Commercial Mortgage-Backed Securitisation

Developments in the European Market

Andrew V. Petersen, Editor.

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CHAPTER TWENTY

THE PORTUGUESE CMBS MARKET

MORTGAGE-COVERED BONDS: A BRAVE NEW TOOL

Pedro Cassiano Santos and Hugo Moredo Santos
Vieira de Almeida & Associados

THE SECURITISATION FRAMEWORK

Securitisation is a tool which has enjoyed a specific legal framework in Portugal since 1999, when Decree-Law 453/99 (the "Securitisation Law") set forth a specific regime applicable to the assignment of receivables for securitisation purposes and ruled on the incorporation and activity of the securitisation vehicles. This specific regulation was enacted in a context where securitisation in Portugal was in its infancy and transactions were carried out under the Portuguese Civil Code structure, which did not comprise a specific securitisation framework, transactions being therefore carried out under the general concept of assignment of credits (Art. 577 of Portuguese Civil Code). Taking into account this absence of a specific structure, securitisations involving mortgage-backed receivables were impracticable due to assignment and registration costs which, together with assignment formalities (which are identical to those applicable to the transfer of the underlying asset—transfer of title over real estate requires the execution of a public deed), were obstacles impossible to overcome.

In this scenario, the Securitisation Law may be seen as having established a legal framework aiming at the simplification and hence at the expansion of the Portuguese securitisation market:

(1) it has provided a standard and specific securitisation regime by regulating the creation and activity of the securitisation vehicles, the

type of receivables that may be securitised, and the entities that may assign credits for securitisation purposes;

(2) it has simplified the process by providing specific rules applicable to the assignment of receivables; and

(3) it has expanded the class of actual eligible assets so as to include mortgage loans by providing for a simplified mechanism for assignment of this type of credit.

Some key aspects of this legal framework may be summarised as follows:

(1) identification of all potential originators, including the Portuguese state and other public law entities, credit institutions, financial companies, insurance companies, pension funds, pension funds' management companies and other corporate entities having their last three-year accounts duly certified by a registered auditor;

(2) definition of the eligibility criteria that the receivables must meet so as to be capable of assignment for securitisation purposes: free assignability (hence, not limited by legal or contractual constraints), pecuniary nature, no-subordination to conditions and no submission to litigation nor to security or judicial seizure or apprehension;

(3) creation of two different structures in terms of securitisation vehicles:

   (a) credit securitisation funds (*Fundos de Titularização de Créditos*—"FTC"), operating on a tripartite structure basis which comprises the fund (autonomous pool of assets), the management company and the custodian, and

   (b) credit securitisation companies (*Sociedades de Titularização de Créditos*—"STC"), operating on a simple structure scheme, formed by the securitisation company only;

(4) establishment of special rules facilitating assignments of receivables in the context of securitisation, which includes:

   (a) the notification to the relevant debtors not to be required whenever the originator is a credit institution, financial company, insurance company, pension fund or pension fund's management company, and

   (b) the possibility for the receivables assignment agreement to be executed by private document, public deed being thus dispensed with (even in those cases where the assigned receivables are backed by mortgages);

(5) establishment of special rules aimed at the characterisation of the assignment as a true and effective sale (the sale of the assets/assignment of receivables must be treated as a complete and final transfer

from the seller—originator—to the purchaser—securitisation vehicle—so that upon such transfer the relevant receivables may no longer and for no legal purpose be seen as assets of the seller);

(6) establishment of special rules aimed at protecting investor's rights in the context of the insolvency of the originator and/or of the servicer:

(a) unlike the general rules in this respect, the assignment of receivables for securitisation purposes even when conducted in the vicinity of insolvency is not deemed to be made in bad faith in the context of the originator's insolvency and therefore the proof of bad faith in the performance of certain acts which may be said to cause depletion of a given debtor's assets (which, in certain circumstances, is deemed to occur as per the general terms of insolvency law) lies upon the creditor whenever such acts occur for securitisation purposes;
(b) unless it is bad faith driven, no assignment of credits for securitisation purposes may be challenged for the benefit of the originator's insolvency estate;
(c) any payments made to the assignor in respect of receivables assigned prior to a declaration of insolvency shall not form part of its insolvency estate even when their maturity date is subsequent to any such declaration; and
(d) any amounts held by the servicer as a result of its collection of payments in respect of credits assigned for securitisation purposes shall not form part of the servicer's insolvency estate.

