THE INITIAL PUBLIC OFFERINGS LAW REVIEW

Editor
David J Goldschmidt

THE LAWREVIEWS

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URÍA MENÉNDEZ

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PREFACE

Welcome to the inaugural edition of *The Initial Public Offerings Law Review*. While it is largely agreed that the first 'modern' initial public offering (IPO) was by the Dutch East India Company (VOC) in 1602, IPOs now take place in nearly every corner of the world and involve a wide variety of companies in terms of size, industry and geography. Several of the earliest exchanges are still at the forefront of the global IPO market, such as the NYSE and LSE, however, the world's major stock exchanges now are scattered around the globe, and many of them are now public companies themselves. Aside from general globalisation, shifting investor sentiment and economic, political and regulatory factors have also influenced the development and evolution of the global IPO market. For example, markets in the Asia-Pacific region, including Hong Kong, Shanghai and Tokyo, have enjoyed a significantly stronger presence in the global IPO arena in recent years owing to economic growth in the Asian markets.

Every exchange operates with its own set of rules and requirements for conducting an IPO. Country-specific regulatory landscapes are often dramatically different between jurisdictions as well. Whether a company is looking to list in its home country or is exploring listing outside of its own jurisdiction, is it important that the company and its management are aware of the requirements from the outset as well as potential pitfalls that may derail the offering. Moreover, once a company is public, there are ongoing jurisdiction-specific disclosure and other requirements with which it must comply.

Virtually all markets around the globe have experienced significant volatility in recent years. In 2016, the uncertainty surrounding the US presidential election, the unexpected outcome of the Brexit vote and numerous other geopolitical issues facing regions throughout the world furthered the general decline in both overall deal count and proceeds raised. Moving forward, however, many regions have a healthy IPO pipeline for the coming 12 months, including many household names.

The Initial Public Offerings Law Review seeks to introduce the reader to the global IPO regulatory environment and main stock exchanges in 16 different jurisdictions. Each chapter provides a general overview of the IPO process in the region, addresses regulatory and exchange requirements and presents key offering considerations. We hope this inaugural edition of *The Initial Public Offerings Law Review* introduces the reader to the intricacies of taking a company public in these jurisdictions and serves as a helpful handbook for companies, directors and managers.

David J Goldschmidt
Skadden, Arps, Slate, Meagher & Flom LLP
New York
March 2017

Chapter 10

PORTUGAL

Carlos Costa Andrade and Ana Sá Couto[1]

I INTRODUCTION

As a result of the slump in the Portuguese economy during the global economic crisis, since 2008 the equity capital markets in Portugal have practically come to a halt.

Since its record high in 2007, the main local stock index (the PSI-20) lost almost two thirds of its value. This freefall may be mainly attributed to the exodus of foreign investors, the freezing of the initial public offers (IPO) market, with practically no activity between the end of 2009 and late 2013, and the loss in value of traded companies, which, despite everything, was not sufficient to attract a significant number of takeover offers from abroad. All these factors seriously limited the amount of capital at the disposal of Portuguese companies.

Recently, however, there has been some movement slowly picking up pace as a new market seems to be opening for small and medium-sized enterprises (SMEs). In recent years a few Portuguese SMEs have requested their listing on both regulated markets and other types of platforms. Although some of them opted to list abroad, it is encouraging to see that, as recently as December 2016, companies have been confident enough to request their admission to trading on the alternative stock exchanges in Portugal.

This is a movement that the Portuguese Securities Markets Commission (CMVM), as well as Euronext Lisbon (the local platform of the Euronext Group), will likely incentivise and explore, in an attempt to take advantage of the fact that Lisbon is gaining a reputation as a key hub for start-up companies in Europe.

II GOVERNING RULES

i Main stock exchanges

The Portuguese law implementing the Markets in Financial Instruments Directive (MiFID)[2] sets out the following organised structures for trading of financial instruments:

a regulated markets as defined under MiFID;
b multilateral trading facilities (MTFs); and
c systematic internalisation by financial intermediaries.

