The CMVM may formulate and publish general legal opinions concerning relevant questions that are placed in writing by any one of the entities subject to its supervision, or the respective associations.

### **Article 371 Publication of consolidated rules**

The CMVM publishes annually an updated text of legal and regulatory rules on matters regulated by this Code and supplementary legislation.

### **Article 372 Self-regulation**

1. Within the limits of the law and regulations, the management entities of regulated markets, MTFs, settlement systems, clearing house, central securities depositories and central counterparties may autonomously regulate the activities managed.

2. The rules established pursuant to the preceding paragraph, which are not subject to registration, and also those that consist of codes of ethics approved by management entities and professional associations of the financial intermediaries, should be communicated to the CMVM.

## **Chapter IV Co-operation**

### **Article 373 Principles**

In addition to same described in Article 358, the co-operation developed by the CMVM should obey the principles of reciprocity, respect for the professional duty of secrecy and restricted use of information for the purposes of supervision.

### **Article 374 Co-operation with other national authorities**

1. In relation to the entities that are also subject to the supervision of other authorities, namely the Bank of Portugal and the Portuguese Insurance Institute, the CMVM and these authorities should co-operate among themselves in order to coordinate the exercise of their respective powers of supervision and regulation.

2. The co-operation described above is of a regular nature and may take place:

- a) In the preparation and approval of regulations, when the law attributes joint competence to them;
- b) In carrying out mutual consultations;
- c) In the exchange of information, even when subject to the professional duty of secrecy;
- d) In the accomplishment of acts of joint inspection;
- e) In the establishment of agreements and common proceedings.

### **Article 375 Co-operation with other national institutions**

1. Public or private entities, with powers of intervention over any of the entities described in Article 359, should co-operate with the CMVM as to the exercise of its powers of supervision.

2. The agreements executed under the above provisions should be published in the CMVM's Bulletin.

**Article 376**  
**Co-operation with foreign counterpart institutions**

1. In carrying out its duties, the CMVM shall cooperate with the other States' counterpart institutions or the equivalent thereof.
2. The CMVM may sign with the said institutions, bilateral or multilateral agreements for co-operation, with the intention of:
  - a) Collect information relating to the administrative infractions against the markets in financial instruments and others whose investigation falls within the scope of the CMVM's powers.
  - b) Exchanging information necessary for the performance of the respective functions of supervision or regulation;
  - c) Consultation as to problems arising from the respective responsibilities;
  - d) Staff training and exchange of experience within the scope of the respective responsibilities;
3. The agreements described above may cover the subordinate participation of representatives of counterpart institutions of a foreign State in acts of the CMVM's jurisdiction, whenever there is a suspicion of violations of the law of that State.
4. The co-operation described in the present Article should be developed in terms of the law, the European Community law and the international conventions that bind the Portuguese State.
5. The CMVM notifies the European Securities and Markets cooperation agreements for the exchange of information with counterparts or the equivalent non-EU States.
6. The provisions of this Article shall apply to the relationships resulting from the participation of the CMVM in international organisations, all necessary changes being made.

**Article 377**  
**Cooperation and assistance in the context of the European Union**

1. Without prejudice to the preceding article, the CMVM further cooperates with its counterparts of EU Member States and shall assist said for the exercise of their supervisory functions and research, in particular with respect to insider trading, market manipulation and breach of the market protection duty.
2. Upon the request of a counterpart organisation, the CMVM shall immediately supply any information requested for the purposes of the provisions of the preceding number and, if it is unable to do so, it shall notify the reasons therefor to the requesting organisation, adopting, if necessary, any appropriate measures to obtain the information requested.

3. The CMVM may refuse to act on a request for information where its communication might adversely affect sovereignty, security or public order, judicial proceedings have already been initiated or a final judgment has already been delivered in respect of the same actions and against the same persons by or before the Portuguese courts.

4. In case of refusal, provided for in the preceding paragraph, the CMVM shall notify the applicant counterpart and the European Securities and Markets Authority, providing as much detailed information as possible on these proceedings or decisions.

5. Upon the request of the counterpart referred to in paragraph 1 and within the scope of the functions envisaged therein, the CMVM shall conduct in the national territory and under its direction any investigations and action necessary in order to ascertain the facts that is an offence in said Member State, and may authorise the representatives of the requesting counterpart, auditors and other experts to accompany or take steps.

6. The CMVM may refuse to act on a request for action or to be accompanied by representatives of the requesting organisation in the cases contemplated in no. 3.

7. If the CMVM is convinced that acts contrary to the provisions of no. 1 are being, or have been, carried out in the territory of another Member State or that acts are affecting financial instruments traded on a regulated market situated in another Member State, it shall give notice of this fact in as specific a manner as possible to the counterpart organisation of the other Member State, without prejudice to its powers to investigate and act upon the offences in question.

8. If the CMVM receives a notification analogous to that contemplated in the preceding number from a counterpart organisation of another Member State, it shall inform the notifying counterpart organisation of the outcome and, so far as possible, of significant interim developments.

9. In the cases contemplated in nos. 7 and 8, the CMVM and counterpart organisations competent to investigate and act upon the offences in question shall consult with one another on the course of action to be adopted.

10. The CMVM may communicate to the European Securities and Markets Authority situations wherein a request for information, conducting *demarches* or accompanying CMVM representatives to said *demarches* presented a counterpart, is rejected or not answered within a reasonable time span.

11. The CMVM shall agree with its counterpart organisations the consultation and cooperation mechanisms necessary to comply with the provisions of paragraph i) of no. 1 and no. 3 of Article 360.

**Article 377-A**  
**Precautionary measures in international cooperation**

1. Whenever the CMVM verifies the breach of duties related to notification and disclosure of qualifying holdings, the drawing-up of a prospectus for a public offer or admission, disclosure of periodic information and the conduct of a regulated market or a multilateral trading system, it shall notify the European Securities and Markets Authority, and the authority of the home Member State of the issuer or, in the case of an infraction committed by a regulated market or multilateral trading facility, the authority of the State which granted the authorisation.
2. If the competent authority fails to take the measures requested or because such measures prove to be inadequate and the holder of the qualifying holdings, the issuer, the financial intermediary in charge of the public offer, the regulated market or MTF persists in breaching the applicable provisions, the CMVM, after informing the competent authority of said fact, shall take the necessary cautionary measures in order to protect the investors and the sound functioning of the markets.
3. For the purposes of the preceding paragraph, the CMVM may prevent the regulated market or MTF in question from continuing to provide, in Portuguese territory, the mechanisms for access and trading by members established in Portugal.
4. The measures taken by the CMVM pursuant to paragraph. 2 are reported as soon as possible, to the European Securities and Markets Authority and to the European Commission.

