The International Capital Markets Review

Fifth Edition

Editor
Jeffrey Golden

Law Business Research

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EDITOR'S PREFACE TO THE FIFTH EDITION

A review of the Editor's Prefaces from prior editions (which the publishers have kindly included in this volume) of *The International Capital Markets Review* will reveal a common thread: what I referred to last time around as 'a somewhat nervous look-back over the shoulder' both at the global financial crisis (GFC) and the impact that it has had on the professional opportunities and workload of international capital markets lawyers.

That should hardly be surprising. Seven years on from the collapse of Lehman Brothers in September 2008 and nearly four years since the first edition of this review appeared, a great deal of ink has been spilt, so to speak, in recording the lessons of the GFC, much of it reflecting an attempt to focus on what brought the crisis about: risk-taking by bankers, blind spots and lack of understanding on the part of regulators, rating agencies asleep at the wheel and wrong economic incentives from policymakers and management.

Lots of answers with hindsight. (But as Queen Elizabeth II profoundly asked, after having been briefed by a group of academics about the causes of the GFC when opening a building at the London School of Economics in 2008, if it was all so obvious how come everyone missed it?)

Again, none of that should be surprising. But what is certainly interesting, if not surprising, is that with all the finger-pointing – bankers, regulators, rating agencies and policymakers – law firms and lawyers in them have emerged relatively unscathed. There has been no shortage of lawsuits, enforcement actions, penalty fines, and most recently criminal prosecutions for financial market misconduct. However, it has been non-lawyers, and not their counsel, who have found themselves in the hot-seat.

Still, that begs, rather than answers, the question, 'What was, or should have been, the role of the lawyer in mitigating the risk of a financial market meltdown?' Was sufficient resort to outside counsel made by financial institutions in the run-up to the GFC? Would greater utilisation of independent counsel have made a difference? What public responsibility, if any, do international capital markets lawyers have to ensure not just that underlying transactions are legal as a matter of positive law but that the financial marketplace is benefited, and financial market stability not threatened, by them? Until now, these are questions that seem to travel mostly beneath the radars of the financial market commentators who have been reflecting on the GFC.

Let us put to one side for a moment the increasing specialism in our area of law and the special challenges that follow from it – I will return to this. Let us leave aside too the fact that the technical skills that may position an international capital markets (ICM) lawyer so as to be able to structure a transaction and render the required legal opinions on enforceability or tax consequence may not qualify that lawyer to assess the business merits of the transaction, give deep knowledge of the customers who sign up to them or provide the necessary context to assess the macro-finance impact of large-scale development of a particular financial product or service. In either case, two questions remain: Can ICM lawyers do a better job to mitigate financial market systemic risk? And, if a more expansive role for the lawyer is to be expected to achieve this, will clients be prepared to pay for it?

It is interesting, is it not, that in what could be argued to have been their earlier 'glory years', financial institutions did rely heavily on outside counsel to keep on the legal straight and narrow. However, there is much evidence to suggest that there was much greater reliance on in-house teams in 2008 following the considerable build-out of these in the preceding decade. Cost-cutting became the 'buzz word'.

Did that institutional ring-fence, however, heighten the risk of seeing everything through too narrow an institutional prism? Gillian Tett, in her excellent new book *The Silo Effect*,[1] reminds us of the major risk of insular groupthink in an age of increased specialisation.

Seeking outside and independent advice on such matters had been seen as a kind of insurance against that. Of course, that insurance was never thought to be cheap. But was it cheap in fact, at least when compared with the penalties, fines and other conduct costs many financial institutions have paid since the GFC? And did the financial institutions in any way connect the cutbacks in legal spend on independent counsel with the GFC? Here's the paradox: the more that lawsuits and enforcement actions have followed in the wake of the GFC, the greater the pressures seem to have been to reduce the budget for independent legal advice in connection with ongoing transactional work. And those pressures continue.

Still, to change our clients' thinking about legal cost-cutting, ICM lawyers must do two things: first, they must avoid giving the impression themselves of being victims of the silo effect. And for many ICM lawyers in modern practice there is similarly the risk both of the silo of their law firm and the silo of their jurisdiction. Failure to share the expertise of lawyers in different law firms and from different jurisdictions can be catastrophic. In this regard, *The International Capital Markets Review* aims to be what Ms Tett would call a 'silo buster'.

And second, important as it may be to demonstrate value added by being aware of the widest possible range of relevant issues and global market practice, it is important too to get there in as cost-efficient a manner as possible. As has just been noted, this is a time when clients have never been more cost-conscious. Since it first appeared, this publication has sought to reduce the costs of staying current in a rapidly changing,

1 G Tett, *The Silo Effect* (Little, Brown 2015).

multi-jurisdictional and expansive area of practice by bringing a wide range of relevant experience within a single volume and constantly updating its content.

As I write this preface, my morning newspaper reports, in addition to bond funds experiencing record inflows, that US$50 billion of global market deals were announced this week, adding to US$300 billion of M&A activity in a record August and more than US$3 trillion since January – keeping things on track for record levels seen only before the GFC. This is all good news for international capital markets lawyers. Plenty of opportunity.

Still, plenty of risk too, especially for any lawyer living in a silo and looking down instead of around. This is not a time to follow the ostrich and its habit of putting its head down when it senses risk in the air.[2] For today's ICM lawyer, the risk comes from a complicated and ever-changing landscape, and not least the plethora of new regulatory developments and regulations reported in the pages that follow. You constantly need to look about you.

So, heads up, bust out of that silo, get your copy of this new edition of *The International Capital Markets Review* at the ready and share in the expertise that follows. Fingers crossed, may the record year continue, and I wish our readers more than their fair share of it!

In the meantime, I tip my hat once again to the impressive and growing group of experts who have taken on the challenge of this book. This year we welcome five new jurisdictions: Bulgaria, India, Kazakhstan, Mexico and Nigeria. I want to thank all our authors sincerely for their contributions and for allowing me the continuing privilege of serving as their editor.

Jeffrey Golden
P.R.I.M.E. Finance Foundation
The Hague
November 2015

2 Pliny the Elder had led us to believe that the ostrich buries its head in sand to avoid danger, but we now know the behaviour of the ostrich is more a matter of 'duck and cover'.

EDITOR'S PREFACE TO THE FOURTH EDITION

It is good of the publishers to include in this volume the Editor's Preface to each of the previous editions of *The International Capital Markets Review*. Reading through these is like an archaeological dig.