1 Carlos Costa Andrade is a partner and Ana Sá Couto is a counsel at Uría Menéndez - Proença de Carvalho.

2 Directive 2004/39/CE of the European Parliament and the Counsel of 21 April on markets in financial instruments, as amended (MiFID).

There are currently three regulated markets operating in Portugal, but only one is a stock exchange: Euronext Lisbon (formerly known as 'Eurolist by Euronext Lisbon'), the official stock quotations market managed by Euronext Lisbon–Sociedade Gestora de Mercados Regulamentados, SA (Euronext Lisbon).

As regards MTFs, there are two main trading platforms currently operating in Portugal, both of which are managed by Euronext Lisbon: EasyNext Lisbon and Alternext. While shares may be admitted to trading on both of them, EasyNext Lisbon is mainly used to list bonds and structured financial instruments (warrants, certificates, etc.) and Alternext is the one market truly intended to serve as an alternative for SMEs to list their shares.

With a few exceptions, the stock exchanges operating in Portugal have so far only attracted domestic issuers. Among them, and taking the PSI-20 as a reference, the most important industries present in Euronext Lisbon are banking (e.g., Banco Comercial Português, Banco BPI and Montepio Geral), utilities (e.g., Galp Energia, EDP, REN and EDP Renováveis) and retail (e.g., Jerónimo Martins and Sonae).

Historically, some foreign issuers have listed their shares in Portugal, but usually only under a dual listing structure, also maintaining their shares trading on the official stock exchange of their respective home countries. This is currently the case with Banco Santander. It was also the case with other Spanish companies such as Banco Popular, Sacyr Vallehermoso and Europac, all of which requested their delisting from the Portuguese stock exchange at some point over the past decade. All of these (Spanish) companies used the dual listing as a means to promote their presence and investment in the Portuguese market in their respective sectors.

One of the most significant IPOs in Portugal over the past decade related to the single foreign issuer solely listed in Portugal: EDP Renováveis, the renewable energy company that was spun-off from EDP in 2008.

The following sections of this chapter focus on the listing of shares on regulated markets in Portugal and the obligations imposed on the issuers of such securities, with a particular emphasis on Euronext Lisbon, the official quotations market in Portugal. In light of the evolving market for SMEs in Portugal, references to Alternext will also be made as appropriate.

ii Overview of listing requirements

In order to be listed on a regulated market, securities must comply, with regard to terms and form, with the requirements of their governing law and be issued in accordance with the law governing the issuer.

The listing of securities on a regulated market operating in Portugal requires the approval of the CMVM, as well as the respective market management entity (Euronext Lisbon). Furthermore, the issuer is required to comply with all of the following conditions:

a it must be incorporated and validly exist in accordance with its governing law;

b it must show that it has an adequate financial and economic situation with regard to the nature of the securities to be listed and to the market on which listing is sought;

c it must have carried out its business activity for at least three years;

d it must have published, under applicable law, its annual accounts for the three years prior to the year in which it has applied for listing;

e it must ensure that securities (shares) of the same category have identical rights under the issuer's by-laws and applicable legislation; and

f it must ensure that the securities (shares) are freely transferable and negotiable.

If the issuer has resulted from a merger or demerger, the requirements referred to in (c) and (d) above are considered fulfilled if they are satisfied by one of the merged companies or the demerger company, as applicable. Furthermore, the CMVM may waive requirements (c) and (d) if it finds that it is advisable in light of the interests of the issuer and investors and the requirement referred to in (b) above, on its own, allows investors to make a clear assessment on the issuer and the securities.

In addition, Euronext Lisbon regulations require that adequate clearing and settlement systems be available in respect of transactions in the shares.

Portuguese law sets forth certain additional eligibility criteria for the listing of shares on Euronext Lisbon with respect to issue size, minimum public float and expected share appreciation:

a Minimum public float: shares may only be admitted to trading if there is an 'adequate level of public dissemination' by the date on which listing commences. An adequate level of public dissemination is deemed to exist if the number of publicly held shares corresponds to at least 25 per cent of the issuer's subscribed share capital represented by such class of shares, or if, due to the high number of shares of the same class and the large number of publicly held shares, a regular functioning of the market in the shares is ensured even though the percentage of the shares that is publicly held is lower than 25 per cent. In this latter case, according to Euronext Lisbon's regulations, such percentage may not be lower than 5 per cent and must correspond to at least €5 million, based on the relevant subscription price.

b Market capitalisation: the expected market value of the shares to be listed must be at least €1 million or, if market capitalisation cannot be determined, the company's shareholders' equity, based on the results of the last financial year, must be at least €1 million. This requirement does not apply to the admission to trading of shares of the same class as shares that are already listed.

