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Securitisation 2020

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13th Edition

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1 Receivables Contracts

1.1 Formalities. In order to create an enforceable debt obligation of the obligor to the seller: (a) is it necessary that the sales of goods or services are evidenced by a formal receivables contract; (b) are invoices alone sufficient; and (c) can a binding contract arise as a result of the behaviour of the parties?

The legal requirements applicable to the form of a contract between a seller and an obligor depend to a large extent on the nature of the contract (e.g. if it is a loan agreement made by a bank to a customer, an agreement between a utility company and a customer, etc.). As an example, the general rule applicable to the granting of credit facilities to consumers is that the relevant contract must be in writing.

The general civil law principle, however (i.e. the rule which applies by default whenever there is no specific rule applicable to a certain type of contractual relationship), is that there is no generally prescribed applicable formality for contracts to be entered into, and therefore a valid contractual relationship for the sale of goods and services can even be established orally (unless otherwise stated in a specific legal provision), and in those circumstances the existence of an invoice is naturally also sufficient to document the relevant contract.

In order for a receivables contract to be deemed to exist as a result of the parties' behaviour alone, it has to be possible to conclude, based solely on the parties' actions, that their intention was to enter into a contract. In other words, the parties' behaviour must be, for all purposes, equivalent to a contractual statement.

1.2 Consumer Protections. Do your jurisdiction's laws: (a) limit rates of interest on consumer credit, loans or other kinds of receivables; (b) provide a statutory right to interest on late payments; (c) permit consumers to cancel receivables for a specified period of time; or (d) provide other noteworthy rights to consumers with respect to receivables owing by them?

A. Interest Rate

As a general rule, the Portuguese Civil Code foresees a legal interest rate. This rate is currently set at four per cent. Any stipulation of an interest rate superior to the legal rate must be made in writing. Also, stipulated rates may not exceed the legal interest rate by more than three per cent (if the obligation is secured) and by more than five per cent (if it is not). Interest stipulated over these limits is deemed reduced to the aforementioned maximum rates.

The general rules described in the previous paragraph do not apply to credit institutions. However, in accordance with the Portuguese legal framework for consumer credit (Decree-Law no. 133/2009 of 2 June 2009 (as amended and currently in force), implementing Directive 2008/48/CE on consumer credit agreements), the Annual Percentage Rate of Charge charged by credit institutions to consumers (including in relation to leasing transactions) is limited to a three-month average disclosed by the Bank of Portugal plus a quarter of that average. For the first trimester of 2020, the maximum Annual Percentage Rate of Charge for consumer credit disclosed by the Bank of Portugal is: (i) 13.1 per cent for personal loans (other than loans for specific purposes such as health or education, or financial leases of equipment); (ii) 15.7 per cent for credit cards, credit lines, current accounts or overdraft facilities; (iii) between 4.3 and 5.7 per cent for leasing automobile loans (depending on whether the vehicle is new or used); and (iv) between 9.5 and 12.2 per cent for automobile loans with retention of title (depending on whether the vehicle is new or used).

B. Delay Interest

As a general rule, the Portuguese Civil Code applies delay interest. As per (A) above, the legal delay interest rate is set at 4 per cent, except if the remuneratory interest (i.e. interest charged under (A) above) is higher, or if the parties agree on a higher delay interest rate. Similar to (A) above, stipulated delay interest rates may not exceed the legal delay interest rate by more than 7 per cent (if the obligation is secured) or by more than 9 per cent (if it is not). Delay interest stipulated over these limits is deemed to be reduced accordingly.

However, under the Portuguese Commercial Code and Ministerial Order no. 277/2013 of 26 August 2013, where the creditor is a commercial company (which may be a legal or a natural person, for instance an individual merchant acting as such) a special delay interest rate applies. At the moment, this rate for the first semester 2020 is set at 7 per cent. Also, under the new framework for payment delays in commercial transactions, approved by Decree-Law no. 62/2013 of 10 May 2013 and Ministerial Order no. 277/2013 of 26 August 2013, all payments made as remuneration of commercial transactions are subject to a special delay interest rate which, for the first semester 2020, is currently set at 8 per cent.

With regard to credit institutions, there is a special framework approved by Decree-Law no. 58/2013 of 8 May 2013, which also limits the delay interest rate which may be charged. In accordance with this special framework, credit institutions may stipulate delay interest rates of up to 3 per cent over the rate applicable to the transaction, which covers principal overdue and not yet paid.

C. Termination

There is, in most circumstances, an unconditional right to terminate the receivables contract during the initial 14 days after execution, in which case the advanced amount is given back to the lender and the contractual relationship terminates, but the financial institution may not charge any additional fees with regard to the termination.

D. Acceleration

Under the Portuguese consumer credit legal framework, financial institutions may only carry out the acceleration of defaulted loans (or terminate the relevant agreement) when more than two instalments (totalling more than 10 per cent of the entire amount outstanding) are due and only following notification to the debtor to that effect, granting him at least 15 days to pay the amounts due and expressly warning him of the possibility of accelerating the loan. Other rights mostly relate to information and contents obligations, the right to render the contract void or voidable if information is not provided, etc.

E. Other noteworthy rights

Consumers also benefit from the protection measures set forth in Decree-Law no. 349/98, dated 11 December 1998 (as amended and currently in force) and in Decree-Law no. 74-A/2017, dated 23 June 2017. These relate, among others, to the right of any debtor to take back any given mortgage loan from the corresponding enforcement proceeding provided such debtor pays to the relevant creditor all the amounts due and not paid, together with the applicable delay interest and any expenses incurred by the creditor. Although this regime has little impact on performing securitisations, it is of major importance in securitisations of non-performing loans as in such type of securitisations, collections depend heavily on the judicial enforcement of the properties given as collateral.

1.3 Government Receivables. Where the receivables contract has been entered into with the government or a government agency, are there different requirements and laws that apply to the sale or collection of those receivables?

Public procurement rules may apply. If the government is acting under private law, it should not have special prerogatives. In any case, specific rules may apply in relation to issues such as the validity of a delegation of powers.

2 Choice of Law – Receivables Contracts

2.1 No Law Specified. If the seller and the obligor do not specify a choice of law in their receivables contract, what are the main principles in your jurisdiction that will determine the governing law of the contract?

If the parties fail to specify the law chosen to govern the receivables contract, it should first be considered whether EC Regulation no. 593/2008 ("**Rome I Regulation**") or the Rome Convention on the law applicable to contractual obligations ("**Rome Convention**") apply to the relevant conflict.

If the Rome I Regulation or the Rome Convention apply, then Article 4 and, to the extent applicable, Articles 5 to 7 of the Rome I Regulation, shall determine the governing law.

If neither the Rome I Regulation nor the Rome Convention apply, the main principles of Portuguese law in relation to the governing law of contracts determine that contracts are governed by the law which the parties considered when executing the contract (even if they have not expressly stated it), or, if this is impossible to determine (i.e. the parties' behaviour is not conclusive in this respect), the law applicable in the place where the parties have their domicile (or, if the parties are domiciled in different jurisdictions, the law of the place where the contract was entered into).

2.2 Base Case. If the seller and the obligor are both resident in your jurisdiction, and the transactions giving rise to the receivables and the payment of the receivables take place in your jurisdiction, and the seller and the obligor choose the law of your jurisdiction to govern the receivables contract, is there any reason why a court in your jurisdiction would not give effect to their choice of law?

If all of the relevant aspects of the receivables contract have a connection with Portugal, there is no reason why a Portuguese court would not give effect to the parties' choice of Portuguese law as the law governing the contract. Please note, however, that there may be mandatory provisions of law in other jurisdictions requiring certain aspects of a contract to be governed by such law (for instance, if the transaction at stake pertains to, or is secured by, real estate property located in another jurisdiction).

2.3 Freedom to Choose Foreign Law of Non-Resident Seller or Obligor. If the seller is resident in your jurisdiction but the obligor is not, or if the obligor is resident in your jurisdiction but the seller is not, and the seller and the obligor choose the foreign law of the obligor/seller to govern their receivables contract, will a court in your jurisdiction give effect to the choice of foreign law? Are there any limitations to the recognition of foreign law (such as public policy or mandatory principles of law) that would typically apply in commercial relationships such as that between the seller and the obligor under the receivables contract?

If the Rome I Regulation or the Rome Convention apply, then Article 3 of the Rome I Regulation and Article 3 of the Rome Convention would allow the parties to choose a governing law. This choice would be subject to the limitations set out in the Rome I Regulation. Of these limitations, we believe those applicable to consumer contracts are probably those which would be more likely to apply in the context of a receivables contract, i.e. if the obligor is a consumer. Limitations in relation to public policy and mandatory principles of law also apply, but they would be less typical.

If the Rome I Regulation or the Rome Convention do not apply, the general principle in Portugal is that the parties may elect the governing law applicable. However, there are certain circumstances in which the parties are not entirely free to choose the law applicable to the whole, or part, of the contract. The parties may not choose foreign law with the intent of fraudulently avoiding Portuguese law. Furthermore, the choice of foreign law may not offend Portuguese international public policy.

Also, regardless of the applicability of the Rome I Regulation or the Rome Convention, if the obligor is resident in Portugal and to the extent that the receivables agreement could be deemed to include general contractual clauses (i.e. those which the obligor may only accept without prior individual negotiation), the choice of foreign law is likely not to preclude the full application of the provisions of Portuguese law on general contractual clauses.

3 Choice of Law – Receivables Purchase Agreement

3.1 Base Case. Does your jurisdiction's law generally require the sale of receivables to be governed by the same law as the law governing the receivables themselves? If so, does that general rule apply irrespective of which law governs the receivables (i.e., your jurisdiction's laws or foreign laws)?

Portuguese law does not generally require that an assignment of receivables is governed by the same law which governs the assigned receivables. However, in our experience (and that of the Portuguese authorities) assignment agreements for Portuguese-originated receivables have usually been governed by Portuguese law.

