Banking Regulation

2020

Seventh Edition

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CONTENTS

Preface	Peter Ch. Hsu & Rashid Bahar, *Bär & Karrer Ltd.*	
Andorra	Miguel Cases Nabau & Laura Nieto Silvente, *Cases & Lacambra*	1
Angola	Hugo Moredo Santos, Filipa Fonseca Santos & Isabel Ferreira dos Santos, *VdA*	18
Brazil	Bruno Balduccini & Ana Lidia Frehse, *Pinheiro Neto Advogados*	27
Canada	Pat Forgione, Darcy Ammerman & Alex Ricchetti, *McMillan LLP*	37
Chile	Diego Peralta Valenzuela, Fernando Noriega Potocnjak & Diego Lasagna Aguayo, *Carey*	53
China	Dongyue Chen & Yixin Huang, *Zhong Lun Law Firm*	61
France	Jean L'Homme, Gaël Rousseau & Gautier Chavanet, *FIDAL*	72
India	Shabnum Kajiji & Nihas Basheer, *Wadia Ghandy & Co.*	82
Indonesia	Miriam Andreta, Siti Kemala Nuraida & Anggarara Hamami, *Walalangi & Partners (in association with Nishimura & Asahi)*	92
Ireland	Keith Robinson & Keith Waine, *Dillon Eustace*	104
Japan	Takashi Saito & Takehiro Sekine, *Nishimura & Asahi*	115
Korea	Thomas Pinansky, Joo Hyoung Jang & Hyuk Jun Jung, *Barun Law LLC*	125
Liechtenstein	Mag. Dr. Daniel Damjanovic, LL.M. & Mag. Sonja Schwaighofer, LL.M., *Marxer & Partner, attorneys-at-law*	135
Mexico	José Ignacio Rivero Andere & Bernardo Reyes Retana Krieger, *González Calvillo, S.C.*	145
Morocco	Salima Bakouchi & Kamal Habachi, *Bakouchi & Habachi – HB Law Firm LLP*	155
Mozambique	Nuno Castelão, Guilherme Daniel & Gonçalo Barros Cardoso, *VdA*	165
Netherlands	Bart Bierman & Eleonore Sijmons, *Finnius*	175
Portugal	Benedita Aires, Maria Carrilho & Sofia Lopes Ramos, *VdA*	186
Singapore	Ting Chi Yen & Dorothy Loo, *Oon & Bazul LLP*	198
South Africa	Dawid de Villiers, Denisha Govender & Eric Madumo, *Webber Wentzel*	211
Spain	Fernando Mínguez Hernández, Íñigo de Luisa Maíz & Rafael Mínguez Prieto, *Cuatrecasas*	222
Switzerland	Peter Ch. Hsu & Rashid Bahar, *Bär & Karrer Ltd.*	241
Timor-Leste	Pedro Cassiano Santos, Rita Castelo Ferreira & José Melo Ribeiro, *VdA*	259
Turkey	Tevfik Adnan Gür & Ahmet Tacer, *Gür Law Firm*	271
United Kingdom	Alastair Holt, *Linklaters LLP*	279
USA	Reena Agrawal Sahni & Timothy J. Byrne, *Shearman & Sterling LLP*	290

Portugal

Benedita Aires, Maria Carrilho & Sofia Lopes Ramos
VdA

Introduction

The Portuguese economy has transitioned positively into 2020. According to the Bank of Portugal's Projections for the Portuguese economy 2018–20, gross domestic product ("**GDP**") is estimated to grow by 1.7% in 2020, in line with the European Central Bank's growth estimates for the euro area.

In recent years, the effects of the 2008 financial crisis, although still present, have begun to make room for new and improved investment, with an emphasis on the tourism and real estate sectors.

The rise of tech companies in Portugal has also had an important driving role, notably in the financial sector. Among the top 30 Portuguese fintechs (selected by the Portugal Fintech Report 2019 based on a series of indicators such as number of employees, investment or revenues, etc.), 17% are insurtech companies (insurers), while another 17% are from the loans and credit sector. In addition to these two segments, which lead the Portuguese 'fintech ecosystem', there is also payment, personal finance, financial infrastructure and blockchain companies.

Banks operating in Portugal continue to undertake a collective deleverage effort, notably via the disposal of non-performing loans – according to the Bank of Portugal (the "**BoP**") report on financial stability, between the end of 2018 and the end of the second quarter of 2019, the ratio of non-performing-loans decreased from 9.4% to 8.3% in relation to total loans.

Corporate indebtedness to the financial sector remained stable during the year of 2019, with only marginal variations. According to the BoP Statistical Bulletin published in January 2020, in November 2019, corporate debt stood at 264,065 million euros and private individuals' debt stood at 140,544 million euros (more 730 million and 1,028 million above the stock registered in November 2018, respectively), confirming an upward trend in lending.

