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Portugal

BANKING & FINANCE

Contributing firm

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This country-specific Q&A provides an overview of banking & finance laws and regulations applicable in Portugal.

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PORTUGAL
BANKING & FINANCE

1. What are the national authorities for banking regulation, supervision and resolution in your jurisdiction?

The Bank of Portugal ("**BoP**") is the national authority for banking regulation, supervision and resolution in Portugal. As the national banking supervisory authority, the BoP is integrated in the Single Supervisory Mechanism ("**SSM**"), being responsible for both prudential and conduct supervision of credit institutions, financial companies, payment institutions and electronic money institutions.

The BoP is also the national resolution authority for Portugal and, in this capacity, is part of the Single Resolution Mechanism ("**SRM**"). Within the SRM, responsibility for the resolution of credit institutions is shared between the Single Resolution Board ("**SRB**") and the BoP.

2. Which type of activities trigger the requirement of a banking licence?

According to Article 4 of the Portuguese Banking Act (*Regime Geral das Instituições de Crédito e Sociedades Financeiras*), approved by Decree-Law No 298/92, of 31 December, as amended from time to time ("**RGICSF**"), based on Annex I of Directive 2013/36/EU of the European Parliament and of the Council, of 26 June 2013, on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC ("**CRD IV**"), banks may take up the following activities, among others:

- Taking deposits and other repayable funds.
- Lending including, *inter alia*: consumer credit, credit agreements relating to immovable property, factoring, with or without recourse, and financing of commercial transactions (including forfeiting).
- Financial leasing.
- Payment services as defined in Article 4(3) of Directive 2007/64/EC.
- Issuing and administering other means of payment (e.g. travelers' cheques and bankers' drafts) insofar as such activity is not covered by point 4.
- Guarantees and commitments.
- Trading for own account or for account of customers in any of the following:
    - money market instruments (cheques, bills, certificates of deposit, etc.);
    - foreign exchange;
    - financial futures and options;
    - exchange and interest-rate instruments;
    - transferable securities.
- Participation in securities issues and the provision of services relating to such issues.
- A provision of advice to undertakings on capital structure, industrial strategy and related questions as well as services relating to mergers and the purchase of undertakings.
- Money broking.
- Portfolio management and advice.
- Safekeeping and administration of securities.
- Credit reference services.
- Safe custody services.
- Issuing electronic money.

The remaining types of credit institutions and financial companies may only carry out the operations allowed under the legal and regulatory provisions applicable to each.

Particularly, pursuant to Article 8(1) of the RGICSF, only credit institutions may accept deposits or other repayable funds from the public for their own account.

When a credit institution intends to carry out MiFID II activities or insurance distribution activities, in addition to the authorisation granted by the BoP, it will need to register with the Portuguese Securities Market Commission ("**CMVM**") and the Supervisory Authority for Insurance and Pension Funds ("**ASF**").

3. Does your regulatory regime know different licenses for different banking services?

Yes. Depending on the banking services a given entity intends to provide, different licenses may be granted, with a greater or lesser scope.

Several of the activities listed in the previous question may be carried out by credit institutions, financial companies, payment institutions and electronic money institutions, depending on the specific laws and regulations governing the activity of these entities.

As states above, pursuant to Article 8(1) of the RGICSF, only credit institutions may accept deposits or other repayable funds from the public for their own account, under a full banking license granted by the BoP.

Financial companies, in turn, may only carry out the operations permitted by the laws and regulations governing their activity (as per Article 7 of the RGICSF), except for accepting deposits or other repayable funds from the public.

Payment institutions are only entitled to provide payment services (as defined in Article 4 of Decree-Law No. 91/2018, of 12 November, approving the Legal Framework on Payment Services and Electronic Money) and to engage in the activities listed in Article 8 of the Legal Framework on Payment Services and Electronic Money, provided that such activities are included in the company's corporate purpose.

Finally, electronic money institutions are only entitled to issue electronic money and to engage in any of the activities listed in Article 8-A of the Legal Framework on Payment Services and Electronic Money, being prohibited from providing any other banking services.

4. Does a banking license automatically permit certain other activities, e.g., broker dealer activities, payment services, issuance of e-money?

Credit institutions, financial companies, payment institutions and electronic money institutions may only carry out the specific operations permitted by the laws and regulations governing their activity. When applying for a banking license, the relevant entity should submit its intended project to the BoP with a high degree of detail, specifically identifying the activity to be carried out and its scope, as well as the proposed business model. This information is essential for a correct legal framing of the entity's specific situation and of the requirements that may be applicable to the setting-up of the company.