In any case, given Article 14 of the Rome I Regulation (and, when the Rome I Regulation does not apply, the risk that a Portuguese court would attempt to enforce a solution similar to that which is set out therein), the parties to an assignment of Portuguese-originated receivables should comply with the obligor notification procedures set out in the Portuguese Civil Code (to the extent not covered by the exemption of notification procedures set out in the Securitisation Law, approved by Decree-Law no. 453/99 of 5 November 1999, as amended from time to time (the "**Securitisation Law**")).

3.2 Example 1: If (a) the seller and the obligor are located in your jurisdiction, (b) the receivable is governed by the law of your jurisdiction, (c) the seller sells the receivable to a purchaser located in a third country, (d) the seller and the purchaser choose the law of your jurisdiction to govern the receivables purchase agreement, and (e) the sale complies with the requirements of your jurisdiction, will a court in your jurisdiction recognise that sale as being effective against the seller, the obligor and other third parties (such as creditors or insolvency administrators of the seller and the obligor)?

We see no reason for a Portuguese court not to recognise the effectiveness of the assignment in this scenario, be it against the seller or against the obligor. The same may be said with regard to effectiveness towards the relevant third parties.

3.3 Example 2: Assuming that the facts are the same as Example 1, but either the obligor or the purchaser or both are located outside your jurisdiction, will a court in your jurisdiction recognise that sale as being effective against the seller and other third parties (such as creditors or insolvency administrators of the seller), or must the foreign law requirements of the obligor's country or the purchaser's country (or both) be taken into account?

From a Portuguese law perspective, we understand that if the obligor and/or the purchaser were located outside Portugal it would not cause a Portuguese court to decide differently from Example 1. However, any mandatory foreign law requirements would need to be complied with.

3.4 Example 3: If (a) the seller is located in your jurisdiction but the obligor is located in another country, (b) the receivable is governed by the law of the obligor's country, (c) the seller sells the receivable to a purchaser located in a third country, (d) the seller and the purchaser choose the law of the obligor's country to govern the receivables purchase agreement, and (e) the sale complies with the requirements of the obligor's country, will a court in your jurisdiction recognise that sale as being effective against the seller and other third parties (such as creditors or insolvency administrators of the seller) without the need to comply with your jurisdiction's own sale requirements?

In this scenario, if the assignment is valid under its governing law, we believe that a Portuguese court would recognise the sale as effective against the seller and any relevant third parties.

3.5 Example 4: If (a) the obligor is located in your jurisdiction but the seller is located in another country, (b) the receivable is governed by the law of the seller's country, (c) the seller and the purchaser choose the law of the seller's country to govern the receivables purchase agreement, and (d) the sale complies with the requirements of the seller's country, will a court in your jurisdiction recognise that sale as being effective against the obligor and other third parties (such as creditors or insolvency administrators of the obligor) without the need to comply with your jurisdiction's own sale requirements?

In this scenario, we also believe that a Portuguese court would recognise the sale as being effective, subject to the considerations made in the next few paragraphs.

If the obligor is a consumer and either the Rome I Regulation or Rome Convention apply, the choice of the seller's country to govern the receivables agreement may not deprive the obligor of the protection granted by mandatory provisions of Portuguese law. We understand that the debtor notification requirements of the Portuguese Civil Code (when not waived by the application of the Securitisation Law) are mandatory provisions protecting the debtor and that, as such, the level of debtor protection enshrined in them must be met either by directly applying Portuguese law or provisions of the law of the seller's country which provide the same level of protection.

If the obligor is a consumer and the Rome I Regulation and Rome Convention do not apply, we still believe that the reasoning of the previous paragraph should apply, as we understand that there would be a risk that a Portuguese court may attempt to enforce a similar solution.

If the obligor is not a consumer, the assignment may be deemed valid if the obligor notification procedures mandated by the law governing the receivables agreement are followed.

In any case and from a risk-mitigating perspective, we would recommend that all assignments of receivables owed by Portuguese resident entities be notified to the debtor in writing.

3.6 Example 5: If (a) the seller is located in your jurisdiction (irrespective of the obligor's location), (b) the receivable is governed by the law of your jurisdiction, (c) the seller sells the receivable to a purchaser located in a third country, (d) the seller and the purchaser choose the law of the purchaser's country to govern the receivables

purchase agreement, and (e) the sale complies with the requirements of the purchaser's country, will a court in your jurisdiction recognise that sale as being effective against the seller and other third parties (such as creditors or insolvency administrators of the seller, any obligor located in your jurisdiction and any third party creditor or insolvency administrator of any such obligor)?

If either the Rome I Regulation or Rome Convention apply, we believe that Portuguese courts would, under Articles 3 and 14 of the Rome I Regulation, recognise the choice of foreign law regarding the sale of the assets and would, as such, have no reason not to deem the sale effective against the seller. The same result would be achieved if neither the Rome I Regulation nor the Rome Convention applied, in this case through the application of the general principle of the Portuguese Civil Code under which the parties are free to elect a governing law.

As for effectiveness against the obligor, if the receivable is governed by Portuguese law, then the obligor is entitled to the protection granted to debtors by the mandatory provisions of Portuguese law applicable to assignments of receivables. As such, we would recommend that the debtor notification requirements of the Portuguese Civil Code (when not waived by the application of the Securitisation Law) be met in relation to the obligor.

4 Asset Sales

4.1 Sale Methods Generally. In your jurisdiction what are the customary methods for a seller to sell receivables to a purchaser? What is the customary terminology – is it called a sale, transfer, assignment or something else?

In the context of securitisation, the customary method for a seller to sell receivables to a purchaser is under the framework of the Securitisation Law. The Securitisation Law has implemented a specific securitisation legal framework in Portugal, which contains a simplified process for the assignment of credits for securitisation purposes. In fact, the sale of credits for securitisation is effected by way of assignment of credits, such being the customary terminology, consisting of a true sale of receivables under the Securitisation Law as the purchaser is the new legal owner of the receivables. It corresponds to a perfected sale of receivables; however, please note the specifics relating to exercise of set-off against the securitisation vehicle below.

4.2 Perfection Generally. What formalities are required generally for perfecting a sale of receivables? Are there any additional or other formalities required for the sale of receivables to be perfected against any subsequent good faith purchasers for value of the same receivables from the seller?

There are no specific formality requirements for an assignment of credits under the Securitisation Law, a written private agreement between the parties being sufficient for a valid assignment to occur (including an assignment of loans with underlying mortgages or other guarantees subject to registration under Portuguese law). Transfer by means of a notarial deed is not required. In the case of an assignment of mortgage loans, the signatures to the assignment contract must be certified by a notary public, lawyer or the company secretary of each party under the terms of the Securitisation Law, such certification being required for the registration of the assignment at the relevant Portuguese Real Estate Registry Office.

Additionally, the assignment of any security over real estate, or of an asset subject to registration, in Portugal is only effective against third parties acting in good faith further to the registration of such assignment with the competent registry by, or on behalf of, the assignee. The assignee is entitled under the Securitisation Law to effect such registration.

In accordance with Article 6 of the Securitisation Law, the assignment of the relevant assets becomes immediately valid and effective between the parties upon the execution of the relevant assignment agreement and, when the assignor is, *inter alia*, a credit institution or a financial company, irrespective of the debtor's consent, notification or awareness.

When such is not the case, and in relation to the effectiveness of the assignment as far as the relevant debtors are concerned, the general rule is that a notification is required for the assignment to become effective, following the general principle under Article 583 of the Portuguese Civil Code.

In what concerns securitisation transactions, we should also mention that the Portuguese Securities Market Commission (the "**CMVM**") also grants an approval to the sale and allocates a 20-digit asset code to the bulk of receivables which constitute the asset portfolio being securitised. Please refer to our answers to questions 7.1 and 7.2 below.

4.3 Perfection for Promissory Notes, etc. What additional or different requirements for sale and perfection apply to sales of promissory notes, mortgage loans, consumer loans or marketable debt securities?

As mentioned in the answer to question 4.2 above, in order to perfect an assignment of mortgage loans and ancillary mortgage rights which are capable of registration at a public registry against third parties, the assignment must be followed by the corresponding registration of the transfer of such mortgage loans and ancillary mortgage rights in the relevant Real Estate Registry Office.

The Portuguese real estate registration provisions allow for the registration of the assignment of any mortgage loan at any Portuguese Real Estate Registry Office, even if the said Portuguese Real Estate Registry Office is not the office where such mortgage loan is registered, given the existence of a centralised and integrated registration system. The registration of the transfer of the mortgage loans requires the payment of a fee for each such mortgage loan.

In what concerns promissory notes ("*livranças*"), the usual practice is for these to be blank promissory notes in relation to which the originator has obtained from a borrower a completion pact ("*pacto de preenchimento*"), which grants the originator the power to complete the promissory note. In order to perfect the assignment of such promissory notes to the assignee, the assignor will have to endorse and deliver these instruments to the assignee.

The assignment of marketable debt instruments is perfected by the update of the corresponding registration entries in the relevant securities accounts, in accordance with the Portuguese Securities Code.

4.4 Obligor Notification or Consent. Must the seller or the purchaser notify obligors of the sale of receivables in order for the sale to be effective against the obligors and/or creditors of the seller? Must the seller or the purchaser obtain the obligors' consent to the sale of receivables in order for the sale to be an effective sale against the obligors? Whether or not notice is required to perfect a sale, are there any benefits to giving notice – such as cutting off obligor set-off rights and other obligor defences?

As to the effectiveness of the assignment between the parties, please refer to our answer to question 4.2 above.

Article 6/1 of the Securitisation Law establishes a general rule pursuant to which the assignment of the receivables becomes effective towards the obligors upon notification of the sale of the receivables. However, a relevant exception applies under Article 6/4 of the Securitisation Law, whereby the assignment of receivables becomes immediately valid and effective between the parties and towards the obligors upon the execution of the relevant assignment agreement, irrespective of the obligor's consent, notification or awareness, when the assignor is, *inter alia*, a credit institution or a financial company.

