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NEWS

BANKING & FINANCE / CAPITAL MARKETS

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EDITORIAL

Pedro Cassiano Santos

The last six months have been rich in news such as: (i) the positive reaction by the market to the European Central Bank's commitment to purchase on the secondary market debt instruments of Member States in difficulties, provided that they are subject to a financial assistance programme and comply with its terms; (ii) the approval by the German Constitutional Court of the new European Stability Mechanism, which clears the path for Germany, subject to certain conditions, to contribute around a third of the amounts necessary to stabilise the Euro; and (iii) the assertion of a Banking Union, decided by the Brussels European Council of October 2012, involving a reinforcement of supervisory powers centralised at an European level. All these news may be decisive for Portugal returning to the debt markets in September 2013, a return that in the meantime seems more viable due to the partial exchange of bonds that will then mature for others with a longer maturity.

At a national level, the highlight is the banking recapitalisation, in the context of Law no. 4/2012, of 11 January, complemented by Public Ordinance 150-A/2012, of 17 May 2012, with three of the largest Portuguese banks – BCP, BPI and CGD – having been recapitalized in a total amount of €6,150M, split between subscription by the State of Core Tier 1 instruments (convertible into special or ordinary shares, as applicable) issued by the three banks and of ordinary shares issued by CGD only. This process involved complex company and regulatory banking law issues, as well as EU law considerations, since this injection of public funds into private banks (or the increase of the State's investment in CGD) constituted State aid, treated as such by the European Commission. As a result, all Portuguese banks deemed systemic by the EBA (the European Banking Authority) – including BES, which carried out a successful share capital increase this year – satisfy the stringent Core Tier 1 capital ratio (9%) determined by the EBA for 30 June, including a buffer to cover sovereign exposure at market prices as of September 2011. Subsequently, both BPI in August (€200M) and BCP in October (€500M) successfully completed their own share capital increases, drawing on their respective shareholders and without resorting to additional public funds.

Within same period we also draw your attention to the successful conclusion of the takeover bids over Brisa by Grupo Mello and the Arcus fund (mandatory takeover, following the acquisition of joint control), and over Cimpor by Grupo Camargo Corrêa (voluntary takeover, with the benefit of a waiver to launch a mandatory takeover), ending with the exclusion of both companies from the PSI-20 index, but showing that a time of crisis is also a time of opportunities (at least for some!!).

The last 12 months continued to show the robustness of public offers of bonds by Portuguese issuers, in particular corporates, in the retail market. In this period alone, more than €2,000M bonds, under prospectuses approved by CMVM or passported into Portugal, were placed in the national market.

September ended with the fifth and toughest evaluation by the Troika of the implementation of the financial assistance programme conditions in Portugal, due to the budgetary drift that occurred this year in relation to initial forecasts. Portugal was granted an extra year to achieve the 3% deficit target.

In a context of crisis, the market has shown its dynamism and fully justifies our attention. So, let us carry on.

I thank you for your interest, and in case you have any comments or suggestions regarding this or other topics, please let us know at amn@vda.pt.

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New measures on elegibility collateral for Eurosystem Operations

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Paula Gomes Freire and Benedita Aires

The ECB decision of 28 June 2012 (ECB/2012/11) on temporary measures relating to credit transactions with the Eurosystem and eligible collateral has allowed the national banks to once more use asset backed securities (ABS) as eligible collateral in such context.

Last April's edition of this newsletter, discussed the use of banking loans portfolios as eligible collateral directly with the Bank of Portugal, as an alternative to the limitation of using ABS, due to the downgrade actions which took place. At this stage, the ECB decision temporarily allows that ABS with two ratings of at least "BBB" are considered eligible collateral (instead of the "A" ratings requirement set out in ECB Guidelines ECB/2011/14).

Moody's	Fitch	S&P	DBRS
A3	A -	A -	AL
Baa3	BBB -	BBB -	BBB

In order to benefit from these temporary measures, ABS shall also satisfy the following requirements:

(i) the cash-flow generating assets backing the ABS shall belong to only one of the following asset classes: residential or commercial mortgages, SME loans, auto loans, leasing and consumer finance;

(ii) the cash-flow generating assets backing the ABS shall not contain loans which are non-performing, structured, syndicated or leveraged;

(iii) the ABS transaction documents shall contain continuing servicing provisions;

(iv) the entity intending to submit ABS as eligible collateral, or an entity with close links to it, may not act as interest rate hedge provider in relation to the ABS.

