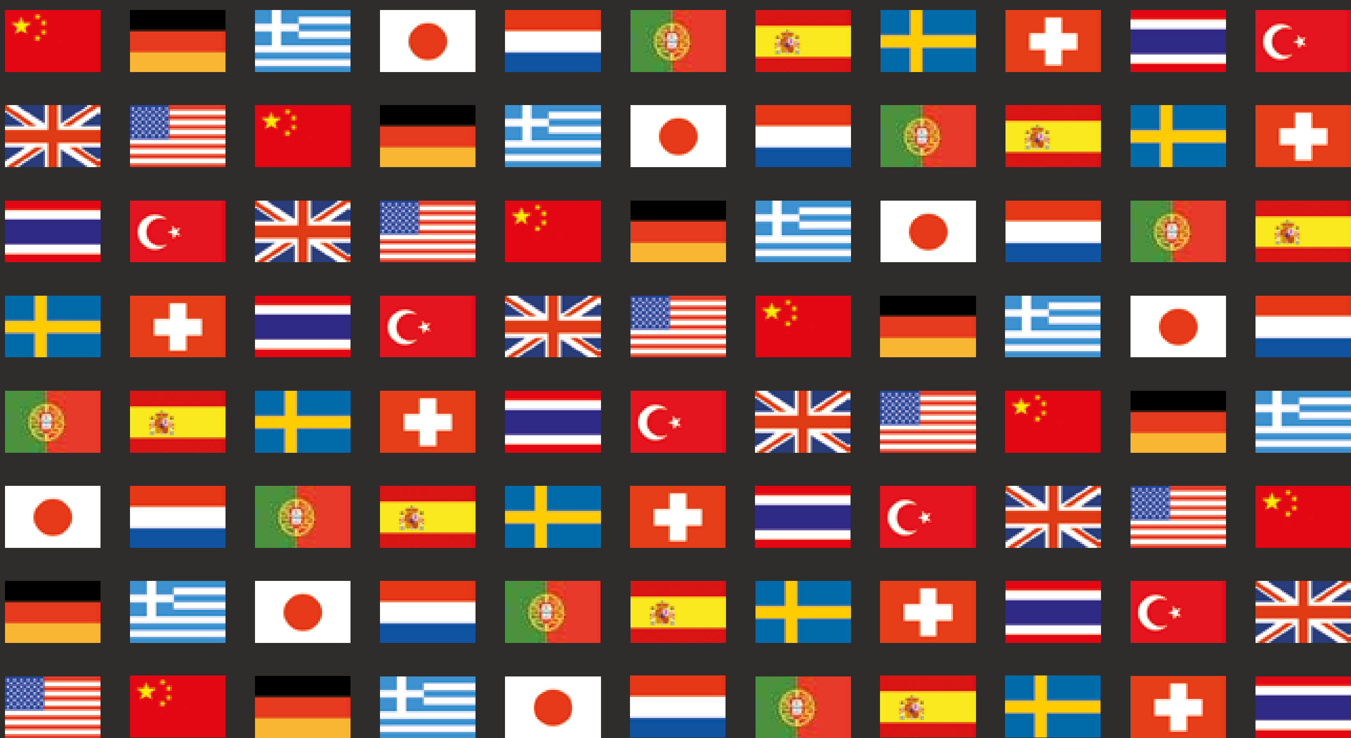
Debt Capital Markets

Contributing editors
David Lopez, Adam E Fleisher and Julian Cardona



2019

GETTING THE DEAL THROUGH

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Debt Capital Markets 2019

Contributing editors

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Cleary Gottlieb Steen & Hamilton LLP

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Preface

Debt Capital Markets 2019

Sixth edition

Getting the Deal Through is delighted to publish the sixth edition of *Debt Capital Markets*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Thailand and the Netherlands.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, David Lopez, Adam E Fleisher and Julian Cardona of Cleary Gottlieb Steen & Hamilton LLP, for their continued assistance with this volume.

GETTING THE
DEAL THROUGH

London
February 2019

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Portugal

Pedro Cassiano Santos, Tiago Correia Moreira, Ricardo Seabra Moura and David Cuba Topete

Vieira de Almeida

1 What types of debt securities offerings are typical, and how active is the market?

The most common debt securities offerings in the Portuguese market consist of bonds, notes, covered bonds, commercial paper and certificates of deposit. In general, debt securities in Portugal are issued by corporates as non-subordinated, unsecured and with floating interest rates, and financial entities issue instruments of this nature as well as more structured products including hybrids, covered bonds and securitisations.