Please note that notification to the obligors is generally required, even in the case of Article 6/4 of the Securitisation Law (as described above), when the servicer of the receivables is not the assignor of the receivables.

Please note that in cases where the relevant receivables contract expressly requires the consent or notification of the obligors, then such consent or notice is required in order for the assignment to be effective against such obligors.

Under Article 6/6 of the Securitisation Law, any set-off rights or other means of defence exercisable by the obligors against the assignee are crystallised or cut off on the relevant date the assignment becomes effective, (i) regardless of notification when such notice is dispensed as above, or (ii) upon notification or awareness of the debtor when such is required.

4.5 Notice Mechanics. If notice is to be delivered to obligors, whether at the time of sale or later, are there any requirements regarding the form the notice must take or how it must be delivered? Is there any time limit beyond which notice is ineffective – for example, can a notice of sale be delivered after the sale, and can notice be delivered after insolvency proceedings have commenced against the obligor or the seller? Does the notice apply only to specific receivables or can it apply to any and all (including future) receivables? Are there any other limitations or considerations?

When applicable, notification to the debtor is required to be made by means of a registered letter (to be sent to the debtor's address included in the relevant receivables contract) and such notification will be deemed to have occurred on the third business day following the date of posting of the registered letter or by means of an email with a read receipt (to be sent to the debtor's email address included in the relevant receivables contract) where the debtor has previously agreed to it.

An exception to this requirement applies when the assignment of credits is made under the Securitisation Law as described in the answer to question 4.2 above.

There is no applicable time limit to the delivery of notice to the obligors, taking into account in any case that, if no exception applies, the assignment shall only be effective towards the obligors upon delivery of the relevant notice. The notice can be delivered after the commencement of any insolvency proceedings against the obligor or against the seller, and the contractual documents for securitisation transactions usually include provisions to allow the assignee to be able to notify all the obligors in case the seller/assignor does not do so.

When required, notice of assignment of credits must be given to each obligor, even though notice may be given for future credits.

4.6 Restrictions on Assignment – General Interpretation. Will a restriction in a receivables contract to the effect that "None of the [seller's] rights or obligations under this Agreement may be transferred or assigned without the consent of the [obligor]" be interpreted as prohibiting a transfer of receivables by the seller to the purchaser? Is the result the same if the restriction says "This Agreement may not be transferred or assigned by the [seller] without the consent of the [obligor]" (i.e., the restriction does not refer to rights or obligations)? Is the result the same if the restriction says "The obligations of the [seller] under this Agreement may not be transferred or assigned by the [seller] without the consent of the [obligor]" (i.e., the restriction does not refer to rights)?

In the first example, we are addressing an assignment of receivables and such assignment is dependent on obtaining the obligor's consent. Unless the consent of the obligor is obtained, the receivables are not eligible for securitisation purposes under Portuguese law, given that Article 4/1/a) of the Securitisation Law establishes that receivables subject to restrictions on their transferability or assignment are not eligible for securitisation purposes. This is the case due to the true sale nature of the assignment of receivables under the Securitisation Law. If such obligor's consent is not obtained, this means that the receivables contracts governing the receivables to be assigned cannot include such receivables or subject them to restrictive provisions as to their ownership transferability. Please refer to our answer to question 4.9 below.

On the other hand, the wording of the second example addresses a situation of assignment of contractual position (in accordance with Article 424 of the Portuguese Civil Code) and not merely an assignment of credits arising thereunder. The assignment of a contractual position requires the consent of the counterparty, and if such consent has been given prior to the assignment, it requires notification thereof to the counterparty.

If the restriction refers only to the seller's obligations under the receivables contract, the receivables are also not eligible for securitisation purposes under Portuguese law, given that Article 4/1/a of the Securitisation Law establishes that receivables subject to restrictions on the transferability or assignment are not eligible for securitisation purposes.

4.7 Restrictions on Assignment; Liability to Obligor. If any of the restrictions in question 4.6 are binding, or if the receivables contract explicitly prohibits an assignment of receivables or "seller's rights" under the receivables contract, are such restrictions generally enforceable in your jurisdiction? Are there exceptions to this rule (e.g., for contracts between commercial entities)? If your jurisdiction recognises restrictions on sale or assignment of receivables and the seller nevertheless sells receivables to the purchaser, will either the seller or the purchaser be liable to the obligor for breach of contract or tort, or on any other basis?

Restrictions on assignment existing in the underlying receivables contracts, including the restrictions mentioned in the answer to question 4.6 above, are enforceable in Portugal. However, in relation to any contractual prohibitions for assignment of credits, these can only be effective towards the assignee if it was aware of such prohibition on the assignment date, as set out in Article 577 of the Portuguese Civil Code. If a given receivables contract comprises such a contractual prohibition on assignment and nevertheless the seller assigns the receivables to a third party, then the seller will be liable towards the obligor for breach of contract, i.e. wilful default ("*incumprimento culposo*") of an obligation, in accordance with the provisions of the Portuguese Civil Code.

4.8 Identification. Must the sale document specifically identify each of the receivables to be sold? If so, what specific information is required (e.g., obligor name, invoice number, invoice date, payment date, etc.)? Do the receivables being sold have to share objective characteristics? Alternatively, if the seller sells *all* of its receivables to the purchaser, is this sufficient identification of receivables? Finally, if the seller sells *all* of its receivables *other than* receivables owing by one or more specifically identified obligors, is this sufficient identification of receivables?

The assignment agreement must identify, specifically, the receivables which are being assigned under a given contract, given that the object of the assignment must be determinable in accordance with the Portuguese Civil Code, such usually being done by listing the relevant receivables in a schedule to the assignment agreement. Such list of assigned receivables refers to standard characteristics of the relevant credits, without disclosing the obligors' personal data which would reveal their identification, in accordance with the applicable data protection rules.

Under the Securitisation Law, bulk assignments are not considered and the seller will not assign all of its undetermined receivables to a given purchaser (or all of its receivables other than a few identified receivables), rather identifying those receivables to be actually assigned and which comply with the Securitisation Law eligibility criteria.

4.9 Recharacterisation Risk. If the parties describe their transaction in the relevant documents as an outright sale and explicitly state their intention that it be treated as an outright sale, will this description and statement of intent automatically be respected or is there a risk that the transaction could be characterised by a court as a loan with (or without) security? If recharacterisation risk exists, what characteristics of the transaction might prevent the transfer from being treated as an outright sale? Among other things, to what extent may the seller retain any of the following without jeopardising treatment as an outright sale: (a) credit risk; (b) interest rate risk; (c) control of collections of receivables; (d) a right of repurchase/redemption; (e) a right to the residual profits within the purchaser; or (f) any other term?

The assignment of the receivables under a receivables sale agreement is generally construed to constitute a valid and true assignment of receivables from an originator to the assignee, being effective between the parties as from the envisaged effective date and whereby the seller is discharged of all its obligations with respect to the receivables comprised in the securitisation pool.

We note that the Securitisation Law requires a true and complete assignment, not being subject to any term or condition. Furthermore, neither the originating entity, nor any of its group companies, may provide any guarantees or enhancement in the context of the assignment or undertake responsibility for payments made by the underlying obligors. As such, the seller retaining credit risk, interest rate risk or control of collections (for its own benefit) or a right of repurchase or a right to residual profits, could be seen as colliding with such true sale concept.

In what concerns the control of collections, we would note additionally that, where the seller is a credit institution in the context of a securitisation, usually the purchaser mandates such seller to act as collection account bank and servicer of the receivables and ensure receipt of collections from the borrowers on behalf of the purchaser, it being clear, however, that any amounts so held by the servicer do not pertain to the servicer (even in a servicer event) and rather belong to the purchaser, in accordance with the Securitisation Law. In this sense, an assignment under the Securitisation Law will typically be a perfected assignment. In terms of repurchase, we would note that the seller would typically have an obligation under the Securitisation Law of repurchase in case of hidden defects or false representations and warranties relating to the assets.

4.10 Continuous Sales of Receivables. Can the seller agree in an enforceable manner to continuous sales of receivables (i.e., sales of receivables as and when they arise)? Would such an agreement survive and continue to transfer receivables to the purchaser following the seller's insolvency?

Without prejudice to the answer to question 4.11 below regarding future receivables, continuous sales would be possible under the Securitisation Law, provided they comply with the answer to question 4.7 above. However, sellers have rather opted to carry out securitisation transactions with revolving periods for assignment of additional receivables on a periodic basis, against payment out of collections and additional funding by the issuance of further notes, rather than continuous sales.

4.11 Future Receivables. Can the seller commit in an enforceable manner to sell receivables to the purchaser that come into existence after the date of the receivables purchase agreement (e.g., "future flow" securitisation)? If so, how must the sale of future receivables be structured to be valid and enforceable? Is there a distinction between future receivables that arise prior to *versus* after the seller's insolvency?

Pursuant to Article 4/3 of the Securitisation Law, future receivables or future cash flows may be assigned for securitisation purposes, provided such receivables or cash flows (i) arise from existing relationships, and (ii) are quantifiable (a confirmation of the estimations made by the originator in respect of the quantum of the future receivables that are being securitised usually being sought). In terms of structure, the originator will assign to the purchaser certain rights over the future receivables or future cash flows, in an amount equivalent to a given overcollateralised percentage of the debt service, and the originator will guarantee that the future receivables or future cash flows generated during each collection period will be sufficient to cover the agreed debt service and, accordingly, for each interest period it will transfer to the purchaser an amount equivalent to 100 per cent of the debt service in respect of such interest period. Furthermore, in case the originator is unable to originate sufficient future receivables or future cash flows to meet its obligations for a given interest period, it will, in any event, pay to the purchaser an amount equal to such shortfall of future receivables, in order to ensure an amount equal to 100 per cent of the relevant debt service.

In respect of insolvency, we refer to our answer to question 6.5 below.