Besides their specific framework, the two aforementioned different structures provide for two different investment instruments: while FTC's issue securitisation units, STC's issue securitisation notes. The creation of these two different types of securitisation vehicles may be seen as having been determined by a flexibility concern. Accordingly, it may have been felt that sticking to FTC's alone could be too limiting, particularly when the historical securitisation background is SPV-based, a structure with which Anglo-Saxon investors seem to be more familiar with. The creation of the two alternatives seems therefore to represent an adequate means of attracting a wider and more diversified range of investors.

FTC's correspond to autonomous pools of assets jointly held by individual or corporate entities (with no specific requirements applying in respect of their nature). Under no circumstances may the FTC's be liable for the debts of said entities (unitholders), of their management company (fund manager) or of the entities from which they have purchased the receivables forming

document). In those cases where the fund regulation allows for: (i) new credits to be purchased (either aimed at replacing previous receivables on their maturity date, should said receivables have a maturity date shorter than the fund's, or in addition to the ones purchased at the time of incorporation of the FTC), and/or (ii) new issues of securitisation units to be made, the FTC's will have a variable nature. When neither (i) or (ii), above, are allowed by the fund regulation, the FTC is said to be of a fixed nature.

As per the terms of the respective fund regulation, the securitisation units may grant their holders any or all of the following rights:

(1) payment of periodic income;

(2) reimbursement of the units' nominal value; and

(3) sharing of the fund's assets left upon liquidation thereof, pro rata with the relevant participation.

When the fund regulation so allows, there may be different categories of securitisation units (i.e. sets of units which grant their holders identical rights but, when compared with other sets of units, entail a different ranking insofar as the exercise of the above rights is concerned) and, provided the equal treatment of the holders of same category securitisation units is ensured, there may be early redemption of the units, either in whole or in part.

On the contrary, STC's are financial companies who are required to:

(1) qualify as *sociedade anónima* (public limited liability company) whose share capital is represented by nominative or registered bearer shares;

(2) include in its name the expression "STC" for ease of identification; and

(3) be exclusively engaged in the carrying out of securitisation transactions by means of purchasing, managing and transferring receivables, and of issuing notes as a source of financing such acquisitions.

Their main feature is that their reimbursement is guaranteed by receivables exclusively allocated to them, i.e. they are of limited recourse to the specific assets backing them. This segregation principle is made effective by the legal provisions which impose the need for the alluded receivables (i.e. those allocated to a given secured note) to be identified as such (in a codified form, the corresponding key being deposited with CMVM—the Portuguese Securities Commission) and to be treated as an autonomous pool of assets creditor's privilege and their rights rank senior to those of the other creditors in respect of receivables allocated to the relevant issue of notes.

Transactions under the securitisation framework

The first securitisation transaction was carried out in Portugal in 1997 and the first AAA securitisation in 1999. However, the first transaction carried out under the Securitisation Law-- which was performed by a mortgage-backed deal - only occurred in late 2001. The regime under the Securitisation Law, although investor-friendly, did not give efficient solutions for tax sensitive matters, an issue that was only overcome with the enactment of Decree-law No.219/2001, dated August 5, 2001, which established the tax regime applying to securitisation transactions.

This specific tax regime included several exemptions, notably in what concerns income inherent to securitisation units (issued by the FTCs) and securitisation notes (issued by the STCs), value added tax relating to servicing of the receivables and management thereof and stamp tax affecting assignments, interest and commissions.

From December 2001 to the present day, the Portuguese market has experienced the incorporation of more than 30 FTCs and four STCs, and the execution of nearly 20 transactions involving receivables backed by mortgages, which clearly evidences the relevant role of this type of security as a related security of a receivable assigned for securitisation purposes.

The mortgage-backed deals originated in Portugal have always related to RMBS, with the CMBS market still waiting to make its debut. Both RMBS and CMBS are subject, as concerns legal and taxation limitations, to the exact same rules as explained above. Actually, the Securitisation Law does not have any provisions specifically applicable to RMBS or to CMBS and, consequently, all key features presented in relation to potential originators, eligibility criteria, selectable securitisation vehicles, rules applicable to the assignment of receivables and investor's protection measures apply, on general terms, to both RMBS and CMBS equally.

Once there is no legal constraint applicable to CMBS when compared to RMBS, the most evident reason to explain the boom of RMBS transactions and the absence of CMBS transactions is that RMBS is a much more homogenised market (notably due to underwriting standards), thus facilitating massive assignment and avoiding complicated due diligence processes. However, things may change in the near future, for the slow-starting CMBS Portuguese market may have found a new path to develop its potentialities: mortgage-covered bonds.