**Article 377-B**  
**Cooperation within the European System of Financial Supervisors**

1. The CMVM cooperates with the European Securities and Markets Authority by providing the necessary information in the fulfillment of its duties as per Article 35 of the EU Regulation No. 1095/2010 of 24 November 2010.
2. The CMVM informs the European Commission, the European Securities and Markets Authority and other EU counterparts of the duty delegation agreements with EU counterparts.
3. The CMVM's condemnatory decisions on the administrative infractions provided for in Articles 389/3/b/c and /e and 394, 395, 397 and 398 and disclosed by the CMVM are concurrently reported to the European Securities and Markets Authority.
4. The CMVM's condemnatory decisions concerning the administrative infractions provided for Articles 389/3/b/c and /e and 394, 395, 397 and 398 are reported annually and collectively to the European Securities and Markets Authority.
5. The CMVM reports information concerning court decisions that sanction, change or repeal the decisions reported under paragraphs 3 and 4.

**Title VIII**  
**Crimes and administrative offences**

**CHAPTER I**  
**Crimes**

**SECTION I**  
**Crimes against the market**

**Article 378<sup>18</sup>**  
**Insider trading**

1. Any person who possesses inside information:

- a) By virtue of his membership of the administrative, management or supervisory bodies of the issuer or his holding in the capital of the issuer; or
- b) By virtue of his having access to the information through the permanent or occasional exercise of his employment, profession or duties in respect of the issuer or any other entity; or
- c) By virtue of his public employment or office; or
- d) By virtue of his criminal activities;

and discloses such information to any person other than in the normal course of the exercise of his functions or who, on the basis of such information, trades or advises anyone to trade in securities or other financial instruments, or directly or indirectly orders their subscription, purchase, sale or exchange for own account or third party's account, shall be punished by a maximum imprisonment of five years or a fine.

2. Any person not falling under the provisions of the preceding paragraph and who, having become aware of inside information, discloses it to a third party or, on the basis of said information, trades or advises anyone to trade in securities or other financial instruments, or directly or indirectly orders their subscription, purchase, sale or exchange for own account or third party's account, shall be punished by a maximum imprisonment of four years or a maximum fine 240 days.

3. Inside information shall mean information of a precise nature which has not been made public relating, directly or indirectly, to one or more issuers, securities or other financial instruments and which, if it were made public, would be likely to have a significant effect on their market.

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<sup>18</sup> Amended by Article 7 Law No. 28/2009, of 19th June

4. In relation to derivatives on commodities, inside information shall mean information of a precise nature which has not been made public relating, directly or indirectly, to one or more such derivatives and which users of markets on which such derivatives are traded would expect or would be entitled to receive in accordance with accepted market practices or regulations on the disclosure of information on those markets, respectively.

5. The provisions of this Article shall not apply to transactions carried out in pursuit of monetary, exchange rate or public debt management policy by the European Central Bank, a State, its national central bank or by any other body designated by such State, nor to trading in own shares in "buy-back" programmes carried out in the conditions permitted under the law.

6. [Repealed]

7. If the transactions referred to in nos. 1 and 2 involve the portfolio of a third natural person or legal entity that is not indicted, this natural person or legal entity may be prosecuted in criminal proceedings as a civil party in the terms contemplated in the Criminal Procedure Code, for the purposes of seizing the benefits of the crime or remedying damages.

### **Article 379<sup>19</sup>** **Market manipulation**

1. Whoever discloses misleading, incomplete, exaggerated or biased information, carries out fictitious transactions or executes other fraudulent practices that are capable of artificially altering the regular functioning of the securities or other financial instruments market, should be punished by a maximum imprisonment of five years or a fine.

2. Those acts considered capable of altering artificially the regular functioning of the securities market are, namely, acts that may change the conditions of price development, the regular conditions of offer or demand of securities or other financial instruments or the normal conditions of issue and acceptance of a public offering.

3. The members of the management body and those responsible for the general management or supervision of areas of activity of a financial intermediary who, having knowledge of the facts described in paragraph 1, performed by individuals directly subject to their management or supervision, and in the performance of their functions, do not stop them immediately, should be punished by a maximum imprisonment of four years or a maximum fine of 240 days, if a more serious punishment is not applicable under any other legal provision.

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<sup>19</sup> Amended by Article 7 Law No. 28/2009, of 19th June

4. [Repealed]

5. If the circumstances set out in nos. 1 and 3 involve the portfolio of a third natural person or legal entity that is not indicted, this natural person or legal entity may be prosecuted in criminal proceedings as a civil party in the terms contemplated in the Criminal Procedure Code, for the purposes of seizing the benefits of the crime or remedying damages.

6. The provisions of this Article shall not apply to transactions carried out in pursuit of monetary, exchange rate or public debt management policy by the European Central Bank, a State, its national central bank or by any other body designated by such State, nor to price stabilisation transactions carried out in the conditions permitted under the law.

### **Article 380 Supplementary penalties**

Besides those set out in the Penal Code, the following supplementary penalties may be imposed to the crimes described in the previous articles:

a) Disqualification, for a maximum period of five years, from the practice as agent of the profession or activity associated with the crime, including prohibition of the practice of management, administration, control or supervision and, in general, representation of any financial intermediary, within the scope of some or all intermediary activities in securities or other financial instruments.

b) Publication of the conviction, at the expense of the defendant, at appropriate locations and in compliance of the legal system and protection of the securities or other financial instruments market.

