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Banking Regulation

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Contributing Editors:

Peter Hsu & Rashid Bahar

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Portugal

Benedita Aires, Maria Carrilho & David Nogueira Palma
Vieira de Almeida

Introduction

The Portuguese economy ended 2018 on a reasonably strong footing, with the economy benefiting from healthy dynamics in the tourism and real estate sectors, and improved investment in recent years. The momentum has continued with the improvement of leading indicators, the expansion of industrial production, low interest rates and a declining unemployment rate (down to 6.9% in August of 2018), all of which helped boost private consumption. Although the fiscal risks remain high, in the first semester of 2018 the government managed to achieve a deficit of 1.9% of GDP (-6.1% in relation to the same period of the previous year).

Noting a slight improvement of the Portuguese economy, but following global concerns regarding the credit crunch, two trends are already being felt. On one side, granting of credit appears to be on an accelerated growth curve; on the other side, banks operating in Portugal are undertaking a collective deleverage effort, visible, notably in the disposal of non-performing loans (according to the report of October, 2018 by the Bank of Portugal (the "**BoP**") on the Portuguese banking system, the ratio of non-performing-loans has been reduced by 6.2 percentage points over the past two years) or through the shut-down or disposal of certain branches or business lines.

A considerable number of new and relevant regulatory frameworks entered into force or will continue to apply in Portugal throughout 2018 and 2019, from which we highlight a few that are further detailed below:

(i) EU Directive 2014/65 on markets in financial instruments ("**MiFID II**") and EU Regulation 600/2014 on markets in financial instruments ("**MiFIR**"), both in force since 2 July 2014, became applicable in EU member states on 3 January 2018. The transposition of MiFID II was concluded this year, through the enactment of Decree-Law 35/2018, of 20 July ("**Decree-Law 35/2018**").

(ii) The Packaged Retail and Insurance-based Investment Products ("**PRIIPs**") Regulation equally became applicable in Portugal on 1 January 2018, aiming to better protect retail investors by increasing the transparency and comparability of investment products.

(iii) The revised Payment Services Directive ("**PSD II**") will enter into force soon, having just been enacted on 5 November 2018, while Law 83/2017, which entered into force on 17 September 2017, introduced several important amendments to the Portuguese legal regime on money laundering and terrorist financing, in line with EU Directive 2015/849.

(iv) EU Regulation 2016/679, also known as the General Data Protection Regulation ("**GDPR**"), aimed at unifying the regime on the processing and movement of personal data throughout the Union, became applicable in Portugal on 25 May 2018, forcing a change in privacy policies for every company functioning in Portugal that deals with private data.

(v) Law no. 83/2017, of 18 August, on measures to combat money laundering and the financing of terrorism was also enacted, taking a step forward from the previous regime.

(vi) Law proposal referring to senior non-preferred deposits and/or instruments has been approved and transposes Directive (EU) 2017/2399, of Parliament and of Counsel, of 12 December 2017.

(vii) Law no. 25/2018, of 20 July, which amended Decree-Law no. 357-B/2007, of 31 October, which establishes the regime for consultation for investment in financial instruments.

Regulatory architecture: Overview of banking regulators and key regulations

General overview

Portuguese banks – and credit institutions in general – are subject to the supervision of two different authorities: in respect of core banking activities such as collecting deposits and granting credit, these are subject to the supervision of the BoP; whilst as financial intermediaries, acting as such and performing securities-related transactions, Portuguese banks are subject to the supervision of the Portuguese Securities Market Commission ("**CMVM**"). Consequently, the set of rules to which Portuguese institutions are exposed is twofold: the Portuguese General Framework for Credit Institutions and Financial Companies (enacted by Decree-Law no. 298/92, of 31 December, as amended from time to time, the "**Banking Law**"), and the Portuguese Securities Code (enacted by Decree-Law no. 486/99, of 13 of November 1999, as amended from time to time, hereinafter "**PSC**"), which accommodated in domestic legislation a wide range of directives, including the prospectus directive, the transparency directive, the takeover directive and the directives on markets in financial instruments. Around this legal inner circle, there is a vast number of regulations issued by the BoP and the CMVM.