MORTGAGE-COVERED BONDS

A little over four years after the first securitisation transaction carried out under the Securitisation Law and a little over six years after the enactment of that Law, and bearing in mind the fast - although smooth - growth of the Portuguese securitisation market, the Portuguese Government has decided to review Decree-law No.125/90, dated April 16, which set out the regime governing an instrument which may constitute an alternative to securitisation (although bearing different features): mortgage-covered bonds.

This review was long awaited by members of the financial community. Although the Portuguese legal environment contained regulation on mortgage-covered bonds since the beginning of the 1990's, Decree-law No.125/90 has never conquered the sympathy of market participants as a piece of legislation providing a useful and efficient tool aimed at creating conditions for debt representative instruments backed by portfolios of mortgage credits to be issued. Therefore, it does not come as a surprise that the preamble of Decree-law No.59/2006, dated March 20, identifies the purposes of avoiding bureaucratisation and creating flexibility as the most relevant targets to be achieved by granting to certain market players the ability to issue mortgage-covered bonds, hence following the European trend on this subject and profiting from the experience gathered with similar instruments in jurisdictions having this tool more efficiently developed.

Therefore, Decree-law No.59/2006 has determined several changes to the legal framework set forth by its predecessor, in particular the:

- enlargement of the type of receivables capable of being used as underlying credits of the mortgage-covered bonds, as a consequence of the adoption of more flexible eligibility criteria, thus allowing for receivables other than those mortgaged-backed to work as underlying assets;
- enlargement of the type of entities enjoying issuing capability, which resulted in the insertion of a new species of credit institution, mortgage loan credit institutions, entities which are known to the legal framework of other EU Member States; and
- acknowledgment of the useful function that risk coverage instruments may perform in the context of a transaction involving debt issuance and the consequent recognition of derivative instruments as appropriate schemes for the purposes of currency fluctuation, interest variation and liquidity shortfalls risk coverage.

Issuing capability

Decree-law No.59/2006 has not accepted the idea of all entities being entitled to issue mortgage-covered bonds. Taking into account the special nature of the typical asset which underlies debt representative instruments,[1] the law has initially limited the issuing capability to those entities which are allowed to grant mortgage loans in the context of their business activities. It is understandable that credit institutions unable to grant mortgage loans should not be entitled to issue debt representative instruments backed, primarily, by mortgage loans. This may be said to constitute a statutory limitation. However, in practice is not that relevant, as all (or, at least, the vast majority of) credit institutions are statutorily allowed to grant mortgage loans.

Even if a credit institution is allowed to grant mortgage loans in the context of its business activity, a second criterion should be also met: an appropriate level of own funds, which the law has set at €7,500,000. This may be said to constitute a prudential limitation, which is aimed at ensuring that credit institutions evidencing a low level of own funds may not obtain liquidity through the issuance of these instruments.

As previously discussed, Decree-law No.59/2006 has also introduced a new type of credit institution: mortgage loan credit institutions. These entities are credit institutions having the power to grant, acquire and sell receivables secured by mortgages over real estate for the purpose of issuing mortgage-covered bonds.[2] In order to properly conduct their activities, mortgage loan credit institutions may also perform all administrative acts relating to the assets which are collected as repayment of the receivables, as well as perform other acts proving necessary for the accomplishment of their primary role.

In conclusion, it is possible to identify as entities enjoying mortgage-covered bonds issuing capability, credit institutions legally authorised to grant mortgage loans which enjoy own funds amounting to no less than €7,500,000, including the new mortgage loan credit institutions.[3]

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[1] Mortgage-backed receivables, resulting from a mortgage loan entered into by and between a credit institution and a given borrower.

[2] Furthermore, mortgage loan credit institutions may also grant, acquire and sell receivables due or guaranteed by central administrations or regional and local authorities of EU Member States for the purpose of issuing mortgage-covered bonds.

[3] The preamble of Decree-law No.59/2006 already anticipates that other entities – notably, financial companies – may in the future be entitled to issue mortgage-backed bonds, a possibility which is closely dependent on the evolution and experience gathered by the use of that instrument.