4.12 Related Security. Must any additional formalities be fulfilled in order for the related security to be transferred concurrently with the sale of receivables? If not all related security can be enforceably transferred, what methods are customarily adopted to provide the purchaser the benefits of such related security?

Under the Portuguese Civil Code, the general rule is that the assignment of credits also implies the transfer of any kind of security or other form of guarantee, unless the relevant assignment agreement provides otherwise. If certain formalities apply to the creation of security, such formalities also usually need to be complied with for a valid transfer of security. Please see our answers to questions 4.2 and 4.3 regarding the transfer of mortgages under the Securitisation Law and the answer to question 5.5.

4.13 Set-Off; Liability to Obligor. Assuming that a receivables contract does not contain a provision whereby the obligor waives its right to set-off against amounts it owes to the seller, do the obligor's set-off rights terminate upon its receipt of notice of a sale? At any other time? If a receivables contract does not waive set-off but the obligor's set-off rights are terminated due to notice or some other action, will either the seller or the purchaser be liable to the obligor for damages caused by such termination?

Under the Securitisation Law and the general rule of the Portuguese Civil Code, an obligor may claim any right of set-off (and, in general, any means of defence) against the purchaser of the receivables in the same terms that could be claimed against the seller, if such right of set-off arises from a fact which has occurred prior to the assignment of the relevant receivable. Such right of set-off is not terminated by any notice of assignment. However, where the right of set-off arises from a fact occurring after the assignment of the relevant underlying receivable, the obligor cannot claim the set-off against the amounts owed and neither the purchaser nor the seller shall be liable towards the obligor for damages. As such, the date of assignment is the cut off or crystallisation date for the purposes of defining which are the exercisable set-off or any other means of defence by any given obligor.

4.14 Profit Extraction. What methods are typically used in your jurisdiction to extract residual profits from the purchaser?

There are several methods used in Portuguese securitisation transactions for the extraction of residual profits from the transaction and the purchaser/issuer of securitised securities, all related to the use of the so-called payments waterfall to be paid from the transaction account (opened with an accounts bank in the name of the SPV) to the relevant receiver.

We would say the most usual method for profit extraction is the establishment of a junior note that covers, under the payments waterfall, all amounts remaining in the transaction account after payment of all transaction expenses, issuer expenses and interest and principal on the outstanding senior notes until they are redeemed in full. In this case, the junior noteholder is entitled to all remaining and residual amounts standing to the credit of the SPV. Another common way for profit extraction is the establishment, under the relevant transaction documents, of fees to be paid to the relevant receiver for their role/commitment within the context of the securitisation transaction.

If no profit extraction mechanics are put in place and agreed between the parties under the securitisation transaction documents, any excess and residual amounts are paid out in the payments waterfall, by a return amount concept with a catch-all nature.

5 Security Issues

5.1 Back-up Security. Is it customary in your jurisdiction to take a "back-up" security interest over the seller's ownership interest in the receivables and the related security, in the event that an outright sale is deemed by a court (for whatever reason) not to have occurred and have been perfected (see question 4.9 above)?

Back-up security in the context of the Securitisation Law is not customary in Portugal, considering that noteholders and secured creditors benefit from the legal creditors' privilege set forth in Article 63 of the Securitisation Law, which covers the transaction assets located in and outside of Portugal.

5.2 Seller Security. If it is customary to take back-up security, what are the formalities for the seller granting a security interest in receivables and related security under the laws of your jurisdiction, and for such security interest to be perfected?

Under Portuguese securitisation transactions, the sellers do not provide security interests to the receivables, given that such could be considered as jeopardising the true sale nature of the transaction.

5.3 Purchaser Security. If the purchaser grants security over all of its assets (including purchased receivables) in favour of the providers of its funding, what formalities must the purchaser comply with in your jurisdiction to grant and perfect a security interest in purchased receivables governed by the laws of your jurisdiction and the related security?

Purchasers in Portuguese securitisation transactions do not usually provide additional security to the noteholders and secured creditors of a given transaction, given that these entities benefit from the legal creditors' privilege mentioned in the answer to question 5.1 above. Other than obtaining the relevant approval for incorporation of the fund or asset digit code approval from the CMVM, which confirms the applicability of the legal creditors' privilege in respect of a given portfolio of receivables pertaining to certain notes issued, no additional formalities are required in order to perfect such legal creditors' privilege, given that it is not subject to registration, in accordance with the Securitisation Law. Additionally, in some transactions, namely those using a securitisation fund, it is usual to create security over the foreign bank accounts of the vehicle – see the answer to question 5.7 below.

5.4 Recognition. If the purchaser grants a security interest in receivables governed by the laws of your jurisdiction, and that security interest is valid and perfected under the laws of the purchaser's jurisdiction, will the security be treated as valid and perfected in your jurisdiction or must additional steps be taken in your jurisdiction?

The security interest would be recognised as valid and effective in Portugal provided that any applicable Portuguese formalities relating to the protection of interested third parties are followed (we refer to the answer to question 5.5 below). For instance, it would be possible to grant an English law pledge over bank accounts (as mentioned above) or over Portuguese law receivables; however, the debtor of those receivables should be notified of such security interest in accordance with Portuguese law in order for it to be effective against said debtor.

5.5 Additional Formalities. What additional or different requirements apply to security interests in or connected to insurance policies, promissory notes, mortgage loans, consumer loans or marketable debt securities?

With regard to additional formalities for validly creating security interests with respect to the abovementioned assets, we note that formalities regarding evidence to third parties must be followed, such as: (a) security over insurance policies needs to be notified to the relevant insurance provider; (b) security over promissory notes needs to be endorsed by the security grantor to the benefit of the security beneficiary on the relevant title; (c) creation of mortgages or subsequent transfers of entitlements in respect thereof need to be registered with the competent registry office; and (d) security in respect of marketable debt securities needs to be registered either in the relevant securities account (book-entry securities) or in the relevant title and securities register (physical securities).

5.6 Trusts. Does your jurisdiction recognise trusts? If not, is there a mechanism whereby collections received by the seller in respect of sold receivables can be held or be deemed to be held separate and apart from the seller's own assets (so that they are not part of the seller's insolvency estate) until turned over to the purchaser?

In general, Portuguese law does not recognise the legal concept of a trust. However, in terms of collections received by the seller pertaining to a given securitisation transaction, we refer to the segregation principle and autonomous estate nature as set out in question 7.2 below. Furthermore, in respect of collections held by the servicing entity, we would also refer to our answer to question 4.9.

5.7 Bank Accounts. Does your jurisdiction recognise escrow accounts? Can security be taken over a bank account located in your jurisdiction? If so, what is the typical method? Would courts in your jurisdiction recognise a foreign law grant of security taken over a bank account located in your jurisdiction?

Portuguese law does not expressly govern escrow accounts; however, similar types of arrangements can be contractually set up and are commonly used by Portuguese banks. Security interests can be taken over bank accounts in Portugal and the typical method to do so would be by granting a pledge over such bank account. A reference should be made to the form of financial pledges which are the customary method of taking security over bank accounts by financial institutions, financial pledges being governed by the regime of Decree-Law no. 105/2004, of 8 May 2004 (as amended), in line with Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements. The important characteristic of these financial pledges is that the collateral taker may have the possibility to use and dispose of financial collateral provided, as the owner of it. Foreign law pledges over Portuguese bank accounts are possible, but the relevant Portuguese bank (as debtor in relation to the balance of that account from time to time) should be notified of the granting of the pledge.

5.8 Enforcement over Bank Accounts. If security over a bank account is possible and the secured party enforces that security, does the secured party control all cash flowing into the bank account from enforcement forward until the secured party is repaid in full, or are there limitations? If there are limitations, what are they?

The bank accounts of the transaction may naturally be subject to security to the benefit of the transaction creditors. No specific or autonomous security is usually required as, in fact, Portuguese securitisation transactions have the benefit of a legal special creditor's privilege ("*privilégio creditório especial*"), as described in our answer to question 7.2 below, existing in respect of all assets forming part of the portfolio allocated to each transaction related to an issuance of notes (including the transaction bank accounts) and, therefore, having effect over those assets existing at any given moment in time for the benefit of the credit securitisation company and being allocated to the relevant issuance of securitisation notes (including the transaction bank accounts, even when located abroad). Upon enforcement, the common representative of the noteholders or the trustee will control the cash flowing into the bank accounts on behalf of the secured creditors and noteholders and will ensure that they are repaid in full (to the extent there are sufficient available funds in the transaction accounts for full payment of the notes).

5.9 Use of Cash Bank Accounts. If security over a bank account is possible, can the owner of the account have access to the funds in the account prior to enforcement without affecting the security?

The bank accounts of the transaction may be subject to security to the benefit of the transaction creditors, as set out in our answer to question 5.8 above. In such context, the owner of the transaction is the issuer as securitisation vehicle and it can access the funds standing to the credit of such accounts, subject to security prior to enforcement thereof. However, we would note that the issuer is contractually bound to apply the funds in such accounts exclusively in the manner set out in the transaction documents, i.e. by applying such available funds in accordance with the agreed priorities of payments, and such utilisation is monitored by the common representative or trustee to the benefit of the holders of the securitisation notes.

6 Insolvency Laws

6.1 Stay of Action. If, after a sale of receivables that is otherwise perfected, the seller becomes subject to an insolvency proceeding, will your jurisdiction's insolvency laws automatically prohibit the purchaser from collecting, transferring or otherwise exercising ownership rights over the purchased receivables (a "stay of action")? If so, what generally is the length of that stay of action? Does the insolvency official have the ability to stay collection and enforcement actions until he determines that the sale is perfected? Would the answer be different if the purchaser is deemed to only be a secured party rather than the owner of the receivables?

In accordance with Article 6 of the Securitisation Law, the general rule is that the assignment of receivables (described in the answer to question 4.2 above) becomes immediately valid and effective between the parties upon the execution of the relevant assignment agreement, irrespective of the debtor's consent, notification or awareness.