The BoP, as the Portuguese central bank, forms part of the European System of Central Banks ("**ESCB**") which is composed of the European Central Bank ("**ECB**") and the national central banks of the European Union Member States. Although the securities segment is not so intensively organised, the CMVM is part of the European Securities and Markets Authority ("**ESMA**"), an association that embraces the European supervisory authorities.

Portugal also forms part of the Economic and Monetary Union ("**EMU**"), the project of Banking Union which relies on three pillars in order to assure the stability and sufficiency of the integration process already carried out by the member countries. These are: the Single Supervisory Mechanism; the Single Resolution Mechanism; and the European Deposit Insurance Scheme. Noting that the previous two pillars are already implemented and properly functioning, the latter is still to be implemented and its absence leaves the Banking Union unbalanced and posing risks to financial stability. In fact, the Banking Union is missing the implementation of a common system for deposit guarantee and the central responsibility for financial stability, both of which are crucial to ensure stability and to consolidate the integration of those steps already taken.

The bank regulatory regime

A credit institution qualifying as a bank, as defined in the Banking Law, is an undertaking conducting the business of receiving deposits or other repayable funds from the public and granting credit for its own account to third parties in general.

Banking activities in Portugal are governed by the Banking Law, which regulates the taking-up and pursuit of banking business. Banks correspond to one of several types of credit institutions and financial entities provided for in the law, operate under the concept of a universal financial licence, and may engage in a long list of activities such as: the acceptance of deposits or other repayable funds from the public; granting credit, or any form of lending, including the granting of guarantees and other payment commitments; financial leasing; and factoring. Banks having their head office in Portugal, as well as branches of banks having their head offices abroad, are qualified to carry on the aforementioned activities subject to Portuguese law.

Branches of banks incorporated in EU Member States may carry out in Portugal the activities listed in Annex I to the EU Directive 2013/36, which the same bank would also be authorised to carry out in its home jurisdiction, provided a number of prerequisites are met. According to the Banking Law, in respect of the activity of overseas banks not having a branch in Portugal, banks authorised in their home country to provide the services listed in Annex I to Directive 2013/36, may still carry on such activities in Portugal, even if they are not established here. As a prerequisite for the commencement of such services in Portugal, the supervisory authority of the bank's home jurisdiction must notify the BoP of the activities that the relevant institution intends to carry out, and certify that such activities are covered by the authorisation granted in the home country, which demonstrates the continuous cooperation required between EU supervising authorities.

It should also be noted that the supervisory system has generally changed following the recent establishment of a single supervisory mechanism ("**SSM**") and a single resolution mechanism ("**SRM**") which are made up of the ECB and national competent authorities, the ECB being responsible for the overall functioning of the SSM and SRM and having direct oversight of the eurozone banks in cooperation with national supervisory authorities.

Recent regulatory themes and key regulatory developments in Portugal

The resolution framework

International context and background

The banking crisis which started in 2008, and its effects, triggered deep international reflection on the lack of efficient rules, mechanisms and intervention powers of supervisors in credit institutions.

At the European level, this reflection resulted in the publication of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 ("**BRRD**"), which established a framework for the recovery and resolution of credit institutions and investment firms.

The aim of the BRRD was to equip national authorities with harmonised tools and powers to tackle crises at banks and certain investment firms at the earliest possible moment, and to minimise costs for taxpayers.

In Portugal, the BRRD was transposed by Decree-Law no. 31-A/2012, of 10 February 2012, Decree-Law no. 114- A/2014, of 1 August 2014 and Decree-Law no. 114-B/2014, of 4 August 2014, setting forth a legal discipline for intervention in credit institutions, consisting in a three-pronged strategy: (i) corrective intervention tools; (ii) provisory administration tools; and (iii) resolution tools. Notwithstanding, full transposition of the BRRD was achieved with Law 23-A/2015, which not only further amended the Banking Law but also implemented into the Portuguese legal order EU Directive 2014/49 on deposit guarantee schemes, thus protecting the depositors of all credit institutions and further contributing to the safeguard of the stability of the EU banking system as a whole.

The resolution tools and financial support

In the present section, we focus on the essential features of the resolution tools under the Banking Law, since before this framework entered into force, the only way out for a credit institution facing a severe financial situation with no obvious cure would be licence revocation and subsequent winding-up.