Foreign issuers intending to list shares on a regulated market operating in Portugal are subject to additional requirements (see Section III.iii, *infra*).

The application for listing is submitted to the regulated market's management entity, together with documents necessary to show compliance with the listing requirements. In particular, prior to listing securities on a regulated market, the issuer must, as a general principle, publish a prospectus (as further commented in Section II.iii, *infra*).

As a general rule, the application is submitted by the relevant issuer. Foreign issuers must submit their listing application through the financial intermediary they must appoint for liaising with the market (see below).

Additionally, shares may be admitted to trading at the request of the holders of at least 10 per cent of stock of the same class provided that the relevant issuer is already a publicly traded company (i.e., a *sociedade aberta*) under Portuguese law. Generically speaking, this will be the case when the company was either incorporated through an IPO in Portugal or has already been admitted to trading its shares, or other securities that may be converted into shares, on a regulated market operating in Portugal.

Finally, when submitting an application for admission to trading on a regulated market, the issuer must appoint a representative with appropriate powers for liaising with the market and the CMVM.

In light of the above, it appears that the requirements for admission to trading on a regulated market in Portugal are closer to those applicable in the United Kingdom, in

particular to the admission to trading on the Main Market of the London Stock Exchange, than those applicable in the United States to NASDAQ and the NYSE.[3] In fact, not only the procedural rules but also the public float and market capitalisation requirements are identical in the United Kingdom and Portugal. Conversely, both NASDAQ and the NYSE require issuers to meet certain financial and distribution standards that appear to be more strict.

By comparison, the listing requirements applicable to the trading of shares in Alternext are even more simple and flexible. While the procedural and documentation requirements are not very different from those applicable to the listing on Euronext Lisbon, the admission to trading on this MTF may be requested provided that shares representing at least €2.5 million are placed with a minimum number of three investors (which must not be related parties to the issuer), through either a public offering or a private placement of the shares.

Accordingly, the issuer requesting the admission to trading of shares on Alternext may not only benefit from the possibility of not having to prepare and register a prospectus with the CMVM, but will always be waived from complying with requirements related to any minimum mandatory free float (as a percentage of the company's share capital).

iii Overview of law and regulations

The Portuguese Securities Code (PSC), enacted by Decree-Law No. 486/99 of 13 November 1999, is the key piece of legislation in Portuguese securities law.

Over the past 18 years, the PSC has been shaped by the local incorporation of several European Union Directives, the most important of which are:

a the Prospectus Directive,[4] which is the most important with respect to IPOs as it regulates the obligation to prepare and register a prospectus with the local regulator (the CMVM), and the contents and liability for such prospectus;

b the Transparency Directive,[5] setting out the obligation to disclose information with respect to publicly traded companies;

c MiFID, governing the existence and functioning of regulated markets and MTFs and, in general, the conduct of the agents (namely, financial intermediaries) participating in these markets;

d the Market Abuse Regulation (MAR),[6] imposing limits on insider dealing and market manipulation (regulating, for instance, the use of stabilisation measures in IPOs and other public offerings); and

e the Takeover Directive,[7] governing matters related to takeovers of publicly traded companies, including mandatory takeovers.

3 Sources: for the United Kingdom, the Financial Services and Markets Act 2000 and the official public guide available at www.londonstockexchange.com/home/guide-to-listing.pdf, and for the stock exchanges in the United States of America the official public guides available at https://listingcenter.nasdaq.com/assets/continuedguide.pdf and www.nyse.com/publicdocs/nyse/listing/NYSE_Initial_Listing_Standards_Summary.pdf.

4 Directive 2003/71/EC of the European Parliament and the Council of 4 November 2003, as amended.

5 Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004, as amended.