This means that the assignment of the receivables under the Securitisation Law constitutes a valid and true assignment of receivables from the seller to the purchaser; namely to the extent that the insolvency of the seller will not cause the sale or assignment to be declared void from a legal standpoint, and neither any insolvency official, any borrower, nor any creditor of the seller would be able to have set aside such assignment unless it could provide evidence as to the fact that the assignment had been made in bad faith (*vide* Article 8 of the Securitisation Law). To set aside the assignment conducted on these terms, this would have to be made either, and subject to the applicable law, in the context of the insolvency proceedings where the insolvency administrator on behalf of the insolvent estate may, in the terms predicted in the Insolvency Law and further explained in our answer to question

6.3, challenge the assignment performed within two years prior to the opening of the insolvency proceedings that is qualified as detrimental to the insolvent estate or, within a period of five years following completion of the sale of the receivables, through an application for an unenforceability judgment ("*impugnação pauliana*") of such assignment and providing that the claiming party is capable of proving that: (i) the sale of the receivables has decreased the assets or increased the liabilities of the originator; (ii) the claim of the relevant creditor has arisen before completion of the sale of the receivables (although claims arising after completion of the date of receivables may also be affected to the extent that the relevant creditor provides evidence that such sale has been entered into for the specific purpose of avoiding the payment satisfaction of the creditors' claim); (iii) completion of the sale of the receivables has caused or worsened the insolvency situation of the originator; and (iv) both the originator and the purchaser acted in bad faith, that is, both of them were aware that completion of the sale of the receivables would have the effect described in subparagraph (iii) above.

6.2 Insolvency Official's Powers. If there is no stay of action, under what circumstances, if any, does the insolvency official have the power to prohibit the purchaser's exercise of its ownership rights over the receivables (by means of injunction, stay order or other action)?

Aside from our answer to question 6.3 below, based on the assumption that a true sale is in place, the only means to prohibit the exercise of rights by the purchaser would be through an injunction ("*providência cautelar não especificada*") followed by the competent main court action.

6.3 Suspect Period (Clawback). Under what facts or circumstances could the insolvency official rescind or reverse transactions that took place during a "suspect" or "preference" period before the commencement of the seller's insolvency proceedings? What are the lengths of the "suspect" or "preference" periods in your jurisdiction for (a) transactions between unrelated parties, and (b) transactions between related parties? If the purchaser is majority-owned or controlled by the seller or an affiliate of the seller, does that render sales by the seller to the purchaser "related party transactions" for purposes of determining the length of the suspect period? If a parent company of the seller guarantee's the performance by the seller of its obligations under contracts with the purchaser, does that render sales by the seller to the purchaser "related party transactions" for purposes of determining the length of the suspect period?

Acts that may be qualified as detrimental to the insolvent estate, performed within two years prior to the opening of the insolvency proceedings, may be challenged by the insolvency administrator on behalf of the insolvent estate. The relevant acts for this purpose are those that diminish, frustrate, aggravate, put in danger or delay the rights of the debtor's creditors. These acts can only be challenged if it is proven that they were motivated by the parties' bad faith (where the counterparty to the act or the beneficiary of the act is a person or entity related to the insolvent entity, the relevant act will be deemed to be motivated by bad faith if carried out within a period of two years prior to the opening of the insolvency proceedings).

The parties' bad faith is defined as knowledge of any of the following circumstances on the date of the relevant act:

(a) that the debtor was insolvent, i.e. unable to fulfil its obligations as they fall due or the debtor's liabilities exceed its assets;

(b) that the act was of a detrimental nature and that the debtor was in a situation of imminent insolvency; or

(c) that insolvency proceedings had commenced.

Where the counterparty to the act or the beneficiary of the act is a person or entity related to the insolvent entity, a legal presumption of bad faith applies if the relevant act was carried out within a period of two years prior to the opening of the insolvency proceedings.

There are also certain acts and transactions which are legally deemed to be detrimental to the insolvent company's estate without the need for any additional proof (such as proof of bad faith of any party). This is the case where:

(a) the division of legacy made less than one year before the date of commencement of insolvency proceedings in which the insolvency's share has been essentially fulfilled with easily evicted property, while the other co-stakeholders kept the major part of the real estate property and nominative securities;

(b) gratuitous acts (i.e. those for which the debtor did not receive any consideration) were performed less than two years before the commencement of the insolvency proceedings where the act results in a reduction in the assets of the debtor;

(c) security was granted within a period of six months prior to the commencement of insolvency proceedings (where such security was granted in respect of pre-existing obligations);

(d) security was granted simultaneously with the secured obligations, within a period of 60 days prior to the commencement of the insolvency proceedings;

(e) surety, sub-surety, guarantee and credit mandates are given, provided they were issued by the insolvent debtor in the six months preceding the date of the commencement of the insolvency proceedings and do not relate to transactions with any real benefit to the debtor;

(f) payment of debts or the performance of other acts occur, which have the effect of performing obligations (for example, set-off) which would become due after the date on which insolvency proceedings are commenced (if such payment or set-off occurs during the six months before the opening of the insolvency proceedings);

(g) payment of debts or the performance of other acts occur, which have the effect of performing obligations (for example, set-off) during the six months prior to the opening of the insolvency proceedings if such payment or set-off is considered unusual according to standard commercial practices and the creditor was not able to demand payment;

(h) acts are performed by the debtor less than a year before the opening of the insolvency proceedings in which the obligations assumed by the debtor significantly exceed those of the counterparty (i.e. transactions at an undervalue); and

(i) reimbursement of shareholder loans occurs, if made in the year that precedes the commencement of the insolvency proceedings.

In any event, it must be noted that, should an assignment of receivables have been made under the Securitisation Law, the burden of proving bad faith is reversed, as the assumption that the above typified acts were made in bad faith will not apply. If an assignment of receivables has been made under the Securitisation Law, the relevant interested parties must always prove bad faith in order for the assignment to be declared void. To date, there has been no court decision or insolvency officer's proceeding unwinding a securitisation transaction.

In case the SPV is majority-owned or controlled by the seller or an affiliate of the seller, the SPV would be deemed as the beneficiary of the act (as a person or entity related to the insolvent entity) and a legal presumption of bad faith would apply if the relevant act was carried out within a period of two years prior to the opening of the insolvency proceedings.

6.4 Substantive Consolidation. Under what facts or circumstances, if any, could the insolvency official consolidate the assets and liabilities of the purchaser with those of the seller or its affiliates in the insolvency proceeding? If the purchaser is owned by the seller or by an affiliate of the seller, does that affect the consolidation analysis?

This is not applicable in the context of the Securitisation Law.

6.5 Effect of Insolvency on Receivables Sales. If insolvency proceedings are commenced against the seller in your jurisdiction, what effect do those proceedings have on (a) sales of receivables that would otherwise occur after the commencement of such proceedings, or (b) on sales of receivables that only come into existence after the commencement of such proceedings?

If the assignment of any assets as described in (a) or (b) above (herein referred to as "**Future Receivables**") is made under the Securitisation Law, then the indications provided under question 6.1 above will also apply and therefore such Future Receivables will not form part of the insolvency estate of the seller even when they only become due and payable or come into existence after the date of declaration of insolvency of the seller, provided that the requirements for assignment of such Future Receivables, as set out in our answer to question 4.10, are duly complied with prior to the date of declaration of insolvency of the seller.

In cases where the assignment is not made under the Securitisation Law and the seller becomes insolvent, then the insolvency official may, at its discretion, choose between executing or not executing the receivables sale agreement, as this agreement will be suspended by virtue of the declaration of insolvency.

6.6 Effect of Limited Recourse Provisions. If a debtor's contract contains a limited recourse provision (see question 7.4 below), can the debtor nevertheless be declared insolvent on the grounds that it cannot pay its debts as they become due?

Limited recourse provisions exist on a contractual basis and in accordance with Articles 60 *et seq*. of the Securitisation Law. However, as remote as a securitisation vehicle's insolvency may be, such a possibility would need to be assessed on a case-by-case basis. In general terms, the debtor is declared insolvent by a Portuguese court where there are no assets to pay debts as they become due. Please note that an insolvency proceeding can be started with a Portuguese court by any creditor of the insolvent entity or by the debtor itself (the debtors board of directors has a duty to file for insolvency); however, insolvency is only declared after the analysis of the debtor's assets and the court's realisation that, in fact, there are no debtor's assets to pay debts.

7 Special Rules

7.1 Securitisation Law. Is there a special securitisation law (and/or special provisions in other laws) in your jurisdiction establishing a legal framework for securitisation transactions? If so, what are the basics? Is there a regulatory authority responsible for regulating securitisation transactions in your jurisdiction? Does your jurisdiction define what type of transaction constitutes a securitisation?

Generally, the Securitisation Law provides for: (i) the establishment of a standard and specific securitisation legal framework by regulating, *inter alia*, the establishment and activity of the securitisation vehicles, the type of credits that may be securitised, and the entities who may assign credits for securitisation purposes; (ii) a simplification of the assignment process by providing for specific rules on the assignment of credits; and (iii) the expansion of the class of eligible assets to include mortgage loans by providing for a simplified mechanism of assignment of this type of credits.

As to the type of transactions that constitute a securitisation, according to the Securitisation Law, these include: (a) traditional securitisation, as defined in Article 2, paragraph (9), of Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation ("**Securitisation Regulation**") (directly applicable in Portugal); (b) synthetic securitisation, as defined in Article 2, paragraph (10), of the Securitisation Regulation; (c) STS securitisation, in accordance with Articles 20 or 24 of the Securitisation Regulation; and (d) non-STS securitisation, which shall need to fulfil the requisites set out in Article 4 of the Securitisation Law, as follows:

- credits or risks must not be subject to legal or contractual assignment restrictions;
- credits or risks must convey stable, quantifiable or predictable monetary flows based on statistical models;
- the existence and enforceability of the credits or risks must be warranted by the assignor; and
- credits or risks must not be litigious nor pledged as security, judicially attached nor seized.