The past few years have seen activity in this area, including private placements (both with and without listing). In the financial sector, Caixa Geral de Depósitos SA issued €500 million (additional Tier 1 instruments) within the context of its recapitalisation programme. In early 2019, Banco Comercial Português SA, issued perpetual subordinated bonds for the total amount of €400 million (additional Tier 1 instruments).

Government bonds also continued to be placed under public offer, thus allowing retail investors to enter this market segment, which had been previously restricted (as far as the primary market was concerned) to institutional investors. Public offers of floating rate bonds were successfully made in 2017, for a total amount of €2.2 billion, and the bonds were admitted to trading on the regulated market of Euronext Lisbon. In July 2018, there was a placement of government bonds under a public offer and subsequently admitted to trading on Euronext Lisbon for a total amount of €1 billion. The transactions closed in April and July 2017. By the end of 2017, Standard & Poor's upgraded Portugal's long-term foreign-currency issuer default rating to BBB-, which maintained its credit rating during 2018, with positive outlook. Fitch Ratings upgraded Portugal's issuer default rating to BBB in 2018 and Moody's credit rating for Portugal was last set at Baa3 with stable outlook.

As to the non-financial sector, Portuguese companies continued to seek recourse to debt capital markets up to the end of 2018 and into 2019. As in past years, this included public subscription offers of bonds by three of the major listed football companies, Sport Lisboa e Benfica –Futebol SAD (July 2018), Futebol Clube do Porto – Futebol SAD (June 2018) and nd Sporting Clube de Portugal – Futebol, SAD (November 2018). We would also highlight the issue of fixed-rate notes by a state-owned company in the aviation sector, SATA Air Açores, guaranteed by the Autonomous Region of Azores and placed to institutional investors.

2 Describe the general regime for debt securities offerings.

The debt securities offerings legal framework is set out in:

- Regulation No. 2017/1129 of the European Parliament and of the Council of 14 June 2017, which will apply from 21 July 2019);
- Directive 2003/71/EU of the European Parliament and of the Council of 4 November 2003, as amended from time to time (Prospectus Directive);
- Commission Regulation No. 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council, as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements, as amended from time to time (Prospectus Regulation);
- Regulation No. 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (Market Abuse Regulation – MAR);
- Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (MiFID II); and
- Regulation No. 1286/2014 of the European Parliament and of the Council of 26 November 2014 (on key information documents for packaged retail and insurance-based investment products – PRIIPs).

The domestic legal framework consists of:

- the Portuguese Companies Code (enacted by Decree-Law No. 262/82, dated 2 November 1986, as amended from time to time);
- the Portuguese Securities Code (enacted by Decree-Law No. 486/99, dated 13 November 1999, as amended from time to time);
- the Securitisation Law (enacted by Decree-Law No. 453/99, dated 5 November 1999, as amended from time to time); and
- the Commercial Paper Framework (enacted by Decree-Law No. 69/2004, dated 25 February 2004 as amended from time to time).

Regulations, notices and instructions issued by the CMVM (the Portuguese Securities Commission, website at www.cmvm.pt), by the Portuguese central securities depository Interbolsa and Euronext Lisbon and by the Bank of Portugal may also be relevant.

As regards the regime for debt securities offerings, the issuance process depends on the offering type chosen by the issuer, whether through a public offer or a private placement. As to the terms of the offering, one may have a standalone issuance or an operation under a debt issuance programme. The structure of both operations is similar, being composed of the same contractual instruments (ie, subscription agreement, paying agency agreement) and negotiated and concluded between the same set of players (ie, the issuer, one or more banking institutions, the paying agent, legal advisers). However, the terms of an issuance under a debt issuance programme (eg, euro medium-term note programme (EMTN) or other relevant domestic programme) are predetermined by the general framework provided by such programme, reducing the role of the parties and, therefore, their margin for negotiation. Once the securities are issued, the issuer shall have them registered with Interbolsa, as operator and manager of CVM (the Portuguese centralised securities depository) and, in the case of an open company (including but not restricted to publicly held companies), communicate the issuance to the CMVM.

The Portuguese debt securities market is supervised by the CMVM. The CMVM is empowered to supervise the market conduct of financial markets in general, including the activity of (debt) securities issuers.

The Portuguese regulator may apply sanctions to entities that fail to comply with the applicable laws. In general, the resulting fines depend on the type of entity and activities carried out, as well as the seriousness of the breach. A supervisory authority's decision may be contested and submitted to the decision of a special court that exclusively decides on competition, regulation and supervisory matters.