### **Article 380-A Seizure and forfeiture of the benefits of a crime**

1. Where an offence generates transitional or permanent economic benefits for an indicted person or a third party for whose account the indicted person trades, including interest, profits or other economic benefits, the same shall be seized during the proceedings or, at least, declared forfeited in the decision convicting such persons, in the terms laid down in the following numbers.

2. The economic benefits generated by an offence include capital gains effectively realised and expenses and losses avoided by committing the offence, irrespective of the final application thereof by the indicted person and even if he has subsequently lost them.

3. Any amounts seized in the terms of preceding numbers shall be applied to remedy the persons who have incurred damages and submitted their claims in the context of criminal proceedings, 60% of the remainder being declared forfeited in favour of the State and 40% in favour of the investor compensation scheme.

4. The economic precautionary measures set out in the Criminal Procedure Code shall apply in the context of proceedings relating to insider trading and market abuse offences, without prejudice to resort to the measures to fight organised crime and economic and financial crime contemplated in separate legislation.

## **Section II Crime of non-compliance**

### **Article 381 Non-compliance**

1. Whoever refuses to respect the orders or legitimate writs of the CMVM, issued within the scope of its supervisory functions, or by any form creates obstacles to its execution, should incur the penalty set out for the crime of qualified non-compliance.
2. Those who fail to meet obligations hinder or defraud the execution of the accessory sanctions or the precautionary measures, imposed in an administrative offence process, should incur the same penalty.

## **Section III Procedural provisions**

### **Article 382 Notification of crime report**

1. Notification of crimes against securities or other financial instruments markets is obtained from the CMVM's own information, criminal police agencies or denunciation.
2. Any financial intermediaries which have their registered office, central management or a branch in Portugal and court or police authorities or employees who, in the course of their profession or duties, become aware of circumstances that may be qualified as a crime against the securities market or that of other financial instruments shall immediately notify the Executive Board of the CMVM.
3. The notification referred to in the preceding number may be submitted through any means appropriate to such end, and shall be confirmed in writing upon the request of the CMVM whenever it has not been initially submitted in writing.
4. The notification submitted by financial intermediaries shall contain the reasons for the suspicion, a detailed and accurate identification of the transactions in question, the orders given, the persons on whose behalf the transactions were carried out, and of other persons involved in the relevant transactions, the ways of trading, the portfolios involved, the economic beneficiaries of the transactions, the markets in question and any other information which may have significance to the end in mind, as well as the capacity in which the person signing the notification operates and his relationship with the financial intermediary.

5. A person or entity that submits a notification to the CMVM in the terms of this Article shall be prohibited from disclosing this fact or any other information thereon to clients or third parties, and shall not be held liable for performing this duty of secrecy or any notification in good faith.

6. Neither the identity of the person notifying such transactions or supplying any information contemplated in this Article nor the identification of the entity for which such person works shall not be disclosed, unless such disclosure is ordered by a judge in the terms contemplated in the Criminal Procedure Code.

### **Article 383**

#### **Preliminary investigation**

1. Once the facts that may be qualified as crimes against the securities or other financial instruments market have been established, the CMVM's Executive Board may order the opening of preliminary investigation proceedings.

2. Such preliminary investigations include the actions necessary to determine the possible existence of a crime against the securities or other financial instruments market report.

3. The preliminary investigations are conducted without prejudice to the supervisory powers of the CMVM.

### **Article 384**

#### **Competency**

The process of investigation is initiated and directed by the CMVM's Executive Board, without prejudice to the internal rules of the distribution of powers and the general delegations of powers within the respective services.

### **Article 385**

#### **The CMVM's prerogatives**

1. For the purposes of the preceding Articles, the CMVM may:

a) Ask any persons or entities for any clarification, information, documents, irrespective of their form, items and particulars necessary to confirm or reject the suspicion of a crime against the securities market or that of other financial instruments;

b) Seize, freeze or inspect any documents, irrespective of their form, valuables, items related to the suspected crimes against the securities or securities market or that of other financial instruments or seal items not seized in the facilities of persons and entities subject to its supervision, to the extent the same prove to be necessary to investigate the suspected crime against the securities market or that of other financial instruments;

- c) Request the competent judiciary authority, in a duly reasoned way, to authorise that fixed or mobile telecommunications service providers or Internet service providers be asked for any existing records of telephone calls and data transmissions;
- d) Request fixed or mobile telecommunications services providers or Internet service providers for any existing records of telephone calls and data transmissions.
2. For the purposes of the provisions of the preceding number, the CMVM may request the collaboration of other entities, the police authorities and criminal investigation police bodies.
3. In the event of an emergency or danger arising from any delay, even before starting any preliminary enquiries for the purposes of this section, the CMVM may perform the actions referred to in paragraph b) of no. 1, including seizure and freezing of valuables, irrespective of the place or organisation in which the same are located.
4. The actions referred to no. 4 of Article 380-A may also be requested by the CMVM of the competent judiciary authorities, in the context of any preliminary enquiries that may take place.
5. The provisions of the Criminal Procedure Code shall apply to any actions performed under paragraph b) of no. 1.
6. The authorisation to obtain the records referred to in paragraph c) of no. 1 shall be granted within forty eight hours by the competent magistrate of the Public Prosecution, and his decision must be notified to the judge in charge of the investigation for the purposes of ratification.
7. The obtainment of the records referred to in the preceding number shall be deemed validated if no decision refusing ratification is issued by the judge in charge of the investigation within the following forty eight hours.
8. In the cases referred to in paragraph c) of no. 1 in which a framework of protection of professional secrecy may be alleged, the prior authorisation must be directly requested by the competent magistrate of the Public Prosecution from the judge in charge of the investigation, and such authorisation must be decided upon without any further formalities and shall be deemed granted if no decision to refuse is issued within forty eight hours.

### **Article 386**

#### **Termination of the investigation process**

Once the preliminary investigation process has been concluded and a crime report obtained, the CMVM's Executive Board refers the relevant details to the competent judicial authority.

**Article 387**  
**Notification duty**

The CMVM's Executive Board is notified of the decisions taken during the proceedings of crimes against the securities or other financial instruments market.