Additionally, under the Securitisation Law, an assignment of credits or risks is deemed to be for securitisation purposes when the assignee is a securitisation vehicle. This means that synthetic securitisations (as standard market transactions whereby a bank (originator) buys credit protection on a portfolio of loans from an investor by the execution of a derivative contract or hedging agreement) do not qualify as securitisation transactions under the Securitisation Law (even if these structures can be put in place in Portugal). Thus, the Securitisation Law regulates a simplified and tax-neutral process for securitisation transactions, through a two-step approach:

- Transfer of receivables to a securitisation vehicle.
- Subsequent issue of securities or units, subscribed for by one or more investors, using the proceeds to fund the purchase of the receivables.

In Portugal, securitisation transactions fall within the regulatory competence of the CMVM, which not only approves the transaction itself by awarding an asset digit code to each issuance but is also responsible for the approval of the incorporation and supervision of the securitisation vehicles (please refer to our answers to questions 4.2 and 7.2). The asset digit code awarded allows for the identification of the autonomous pool of assets at any given time.

Also, the Bank of Portugal, the Portuguese central bank, must be notified by the originators of the securitisation transactions being carried out.

A special securitisation tax regime is also in place. It was established through Decree-Law no. 219/2001 of 4 August 2011 (as amended from time to time) (the "**Securitisation Tax Law**").

7.2 Securitisation Entities. Does your jurisdiction have laws specifically providing for establishment of special purpose entities for securitisation? If so, what does the law provide as to: (a) requirements for establishment and management of such an entity; (b) legal attributes and benefits of the entity; and (c) any specific requirements as to the status of directors or shareholders?

A flexibility concern seems to have led to the establishment of two different types of securitisation vehicles: credit securitisation funds ("**FTCs**"); and credit securitisation companies ("**STCs**").

The FTC structure is necessarily a tripartite one: (a) the fund, which must be managed by; (b) a Fund Manager, pursuant to the terms of the applicable fund regulation.

Fund Managers (*Sociedades Gestoras*) are financial companies who are required to: (i) hold registered offices and effective management in Portugal; (ii) qualify as a *sociedade anónima* (public limited liability company) whose share capital is represented by nominative book-entry shares; (iii) be exclusively engaged in the management of one or more funds on behalf of the holders of Securitisation Units; and (iv) include in its name the expression "SGFTC".

As from 1 January 2020, the incorporation of Fund Managers is subject to approval by the CMVM and their activity is subject to supervision by this regulatory authority.

One same Fund Manager may have a number of different funds under management and it is the Fund Manager who is responsible for the application for approval of incorporation of each new fund, by filing the relevant approval request with the CMVM – the entity responsible for approving the incorporation of each new fund through the approval of the relevant fund regulation. The incorporation of a fund is deemed to occur upon payment of the subscription price for the relevant securitisation units, something that may only occur upon the CMVM's approval having been obtained.

As the FTC itself has no legal personality (it is an autonomous pool of assets held jointly by a different number of entities), its management is entrusted to the Fund Manager, which must manage the fund in accordance with the fund regulation and with certain legal limitations on the management of the FTC such as, for example, the requirement that the Funds' funds are used for the initial or subsequent acquisition of credits (for securitisation purposes) and that such credits represent at least 75 per cent of the securitisation funds' assets.

It is also relevant to note the fact that Fund Managers are subject to specific capital adequacy requirements. A minimum share capital requirement of EUR 125,000 applies while they must have own funds which are equal to, or higher than, a certain percentage of the net value of all funds managed.

STCs are companies which are required to: (i) qualify as a public limited liability company whose share capital is represented by nominative book-entry shares; (ii) include in its name the expression "STC"; and (iii) be exclusively engaged in the carrying out of securitisation transactions by means of acquiring, managing and transferring receivables and of issuing notes as a source of financing such acquisitions.

The incorporation of STCs is subject to an approval process near the CMVM and, although they do not qualify as financial companies, this process imposes compliance with a number of requirements that are similar to those arising under all relevant Banking Law requirements. These requirements may be said to have an impact in terms of the shareholding structure an STC is to have, to the extent that full disclosure of both direct and indirect ownership is required for the purposes of allowing the CMVM to assess the reliability and soundness of the relevant shareholding structure. The same applies in respect of the members of corporate bodies, namely directors who must be persons whose reliability and availability must ensure the capacity to run the STC business in a sound and prudent manner.

STCs are also subject to specific capital adequacy requirements. A minimum share capital requirement of EUR 125,000 applies while they must have own funds which are equal to, or higher than, a certain percentage of the net value of issued outstanding securitisation notes.

In terms of legal attributes and benefits, we believe it is fair to say that both vehicles are quite similar as they both allow for a full segregation of the relevant portfolios and their full dedication to the issued securities. While in a fund structure this is achieved through the structure itself, as the assets of each fund are only available to meet the liabilities of such fund in a company structure, certain relevant legal provisions establish a full segregation principle and a creditors' privileged entitlement over the assets that are so segregated and which collateralise a certain issue of notes.

This segregation principle means that the receivables and other related assets and amounts existing at a given moment for the benefit of an STC, and which are related to a certain issuance of notes, constitute an autonomous ring-fenced pool of assets ("*património autónomo*") which is exclusively allocated to such issuance of notes and which is not, therefore, available to creditors of the STC other than the noteholders, and to the services providers existing specifically in the context of such issuance of notes until all the amounts due in respect of the notes have been repaid in full. To this effect, the assets integrated in each *património autónomo* are listed and filed with the CMVM and subject to an asset identification code that is also granted by the CMVM.

In addition to the above, and in order to render this segregation principle effective, the noteholders and the other creditors relating to each series of securitisation notes issued by the STC are further entitled to a legal creditor's privilege (equivalent to a security interest) over all of the assets allocated to the relevant issuance of securitisation notes, including assets located outside Portugal. In fact, according to Article 63 of the Securitisation Law, this legal special creditor's privilege ("*privilégio creditório especial*") exists in respect of all assets forming part of the portfolio allocated to each transaction related to an issuance of notes and therefore has effect over those assets existing at any given moment in time for the benefit of the STC that are allocated to the relevant issuance of securitisation notes.

7.3 Location and form of Securitisation Entities. Is it typical to establish the special purpose entity in your jurisdiction or offshore? If in your jurisdiction, what are the advantages to locating the special purpose entity in your jurisdiction? If offshore, where are special purpose entities typically located for securitisations in your jurisdiction? What are the forms that the special purpose entity would normally take in your jurisdiction and how would such entity usually be owned?

The Securitisation Law establishes two types of securitisation vehicles as set out in question 7.2, subject to different forms of incorporation but very similar in legal attributes and benefits, as they both allow for a full segregation of the relevant portfolios and their exclusive allocation to the issued securities. On the one hand, in a fund structure, this is achieved through the structure itself, as the assets of each fund are only available to meet the liabilities of such fund. On the other hand, in a company structure (which works as a multi-compartment entity) certain relevant legal provisions establish a full segregation principle, and a creditor's privileged entitlement over the assets that are so segregated and that collateralise each transaction and the corresponding issue of notes. From an operational perspective, the timing and documentation package for both alternatives under the Securitisation Law are very similar (see question 7.2).

The choice of using an FTC or an STC structure in a given securitisation transaction was essentially the investor's, being historically, and initially, more familiar with the fund structure (which then used a foreign SPV to issue the notes to market investors).

Initially, in securitisation transactions in the Portuguese market:

- the FTC acquired the assets and issued securities (securitisation units); and
- an SPV (generally in Ireland or Luxembourg) subscribed for the securitisation units and issued notes, which were purchased by the final investors.

This was essentially investor-driven, as it was felt that it would be difficult to place units with investors (as they are not pure debt instruments but quasi-capital instruments).

Since the first Portuguese securitisation with an STC in 2004, under which tax claims and social security claims credits were assigned by the Portuguese state to Sagres STC, S.A., the STC has spread in the market and generally been accepted by institutional investors. In recent years, securitisations have essentially adopted STCs, with a direct issuance out of Portugal.

In any case, when using both STCs or FTCs, Portuguese securitisations are subject to the Securitisation Law, whereby the relevant SPV is required to be incorporated in Portugal and the assignment of loans is fully governed by Portuguese law and subject to full supervision of the CMVM. One of the benefits of this regime is the tax neutrality, as set out in section 9.

7.4 Limited-Recourse Clause. Will a court in your jurisdiction give effect to a contractual provision in an agreement (even if that agreement's governing law is the law of another country) limiting the recourse of parties to that agreement to the available assets of the relevant debtor, and providing that to the extent of any shortfall the debt of the relevant debtor is extinguished?

Yes. The Portuguese general rule on limited recourse provided by Article 602 of the Portuguese Civil Code establishes that a limited recourse provision may be contractually agreed between the debtor and the creditor, limiting the debtor's liability to certain available assets. Under this general rule, a Portuguese court would enforce and give effect to such a limited recourse provision. Also, limited recourse provisions are specifically valid and binding under the provisions of Articles 60 *et seq.* of the Securitisation Law. Insofar as limited recourse arrangements are concerned, we would furthermore take the view that they correspond to an application in a specific context (that of securitisation) of a possibility of having a contractual limitation on the assets which are liable for certain obligations or debts, which is provided for by Portuguese law on general terms (namely Article 602 of the Portuguese Civil Code). Once they result from the quoted provisions of the law, limited recourse shall not be affected by the issuer's insolvency, however remote such an event may be in the context of the Portuguese securitisation vehicles.

7.5 Non-Petition Clause. Will a court in your jurisdiction give effect to a contractual provision in an agreement (even if that agreement's governing law is the law of another country) prohibiting the parties from: (a) taking legal action against the purchaser or another person; or (b) commencing an insolvency proceeding against the purchaser or another person?

Non-petition, limited recourse and priority of payments arrangements, as usually contained in the securitisation transactions documentation, are valid under Portuguese law, deriving directly from the provisions of Articles 60 *et seq.* of the Securitisation Law.

