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NEWS

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EDITORIAL

Pedro Cassiano Santos

Since our last Newsletter from April 2014, the PSI 20 has shrunk by almost a third in value and the main event in the market has been the resolution of Banco Espírito Santo ("**BES**") decided by the Bank of Portugal on 3 of August which has split the bank in half ("bad bank" and Novo Banco). Nevertheless, other important developments related with the long-standing telecommunications company PT SGPS, S.A. have also occurred with relevant effects on the market.

At the European level, the European Central Bank ("**ECB**") has been closely monitoring the markets and continues to follow its monetary stimulus policies to the economies of the euro zone and, thanks to the implementation of the Single Supervisory Mechanism, shall become directly responsible for the supervision of 130 European banks such as CGD, BCP, BPI and Novo Banco.

In Portugal, the financial assistance programme implemented by the Troika has come to an end, but the country shall remain subject to regular and close monitoring for the next 20 years.

The resolution measure of BES has had inevitable implications in the stabilization of the banking sector, compromising the results obtained during the financial assistance programme. It has also determined the first application of the resolution regime under Portuguese banking law, which already provided for prevention mechanisms against systemic risks and contamination of the real economy, by allocating losses and costs between shareholders and creditors of banking institutions.

At the Portuguese banking sector level, relevance must be given to the results of the stress tests and of the banking asset quality review disclosed by the ECB which has demonstrated the resilience of banks under examination and the existence of adequate capitalization levels, with capital ratios above the reference value of 8%. Notwithstanding the fact that the CET1 ratio for 2016 projected for BCP has not met the threshold of 5,5%, the bank has already identified and implemented a package of measures intended to integrally cover the difference detected during the exercises.

During such period, the Portuguese market has been particularly active, with several relevant transactions taking place such as, namely, consumer and SME loan securitizations. In this regard, we note the issuance of securitized bonds by *Tagus – Sociedade de Titularização de Créditos, S.A.* and *Gamma – Sociedade de Titularização de Créditos, S.A.* in the amount of €308M and €927,4M respectively. Additionally, several transactions originating at the Espirito Santo Group level have taken place such as the sale of the flag-ship insurance company *Tranquilidade* and the takeover bid on ES *Saúde*, SGPS, S.A.. We also make reference to the mandatory tender offer by *Futebol Clube do Porto* on the shares of FCP, SAD. Finally, the banking sector recapitalization plan continues its course with the banks refunding the State in advance with the landed amounts, with the emphasis being on BPI which has already reimbursed the entirety of its loans.

In this semester we highlight (i) the publication of a public consultation by the European Securities and Market Association on the Omnibus II Directive on the implementation of Regulatory Technical Standards on Prospectus, (ii) the creation of a new Portuguese development financial institution which has already been cleared by the European Commission, (iii) the entry into force of Regulation (UE) 909/2014 of 23 July introducing modifications on improving securities settlement in the European Union and on Central Securities Depositories, (iv) the entry into force of Law 61/2014 of 26 August approving a special regime applicable to deferred tax assets, and (v) the publication of Decree-Law 157/2014, of 24 October amending the General Regime for Credit Institutions and Financial Companies, resulting in a clearer dichotomy between credit institutions and financial companies, which transposes Directive 2013/36/UE into Portuguese jurisdiction.

We try to give a brief account of these events in the upcoming articles. Thank you for your attention, and if any comments or suggestions on these and other topics should arise, please do let us know through fapc@vda.pt.

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CMVM UNDERSTANDINGS ON COMPETING OFFERS

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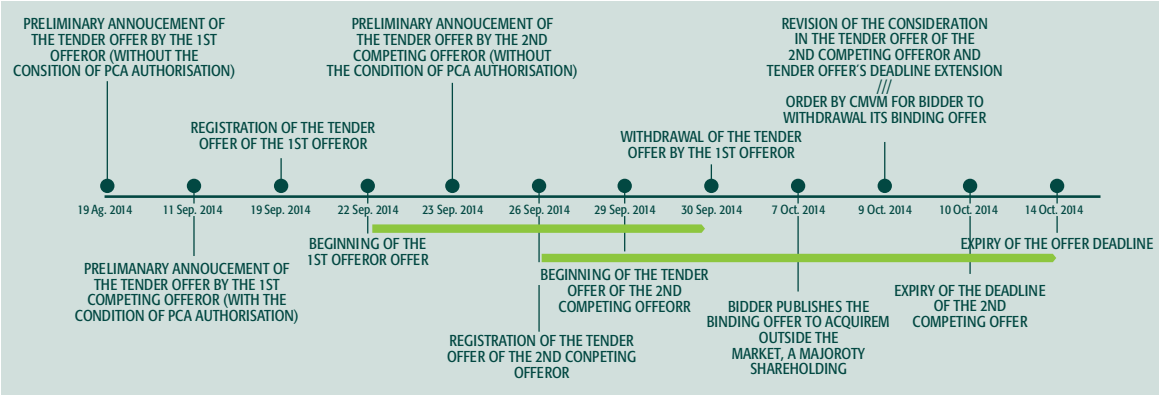
Orlando Vogler Guiné / Sandra Cardoso