**Chapter II**  
**Administrative offences**

**Section I**  
**Special administrative offences**

**Article 388<sup>20</sup>**  
**Common provisions**

1. The following fines are applicable to the offences set out in this Section:
  - a) Between €25,000 and €5,000,000 when classified as very serious;
  - b) Between €12,500 and € 2,500,000, when classified as serious;
  - c) Between €2,500 and €500,000, when classified as less serious;
  
2. Without prejudice to Article 404/1/a), if the economic gain doubled is more than the maximum value of the fine applicable, then the highest value shall prevail.
  
3. The administrative infractions contemplated in the following Articles concern both the breach of duties laid down in this Code and any regulations thereon and the breach of duties laid down in other domestic or Community laws and any regulations thereon in respect of the following matters:
  - a) Financial instruments, public offers concerning securities, organised forms of trading of financial instruments, settlement and clearing systems, central counterparty, financial intermediation systems, securitization companies, venture capital companies, venture capital funds or entities legally authorised to manage venture capital funds, assurances linked to investment funds, the individual subscription contract to open-end pension funds and the information and advertising system concerning any of said matters;
  
  - b) Management entities of regulated markets, MTFs, settlement systems, clearing house, central securities depositories, central counterparties or management entities of shareholdings in said entities.

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<sup>20</sup> Amended by Article 7 Law No. 28/2009, of 19th June

4. If, in accordance with the law or regulation, a duty is required to be fulfilled within a determined period of time, non-compliance with same is deemed to exist as soon as the time period has expired.

5. Information that has not been disclosed by the appropriate means is deemed not to have been disclosed.

6. Where a law or a regulation of the CMVM alters the conditions or terms of compliance with a duty contained in a prior law or regulation, the former law shall apply to the circumstances that occurred while it was in effect, and the new law shall apply to all subsequent circumstances, unless the most favourable law applies in the light of the nature of the circumstances.

### **Article 389<sup>21</sup> Information**

1. The following constitutes a very serious administrative infraction:

a) Transmission or disclosure of information which is not comprehensive, true, current, clear, objective and lawful by any person or entity and through any means;

b) The failure to submit documents to the Information Disclosure System of the CMVM;

c) The provision of information to the CMVM that is not comprehensive, true, current, clear, objective and lawful or the failure to do so.

2. Sub-paragraph a) of the preceding paragraph includes the information provided by any entity, which carries out intermediation activities, to its clients.

3. Any of the following behaviours constitutes a serious offence:

a) Practice of actions described above, if the securities or any other financial instruments, to which the information refers, is not traded on a regulated market and, if the operation has a value equal or inferior to the maximum limit of the fine prescribed for serious offences.

b) Submit information that is not comprehensive, true, current, clear, objective and lawful to the management entities of the regulated markets, MTFs, settlement systems, clearing house, central securities depositories and central counterparties;

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<sup>21</sup> Amended by Article 7 Law No. 28/2009, of 19th June

- c) The total or partial failure to submit documents or information to the management entities of the regulated markets;
  - d) Publication or disclosure of information without a report or opinion drawn up by an auditor or the failure to declare that the information was not audited, when required by law;
  - e) Breach of information systems containing investment recommendations and any conflicts of interest related thereto.
4. The disclosure of information not written in Portuguese or without a translation into Portuguese, when required, constitutes a less serious offence.
5. The disclosure of advertising material that is not in accordance with the following requirements constitutes a less serious offence:
- a) Clear identification as an advertising message;
  - b) Approval by the CMVM when required;
  - c) Reference to the prospectus;
  - d) Prior disclosure of the preliminary prospectus, in case of withdrawal of investment intentions.

**Article 390<sup>22</sup>**  
**Public companies**

1. The failure to report or disclose qualifying holdings in public companies or holdings held by a public company in a company based in a Non-EU State or jurisdiction constitutes a very serious administrative infraction.
2. The omission of the following is considered a serious offence:
- a) [Repealed]
  - b) Communication to the CMVM of shareholder agreements relating to the exercise of the corporate rights in a public company;
  - c) Verification of the authenticity of postal votes and guarantee of their confidentiality.

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<sup>22</sup> Amended by Article 7 Law No. 28/2009, of 19th June

3. The lack or omission of the following is a less serious offence:

- a) Mention of the public company status in external acts;
- b) Communication to the CMVM of an indication of non-compliance with the duty of information relating to qualifying holdings in public companies;
- c) The rendering of information to the holder of a qualifying holding in a public company by the holders of securities to which the inherent voting rights are attributable;
- d) The non-provision of the proxy form to the holders of the voting rights for the exercise of said rights;
- e) Mention, in the notice convening the General Meeting, of the availability of the proxy form or indication of how to request same;
- f) Mention of the details required in a proxy to participate in the general meeting of a public company;
- g) Submitting to the CMVM the standard document used as a proxy to participate in a general meeting of a public company;
- h) Rendering of information to the holders of voting rights by the recipient of a proxy to participate in a general meeting of a public company;
- i) Fulfilment of the duties resulting from the loss of public company status.

**Article 391<sup>23</sup>**  
**Sinking funds**

Failure to form mandatory sinking funds and non-compliance with the duty to contribute to said funds constitutes a very serious administrative infraction.

**Article 392**  
**Securities**

1. The violation of any of the following duties is a very serious offence:

- a) Cancellation of certificated securities converted into book entry securities;

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<sup>23</sup> Amended by Article 7 Law No. 28/2009, of 19th June

b) Adoption of measures to prevent or correct divergences between the quantity of the issued securities and those in circulation;

c) Adoption by the registering entities of the required means for the security of registers and separation of securities accounts;

d) Keeping individual registers of certificated or book entry securities integrated in a centralised system without the required details or documentation;

e) Blockage demanded by law or securities holders;

f) Mention on securities of their integration in a centralised system or exclusion without required updating.

2. The following are very serious offences:

a) Transfer of blocked securities;

b) Cancellation of registers or destruction of deposited Titles, except in the cases prescribed by law;

c) Creation, maintenance, management, suspension, or closing of centralised systems of securities outside the cases and terms prescribed by law or regulation.