7.6 Priority of Payments "Waterfall". Will a court in your jurisdiction give effect to a contractual provision in an agreement (even if that agreement's governing law is the law of another country) distributing payments to parties in a certain order specified in the contract?

Priority of payments provisions are standard contractual provisions included in Portuguese securitisation transactions (governed by both Portuguese law when the vehicle is a securitisation company, and by a foreign law, usually English law, when the vehicle at stake is a securitisation fund, as in this case; the issuer is usually an Irish SPV) and are valid under Portuguese law and would be given effect by a Portuguese court (but if governed by a foreign law, in the context of a judicial recognition of a foreign court decision – *reconhecimento de sentença estrangeira*).

7.7 Independent Director. Will a court in your jurisdiction give effect to a contractual provision in an agreement (even if that agreement's governing law is the law of another country) or a provision in a party's organisational documents prohibiting the directors from taking specified actions (including commencing an insolvency proceeding) without the affirmative vote of an independent director?

As per the Portuguese Insolvency Code, the commencement of insolvency proceedings is an obligation of the board of directors of any given company that is found to be insolvent and therefore there should not be a limitation as to the fulfilment of this legal obligation.

7.8 Location of Purchaser. Is it typical to establish the purchaser in your jurisdiction or offshore? If in your jurisdiction, what are the advantages to locating the purchaser in your jurisdiction? If offshore, where are purchasers typically located for securitisations in your jurisdiction?

As mentioned above, the Securitisation Law establishes two types of securitisation vehicles, subject to different forms of incorporation – the FTCs and the STCs – which act as issuers and purchasers. When using any of these entities or vehicles, securitisation transactions are subject to the Securitisation Law, whereby the relevant SPV is incorporated in Portugal and the assignment of loans is fully governed by Portuguese law and subject to full supervision of the CMVM (for more details, please refer to our answer under question 7.3 above).

8 Regulatory Issues

8.1 Required Authorisations, etc. Assuming that the purchaser does no other business in your jurisdiction, will its purchase and ownership or its collection and enforcement of receivables result in its being required to qualify to do business or to obtain any licence or its being subject to regulation as a financial institution in your jurisdiction? Does the answer to the preceding question change if the purchaser does business with more than one seller in your jurisdiction?

The mere purchase and management of a certain portfolio of receivables does not, in itself, qualify as a banking or financial activity (unless it is to be carried out on a professional and regular basis, or includes any form of credit granting) and should therefore not give rise to the need for any kind of authorisation or licence being obtained.

8.2 Servicing. Does the seller require any licences, etc., in order to continue to enforce and collect receivables following their sale to the purchaser, including to appear before a court? Does a third-party replacement servicer require any licences, etc., in order to enforce and collect sold receivables?

No. When the seller remains in charge of the collection of receivables (as, in fact, is foreseen in the Securitisation Law, for example, when the seller is a bank, credit institution or other financial company) no licence or authorisation is required for the seller to continue to enforce and collect receivables, including to appear before a court (assuming the debtors are not aware of the assignment). However, should the assignment of the receivables have been notified to the debtors, then the servicer will need to show sufficient title to appear in court, like a power of attorney, in case its legitimacy is challenged by the relevant debtor as, in fact, only a fully-fledged creditor has the relevant legitimacy ("*legitimidade processual*") to claim a certain credit in court.

In cases where another entity is chosen to perform the role of servicer, a third-party replacement servicer is appointed to replace the seller as original servicer or a back-up servicer is required to be put in place, CMVM's approval to this effect is required, as set out under Article 5 of the Securitisation Law.

8.3 Data Protection. Does your jurisdiction have laws restricting the use or dissemination of data about or provided by obligors? If so, do these laws apply only to consumer obligors or also to enterprises?

There are, indeed, applicable data protection laws, but exclusively in respect of consumer obligors or individuals and not to enterprises. However, the use or dissemination of personal data in respect of directors of enterprises who are individuals will also be subject to restrictions.

Portugal is currently subject to the EU Regulation 2016/679 (the General Data Protection Regulation or "**GDPR**").

GPDR applies to the processing of personal data by entities located in EU territory (regardless of whether or not the processing takes place in the EU) and to entities located outside EU territory (whenever they provide goods and services to or monitor EU citizens).

Pursuant to the GDPR, personal data may be processed if: (a) it is carried out with the data subject's consent; (b) it is necessary for the performance of a contract with the data subject; (c) it is necessary for compliance with a legal obligation; (d) it is necessary in order to protect the vital interests of the data subject; (e) it is necessary for the public interest or in the exercise of official authority; or (f) it is necessary for the controller's or recipient's legitimate interests, except where overridden by the interests of the data subject. Specific rules are established as to the validity of consent and additional data subject rights and obligations.

The GDPR renders it unnecessary to notify or obtain authorisation (depending on the intended terms of processing) from the national data protection authority (the *Comissão Nacional de Proteção de Dados*), although additional obligations apply – for example, data breach notifications, mandatory privacy impact assessments, additional data subject rights, the obligation to keep internal data processing records, possible Data Protection Officer appointment, and privacy by design and privacy by default principles.

8.4 Consumer Protection. If the obligors are consumers, will the purchaser (including a bank acting as purchaser) be required to comply with any consumer protection law of your jurisdiction? Briefly, what is required?

Portuguese law (namely the Portuguese Constitution, the Civil Code and the Consumer Protection Law) contains general provisions in relation to consumer protection. These provisions cover general principles of information disclosure, information transparency (contractual clauses must be clear, precise and legible) and a general duty of diligence, neutrality and good faith in the negotiation of contracts.

Decree-Law no. 446/85 of 25 October 1985, as amended from time to time and Decree-Law no. 249/99 of 7 July 1999 (which implemented Directive 93/13/CEE of 5 April 1993) and Decree-Law no. 323/2001 of 17 December 2001, known as the *Lei das Cláusulas Contratuais Gerais* ("**the Law of General Contractual Clauses**"), prohibits, in general terms, the introduction of abusive clauses in contracts entered into with consumers. Pursuant to this law, a clause is deemed to be abusive if such clause has not been specifically negotiated by the parties and leads to an unbalanced situation insofar as the rights and obligations of the consumer (regarded as the weaker party) and the rights and obligations of the counterparty (regarded as the stronger party) are concerned and the law provides for an extended list of prohibited clauses. The use of such clauses that are prohibited will cause the relevant clauses to be considered null and void.

There are many legal and regulatory diplomas setting forth protection measures to the benefit of consumers, notably Decree-Law no. 220/94 of 23 August 1994, which states the minimum level of information to be included in loans, such as the annual effective rate and information related thereto. Recently, Decree-Law no. 74-A/2017, of 23 June on credit agreements for consumers relating to residential immovable property (which implemented Directive 2017/17/EU) established a number of requisites for ensuring consumer protection and transparency, notably as in relation to the provision of pre-contractual information. On other noteworthy rights of the consumers in the context of enforcement proceedings, please refer to answer to question 1.2 D.) above.

8.5 Currency Restrictions. Does your jurisdiction have laws restricting the exchange of your jurisdiction's currency for other currencies or the making of payments in your jurisdiction's currency to persons outside the country?

Other than in international embargo circumstances, there are no laws in Portugal restricting foreign exchange transactions or free international capital movements.

We would note, in addition, that if the debt securities issued by the funding vehicle are cleared through *Interbolsa – Sociedade Gestora de Sistemas de Liquidação e de Sistemas Centralizados de Valores Mobiliários, S.A.* ("**Interbolsa**"), as operator of the Portuguese centralised securities system, then payments can only be made in the currencies accepted by Interbolsa. For the time being, Interbolsa will only settle and clear notes denominated in euros, Canadian dollars, Swiss francs, US dollars, Sterling and Japanese yen and notes denominated in any other currency upon prior request and approval.

8.6 Risk Retention. Does your jurisdiction have laws or regulations relating to "risk retention"? How are securitisation transactions in your jurisdiction usually structured to satisfy those risk retention requirements?

Yes. With the entering into force of the Securitisation Regulation, risk retention requirements that used to be foreseen in sectoral legislation applicable to credit institutions, insurers and Fund Managers, have been recast and compiled in a single, harmonised regime. These requirements apply to securitisations, the securities of which have been issued on or after 1 January 2019 (or for securitisation transactions issued prior to 1 January 2019 where new securities are issued on or after 1 January 2019). Sectorial legislation therefore continues to apply to securitisations the securities of which have been issued prior to 1 January 2019 (i.e. in Articles 405 to 410 of Regulation (EU) no. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) no. 648/2012, as amended from time to time, the CRR Regulation).

Despite the legislative patchwork, an obligation to retain a material net economic interest of no less than 5 per cent applies to originators (among others) across the different laws and regulations in force, together with the existing five structural methods of risk retention that can be set out as follows:

(a) Retention of no less than 5 per cent of the nominal value of each of the tranches sold or transferred to the investors.
(b) In the case of revolving securitisations or securitisations of revolving exposures, the retention of the originator's interest of no less than 5 per cent of the nominal value of each of the securitised exposures.
(c) Retention of randomly selected exposures, equivalent to no less than 5 per cent of the nominal value of the securitised exposures, where such exposures would otherwise have been securitised in the securitisation, provided that the number of potentially securitised exposures is no less than 100 at origination.
(d) Retention of the first lost tranche and, if necessary, other tranches having the same or a more severe risk profile than those transferred or sold to investors and not maturing any earlier than those transferred or sold to investors, so that the retention equals in total no less than 5 per cent of the nominal value of the securitised exposures.
(e) Retention of a first loss exposure not less than 5 per cent of every securitised exposure in the securitisation.

We should note that the risk retention requirements set forth under Securitisation Regulation are broadly consistent with those set out initially under CRR Regulation and under Portugal's Notice 9/2010 in relation to items (a) to (d) above and that there are no limitations under Portuguese law for such requirements to be implemented. As such, the structure by which existing transactions have been relying upon will be in many aspects unaltered.