Only a full banking license, which can only be granted to banks, automatically covers the provision of all the services listed in question 2 above, subject to the necessary additional registrations with the CMVM and ASF, if and when applicable. The remaining licenses specifically envisage the provision of a restricted number of services.

5. Is there a "sandbox" or "license light" for specific activities?

There is no "sandbox" or "license light" for specific activities in Portugal. However, in September 2018, the BoP, the CMVM and the ASF, in collaboration with the Portugal Fintech Association, established an innovation hub called Portugal FinLab. Portugal FinLab acts as a communication channel between regulators and market operators regarding innovative projects in the Portuguese financial sector. Through this channel, the regulatory authorities cooperate with and inform the market operators in FinTech and related areas on how they can frame their activity within the legal and regulatory framework, including by providing information on the authorisation and registration process in the Portuguese jurisdiction.

6. Are there specific restrictions with respect to the issuance or custody of crypto currencies, such as a regulatory or voluntary moratorium?

Currently, issuing and trading virtual currencies is not regulated or supervised by the BoP or by any other financial supervisory authority. Nevertheless, since 1 September 2020, the BoP is the authority with powers to both register and verify compliance with the applicable legal and regulatory provisions on money laundering and terrorist financing among entities that carry out any of the following activities with virtual assets: exchange services between virtual assets and fiat currencies or between one or more virtual assets; transfer services of virtual assets; and custody or safekeeping services and administration of virtual assets or of instruments that allow to control, hold, store or transfer these assets, including private cryptographic keys.

As such, financial institutions are obliged to evaluate funds transfers from and to virtual currency trading platforms in accordance with the rules applicable to the prevention of money laundering and terrorist financing.

Entities which issue and trade virtual currencies are not required to operate under an authorisation granted by the BoP or to be registered with the same, their activity not being subject to any type of prudential or conduct supervision. However, due to the risks associated with virtual currency usage, the BoP recommends that credit institutions, payment institutions and electronic money institutions subject to its supervision abstain from buying, holding or selling virtual currencies, as set out by BoP Circular Letter No. 11/2015/DPG, which was issued upon request by the European Banking Authority ("**EBA**") to the respective national supervisory authorities.

7. What is the general application process for bank licenses and what is the average timing?

In Portugal, access to the activity of banks and the pursuit of their business is subject to prior authorisation, and subsequent registration, which is granted on a case-by-case basis by the BoP, acting within the framework of the SSM and, therefore, in continuous cooperation with the ECB.

The request for authorisation is presented by the applicant bank before the BoP through the submission of several elements listed in Article 17 of RGICSF including, among others, characterisation of the type of credit institution to be set up, programme of operations, identity of the founding shareholders, reasoned explanation on the adequacy for the shareholder structure to the stability of the entity, identification of the members of the management and supervisory bodies, etc.

As a general rule, the relevant parties must be notified of the authorisation decision within six months of the application being deemed complete, but in any case no longer than twelve months after the initial receipt of the application by the BoP.

8. Is mere cross-border activity permissible? If yes, what are the requirements?

Banks not established in Portugal, yet duly authorised in their Home Member State to provide the services listed in Annex I to the CRD IV, may also carry out such activities in Portugal under the freedom to provide services regime.

As a prerequisite for the commencement of the provision of such services in Portugal, the bank must notify the competent supervisory authority of its home jurisdiction of the activities it intends to carry out. The national supervisory authority in question shall then forward said notification to the BoP, certifying that the intended activities are covered by the authorisation granted in the respective home country.

9. What legal entities can operate as banks? What legal forms are generally used to operate as banks?

The following entities can operate as banks in Portugal, provided that several prerequisites are met:

- Credit institutions having their head office in Portugal and incorporated under the form of a public limited company (*sociedade anónima*);
- Credit institutions authorised in other EU Member States, under the freedom to provide services;
- Portuguese branches of credit institutions authorised in other EU Member States or in Member States of the European Economic Area, under the freedom of establishment; and
- Portuguese branches of credit institutions authorised in third countries.