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3 Give details of any filing requirements for public offerings of debt securities. Outline any requirements for debt securities that are not applicable to offerings of other securities.

Public offerings are subject to two basic principles: equal treatment and offer stability, upon their announcement. According to the Portuguese legal regime, in line with EU major guidelines, the public offerings of debt securities shall comply with the following requirements:
- prior approval of the prospectus by the CMVM, which will follow the provisions set forth in the Prospectus Regulation;
- the intervention of a financial intermediary, providing placement and assistance services, in case the issuer is not qualified as a financial intermediary; and
- disclosure and distribution of the prospectus to investors.

Along with the prospectus, the offeror's request for approval must be supported by the following documentation:
- copy of the offer's resolution issued by the offeror's board of directors and further administrative decisions required;
- copy of the issuer or the offeror's by-laws (as the case may be);
- certified copy by the competent commercial registry office of the valid permanent certificate of the issuer or the offeror (as the case may be);
- copy of the financial statements of the issuer, supervisory board's opinion and legal accounts certificate, concerning the relevant period under the terms of the prospectus regulation;
- auditor's report;
- ISIN code;
- copy of the agreement concluded with the financial intermediary in charge of assisting the offer;
- copy of the underwriting agreement, if applicable; and
- any other legally required documentation, if applicable (expert report, pro-forma financial information, offer's project announcement).

Regarding structured products (ie, securitised bonds), a key information document (KID) must be provided to small investors before contracting for investment products, under the terms of the PRIIPS Regulation. The KID aims to provide clear, comparable and complete information on investment products.

The Portuguese Securities Code does not distinguish public offerings by type of security, but rather by type of operation (subscription, sale or acquisition).

4 In a public offering of debt securities, must the issuer produce a prospectus or similar documentation? What information must it contain?

Yes, see also question 3. As regards debt securities public offerings, the prospectus must contain:
- a summary, providing investors with key information concerning the nature and risks of the issuer and the securities, including the rights granted by such securities;
- selling restrictions;
- brief description of the risks and essential features of the issuer, including assets, debt and financial situation;
- general terms of the offer, including the expenses investors may incur before the issuer;
- detailed information concerning admission to trading;
- the purpose of the offer and the allocation of its revenues;
- the people responsible for its content;
- the legal structure and composition of the issuers' bodies; and
- reference to liability that may arise from its drafting.

Notwithstanding the foregoing, it should be noted that, in some cases, the Securities Code does not require the prior drafting of a prospectus. The following operations, in relation to what concerns debt securities offerings, are not subject to such requirement:
- securities offers, by merger or demerger, in the case that, 15 days prior to such resolution by the competent body, a document containing prospectus-equivalent information (as considered by the CMVM) is available;
- securities offers to the offeror's directors or employees or promoted by an entity in relation with the offeror or subject to the same legal framework, as long as the issuer's registered office is based in the EU and a document containing the conditions of the offer and the securities is made available; and
- securities offers promoted by a non-EU based entity, provided that such securities are admitted to trading in an EU-regulated market or in a non-EU-regulated market. In the latter case, adequate information shall be made available, including a document containing the conditions of the offer and the securities, and the European Commission shall have adopted a decision on the equivalence of that state market.

5 Describe the drafting process for the offering document.

The main issues regarding offer documentation relate to disclosure requirements. The information provided by the issuer must be complete, trustworthy, updated and objective, allowing investors to obtain a clear judgement on the terms of the offer, on the securities and on the financial condition of the issuer.

Nonetheless, the Securities Code allows the offeror to require the CMVM not to include certain information in the prospectus, if:
- disclosure of such information is contrary to the public interest;
- disclosure of such information has a significant impact on the issuer (as long as such omission does not mislead the investors' appraisal); or
- disclosure of such information is not relevant to the offer, nor influences the offeror's financial situation appraisal.

As mentioned previously, the prospectus must contain adequate and sufficient information in order to fulfil the above-mentioned purpose. While drafting the offering documentation, offerors and further individuals or entities responsible for preparing the offer must bear in mind that they might be liable for damage caused by any discrepancy between the content of the prospectus and the existing factual situation, described in the terms set out above. Moreover, in this case, the CMVM is entitled to impose fines and penalties, as the violation of such duty constitutes an administrative penalty (see questions 26, 27 and 28).

The duty of information imposed on the offeror varies according to the type of offer. In the event of a private placement, the disclosure requirements are considerably lower, as the offer's addressee is in the position of obtaining the relevant information itself.

