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NEWS

BANKING & FINANCE / CAPITAL MARKETS

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EDITORIAL

Pedro Cassiano Santos

Since our last Newsletter, many advances took place in the economic, political and legal contexts, both in Europe and in Portugal, which we try to briefly describe in the upcoming articles.

Firstly, we highlight the fact that the European Union has completed, on April 15th, probably the biggest integration project since the creation of the euro in 1999, with the formal approval of the last step of a process which will certainly and significantly change the future management of banking crises.

The starting point for the structuring of a Banking Union resulted from the recent banking crisis, where the weakness of the national systems were exposed and the inability of several banks to endure their losses without a common management framework has been revealed.

The last step of the Banking Union envisages the embodiment of the second pillar, with the Single Resolution Mechanism (the "**SRM**"), to resolve or restructure banks experiencing severe liquidity or solvency problems, which are incorporated in Member States participants in the Single Supervisory Mechanism (approved in September 2013 by regulation no. ECB/2014/17 of the European Central Bank and implicating the transfer of part of the banking supervision powers from Member States to an European level) and are subject to ECB's supervision. Along with the SRM, the establishment of a Single Bank Resolution Fund was approved, with the main purpose of financing the resolution or the restructuring of European banks experiencing solvency problems, vital tool for the appropriate functioning of the SRM.

Since October 2013, we emphasise the entry into force of (i) Decree-Law 40/2014, executing Regulation (EU) 648/2012 of the European Parliament and of the Council, on OTC derivatives, central counterparties and trade repositories (EMIR), (ii) the Regulation (EU) 575/2013 of the European Parliament and of the Council, establishing new prudential requirements applicable to Credit Institutions and Investment Firms, (iii) Decree-Law 29/2014, amending the legal framework on commercial paper issuances, and (iv) the UCITS V Directive, establishing new rules on depositories, remuneration and sanctions on Undertakings for the Collective Investment in Transferable Securities.

We also highlight the privatisation of circa 70% of CTT's share capital in Portuguese and international capital markets, completed in December 2013, which resulted in a gain to the Portuguese State in the amount of €500,000,000 and revealed many international investors' "appetite" for Portuguese assets. The CTT's share capital is now held by more than 25,000 investors.

At the debt level, the issuance of bonds continues successfully, with particular emphasis to the issuance by EDP of €650,000,000 of 5 year-term bonds, with an interest rate well below 3%, and the public offering of bonds in the amount of €80,000,000, issued by Banif in December 2013.

Also, a reference is deserved to the closing, by EDP and Tagus (a securitisation special purpose vehicle), of a market placement transaction of part of the electricity tariff deficit, related to a deferral over five years of the over costs' recovery resulting from energy production in 2013, giving rise to the issuance of €750,000,000 securitised bonds placed with a set of international institutional investors. This is another sign that the "appetite" from international investors for Portuguese assets has changed and increased in the light of the recent environment. Will this good "appetite" remain?

In April starts the last troika evaluation to the implementation of the financial aid programme, where permanent budgetary adjustment measures are to be decided. More than knowing how we are exiting the programme (there are no doubts on the exit, that being in itself an outstanding result), the question is whether we have learned and corrected what was wrong. This is the ultimate challenge for the next years and all of us need to be engaged to the developments occurring during the next months.

Thank you very much for your attention, and if any comments or suggestions on these and other topics should arise, please do let us know through facp@vda.pt.

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New legal regime of commercial paper

Hugo Moredo Santos / André Menezes Falcão

The Decree-Law no. 29/2014, of 25 February ("**DL 29/2014**"), has reformulated the legal regime of short-term debt securities, commonly designated as «commercial paper».

With the aim of inducing the use of this instrument, broadening companies' financing alternatives, the main innovation contained in DL 29/2014 is the removal of the quantitative limits to the issuance of commercial paper (which hitherto could not exceed the triple of the issuer's own funds). At the same time, this easing is accompanied by strengthened disclosure duties to the market.

Thus it is now possible to issue commercial paper without limits to the raising of funds and regardless of the issuer's own funds level, whenever at least one of the following requirements is fulfilled: (i) being an issuer of securities admitted to trading on a regulated market; (ii) presentation by the issuer of an adequate financial autonomy ratio under the terms to be defined on a CMVM Regulation; or (iii) the existence of a sponsor of the issuer, which must hold at least 5% of the amounts issued in its portfolio, until the maturity date.