The first begins with a somewhat nervous look-back over the shoulder at the then-recent financial crisis. An expression in that preface of admiration for the 'resilience' of the markets sounded at the time more a hope and expectation than a certainty or done deal.

In the second, further signs that a 'big freeze' on capital market transactional work was 'thawing' were noted; however, the challenge of new and voluminous regulation, as much as the potential for deal flow, made this publication of particular relevance when that edition appeared.

By the time the third preface was written, the major global financial institutions were hiring again, but we were still looking for hard evidence or 'confirmation' that an uptick in deal flow lay ahead and that the extra staffing was in anticipation of opportunity rather than more simply a reaction to a compliance burden.

Now, as I put pen to this Editor's Preface to the fourth edition of the work, we have just witnessed the successful launch of the world's largest-ever stock flotation. Alibaba shares soared 39 per cent on the first day of trading and, after the bankers exercised a greenshoe option, raised US$25 billion. Meanwhile, *The Times* reports a buoyant London braced for a 'listing stampede'. Hong Kong is rivalling New York for the greatest number of cross-border deals. The *Financial Times* also reminds us that in fact, measured by deal value, year-to-date listings in New York have raised twice as much as in London and Hong Kong combined – the fastest pace since 2000. A corner turned? Hopefully, we are seeing real opportunity, at least for the informed ICM lawyer. As in the past, this book seeks to keep at the ready for just such an ICM lawyer relevant analysis as a means for staying on top of an ever-expanding flow of necessary information.

New capital market regulation increases exponentially, and often purports to have extraterritorial reach. More than half of the Dodd-Frank rulemakings have now been finalised but nearly a quarter of the rulemaking requirements are still yet to be proposed. This past year has also been a busy period for regulatory reform at the European level and in other key jurisdictions covered in this volume. Notably as well, courts around the world have been building up a significant jurisprudence in disputes involving complex products and other capital market structures. We have almost certainly seen more ISDA contract cases since this book first appeared than in all the years that preceded that first edition put together.

Not surprisingly then, this volume keeps getting 'fatter'. Soon the publishers will have to provide wheels for the book! What started as coverage of 19 relevant jurisdictions, now surveys 33 – five of which (Colombia, Kuwait, Norway, Peru and Portugal) are included for the first time.

There has, however, certainly been no dilution in the quality of contributions. Someone clever once said that you are only as good as the company that you keep, on which basis the reader can feel very good indeed when turning to the lawyers and law firms that share their collective experience in the pages that follow. It remains a privilege and an honour to serve these contributors as their editor.

I am confident that the latest surveys that follow will prove useful to our practitioner readers, and I will not be surprised if a few legal archaeologists among those get to excavating beyond the prefaces and examine the strata of the jurisdictional landscapes of earlier editions as they aim to equip themselves for their professional journeys ahead. Who knows? One of you may even be an Indiana Jones, who, armed with the information herein, may be tempted to grab that bullwhip and fedora and undertake a particularly ground-breaking transactional adventure or two. Indeed, it may even be that those adventures form part of the ICM story when it gets told in future editions of *The International Capital Markets Review*!

Jeffrey Golden
P.R.I.M.E. Finance Foundation
The Hague
November 2014

EDITOR'S PREFACE TO THE THIRD EDITION

As I write the preface to this third edition of *The International Capital Markets Review*, my morning newspaper reports that one of the major global banks, having shrunk its workforce by more than 40,000 employees over the past two years, will now embark on a hiring spree to add at least 3,000 additional compliance officers.

It would be nice if the creation of these new jobs evidenced new confidence that capital markets activity is on the rise in a way that will justify more hands on deck. In other words, capital markets lawyers will have something to celebrate if this bolstering of the ranks was thought necessary to ensure that requisite regulatory approvals and transactional paperwork would be in place for a projected expansion in deal flow.

And, indeed, my morning newspaper also reports a new transaction of some significance, namely, Twitter's filing for a multi-billion dollar international public offering, accompanied by a tweet, of course – but with a true sign-of-the-times disclosure: 'This Tweet does not constitute an offer of any securities for sale'!

Yes, confirmation of an uptick in deal flow – especially 'big deals' flow – would be nice. In the preface to the last edition of this work, I speculated that there were 'signs that any 'big freeze' on post-crisis capital markets transactional work may be thawing'. All the better if the current newspaper reports provide continued and further support for that inference. After all, when our first edition appeared a little over two years ago, the newspapers were saying terrible things about the capital markets.

What is more likely, however, is that this increased staffing aims to cope with regulatory complexity that will now impact the financial markets regardless of any growth and perhaps may even have been designed to slow down the business being done there. That complexity, but also just the scale of recently promulgated new regulation and the practitioner's resulting challenge in 'keeping up' have all encouraged this new third edition. The 8,843 pages of Dodd-Frank rule-making that I reported in my preface to the last edition have now grown to more than 14,000 pages at this time of writing – and approximately 60 per cent of the job remains unfinished. Other key jurisdictions have been catching up. Plus the rules are purposive and aim to change the way things have been done. If compliance and even ethics in the capital markets were ever instinctual, rather than matters to be taught and studied, that is probably a thing of the past.

The thickness of this volume has grown as well because of the increased number of pages and coverage in it. Nine new contributors (Finland, Indonesia, Italy, the Netherlands, the Philippines, Spain, Switzerland, Tanzania and the UAE) and an overview of EU Directives have been added. Banks are lending less to corporates, which in turn are having to issue more to meet liquidity needs. Moreover, with the low interest rate environment of quantitative easing, central banks are encouraging risk-taking rather than hoarding. For investors, risk-free assets have become very expensive. So we see a growing willingness to get off the traditional highway in search of yield. Investment banks are, as a result, often taking their clients (and their clients' regular outside counsel) to difficult, or at least less well-known, geographies.

Having a pool of country experts and jurisdictional surveys that facilitate comparative law analysis can be very helpful in this instance. That is exactly what this volume aims to provide: a 'virtual' legal network and global road map to help the reader navigate varying, and increasingly difficult, terrain to arrive at right places.

There has been much relevant change in the legal landscape surveyed in the pages that follow. However, what has not changed is our criteria for authors. The invitation to contribute continues to go to 'first in class' capital market specialists from leading law firms. I shall be glad if, as a result, the biographical notes and contact details of the contributing firms prove a useful resource as well.