10. What are the organizational requirements for banks, including with respect to corporate governance?

As set out in RGICSF, as well as in several complementary BoP regulations, banks must generally fulfil the following organisational and governance requirements:

- They must correspond to one of the types provided for in Portuguese law;
- As a general rule, they must be structured in the legal form of a public limited company (*sociedade anónima*);
- Their sole purpose must be to carry out the activities legally permitted under Article 4 of RGICSF;
- Their initial share capital must not be lower than the legally required minimum, represented by nominative shares;
- Their head office and effective management must be located in Portugal (without prejudice to the previously listed exceptions for credit institutions headquartered in EU Member States and third countries);
- They must implement robust internal rules on

corporate governance, including a clear organisational structure with well-defined, transparent and coherent lines of responsibility;
- Effective processes must be put in place for the identification, management, monitorisation and reporting of the risks the credit institution is or might potentially be exposed to;
- Adequate internal control mechanisms must be put in place, including sound administrative and accounting procedures;
- Their remuneration policies and practices must promote and be consistent with sound and prudent risk management;
- The reputation, professional qualifications, independence and availability of the members of their management and supervisory bodies, at both an individual level and at the level of these bodies, must provide guarantees of sound and prudent management.

Additional requirements are set regarding governance models for banks (specifically related to the composition and mechanics of their supervisory and management bodies). The day-to-day management of the bank must be carried out by at least two members, although the actual number should be higher to include an adequate number of independent and non-executive members, depending on the organisational structure of the entity at hand. The supervisory body must include a majority of independent members with relevant knowledge and experience, namely in accounting and auditing.

If the bank is also a listed company, with shares admitted to trading on a regulated market located/functioning in Portugal, additional governance requirements shall apply, such as the need to ensure a proportional gender distribution of seats on the board of directors, with the underrepresented gender in no case making up any less than 33.3% of the board, the limit being assessed separately with respect to executive and non-executive directors (as per Article 3 of Law No 62/2017, of 1 August).

11. Do any restrictions on remuneration policies apply?

The remuneration policy and practices applied by banks must comply with the following general requirements:

- Remuneration policies must promote sound and effective risk management, not encouraging risk-taking which exceeds the bank's level of tolerated risk;
- Remuneration policies must be aligned with the business strategy, objectives, values and long-term interests of the bank, and must incorporate measures to avoid conflicts of interest;
- Employees performing risk management and control functions must remain independent from the business units they oversee, being granted the necessary powers and a remuneration in line with the achievement of the objectives associated with these functions, independently from the performance of the units they oversee;
- The remuneration of employees performing risk management and control functions must be directly supervised by the bank's remuneration committee or, in its absence, by its supervisory body;
- A clear distinction must be established between the criteria for setting the fixed component of remuneration, primarily reflecting the employee's relevant professional experience and organisational responsibility, and the variable component of remuneration, based on sustainable performance and adapted to the level of risk of the bank, as well as the employee's performance beyond that contractually required, while not limiting the bank's ability to strengthen its own funds.

The implementation of the bank's remuneration policy shall be subject to an internal, centralised and independent analysis on an annual basis (at least), to be carried out by the remuneration committee or, in its absence, by the non-executive members of the management body or by the supervisory body.

These rules are the result of a very linear transposition of CRD IV provisions (namely, Article 92 *et seq*.) into Portuguese law, specifically RGICSF, which are to be considered alongside the guidelines issued by the European Banking Authority.

12. Has your jurisdiction implemented the Basel III framework with respect to regulatory capital? Are there any major deviations, e.g., with respect to certain categories of banks?

With respect to regulatory capital, the Portuguese jurisdiction has implemented the Basel III framework, through CRD IV, transposed into RGICSF, and EU Regulation 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 ("**CRR**"), directly applicable in Portugal, with no major deviations.

13. Are there any requirements with respect to the leverage ratio?

Yes. CRD IV has been fully transposed in Portugal through the publication of Decree-Law No 157/2014, of 24 October, which amends RGICSF.

The leverage ratio is a simple, risk-neutral regulatory tool, designed to act as a credible complement to the risk-weighted capital requirement, and has as its objective to limit the build-up of leverage in the banking sector and, thus, avoid the rapid deleveraging process that can damage the financial system and the real economy.

Taking into consideration the formula for this ratio, the capital measure divided by the exposure measure should be equal to or greater than 3 per cent., the capital measure being the Common Equity Tier 1 and the exposure measure the sum of: (i) on-balance sheet exposures; (ii) derivatives exposures; (iii) exposures to securities financing transactions; and (iv) off-balance sheet items.