Such measures imply that ABS be subject to higher valuation haircuts; e.g. a residential mortgage backed ABS with "BBB" ratings shall suffer a 26% haircut (instead of 16% haircut for "A" ratings).

On another point, ECB Guidelines ECB/2012/23 of 10 October provide for additional temporary measures for Eurosystem operations, allowing that collateral denominated in GBP, JPY or USD be considered as eligible.

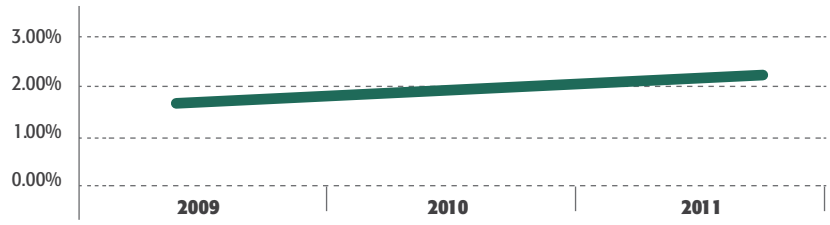
In this context, the maintenance or new issuances of ABS to be used as eligible collateral is a valuable option which represents a funding opportunity with the ECB.

Changes in the residential mortgages framework

Pedro Bizarro

The current economic context has led to an increase in the difficulties felt by Portuguese families in complying with their obligations towards the financial system, namely with regard to residential mortgage loans ("**RML**"). In light of rising unemployment and the high rate of homeownership in Portugal, this issue has had special attention from legislators.

Rate of default in residential mortgage loans (% of the total value of credit granted by the banks)

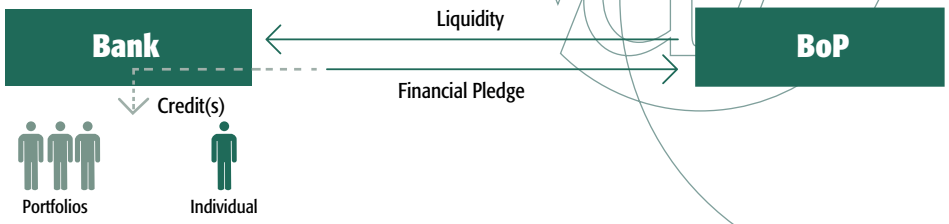


A number of legislative measures have recently been presented for promulgation which completely transform the legal framework applicable to pre-default and default on RML contracts. Some of these measures are generally applicable, whereas others are meant only for cases of unemployment or special economic needs.

Amongst generally applicable measures, the limitation of the bank's right to terminate the agreement by reason of default (which from now on will exist only if the borrower defaults on three instalments, partial default being specifically regulated) deserves special mention. Also important is the limitations on raising credit costs (notably on increasing the spread) in the event of the real estate asset being leased following job loss or change in workplace location, as well as in a loan renegotiation following divorce, separation or the death of a spouse. Furthermore, it is important to point out the inclusion of the payment of RML debts in the number of situations which make it possible for retirement or education savings plans to be redeemed, as well as the possibility of the debtor designating the RML instalment as a priority payment when paying several different debts to the bank. In case of unemployment or special economic needs, when enforcement of the mortgage is imminent, a process may begin which entails the restructuring of the debts arising from the RML. This process may include grace periods, extension of payment deadlines, spread reductions and the granting of an additional loan destined to support (temporarily) the payment of RML instalments. As a last resort in these situations, transfer of the mortgaged asset to the bank or to a real estate leasing investment fund (a special type of investment fund set up under Portuguese law which benefits from a favourable tax regime) as a mean to pay the entire debt is also a possibility, in which case the borrower may become entitled to lease (and, later on, repurchase) the mortgaged asset or to exchange it for a less valuable real estate asset.

Collateral and liquidity transactions

Tiago Correia Moreira and Orlando Vogler Guiné



Following the Bank of Portugal ("**BoP**") regulation, the liquidity transactions entered into with the **BoP** have extended their scope – for a transitional period, credit claims of credit institutions over their clients may be used as collateral in such transactions.