The International Capital Markets Review is not a novel. Impressed I might be, but I would certainly also be surprised by anyone picking up and reading this volume from cover to cover. What I expect instead, and what is certainly the publisher's intention, is that this work will prove a valuable resource on your shelf. And I hope that you will have plenty of opportunities to take it off the shelf and lots of excuses to draw on the comparative jurisdictional wisdom it offers.

Let me again express my sincere gratitude to our authors for their commitment to the task and their contributions. It remains a privilege to serve as their editor and a source of great pride to keep their company in the pages of this book.

Jeffrey Golden
P.R.I.M.E. Finance Foundation
The Hague
October 2013

EDITOR'S PREFACE TO THE SECOND EDITION

It was my thought that we should also include in this second edition of *The International Capital Markets Review* my preface to the first edition. Written less than a year ago, it captures relevant background and sets out the rationale for this volume in the series. The contemporary importance of the global capital marketplace (and indeed you must again admire its resilience), the staggering volume of trading and the complexity of the products offered in it, and the increased scrutiny being given to such activity by the courts all continue. And, of course, so does the role of the individual – the difference that an informed practitioner can make in the mix, and the risk that follows from not staying up to date.

However, I was delighted, following the interest generated by our first edition, by the publisher's decision to bring out a second edition so quickly and to expand it. There were several reasons for this. The picture on the regulatory front is much clearer for practitioners than it was a year ago – but no less daunting. According to one recent commentary, in the United States alone, rule-making under the Dodd-Frank report has seen 848 pages of statutory text (which we had before us when the first edition appeared) expand to 8,843 pages of regulation, with only 30 per cent of the required regulation thus far achieved. Incomplete though the picture may look, the timing seems right to take a gulp of what we have got rather than wait for what may be a very long time and perhaps then only to choke on what may be more than any one person can swallow in one go! Regulatory debate and reform in Europe and affecting other key financial centres has been similarly dramatic. Moreover, these are no longer matters of interest to local law practitioners only. Indeed, the extraterritorial reach of the new financial rules in the United States has risen to a global level of attention and has been the stuff of newspaper headlines at the time of writing.

There are also signs that any 'big freeze' on post-crisis capital markets transactional work may be thawing. In the debt markets, the search for yield continues. Equities are seen as a potential form of protection in the face of growing concerns about inflation. Participants are coming off the sidelines. Parties can be found to be taking risks. They are not oblivious to risk. They are taking risks grudgingly. But they are taking them. And derivatives (also covered in this volume) are seen as a relevant tool for managing that risk.

Most importantly, it is a big world, and international capital markets work hugs a bigger chunk of it than do most practice areas. By expanding our coverage in this second edition to include six new jurisdictions, we also, by virtue of three of them, complete our coverage of the important BRIC countries with the addition of reporting from Brazil, Russia and China. Three other important pieces to the international capital markets puzzle – Belgium, the Czech Republic and New Zealand – also fall into place.

The picture now on offer in these pages is therefore more complete. None of the 24 jurisdictions now surveyed has a monopoly on market innovation, the risks associated with it or the attempts to regulate it. In light of this, international practitioners benefit from this access to a comparative view of relevant law and practice. Providing that benefit – offering sophisticated business-focused analysis of key legal issues in the most significant jurisdictions – remains the inspiration for this volume.

As part of the wider regulatory debate, there have been calls to curtail risk-taking and even innovation itself. This wishful thinking seems to miss the point that, if they are not human rights, risk-taking and innovation are hardwired into human nature. More logical would be to keep up, think laterally from the collective experience of others, learn from the attention given to key issues by the courts (and from our mistakes) and 'cherry-pick' best practices wherever these can be identified and demonstrated to be effective.

Once again, I want to thank sincerely and congratulate our authors. They have been selected to contribute to this work based on their professional standing and peer approvals. Their willingness to share with us the benefits of their knowledge and experience is a true professional courtesy. Of course, it is an honour and a privilege to continue to serve as their editor in compiling this edition.

Jeffrey Golden
London School of Economics and Political Science
London
November 2012

EDITOR'S PREFACE TO THE FIRST EDITION

Since the recent financial markets crisis (or crises, depending on your point of view), international capital markets (ICM) law and practice are no longer the esoteric topics that arguably they once were.

It used to be that there was no greater 'show-stopper' to a cocktail party or dinner conversation than to announce oneself to be an ICM lawyer. Nowadays, however, it is not unusual for such conversations to focus – at the initiation of others and in an animated way – on matters such as derivatives or sovereign debt. Indeed, even taxi drivers seem to have a strong view on the way the global capital markets function (or at least on the compensation of investment bankers). ICM lawyers, as a result, can stand tall in more social settings. Their views are thought to be particularly relevant, and so we should not be surprised if they are suddenly seen as the centre of attention – 'holding court', so to speak. This edition is designed to help ICM lawyers speak authoritatively on such occasions.

In part, the interest in what ICM lawyers have to say stems from the fact that the amounts represented by current ICM activities are staggering. The volume of outstanding over-the-counter derivatives contracts alone was last reported by the Bank for International Settlements (BIS) as exceeding US$700 trillion. Add to this the fact that the BIS reported combined notional outstandings of more than US$180 trillion for derivative financial instruments (futures and options) traded on organised exchanges. Crisis or crises notwithstanding, ICM transactions continue apace: one has to admire the resilience. At the time of writing, it is reported that the 'IPO machine is set to roar back into life', with 11 flotations due in the United States in the space of a single week. As Gandhi said: 'Capital in some form or another will always be needed.'

The current interest in the subject also stems from the fact that our newspapers are full of the stuff too. No longer confined to the back pages of pink-sheet issues, stories from the ICM vie for our attention on the front pages of our most widely read editions. Much attention of late has been given to regulation, and much of the coverage in the pages of this book will also report on relevant regulation and regulatory developments; but regulation is merely 'preventive medicine'. To continue the analogy, the courts are our 'hospitals'. Accordingly, we have also asked our contributors to comment on any lessons to be learned from the courts in their home jurisdictions. Have the judges got it right? Judges who understand finance can, by fleshing out laws and regulations and applying them to facts perhaps unforeseen, help in the battle to mitigate systemic risk. Judges who do not understand finance – given the increase in financial regulation, the amounts involved, and the considerable reliance on standard contracts and terms (and the need therefore for a uniform reading of these) – may themselves be a source of systemic risk.