14. What liquidity requirements apply? Has your jurisdiction implemented the Basel III liquidity requirements, including regarding LCR and NSFR?

Portugal has implemented, through the transposition of CRD IV, the Basel III liquidity requirements. Notwithstanding this, as Portugal is a Member State of the EU, the Basel III rules are also applicable in the Portuguese jurisdiction, through the CRR.

In general terms, the LCR and NSFR requirements are applicable; however, the BoP, as the competent supervisory authority, is able to impose a specific liquidity requirement to capture the liquidity risks to which the credit institution is or may be exposed, considering certain situations.

Thus, as in other EU Member States and regarding the LCR, the relevant entities are required to hold sufficient unencumbered liquid assets to withstand a 30-day stress period, obliging institutions to hold an adequate liquidity buffer, consisting of high-quality liquid assets (HQLA) that can be easily monetized on private markets, to cope with the net level of liquidity outflows.

On the other hand, regarding the NSFR, institutions shall ensure that long-term obligations are adequately met with a diversity of stable funding instruments under both normal and stressed conditions. This Net Stable Funding Ratio requires a minimum amount of funding that is expected to remain stable over a one-year time horizon, based on liquidity risk factors assigned to net asset exposures and off-balance sheet positions.

Both ratios shall ascertain a value equal to or greater than 100%.

15. Do banks have to publish their financial statements? Is there interim reporting and, if so, in which intervals?

Yes, banks must publish their financial statements (according to Article 115 of RGICSF and BoP Notice No 1/2019 ("**Notice 1/2019**")). Rules for the publication of financial statements are applicable to: (i) credit institutions, investment firms and financial institutions; (ii) branches, in Portugal, of credit institutions, investment firms and financial institutions which have their head office in the EU; and (iii) branches, in Portugal, of credit institutions, investment firms and financial institutions which have their head office in third countries.

According to Notice 1/2019, the financial statements on an individual basis and on a consolidated basis, when applicable, comprise the following documents:

- Complete set of financial statements, in accordance with the Internal Accounting Standards (IAS) as adopted, from time to time, by Regulation of the European Union (Regulation (EC) No 1606/2002 of the European Parliament and of the Council, of 19 July 2002, on the application of international accounting standards);
- Management report;
- Legal certification of accounts, when provided for in general law; and
- Opinion of the supervisory board, if one exists.

Regarding the periodicity of publication of financial statements, credit institutions, investment firms and financial institutions, and branches, in Portugal, of credit institutions, investment firms and financial institutions which have their head office in third countries, must publish the complete annual financial statements on an individual basis and, when applicable, on a consolidated basis, on their website, within 30 days of their approval. In the specific case of branches, in Portugal, of credit institutions, investment firms and financial institutions which have their head office in the European Union,

these must publish the complete annual financial statements of the entity to which they belong, on an individual basis and, when applicable, on a consolidated basis, on their website, within 30 days of their approval.

It is important to mention that some of the aforementioned entities, if considered to be institutions of systemic importance under the terms of Article 138-Q of RGICSF, the credit institutions authorised to receive deposits must publish, according to Article 4 of Notice 1/2019:

- Statement of financial position and income statement:
  - 60 days after the end of the first and third quarters; and
  - 90 days after the end of the second quarter.

Notwithstanding publication of the complete annual financial statements, the aforementioned entities must also disclose those information elements to the BoP within 30 days of their approval or as soon as they are made public, if earlier.

Only issuers of securities admitted to trading on a regulated market are subject to interim reporting, according to Article 244 and 246 of the Portuguese Securities Code. As established in this Code, issuers of equity and debt securities admitted to trading on a regulated market shall disclose, as soon as possible, but no later than three months after the end of the first semester of the financial year, for the activity of that period, and must keep it available for the public for, at least, ten years.

Additionally, if the issuers of shares (equity) admitted to trading on a regulated market (i.e., listed companies) are, according to RGICSF, considered credit institutions or financial companies, they are obliged to disclose quarterly, instead of semi-annual, financial information.

16. Does consolidated supervision of a bank exist in your jurisdiction? If so, what are the consequences?

Yes. According to RGICSF, the BoP is the competent authority to supervise credit institutions on a consolidated basis.

Without prejudice to supervision on an individual basis:

- Credit institutions having their head office in Portugal and having as subsidiaries one or more credit or financial institutions or holding a participation in them shall be subject to supervision based on their consolidated financial situation; and
- Credit institutions having their head offices in Portugal, and where the parent company is a financial holding company or a mixed financial holding company which has its head office in a Member State of the European Union, shall be subject to supervision based on the consolidated financial situation of the parent company.