3. [Repealed]

4. The following are serious offences:

a) The registration of book entry securities or deposit of certificated securities with an entity or in a centralised system distinct from those allowed or demanded by law;

b) Refusal of information by a registering or depository entity or managing entity of a centralised system to individuals authorised to request same or the omission of submitting information within the required time period prescribed by law or agreed with the interested party.

5. The facts referred to in the preceding paragraphs constitute a less serious administrative infraction when relating to securities issued by private companies or companies not admitted to trading on a regulated market.

## **Article 393 Public offers**

1. The following are very serious offences:
  - a) Performance of a public offer without approval of its prospectus or registration with the CMVM;
  - b) Disclosure of a public offer for distribution, decided or intended, and acceptance of subscription or purchase orders before disclosure of the prospectus or, in the case of a takeover bid, before publication of the offer announcement;
  - c) Disclosure of a prospectus, any supplements thereto and rectifications to the base prospectus without prior approval thereof by the competent authority;
  - d) The disclosure of privileged information about a public offer for distribution that has been decided or planned;
  - e) The creation or the amendment of accounts, registers or fictitious documents susceptible of modifying the rules of attribution of securities;
  - f) The failure to disclose the approval of amendments to the articles of association for the voluntary suspension of the effects of transfer restrictions, voting rights and assignment rights and removal of members of the corporate boards.
  
2. The violation of any of the following duties is a very serious offence:
  - a) The equality of treatment and observance of the rules of apportionment;
  - b) The disclosure of the results of an offering or application for admission to trading of securities that are the object of an offer;
  - c) Disclosure of a prospectus, base prospectus, any supplements and rectifications thereto or the final terms of the offer;
  - d) Inclusion of information in the prospectus, base prospectus, any supplements and rectifications thereto or the final terms of the offer which is complete, accurate, updated, clear, objective and lawful in accordance with the models contemplated in Regulation no. 809/2004/EC of the Commission of 29 April;
  - e) The duty of secrecy relating to the preparation of a take-over;
  - f) Publication of the preliminary announcement of the public offer of acquisition;
  - g) The application for registration of the public offer of acquisition, as well as launching of same after the publication of the preliminary announcement;

h) The launching of a mandatory take-over;

i) Communication to the CMVM of an increase in voting rights in a percentage higher than 1% by whom, having exceeded more than one third of the voting rights within a public company, has proved that it does not control and is not in a group relationship with that company;

j) Relating to the execution of transactions pending a public offer of acquisition;

l) The duty of increasing the consideration for a price that is not lower than the highest price paid for the securities acquired in a transaction carried out pending a mandatory takeover bid.

3. It is a serious offence for a public offering to take place:

a) Without the intervention of a financial intermediary, where such intervention is mandatory;

b) With violation of the rules relating to its amendment, revision, suspension, withdrawal or revocation.

4. The following are serious offences:

a) Collection of intentions to invest without approval of the preliminary prospectus by the CMVM or before disclosure thereof;

b) The violation of the issuer's duty of co-operation in a public offering for sale;

c) The failure to submit the preliminary announcement to the CMVM, target company or managing entities of regulated markets;

d) The violation, by a company which is the object of a public offer of acquisition, of the duty to publish a report on the offer and submit same to the CMVM and offeror, of the duty to inform the CMVM of the trades in securities which are the object of the offer and of the duty to inform the employees about the contents of the offer documents;

e) Breach of the duty of prior notification of the registration document to the CMVM;

f) Breach of the duty to include the list of information incorporated by reference in the prospectus when the prospectus contains information incorporated by reference;

g) [Repealed];

h) Breach, by the offeror or persons involved in any of the situations envisaged in Article 20, of the ban on trading outside a regulated market of

the class of securities included in the bid or that comprise the consideration without the CMVM's prior authorisation;

i) Breach, by the offeror or persons involved in any of the situations envisaged in Article 20, of the duty to report transactions pending a takeover bid to the CMVM;

j) Breach, by the offeror, of the duty to inform the employees' representatives or, in the absence thereof, the employees of the offer documents' content.

5. The omission of reporting a private offer for distribution to the CMVM amounts to a less serious administrative offence.

### **Article 394 Organised Trading Systems**

1. The following are very serious offences:

a) The creation, maintenance of functioning or management of an organised trading system, the suspension or the closing of its activity, outside the cases and terms prescribed by law or regulation;

b) The functioning of a regulated market or MTF in accordance with rules not registered with the CMVM or not published;

c) The failure by management entities of regulated markets or MTFs in providing information, which is obligatory to do so, to the public;

d) The admission of members of a regulated market or MTF by the respective management entity without the requirements prescribed by law or regulation;

e) The lack of advertising of the regulated markets sessions;

f) The admission of financial instruments to trading in a regulated market in breach of the legal rules and regulations;

g) The non-disclosure of the admission prospectus, respective addenda and rectifications, or information necessary for their update, or disclosure without the prior approval of the competent entity;

h) The non-disclosure of the required information, by the issuers of securities traded in the regulated market;

i) Breach of the inside information system, except when such breach is a crime.

2. The violation of any of the following duties is a serious offence:

a) Submitting the details, necessary for the information of the public, to the regulated market managing entity by the issuers of securities admitted to trade;

- b) Informative link with other regulated markets;
  - c) Provision of the necessary information for the proper management of the market or system to the management entity of the regulated market or MTF, by its members;
  - d) Application for admission to trading in the regulated market of securities of the same category as those already admitted;
  - e) Submission of the information as required by law to the CMVM, by the issuers of securities admitted to trading on a regulated market or by those that had requested the admission to trading in a regulated market of securities without the issuer's consent;
  - f) Disclosure of the document consolidating the annual information;
  - g) Disclosure of the information required under no. 2 of Article 134;
  - h) Make the information available to the public for a certain time period, when required by law.
3. The lack of nomination of the following is a less serious offence:
- a) A Liaison Representative for the market and the CMVM, by an entity with securities admitted to listing in a regulated market;
  - b) A representative before the operator of such market and the CMVM, on the part of a member of the regulated market.