ICM lawyers are receiving greater attention because there is no denying that many capital market products that are being offered are complex, and some would argue that the trend is towards increasing complexity. These changing financing practices, combined with technological, regulatory and political changes, account for the considerable challenge that the ICM lawyer faces.

ICM activity by definition shows little respect for national or jurisdictional boundaries. The complete ICM lawyer needs familiarity with comparative law and practice. It would not be surprising if many ICM practitioners felt a measure of insecurity given the pace of change; things are complex and the rules of the game are changing fast – and the transactions can be highly technical. This volume aims to assuage that concern by gathering in one place the insights of leading practitioners on relevant capital market developments in the jurisdictions in which they practise.

The book's scope on capital markets takes in debt and equity, derivatives, high-yield products, structured finance, repackaging and securitisation. There is a particular focus on international capital markets, with coverage of topics of particular relevance to those carrying out cross-border transactions and practising in global financial markets.

Of course, ICM transactions, technical though they may be, do not take place in a purely mechanical fashion – a human element is involved: someone makes the decision to structure and market the product and someone makes the decision to invest. The thought leadership and experience of individuals makes a difference; this is why we selected the leading practitioners from the jurisdictions surveyed in this volume and gave them this platform to share their insights. The collective experience and reputation of our authors is the hallmark of this work.

The International Capital Markets Review is a guide to current practice in the international capital markets in the most significant jurisdictions worldwide, and it attempts to put relevant law and practice into context. It is designed to help practitioners navigate the complexities of foreign or transnational capital markets matters. With all the pressure – both professional and social – to be up to date and knowledgeable about context and to get things right, we think that there is a space to be filled for an analytical review of the key issues faced by ICM lawyers in each of the important capital market jurisdictions, capturing recent developments but putting them in the context of the jurisdiction's legal and regulatory structure and selecting the most important matters for comment. This volume, to which leading capital markets practitioners around the world have made valuable contributions, seeks to fill that space.

We hope that lawyers in private practice, in-house counsel and academics will all find it helpful, and I would be remiss if I did not sincerely thank our talented group of authors for their dedicated efforts and excellent work in compiling this edition.

Jeffrey Golden
London School of Economics and Political Science
London
November 2011

Chapter 25

PORTUGAL

Orlando Vogler Guiné and Sandra Cardoso[1]

I INTRODUCTION

Following a difficult period in the aftermath of the financial crisis that began in mid-2007 and after the Financial Assistance Programme agreed by the Portuguese Republic with the Troika having concluded in May 2014, the Portuguese economy has been showing important signs of improvement (steady increase of exports, increase in GDP, etc.). Sovereign issuances have been undertaken at historically low yields, as, for instance, the treasury bond syndicated deal of September 2015 shows, in a total amount of €3 billion and a fixed interest rate of 2.2 per cent.

This is even more significant if one takes into account that not much more than one year has passed since the collapse of Grupo Espírito Santo (GES, one of the largest Portuguese conglomerates, with interests all over the economy) and the resolution of BES (of which GES was the largest shareholder), which was decided by the Bank of Portugal on 3 August 2014.

The Portuguese framework on capital markets is substantially in line with European legislation. The Securities Code, enacted by Decree-Law 486/99, as amended, establishes the framework in relation to financial instrument, offers, financial markets and financial intermediation. Specific laws may apply to specific instruments and transactions (commercial paper, covered bonds, recapitalisation, etc.) and regulations issued by the Portuguese Securities Market Commission (CMVM), the Portuguese central securities depository Interbolsa and by Euronex Lisbon should also be considered.

On the banking side, the main framework is the Credit Institutions and Financial Companies Framework, enacted by Decree-Law 298/92, as amended. Also, the notices and instructions issued by the Bank of Portugal may be relevant. Bearing in mind the

1 Orlando Vogler Guiné is a managing associate and Sandra Cardoso is an associate at Vieira de Almeida & Associados, Sociedade de Advogados RL.

banking union that is being implemented and the EU harmonisation developments, national banking laws are naturally much in line with EU rules.

The Portuguese financial regulation system is composed of three pillars (following the same structure as the European supervisory system, and being divided in accordance with the activities and matters at stake) supervised by three different authorities: (1) the Bank of Portugal, which is the central bank and which has prudential function (now in coordination with the European Central Bank (ECB), particularly for the largest Portuguese banks) and market conduct powers to supervise matters related to credit institutions and financial companies acting in Portugal; (2) the CMVM, which is empowered to supervise the market conduct of financial markets, issuers of securities and financial instruments and financial intermediaries, and (3) the Portuguese Insurance and Pension Funds Authority (ASF), which supervises the insurance system.

Portuguese authorities may also apply sanctions to those entities that do not comply with the applicable laws. In general, the fines depend on the type of entity and activities carried on and the seriousness of the breach. A supervisory authority's decision may be contested and submitted to the decision of a special court that exclusively decides on competition, regulation and supervisory matters.

Supervisory authorities are now much more active in sanctioning market players and the special court on regulatory matters has been set up to enhance the capacity to respond to the current demands on regulatory matters. In recent years, authorities have imposed fines on several entities, including banking board members who have been accused of hiding relevant accounting information.

II THE YEAR IN REVIEW

i Developments affecting debt and equity offerings

Market trends and legal remarks

The past year has presented an interesting but challenging environment in the Portuguese capital markets. As noted above, the landmark event one year ago was the resolution of BES and the creation of the bridge bank Novo Banco. This was unprecedented terrain for Portugal, and even at an EU-wide level, if one takes it as the first resolution with the Bank Recovery and Resolution Directive (BRRD).[2] It is of public knowledge that this is still being litigated by a number of entities, but the Bank of Portugal still managed to conduct an innovative sale process (i.e., an M&A transaction under public law rules). However, in September 2015 the Bank of Portugal announced the suspension of negotiations, essentially due to the uncertainties that may impact the financial condition of Novo Banco, especially considering that the ECB Supervisory Review and Evaluation Process on Novo Banco will only be completed towards the end of 2015. Negotiations are to be resumed after such uncertainties are resolved.

Once this process is finalised, it will certainly contribute to the normalisation of the financial system in the near future.

