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Update

Finance and Governance

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✳ PART II - AMENDMENTS TO FINANCIAL LEGISLATION

Law No. 23-A/2022 – Transposition of the CRD V and BRRD II Directives

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I. Introduction and legal background:

On December 10, 2022, **Law no. 23-A/2022, of December 9** ("Law") entered into force. This Law revises a wide range of banking and financial legislation, transposing Directives **(EU) 2019/878** ("**CRD V**") on access to banking¹ activity and prudential supervision and **(EU) 2019/879** ("**BRRD II**"), regarding recovery and resolution of credit institutions and Investment Firms.

The main focus of this Law, in the financial sector, is the revision of the applicable requirements to legal entities whose activities are subject to the supervision of the Portuguese Securities and Markets Authority ("CMVM"), namely Investment Firms.

For such purposes, BRRD II becomes preponderant for the analysis presented herein, considering that the requirements on resolution and recovery are applicable to Investment Firms, when duly *authorized to provide trading services on their own account or underwriting and/or placement services²*.

Even though such amendments are mainly related to banking legislation – particularly the amendments to the General Regime of Credit Institutions and Financial Companies ("RGICSF") – this Law also provides a set of amendments to the Securities and Markets regulation – albeit of surgical scope – not only to the Portuguese Securities Code ("CVM"), but also to Decree-Law no. 199/2006, of October 25, regarding the liquidation of credit institutions and financial companies which have their headquarters in Portugal and their branches in other Member States, as well as to the Legal Framework of Covered Bonds, approved in annex to Decree-Law no. 31/2022, of May 6.

II. Main amendments introduced to the regulation of the financial sector

Regarding the financial sector, the modifications introduced by the Law represent greater detail and better articulation between the rules and duties applicable to banking sector agents and those applicable to financial sector players.

Hence, and even though not foreseen under this analysis, some of the changes to RGICSFⁱⁱⁱ ultimately have direct effects on the financial legislative landscape, namely regarding the rules applicable to resolution, recovery and internal recapitalization, as well as the definition of cooperation procedures between the two supervisory authorities, *i.e.* Bank of Portugal and CMVM.

As to the Portuguese Securities Code, article 267 (1) regarding the participants of settlement systems has been amended. Until this date, only *credit institutions, investment companies, institutions with corresponding functions that are authorized to exercise activities in Portugal, public entities and companies that benefit from a State guarantee* were considered as participants of the settlement systems of financial instruments, with the new Law, this prerogative also falls upon the clearing members of a central counterparty authorized under the European Union legislation.

Finally, under the Legal Framework for Covered Bonds, the changes introduced reflects a change to the applicable sanctions as a result of liability for misdemeanours for breach of duties under covered bonds.

ⁱ The analysis of the banking amendments can be found at: <https://www.servulo.com/en/knowledge/Transposition-of-the-CRD-V-and-BRRD-II-Directives/8171/>.

ⁱⁱ See the Report of the CMVM, requested by the Portuguese Parliament in the context of the Legislative Procedure initiated by the Government's Proposed Law under no. 21/XV/1, p.3.

ⁱⁱⁱ As previously mentioned, the analysis to the changes introduced to the RGICSF may be found at: <https://www.servulo.com/en/knowledge/Transposition-of-the-CRD-V-and-BRRD-II-Directives/8171/>.