6 Which key documents govern the terms and conditions of the debt securities? Who are the parties to such documents? How can such documents be accessed?

The terms and conditions of debt securities, such as bonds or notes, are often governed by EMTN programmes or other relevant domestic programmes. In the case of a standalone issuance, the parties establish a contractual relationship ad hoc, without prejudice to the relevant provisions of the programme that might be imported.

Regardless of the type of issuance, the contractual instruments agreed by the parties are mostly the same:
- a subscription or programme agreement, signed by the issuer and the subscriber;
- a paying agency agreement, signed by the issuer and the paying agent in charge of assisting the offer; and
- a common representative appointment agreement, to mandate the noteholders' representative, operating as a spokesperson, usually in place for the duration of the transaction.

The terms and conditions of the debt securities shall be made available by the financial intermediary, in the case of public offers, or directly by the issuer, in the case of a private placement.

7 Does offering documentation require approval before publication? In what forms should it be available?

As regards public offers, the CMVM must approve the offering documentation before publication (see questions 3, 4 and 8).

The prospectus can only be published upon CMVM approval. Upon approval, the final version of the prospectus shall be sent to the CMVM and made available to the public (in the terms referred to in question 11). In general, the prospectus must be disclosed until the last day before the offer gets under way. However, if the offer has been preceded by the negotiation of rights, the prospectus shall be disclosed by the business day prior to the date where such rights are detached.

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8 Are public offerings of debt securities subject to review and authorisation? What is the time frame for approval? What are the restrictions imposed, if any, on the issuer and the underwriters during the review process?

Public offerings of debt securities are subject to review and authorisation, as mentioned above. The CMVM must approve the prospectus within 10 days, unless the issuer has never been involved in a public offer previously, which will extend the deadline to 20 days.

Any advertising material related to the offer is subject to review and authorisation by the CMVM as well. The CMVM may authorise publication of advertising material prior to approval of the prospectus or registration of the offer, if it considers the approval or registration as viable.

The absence of a decision within the referred time period implies the rejection of the request.

9 On what grounds may the regulators refuse to approve a public offering of securities?

The regulator shall refuse the offer if:

- the documents submitted (as set out in question 3) are false or forged, or do not comply with any legal requirements; or
- the offer is considered illegal or is deemed a fraud contrary to law.

10 How do the rules differ for public and private offerings of debt securities? What types of exemptions from registration are available?

The issuer shall register the securities with Interbolsa, as operator and manager of CVM and, in the case of an open company (including but not restricted to publicly held companies), communicate the issuance to the CMVM, whether the offer is public or private.

As to public offers, prior registration is not required if:

- the issuer is an EU member state or any related public entity;
- the securities are unconditional and irrevocably guaranteed by such state or entity;
- the issuer is the European Central Bank or any central bank of any EU member state;
- the issuer is a publicly held collective investment entity;
- the offer is exclusively announced in a regulated market registered with the CMVM;
- the securities are tradable in integral multiples of €100,000 (minimum);
- the issuer is a public international body participated in by at least one member state;
- the issuer is a not-for-profit entity, as recognised by a member state;
- the issuer is a credit institution and the securities are non-subordinated, non-convertible, non-exchangeable and refundable;
- the total amount of the securities in the EU is less than €5 million;
- the issuer is a credit institution and the total amount of the offer in the EU is less than €75 million and the securities are non-subordinated and non-convertible;
- the issuer is a collective investment entity; or
- the securities' maturity is less than one year.

Private placement offers do not require the elaboration and prior approval of a prospectus, nor any of its subsequent terms, but are generally required to be registered with the commercial registration authority.

11 Describe the public offering process for debt securities. How does the private offering process differ?

In relation to public offers, the offeror shall submit the request to register the offer or to approve the prospectus. The CMVM shall then, within 10 or 20 days (as mentioned in question 8), accept or refuse the request. The time period of the offer must be fixed by the offeror according to the terms of the offer, to the potential investors and issuers' interest and to the market functions' demands. However, after approval by the regulator, the prospectus is only valid for 12 months.

Once the offer is approved and announced, the offeror can only review its terms once, by reducing (at least) 2 per cent of the price initially announced. However, in the case of a change in circumstances, the offer may be revoked.

During this period, investors must transmit their acceptance orders to the financial intermediary appointed by the offeror (such acceptance orders might be revoked until five days before the offer's deadline, unless otherwise provided by the offer documentation).

Once the deadline is reached, the financial intermediary shall calculate and publish the results and also, as the case may be, announce the securities' admission to trading.

