

Notice No 11/2005

Whereas the opening of a bank deposit account is a crucial bank operation, which frequently starts a long-lasting business relationship between a client and a credit institution, requiring, as far as possible, a complete, sound and permanently updated knowledge of the identification elements of a client, of his/her representatives and of those authorised to operate the account in question;

Whereas it is necessary to ensure transparency and with a view to the establishment of fair and reliable relationships, the client shall be provided with timely and detailed information on the terms and conditions and contents of a bank deposit contract, including those relating to its operation, which shall always be updated;

Whereas it is convenient to clarify that the opening of a bank deposit account can be non-presential, i.e. it can be made through the most modern distance communication tools, namely through electronic means; however, the specific risks involved in these operations shall be taken into account as well as the fact that in the light of the legislation currently in force, the electronic transfer of the documents required for verifying the identification of the client does not suffice by itself, as such documents must be kept by the institutions;

Whereas it is important to regulate the requirements, which from a bank point of view, must be complied with in the opening of a bank deposit account, irrespective of the fulfilment of additional requirements, of civil or other nature, to which the institutions are subject by virtue of other regulatory provisions:

Banco de Portugal has decided to update the requirements relating to the opening of bank deposit accounts. Thus, in use of the powers conferred on it by Article 17 of its Organic Law and by Article 7 of Decree-Law No 454/91 of 28 December 1991, Banco de Portugal provides for the following:

CHAPTER I

General provisions

Article 1

Scope and addressees

This Notice regulates the general conditions relating to the opening of bank deposit accounts in the following credit institutions having their head office or a branch in the national territory:

- a) Banks;
- b) Savings banks (*caixas económicas*);
- c) Central Mutual Agricultural Credit Bank (*Caixa Central de Crédito Agrícola Mútuo*);
- d) Mutual Agricultural Credit Banks (*caixas de crédito agrícola mútuo*).

Article 2

Special duty of care

When opening a deposit account, credit institutions must act with particular care, adopting the required procedures:

- a) Full identification and respective verification of each holder of the same account, the respective representatives and any other third party authorised to operate the account in question;
- b) Confirmation of the truthfulness and adequacy of the instruments conferring the powers to represent and operate the accounts.

Article 3

General terms and conditions of the bank deposit contract

1 – Prior to the opening of a bank deposit account and without prejudice to the fulfilment of any other information duties, provided for by law, credit institutions shall provide the respective clients with a printed version of the general terms and conditions governing the bank deposit contract to be entered into, or, with the client's agreement, with any other long-lasting means, enabling the easy access to the information stored in them and its full and unchanged reproduction.

2 - Credit institutions must prove evidence of having provided the holders of the accounts or their representatives with the general terms and conditions governing the bank deposit contract, even when the account was opened without direct and personal contact between the credit institution and its client.

CHAPTER II

Identification procedures

SECTION I

General principles

Article 4

Requirements related to supporting documents

1 - Without prejudice to the provisions of Article 10 (3) and (4) and of subparagraph (b) of Article 12 of this Notice, the opening of a deposit account requires always the presentation of a valid identification document, with the photo and signature of its holder, issued by the competent official authority.

2 – The confirmation by the client of any particulars required for the opening of an account can only be made by means of original documents or duly certified copies.

3 – Whenever the documents submitted to credit institutions for the opening of a deposit account raise doubts as to their content, truthfulness, authenticity, correctness, accuracy or sufficiency, the said institutions must seek the confirmation of the identification elements mentioned in Article 9.

Article 5

Compilation and keeping of documents

1 – Credit institutions when opening an account and in the subsequent updating of information particulars related thereto, must make legible copies of the documents submitted to them.

2 – Documents compiled by credit institutions for the purpose of opening or updating deposit accounts shall be kept in paper or any other long-lasting support, enabling the full and unchanged reproduction of information within five years as of the close-out of the account in question.

3 – The provisions of (2) above do not prejudice compliance by credit institutions with other legal obligations to which they are subject regarding the compilation and keeping of documents.

Article 6

Employee's identification duty

Employees of credit institutions, when opening and updating information on deposit accounts, as well as when verifying and confirming the documents produced, shall inscribe in the internal registrations their clear identification and the respective date.