These are the cases where the law requires supervision on a consolidated basis. However, the BoP, as the competent supervisory authority, may determine the inclusion of a credit institution under supervision on a consolidated basis in the following cases:

- When a credit institution exercises significant influence over another credit or financial institution, even if it has no qualifying holding;
- When two or more credit institutions or financial institutions are subject to single management, even if not established in the articles of association or contract; and
- When two or more credit institutions or financial institutions have management or supervisory bodies composed predominantly of the same persons.

Special rules regarding supervisory competence may be applied. As stated in Article 132 *et seq.* of RGICSF:

- The BoP carries out supervision on a consolidated basis where a financial holding company or mixed financial holding company has its head office in Portugal and is the parent company of credit institutions with head office in Portugal and another Member State of the European Union;
- Credit institutions with their head office in Portugal and that have, as their parent company, a financial holding company or a mixed financial holding company with head office in another Member State of the European Union, where another credit institution's subsidiary is also established, will be subject to supervision on a consolidated basis by the supervisory authority of that Member State;
- Credit institutions with their head office in Portugal, the financial holding company or mixed financial holding company of which has its head office in a Member State of the EU, and which form part of a group where the other credit institutions have their head office in different EU Member States and which

have, as parent companies, a financial holding company or mixed financial holding company also with its head office in different Member States, shall be subject to supervision on a consolidated basis by the supervisory authority of the credit institution with the largest balance-sheet total; and
- Credit institutions with their head office in Portugal, whose parent company is a financial holding company or a mixed financial holding company with its head office in another Member State of the European Union and which has credit institution subsidiaries in Member States other than the one where its head office is located, shall be subject to supervision on a consolidated basis by the supervisory authority that authorised the credit institution with the largest balance sheet total.

The aforementioned institutions are required to submit to the BoP all information on the companies in which they have a qualifying holding which is necessary for their supervision, and the subsidiary companies shall be obliged to provide to the institutions the information elements necessary for compliance with the reporting requirements related to supervision on a consolidated basis.

17. What reporting and/or approval requirements apply to the acquisition of shareholdings in, or control of, banks?

According to Article 102 *et seq.* of RGICSF, a natural or legal person who aims to hold, directly or indirectly, a qualifying holding in a credit institution shall notify the BoP of their project in advance, whenever this results in a percentage that reaches or exceeds 10%, 20%, one third or 50% of the share capital or voting rights of the credit institution or when the credit institution becomes a subsidiary of the acquiring entity. Furthermore, the BoP must also be notified in advance of any acts resulting in a decrease in a qualifying holding.

In line with the above, BoP Notice No 5/2010 establishes the elements and information that must accompany the aforementioned notification, namely:

- For natural persons:

1. Personal information, such as name, date and place of birth, taxpayer number and contact information;
2. Professional experience: current and past experience in the last ten years (reference to the business sector, position and performance of current management duties, as appropriate, date of start of functions, mandate and date (or expected date) of termination of functions, and work experience at entities registered with financial sector supervisory authorities;

- Academic background;

1. Information regarding good repute;
2. Financial information; and
3. Information regarding potential conflict of interests.

- For legal persons:

1. Company's information and corporate structure;
2. Identification and current and past professional experience of the members of the board of directors of the legal person;

- Information regarding good repute, except if the legal person and the members of the board of directors are already subject to supervision by, or registered with, a supervisory authority of the financial sector;

1. Financial information; and
2. Information regarding potential conflict of interests.

The BoP must also be provided with information regarding the acquisition of the qualifying holding (e.g.: entity's information, purpose of acquisition and existing shareholders' agreements) and regarding the financing of such acquisition.

Lastly, if the proposed acquisition results in a change in control or establishes a control relationship, the proposed acquirer shall submit a detailed business plan in accordance with Schedule II of BoP Notice No 5/2010. On the other hand, if there is no change in control of the financial entity proposed to be acquired, the proposed acquirer must submit a strategic guidance document pursuant to the abovementioned legal framework.

18. Does your regulatory regime impose conditions for eligible owners of banks (e.g., with respect to major participations)?