### **Article 395 Operations**

1. The carrying out of the following operations is a very serious offence:
- a) In a particular regulated market or MTF, on financial instruments, not admitted to trading on said market or not selected for trading in said facility or suspended or excluded from trading;
  - b) Not allowed or in conditions not allowed;
  - c) Without providing the required guarantees.
2. The following are serious offences:
- a) The carrying out of operations without the intervention of a financial intermediary, when required;
  - b) The trading on a regulated market of transactions based on standard clauses that have not been approved nor reported in advance, when so required;

c) The carrying out of transactions by members of the administrative, management and supervisory bodies of the financial intermediaries or management entities of the regulated markets, MTFs, settlement systems, clearing house, central securities depositories and central counterparties, and in addition, the respective employees, if they are precluded from being involved in said transactions.

d) The breach of the duty to communicate to the CMVM transactions on financial instruments admitted to trading on the regulated market.

3. [Repealed]

### **Article 396 Central Counterparty and Settlement Systems**

1. The following constitutes a very serious administrative infraction:

a) Carrying out functions of the clearing house, central counterparty activity and functions of the settlement system outside the cases and terms prescribed by law or regulation, particularly, when carried out by an entity not authorised for said purpose;

b) The functioning of the clearing house, central counterparty or settlement system in accordance with rules that are not registered with the CMVM, not publicly disclosed or in breach of the registered rules;

c) The carrying out of transactions on financial instruments referred to in Article 2/1/e) and /f) without intervention by the central counterparty;

d) Failure to make timely provision of financial instruments or cash for the settlement of transactions;

e) Breach, by the entity that undertakes the functions of the clearing house or central counterparty, of the duty to take the necessary measures for minimising the risks and appropriate for the proper functioning of the mechanisms adopted and protecting the markets;

f) Breach, by a central counterparty, of the duties concerning segregation and portability and prudential requirements.

2. [Repealed]

### **Article 397 Financial Intermediation Activities**

1. The execution of acts or the performance of financial intermediation activities without due authorisation or registration, or outside the scope of authorisation or registration, is a very serious offence.

2. The violation by entities authorised to perform financial intermediation activities, of any of the following duties, is a very serious offence:

- a) To effect and maintain updated the daily register of operations;
- b) To respect the rules governing conflicts of interest;
- c) Not to effect operations which constitute excessive financial intermediation activity (churning);
- d) To verify the legitimacy of those placing orders and adopt the steps which permit to establish the time of reception of the order;
- e) To reduce in writing or record the orally received orders;
- f) To respect the rules of priority in the transmission and execution of market orders;
- g) To provide clients with the necessary information;
- h) Not to execute, without the authorisation of or the confirmation from the client, contracts in which the client is a counterpart;
- i) Disclose orders which are not immediately executable;
- j) Respect the rules on the aggregation of orders and allocation of transactions;
- l) Not execute orders, without the client's consent, outside a regulated market or a MTF;
- m) Adopt an order execution policy or assess periodically as required by law;
- n) Respect the requirement of financial intermediation contracts being in writing, when so required;
- o) Respect the rules on the assessment of the appropriate transaction in line with the client's profile.

3. [Repealed]

4. The violation by entities, authorised to exercise financial intermediation activities, of any of the following duties is a serious offence:

- a) Preserve documents within the time legally demanded;
- b) [Repealed]
- c) Accepting orders;

- d) Refusing orders;
- e) Report to the CMVM the standard contractual clauses that are used in the contracts, when so required;
- f) Comply with the rules on outsourcing;
- g) Keep client records;
- h) Comply with the rules on the categorisation of investors.

### **Article 398 Professional duties**

It is a very serious offence the violation of any of the following duties:

- a) Confidentiality;
- b) Asset separation;
- c) The non-use of securities, other financial instruments or cash outside the cases prescribed by law or regulation;
- d) The defence of the market.

### **Article 399 The CMVM's rules**

1. It is a serious offence not to comply with the CMVM's legitimate orders or writs transmitted in writing to recipients.
2. If the non-compliance described in sub-article 1 occurs and the CMVM notifies the recipient to comply with the order or writ and the non-compliance continues, a fine corresponding to a very serious offence will apply, provided the CMVM's notification contains an express indication that in case of non-compliance, this sanction will be imposed.

### **Article 400 Other offences**

The breach of duties that are not mentioned in the previous articles albeit enshrined in this Code or in other legislation mentioned in Article 388/3 constitutes:

- a) A less serious administrative infraction;
- b) A serious administrative infraction, when the agent is a financial intermediary or any of the entities referred to in Article 388/3/b, while conducting their relevant activities;

c) A very serious administrative infraction, in the case of a breach of a duty of secrecy in respect of the CMVM's supervisory activities.

## **Section II General provisions**

### **Article 401 Liability for administrative offences**

1. Individuals, legal entities, independently of the regularity of their incorporation, companies and associations without a legal status may be liable for the offences set out in this Code.
2. Legal individuals and entities described in the above sub-article are liable for the offences set out in this Code when actions have been practised, in the exercise of their respective functions, or in their name, or on their behalf, by members of their management bodies, agents, representatives or employees.
3. The liability of the legal person is excluded when the agent acts against the express orders or instructions of said person.<sup>24</sup>
4. Unless an even greater sanction is applicable to the individual by another legal provision, the sanction set out for the author of the act, especially mitigated, will be imposed on the members of the management bodies of companies and similar entities as well as those responsible for the management or supervision of areas of activity where the offence takes place, whenever such individuals, being aware or in a position where they should have been aware of the offence, do not adopt measures to end the same immediately.
5. The liability of companies and similar entities does not exclude the individual liability of the respective agents.

### **Article 402 Forms of offences**

1. The administrative offences set out in this Code are punishable when same is of an intentional or negligent nature.
2. The attempt to practice any of the administrative offences described in this Code is punishable.

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<sup>24</sup> Amended by Article 5 Decree-Law No. 211-A/2008, of 3<sup>rd</sup> November

**Article 403**  
**Fulfilment of the violated duty**

1. Whenever the administrative offence results from the omission of a duty, the payment of a fine or fulfilment of an accessory sanction, the infringer is not released from fulfilling the obligation, if this is still possible.
2. The CMVM may subject the infringer to an injunction to comply with the duty owed.
3. If the injunction is not executed in the set period of time, the agent incurs the sanction prescribed for very serious offences.