Article 7

Identification of financial sector entities

1 - Credit institutions are waived from complying with the identification procedures provided for in this Notice regarding the entity holding the account and any representative, when they open accounts, whose holders are currently and effectively:

Financial entities envisaged in Article 13 of Law No 11/2004 of 27 March;

Credit institutions, financial corporations or insurance companies, in so far as they carry on activities in the life insurance branch, established in another European Union Member State or in a country or territory listed in Annex 1 to Instruction of Banco de Portugal No 26/2005, including the branches established in these geographical areas.

2 – The provisions of (1) above do not exempt credit institutions from accurately verifying and compiling the information particulars that authenticate the granting and exercise of representation powers for the opening of accounts.

Article 8

Opening requirements and limits to the operation of accounts

1 - Credit institutions can only open deposit accounts in the name of entities that provide them with all the identification elements mentioned in Article 9, applicable to the situation in question, as well as the documentary evidence of the information particulars referred to in subparagraphs (a) to (e) of (1) and (a) to (d) of (2) of the same Article, without prejudice to the provisions of the following paragraph.

2 – As long as credit institutions are not in possession of the documentary evidence foreseen in Article 9, credit institutions cannot allow any credit or debit

entries in the account after the initial deposit, make available any payment instruments related to the said account or make any changes in their holders.

SECTION II

Opening of bank deposit accounts in personal presence

Article 9

Identification elements

Whenever credit institutions open a bank deposit account in personal presence, the respective files shall contain, at least, the following elements, relating to each of the account holders and to their representatives, as well as any other third parties authorised to operate the account in question:

1) In the case of natural persons:

- a) Full name and signature;
- b) Date of birth;
- c) Birthplace;
- d) Nationality;
- e) Name of parents;
- f) Full address;
- g) Profession and name of employer;
- h) Official posts held;
- i) Type, number, date and entity issuing the identification document;

2) In the case of legal persons:

- a) Business name;
- b) Purpose;
- c) Address of the head office;
- d) Legal person identification number;
- e) Identity of the holders of equities and voting rights of the legal person equal to or higher than 25%;

f) Identity of the holders of the management bodies of the legal person;

3) In the case of accounts held by individual entrepreneurs, the respective account opening form shall contain the legal person identification number or the taxpayer identification number, the business name, the address of the head office and the purpose, besides the identification elements referred to in (1) above;

4) In the case of accounts held by limited liability individual enterprises or by “collective centres of interest” without legal personality, such as condominiums of buildings submitted to the horizontal property regime and autonomous properties, negotiated under the terms of the general law, the provisions of (2) above shall be applicable, duly adapted;

5) For the purposes of this Notice, holders of official posts are considered to be, namely, the members of sovereignty bodies, executive members of the central, regional and local government and the members of the management bodies of entities under the indirect administration of the State.

Article 10

Supporting evidence

1 – With respect to natural persons:

a) The identification elements mentioned in subparagraphs (a) to (d) of Article 9 (1) must be supported by the following evidence:

With regard to residents, through the presentation of the identity card or any other document replacing it under the terms of Portuguese law, passport or permit of residence in the national territory;

With regard to non-residents, through the presentation of the passport, identity card or any other document that complies with the requirements laid down in Article 4 (1) of this Notice;

b) The identification element referred to in subparagraph (e) of Article 9 (1), if not referred to in any document mentioned in the previous subparagraph, must be confirmed through a civil registration certificate or in the case of non-nationals, through an equivalent official document;

- c) The identification element referred to in subparagraph (f) of Article 9 (1) must be confirmed through any supporting evidence deemed suitable and sufficient by the credit institution or through a suitable means intended to confirm the address stated;
- d) The identification element referred to in subparagraph (g) of Article 9 (1) must be confirmed through the presentation of a professional card, wage receipt or any other supporting document;
- e) The identification element referred to in subparagraph (h) of Article 9 (1) does not require any supporting evidence.

2 – With respect to legal persons:

- a) The identification elements referred to in subparagraphs (a) to (c) of Article 9 (2) shall be confirmed through the presentation of a commercial registration certificate or any other official document;
- b) The identification element referred to in subparagraph (d) of Article 9 (2) shall be confirmed through the presentation of the identification card issued by *Registo Nacional de Pessoas Colectivas* (National Registration of Legal Persons), or in the case of non-residents, through an equivalent document;
- c) The identification elements referred to in subparagraphs (e) and (f) of Article 9 (2) may be confirmed through a written declaration issued by the legal person itself, containing the name or the business name of the holders.