According to the Banking Law, the BoP may decide to apply four different resolution measures to failing institutions, neither of which involves obtaining previous consent of the intervened institution's shareholders or any third party:

a) the sale of business tool;
b) the bridge bank tool;
c) the asset separation tool; and
d) the bail-in tool.

In a sale of business scenario, the BoP will decide on the transfer, in whole or in part, of assets, rights or liabilities of the intervened credit institution to one or more institutions authorised to pursue the same activity in the Portuguese market.

When deciding on the bridge bank scenario, the BoP resolves on the transfer, in whole or in part, of assets, rights or liabilities of the intervened credit institution to one or more bridge institutions specifically incorporated for such purpose, which, in turn and at a later stage, will be sold in the market or will transfer its assets and liabilities to one or more institutions authorised to pursue the banking activity in the Portuguese market. The remaining assets and liabilities not transferred to the bridge institution stay on the balance sheet of the failed bank, which typically enters into winding-up proceedings applicable to credit institutions.

In the asset-separation scenario, the BoP may determine the transfer of assets, rights or liabilities of an institution under resolution or a bridge institution to one or more asset management vehicles, so as to maximise the respective value in a subsequent alienation or liquidation.

Finally, in a bail-in situation, the BoP may also decide to apply bail-in measures to a given credit institution for the purpose of reinforcing its capital position and own funds, so it may continue to carry out its banking activity, whilst complying with regulatory requirements. In this regard, the BoP is empowered to reduce the nominal value of credits that constitute credit institution liabilities and to increase the share capital by the conversion of eligible liabilities through the issue of ordinary shares. Through this tool, losses end up being allocated to shareholders and creditors, thus shifting the burden of bank rescues from taxpayers to bank creditors.

Similarly to what happens in other countries, the Portuguese resolution legal framework creates a Resolution Fund, the purpose of which is to provide financial support for the implementation of resolution measures, such as subscribing the share capital of a bridge bank. At this point, an inevitable question must be raised: what are the financial resources of the Resolution Fund?

Answering the above, the Banking Law and the Resolution Fund Regulation set forth that the financial resources of the Resolution Fund are essentially revenues from banking sector contributions; initial and periodic contributions by participant institutions; loans, preferably granted by participant institutions; investment revenues; donations; and any other income, revenues or values arising from an institution's activities, or that are attributed to it either by law or contract.

Furthermore, should the Resolution Fund not have enough financial resources, the participant institutions and/or the State shall be called upon to make additional contributions, and the former may also be requested to grant guarantees. In the present context, where credit institutions struggle both to meet demanding capital requirements and generate liquidity for injection in a weak economy, it is hard to anticipate how, under what funding pressure and in what timings the necessary resources for the Resolution Fund could be gathered and maintained. This issue is even more crucial in a bridge bank scenario, where the Resolution Fund happens to be its sole shareholder. Resolution tools must comply with the guiding principle, prescribing that shareholders and creditors of the failed credit institution should bear first losses, in accordance with the creditors' hierarchy set forth in the Portuguese Insolvency Code, and that creditors of the same class should be treated in an equitable manner; however, the general scope of this analysis does not cover burden-sharing issues.

A common framework: Loss absorbing and recapitalisation capacity of institutions

In the context of a bail-in, in order to ensure there are sufficient financial resources available for the write-down of debt or for the conversion of liabilities into equity, the BRRD requires resolution authorities to set minimum requirements for own funds and eligible liabilities ("**MREL**") which must be met by financial institutions. At a global level in 2015, the Financial Stability Board and the Basel Committee on Banking Supervision have adopted a total loss-absorbing capacity ("**TLAC**") standard, focusing specifically on global systemically important banks, requiring institutions to have an adequate amount of liability to ensure the absorption of losses and recapitalisation in the resolution phase.

According to the Banking Law, the BoP is to determine, on a case-by-case level, the set of minimum requirements for own funds, and eligible liabilities to be complied with, based on each individual financial situation. The ultimate objective to be ensured is that institutions have sufficient loss-absorbing and recapitalisation capacity to ensure smooth and fast absorption of losses and recapitalisation, with a minimum impact on financial stability, while aiming to avoid an impact on taxpayers. The TLAC minimum requirement shall be met with subordinated liabilities that rank in insolvency below liabilities excluded from TLAC – which can be achieved by: contractual subordination – legal effects of a contract; statutory subordination – the laws of a given jurisdiction; or structural subordination – a given corporate structure.

