



CMVM

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CMVM Regulation No. 2/2010 Investor Compensation Scheme (Amends CMVM Regulation No. 2/2000)

Decree-Law No. 162/2009 of 20 July and Ministerial Order No. 1426-A/2009 of 18 December amended the legal framework for the Investor Compensation Scheme, approved by Decree-Law 222/99 of 22 June and the Investor Compensation Scheme Regulation, approved by Ministerial Order No. 1266/2001 of 6 November.

On account of these changes, the corresponding amendments need to be made to CMVM Regulation No. 2/2000 on the Investor Compensation Scheme.

The amendment to this Regulation virtually confines itself to what is required in order to be in conformity with the amendments implemented by the abovementioned legislation.

The key amendment concerns establishing a ceiling to the amount of the contribution that each participating entity is obliged to make in the event of a claim being lodged against the Scheme that is set at 2.50% of their core capital.

Moreover, further clarification by Decree-Law No. 162/2009 of 20 July on the scope of the Scheme's cover are also specifically included in the list of examples that define the concept of funds from investment transactions corresponding to the guarantees for repayment of the amounts determined or determinable, which the participating entity is under obligation to the investors, in accordance with the contractual terms of investment transactions, and the mode of establishing these amounts is established.

Thirdly, the updated list of financial instruments covered by reference to the Directive on Markets in Financial Instruments (MiFID) and the introduction of some *ad hoc* adjustments in transaction matters is particularly salient.

Thus, pursuant to the provisions of Article 6/3 and Article 23/3 of Decree-Law 222/99 of 22 June, and after consultation with the Portuguese Central Bank, Executive Committee of the Investor Compensation Scheme, Portuguese Banking Association, APC - Portuguese Association of Brokers and Financial Brokerage and APFIPP - Portuguese Investment Funds, Pension Funds and Asset Management Association, the Executive Board of the CMVM approved the following Regulation:

Article 1
Amendments to CMVM Regulation No. 2/2000

Articles 2, 4, 5, 8 and 9 of CMVM Regulation No. 2/2000 are hereby amended to read as follows:

'Article 2
(...)

1. (...)

a) (...)

b) (...)

2. (...)

a) (...)

b) (...)

c) (...)

d) (...)

e) In accordance with the contractual terms of investment transactions, the funds corresponding to the guarantees for repayment of the determined or determinable amounts that the participating entity is under obligation to the investors, in so far as the value of the guaranteed amount exceeding the net value of the assets assigned to investment transactions that guarantee the repayment in question.

3. For the purposes of paragraph 1/b), the assets referred to in Section C of Appendix 1 of Directive 2004/39/EC of the European Parliament and Council of 21 April 2004 on Markets in Financial Instruments are considered to be financial instruments.

4. In calculating the value of funds and financial instruments referred to in the preceding paragraphs, the participating entities shall proceed as follows on the reference date of the information:

a) The funds' values are converted into Euros at the respective currency exchange rates;

b) Securities are assessed on the basis of the last most liquid market price, with the amounts to be converted to Euros at the respective exchange rates or, in the absence of a market price in the last 30 days:

i) Investment units in collective investment undertakings are assessed at the market value last reported by the management entity;

ii) The other securities are assessed according to the average of the last best bids and offers distributed through specialized entities, or in the absence thereof, based on purchase price or in the absence thereof, at par value;

iii) In lieu of the criteria referred to in point ii) above, the participating entities may use the theoretical value obtained by utilising valuation models used and universally recognized in the financial markets, ensuring that the assumptions utilised in the assessment conforms to noted market conditions;

c) The money market instruments are assessed according to the valuation criteria of off-balance sheet items contained in the Banking System Accounting Plan as defined by the Portuguese Central Bank (*Banco de Portugal*), with the amounts to be converted to Euros at the respective exchange rates.

d) The derivatives are assessed on the basis of margins established for each client at the participating entity and, where applicable, the balance of daily gains and losses, or in the absence of margins, on the basis of positive results that the client would receive if the contract was settled, with the calculated amounts to be converted to Euros at the respective exchange rates in both instances.

5. The Scheme may request a general statement of opinion on the method of assessing the financial instruments invested or to be invested by the participating entity, at the expense of said entity, from another specialized entity for the purpose of assessing the financial instruments at issue.

6. The information referred to in the preceding paragraphs shall be provided in an itemised format for each eligible customer and include the following:

a) The tax identification number of the client;

b) The number of each account wherein the client is the account holder or joint account holder;

c) The financial instruments recorded in each account;

d) The quantity and value of financial instruments recorded in each account in proportion to the joint holdership of the client;

e) The amount of funds from investment transactions referred to in paragraph 2 above, including the related guarantees of repayment to the extent provided in the final part of paragraph e) thereof, which relates to each account in proportion to the joint holdership of the client.

Article 4 (...)

1. (...)

2. The Scheme's Executive Committee may decide by resolution to waive, wholly or partially, payment of the amount referred to in the preceding paragraph by all the participating entities for each year.

3. (...)

Article 5
(...)

1. (...)

2. (...)

3. The provision of any information whatsoever by the participating entity to the Scheme must be signed by at least one director or one of the persons referred to in paragraph 1.

4. (...)

Article 8
(...)

1. (...)

2. The pledge consists of instructions issued by the participating entity to the managing entity of the Central Securities Depository or, when the financial intermediary entitled to provide the activity referred to in Article 291/a) of the Securities Code does not have direct access to this system, this in turn should appear in the account opened in the Central Securities Depository.

3. (...)

4. (...)

5. The securities that may be subject to the pledge referred to in the preceding paragraphs consists of securities admitted to trading on regulated markets, issued or guaranteed by entities whereby credit institutions and financial companies are exempt from establishing reserves for specific credit risk and that have a redemption period of greater than 18 months on the date of creation or modification of the pledge and every update thereof referred to in the preceding paragraph, provided that the law applicable to the constitution of a pledge allows for extrajudicial enforcement.

6. The securities pledged and assessed on the basis of the average closing prices recorded in the last five sessions of the relevant market of the month prior to the date of creation or modification of the pledge and every update thereof referred to in paragraph 4, should correspond to an amount equal to or greater than 107.5% referred to in paragraph 1.

7. Whenever the pledged securities, which were assessed by the average closing or reference price recorded in the last five sessions of the relevant market, represent less than 92.5% of the amount referred to in paragraph 1, the participating entity should increase the pledge in order to restore the percentage referred to above.

8. (...)

9. (...)

10. (...)

Article 9
(...)

1. In the event of a claim being lodged against the Scheme, the contribution of each participating entity represents a percentage of the total value of compensation resulting from the ratio of the value of the funds and financial instruments listed in Article 2. This is covered by the Scheme and held, administered or managed by that entity and the value of funds and financial instruments covered by the Scheme and held, administered or managed by all participating entities, including the entity that caused the claim to be lodged against the Scheme, with a maximum of 2.5% of their core capital according to the latest information with reference to the date that the claim was lodged, transmitted by the Portuguese Central Bank (*Banco de Portugal*), at the request of the Scheme's Executive Board.

2. (...)

3. (...)

Article 2
Entry into force

This Regulation shall enter into force the day following its publication.

Lisbon, 12 March 2010

The Chairman of the Executive Board, Carlos Tavares, Vice-Chairman of the Executive Board, Amadeu Ferreira