In relation to marketing and advertising, the offeror might publicly announce the offer by any means deemed as appropriate (eg, press release; statement of the board of directors; through the offeror's, the financial intermediary's or the CMVM's website; newspaper; documents may be made available for consultation at the offeror's registered office or at the financial intermediary's branches).

As to private offers, the negotiation of the relevant contractual instruments shall be made by the parties, inter alia, the offeror or issuer, the subscriber, the paying agent, financial intermediaries and legal advisers.

12 What are the usual closing documents that the underwriters or the initial purchasers require in public and private offerings of debt securities from the issuer or third parties?

Typically, when dealing with a private placement, underwriters tend to require the following set of documents:

- certified copy by the competent commercial registry office of the valid permanent certificate of the issuer;
- copy of the issuer's updated by laws or articles of association;
- certified copy of the resolutions of the board of directors of the issuer authorising the issuance;
- non-insolvency certificate;
- legal opinion supplied by the issuer's attorneys;
- legal opinion supplied by the subscriber's attorneys; and
- auditors' comfort letter to cover for the period elapsed between the last approved accounts and the offer.

The situation differs in the event of a public offer. Since the applicable law requires an exhaustive set of documentation, previously provided and disclosed by the offeror, no further items are needed.

13 What are the typical fees for listing debt securities on the principal exchanges?

Issuers usually pay an admission fee in respect of medium or long-term debt securities (one-time fee payable at the time of the initial listing, for each admission) and annual fees (payable annually by a company to remain listed on an exchange).

The fees due from companies for listing medium or long-term debt securities are as follows (see *Listing Fee Book 2019*):

Medium-/long-term debt securities		
	Standalone	**Programme**
1: Admission fee	€150 per tranche of €25 million (maximum €3,750)	€700 per line
	Issued amount (€ million) (greater than – up to or equal to)	**Fee per year**
2: Annuity fee	0 – 50	€525
	50 – 100	€550
	100 – 250	€575
	250 – 500	€600
	500 and above	€625
Maximum fee (1 + 2)	**€16,250**	**€13,200**

As to short-term debt securities (issuers are not required to pay an annual fee for straight debt securities unless explicitly prescribed in a notice published by Euronext), the fees are as follows:

Short-term debt securities	
Type of fee	**Fee**
1: Admission fee	€150 per line
2: Variable fee	€10 per €m issued amount x (number of admisssion days/365)
Maximum fee (1+2)	**€15,000**

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Each issuer shall pay an annual fee of €500 per line for debt securities linked to equity securities (such as convertibles, exchangeable bonds) issued by it.

Additionally, each issuer shall pay an extra fee if Euronext Paris SA or Euronext Brussels NV/SA performs centralisation services in respect of an admission of debt securities:

Debt securities	
Amount centralised (€m)	**Fee**
Tranche (greater than – up to or equal to)	
0 – 25	€10,000
25 – 50	€20,000
50 – 100	€40,000
100 and above	€40,000 + 0.3 per cent of the centralisation amount in excess of €100 million

14 How active is the market for special debt instruments, such as equity-linked notes, exchangeable or convertible debt, or other derivative products?

The Portuguese market is also active in the area of derivative products. The most common instruments are asset-backed securities, such as covered bonds or securitised bonds, equity-linked notes and warrants.

15 What rules apply to the offering of such special debt securities? Are there any accounting implications that the issuer should be aware of?

In general, the rules applicable to such debt securities offerings are the same applicable to other types of securities offerings (see question 2).

Nonetheless, specific rules may be considered, considering securities and derivative markets. A single Euronext rule book governs trading on all Euronext securities and derivatives markets, which contains both harmonised and non-harmonised rules. In addition, notices adopted by Euronext in this respect should also be considered.

The accounting issues relating to these types of securities are related to their qualification as equity, debt or hybrid instruments, which may have a relevant impact on the issuer's tax liabilities. Moreover, if the issuer is a financial institution, such qualification will have an impact on the issuer's capital requirements.

16 What determines whether securities are classed as debt or equity? What are the implications for instruments categorised as equity and not debt?

Debt securities grant their holder the following rights and prerogatives:
- a credit claim against the issuer, graduated before any shareholders' credits (in the case of liquidation); and
- the right to receive regular payments from the issuer, as principal and interest payments.

Such rights might be exercised until the maturity date of the securities. On the other hand, equity securities grant their holder a set of rights over the company, which might be exercised for the time during which the holder maintains its quality, such as:
- the right to a share in the profits (eg, dividends, which in any case are subject to shareholders' resolutions);
- the right to vote at shareholders' general meetings;
- the right of information over the company's activities; and
- the right to be appointed as a member of the board of directors or the supervisory body, in accordance with the terms set forth by the law and the company's by-laws.