**Article 404**  
**Accessory sanctions**

1. In addition to fines and notwithstanding those set out in the General Legal Framework applicable to administrative offences, the following accessory sanctions might be imposed on those responsible for any offence:
  - a) Apprehension and loss of the object of the offence, including the benefit obtained by the infringer by the practice of the offence;
  - b) Temporary suspension of the exercise by the infringer of the profession or the activity to which the offence refers;
  - c) Disqualification from the exercise of the function of administration, management, control, supervision and, in general, representation of any financial intermediary within the scope of any or all activities of intermediation in securities or other financial instruments;
  - d) Publication by the CMVM, at the expense of the infringer and in places suitable for the accomplishment of the aims of general prevention of the legal system and protection of securities or other financial instruments markets, of the sanction imposed in view of the offence;
  - e) Revocation of the authorisation or cancellation of the registration necessary for the performance of the activities of financial intermediation in securities or in other financial instruments;
2. The sanction described in paragraphs b) and c) of the sub-article above may not have a duration greater than five years from the definitive sanctioning decision.
3. The publication described in sub-article 1(d) may be made completely or partially, in accordance with the CMVM's decision.

**Article 405**  
**Determination of the applicable sanction**

1. The determination of the actual fine and accessory sanctions is done pursuant to the material illegality of the act, agent's negligence, benefits obtained and prevention requirements. Whether the agent is an individual or legal entity, is also taken into account.

2. In the determination of the material illegality of the act and the negligence of legal entities and similar entities, the following circumstances, among others, are taken into consideration:

- a) The danger or damage caused to investors or the market of securities or other financial instruments;
- b) The occasional or repeated nature of the offence;
- c) The existence of the concealment of acts which tend to impair discovery of the offence;
- d) The existence of acts by the agent, on own initiative, aiming at, repairing the damages or preventing the dangers caused by the offence.

3. In the determination of the material illegality of the act and negligence of individuals, beside those described in the sub-article above, the following circumstances are taken into consideration:

- a) Level of responsibility, scope of functions and role in the said legal entity;
- b) Intention to obtain, for itself or another entity, an illegitimate benefit or damages caused;
- c) The special duty of not committing the offence.

4. In the determination of the applicable sanction, the agent's economic situation and previous conduct are also taken into consideration.

**Article 406**  
**Fines, costs and economic benefits**

1. When offences are also attributable to entities described in Article 401(2), these entities are jointly responsible for the payment of fines, costs or other burdens associated with the sanctions imposed in the offence proceedings, for which the individual agents described in the same sub-article are responsible.

2. Payments resulting from the imposition of fines and economic benefit in administrative offence proceedings revert totally to the Investors' Compensation Scheme, independently of the date on which the condemnatory decision becomes final or transits in *res judicata*.

**Article 407**  
**Subsidiary law**

Except when otherwise prescribed by this Code, the General Legal Framework applying to administrative offences applies to offences set out in this Code as well as to the procedures applying to same.

**Section III**  
**Procedural provisions**

**Article 408<sup>25</sup>**  
**Jurisdiction**

1. The CMVM's Executive Board has jurisdiction over the proceedings of offences, imposition of sanctions and additional sanctions as well as measures of precautionary nature set out in this Code, without prejudice to the possibility of delegation in accordance with the law.
2. The CMVM may request delivery of or seize, freeze or inspect any documents, valuables or items related to the pursuit of unlawful acts, irrespective of their form, and seal items not seized in the facilities of persons or entities subject to its supervision, and also request the explanation and information from any persons or entities. This is carried out to the extent the same are necessary for investigating or supporting any proceedings entrusted to it.

**Article 409**  
**Appearance of witnesses and experts**

1. The CMVM imposes a pecuniary sanction of up to 10 account units to witnesses and experts that do not appear on the designated day, time and place for due process, without justifying their absence immediately or within five working days.
2. Payment is effective within 10 days of the notification, under threat of enforced payment proceedings being instituted.

**Article 410**  
**Absence of the defendant**

The failure of the defendant to appear does not prevent offence proceedings from continuing.

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<sup>25</sup> Amended by Article 7 Law No. 28/2009, of 19th June

## **Article 411 Notifications**

1. Notifications in the offence processes are made by registered letter with an acknowledgement of receipt, directed at the headquarters or domicile of the recipient and its legal representative, or individually, and if necessary, by means of the police authorities.
2. The notification to the defendant of pleadings that represents an administrative offence, as well as the decision to impose the sanction, accessory sanction or some interim measures of protection, is made in accordance with the above sub-article or, when the defendant is not found or refuses to accept the notification, by an announcement published in one of the local newspapers in the locality of its headquarters or last known residence in the country or, in the absence of newspapers or if the defendant does not have headquarters or residence in the country, in one of Lisbon's daily newspapers.

## **Article 412 Interim measures of protection**

1. When it becomes necessary for the instruction of proceedings, the defence of the securities or other financial instruments market or the protection of the investors' interests, the CMVM may order one of the following measures:
  - a) The preventive suspension of one or some of the activities or functions carried out by the defendant;
  - b) The exercise of functions or activities subject to certain conditions, necessary for this exercise, namely, compliance with the duty to inform;
  - c) Seizure or freezing of valuables, irrespective of the place or organisation in which the same are located.
2. The order described in the sub-article above comes into force, according to the following cases:
  - a) Until its revocation by the CMVM or final judgement;
  - b) Until enforcement of an ancillary sanction equivalent to the measures contemplated in the preceding number.
3. The order of preventive suspension may be published by the CMVM.
4. When, in accordance with sub-article 1, total suspension of the activities or functions carried out by the defendant is determined and same is convicted, in the same process, to an accessory sanction which consists of the disqualification or suspension of carrying out the same activities or functions, the time served in preventive suspension will be fully deducted in the execution of the accessory sanction.

**Article 413**  
**Notice procedure**

1. When the administrative offence consists of a reparable irregularity that does not result in losses to investors or securities or other financial instruments markets, the CMVM may warn the infringer, notifying same to rectify the irregularity.
2. If the infringer does not rectify the irregularity within the required time period, the proceeding of the offence continues its normal procedure.
3. When the irregularity is rectified, the process is closed and the notice becomes final as a final sentence, and the same act may not be considered again as an offence.