Owners of banks are subject to previous assessment by the BoP in order to establish whether they are capable of ensuring safe and sound management (*gestão sã e prudente*), during both the incorporation and authorisation procedure of the credit institution (as per Articles 17 *et seq.* of RGICSF) or during the acquisition of

a qualifying shareholding, at a later stage (please refer to the previous question).

19. Are there specific restrictions on foreign shareholdings in banks?

No. However, as mentioned in question 17 above, anyone, whether Portuguese or foreign, intending to acquire a qualifying holding in a Portuguese bank, or to increase an existing qualifying holding above certain levels, must communicate that intention to the BoP under the terms set forth in Article 102 *et seq.* of RGICSF.

The BoP may object to the acquisition if it believes that the proposed acquirer does not meet the conditions that would guarantee a sound and prudent management of the bank, or if the information provided by the proposed acquirer is incomplete.

20. Is there a special regime for domestic and/or globally systemically important banks?

A single supervisory mechanism entered into force in the European Union in November 2014, implementing a shared supervision model under which prudential supervision is shared between the European Central Bank ("**ECB**") and the National Competent Authorities ("**NCA**" – for Portuguese banks, the BoP) acting under strict cooperation, leaving market conduct supervision of credit institutions to the NCAs.

As regards prudential supervision, the allocation of tasks and responsibilities between the ECB and the NCAs is now done based on whether credit institutions are qualified as significant or less significant, with significant credit institutions being under the direct supervision of the ECB, whereas less significant credit institutions remain under the supervision of the respective NCA.

In Portugal, several banks are under the direct supervision of the ECB, whereas other less significant credit institutions remain under the supervision of the BoP. Nevertheless, the BoP is charged with assisting the ECB in exercising prudential supervision powers.

21. What are the sanctions the regulator(s) can order in the case of a violation of banking regulations?

Under the terms set forth in Articles 210 and 211 of RGICSF, the BoP may apply administrative fines in accordance with the gravity of the sanction. Depending on whether the administrative fines are applied to a legal or to a natural person, administrative offences are punishable with a fine of EUR 3,000.00 to EUR 1,500,000.00 or EUR 1,000.00 to EUR 500,000.00. In case of particularly serious breaches, defined by law, fines can reach EUR 10,000.00 to EUR 5,000,000.00 or EUR 4,000.00 to EUR 5,000,000.00, depending on whether applied to a legal or natural person, respectively. Nevertheless, if twice the economic benefit obtained by the offender is determinable and exceeds the maximum limit of the applicable fine, the fine shall be increased to this value.

It is also worth mentioning that the regulator may apply an additional penalty (*sanção acessória*) to offenders, such as: loss of the benefit of the breach, loss of the object of the breach and goods belonging to the offender which are related to the breach, or suspension from exercising voting rights conferred on shareholders in any entity subject to supervision by the BoP, for a period of one to ten years.

22. What is the resolution regime for banks?

In general terms, RGICSF covers most of the national legal framework applicable to the resolution of banks, specifically in its Chapter III.

Furthermore, as the resolution regime for banks is subject to a degree of legal harmonisation at the European level, several pieces of EU legislation should be taken into consideration, such as CRD IV, CRR, Directive 2014/49/EU of the European Parliament and of the Council, of 16 April 2014, on deposit guarantee schemes (SGD), and Regulation (EU) No 806/2014 of the European Parliament and of the Council, of 15 July 2014, establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (SRM and SRF Regulation).

23. How are client's assets and cash deposits protected?

One of the purposes of the resolution measures (as per Article 145-C of RGICSF) is to ensure the protection of depositors whose deposits are guaranteed by the Deposit Guarantee Fund (*Fundo de Garantia de Depósitos* – "**FGD**"). As noted below, some investors have their claims covered by the Investor Compensation Scheme (*Sistema de Indemnização aos Investidores* – "**SII**").

Effectively, the FGD, originally created in 1992 by Decree-Law No 298/92, of 31 December, which approved RGICSF, guarantees the repayment of deposits at participating credit institutions, up to a maximum limit of EUR 100,000 per depositor and per credit institution (and in some cases potentially over and above), in the event of the unavailability of deposits in a participating credit institution (please see a list of the participating credit institutions). The FGD may also intervene in the execution of resolution measures applied to the credit institutions that participate in it.

Participating credit institutions must inform their depositors whether the contracted deposits are eligible for the guarantee provided by the FGD. Additionally, when a deposit is marketed, the participating credit institution should provide the depositor with the respective information form (FID) and with information on the deposit protection and whether the contracted deposit is eligible for the guarantee provided by the FGD, and this form must be provided to the depositor at least once a year.