In the case of liquidation proceedings, shareholders are considered as subordinated creditors, being paid only after the satisfaction of all other creditors' claims.

17 Are there any transfer restrictions or other limitations imposed on privately offered debt securities? What are the typical contractual arrangements or regulatory safe harbours that allow the investors to transfer privately offered debt securities?

Whenever a securities resale or final allocation is made by a financial intermediary and the offer is lawfully qualified as public, most rules governing public offerings are also applicable. In such cases, the financial intermediary may use, upon the issuer's prior written consent, the prospectus validly disclosed beforehand, as long as it remains updated.

There are no further restrictions in relation to privately offered debt securities.

18 Are there special rules applicable to offering of debt securities by foreign issuers in your jurisdiction? Are there special rules for domestic issuers offering debt securities only outside your jurisdiction?

According to the Securities Code, public offerings addressed to individuals or entities domiciled in Portugal, regardless of the offeror's personal law and the law applicable to such securities, are ruled by its provisions.

Additionally, the CMVM is the competent supervisory authority to approve the prospectus of any public distribution offer announced by an entity with its registered office in Portugal, regarding securities that comprise the right to acquire shares or securities whose nominal value is less than €1,000 (or the equivalent amount in a foreign currency, as the case may be). The aforementioned rule applies if the offeror of such securities is simultaneously the issuer of the underlying securities or an entity within the same group of the latter.

The prospectus approved by the competent authority of an EU member state concerning a public distribution offer taking place in Portugal and in other member states is valid, provided that such entity has delivered a certificate of approval and a copy of the prospectus under consideration and the translation of its summary, if applicable.

The CMVM may approve a prospectus related to a public distribution offer of an entity based outside the EU provided that such prospectus has been drafted according to international rules established by an international supervisory securities organisation and includes similar information as the one required by the Securities Code and the Prospectus Regulation.

There are no specific rules for domestic issuers offering debt securities only outside the Portuguese jurisdiction.

19 Are there any arrangements with other jurisdictions to help foreign issuers access debt capital markets in your jurisdiction?

The provisions applicable in this respect are those set out in the Prospectus Directive and its implementing legal acts.

20 What is the typical underwriting arrangement for public offerings of debt securities? How do the arrangements for private offerings of debt securities differ?

According to the Securities Code, underwriting agreements under a public offer cover the preparation, launch and execution of the offer. The services provided by the financial intermediary in this respect include the drafting and preparation of the prospectus and its approval request, as well as the aggregation of all declarations of acceptance. Additionally, the financial intermediary shall advise the offeror about the terms of the offer, inter alia, scheduling, pricing and compliance with applicable laws and regulations.

The obligations assumed by the financial intermediary might vary in accordance with the type of contract concluded with the offeror. The Securities Code prescribes the following types of contracts:
- placement agreement, in which the financial intermediary is obliged to use its best efforts in order to distribute the securities under consideration;
- underwriting agreement, in which the financial intermediary acquires the securities under consideration and is obliged, at its own risk, to place them under the terms agreed with the offeror; and
- underwriting agreement, in which the financial intermediary is obliged to acquire the remainder of the securities that have not been acquired during the offer.

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In general, underwriting agreements do not depend on whether the offer is public or private.

21 How are underwriters regulated? Is approval required with respect to underwriting arrangements?

Pursuant to the Securities Code, the provision of financial intermediation services depends on the prior authorisation by the competent supervisory authority (awarded by the Bank of Portugal) and prior registration with the CMVM. Most of the provisions related to underwriters in this respect are addressed to credit institutions and financial companies.

Nonetheless, financial intermediaries across the EU may also benefit from the European passport for investment services as provided by MiFID II.

22 What are the key transaction execution issues in a public debt offering? How is the transaction settled?

In Portugal, debt securities represented in dematerialised book-entry form shall be registered with the CVM, the Portuguese centralised securities depository, operated and managed by Interbolsa. On the other hand, debt securities physically represented must be deposited, alternatively (depending on the relevant law provisions applicable), in a financial intermediary or with the CVM.

The issuer (or another duly appointed entity, eg, the paying agent) must file the registration with the CVM. Usually, registrations submitted to the CVM are concluded in a period of one or two days (maximum).