2 Directive 2014/59/EU.

Tender offers

From August to October 2014, four interested acquirers aimed at purchasing a controlling stake (ultimately, all the listed share capital) in ES Saúde, a health-care operator, which at the beginning of the year had its IPO and was part of GES. These included national and foreign investors, some already present in the Portuguese health market and others not. During the process the first two competing bids, under the current Securities Code, were launched, and another party aimed to acquire the controlling stake directly, via an over-the-counter (OTC) transaction, which was blocked by the CMVM. As reported last year, the CMVM took the opportunity to lay down some interpretations of the competing offer regime,[3] which should be taken into account in future bids, particularly with regard to interaction with the antitrust legislation and deadlines.

In the context of the merger between the Portugal Telecom group and Oi, a Brazilian telecoms operator, and the aftermath of the GES crisis, which materially affected the former, Portugal Telecom group was the target of several potential transactions, including firm M&A offers for its Portuguese business (ultimately acquired by Altice for over €7 billion) and the announcement of a general and voluntary takeover bid at the beginning of November 2014 by Terra Peregrin. The actual feasibility of this tender offer and the legal nature thereof was widely discussed in the market, and ultimately it was withdrawn.

On the banking side, in February 2015, the Spanish CaixaBank preliminary announced a public general and voluntary takeover bid for the acquisition of BPI. CaixaBank was already a major shareholder of Banco BPI, just below half of the share capital and voting rights. Although it held more than one-third of the share capital and voting rights of BPI, it has been accepted by the CMVM (and the market) that CaixaBank actually has no control over BPI, for a number of legal reasons, including the currently applicable 20 per cent voting rights cap in BPI's by-laws. This takeover bid was subject to some conditions, among others, the removal of said voting cap upon a shareholders' resolution. The respective shareholders' meeting to remove the voting cap occurred on June 2015, but it was dependent on the favourable vote of 75 per cent of the votes cast. As this majority was not achieved, the main condition to launch the takeover, as announced by CaixaBank, was not met and the takeover offer was withdrawn. In this context there have also been moves among shareholders to reanimate a project to merge BPI with BCP, but this seems to have been dropped in the meantime.

In respect of BPI, we would note that it recently announced an intended split of its African (Angolan mostly) business, to tackle the applicable higher capital requirements due to the increase of risk weighting of such business as determined by European regulation. If the project is approved by the relevant shareholders and regulators, a new company (a holding) will be incorporated and listed on Euronext Lisbon market, having BPI's shareholders as initial shareholders.

As a side note, the most recent (ongoing) takeover transaction is the general and voluntary takeover bid over Glintt, announced in September 2015 by Farminveste,

3 See www.cmvm.pt/CMVM/Apoio%20ao%20Investidor/Faq/Pages/20141013j.aspx.

its majority shareholder. Glintt's board of directors publicly announced that the consideration proposed by Farminveste is adequate.

Public offers

The end of 2014 and the beginning of 2015 saw an increase in the recourse to the capital markets by non-financial Portuguese companies. This included a share capital increase, under a public offering and a subsequent institutional placement (by SONAE Indústria in November 2014), accelerated book buildings (ABBs, as was the case of a stake of approximately 2 per cent of EDP shares in January 2015 and of a stake of over 5 per cent. of Corticeira Amorim in September 2015), as well as two exchange offers, one launched on May 2015 for the acquisition of all minority shareholders' ordinary shares of Semapa (a listed holding company) in consideration for ordinary shares of Portucel (a paper sector listed company and controlled by Semapa). This was a transaction with some innovative features, such as being launched by the issuer itself (Semapa) and not by its controlling (or, in the case of unsolicited bids, potential controlling) shareholder, and over 51 per cent of the targeted shares were tendered. In June 2015, Mota-Engil launched a bond issue, to be partially settled with own and earlier maturing bonds and part in cash, which was also a new feature in the market. All new bonds offered were subscribed.

Other public subscription offers of bonds by non-financial Portuguese listed companies were also conducted, including by the three major listed football companies (Futebol Clube do Porto, Sporting Clube de Portugal and Sport Lisboa e Benfica – Futebol, SAD), with demand largely exceeding the offer amount.

Financial institutions also conducted several offers during 2015, for instance, BCP announced in May the launch of a partial and voluntary public tender offer for the acquisition of subordinated securities for exchange of up to 5,350 million new ordinary, nominative and book-entry shares of BCP with no par value, which was accepted near the top offer limit.

In October 2015, the Council of Ministers approved a resolution to allow Portuguese government bonds to be placed under public offer, thus allowing retail investors to become part of this market segment, so far restricted (as far as the primary market is concerned) to institutional investors.

ABS and covered bonds

We have also been seeing some activity in securitisation, with a significantly high number of deals, but each with volumes normally lower than pre-crisis levels. These are both retained and market deals, with a range of different asset classes, including electricity receivables, and with new originators accessing this product lines, as was the case of the approximately €650 million consumer credit securitisation originated by Credibom in July 2015.

Covered bonds have continued to play a role in the Portuguese capital markets, with transactions coming to market and not just being issued for retention or collateral purposes.

It is worth noting that, following the conversion of BII's covered bonds into (simplified) pass-through covered bonds which we reported on last year, Novo Banco established, at the beginning of October 2015, a conditional pass-through covered bonds programme, more closely structured in line with the international precedents. Furthermore, this programme was established by Novo Banco in the form of a bridge bank, which we also see as a positive innovative feature.

Debut corporate hybrid issuance

Finally, we would highlight the recent (September 2015) €750 million subordinated notes issue by EDP, maturing in 2075, which should be the first big issue of hybrid instruments by a Portuguese (non-financial) corporate, and which could be the debut issuance of a flourishing market. The transaction was well priced for the issuer and received very interesting debt/equity treatment for rating purposes (S&P, Moody's, Fitch), even though it is, legally and accounting wise, a debt instrument, with the frameworks applicable to such instruments applying. Portuguese insolvency laws are very flexible in allowing contractual subordination, which can be a useful tool for interest issuers. It is also possible to include coupon deferability without jeopardising the debt nature of the instrument, as in this case.

Liability management exercises

During 2015 the Portuguese market witnessed some transactions with the purpose of managing and restructuring the balance sheet of Portuguese issuers.