In this context, it is important to note that EU Directive 2017/2399 (which is to be transposed into national law by 29 December 2018) amends the BRRD by creating a new asset class of "non-preferred" senior debt that ranks in insolvency above own-funds instruments and subordinated liabilities that do not qualify as own funds, but below other senior liabilities. This seeks to enable institutions to use the less costly ordinary senior debt for their funding or other operational reasons and issue new non-preferred debt to obtain funding, while complying with the TLAC subordination requirement. In this scope it is worth mentioning the seniorisation of uncovered deposits in relation to ordinary secured creditors, but below in ranking to covered deposits.

<u>Combating money laundering and terrorism financing</u>

EU Directive 2015/849 was enacted with the purpose of aligning the EU framework with the Financial Action Task Force recommendations, placing a special emphasis on the creation of a European-wide registry of beneficial ownership. For this purpose, corporate and other legal entities incorporated within the Union's territory are required to obtain and hold adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests held. This information must be held in a central or public register, ensuring that such information is accessible not only to law enforcement and financial institutions, but also to any person or organisation that can demonstrate a "legitimate interest" in the disclosure of such information.

In Portugal, the regime was transposed by Law 83/2017, amended from time to time and complemented by several Notices enacted by the BoP, which introduced several amendments to the Portuguese legal regime on money laundering and terrorist financing. The legal concept of money laundering was expanded to include additional types of behaviour, new national and international cooperation standards, and a new set of entities subject to its scope. It further densified the existing supervisory and reporting duties and amended the previous sanctions framework, with the inclusion of new criminal offences and misdemeanours. More recently, the Bank of Portugal issued Notice no. 2/2018, of Bank of Portugal, adopting the sectorial regulation set out in the abovementioned law, and regulating the exercise of duties arising therefrom.

Furthermore, Law 89/2017 approved the legal framework of the Central Register of Beneficial Ownership ("**BOCR**"), transposing Chapter III of EU Directive 2015/849, which consists of a database managed by the Institute for Registrations and Notaries with updated information on the natural person(s) who, directly or indirectly, or by means of a third party, own(s) or control(s) entities subject to registration. Further to this Law, entities subject to the BOCR must regularly declare sufficient information about their beneficial owners.

<u>The MiFID II / MiFIR legislative package</u>

As mentioned above, the MiFID II/MiFIR legislative package has been applicable from 3 January 2018, published with the aim of creating a level playing-field for firms to compete in the EU's financial markets, and to ensure a consistent level of consumer protection across the EU.

This new regulatory package aims at: ensuring a greater transparency for all market participants, while also increasing market safety, efficiency and fairness; implementing enhanced governance for trading venues; on-exchange trading of standardised derivatives; more intensive regulation of commodity derivatives; and greater consolidation of market data.

Investor protection has been stepped up through: the introduction of new requirements on product governance and independent investment advice; improved pre- and post-trade transparency; the extension of existing rules to structured deposits; and the improvement of requirements in a variety of areas such as responsibility of management bodies, cross-selling, staff remuneration, inducement and information, more extensive reporting of transactions and conflicts of interest, and complaints handling.

The transposition of MiFID II/MiFIR into Portuguese law was concluded in 2018 with the enactment of Decree-Law 35/2018, a legal act which amends the rules on the marketing of financial products and on the organisation of financial intermediaries and transposes the MiFID II and several other related EU regulations.

Decree-Law 35/2018 not only brought several changes to relevant Portuguese legal diplomas, such as the Securities Code and the General Framework for Credit Institutions and Financial Companies, it also contains three new legal frameworks: the legal framework for the design, marketing and supply of investment advice services on structured deposits; the legal framework for PRIIPs; and the legal framework for central securities depositories.

From the lengthy set of changes introduced, we highlight those on client categorisation, adequacy obligations, information duties, investment services and conflicts of interest, which will have a considerable impact on the day-to-day activities of financial institutions. In light of this, considerable work has been done by financial institutions and financial intermediaries in reassessing internal policies and procedures to meet demanding new obligations.