3 - When opening a bank deposit account in the name of a minor (a person under 18 years of age), who due to his/her age does not hold any of the documents referred to in subparagraph (a) of (1), the confirmation of the respective identification elements shall be made through the presentation of the birth bulletin, birth certificate, or in the case of non-nationals of an equivalent official document, to be presented by the person who has proved to have legal powers to negotiate the opening of the account through any documentary evidence deemed suitable and sufficient by the credit institution.

4 – Where the natural or legal person to be identified is not a resident in the national territory and has not unequivocally confirmed any of the identification elements referred to in the foregoing Article, credit institutions may request the confirmation in writing of the truthfulness and correctness of the information provided, issued by a credit institution in which the said person is already the

holder of a bank deposit account and which is established in a Member State of the European Union or in a country or territory mentioned in Annex 1 to Instruction of Banco de Portugal No 26/2005, to be directly sent by the issuer to the institution where the account will be open.

5 – For the purposes of this Notice, the concepts of resident and non-resident are those provided for in Decree-Law No 295/2003 of 21 November.

SECTION III

Opening of bank deposit accounts without personal presence

Article 11

Identification elements

Whenever credit institutions open a bank deposit account without direct and personal contact with the respective holder or his/her representative, credit institutions shall fully comply with the identification requirements envisaged in Article 9.

Article 12

Supporting evidence

The confirmation of the identification elements referred to in the foregoing Article shall be made, at least, through one of the following means:

- a) Remittance to the credit institution, by registered letter, of a certified copy of the supporting evidence of the identification elements required in accordance with the provisions laid down in Article 10;
- b) Written declaration confirming the truthfulness and correctness of the information provided by the interested party, issued by a credit institution in which the said person is already the holder of a bank deposit account and which is established in a Member State of the European Union or in a country or territory mentioned in Annex 1 to Instruction of Banco de Portugal No 26/2005, to be directly sent by the issuer to the institution where the account will be open.

CHAPTER III

Final provisions

Article 13

Information of a tax nature

When opening an account and with respect to each of its holders, credit institutions must make a record of the taxpayer number, as required by Portuguese tax legislation, through the presentation of an original or of a certified copy of the tax payer card.

Article 14

Legal person identification number

Credit institutions are not allowed to enter into a cheque convention nor provide cheque forms to non-resident legal persons having no establishment in the national territory nor to any entity without legal personality, who, pursuant to the terms of the general law, holds a deposit account without the presentation of the respective legal person identification number, assigned by *Registo Nacional de Pessoas Colectivas* (National Registration of Legal Persons).

Article 15

Registration and file updates

1 - Credit institutions shall undertake a thorough examination of the deposit accounts existing on the date of entry into force of this Regulation, on the basis of materiality and risk criteria, which take into account, in particular, the specific characteristics of each account, of its holder and the business relationship, in order to identify the accounts that require the timely update of the corresponding registrations in accordance with the provisions laid down in this Notice.

2 - Credit institutions must establish regular confirmation procedures regarding the correctness of the data included in their registrations, periodically contacting the holders of all accounts and their representatives – at least every five years – for an update of information particulars, in accordance with the provisions laid down in this Notice.

3 - Whenever credit institutions have reasons to doubt the truthfulness or the correctness of the information particulars provided, they shall act in order to update the data included in the registrations mentioned in the foregoing paragraphs.

4 - Without prejudice to the provisions of (2) and (3), credit institutions shall expressly foresee, in the terms and conditions governing deposit contracts, that their clients must communicate any changes in the identification elements foreseen in Article 9 of this Notice.

Article 16

Provision of information

Credit institutions may contact the Payment Systems Department of Banco de Portugal if they have any doubts about the implementation of the provisions of this Notice.

Article 17

Revocation rule

Instruction No 48/96, published in *Boletim de Normas e Informações do Banco de Portugal* No 1 of 17 June 1996 is hereby revoked.

Article 18

Entry into force

This Notice shall enter into force on the 90th day following its publication.

Lisbon, 13 July 2005. - The Governor, *Vítor Constâncio*.