

OCTOBER 2018

**LEGAL FRAMEWORK ON THE ACCESS TO AND THE EXERCISE OF THE ACTIVITY OF
CREDIT INTERMEDIARY****REGULATION AND SUPERVISION**

Decree-Law no. 81-C/2017 of 7 July transposed to the national legal order Directive no. 2014/17/EU of the European Parliament and of the Council, which approves the legal framework establishing the requirements for the access to and the exercise of the activity of credit intermediary and the provision of advisory services.

The entry into force of the legal document deems credit intermediation an activity regulated by and subject to *Banco de Portugal's* [Bank of Portugal's] supervision, the entity which becomes responsible, specifically, for authorizing the exercise of such activities, supervising the behavior of credit intermediaries and punishing potential breaches of the law.

The entities which, on the 1st January 2018, already performed credit intermediation in Portugal may continue to do so until the 1st January 2019 (having unfailingly to conclude the process of registration before *Banco de Portugal* [Bank of Portugal] until that date), without any prior authorization, notwithstanding the observation of conduct, information and assistance duties set forth in the corresponding legal framework and other regulatory provisions.

All entities that have an intention to start exercising this activity after the 1st January 2018 must register themselves before the *Banco de Portugal* [Bank of Portugal] for this purpose.

THE CREDIT INTERMEDIARY

The credit intermediary is the natural or legal person who takes part in the credit granting process: **(i)** presenting or offering credit agreements to consumers; **(ii)** providing assistance to consumers by undertaking preparatory work or other pre-

contractual administration in respect of credit agreements, even if proposed by another; **(iii)** concluding credit agreements with consumers on behalf of lending institutions; **(iv)** providing advisory services through issuing personalized recommendations on credit agreements.

By means of example, the following will be considered credit intermediaries: **(i)** real estate agents who propose or assist in the conclusion of housing credit agreements; **(ii)** car dealerships or sellers who propose or assist in the conclusion of consumer credit agreements; **(iii)** commercial establishments which propose or assist in the conclusion of consumer credit agreements.

The credit intermediary is not authorized to grant credit nor to intervene in the marketing of other banking products or services such as, for instance, term deposits or payout services.

CATEGORIES OF CREDIT INTERMEDIARIES

The abovementioned legal framework provides for three different categories of credit intermediaries, who cannot exercise the activity in more than one:

- 1. Credit Intermediary in an Ancillary Capacity:** The natural or legal person who supplies goods or provides services and who, acting on behalf and under the full and unconditional responsibility of the single creditor or several creditors, behaves like a credit intermediary, aiming at selling the goods or services that it offers.
- 2. Tied Credit Intermediary:** The natural or legal person who acts as a credit intermediary on behalf of and under the full and unconditional responsibility of the single creditor or several creditors with whom they have concluded a binding contract;
- 3. Non-tied Credit Intermediary:** The legal person who acts as a credit intermediary without having concluded a binding contract with any creditor. This intermediary agrees on an intermediation contract with the consumer, in which the

terms and conditions for the provision of the credit intermediation are established.

ACCESS REQUIREMENTS

The access and exercise of the activity of credit intermediary becomes, with the entry into force of the legal framework at hand, subject to previous authorization of *Banco de Portugal* [Bank of Portugal], which can be obtained after demonstration that several conditions have been fulfilled, namely: **(i)** adequate commercial and administrative organization; **(ii)** adequate knowledge and expertise; **(iii)** good repute of the interested parties; **(iv)** non-existence of incompatibilities with the activity.

SANCTIONS FRAMEWORK

Only credit intermediaries may use the expressions “*credit intermediary*”, “*credit mediator*”, “*credit agent*” or equivalent in their trade or business name.

In the event that the authorization for the exercise of the activity fails to be obtained until the 1st January 2019, those entities are prohibited from performing credit intermediation acts, under penalty of a fine ranging from € 1,000.00 to € 500,000.00 (natural persons) or € 3,000.00 to € 1,500,000.00 (legal persons).

PARES | Advogados is available to provide more client-specific information on the legal and regulatory frameworks applicable to credit intermediaries, being able to render the necessary support to the credit intermediary registration process before the *Banco de Portugal* [Bank of Portugal].

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