**Article 414**  
**Summary proceeding**

1. When the reduced gravity of the offence and the reduced negligence of the agent so justifies, the CMVM may, before formally accusing the defendant, issue a warning or impose a fine which should not exceed three times the minimum limit set out for the offence.
2. It may, also, be determined that the defendant adopts the legally required behaviour within the time period set by the CMVM.
3. The decision set out in sub-article 1 is in writing and contains the identity of the defendant, the brief description of the alleged facts, the reference to the legal provisions violated and concludes with the warning or indication of the fine actually imposed.
4. The defendant is notified of the decision and informed that it has the right to refuse, within five days, and of the consequences set out in the following sub-article.
5. The defendant's refusal or silence during this time, the requirement of any supplementary action, non-compliance with the provision set out in sub-article 2 or the non-payment of the fine within 10 days of the notification described in the sub-article above determines the immediate continuation of the offence process, with the decision described in sub-articles 1 and 3 having no effect.
6. The defendant having proceeded with the compliance set out in sub-article 2 and the payment of the fine imposed, the decision becomes final as a condemnatory decision, and the same fact may not again be considered as an offence.
7. The decisions given in summary processes are not subject to judicial appeal.

**Article 415**  
**Suspension of the sanction**

1. The CMVM may suspend, totally or partially, the execution of the sanction.
2. The suspension may be conditional to the execution of certain obligations, namely those considered necessary for the regularisation of illegal situations, the reparation of damages or the prevention of dangers for the securities or other financial instruments markets or investors.
3. The suspension time period of the sanction is set between 2 (two) and 5 (five) years, calculating from the expiry date of the time period of the legal rejection of the condemnatory decision.
4. The suspension does not cover costs.
5. The suspension time period having elapsed without the defendant having practised any criminal act or administrative offence as set out in this Code, and without any violation of the obligations that had been imposed on same, the conviction is without effect; on the contrary the imposed sanction is executed.

**Article 416**  
**Judicial appeal**

1. Once the appeal against the CMVM's decision is received, same is forwarded to the Public Prosecutor within 20 working (twenty) days, where other allegations may be joined.
2. Without prejudice to Article 70 of the Decree Law No. 433/82 dated 27 October, the CMVM may still join other details or information that is considered relevant to the said decision as well as offer evidence.
3. The court may decide without a hearing, if there is no opposition from the defendant, the Public Prosecutor or the CMVM.
4. If there is a hearing, the court will decide, based upon the evidence presented at the hearings as well as during the administrative phase of the offence procedure.
5. The CMVM may participate in the hearing by appointing a representative for this purpose.
6. The waiver of the indictment by the Public Prosecutor depends on the CMVM'S consent.
7. The CMVM shall be entitled to autonomously appeal against decisions issued in the context of proceedings for annulment permitting such appeal, as well as to reply to any appeals lodged.
8. The prohibition of *reformatio in pejus* shall not apply to proceedings relating to administrative infractions initiated and decided in the terms of this Code, and this information must be contained in all final decisions permitting annulment or appeal.

**Article 417**  
**Jurisdiction in recognising judicial appeal**

The Competition, Regulation and Supervision Court has the jurisdiction to recognise the judicial appeals, reviews and execution of the decisions or any other legal measures as determined by the CMVM within the scope of administrative infraction proceedings.

**Article 418**  
**Statute of Limitations**

1. The statute of limitations for administrative offences proceeding is five years.
2. The statute of limitations for sanctions imposed is five years and is calculated from the day on which the decision that determined its imposition becomes final or transits in *re judicata*.

**Chapter III**  
**Common provisions of crimes and administrative offences**

**Article 419**  
**Personal details**

1. The individual responsibility of the agents is not hindered by the fact that the legal type of offence requires certain individual details and these are only verified in the legal individual, a similar entity or one of the agents involved, nor the fact that, it is required that the agent practises the act in its own interest, with the agent having acted in the interest of others.
2. The invalidity or nullity of the act that is the basis of the actions of the agent in the name of another does not hinder the application of the provisions of the previous sub-article.

**Article 420**  
**Concurrence of offences**

1. If the same circumstances simultaneously constitute a criminal and an administrative infraction, the indicted shall be held liable for both offences, and separate proceedings, to be determined by the competent authorities, shall be initiated, without prejudice to the provisions of the following number.
2. In the cases contemplated in paragraph i) of no. 1 of Article 394, when the circumstances that may simultaneously constitute a criminal and an administrative infraction are imputable to the same perpetrator on the same basis of subjective imputation, only the criminal proceedings shall apply.

**Article 421**  
**Duty to notify**

The competent authority for the imposition of accessory sanctions for the revocation of authorisation or cancellation of the registration, if same is also not the competent entity for the practice of these acts, should communicate to the latter the crime or offence concerned, together with specific facts, imposed sanctions and status of the process.

**Article 422<sup>26</sup>**  
**Dissemination of decisions**

1. Upon expiry of the judicial review period, a decision by the CMVM that convicts the agent for carrying out one or more serious or very serious administrative infractions shall be disclosed through the Information Disclosure System referred to in Article 367, by means of a statement drawn up by the CMVM or wholly, even if the judicial review has been lodged. In the latter case, specific reference to said review should be made.
2. Any court decision that confirms alters or repeals a decision by the CMVM or the lower court in the sense of conviction shall be immediately notified to the CMVM and must be disclosed in the terms of the preceding number.
3. The provisions of the preceding numbers shall not apply to fast-track summary proceedings where suspension of the sanction applies, the illegality of the acts or the guilt of the perpetrator are reduced or when the CMVM considers that disclosure of the decision may be detrimental to investors' interests, severely affect the financial markets or cause actual damages to persons or entities involved, clearly disproportionate to the seriousness of the acts imputed.
4. Irrespective of a final judgement having already been obtained or not, any court decisions concerning crimes against the market shall be disclosed by the CMVM in the terms of nos. 1 and 2.

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<sup>26</sup> Amended by Article 7 Law No. 28/2009, of 19th June