In respect of corporates (non-financial), and besides the above-mentioned exchange offer by Mota-Engil, we note the tender offer on BCR's €600 million bonds due in 2016, launched by Barclays as offeror, and the subsequent issuance of €300 million bonds due in 2025 by BCR. We would also note the successful consent solicitation process undertaken by PT Portugal and Oi, to substitute the former with PTIF (a BV subsidiary of Oi) as issuer of notes. PT Portugal had assumed the role of issuer in the place of Portugal Telecom, SGPS (now called Pharol, SGPS) in 2014, and 2015's consent solicitation was required to conclude the sale of PT Portugal by Oi to Altice, the biggest M&A transaction in recent years in Portugal. The process included offering a put option right to investors and adjustments to consent fee and put option settlement mechanics to the local (Interbolsa) regulations and procedures.

Portuguese listed financial companies also conducted several transactions during 2015, and we would expect more to come, particularly in the Tier 2 segment (see below, as well as the above BCP transaction).

Changes in debt securities legislation

As anticipated in last year's chapter, the Companies Code was amended, in particular in relation to the legal regime of bonds and of preference shares.[4] We summarise below the most relevant changes.

Similarly to the changes made one year previously to the legal regime applicable to the issuance of commercial paper, there are now a number of additional exceptions allowing companies to issue bonds without the need to comply with a minimum equity amount or ratio. The most significant new exception was the inclusion of a wholesale

4 Decree-Law 26/2015, of 6 February 2015.

exemption, in line with the Prospectus Directive. Accordingly, if the bonds have a minimum denomination or placement amount per investor of €100,000, no such minimum criterion is required. The other new exception concerns qualified investor subscriptions, but this depends on the bonds not being listed, so it should be of less practical importance. On the other hand, and besides the exceptions that already existed of the company being listed or there being security or guarantees in place to the benefit of the bondholders, the legislator has clarified that under the rating exception it suffices for the issuer's debt obligations of the same sort to be rated (no specific rating for the issue is required).

The general requirement of companies existing for over one year before the bond issuance has also fallen away if financial information on the issuer, not older than three months prior to the issue date, and audited by a certified auditor registered with the CMVM, is made available to the bondholders. This should prove to helpful when structuring acquisition finance transactions through bond issuances (and with the benefit, *inter alia*, of the special WHT-exemption regime applicable to bonds held by non-resident investors generally,[5] but not to general foreign funders under loan agreements). It will now be possible to, very near to completion, incorporate an SPV, have its (at that stage, very simple) accounts audited, and issue the bonds to finance the relevant acquisition. In any case, the other exceptions to the general requirement remain applicable (merger or demerger with or from a longer lasting company, state ownership of the majority of the share capital or guarantee from a credit institution or the state).

Another area where significant changes were made, taking advantage of the relevant experience witnessed in the securitisation and covered bonds markets, with more flexible and updated regimes, was in the field of common representatives (CR). Portuguese law does not have the concept of 'trust', but taking the legal provisions and the contractual terms together, it is possible now for the Portuguese structure to be set up with not that many structural differences from the English law structure. The amendments included broadening of the list of entities that may undertake that role, which now includes, namely, the entities licensed to provide investors representation services in any EU Member State (e.g., trustees, even if not subject to licensing and/or authorisation in its home Member State). It has also been clearly established that the CR needs be an independent entity, meeting a number of criteria, and that it may be appointed in the terms and conditions of the notes. As a side note, if the CR is an entity regulated under national law, it may also be the security agent to the benefit of whom financial collateral arrangement is granted. The CR's liability may be limited, except when acting with wilful misconduct or gross negligence; a liability cap may be included (the actual scope of the cap is subject to discussion), but may not be lower than 10 times the CR's annual fees. These new features have already been tested and applied in practice, notably in the context of shopping mall refinancing.

Finally, and among other changes, the legislator has taken the opportunity to clarify that mandatory and reverse convertibles follow the regime applicable to convertible bonds, and that perpetual bonds follow the regime of ordinary bonds, with

5 Decree-Law 193/2005, of 7 November 2005.

the applicable adjustments where necessary, and the regime of participating bonds has been clarified, allowing for a wider scope of bonds and participation forms.

As a side note, it is possible that Interbolsa, the Portuguese CSD, will become an Eligible Securities Settlement System for purposes of the STEP/Step Label over the coming months, which could certainly enhance the market and collateral prospects for Portuguese commercial paper issuers.

Changes in preference shares legislation

As mentioned above, the regime of preference shares has also been amended. We are only briefly referring to them, as additional changes seem to be required before this instrument can actually take effect. The minimum priority dividend to be distributed to the holders of preference shares without voting rights was reduced from 5 per cent to 1 per cent of its respective nominal (or issue) value, and it is now clear that the priority dividend can be the sole dividend payable to holders or in addition to the ordinary dividend also payable to them. Priority dividend in arrears can now be paid within three (instead of only two) fiscal years. The legislator introduced additional flexibility in respect of preference shares subscribed exclusively by qualified investors and not admitted to trading on a regulated market and included a general article allowing for the issuance of other types of preference shares, but which, considering the way in which the law was drafted, still seem to us to fall short of the real market needs.

It is possible that some legal changes will be discussed and possibly introduced to the regime of ordinary shares in the near future, including the possibility of the articles of association foreseeing multiple or double voting or other voting entitlements, which we would consider could be beneficial to attract new issuers to the stock exchange. We expect, however, that, for historical and other reasons, it will be harder to put them forward and amend the legislation. It is also possible that the preference shares regime will be further amended.

Changes in banking law

The Credit Institutions and Financial Companies Framework was subject to two major amendments, and therefore it was republished twice (but subject to some other subsequent amendments), in particular as a result of the implementation of the latest Capital Requirements Directive (CRDIV – Basel III)[6] and the BRRD. This general banking law is now much longer and much more detailed, including in terms of supervisory authorities and procedures and prudential requirements (introducing, *inter alia*, the capital buffers) and resolution tools. Portugal has had a resolution regime since 2012, which was actually employed last year in the resolution of BES, but now the regime is much more exhaustive, including additional resolution tools (bail-in and asset segregation and management, besides the transfer of business to existing institutions or bridge institutions which already existed) and extending the no 'creditor' worse-off principle to shareholders.

6 Directive 2013/36/EU.

Own-funds regulations

We have addressed the changes to the own funds regime in last year's chapter, particularly under Regulation (EU) No. 575/2013 (CRR), establishing rule on common equity Tier 1 capital, additional Tier 1 (AT1) capital and Tier 2 capital.

The market for the issuance of Tier 1 and Tier 2 capital instruments is still to kick off even though Portuguese banks have already started to look into the new features for subordinated and hybrid instruments, and incorporating the same in their EMTN Programmes. There was a Tier 2 issuance made by Banif at the beginning of the year and liability managements have been made to accommodate changes to existing capital instruments.