The issuer is exempt from these requirements whenever (i) the unit nominal value of commercial paper equals or exceeds €50.000,00, or the subscription is exclusively made in minimum batches equal or superior to €50.000,00; or (ii) the issuance is fully subscribed by qualified investors.

Another innovation is the introduction of the figure of the sponsor of the issuance, who shall have as main functions the market making and the assistance in the compliance of the disclosure duties by the issuer.

It is expected that this new regime enhances the commercial paper issuance markets, turning this instrument into a more attractive financing alternative for companies.

EMIR – The Regulation On OTC Derivative Transactions

Pedro Simões Coelho / Ana Moniz Macedo

After being appointed as one of the main causes of the 2008 financial crisis, derivative transactions made out of the regulated market (OTC) were subject to regulation at European level, through the publication of Regulation (EU) no. 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (better known as EMIR – European Market Infrastructure Regulation) together with the other European implementation regulations.

In order to assess the applicable regulation it must be given consideration to the type of transaction and, mainly, the characteristics of the parties involved. Under EMIR, the financial counterparties ("FC") are separated from the non-financial counterparties ("**NFC**"). FCs are, generally, institutions regulated by EU law and duly authorized to provide banking, financial, insurance and collective investment services. NFCs are the other entities established in the EU, being these divided between NFC+ and NFC- depending on whether a clearing threshold is exceeded. Such excess is calculated through an assessment based on the calculation of the gross notional aggregate of the transactions made by the group in which NFC is integrated, being excluded the transactions made with the aim to cover risks arising from its normal activity.

EMIR imposes reporting, clearing and risk management obligations in relation to each transaction. The reporting obligations apply to all entities and transactions and must be fulfilled through the communication of information to a trade repository company (a regulated entity duly authorised to provide these services). Trade repositories are required to hold the information avoiding its duplication and in order to facilitate supervision.

The clearing obligation imposes in determined transactions (depending on the nature of both the contract and parties involved) the recourse to a central counterparty ("**CCP**"), which is a regulated entity authorized to interpose itself between the contracts' counterparties with the aim to reduce systemic risk. The enactment of these obligations shall be progressive and depend on the approval of technical standards for each derivative's category, being its application expected to occur between the end of 2014 and the beginning of 2015.

In case this obligation does not apply, a set of risk management duties are established in EMIR, namely the imposition of deadlines for confirmation of transactions, rules for the identification and resolution of disputes or the obligations to periodically reconcile the portfolio and, if possible, to proceed with its respective compression. FC and NFC+ are also obliged to evaluate the derivatives portfolio not subject to clearing on a daily basis, and to exchange collaterals in relation to the obligations arising from such transactions with their counterparties. These obligations are already in force, with the exception of the collateral exchanging obligation, which implementation is scheduled to occur by the end of 2015, pending on the approval of its technical standards.

Even though it is not required for Member States to implement EMIR, these are required to supervise the fulfilment and to decide on the penalties of non-compliance of the duties deriving thereof. For this purpose, it was recently enacted Decree-Law no. 40/2014, of 18 March. According such Decree-Law, the Bank of Portugal, the Portuguese Securities Commission and the Portuguese Insurance Institute become the competent supervisory authorities of these transactions, being also defined the applicable sanctions regime to FC and NFC regarding the violation of EMIR, becoming possible to impose fines of until €1.000.000 (NFC) or €5.000.000 (FC), as well as ancillary penalties.

Currently, it is still difficult to foresee the effects and feasibility of this regulation at EU level, but it is perceived a good adherence to these regulations, which are nothing more than preventive rules of systemic risks.

Regulation (EU) 575/2013 of the European Parliament and of the Council

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Prudential Requirements for Credit Institutions and Investment Firms

Orlando Vogler Guiné / Sandra Cardoso

Regulation (EU) no. 575/2013 of the European Parliament and of the Council, on prudential requirements for credit institutions and investment firms and amending Regulation (EU) no. 648/2012 (the "Regulation") was approved on 26 June 2013.

The **Regulation** essentially amends the legal framework applicable to the own funds of credit institutions and investment firms, further to the principles established in Directive 2013/36/EU of the European Parliament and of the Council on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms.

