

AMENDMENTS TO PORTUGUESE SECURITIES CODE

As of January 30, 2022, Portuguese listed companies are subject to new rules: the issue of shares with multiple voting rights is allowed and the threshold for the disclosure of qualified holdings was increased from 2% to 5%. Other rules on public offers, takeovers and delisting have changed.

CONTACTS

ANTÓNIO MACEDO VITORINO

AVITORINO@MACEDOVITORINO.COM

ANDRÉ DIAS

ADIAS@MACEDOVITORINO.COM

Law 99-A/2021 approved several amendments to the Portuguese Securities Code that entered into force on January 30, 2022, of which we highlight the following:

Securities

Companies are entitled to issue multiple voting shares, with a cap of five votes per share.

Companies may also issue debt securities and increase their nominal value provided that the terms and conditions of the securities so allows it.

Issuers

All disclosure rules applicable to listed companies (e.g., annual reports and accounts, corporate governance report, payments made to public administrations, semi-annual information, insider information, managers' transactions, transactions with related parties and other information by issuers of shares and other securities) are now included in the Securities Code and some reporting duties were eliminated.

Qualifying holdings

The minimum threshold for disclosing qualifying holdings was increased from 2% to 5%, in line with other EU countries' securities regulations.

The rules on the attribution of voting rights were simplified.

Exercise of voting rights

A 21-days prior notice for the calling of the meetings was imposed, with a shorter period of not less than 10 days being permitted in the case of credit institutions and financial companies.

Shareholders who intend to participate in a General Meeting must deliver a single statement to the financial intermediary instead of the two statements previously required (to the Chair of the General Meeting and to the financial intermediary).

Beneficial owners of securities will be entitled to directly exercise the shareholders' rights even if they are not the direct holders of the securities, provided they present a "certificate of beneficial owner" (*certificado de legitimação*).

Financial intermediaries, whether based in Portugal or not, who hold shares in their own name acting on behalf of others, and other financial intermediaries in the intermediation chain, must allow the investors on whose behalf the shares are held to exercise the rights linked to the shares.

Institutional investors (e.g., insurance companies and pension funds), asset managers and so-called "voting advisors" are subject to additional transparency and disclosure rules.

Public offers

Public offers are now defined as offers of securities that require the prior disclosure of a prospectus or a document required under EU law.

The engagement of a financial intermediary to provide assistance and placement services in a public offer is no longer mandatory.

Offerors are allowed to revise the terms and conditions of an offer up to two days prior to its term subject to the authorization of the Securities Market Authority (*Comissão do Mercado de Valores Mobiliários*, “**CMVM**”).

The threshold for the publication of a prospectus was increased from €5 million to €8 million.

Prospectus

The liability for the content of a prospectus is extended to the guarantor, if any, and the mandatory liability of the financial intermediary that assists the offeror no longer applies, unless and to the extent the financial intermediary accepts to be named as such in the prospectus.

Prospectuses for offers in Portugal may be presented in English, unless CMVM opposes; when written in another language, CMVM may require the summary of the prospectus to be translated to Portuguese.

Takeovers

The acquisition of securities by inheritance will not trigger takeover rules.

The double requirement for the exercise of the right to compulsory acquisition (*i.e.*, 90% of the total voting rights and 90% of the voting rights covered by the takeover bid) was revoked, being sufficient that the takeover reaches 90% of the total voting rights.

The takeover rules no longer apply to debt exchange offers, being only applicable to companies with shares admitted to trading on a regulated market in Portugal.

Administrative authorizations related with takeovers must be obtained within 6 months.

The competing offer rules were amended and now allow competing offers with less favorable conditions in relation to a previously announced offer.

Delisting and other amendments

Voluntary delisting is admissible when the delisting is approved in a general meeting of the company by a majority of not less than 90%, being the company obliged to acquire, by itself or by a third party, the shares of the shareholders that voted against it.

If the issuer enters in liquidation or insolvency, the securities admitted to trading must be registered with the issuer or a financial intermediary.