Nevertheless, Securitisation Regulation has introduced certain novelties in terms of retaining risk. Among others, originators, sponsors or original lenders have become liable to retain risk even when the investor is not required to verify the fulfilment of the risk retention requirement (the so-called "direct approach" that has complemented the already existing "indirect approach"). In this context, Securitisation Regulation also requires that the investor reports contain information about the risk retained, notably on the modality of risk retention chosen. Please refer to our answer to question 8.7 on the European Banking Authority ("**EBA**")'s regulatory developments on risk retention.

8.7 Regulatory Developments. Have there been any regulatory developments in your jurisdiction which are likely to have a material impact on securitisation transactions in your jurisdiction?

From a regulatory standpoint, and as mentioned in our answer to question 8.6, the Securitisation Regulation has become applicable to all securitisation products issued on or after 1 January 2019. Besides creating a new framework for simple, standard and transparent securitisations at the EU level, the regulation affects due diligence requirements, transparency rules and the approach to risk-retention.

The densification of the regime laid down under the Securitisation Regulation and further regulatory developments in this context are expected to be carried out by EBA, which, under the Securitisation Regulation, is mandated to draft regulatory technical standards to specify these requirements in greater detail.

Among others, attention should be drawn to EBA's final draft regulatory technical standards on the requirements for originators, sponsors and original lenders related to risk retention, which were issued on 31 July 2018 and currently await approval by the European Commission. This final draft RTS, which, if approved, will repeal the Commission Delegated Regulation (EU) no. 625/2014 on risk retention, aims to provide clarity on the requirements relating to risk retention, thus reducing the risk of moral hazard and aligning interests, by specifying in greater detail the risk retention requirement. Moreover, market participants should also take into account EBA's final guidelines on the STS criteria for non-ABCP securitisation and ABCP securitisation dated 12 December 2018. These guidelines, which aim to provide a single point of consistent interpretation on the STS criteria complement, to some extent, the final regulatory technical standards issued by EBA on 31 July 2018 on the meaning of homogeneity set out in Commission Delegated Regulation (EU) 2019/1851 of 28 May 2019.

In case of retail securitisation transactions, although not common in Portugal, we would highlight that Regulation 1286/2014, on Packaged Retail and Insurance-based Investment Products ("**PRIIPs Regulation**") entered into force on 1 January 2018. This 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. The PRIIPs Regulation, which is applicable to structured products (i.e. securitised bonds) foresees, amongst others, 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 scope of the PRIIPs Regulation.

9 Taxation

9.1 Withholding Taxes. Will any part of payments on receivables by the obligors to the seller or the purchaser be subject to withholding taxes in your jurisdiction? Does the answer depend on the nature of the receivables, whether they bear interest, their term to maturity, or where the seller or the purchaser is located? In the case of a sale of trade receivables at a discount, is there a risk that the discount will be recharacterised in whole or in part as interest? In the case of a sale of trade receivables where a portion of the purchase price is payable upon collection of the receivable, is there a risk that the deferred purchase price will be recharacterised in whole or in part as interest? If withholding taxes might apply, what are the typical methods for eliminating or reducing withholding taxes?

The Securitisation Tax Law has established the tax regime applicable to the securitisation transactions carried out under the Securitisation Law. Its main goal was to ensure a tax-neutral treatment to the securitisation transactions set up by each one of the securitisation vehicles provided for in the Securitisation Law. Therefore, under Articles 2/5 and 3/4 of the Securitisation Tax Law, there is no Portuguese withholding tax on (i) the payments made by the purchaser (an STC and FTC) to the seller in respect of the purchase of the receivables, (ii) the payments by the obligors under the loans, or (iii) the payments of collections by the servicer (who is usually also the seller) to the purchaser.

The nature or the characteristics of the receivables and the location of the seller do not have any influence on the tax regime referred to above. However, the purchaser must be an STC or FTC resident for tax purposes in Portugal in order to benefit from the special tax regime.

There is no recharacterisation risk of the deferred purchase price as payments of collections are not subject to withholding tax. Also, there is no recharacterisation risk of the sale of trade receivables at discount as interest (since this should be understood as the purchase price and not as income).

On the other hand, under Article 4/1 of the Securitisation Tax Law, income generated by the holding (distributions) or transfer (capital gains) of the notes and units is generally subject to the Portuguese tax regime established for debt securities.

According to Circular no. 4/2014 issued by the Portuguese Tax Authorities and to the Order issued by the Secretary of State for Tax Affairs, dated 14 July 2014, in connection with tax ruling no. 7949/2014 disclosed by the Portuguese tax authorities, the general tax regime on debt securities (as established in Decree-Law no. 193/2005, of 7 November, as amended from time to time ("**Decree-Law 193/2005**")) also applies on income generated by the holding or the transfer of securitisation notes issued by STCs under securitisation transactions.

Decree-Law 193/2005 is therefore applicable to securitisation notes, notably regarding the requirements on registration of securitisation notes in the relevant clearing systems and on the exemption applicable to income obtained by non-resident holders of such securitisation notes. In this regard, payment of interest and principal on securitisation notes are exempt from Portuguese income tax, including withholding tax, provided the relevant noteholder qualifies as a non-Portuguese resident having no permanent establishment in Portugal. Such exemption does not apply to non-resident individuals or companies if the individual or company's country of residence is any jurisdiction listed as a tax haven in Ministerial Order no. 150/2004, of 13 February 2004 (as amended from time to time) and with which Portugal does not have a double tax treaty or a tax information exchange agreement in force, provided the requirements and procedures for evidencing the non-residence status are complied with. To qualify for the exemption, noteholders will be required to provide the direct registry entity with adequate evidence of non-residence status prior to the relevant interest payment date, according to procedures required under Decree-Law 193/2005. If, for any reason, withholding tax on interest payments is applied and the relevant noteholder is able to benefit from the income tax exemption, a reimbursement procedure is available under Decree-Law 193/2005.

9.2 Seller Tax Accounting. Does your jurisdiction require that a specific accounting policy is adopted for tax purposes by the seller or purchaser in the context of a securitisation?

No specific tax accounting requirements need to be complied with by the seller under the securitisation tax regime. However, CMVM Regulation no. 1/2002, of 5 February 2002, sets forth the specific accountancy regime for FTCs, and CMVM Regulation no. 12/2002, of 18 July 2002, establishes specific accountancy rules for STCs (although the accounting procedure of this type of corporate entity follows the general Portuguese Accountancy Standards).

9.3 Stamp Duty, etc. Does your jurisdiction impose stamp duty or other transfer or documentary taxes on sales of receivables?

Pursuant to the Securitisation Tax Regime, no stamp duty is due on: (i) the sale of receivables being securitised; or (ii) the fees and commissions which fall under Article 5 of the Securitisation Law (i.e. referring to required acts to ensure good management of the receivables and, if applicable, of the respective guarantees, and to ensure collection services, the administrative services relating to the receivables, all relations with the debtors and also maintaining, modifying and extinguishing acts related to guarantees, if any), that may be charged by the servicer to the purchaser. In addition, no documentary taxes are due in Portugal.

9.4 Value Added Taxes. Does your jurisdiction impose value added tax, sales tax or other similar taxes on sales of goods or services, on sales of receivables or on fees for collection agent services?

The sale of receivables is VAT-exempt under Articles 9(27)(a) and (c) of the Portuguese VAT Code, which are in line with Article 135(a) and (c) of the VAT Directive (EC Directive 2006/112/EC). Pursuant to the Securitisation Tax Regime, no value-added tax is due on the administration or management of securitisation funds or on the fees and commissions regarding management services falling under Article 5 of the Securitisation Law, as described in our answer to question 9.3 above.

9.5 Purchaser Liability. If the seller is required to pay value-added tax, stamp duty or other taxes upon the sale of receivables (or on the sale of goods or services that

give rise to the receivables) and the seller does not pay, then will the taxing authority be able to make claims for the unpaid tax against the purchaser or against the sold receivables or collections?

This is not applicable since the assignment of the receivables benefits from a stamp tax and a VAT exemption.

9.6 Doing Business. Assuming that the purchaser conducts no other business in your jurisdiction, would the purchaser's purchase of the receivables, its appointment of the seller as its servicer and collection agent, or its enforcement of the receivables against the obligors, make it liable to tax in your jurisdiction?

Considering the above, it is important to highlight that the purchase of the receivables is qualified as a true sale transaction under the Securitisation Law (the purchaser being the legal owner of the receivables), and therefore the purchaser is subject to tax in Portugal (namely in respect of income arising from the receivables). However, despite being viewed as an ordinary taxpayer, in order to ensure a tax-neutral treatment on the securitisation transactions, the taxable income of the purchaser tends to be equivalent to zero for tax purposes since the income payments made to the noteholders are tax-deductible.

9.7 Taxable Income. If a purchaser located in your jurisdiction receives debt relief as the result of a limited recourse clause (see question 7.4 above), is that debt relief liable to tax in your jurisdiction?

The provisions of Article 60 *et seq.* of the Securitisation Law specifically provide for limited recourse provisions that are valid and binding on the noteholders. Insofar as limited recourse arrangements are concerned, we would take the view that they correspond to an application in a specific context (that of securitisation) of the possibility of having a contractual limitation on the assets that are liable for certain obligations or debts, which is provided for by Portuguese law on general terms (namely Article 602 of the Portuguese Civil Code). Once they result from the quoted provisions of the law, limited recourse shall not be affected by the issuer's insolvency, however remote such event may be in the context of the Portuguese securitisation vehicles. As to these matters, we refer to question 7.3 above.

This being said, the fact that the noteholders have a limited recourse to the pool of receivables backing the securitisation notes does not have an impact on the tax regime applicable to their status as noteholders under the Securitisation Tax Law and Decree-Law 193/2005. Taxation on the notes shall occur exactly on the same terms as, and with no exceptions from, what is described in question 9.1 above.

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