We see it as key for the AT1 market that tax deductibility of coupon payments is fully clarified by the legislator or the tax authorities (and some clarification on the full application of the general WHT exemption regime under Decree-Law 193/2005 would also be welcomed).

Regarding the Tier 2 instruments, after discussions at EBA, the Bank of Portugal took the view in the fourth quarter 2014 that the eligibility of Portuguese Tier 2 instruments was dependent on the applicability of a deferral of payments clause. Under such clause, an issuer could decide to defer interest payments up to maturity without defaulting under the notes, which put Portuguese banks in a worse position than many of its EU competitors in the Tier 2 market, and which was a change in interpretation of Portuguese civil law.

Given this position, some EMTN programmes were actually amended to have this change included, but only one issuance, in January 2015, was made. In the meantime, and following the discussions and valid legal arguments put forward by the banking community, led by the Portuguese Banks Association (APB), the Bank of Portugal has reconsidered and in July an LME was conducted to adjust existing Tier 2 instruments to the new rules, without such deferral clause. The Bank of Portugal formally opined in writing to APB that no such clause was needed, provided that an express reference was made to Article 63, paragraph l) of the CRR, which requires that 'the provisions governing the instruments or subordinated loans, as applicable, do not give the holder the right to accelerate the future scheduled payment of interest or principal, other than in the insolvency or liquidation of the institution.'

Finally, Tier 3 capital instruments are now being discussed in the market and debt programmes will need to be adjusted in accordance with the new requirements TLAC/CRML that shall be applicable. For now, Tier 2 languages in the terms and conditions of the programmes are being amended (to foresee the possibility of issuing instruments that rank in between senior instruments and Tier 2 instruments and that are bail-in-able ahead of senior debt) but the new issues of Tier 3 capital instruments will, in practice, depend on older Tier 2 instruments having been redeemed or discontinued.

Other banking remarks

We would also highlight, for its novelty, Law 102/2015 of 24 August 2015, regulating crowdfunding for the first time in Portugal. Crowdfunding is defined as a financing alternative for entities, their activities or projects, which involves raising investment from one or more individual investors, upon registration with (online) electronic platforms. The law identifies four types of crowdfunding, among which we would highlight

(1) loan-based crowdfunding, where the relevant loans bear interest in favour of the lenders (so this will comprise peer-to-peer lending), and (2) equity-based crowdfunding, which enables investors to acquire, through the relevant platform, a shareholding in the relevant company. The CMVM shall issue further regulation governing both of them, and there will be a prior registration with the CMVM requirement for entities managing electronic platforms and an obligation on them to identify the relevant investment risks in equity-based or lending-based crowdfunding.

On the soft law front, the Bank of Portugal affirmed, through a circular letter of 3 March 2015, that interest rates in loan agreements, having as underlying a reference index, should follow their respective evolution, even if such evolution is negative. The Bank of Portugal based this position on particular statutes. However, the Bank of Portugal further admits that legal solutions may be implemented to overcome this effect, for instance, through derivatives.

We believe this matter will continue to be discussed, as it may impact several contracts between banks and consumers. From our perspective, one should also take into account the onerous nature of bank loans as well as other legal principles. Portuguese law expressly admits the possibility to modify the interest rate in the regime applicable to general contractual conditions. Furthermore, the Portuguese Civil Code foresees the *rebus sic standibus* rule. Considering the above, a negative interest rate or even zero interest scenario does not appear to us as a legitimate result, from a legal perspective, irrespectively of the negative evolution of the index and the relevant agreement being silent on this.

Even though said circular letter does not apply to bonds issuances, some bonds issuers are considering including in the relevant terms and conditions or forms of final terms, for the avoidance of doubt, that a negative or zero interest rate will not apply to such bonds. In any case, even if no such provision is foreseen, the issuer should always have the right to waive the benefit of a negative index and ascribe to it a zero amount.

The Bank of Portugal also published Notice 1/2015, which determines that, as of 1 January 2016, a capital conservation buffer of 2.5 per cent will be required, which may result in a significant impact on Portuguese banks capital demands. Also, Ministerial Order 362/2015 increased the minimum share capital for financial institutions, including credit institutions, which now have a minimum share capital of €17.5 million.

AIFMD

With quite some delay, the AIFMD[7] was finally implemented in Portugal, through two separate pieces of legislation and regulation, in particular (1) Law 16/2015 of 24 February 2015 and CMVM Regulation 2/2015, governing both UCITS funds and respective fund managers and AIFs and respective fund managers (generally, including real estate investment funds), and (2) Law 18/2015 of 4 March 2015, governing venture capital and some other sorts of investment. A CMVM regulation governing venture capital was subject to public consultation, but has not yet been published. Only in

7 Directive 2011/61/EU.

respect of (2) above did the legislator foresee a lighter regime applicable to fund managers who do not manage assets in excess of €500 million or, if leveraged, €100 million.

Even though the AFIMD addresses the regulation of the fund managers and not the funds themselves, the Portuguese legislator took the opportunity to amend a number of fund rules, with particular emphasis on real estate investment funds. We would say that the most significant changes were the amendments to real estate evaluation, shortening the general time gaps for real estate appraisals from two years to one year (for some open-ended funds, six months, and subject to a number of exceptions in all funds) and determining that the accounting value of real estate in the funds' portfolios should be the average of the two appraisals. In this context, on 14 September 2015 a new legal regime applicable to real estate appraisers was published, unifying under one same law the requirements applicable throughout the financial sector (banking, insurance, capital markets).

Transparency Directive

The latest amendments to the Transparency Directive are yet to be implemented,[8] but the CMVM has already released a public consultation paper and its respective results and final report and draft legislation.[9] In any case, the most relevant amendment has been, in our view, already in force to a great extent in Portugal since 2010, through CMVM Regulation 5/2010, requiring disclosure of substantial economic long positions. This will now be written into the law. The consultation paper also foresees the traditional Transparency Directive custodian exemption (i.e., under which shares held as a mere custodian on behalf of clients and with no voting discretion) shall now be made clearly available. This follows the most recent practical experience with the CMVM (even in the absence of such express exemption in the law), and which will certainly be helpful to the securities custodianship business and allow for a procedural harmonisation particularly for international banks in this business. The final draft legislation foresees quarterly accounts as non-mandatory, unless listed issuers are prudentially required to prepare such accounts.