It is also worth mentioning that the Portuguese banking and financial market and its regulators have been closely following the potential impacts of Brexit, which will take effect on 31 January 2020. Although its consequences have not yet been generally felt, attention is being paid to the outcome of this process, with transitional and contingency measures having been adopted.

A considerable number of new and relevant regulatory frameworks entered into force or will continue to apply in Portugal throughout 2019 and 2020, among which we highlight the following:

(i) Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017, which entered into force on 1 January 2019, amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) Nos 1060/2009 and 648/2012 (the "**Securitisation Regulation**").

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(ii) Law No. 69/2019, of 28 August 2019, which has amended the Securitisation Law (defined below), complementing the Securitisation Regulation.
(iii) Decree-Law No. 144/2019, of 23 September, which transfers from the BoP to the Portuguese Securities Market Commission (the "**CMVM**") the powers of prudential supervision of investment fund management companies and credit securitisation fund management companies ("**SGFTC**"), was published in 2019 and entered into force in January 2020.
(iv) The Payment Services Directive ("**PSD II**"), which approved the regime for payment services and electronic money, transposing into national law Directive 2015/2366 of the European Parliament and of the Council, of 25 November 2015, on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No. 1093/2010, and repealing Directive 2007/64/EC, came into force on 13 November 2019 and Decree-Law No. 91/2018 ("**Decree-Law 91/2018**"), which transposes PSD II into the Portuguese legal order.
(v) EU Regulation 2016/679, also known as the General Data Protection Regulation ("**GDPR**"), aimed at unifying the legal regime for the processing and movement of personal data throughout the European Union, became applicable in Portugal on 25 May 2018, forcing changes in the privacy policies of every company functioning in Portugal that deals with private data. Law No. 58/2019, of 8 August, has also been enacted, ensuring the execution in the national legal system of the GDPR.
(vi) Law No. 23/2019, of 13 March, transposing Directive (EU) 2017/2399 of the European Parliament and of the Council, of 12 December 2017 (the "**Creditor Hierarchy Directive**"), referring to senior non-preferred deposits and/or instruments has been approved, also conferring a preferential claim to all deposits generally *vis-à-vis* senior debt ("**Law 23/2019**").
(vii) Decree-Law No. 42/2019, of 28 March, which entered into force on 1 July 2019, establishing the simplified regime for the bulk assignment of credits.
(viii) CMVM Regulation No. 3/2019, amending CMVM Regulation No. 2/2016, on the handling of complaints and conflict resolution procedures.
(ix) BoP Notice No. 3/2019, of 5 November, amending BoP Notice No. 11/2014, of 22 December, which establishes the inclusion of branches in Portugal of financial institutions with their head offices abroad.
(x) Finally, EU Directive 2014/65 on markets in financial instruments ("**MiFID II**") and EU Regulation 600/2014 on markets in financial instruments ("**MiFIR**"), which became applicable in the EU in 2018, and the transposition of MiFID II by Decree-Law 35/2018, of 20 July ("**Decree-Law 35/2018**").

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 authorities: core banking activities, such as collecting deposits and granting credit, are subject to the supervision of the BoP; whilst financial intermediaries, acting as such and performing securities-related transactions, 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: namely, 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 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

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directives on markets in financial instruments. Surrounding this legal inner circle, there is a vast number of applicable regulations issued by the BoP and the CMVM.

The BoP, as the Portuguese central bank, is 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 encompasses the European supervisory authorities.

Portugal is also part of the Economic and Monetary Union ("**EMU**") and the Banking Union project, which relies on three pillars to ensure the stability and sufficiency of the integration process already carried out by the EU member countries. These pillars 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 functioning properly, the latter is still to be implemented and its absence leaves the Banking Union unbalanced, 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; granting credit or any form of lending, including the granting of guarantees and other payment commitments; financial leasing; and factoring.

Banking activities in Portugal are governed by the Banking Law, which regulates the banking business overall. Banks are one of several types of credit institutions and financial entities provided for in the law, operating under the concept of a universal financial licence, and those having their head office in Portugal, as well as branches of banks having their head office abroad, are qualified to carry on the aforementioned activities, subject to Portuguese law.

Branches of banks incorporated in EU Member States are permitted to carry out in Portugal the activities listed in Annex I to EU Directive 2013/36, which they would also be authorised to carry out in their home jurisdiction, provided that several prerequisites are met. According to the Banking Law, in respect of the activity of overseas banks not having a branch in Portugal, if these banks are authorised in their home country to provide the services listed in Annex I to this Directive, they may still carry on such activities in Portugal, even if 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 the bank intends to carry out and certify that such activities are covered by the authorisation granted in the respective home country, which demonstrates the continuous cooperation required between EU supervising authorities.