PRIIPs

According to the PRIIPs Regulation, a PRIIP product constitutes any investment where, regardless of legal form, the amount payable to the retail investor is subject to fluctuations because of the exposure to reference values or to the performance of one or more assets which are not directly purchased by the retail investor. The regulation applies to PRIIPs products and services purchased by an EEA Resident Retail Investor, regardless of their nationality, being applicable worldwide, irrespective of where a PRIIP is purchased, as long as it is purchased by an EEA Resident Retail Investor.

Having entered into force on 1 January 2018, the Regulation pursues the objective of increasing the transparency and comparability of investment products through the issue of a standardised short form disclosure document - the PRIIPs Key Information Document ("**KID**"), thereby making it easier for retail investors to understand and compare the key features, risks and costs of different products within the PRIIPs' scope. The CMVM is the competent authority to supervise the production, marketing and consultancy services related to PRIIPs, and the PRIIPs regulation shall be the sole applicable instrument on this matter until further CMVM regulation is issued.

The KID has to be produced by the entities operating in the banking, insurance and securities sectors of the financial markets and be submitted to the CMVM, any changes thereof being required to be adequately disclosed.

It is important to note that the PRIIPs Regulation sets out the regulatory context to be complied with for trade and marketing of complex financial products and unit-linked life insurance products, thereby superseding the former regime set out in the CMVM Regulations.

Digital currency

It is worth mentioning digital currency and its regulatory regime applicable in Portugal, due to the exponential growth observed last year, and the increasing interest from the supervising authority, financial institutions and their clients in the sector. The Decree-Law no. 317/2009, of 30 October, amended from time to time ("**Decree-Law 317/09**") regulates which entities may issue digital currency, the requirements that a financial institution must meet in order to be able to issue and deal with digital currency, and the need to segregate the activities performed by the same financial institution.

Additionally, Decree-Law 317/09 grants the possibility of outsourcing operational functions related to the issuing of digital currency to other entities, if the BoP is previously informed of this intention and the financial institution guarantees the maintenance of internal quality control, and ensures that the BoP is capable of verifying the fulfilment of all applicable legal norms.

The revised Directive on Payment Services ("**PSD II**")

EU Directive 2015/2366 entered into force on 12 January 2016 and provided that the respective transposition should have taken place by 13 January 2018, thereby providing

Member-States with a two-year period for the introduction of the necessary changes in national law. On 12 November 2018, Decree-Law no. 91/2018 ("**Decree-Law 91/2018**") was enacted, introducing PSD II into Portuguese Law.

The directive creates new types of payment services, enhances customer protection and security, and enlarges its scope of applicability when compared to the previous directive. Banks will become obliged to provide free access to customer data and account information to licensed third-party businesses, in cases where the customer has given explicit consent. It seeks to promote payment innovation in the current technological context and constitutes an important step toward the Digital Single Market in Europe, the European Commission strategy to ensure access to online activities under conditions of fair competition and a high level of consumer and personal data protection.

Decree-Law 91/2018 introduces PSD II regarding access to the activity of payment institutions and the provision of payment services, as well as access to the activity of digital currency institutions and the provision of digital currency-issuing services.

This Decree-Law will change the regulation of new payment services existing in the market, to allow for new payment services providers that share information between themselves, as long as they are authorised to do so by their clients.

Additionally, such Decree-Law establishes: cross-border payments in the European Union; the technical and business requirements for credit and direct debit transfers in euros; the currency exchange rates applicable to operations paid through cards; and regulates the provision of information regarding accounts and the initiation of payments.

<u>The STS Regulation</u>

EU Regulation 2017/2402, which establishes a general securitisation framework at the EU level ("**STS Regulation**") entered into force on 17 January 2018 and will become applicable to all securitisation products from 1 January 2019 onwards. Besides creating a new framework for simple, standard and transparent securitisations, the regulation will affect due diligence requirements, risk-retention requirements and transparency rules.

At a national level, a preliminary bill amending the current Portuguese Securitisation Law in light of the STS Regulation is currently under discussion, having been subject to a public consultation which ended on 14 December 2018.

<u>EU Regulation on Data Protection</u>

The GDPR is aimed at unifying the regime on the processing and movement of personal data throughout the Union, and has been applicable in Portugal since 25 May 2018.