6 EU Regulation 596/2014 of the European Parliament and the Council of 16 April 2014, which entered into effect on 3 July 2016.

7 Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids.

The legal regime set out in the PSC is supplemented by several other pieces of legislation and further developed in the regulations and instructions issued by the CMVM, pursuant to its regulatory powers, and in the rules adopted by entities with self-regulation capacity, in particular the management entities of securities markets and securities depositary and settlement systems, such as Euronext Lisbon and Interbolsa – Sociedade Gestora de Sistemas de Liquidação e de Sistemas Centralizados de Valores Mobiliários, SA (Interbolsa).

In addition to these rules and regulations, the CMVM's recommendations and opinions, although they do not have a binding effect, are also considered by market participants as guidance for the application and clarification of applicable laws.

The CMVM also maintains an information disclosure system that is available to the public on its website,[8] which includes, *inter alia*, decisions of interest to the public and other information notified to the CMVM or approved by it, such as disclosure by regulated entities of inside information and qualifying holdings and accounts filed with the CMVM.

Furthermore, all securities listed on a regulated market in Portugal must be registered with the Portuguese centralised securities depositary system (CVM) managed by Interbolsa, even when they are originally registered with a foreign depository and settlement system. Consequently, Interbolsa plays a major role in Portugal in the offering of shares, in particular IPOs.

Considering all of the above, there are three main sets of legal rules that issuers, shareholders and financial intermediaries involved in preparing and launching an IPO in Portugal must take into special account:

a The framework governing the prospectus. Except in specific cases, such as when the offer is limited to qualified investors[9] or is otherwise carried out through a private placement, the listing of a company will always require the registration of a prospectus with the CMVM. Also, it is important to be aware of the rules on advertisement during public offerings, where all marketing materials require the prior approval of the CMVM.

b The rules of conduct applicable to the financial intermediaries involved in this process, stemming from MiFID but also from the MAR.

c Finally, the regulations (including practical guidelines) applicable to the registration and settlement of the issuance with the CVM, which is important in order to develop a close collaboration with Interbolsa.

III THE OFFERING PROCESS

i General overview of the IPO process

The procedure for an IPO on the Portuguese regulated market follows the framework and practice applicable within the European Union, particularly owing to the common requirements in terms of preparation, regulatory approval and disclosure of an offer prospectus, under the terms already described in Section II, *supra*.

8 www.cmvm.pt.

9 As defined under MiFID.

Parties

The main parties within the IPO process are as follows:

a issuer and respective members of the board of directors and supervisory board;

b shareholders of the issuer (if there is a sale of shares or any undertakings of the shareholders under the offer, such as lock-up commitments);

c financial intermediary or intermediaries, appointed to assist the issuer, place or underwrite the securities in the retail offer. The appointment of a financial intermediary for assistance and placing is mandatory, unless the issuer is a financial intermediary authorised to perform this activity;

d financial intermediaries who place or underwrite the shares under the institutional offer;

e auditors of the issuer; and

f local and international legal counsel to the entities referred to in (a) and (b) on one side, and (c) and (d) on the other side.

Timeline

Concerning the timeline, an IPO procedure may last from 45 to 65 days from starting drafting the prospectus until the shares start trading, the upper part of the range applying when the IPO is performed totally or partially as a share capital increase and a general meeting needs to be called for approval thereof.

Documentation

As mentioned above, the main piece of documentation within the IPO is the prospectus, which shall be drafted in accordance with the provisions of the PSC implementing the Prospectus Directive.

According to the PSC, the public offer may only start after a prospectus has been approved by the CMVM.

