



## BANKING & FINANCE | REGULATORY FRAMEWORK ON THE GRANTING OF EXTRAORDINARY PERSONAL GUARANTEES BY THE PORTUGUESE STATE

Ministerial Order no. 1219-A/2008, of 23 October (“the Order”), which regulates the granting of extraordinary personal guarantees by the State (“the Guarantees”) to credit institutions (“the Beneficiaries”) within the scope set out by Law no. 60-A/2008, of 20 October (“the Law”), was published yesterday.

In accordance with the Order, the Beneficiaries will be credit institutions with head-office in Portugal and the Guarantee is aimed at guaranteeing their commitments under credit facilities as well as under the issue of unsubordinated debt the maturity of which is not less than three months nor more than three years (extendible to five years by means of a duly justified proposal by the Bank of Portugal (“BdP”)).

The Guarantees may be granted or renewed until 31 December 2009. All transactions which benefit from any other kind of guarantee and financing transactions carried out under jurisdictions which do not comply with internationally accepted standards of transparency shall not qualify for Guarantee purposes.

Among the matters regulated by the Order, we would point as the most important ones:

- (i) the procedures referring to the granting of the Guarantees;
- (ii) the follow-up of the Beneficiaries;
- (iii) the consequences arising from the enforcement of the Guarantees; and
- (iv) the value of the commissions to be paid by the Beneficiaries to the guarantor State.

The request for the granting of a Guarantee must be presented to the BdP, along with, *inter alia*, the following data:

- (i) the grounds for, and purposes of, the envisaged transaction;
- (ii) the showing that the Guarantees is necessary in order to ensure the ordinary functioning of the candidate Beneficiary;
- (iii) a draft of the financing transaction at stake or the main transaction documents pertaining thereto;
- (iv) a declaration allowing the disclosure to the Portuguese Treasury Department (“DGTF”) and to the Institute for the Management of Treasury and Public Credit (“IGTCP”) of any elements deemed necessary to the full analysis of the Guarantee’s request; and
- (v) the confirmation that requirements necessary to enable the Guarantee enforcement are fully met.



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The Guarantee request shall be subject to the analysis and opinion of BdP, DGTF and IGTCP which in such analysis shall take into account the contribution of the Beneficiaries for the financing of the national economy, as well as the need and the financial terms and conditions of the financing transactions at stake.

The issue by the BdP and IGTCP of a grounded proposal on the Guarantee request shall take place within eight business days following the respective presentation. Upon receiving such proposal, the finance minister shall decide on said request in the two following business days. If the complexity of the transaction so requires, such deadlines may be extended for equal periods.

In the event of a favourable decision, BdP shall while the Guarantee is outstanding monitor the economic and financial situation of the Beneficiary and its behaviour, by means of its usual supervisory powers, accompanied by any additional data it requires to the Beneficiary. Furthermore, the Beneficiary shall send to the DGTF a copy of the documents confirming capital reimbursements and interest payments under the guaranteed transaction, together with reports on the amounts no longer subject to the Guarantee and shall provide DGTF with information on any changes in the conditions that grounded the granting of Guarantee.

In case the Guarantee is enforced upon a default by the Beneficiary under the underlying financing transaction, the State shall replace the creditor thereof, thus becoming entitled to the respective rights against the Beneficiary. Additionally, in an enforcement context the State also has the ability to, if and when that shows necessary for the protection of its position:

- (i) convert, after consultation with the BdP, the debt into equity of the Beneficiary, including (but not limited to) by way of issuance of preferred shares;
- (ii) decide on the adoption of corporate governance measures, on dividends distribution and on the remuneration of the Beneficiary's officers; and
- (iii) to assign to the Beneficiaries one or more temporary administrators with powers similar to those granted to the temporary administrators nominated by the BdP within the scope of insolvency or financial reorganisation of credit institutions.