Main features inherent to mortgage-covered bonds

This new legal framework profited from several investor protection mechanisms introduced by the Securitisation Law, the generality of which were unknown to the former Decree-law No.125/90. Therefore, mortgage-covered bonds grant certain entitlements to their holders, which are aimed at allowing them to be detached from all risks not inherent to the securities they hold (the mortgage-covered bonds) and the receivables underlying them (the mortgage loans). In this context, the special creditor privilege (which, for flexibility and costs saving purposes, is not subject to registration) over the underlying mortgage receivables and other assets integrating the covered pool, assumes a predominant position.[4] This credit privilege allows the holders of mortgage-covered bonds to enjoy a preferential position in relation to other creditors for the purposes of principal repayment, and interest payment corresponding to their mortgage-covered bonds.[5]

Additionally, as the mortgage receivables and other assets allocated to the mortgage-covered bonds, including the proceeds relating to interest and repayments, constitute an autonomous pool of assets, they are incapable of being used for the payment of other debts incurred by the issuer, to the extent the amounts due to the holders of the mortgage-covered bonds are not fully discharged. This segregation structure, which is already familiar to investors in securitisation units (on a fund by fund basis) and on securitisation notes (on a issuance by issuance basis) issued by FTCs and STCs respectively, demands mortgage receivables and other assets forming part of the autonomous pool of assets allocated to the mortgage-covered bonds, to be registered in segregated accounts of the issuer, and identified in a codified manner in the issuance documents.[6] The key to the code, following the solution that already applies to securitisation notes,[7] must be deposited with the Bank of Portugal, as supervising entity of the issuer. Decree-law No.59/2006 has not provided for specific rules governing the access by holders of mortgage-covered bonds to the code, entrusting the matter to the Bank of

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[4] In its main features, notably the preference status granted thereby and the absence of registration, this entitlement is very similar to the one awarded to the holders of securitisation bonds and entities rendering services connected with the issuance thereof under Portuguese Securitisation Law.

[5] This credit privilege is extendable to the counterparts of eligible derivative transactions, insofar as the receivables resulting from such transactions are concerned. See "Risk Coverage Instruments", below.

[6] The Portuguese securitisation funds dispense with the need for such a segregated registration, as each fund works as an autonomous pool of assets, and is thus capable of being used for only one transaction, even if the same involves multiple issuances and multiple series of securitisation units.

[7] The key to the code of the securitisation bonds' accounts shall be deposited with the CMVM (Portuguese Securities Commission), as supervising entity of the STCs.

Portugal, who must establish, by means of regulation, the conditions under which such access may, in the event of default, take place.

Another relevant feature of mortgage-covered bonds is the ring fencing mechanism set forth by the legislator, so as to safeguard those instruments and respective holders, from events having a negative patrimonial impact on the issuer, notably its insolvency. Hence, in the event of dissolution and winding-up (including on grounds of insolvency) of the issuer, the mortgage receivables and remainder assets allocated to the mortgage-covered bonds will be segregated from the insolvency estate and thus will not form part thereof. This segregation allows for the mortgage receivables and assets to be autonomously managed until full repayment of the amounts due to the holders of the mortgage-covered bonds, notwithstanding the bondholders meeting being entitled to approve the immediate acceleration of those securities. Also in this respect, the Bank of Portugal is required to provide the procedures that must be adopted during such autonomous management and the terms of the liquidation of the estate (mortgage receivables and other assets) allocated to the mortgage-covered bonds following the acceleration of the securities.

What type of assets can back mortgage-covered bonds?

Decree-law No.59/2006 provides for two different categories of underlying assets:

- unconditioned pecuniary non-matured mortgage-backed receivables, and
- other assets.

Unconditioned pecuniary non-matured mortgage-backed receivables

These include three different sorts of receivables:

(1) pecuniary receivables that are not matured, nor subject to conditions, nor encumbered, nor judicially seized or apprehended and which are secured by first ranking mortgages over residential or commercial real estate located in a EU Member State;

(2) receivables secured by junior mortgages where all receivables secured by senior mortgages over the same real estate are held by the issuer and allocated to the same bond issuance; and

(3) receivables enjoying the benefit of a personal guarantee granted by a credit institution or by an appropriate insurance policy, with a mortgage counter guarantee evidencing the characteristics identified above.

It should be noted that, when establishing the eligibility criteria for assets which may back mortgage-covered bonds, Decree-law No.59/2006 has followed in the footsteps of the Securitisation Law with regard to the definition of the receivables capable of assignment for securitisation purposes. In fact, only in respect of maturity and transferability the features of eligible unconditioned pecuniary non-matured receivables differ from those of receivables eligible for securitisation purposes.