Hence the Regulation now defines the conditions to be verified for an instrument to be considered as a Common Equity Tier 1 instrument, an Additional Tier 1 instrument or a Tier 2 instrument, namely its minimum original maturity, ability to redeem the instruments or pay interest, according to the following table:

	Common Equity Tier 1 Instruments	Additional Tier 1 Instruments	Tier 2 Instruments
Maturity	Perpetual	Perpetual	5 Years (minimum)
Losses absorption mechanism	Ability to cancel amount distributions or write-down the amount	Mechanism to write-down the principal amount of the instruments; conversion to Common Equity Tier 1 instruments; cancellation of distributions	N/A
Payments	Depends on the existence of distributable funds	Depends on the existence of distributable funds	Does not depend on the existence of distributable funds

The Regulation establishes a transitional regime for the recognition of instruments already issued, in full, partially or time-limited, depending on whether they have been issued before 1 January 2014 and constitute state financial aid instruments, or, not constituting state financial aid ins-truments, on whether they were issued or were eligible as own funds prior to 31 December 2011, and on whether they include a call option with an incentive to be redeemed.

The Commission Delegated Regulation (EU) no. 241/2014, of 7 January, supplementing the Regulation with regard to regulatory technical standards for own funds requirements for institutions, defines, inter alia, the situations of incentive to redemption and the procedures to write-down the instruments' principal amount upon the occurrence of a trigger event.

The Q&A Single Rulebook of the European Banking Authority ("**EBA**"), provides clarification, for instance, on the transitional regime and the rules applicable to already issued instruments which are subject to amendments.

This new framework raised some questions to the national institutions subject thereto, given the terms of the transitional regime provided for in the Regulation, as well as some differences between the new set of rules and the old ones in force in Portugal (foreseen in the Notice of the Bank of Portugal ("**BdP Notice**") no. 6/2010, as supplemented by BdP Notice 1/2011, of 5 April, on the Core Tier 1 ratio of credit institutions), particularly in what concerns minimum maturities, mandatory mechanisms of instruments' conversion or write-down of the principal amounts and limitations to events of default.

Some other questions of interpretative nature were raised, namely as to the acceptability of the inclusion of Portuguese law preference shares as Common Equity Tier 1 instruments, given the Portuguese rules on payments of preferred dividends (at least 5% of the relevant nominal amount), compared with what is foreseen in the Regulation.

Also, we note that the update of national EMTN programmes have already started and the relevant Terms and Conditions are now being amended in light of the new Regulation.

http://www.eba.europa.eu/single-rule-book-qa?p_p_id=questions_and_answers_WAR_questions_and_answersportlet&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-1&p_p_col_pos=1&p_p_col_count=2&_questions_and_answers_WAR_questions_and_%20-%20search#search

Future UCITS V

Pedro Simões Coelho / Filipe Ravara

On 15 April 2014, it was approved by the European Parliament the UCITS V Directive ("**UCITS V**"). The key elements of this Directive are:

a) Depositary functions:

Establishment of a new depositary regime in line with the one contained in Directive no. 2011/61/EC, of 8 June 2011, on Alternative Investment Fund Managers.

Accordingly, it is intended that the depositary will be liable for any loss of UCITS' assets held in custody. Also, investors shall be entitled to redress directly against the depositary, not being required to rely on the management company's ability to accomplish this task.

Furthermore, it was agreed that each UCITS will be required to appoint a single depositary, being only eligible to perform such function national central banks, credit institutions and regulated firms with sufficient capital and adequate infrastructure.

b) Remuneration policy:

Similarly to AIFMD, it shall be created a set of rules concerning the remuneration of UCITS' managers, including senior management, risk and internal controls functions, in order to promote a sound and effective risk management, consistent with the UCITS risk profile, and enhancing the transparency of the remuneration practices.

c) Sanctions:

In order to harmonise the rules pertaining to administrative sanctions Member States shall be required to compile a list of minimum penalties concerning the breach of UCITS rules related to (I) authorisation requirements, (II) operational obligations and (III) reporting duties, which shall encompass public warnings, temporary suspensions and fines.

The procedure for enactment and implementation of UCITS V by EU Member States is intended to be completed by mid-2016.