23 How are public debt securities typically held and traded after an offering?

Law No. 15/2017, of 3 May 2017, has prohibited the issuance of bearer securities and currently only registered securities can be issued by Portuguese issuers. In this respect, outstanding bearer securities were converted into nominal securities during the transition period (4 November 2017). Therefore, debt securities in Portugal have been represented in registered form as from 2017.

Debt securities are commonly represented in dematerialised book-entry form, through an account held with the CVM. Debt securities are usually traded through the organised markets where they are listed, and particularly Euronext Lisbon, when applicable, and otherwise through the over-the-counter market of financial intermediaries.

24 Describe how issuers manage their outstanding debt securities.

Issuers can manage their outstanding debt securities through open market purchases, tender and exchange offers.

As to open market purchases, the Companies Code establishes that companies may acquire their own debt securities on the same terms applicable to the acquisition of their own shares. In general, a company may only acquire its own shares up to 10 per cent of its share capital.

The terms and conditions of bonds or notes may be amended by means of a creditors' meeting, as prescribed by the Companies Code. Resolutions shall be approved by half the voting rights held by all noteholders or by two-thirds of the votes cast, depending on whether such resolution is adopted upon the first or the second date fixed.

Finally, issuers have recourse to exchange transactions, trading outstanding debt or quasi-outstanding debt by new debt. This sort of operation may be concluded by means of a public or private offer, depending on the legal provisions applicable.

25 Are there any reporting obligations that are imposed after offering of debt securities? What information would be included in such reporting?

The MAR, in force since 3 July 2016, has a tight set of disclosure requirements, with which issuers, in this respect, must comply. The MAR rules cover the disclosure of inside information, insiders' lists, managers' transactions, investment recommendations and statistics and the dissemination of information in the media.

26 Describe the liability regime related to debt securities offerings. What transaction participants, in addition to the issuer, are subject to liability? Is the liability analysis different for debt securities compared with securities of other types?

Pursuant to the Securities Code, any damage caused by any discrepancy between the content of the prospectus and the existing factual situation carry the liability for the following entities or individuals (jointly and severally), unless they prove no fault of their own:

(i) the issuer and/or the offeror;
(ii) the members of the offeror or the issuer's board of directors;
(iii) the members of the supervisory board, audit firms, certified public accountants or any other person responsible for the certification or appreciation of the documents on which the prospectus was based;
(iv) financial intermediaries appointed to assist the offer; and
(v) any other persons referred in the prospectus as responsible for any information, forecast or research contained therein.

Additionally, and regardless of the aforementioned, the following entities are subject to strict liability, independently of fault:

- the offeror, if any person referred in (ii), (iv) and (v) above is held liable;
- the issuer, if any person referred in (ii) and (iii) above is held liable; and
- the person or entity responsible for the assistance consortium, if applicable, if any person referred in (iv) above is held liable.

The Portuguese liability regime is the same, regardless of the type of security under consideration.

27 What types of remedies are available to the investors in debt securities?

If any person or entity is held liable under the terms stated above, investors may claim compensation for damages and loss caused within six months of being aware of the prospectus' inconsistency. However, the right to indemnity ceases two years after the expiry date of the prospectus.

28 What sanctioning powers do the regulators have and on what grounds? What are the typical results of regulatory inquiry or investigation?

The CMVM is the competent supervisory authority for processing administrative penalty proceedings, imposing fines and additional sanctions, if applicable.

In this respect, fines range between €5,000 (minimum applicable) and €5 million (maximum applicable). The maximum value may be elevated to the highest of the following amounts:

- triple the economic benefit obtained, including the value of any avoided losses;
- in relation to major offences, 10 per cent of the turnover, according to the last consolidated or individual financial statements approved by the company's board of directors; and
- in relation to offences for use and transmission of insider information and market manipulation, 15 per cent of the turnover, according to the last individual or consolidated financial statements approved by the company's board of directors.

In general, the following types of acts may constitute an administrative penalty:

- a breach, by any means, of the duty of information;
- non-compliance with any legal or administrative provisions related to the securities;
- the announcement of a public offer without prior approval, registration, disclosure or diffusion of the prospectus or any breach of other legal provisions regarding public offers;
- a breach of any provisions concerning market transactions;
- performing functions assigned to clearing houses;
- performing functions assigned to financial intermediaries;
- a breach of legal duties imposed to financial intermediaries;
- a breach of any specific professional duties (eg, professional secrecy or asset segregation);
- market abuse; and
- any failure to comply with the CMVM's instructions.

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As at the third quarter of 2018, the CMVM had 98 proceedings ongoing, had initiated 14 new proceedings, filed one and reached a decision on 17. In addition, seven decisions had been challenged in court.