Regarding maturity, it should be stressed that the original version of the Securitisation Law also prevented the use of matured and unpaid receivables for securitisation purposes, a restriction which has been eliminated so as to "leave to market players the role of evaluating the quality of the transactions they wish to enter in light of the rating attributed by the relevant rating agency".[8] Securitisation regulation has not always been as it currently is; the legislator has originally chosen a prudent approach on the eligibility criteria and has later removed some of the limitations initially imposed in order to meet the market development and to achieve a full undertaking by investors, as decision makers, of the investment risk inherent to the purchased securities. It remains to be seen if the same happens in respect of this requisite for mortgage-covered bonds.

The absence of transferability (a key, indeed critical, feature of receivables hoping to qualify as suitable for assignment for securitisation purposes) among the mortgage-covered bonds eligibility criteria means that there must be no transfer of the mortgage loan and relevant mortgage to any third party, as happens in standard securitisation (as opposed to synthetic securitisation). As happens in securitisation transactions, the proceeds inherent to mortgage loans are allocated to the mortgage-covered bonds. However, the benefit of the holders of mortgage-covered bonds to receive all principal and interest collections resulting from those loans is not the consequence of a transfer of title but rather of an allocation of proceeds and security scheme, thus implying no variation at the creditor position level.

Other assets

In the "other assets" category, the law has included deposits with the Bank of Portugal, in cash or in securities eligible for credit transactions of the Eurosystem; current or term account deposits with credit institutions (which are not in a domination or group relationship with the issuer) having a rating equal to or higher than "A-" or equivalent; and other assets complying simultaneously with the requisites of low risk and high liquidity.

[8] Preamble of Decree-law No.303/2003, dated December 5, which enacted the second amendment to the Portuguese Securitisation Law.

In addition to their specific features, the main difference between the two types of underlying assets stems from the fact that the total value of the "other assets" may not exceed 20 per cent of the global value of the mortgage receivables and other assets allocated as security over the mortgage-covered bonds.

Risk coverage instruments

The need to ensure, at all times, that the relevant periodic payments are duly performed as and when they fall due is one of the major concerns inherent to the issuance of bonds and other debt representative securities. Therefore, it is critical to permit the use by the issuer of certain tools whenever, for any reason whatsoever, proceeds originated by the mortgage-backed receivables and other assets allocated to the issued mortgage-covered bonds prove to be insufficient to meet the scheduled payment obligations.

In order to face temporary liquidity shortfalls, irrevocable credit lines may be contracted and, if needed, activated, the corresponding funds being exclusively used for purposes of repayment and interest payments of the relevant mortgage-covered bonds. Following the same rating level requirement which has been presented above in relation to current or term account deposits with credit institutions (which may be comprised within the "other assets" category), those credit facilities may only be contracted with credit institutions rated at least "A-".

On the other hand, and with the exclusive purpose of ensuring risk coverage, namely interest rate, currency exchange and liquidity shortfalls, the issuer is entitled to conduct transactions involving derivative financial instruments. Those instruments would form part of the autonomous pool of assets allocated to the performance of the corresponding mortgage-covered bonds, and should be considered for calculation of the relevant limits and registered in the applicable segregated accounts of the issuer.[9]

As happens with the credit facilities, there is a restriction on where derivative financial instruments may be entered into. Decree-law No.59/2006 identifies regulated markets functioning in Member States or recognised markets of a full member of the Organisation for Economic Co-operation and Development (OECD) as eligible transaction markets for this type of transaction. The entering into of transactions involving derivative financial

[9] This registration shall additionally include, in respect of each derivative financial instrument, the following conditions: the mortgage-covered bonds to which such instrument is allocated, asset or assets underlying such mortgage-covered bonds, transaction amount, identification of the counterpart and initial date and maturity date.

instruments outside those restrictions is only acceptable if the respective counter part is a credit institution rated at least "A-".

Derivative financial instruments grant to the counterpart of the issuer the credit privilege referred to earlier in this chapter, insofar as the receivables resulting from such transactions are concerned.

It should be noted that the Bank of Portugal may define, by means of regulation approved for such purpose, the terms in which the derivative financial instruments are to be considered for the purposes of determining the prudential limits explained in the next part of this chapter, or set forth the application of further conditions on the use of derivative financial instruments.