The application for the approval of the prospectus must be submitted to the CMVM together with the following key documents within the IPO:

a a copy of the resolutions authorising the issuance and offer of securities passed by the issuer's[10] competent bodies, and any required management decisions;

b a copy of the issuer's by-laws;[11]

c a current certificate of company registration of the issuer;[12]

d a copy of the management reports and accounts, the opinions of the supervisory corporate bodies and the legal certification of the issuer's accounts for the periods required under Commission Regulation 809/2004 of 29 April (the Prospectus Regulation);

e a report or statement from a chartered accountant or a chartered accountancy firm;

f the identification code or codes of the securities covered by the approval request;

g a copy of the agreement with the financial intermediary assisting in the transaction;

h a copy of the placement or underwriting agreement and the placement or underwriting consortium agreement concerning the retail offer, if applicable;

10 Or seller's competent bodies, in case of sale of shares pursuant to the initial public offer.

11 And of the seller, in case of sale of shares pursuant to the initial public offer.

12 And of the seller, in case of sale of shares pursuant to the initial public offer.

i a copy of the market making agreement, stabilisation contract and overallotment facility (greenshoe option) concerning the retail offer, if applicable;[13]
j the draft prospectus; and
k the *pro forma* financial information, if required.[14]

ii Pitfalls and considerations

Shareholders pre-emption rights in IPOs with share capital increase

When the IPO of a company incorporated in Portugal comprises a share capital increase in cash, it should be noted that pre-emption rights for the subscription of new securities are granted in law to current shareholders, *pro rata* to their existing holdings.

Pre-emption rights can be limited or excluded by a separate resolution at the general shareholders' meeting that approves the share capital increase, provided that the limitation or exclusion is duly grounded and is in the best interest of the issuer. This separate resolution shall be approved, alongside the resolution approving the share capital increase, by a qualified majority of two-thirds of the issued votes, either on first or second call, unless on a second call at least one-half of the share capital is present or represented, in which case the corresponding resolutions may be passed by a simple majority of votes.

In the event that the board of directors proposes to limit or exclude pre-emption rights for the purpose of the IPO, the board must submit a written report to the general shareholders' meeting, stating:

a the reasons behind such a proposal;
b the means of allotting new shares;
c the conditions under which the shares are to be paid up;
d the issue price; and
e the criteria used to determine this price.

Shareholders must be allowed to access this report for 15 days prior to the date of the general shareholders' meeting approving the share capital increase.

Pricing issues

One of the matters that commonly raises more issues in an IPO is the mechanism to determine the final offer price.

Pursuant to the PSC, the prospectus may not include the final price and quantity of securities offered provided that:

a the prospectus includes the criteria or conditions according to which the offer price and the number of offered shares will be determined or, concerning price, the maximum price is included in the prospectus; or
b the acceptance of acquisition or subscription of the shares may be withdrawn within no fewer than two business days after the final offer price being disclosed.

13 Clauses on market making, stabilisation and overallotment facility (greenshoe) may be included in the underwriting agreement referred to in (h).

14 Generally, *pro forma* financial information is required in case of a significant change in the situation of an issuer due to a particular transaction, with the exception of situations where merger accounting is required.

In the scenario referred to in (a), the final price only needs to be announced after the offer is closed. In this case, there is no period during which investors may withdraw their acceptance.

In this regard, in Portugal it is common to issue a prospectus containing a price range (i.e., a maximum price) and then market with a view to book-building. The final price is determined after gauging valuations from the different institutional investors that were sounded during the roadshow. This was the procedure adopted in the IPOs of CTT Correios de Portugal in December 2013 and of Espírito Santo Saúde (currently Luz Saúde) in February 2014.

In the scenario referred to in (b), the final price shall be announced through the issue of a pricing announcement, and acquisitions and subscriptions of securities in the offer may be withdrawn for a period of no fewer than two business days after the final offer price being disclosed.

iii Considerations for foreign issuers

First, public offer and listing prospectuses exclusively prepared in Portugal must be drawn up in a language accepted by the CMVM, which in practice is Portuguese. If, however, the public offer and listing prospectuses are prepared in one or more Member States other than Portugal, for which the CMVM is the competent authority, they may be drawn up in the language of choice of the issuer, provided that such language is accepted by that Member State's competent authorities, or is a language customary in international finance. In practice, the CMVM only considers English as such.

Second, except where securities are admitted to trading on a regulated market situated or operating in a European Union Member State, the CMVM may ask the issuer to submit a legal opinion attesting the satisfaction of the general eligibility criteria concerning the shares and the valid existence of the issuer in accordance with its governing law.

