NOV/DEC 2020 ISSUE 299

LEGAL BUSINESS

LEGAL BUSINESS I NOVEMBER/DECEMBER 2020 I ISSUE 299 I www.legalbusiness.co.uk

ROLL UP YOUR SLEEVES

Global 100 firms cling to peace before the war

The pandemic and Portuguese capital markets

In 2019, our article in *Legal Business* ended as follows: 'Therefore, with the benefits of a renewed legal and regulatory framework and of an environment where low interest rates facilitate access to funding, 2020 is likely to follow in line with the current year, promising continued intense activity and diversity'. In January 2020, VdA organised an international conference on sustainable finance, where we discussed the growing relevance of ESG factors with key players.

However, unpredictably, by March 2020 it was clear that our prediction of 'continued intense activity and diversity' was beginning to make little or no sense, as the Covid-19 pandemic reached Portugal (and the world). By the end of March, an unprecedented legal moratoria regime was enacted and subsequently extended until the end of September 2021. Very dark clouds were on the horizon for those looking for funding or refinancing, and on top of the legal moratoria regime, *force majeure* and material adverse change clauses became hot topics of discussion.

Nevertheless, the market was still there for Portuguese rated issuers and issuers with an established EMTN Programme, even during the more demanding periods of lockdown. EDP launched a green bond in April (and returned to the market in September for a yankee bond, on top of successfully completing a share-capital increase) and the Autonomous Regions of the Azores raised €185m in May (having also returned to the market in September for a €285m issue) and the Autonomous Regions of Madeira raised €458m in November, for the first time in over a decade without the need for an explicit government guarantee, while Galp issued senior bonds in June under its EMTN Programme.

Sustainable finance has continued to play an important role in capital markets and the adoption of ICMA's green and social bonds principles is gaining ground, backed by the approval of the EU Green Deal. In addition to EDP's green bond referred to above, it is worth mentioning green-labelled Green Belem RMBS 1, the first STS-compliant residential mortgaged backed securitisation originated in Portugal by Union de Créditos Inmobiliários. Further STS compliant securitisations were also completed in the summer, with European Investment Bank and European Investment Fund subscriptions for such deals.

Summer arrived and retail issues came into the spotlight: on the debt front, frequent issuer Sport Lisboa e Benfica – Futebol SAD showed that it was possible to target the retail market and raise €50m with solid demand; on the equity front, EDP successfully completed a share capital increase through a rights issue, for an amount over €300m, something which the domestic market had not seen for over five years.

Also of relevance were the consent solicitation processes carried out by some issuers, which sought to manage in advance possible stress situations in respect of financial covenants, as well as the accomplishment of mergers and other corporate events. They also sought to prepare for a hard Brexit scenario by replacing UK-based trustees and common representatives with continental European providers, to prevent possible negative consequences to their outstanding issuances.

On the regulatory front, the approval of Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment (the Taxonomy Regulation) marked the agenda.

This Regulation sets forth the criteria for determining whether an economic activity qualifies as environmentally sustainable for the purposes of establishing the degree to which an investment is environmentally sustainable. Until now, the ICMA Green Bond Principles dominated the agenda, but having a more robust and binding tool will surely prove very helpful: on the one hand, to enhance certainty and comparability; on the other, to avoid greenwashing, ultimately promoting the channelling of capital flows towards sustainable investments.

The other noteworthy driver in Portugal, the contents of which is still unknown at this stage, is the expected publication of the amended Portuguese Securities Code. Drafting efforts were intense during 2020, although it is still uncertain when this relevant piece of legislation will come out. In terms of capital markets, Portugal enjoys a solid legal framework resulting from the transposition of EU Directives, combined with the direct application of EU Regulations. Revisiting the existing legal framework of the Portuguese Securities Code will certainly contribute to making it more consistent, more reliable and hopefully more friendly. As an aside, reference is deserved by the draft Banking Code, currently under public consultation, a piece of law designed to systematise and encompass the generality of the Portuguese regulatory regime applicable to the exercise of banking activities, adapted to the European Monetary Union context unlike the laws currently in force.

On top of such legislative evolutions, what can be expected in the coming months, particularly from the market perspective? It is ambiguous to gaze into the crystal ball, especially considering the numerous and still uncharted challenges brought by the Covid-19 pandemic. However, we would say that on the corporate front, seeing as the moratoria has not (directly, at least) applied to bonds and other debt representative securities, more consent solicitation processes and tender/cash offers to seize opportunities may lay ahead in 2021, while low interest rates will continue to attract those that can access the capital markets. As regards banks, without prejudice to the stimulus and liquidity provided by the European Central Bank, measures to reinforce capital ratios, including additional Tier 1 instruments, senior preferred bonds or share capital increases are likely to be on the list of priorities for next year.

Furthermore, and as a general trend for 2021 and hopefully years to come, we foresee a focus on sustainability, in the form of green (or blue, for a country with so many ocean ties), social or other sustainability-linked bonds. Regulation has been passed in that direction, issuers and investors have become more generally aware of the relevance of sustainability and investors also becoming more demanding regarding the whereabouts of their funds. Social bonds, in particular, have proved to be a good solution in many countries to raise funds to meet urgent needs triggered by the pandemic. ESG factors have thus gained a holistic and practical relevance for the capital markets ecosystem that is expected to continue until long after the pandemic and its effects have passed.

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