The credit granted by the BoP in the context of such transactions shall be secured through a financial pledge under Decree-Law no. 105/2004, dated 8 May 2004 ("**DL 105/2004**") created by the credit institution for the benefit of the **a** over each of the additional credit claims, both whenever such credits are pledged individually or as part of a credits' portfolio.

Accordingly, Decree-Law no. 192/2012, dated 23 August 2012 introduces an amendment to the financial pledge provided in DL 105/2004 so as to, notably, abolish compliance with the requirements on registration or debtors' notification.

From an enforcement point of view, it is worth further mentioning that (i) the security collateralizing the pledged credit is transferred, by virtue of law, to the beneficiary of the financial pledge and does not require registration, even if such security is subject to registration; (ii) the beneficiary of the guarantee may require the guarantor, even if under liquidation, to perform, on its behalf, all the acts required for safe management of the credits and correspondent security, including credits' collections and relationships with debtors; and (iii) the effectiveness towards the debtors of the pledged credits requires notification, except if the beneficiary of the guarantee has made the request referred in point (ii).

A trial period to tackle "marketfright"

José Pedro Fazenda Martins

In theory, the most appealing option for new entrants in the market, especially for solid and profitable Small and Medium Enterprises ("**SME**"), is the regulated segment. Listed shares in the regulated market are more easily traded and acquired by investment funds and other institutional investors, as they are subject to legal constraints with regard to the composition of their portfolios.

However, the admission to the regulated market is somewhat burdensome, in terms of disclosure obligations and corporate governance. The so-called proportionate approach to prospectus draw up by SME has alleviated this burden with regard to public offers, but investor protection requirements draw a line preventing a lighter touch on other matters (e.g ongoing obligations).

Moreover major shareholders of family-owned companies have the sense that listing is a no-return trip, as the regime that applies to "*sociedade abertas*" protects minority shareholders from being trapped in unlisted companies. Therefore, in case of bitter experiences, there is no other way out for the company than buying back shares at expensive prices.

Alongside with other market participants, we believe that a recent listed SME's should be allowed a trial period of 3-5 years to adapt to the market.

However, we think this trial period should be combined with improvements in the *sociedade aberta's* regime. At the end of the trial period, the general shareholders meeting should be entitled to vote the loss of status of *sociedade aberta* by more than 50% of the voting rights. Dissenting shareholders could be offered not only cash for their shares, but also non-voting preferred stock or debt instruments, according to the terms set out in the prospectus. Acquired shares under this scheme would be immediately cancelled. Similar result can be achieved by issuing and listing just redeemable shares, but this proposal is by far more beneficial to market liquidity.

Application of the Prospectus Directive in Portugal

Maria Corrêa Nunes

On 10 August 2010, Directive no. 2010/73/EU of 24 November (the "**New Directive**") was published, whose implementation deadline was 1 July 2012 and that amended:

(i) Directive no. 2003/71/EC, of 4 November ("**Prospectus Directive**"); and

(ii) Directive no. 2004/109/EC, of 15 December ("**Transparency Directive**").

Although the public consultation launched by the CMVM on the preliminary draft of the domestic legislation that will implement the New Directive into the Portuguese jurisdiction has already ended, such draft is still to be approved.

In this context, the CMVM approved on 13 July 2012 a generic opinion on the application of the New Directive, pursuant to which individuals may avail themselves of the provisions of the New Directive that impose unconditional and clearly expressed duties on Member States, as well as of the rules resulting from the approval of the Delegated Regulation (EU) No. 486/2012, of 30 March ("**Delegated Regulation**"), regulating the New Directive and amending Regulation (EC) No. 809/2004, of 29 April, on the format and content of the prospectus, which rules are directly applicable into domestic jurisdiction.

The following rules, amongst others, are applicable in the Portuguese jurisdiction to prospectuses approved after 1 July 2012 and will remain in force until the effective implementation of the New Directive:

(a) the new definition of qualified investor, as defined in the Markets in Financial Instruments Directive;

(b) the amendments to the criteria for the waiver of a prospectus, namely the increase of recipients for the purposes of qualifying as a public offering, from 100 to 150;

(c) the possibility to use a previously approved prospectus in case of resale of securities by a financial intermediary; and

(d) the new contents of the summary and the final terms, resulting from the Delegated Regulation.