The new regime replaces the Data Protection Directive 95/46/EC and introduces significant changes, imposing a set of new obligations on companies, with non-compliance resulting in heavy fines (rising up to 4% of annual global turnover). Rules on consent have been strengthened and extraterritorial applicability has been introduced, as the regulation applies to all companies which happen to process the personal data of data subjects residing in the Union, regardless of the company's location.

<u>Senior non-preferred deposits and/or instruments</u>

This law proposal seeks to transpose Directive (EU) 2017/2399, of Parliament and of Counsel, of 12 December 2017, establishing the privileged ranking of deposit credits *vis-à-vis* common credits – noting that these credits will continue to be ranked junior to those credits that have already benefited from creditor privileges, and the ranking of the credit in the case of debtor's insolvency will be maintained.

The purpose of the creation of these new debt instruments is to allow credit institutions to fulfil the subordinated requisite of minimum own funds and eligible credits with instruments less burdensome than own funds' instruments, and still be able to sustain losses in resolution and contribute to the internal recapitalisation of the credit institution in a credible way, without risking the fulfilment of the principle "no creditor worse off".

Consultation for investment in financial instruments

Law no. 35/2018, of 20 July, amending Decree-Law no. 357-B/2007, of 31 October ("**Law 35/2018**"), which establishes the regime for service of investment in financial instruments advice, seeks to: provide better assurance of the adequate professional qualification of advisors; increase independence in the provision of services; improve the procedure of adequacy evaluation; and reinforce the informational duties towards clients (before and after the execution of the contract).

Law 35/2018 aims at imposing a duty of evaluation of the adequacy of the structured deposits, in order to provide the client with the best product available, bearing in mind its characteristics. This is achieved by imposing minimal information obligations and an obligation to categorise clients in the context of the commercialisation of the structured deposits, and imposing duties that the financial institutions must comply with during the negotiation of contracts, among others.

Bank governance and internal controls

EU Directive 2013/36, on access to the activity of credit institutions and the prudential regulation of credit institutions and investment firms, sets forth the general principles on the internal governance and prudent management of institutions. In this vein, the Banking Law establishes that management and supervisory bodies of credit institutions are responsible for defining, overseeing and implementing governance arrangements that are adequate to ensure the effective and prudent management thereof, including the necessary segregation of duties and the prevention of conflicts of interest.

The Banking Law further establishes that it is the duty of management and supervisory bodies, within their respective competences, to:

a) assume overall responsibility for the credit institution and approve and oversee the implementation of its strategic objectives, risk strategy and internal governance;
b) ensure the integrity of accounting and financial reporting systems, including financial and operational controls, and compliance with the law and relevant applicable standards;
c) oversee the disclosure process and the information duties towards BoP; and
d) accompany and control activity at top management levels.

Banks should plan and apply, in a proper manner, their remuneration policy, and must record in specific documents the respective procedures and any other items required for its implementation. Pursuant to the BoP Notice no. 10/2011, the implementation of a remuneration committee, which must comply with several rules and procedures, is mandatory provided that certain requirements are met by the financial institution at stake.

As regards information disclosure, banks must disclose information concerning the remuneration of both corporate bodies and employees, and the information shall be included in the respective corporate governance report and in the internal compliance report to be sent to the BoP or the SSM.

Portugal implemented CRD IV through Decree-Law no. 157/2014, dated 24 October 2014. Although the majority of CRD IV rules were already in force, the national legal framework has been further strengthened regarding the requirements for the relationship between the variable (or bonus) component of remuneration and the fixed component (or salary), and with regard to the disclosure and transparency of the remuneration policy, and practices applicable by institutions, including information on the link between pay and performance.

Rules governing banks' relationships with their customers and other third parties

Although the financial crisis triggered an increase of legislation on the protection of banking clients and investors, bank-customer relationships have been on the legislators' and regulators' radar long before harsh times began.

In reference to deposit-taking activities, it is important to make reference to the abovementioned deposit compensation scheme, designated the Deposit Guarantee Fund (*Fundo de Garantia de Depósitos*, "**DGF**"), which is aimed at guaranteeing the reimbursement of deposits held with credit institutions incorporated in Portugal and with Portuguese branches of credit institutions incorporated in a non-EU State, in case the latter do not possess a compensation scheme equivalent to the DGF. Reimbursement is guaranteed up to the amount of €100,000 per depositor.