Nevertheless, not all deposits are eligible for the guarantee provided by the FGD, such as the following deposits when established in the name and on behalf of: credit institutions; investment firms; financial institutions; insurance and reinsurance companies; collective investment institutions; pension funds (except deposit accounts of pension funds whose members are small or medium-sized companies); national and foreign state entities (with the exception of local city council deposit accounts with an annual budget of EUR 500,000 or less); supranational or international organisations; among others.

In parallel, the SII is a legal person under public law, created by Decree-Law No 222/99, of 22 June 1999, with the aim of protecting small investors if a participating entity is not financially able to repay or return the money or financial instruments owed to them. It operates alongside the CMVM.

The SII covers amounts owed to investors, up to a limit of €25,000 per investor (regardless of the number of accounts held by the investor and the number of holders of such accounts), by a financial intermediary (e.g., banks, brokers, asset management companies, collective undertaking management companies, etc.) which participates in the SII and which does not have the financial capacity to repay or reimburse the following: financial instruments (shares, bonds, units in investment funds) deposited by or managed on behalf of clients; and money deposited by clients with the financial intermediary and specifically intended to be invested in financial instruments (including claims arising from investment operations, where the contractual terms and conditions provide for a money-back guarantee). Similarly to the FGD, not all investors are protected. The SII aims to protect small investors, excluding "institutional" investors.

24. Does your jurisdiction know a bail-in tool in bank resolution and which liabilities are covered?

Yes. Bail-in is foreseen as one of the applicable resolution measures regulated by RGICSF.

Portuguese law determines that the resolution authority may not exercise its bail-in prerogatives with regard to certain liabilities, the following being excluded (as per Article 145-U(6) of RGICSF and Article 44 of the BRRD):

- FGD guaranteed deposits (please see question 2 above);
- Credits covered by *in rem* security;
- Credits from entities providing trading on own account and underwriting or placement of financial instruments on a firm commitment basis (except entities within the same group) that have a remaining maturity of less than seven days;
- Credits arising from a participation in payment systems or liabilities to institutions, except entities within the same group, that have a remaining maturity of less than seven days;
- Credits to employees of the credit institution, salary or pension benefits (except variable remuneration not derived from collective agreements and variable component of the remuneration of persons responsible for taking significant risks);
- Credits related to critical and strategic goods and services providers for the operation of the credit institution;
- Tax credits (from both State and local authorities), which enjoy preferential credit;
- FGD credits related to the payment of contributions;
- Credits arising from holding assets or funds of clients on their own behalf and of collective investment undertakings.

In addition, and as per Article 44(3) of the BRRD (reflected in Article 145-U(9) of RGICSF), the resolution authority may exclude liabilities, in whole or in part, in the following circumstances:

- If the bail-in tool cannot be applied to such

liabilities within a reasonable timeframe;
- If the exclusion is strictly necessary and proportionate to ensure the continuity of critical functions and business lines, and to ensure the maintenance of the institution's essential operations, services and transactions;
- If the application of the bail-in tool to those liabilities would cause a destruction in value, such that the losses borne by other creditors would be higher than if those liabilities were not excluded from bail-in;
- The exclusion is strictly necessary and proportionate to avoid a serious disturbance in the functioning of financial markets, with an impact on the national or EU economy, in particular with regard to unsecured deposits from individuals and from micro, small and medium-sized companies.

25. Is there a requirement for banks to hold gone concern capital ("TLAC")?

In the past years, the legal and regulatory framework of the Minimum Requirement for own funds and Eligible Liabilities ("**MREL**"), a tool used in the context of resolution planning with the purpose of ensuring the resolvability of the credit institution by guaranteeing that, in resolution, the institution has sufficient liabilities to absorb its losses and carry out its recapitalisation, was reviewed to align this requirement with the international standard on Total Loss-Absorbing Capacity ("**TLAC**"), which aims to ensure that Global Systemically Important Institutions ("**G-SIIs**") have, in a resolution scenario, sufficient loss absorbing and recapitalisation capacity to ensure the implementation of resolution measures in an orderly manner and in a way that minimises impacts on financial stability, ensures the continuity of critical functions and avoids absorption of losses by public funds.