29 What are the main tax issues for issuers and bondholders?

Bond transactions usually raise some tax concerns both for the investor and for the issuer. One of the main tax implications relates to withholding taxes on interest payments applicable to investors and ultimately to issuers, since they may be also subject to costs of such tax owing to gross-up clauses. In this respect, under the general tax regime investment income (including interest) payments arising from bonds issued by Portuguese borrowers and made to Portuguese-resident investors will be subject to withholding tax at a rate of 25 per cent, in the case of resident legal entities, or at a rate of 28 per cent, in the case of resident individuals. A final withholding tax rate of 35 per cent applies to investment income (including interest) paid or made available to accounts opened in the name of one or more account holders acting on behalf of one or more unidentified third parties (unless the relevant beneficial owner of the income is identified and thus general tax rates applicable to such beneficial owner will apply).

On the other hand, investment income obtained by non-resident legal entities without a permanent establishment in Portugal is subject to withholding tax at a rate of 25 per cent (in the case of non-resident entities), at a rate of 28 per cent (in the case of non-resident individuals), or at a rate of 35 per cent (in the case of entities or individuals domiciled in a blacklisted jurisdiction as set out in Ministerial Order No. 150/2004 of 13 February 2004, as amended, and on payments to omnibus accounts in which the beneficiary of the income is not identified), which is the final tax on that income (reduced tax rates might be applicable pursuant to an applicable double tax treaty provided the formalities have been duly met).

Notwithstanding the above general tax regime, Decree-Law No. 193/2005 of 7 November 2005, as amended, sets out a special taxation regime, which provides that interest payments (and all other investment income arising from notes whenever applicable) to non-resident bondholders that are the beneficiaries of such interest payments to be made by Portuguese resident issuers, as well as capital gains deriving from a sale or other disposition of such notes by those beneficiaries, will be exempt from Portuguese income tax and, consequently, from withholding tax, provided that the beneficiaries are:

- central banks and governmental agencies;
- international bodies recognised by the Portuguese state;
- entities resident in countries with which Portugal has in force a double tax treaty or a tax information exchange agreement; or
- other entities without headquarters, effective management or a permanent establishment in the Portuguese territory to which the relevant income is attributable that are not domiciled in a blacklisted jurisdiction as set out in Ministerial Order No. 150/2004 of 13 February 2004, as amended.

Bonds must be integrated in a centralised system for securities managed by a resident entity or by an international clearing system managing entity established in another EU member state or European Economic Area member state (in the latter case, provided it is bound by an administrative cooperation in tax matters similar to the one established within the European Union) and the procedure aimed at assessing the non-resident status of the holder of bonds should be duly complied with.

From the issuer's perspective, interest payments in connection with bonds will, as a rule, be tax-deductible. However, Portuguese interest barrier rule limits the deductibility of net financial expenses to the higher of the following: €1 million or 30 per cent of the EBITDA. The net financial costs that are not deductible in a certain given fiscal year, as a result of the above limits, may be carried forward for a period of five fiscal years, as long as those limits are complied with. When the amount of financial costs considered as tax-deductible is lower than the percentage limit (30 per cent), the unused part of such limit may be carried forward for a period of five fiscal years (increasing the maximum deductible amount), until that remaining part is fully used.

Although no stamp tax will apply to the issuance of bonds, guarantees in connection with such transactions will trigger stamp tax, which is of territorial application to acts or contracts having legal effect within Portugal. The stamp tax rate applicable to guarantees is 0.04 per cent per month or fraction thereof on transactions with a maturity of less than 12 months, or 0.5 per cent for guarantees granted for a period from one year to five years. The rate is increased to 0.6 per cent on guarantees with maturity of five years or more or with no term. The applicable stamp tax rate is levied on the full amount of obligations guaranteed and will be borne by the issuer.

Property transfer tax is levied on the transfer for consideration of real estate located in the Portuguese territory. In the case of property transfers resulting from mortgage enforcements, bondholders as beneficiaries of the guarantee are subject to Portuguese property transfer tax at a rate of up to 6.5 per cent and also to stamp tax at a rate of 0.8 per cent over the taxable value of each property or the value foreseen on each agreement, if higher, in connection with an enforcement procedure of a mortgage deed eventually provided on such bond transaction. Property transfer tax will also apply under an enforcement scenario if the bondholder acquires at least 75 per cent of the share capital of a company incorporated as private limited company (sociedade por quotas), as well as of a privately placed closed-end real estate investment fund that owns real estate located in Portugal.

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