When considering the relationship of both financial intermediaries and banks with their customers, rules set forth in the PSC and the Banking Law must be taken into account. The PSC obliges financial intermediaries to keep effective and transparent procedures to handle non-qualified investors' claims, compliant with some predetermined requirements. As for the Banking Law, it sets forth that credit institutions should adopt codes of conduct, which are disclosed to the public and include all principles and rules underlying the bank/client relationship, as well as information on claims-handling procedures. Furthermore, the Banking Law provides for the possibility of customers directly presenting claims to the BoP. Although it is not mandatory, major banks in Portugal currently have their own Ombudsman, in charge of claims receipt and follow-up.

Banks and other financial intermediaries should also mandatorily comply with the general consumer complaint procedures which, among other measures, oblige operators to have available a complaints book, with any claims being followed up by the competent supervisory authority.

Turning to other innovations in banking activity, we focus on lending activities, in relation to which Decree-Law no. 227/2012, of 25 October, establishes a set of rules that should be complied with by credit institutions within the follow-up and management of breach of contracts and non-judicial settlement of payment defaults. In a clear protective move of small companies and consumer borrowers in difficult times, this document also creates a banking clients' support network aimed at preventing the breach of credit contracts, and promoting non-judicial settlement of credit contracts-related conflicts.

The residential mortgage loan product has also been on the radar of the Portuguese legislator and the BoP, with the corresponding regime being amended by Decree-Law no. 74-A/2017, of 23 June, and establishing a range of measures evidencing the increased difficulties for Portuguese households to comply with their obligations towards the financial system. Some of these changes have a general scope but others specifically target the responsible granting of credit, attending to the correct evaluation of real estate, the proper management of conflicts of interest, and the obligation to provide out-of-court means of litigation. In turn, this legal framework shall be read and applied together with a set of duties that shall be complied with by the banks, such as the Banking Law, among others, within the negotiation and enforcement of this type of loan.

This is without prejudice to, and coexists with, the regulation issued by the BoP, in 2014, on the minimum information duties under consumer credit contracts. This regulation has been adopted following Decree-Law no. 133/2009, of 2 June, which established a set of duties of information to be provided by credit institutions prior to entering into consumer credit contracts, having specified the terms, frequency and formalities according to which the said information shall be provided.

Benedita Aires
Tel: +351 21 311 3479 / Email: bla@vda.pt

Benedita Aires joined VdA in 2003 and is a partner in the Banking & Finance practice where she has been involved in several transactions, in Portugal and abroad, mainly focused on the issuance and placement of debt, equity and regulatory capital instruments and other structured financial products and classic financing. She has also been actively working in securitisation transactions, covered bonds issuances, asset financing and other types of asset-backed transactions. She has been recently actively involved in public recapitalisation transactions and the application of resolution measures to Portuguese banks, including the incorporation of bridge banks and the approval of the state aid and restructuring plans for such banks by the European Commission, and has also been involved in the sale process for financial institutions. Seconded to Clifford Chance LLP, London office, integrating the Structured Debt team during 2007 to 2008, she is admitted to the Portuguese Bar Association and registered as a European Registered Lawyer.

Maria Carrilho
Tel: +351 21 311 3400 / Email: mlc@vda.pt

Maria Carrilho joined VdA in 2013. She is an associate at the Banking & Finance practice where she has been actively involved in several transactions, namely securitisation and real estate financing. Maria holds a Law degree from New University of Lisbon, Faculty of Law and is currently preparing a thesis for the Masters in Law and Management from Católica School of Business and Economics, Faculty of Law.

David Nogueira Palma
Tel: +351 21 311 3400 / Email: dnp@vda.pt

David joined VdA in 2018, as a Trainee at the Banking & Finance practice. He holds a Law degree from the University of Lisbon and he is currently concluding his Masters degree in Corporate law at the Catholic University of Portugal (School of Lisbon). Furthermore, he is a post-graduate in Companies law and he is concluding his post-graduate studies in Advanced Banking law at the University of Lisbon.

Vieira de Almeida

Rua Dom Luís I, 28, Lisbon, Portugal
Tel: +351 21 311 3400 / Fax: +351 21 311 3406 / URL: www.vda.pt