Third, foreign issuers must appoint a financial intermediary for liaising with the market where the securities will be admitted to trading, which must be (1) a credit institution authorised to carry out its activity in Portugal; and (2) a member of the CVM. Such financial intermediary is responsible for, among other matters, submitting the listing application and ensuring compliance with the listing procedures, liaising with the relevant local entities on behalf of the issuer, providing the exercise of the economic rights inherent in the listed securities as well as the information that it is required to provide by law.

In addition, where the shares to be listed are registered with a foreign depository and settlement system, the financial intermediary is responsible for ensuring that such shares are also registered in individual accounts opened with participants in the foreign settlement system, in permanent coordination with such foreign participant.

Finally, foreign issuers will also be subject to the post-IPO requirements described in Section IV, *infra*.

IV POST-IPO REQUIREMENTS

A company that has its shares subject to an IPO and admitted to trading in Portugal must fulfil certain post-IPO disclosure obligations, some of which are given below.

i Disclosure of inside information

The concept of inside information is set forth in Article 7(1)(a) of the MAR. Under the MAR, inside information means information of a precise nature that has not been made

public, relating directly or indirectly, to one or more issuers of financial instruments[15] or to one or more financial instruments that, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of the related derivative financial instruments.

Article 17 of the MAR prescribes, moreover, that an issuer shall inform the public as soon as possible of inside information that directly concerns the issuer.

ii Disclosure of qualified shareholders communicated thereto by the relevant holders

Article 16 of the PSC, which implemented Chapter III of the Transparency Directive in Portugal, imposes obligations on holders of voting rights and issuers to make notifications regarding the percentage of voting rights held in the issuer once specified thresholds are exceeded. The notification requirement is triggered by having control over the exercise of voting rights attached to shares, rather than merely by the holding of interests in shares themselves.

Upon triggering notification requirements, the holder shall notify the issuer and the CMVM of such event as soon as possible but in any event no later than four trading days upon acknowledging the relevant event (such acknowledgment being presumed to take place two trading days after the transaction date). The issuer is subsequently obliged to disclose such information to the public as soon as possible but no later than three trading days upon receiving the notification from the relevant holder.

iii Disclosure of transactions performed by persons discharging managerial responsibilities

Pursuant to Article 19(1) of the MAR, persons discharging managerial responsibilities, as well as persons closely associated with them, shall notify the issuer and the CMVM of every transaction conducted on their own account relating to the shares or debt instruments of that issuer, or to derivatives or other financial instruments linked thereto, provided than an aggregate threshold of €5,000 for the financial year has been exceeded.[16] Such notification shall be made promptly and no later than three business days after the date of the transaction. The issuer shall ensure that the information above is made public promptly through the CMVM website.

iv Periodic financial reporting: annual, semi-annual and quarterly financial reports

Pursuant to Article 245 et seq. of the PSC, which implemented Chapter II of the Transparency Directive in Portugal, the following items shall be available to the public within four months from the close of the financial year:

15 The definition comprises (1) financial instruments admitted to trading on a regulated market or for which a request for admission to trading on a regulated market has been made; (2) financial instruments traded on an MTF, admitted to trading on an MTF or for which a request for admission to trading on an MTF has been made; (3) financial instruments traded on an organised trading facility; and (4) financial instruments not covered by any of the previous items, the price or value of which depends on, or has an effect on, the price or value of a financial instrument referred to in the previous items, including, but not limited to, credit default swaps and contracts for difference.

16 Threshold defined in Article 19(8) of the Market Abuse Regulation, although the CMVM may increase the threshold up to €20,000, under the terms set forth in Article 19(9) of the Market Abuse Regulation.

a the management report, the annual accounts, the audit report and other accounting documents required by law or regulation;
b the report of an external auditor; and
c statements of responsibility from the persons responsible within the issuer, whose names and positions are to be clearly indicated.

Issuers of shares must also publish, as part of their annual management report, information on the corporate governance structure and practices.