It should also be noted that the supervisory system has changed following the establishment of a single supervisory mechanism ("**SSM**") and a single resolution mechanism ("**SRM**"), which are made up of the ECB and national competent authorities, with 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

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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, with the purpose of setting forth a legal discipline for an intervention in credit institutions, consisting in a three-pronged strategy: corrective intervention tools; provisory administration tools; and 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, 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.

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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, 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 the 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; or statutory subordination – the laws of a given jurisdiction; or structural subordination – a given corporate structure.

In this context, it is important to note that the Creditor Hierarchy Directive 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

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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 that Law 23/2019, in addition to implementing the Creditor Hierarchy Directive into Portuguese law, governing the position of unsecured debt instruments in the ranking in insolvency proceedings, also confers a preferential claim to all bank deposits generally *vis-à-vis* senior unsecured debt. Moreover, it should also be noted that following the publication of Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 ("**CRR II**"), amending Regulation 575/2013 of the European Parliament and of the Council of 26 June ("**CRR**"), the CRR now includes a new section defining the eligible liabilities that, taken together with own funds, may be used to satisfy the TLAC minimum requirement.

The Securitisation Regulation and Law 69/2019

The Securitisation Regulation became applicable to all securitisation products on 1 January 2019. Besides creating a new framework for simple, standard and transparent securitisations, the regulation effects due diligence requirements, risk-retention requirements and transparency rules.

In Portugal, Law No. 69/2019 of 28 August has been published, amending the Securitisation Law (approved by Decree-Law No. 453/99, of 5 November), laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation ("**STS Securitisation**"). Among other aspects, the abovementioned law amended the definition of securitisation and introduced "new" types of securitisation, which now include: "traditional Securitisation"; "synthetic Securitisation"; "STS Securitisation"; and "non-STS Securitisation". Additionally, this law expressly establishes the possibility for securitisation companies to hold, for a period of two years, real estate assets acquired in the context of an *in lieu* payment (*dação em pagamento*) or in the context of enforcement of security over those assets, settling an issue that had long since been raised.

Decree Law 144/2019, of 23 September

Pursuant to this Decree-Law, the CMVM becomes responsible not only for the supervision of investment funds and credit securitisation funds, but also for the prudential supervision of their management companies (which were, until now, under the supervision of the BoP).

Although the introduction of this change was the main purpose of said legal act, it has in fact introduced several other relevant changes into the Banking Law, the Securitisation Law, the Legal Framework for Undertakings for Collective Investment (approved by Law No. 16/2015, of 24 February) and the Legal Regime for Private Equity, Social Entrepreneurship and Specialized Investment (approved by Law No. 18/2015, of 4 March), amongst which we highlight the creation of credit funds. Credit funds shall take the form of alternative investment funds ("**AIFs**") and specialise in granting credits to companies.

PSD II and Decree-Law 91/2018

On 12 November 2018, Decree-Law 91/2018 was enacted, transposing PSD II into the Portuguese legal order.

In broad terms, the directive created new types of payment services, enhanced customer protection and security, and enlarged its scope of applicability when compared to the previous directive. Banks became 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 and it seeks to promote payment innovation in the current technological

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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.

In Portugal, Decree-Law 91/2018 transposed PSD II in what regards the incorporation and licensing 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. Under this diploma, several entities – notably payment institutions and e-money institutions – other than the traditional credit institutions may offer payment services.

This Decree-Law alters the regulation of 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, this Decree-Law establishes: cross-border payments in the European Union; the technical and business requirements for credit and direct debit transfers in euros; and the currency exchange rates applicable to operations paid using cards; while also regulating the provision of information regarding accounts and the initiation of payments.

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

In 2019, Law No. 58/2019, of 8 August, came into force ensuring the implementation of the GDPR in Portugal. In addition to implementing the GDPR, this law extended certain provisions of the latter, such as with regards to scope and application – being applicable to the processing of data carried out outside the Portuguese territory, in some circumstances – and in respect of the tasks of the data privacy officer.

<u>Senior non-preferred instruments</u>

This law entered into force on 14 March 2019, transposing the Creditor Hierarchy Directive and providing for the legal recognition of unsubordinated and unsecured non-preferred senior debt in Portugal. It also established the privileged ranking ("*privilégio creditório*") of all bank deposit credits *vis-à-vis* senior unsecured debt.