The new regime of the Portuguese Traesury and Debt Management Entity

The Portuguese Treasury and Debt Management Public Institute has been converted into a public company named *Agência de Gestão de Tesouraria e da Dívida Pública* – IGCP, E.P.E. ("**IGCP**"), subject to the public companies regime.

The amendments introduced by Decree-Law no. 200/2012, dated 27 August 2012, which published the new IGCP's by-laws, aim at a more efficient State's financial management, namely by granting to IGCP a status equivalent to the status of credit institutions, having the capacity to grant financing to public companies and to manage financial derivative portfolios pertaining to such entities. Despite of that, IGCP will not be subject to the supervision of the Bank of Portugal.

Instructions no. 17/2012, 28/2012 and 29/2012 of the Bank of Portugal

Further to the additional measures to promote the lending activity and market liquidity in the euro zone that were already implemented, Instructions no. 17/2012, 28/2012 and 29/2012 of the Bank of Portugal ("**BoP**") were recently published. These instructions establish the eligibility criteria to be considered by the BoP regarding the additional assets that can be used as collateral in operations of monetary policy of the Eurosystem. Additionally, they set out an obligation for the participating institution to obtain a waiver from debtors to the set-off rights towards the relevant institution and the BoP, as well as the rights arising from the rights of banking secrecy, in what concerns agreements concluded from 2 November 2012 onwards.

Decree-Law no. 225/2012, dated 17 October 2012

This Decree-Law amends, for the second time, Decree-Law no. 27-C/2000, dated 10 March 2000, that approves the system of access to the minimum banking services (the "**System**"), establishing the basis of the protocols to be entered into by and between the Minister of Economy and Employment, the Bank of Portugal and the credit institutions that wish to adhere to the System. Additionally, this diploma regulates certain aspects related to the operationalization of the System's juridical regime, establishing, among others, the duty to communicate the reasons that justify the refusal of opening of the minimum banking services account and, when the necessary conditions are meet, the previous notification to the client of the resolution of the banking deposit agreement.

Regulation (EU) no. 236/2012

Regulation (EU) No. 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps (the "**Regulation**") has already entered into force and will be fully and directly applicable in the Portuguese the jurisdiction on 1 November 2012. From this date onwards the CMVM Regulation No. 4/2010 on information disclosure duties regarding this matter will no longer apply. The aim of the Regulation and its regulatory framework is to create a European harmonized framework, by increasing transparency of short positions held by investors in EU securities and reducing settlement and other risks linked with uncovered or naked short selling.

Instruction no. 27/2012 of the Bank of Portugal

New report obligations to the Bank of Portugal ("**BoP**") will enter into force on January 2013 their main objective being the gathering of statistics regarding external transactions, recorded in the national payments balance sheet and concerning Portuguese international investment position.

In this context, and as from the referred date, all individuals and corporate entities resident in Portugal who carry out cross-border transactions shall be required to report them on a monthly basis to the BoP for statistical purposes, using the BPnet system or the Company Area on BoP's at the BoP website. This instruction revokes BoP Instruction no. 34/2004, of 30 December 2004, with effects from 1 July 2013.

Notice no. 9/2012 of the Bank of Portugal

Notice no. 9/2012 of the Bank of Portugal ("**BoP**") establishes the information requirements on money laundering and terrorist financing risk management to be submitted to the BoP by all entities under its supervision. This is a report that targets the functioning of the internal control system of the referred entities.

Instruction no. 19/2012 of the Bank of Portugal

It was recently published Instruction no. 19/2012 of the Bank of Portugal ("**BoP**") that regulates the remittance to the BoP by all entities under its supervision of information regarding payment systems, instruments, operations and services, as well as transference of funds (e.g. used payment instruments and bank accounts as well as any incident that might have occurred with payment instruments).

Bank of Portugal notices on Recovery Plans and Bridge Banks

BoP notice no. 12/2012 defines the content and the submission procedure of the recovery plans to the BoP by credit institutions authorized to receive deposits and parent companies of financial groups that include credit institutions authorized to receive depo-sits subject to supervision on a consolidated basis. BoP notice no. 13/2012 defines the rules of creation and functioning of bridge banks established by resolution of the BoP to enforce resolution measures for credit institutions and other legal entities subject to the enforcement of such measures.

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