Prudential rules

As illustrated by provisions such as those relating to segregation and ring fencing, the whole purpose of mortgage-covered bonds, is allocation, asset-backing and a direct connection between a particular asset and the securities whose performance it secures. Therefore, the existence of certain ratios is crucial for the prudent relationship between the backing assets and the performing securities. Therefore, Decree-law No.59/2006 provided that the nominal global value of the outstanding mortgage-covered bonds may not exceed 95 per cent of the nominal global value of the mortgage receivables and other assets allocated thereto. Similar rules apply to interest payments, and thus the nominal global amount of interest to be paid to the holders of mortgage-covered bonds may not exceed, from time-to-time, the amount of interest pertaining to the mortgage receivables and other assets allocated to the mortgage-covered bonds. The calculation of these limits, as well as other limits or conditions, and relevant calculation methods, namely in what relates to risk coverage and management, may still be complemented by regulations enacted by the Bank of Portugal.

While these two references relate to the mortgage-covered bonds themselves, another reference, working as an eligibility criterion, also results from the law: the relationship between the amount of a mortgage receivable and the value of the mortgage securing it, i.e. the loan-to-value ratio. Contrary to the position under the Securitisation Law, Decree-law No.59/2006 has defined a minimally acceptable ratio to the agreement that parties may achieve in the transaction documents determining that the amount of any mortgage receivable allocated to mortgage-covered bonds may not exceed the value of the respective mortgage (i.e. that amount secured thereby): neither 80 per cent of the value of the secured asset, in the case of residential real estate, nor 60 per cent of that value in the case of commercial real estate.

Should any of the above limits be exceeded the issuer shall ensure that the excess is not prejudicial to the performance of the issued mortgage-covered bonds and that the balance which the law has defined as a minimum — and which is evidenced by the referred ratios — is promptly re-established. For such a purpose, the issuer may:

(1) enlarge the set of assets allocated to the mortgage-covered bonds, improving the deficient backing level (rebalance at the underlying asset level) by the allocation of new mortgage receivables, with or without substitution of the mortgage receivables allocated to the mortgage-covered bonds, or other authorised assets; and/or

(2) decrease the number of outstanding mortgage-covered bonds and improve the backing level (rebalance at the mortgage-covered bonds level), through the acquisition of mortgage-covered bonds in the secondary market.

Tax implications

Provided certain requisites are met, income generated by mortgage-covered bonds may be exempt from corporate or personal income tax (including capital income and capital gains). This exemption is provided for in Decree-law No.193/2005, dated November 7, which sets forth a special taxation regime applicable to securities qualifying as debt representative instruments issued by public or private entities and traded in a centralised system recognised by Portuguese Securities Code.

Additionally, and in order for those securities to be released from tax contingencies, a second requisite must be met: the effective beneficiaries thereof may not have their residence, head office, effective management or permanent establishment in Portuguese territory to which the alluded income may be allocated, a structure which is very close to the one provided for in Decree-law No.219/2001, which establishes the tax regime applying to securitisation transactions carried out under the Securitisation Law.

CONCLUSION AND EXPECTATIONS

Legislation on mortgage-covered bonds has been awaited for several years by Portuguese market players, particularly credit institutions having strong shares in residential mortgage markets. The Portuguese legislator has closely followed the already tested and efficient framework of the Securitisation Law notably in matters such as the entitlements of holders of mortgage-covered bonds, including:

- the special creditor privilege over the underlying mortgage receivables,
- the account's segregation mechanism,
- the ring fencing structure,
- the definition of eligible underlying assets, where the criteria applicable to receivables qualifying for securitisation purposes have been *mutatis mutandis* adopted, and
- admissibility of risk coverage instruments.

Decree-law No.59/2006 has thus chosen to follow solutions that have been successfully used by the legal framework under which dozens of securitisation transactions, including those of mortgage-backed receivables, were carried out in Portugal.

It is to be hoped that the inefficiencies that doomed the now revoked Decree-law No.125/90 have been identified. In its place, a brave new tool has now been made available granting market players, from originators to arrangers, an alternative tool to manage mortgage loan portfolios which may be more useful in all those cases where balance sheet release is not critical asset class diversification for investors is also an achievement of their new legislation.

As discussed, most of the legal solutions have already crossed the market hurdle with regard to securitisation structures. The adoption of those same solutions for the issuance of mortgage-covered bonds demonstrates that the Portuguese legislator has followed the path of flexibility and market and investors protection, for the benefit of transactions originating out of Portugal. The legislator has done its job and it remains to be seen how market participants will respond.