The Portuguese framework reflects this standpoint, thus demanding that credit institutions always meet a certain MREL. Although the MREL requirement is applicable to all European credit institutions, certain provisions resulting from the adoption of the TLAC requirement in the European Union will only affect G-SIIs, which is justified given that the TLAC was designed and calibrated taking into account institutions and groups of that size and systemic relevance.

Pursuant to Article 145-Y(4) of the RGICSF and Article 45 of the BRRD, eligible credits for the purpose of MREL calculation must meet all the following conditions:

- The agreement giving rise to the credit is valid and effective;
- The holder of the credit is not the credit institution itself and the credit is not guaranteed by the credit institution;
- The conclusion of the credit agreement has not been financed directly or indirectly by the credit agreement;
- The credit shall become due in at least one year and, where the contractual instrument establishing the credit confers a right of early repayment to its holder, its maturity shall be deemed to be the first date on which that right can be exercised;
- The credit does not arise from a derivative financial instrument;
- The credit does not arise from an FGD guaranteed deposit.

26. In your view, what are the recent trends in bank regulation in your jurisdiction?

Banking regulation in Portugal will certainly be impacted by the approval of a new legal framework. On 29 October 2020, the BoP launched a public consultation on the initial draft of the new Portuguese Banking Code (*Código da Atividade Bancária*, or "**CAB**").

The regulator considered that the legal framework applicable to banking activity in Portugal needed to be reviewed and has therefore proposed replacing the RGICSF with the CAB. The public consultation on the initial draft was open until 15 January 2021.

The initial draft CAB contains various new features, among which we would highlight:

- Electronic processing: rules on processing and the notification of interested parties by electronic means;
- Supervisory measures and transparency: rules on supervisory measures, and the construction and definition of an express principle of transparency vis-à-vis the supervisor which encompasses group participation structures;
- Culture, governance and members of corporate bodies: matters relating to organisational culture, corporate governance, the suitability of members of management and supervisory bodies, internal procedures and remuneration practices and policies;
- Conflicts of interest and transactions with related parties: new rules for transactions with related parties;
- Own financial instruments and prohibition of

self-placement: institutions are prevented from lending to all types of investors for the acquisition of own financial instruments, as well as from marketing these instruments to non-professional investors;
- Precautionary prohibition of voting rights: empowering the BoP to intervene in urgent situations, including to determine the sale, in whole or in part, of qualifying holdings;
- Preventing illegal financial activity: densification of the framework for the prevention of illicit financial activity.

27. What do you believe to be the biggest threat to the success of the financial sector in your jurisdiction?

The Covid-19 pandemic has affected people and businesses in several ways.

The resulting crisis is prone to have a particularly major impact on loans, and the derogatory regime approved by Decree-Law No 10-J/2020, of 26 March 2020, should be highlighted.

It should be noted that credits outside the scope of the statutory moratorium may benefit from a voluntary moratorium scheme if agreed between the lender and borrower. In this context, we highlight the protocol entered into within the Portuguese Association of Banks ("**APB**"), in relation to the general conditions applicable to two private moratoria, aimed at individuals (for non-mortgage credits and for mortgage credits).

The Association of Specialised Credit Institutions ("**ASFAC**") has published on its website the terms and conditions of private moratorium to be enforced by its associates who decide to make this available to their clients, as well as by other non-associate institutions who may wish to do the same. Similarly, the Portuguese Association of Leasing, Factoring and Renting ("**ALF**") has created a private moratorium regime for individuals holding leasing contracts (Real Estate and Movable Property).

This statutory moratorium scheme, foreseen in Article 5 of Decree-Law No 26/2020, of 16 June, may apply to such moratorium, provided that the conditions of its applicability are met.

The following moratorium measures have been introduced:

- Prohibition of revocation, in whole or in part, of credit lines and loans, in the amounts contracted, from 27 March 2020 and for the entire duration of the measure;
- Extension, for a period equal to the term of the measure, of credits with payment of principal at the end of the contract, together with all associated elements, including interest and guarantees, namely those provided by way of insurance or securities;
- Suspension, during the period of the measure, of credits with partial instalments or other cash amounts payable, of payments of principal, rents and interest in such period. The contractual payment plan is automatically extended, for a period equal to the suspension, so that there are no charges other than the variability of the reference interest rate underlying the contract, and all the elements associated with the contracts, including guarantees, are also extended.

When the statutory and voluntary moratorium expire, a significant level of default among borrowers is expected to occur. This may jeopardise the stability of the Portuguese banking system, which was still recovering from the effects of the 2008 global financial crisis.

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