The reason for creating these new debt instruments is to allow credit institutions to fulfil the subordinated requisite of the TLAC subordination requirement and eligible liabilities with instruments less burdensome than own funds' instruments, and to still be able to sustain losses in resolution and contribute to the internal recapitalisation of the credit institution in a credible way, without compromising the principle "no creditor worse off".

This law establishes that in the event of insolvency, the amount of any claims arising from non-preferred senior debt shall be paid in insolvency after the other common claims have been fully paid and before the subordinated claims have been paid, in proportion to their amounts if the insolvent estate is insufficient to meet them in full. For this ranking in insolvency hierarchy to apply, debt instruments shall be issued by credit institutions or certain entities set out therein and fulfil all the following conditions: the original maturity of the debt instruments is one year or more; the debt instruments do not incorporate financial derivative instruments,

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nor are they themselves financial derivative instruments; and the contractual provisions applicable to the debt instruments and, where applicable, their prospectus expressly state that, in case of insolvency, the ranking of claims arising from the debt instruments is that provided for therein. Lastly, for the instruments to satisfy the TLAC minimum requirement, they now should also comply with the CRR's provisions, as amended by CRR II, with the requirements set out in Article 72B.

Decree Law No. 42/2019, of 28 March – bulk assignment of credits

This diploma arises in the context of *Programa Capitalizar* (Capitalise Programme), approved by the Portuguese Government in 2016 and aimed at supporting the capitalisation of companies and recovery of the economy. As such, it promotes greater simplicity in credit assignment (notably, by credit institution and particularly relevant in the context of securitisation) by waiving the assignee's procedural qualification for each of the processes in which the assigned credit is being demanded, as well as the simplification of the associated filing operation, amongst others.

A bulk assignment of credits is deemed to occur if the assignee is a credit institution, financial company or securitisation company, whenever the global disposal price of the portfolio to be assigned is at least €50,000 and the portfolio consists of at least 50 separate credits.

In addition, the filings required for the bulk assignment of credits shall be carried out centrally, by means of a single submission, and the completion of these filings will waive the need to produce evidence of registration status under Article 31 of the Land Registry Code.

CMVM Regulation No. 3/2019 on the handling of complaints and conflict resolution procedures

CMVM regulation No. 2/2016 established greater investor protection by dealing with complaints submitted by non-qualified investors in relation to entities supervised by the CMVM and the resolution of conflicts relating to financial instruments. Two years after the entry into force of said regulation, the CMVM decided to strengthen its procedures.

The CMVM's intervention aimed at promoting an extrajudicial resolution of a conflict, through moral suasion. In this context, it was decided to identify in the regulation that the CMVM's final intervention in the complaint handling process involves an analysis of the situations presented with a view to resolving the conflict in question.

Notice of the BoP No. 3/2019, of 5 November, which amends Notice of BoP No. 11/2014, of 22 December

As a result of the implementation of Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, a large number of entities within the EU lost the respective qualification as credit institutions in their home Member States, becoming financial institutions. Given that branches of financial institutions do not benefit from the EU passport regime and also given the lack of an harmonised framework at EU level, the BoP has decided to clarify, by means of this Notice, the prudential regime applicable to branches of financial institutions established in the UE and acting in Portugal, extending the prudential requirements set forth under EU Regulation 575/2013 to such entities.

The MiFID II / MiFIR legislative package

The MiFID II/MiFIR legislative package has been applicable from 3 January 2018, aimed at ensuring 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 and investor protection.

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The transposition of MiFID II/MiFIR into Portuguese law was concluded in 2018 with the enactment of Decree-Law 35/2018, which, amongst several changes in relevant legal diplomas, created 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.

Considerable work has been carried out by the regulators and by both financial institutions and financial intermediaries in reassessing and strengthening internal policies and procedures to meet the continuous obligations imposed by MiFID II/MiFIR.

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, pursuant 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

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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 considered. 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 customers with the opportunity to directly present 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 was adopted following Decree-Law No. 133/2009, of 2 June, which established a set of duties of information to be observed by credit institutions prior to entering into consumer credit contracts, having specified the terms, frequency and formalities according to which said information should be provided.

The BoP is responsible for the preventive supervision of money laundering and terrorist financing ("**ML/TF**") in the financial sector, overseeing financial institutions' compliance with the applicable laws and regulations. In Portugal, ML/TF is addressed by Law 83/2017, which transposed EU Directive 2015/849, and by several Notices and Instructions issued by the BoP, in particular, Notice No. 2/2018, which governs enforcement conditions, procedures,

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instruments, mechanisms, enforcement measures, reporting obligations and other aspects necessary for ensuring the prevention of ML/TF in the activities of financial entities subject to the BoP's supervision.

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 persons who, directly or indirectly, or by means of a third party, own or control entities established or acting in Portugal.

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