Such issuers must also disclose, within two months from the end of the first six months of their financial year, the following documentation with regard to their activity for such period:

a a condensed set of financial statements, containing at least:
- a balance sheet; and
- a condensed profit and loss account and explanatory notes on such accounts prepared in accordance with the same accounting principles used in the preparation of the annual financial reports;

b an interim management report, including, at a minimum, an indication of significant events that have occurred during such period and their impact on the condensed set of financial statements, together with a description of the principal risks and uncertainties for the remaining six months on the financial year; and
c statements of responsibility from the persons responsible within the issuer, whose names and positions are to be clearly indicated.

Finally, with the exception of credit institutions and financial companies with their shares admitted to trading in Portugal, other issuers are not required to report quarterly financial information. However, in that case they must do so for at least two years counting from their first quarterly disclosure.

v Transactions in own shares

Portuguese issuers of shares admitted to trading on a regulated market in Portugal must, within three business days from the date of the relevant transaction:

a notify the CMVM of such transactions; and
b publicly disclose:
- the final position resulting from the relevant transaction reaching, exceeding or falling below 1 per cent of the share capital or any multiples thereof; and
- all acquisitions and disposals, regardless of the respective net balance, executed in the same stock market session, reaching or exceeding 5 per cent of the trade volume negotiated during such stock market session.

These disclosure obligations also arise for a parent company with respect to transactions in its securities by a controlled company.

However, the disclosure obligations described in (b) above do not apply to transactions in an issuer's own securities that are made in execution of liquidity provider agreements entered into in accordance with the accepted market practice as stated by the CMVM. Such transactions must nevertheless be disclosed to the CMVM at the end of each quarter.

V OUTLOOK AND CONCLUSION

When studying the national environment for IPOs, one mainly looks into the applicable legal framework and the market practices in terms of offer structures.

Concerning this legal framework, Portuguese law has benefited from the harmonised EU legislation on information disclosure, by means of the Prospectus Directive, the Transparency Directive and the MAR, thereby providing enhanced comfort to issuers and investors in the Portuguese capital markets.

On the other hand, the fact that there were only two IPOs on the regulated market in Portugal since 2008 – although there were many secondary public offers – implies a lack of precedents in comparison with mature markets in continental Europe such as Germany or France.

In spite of the above, the clear legal framework and a sophisticated regulator have created the means for Portugal to welcome an increase in the volume of IPOs, both for blue-chips (on regulated markets) and SMEs (on alternative exchanges tailored thereto). Innovative solutions, such as the SME growth market provided by the MiFID II regulatory package (expected to come into force by the beginning of 2018) may certainly boost this expected trend and contribute to making capital markets a real alternative to traditional bank financing in Portugal.

Appendix 1

ABOUT THE AUTHORS

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Uría Menéndez

Carlos Costa Andrade has been a partner in the Lisbon office of Uría Menéndez since 2005. Between 1996 and 1999, he was in-house counsel (issuers and market division) at NYSE Euronext Lisbon – Sociedade Gestora de Mercados Regulamentados, SA. Since 2012, he has divided his practice between Uría Menéndez's Lisbon and London offices'.

His practice includes capital markets, M&A and corporate governance.

Alongside his work as a lawyer, Carlos Costa Andrade also holds several management positions and is currently a member of the Equity and Fixed Income Committee of BM&F BOVESPA and secretary to the General Assembly of OPEX.

Carlos is among the most highly regarded banking and finance and capital markets lawyers according to *Chambers Global Portugal*, *IFLR 1000 Portugal* and *The Legal 500*.

ANA SÁ COUTO

Uría Menéndez

Ana Sá Couto joined Uría Menéndez in 2002 and was appointed counsel in January 2010. She is a member of the capital markets practice group. Between 1997 and 2002, she carried out activities for another Portuguese law firm.

She focuses her practice on capital markets, mergers and acquisitions, commercial and corporate law, corporate governance, banking and financial law.

She has participated in several major transactions connected to listed companies and issuers of various types of securities, especially privatisations, OPAs, OPVs, IPOs, ABOs, offer and admission to trading of different types of financial instruments (including structured products), collective investment schemes and venture capital, constitution and regular monitoring of different types of credit institutions and financial intermediaries.

Ana has been singled out by *Chambers Global* and *Chambers Europe* for her work on capital markets in Portugal, as well as other relevant directories.

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