2014 ISDA Credit Derivatives Definitions New definitions and amendments to the 2003 ISDA Credit Derivatives Definitions

On 21 February 2014 the International Swaps and Derivatives Association, Inc. (ISDA) published a revised version of the 2003 ISDA Credit Derivatives Definitions, a document which contains the terms used in the documentation of most credit derivatives transactions. New terms were added and amendments were made to the existing terms in order to address issues that were discussed in recent credit and succession events, as well as discussed regarding the potential impact of a Eurozone collapse on the credit derivative market. The implementation date of this revised version shall be by September 2014 CDS roll date.

Amendments to the Recapitalisation Framework

Law no. 1/2014, of 16 January, implements the eighth amendment to Law no. 63-A/2008, of 24 November, relating to financial soundness reinforcement measures for credit institutions, not being applicable to the recapitalisation transactions in force as at the date of its publication. This amendment sets forth that a public recapitalisation shall be preceded by measures aimed at reducing an insufficiency of own funds, which is determined by the Bank of Portugal, the institution at stake delivering a capital reinforcement plan, which should allow the removal or reduction to the maximum of such insufficiency, including measures for capital reinforcement, burden sharing and prevent capital exit. The Law foresees that the institution also presents a detailed analysis of its asset quality and prospective assessment of the adequacy of its own funds and, if after such steps, the insufficiency remains and the institution intends to resort to public investment, it shall deliver a restructuring plan, in accordance with the EU state aid principles and guidelines.

Applicability of the Special Taxation Regime to Securitized Bonds

The Circular no. 4/2014, issued by the Tax Authority, clarifies the scope of application of the Special Taxation Regime of Debt Securities enacted by Decree-Law no. 193/2005, of 7 November ("**Special Regime**").
Accordingly, the Tax Authority confirmed that the Special Regime is also applicable to bonds issued under securitization transactions ("**Securitized Bonds**"), provided that the other mandatory requirements and procedures established therein are met. Consequently, the effective beneficiaries of income arisen from Securitized Bonds will benefit from the more favourable tax conditions established in the Special Regime.

Implementation of Basel II in Mozambique

Notice no. 3/GBM/2012, of 13 December, issued by the Bank of Mozambique ("**BM**"), which aim was to define the scope and timing for the implementation of Basel II in Mozambique, established that, from 1 January 2014, credit institutions should proceed to the report of prudential information in accordance with the Basel II prudential regime.
On 31 December, 2013, the BM published relevant Notices in the context of such implementation, in particular, Notices no. 11-17 and 19-20/GBM/2013: Minimum Capital Requisites for Credit Risk Coverage, Operational Risk Coverage and Market Risk Coverage; Calculation of Own Funds; Solvency Ratios and Prudential Limits; Minimum Regulatory Provisions; Compensation and Financial Liquidity; Rules on Information Disclosure and Internal Capital Adequacy Process.

Maximum Interest Rates Applicable to Consumer Credit Agreements

Instruction no. 2/2014 of the Bank of Portugal ("BoP"), which entered into force on April 1st 2014, provides the maximum interest rates applicable to consumer credit agreements during the 2nd quarter of 2014.
The rates set out in the abovementioned Instruction are the upper limits to the charges which can be hired in each type of credit agreement, which is a restriction on the freedom of contracting financing conditions.
The Bank of Portugal has determined for the 2nd quarter of 2014 the following maximum interests:

1. Personal Loan

I. Education, health, renewable energy, leased equipment – 5,7%;
II. Other personal loans – 16,5%;

2. Auto Loan

I. Leasing or Long-term rental (new) – 7,8%;
II. Leasing or Long-term rental (used) – 9,0%;
III. Subject to a reservation of title and others (new) – 11,1%;
IV. Subject to a reservation of title and others (used) – 14,9%.

3. Credit Cards, credit lines, current bank accounts and overdraft facilities – 22,1%.

4. Credit overrunning – 22,1%.

Bank of Portugal's Notice no. 5/2013

Bank of Portugal's Notice no. 5/2013 has established new mechanisms, conditions and procedures related to money laundering and terrorism financing preventive duties as set out in Law no. 25/2008, of 5 June, applicable to credit institutions, financial companies, payment institutions and electronic money institutions established in Portugal, branches of credit institutions, financial companies, payment institutions and electronic money institutions operating in Portugal and postal office entities which provide financial services to the public under the Bank of Portugal's supervision.

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