MiFID2

A challenge that financial intermediaries on the securities law front are expected to face in the coming years is implementation of MiFID2.[10] We anticipate and would advise this to be a gradual process, with the entities adjusting even before formal or legal implementation of MiFID2 in Portugal. One of the key areas seems to be the more demanding rules on costs, charges and (especially) inducements, and more so in respect of independent discretionary portfolio management or investment advice. Financial intermediaries may need to revisit their fee structures and arrangements in place, to avoid a negative outcome.

8 Directive 2013/50/EU, amending Directive 2004/109/EC.

9 Available at www.cmvm.pt.

10 Directive 2014/65/EU.

Solvency II

The implementation legislation of the Solvency II Directive[11] was finally published on 9 September 2015 (Law 147/2015), entering into force on 1 January 2016, subject to a number of transitional provisions. The Portuguese legislator and regulator had been anticipating a number of features of Solvency II over the past few years, so in many fields the expected impact should not be as big as in some other jurisdictions. In any case, and considering, *inter alia*, that Solvency II focuses greatly on the market risk inherent to the assets in which insurance companies are invested in, we would expect Solvency II to have a relevant impact in terms of regulatory capital requirements imposed on the Portuguese insurance sector. This might lead to the need to set up, through the capital markets or otherwise, eligible capital instruments, to enhance Portuguese insurance companies' capital position.

On the other hand, Solvency II heavily restricts, due to its capital charges, the investment in ABS (differently from the US, for instance), which is not welcome news when in Portugal and across the EU efforts are being made to revive the ABS market, also in the context of the Capital Markets Union initiative.

iii Cases and dispute settlement

During the past year, the swaps business has continued to be a hot topic. Banks in the Portuguese market have been contracting swaps with clients in the past decade as follows:

a under Portuguese law (and jurisdiction) governed master agreement, based on the ISDA master agreement principles, but shorter and less complex; and

b under the standard ISDA master agreements.

The latter alternative has been typically followed by bigger corporates (or public sector entities, as mentioned above) with wider experience in the financial markets, while the former has been more used for smaller clients and SMEs, relatively less experienced in the financial markets, and more tempted to sue the banks when the underlying asset evolves negatively.

Highlighted case law

The Supreme Court of Justice (STJ) decision of 10 October 2013, which we discussed in last year's chapter, acknowledged the validity of derivative contracts and the applicability to derivative contracts governed by Portuguese law, namely between banks and SMEs, of the *rebus sic standibus* rule and the importance of a balanced contract. Following this decision, there has been an intense legal discussion, in courts and among scholars, regarding derivatives: whether they are not rather instruments of gaming and betting or of a merely speculative nature, with consequences on their validity. The validity of an English jurisdiction clause was also discussed.

2015 brought with it, *inter alia*, two landmark cases, which helped to clarify a number of questions and doubts that had been arising in the legal community, and which we think bring clarity, in the right direction, on a number of issues. Both dated

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11 Directive 2009/138/EC.

11 February 2015, the STJ affirmed, in general, derivatives as legally valid financial instruments, recognised as such in EU and national law, and thus not accepting the gaming and betting nature thereof, including where there is lack of evidence of hedging purposes by the client, on the one hand, and, on the other, the validity of clauses attributing jurisdiction to the courts of England, on the basis of the applicable civil procedure EU rules (this is particularly relevant for derivatives agreed under ISDA master agreements). We see these two decisions as an important step for the stability of the financial system and to end some of the discussions still pending relating to these matters.

First real test to fiduciary duties and business judgement rule to come

Still in the aftermath of the GES crisis, there were intense discussions and conflicts within Portugal Telecom (now Pharol), as it was found out that it had invested approximately €900 million in GES commercial paper. This led to the renegotiation of the merger terms with Oi, and is now also expected to lead to a number of litigations to be initiated against former corporate body members, including executive directors. Even though Portugal has (in the books, at least) a fiduciary duties regime at the level of the most modern jurisdictions and a business judgement rule (much in line with the US experience) in place since 2006, these rules have, however, not yet been really tested in a big case. It seems now will be the time for it, following the issuer's shareholders' meeting of July 2015.

v Other strategic considerations

The fact that Portugal is a small market within Europe should be taken into account when capital market transactions are undertaken. Given the size of the market and the reduced number of players, information can be expected to be quickly disseminated among relevant market operators. For the same reason, and also taking into account the most recent developments in the market and the increased public pressure on regulators (and with the BES/GES crisis, and other still very fresh cases such as the Portugal Telecom case), more intense scrutiny by supervisory authorities – including the CMVM – should be expected (prospectus review and approval, complex financial products placement and relevant documentation, rules of conduct, etc.).

Given the speed of approval of securities legislation in Brussels, in the form of regulations and directives, a cautious regulatory approach should be taken, as the legal regime is constantly subject to changes. In any case, there is great expectation regarding the developments and outcome of the Capital Markets Union initiative from the European Commission, particularly considering that Portuguese companies are very highly dependent on banking credit, while Portuguese banks are still facing significant challenges and needs for deleverage.

III OUTLOOK AND CONCLUSIONS

As mentioned, Portugal has exited the Economic Adjustment Programme, but it is still a challenging environment. This is also, however, a time for opportunities, as the increased activity in the Portuguese M&A market shows. This new environment also brings new legal challenges, but they will certainly not be an obstacle to executing interesting transactions in the market.

Finally, there is likely to be increasing securities law litigation in the courts from retail investors, subordinated creditors and shareholders, but also from senior creditors affected by developments in the market in the past couple of years.

Appendix 1

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Orlando Vogler Guiné has a law and a business law master's degree from the Coimbra Faculty of Law and a postgraduate degree in securities and business law from the Lisbon Faculty of Law. He joined Vieira de Almeida & Associados in 2006, after an internship with the Portuguese Securities Commission (CMVM). He has been actively involved in capital market transactions there since, including takeovers, liability managements, asset-backed securities, debt, hybrid and share issues, including IPOs and ABBs, bank recapitalisations and resolution, undertakings for collective investment, and derivatives, assisting some leading institutions in the financial and non-financial sectors. Besides his professional work he has been a guest lecturer on postgraduate and master's courses, and at several conferences, and publishing works on securities and company law. He is a member of the Business Law Institute (IDET – Coimbra Faculty of Law) and of the Portuguese/Swiss Chamber of Commerce.

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