Between August and October, one main point of interest in the Portuguese capital markets were the offers and proposals made by national and foreign groups for the shares of Espírito Santo Saúde, which had been admitted to trading at the beginning of this year, following an IPO. This was the first time that the regime of competing offers under the Portuguese Securities Code ("**PSC**") was tested, even though some literature had already been published. On the other hand, other legal regimes, such as the competition (anti-trust) and public-private partnerships in the health sector frameworks had to be simultaneous considered.

We have summarised below the main events that took place in this context:



Several controversial questions arose, on which the Portuguese Securities Markets Commission ("**CMVM**") opined and published a set of Questions and Answers that should be taken into account in order to anticipate future scenarios in competing offers. Due to its importance in the future admissibility of other offers or proposals of acquisition, we highlight a few below.

CMVM stated that the disclosure of a preliminary announcement of competing offer or the request to register a competing offer has no effect over the initial tender offer, becoming autonomous procedures, which may affect the time course of the initial and the second offer.

Also, CMVM considered that, since the competition (anti-trust) law allows for the conclusion of a tender offer that was not previously subject to the non-opposition of the Portuguese Competition Authority ("**PCA**"), the offeror then being generally prohibited to exercise its voting rights (in case the offer is successful) (article 40(2) of Law 19/2012, of 8 May), "*the decision of non-opposition from the Portuguese Competition Authority only impacts the decision to register the tender offer if the offeror sets it as a condition to launch the offer*". In practice, if the initial offeror does not set the decision of non-opposition as a condition to launch its tender offer, the competing offeror hardly will be able to obtain, in due course, said decision in order to register its tender offer, and thus will be excluded from the transaction. Important contrary arguments may, however, be invoked, namely that offerors who already have a significant presence in the relevant market (and cannot reasonably launch their offer without that condition, considering the remedies that they may become subject to) will be deterred and therefore the likelihood that such entities may effectively announce and launch competing tender offers will be reduced or none, in detriment of the market.

CMVM additionally considered that the public disclosure of an over-the-counter ("**OTC**") proposal to acquire the main shareholding in the target company, which acceptance would imply a duty to launch a mandatory tender offer, should comply with the competing offers regime, since (indirectly) the recipients and the percentage of the share capital targeted by the proposal are the same, and therefore are in a factual competing situation. Consequently, as it could not be (re)formulated as a competing offer, considering the deadline under article 185-A/1 of the PSC (launch by the 5th prior to the end of the tender offer), CMVM understood that the proposal should be withdrawn. As above, relevant contrary arguments may be put forward, as the law does not expressly favour the regime of competing tender offers over the mandatory tender offers regime and considering also the implied limitation to private autonomy (freedom to contract) in the execution of OTC transactions.

The CMVM Questions and Answers are available, in Portuguese, here.

SPECIAL REGIME ON DEFERRED TAX ASSETS

Pedro Simões Coelho/ Ricardo Seabra Moura

Law no. 61/2014 of 26th of August has created the special regime applicable to deferred tax assets ("DTA") arising from the non-deduction to tax income of expenses and negative asset variations regarding impairment losses and post-employment benefits or long term benefits ("Expenses and NAV").

The applicability of the regime depends on the submission of the manifestation of such intention to the Tax Authority until 5 September 2014 and of its approval in a shareholders meeting, being possible for the Expenses and NAV to be tax deductible until the limit of the tax income corresponding to the respective tax period.

In the event taxable income is insufficient, excessive costs and NAV shall not be deducted and the correspondent DTA's DTA can be converted into tax credits if the taxpayer:

(a) Registers a negative net result; or

(b) Begins a voluntary liquidation procedure or becomes insolvent; or

(c) Is subject to the revocation of its respective authorization.

This tax credit shall be used in the offsetting with other tax debts or, alternatively, to refund the taxpayer.

The conversion referred to in (a) implies the simultaneous establishment of a special reserve and of conversion rights allocated to the Portuguese State. The conversions rights are securities that entitle their holder the right to demand the tax payer the correspondent capital increase through the incorporation of the special reserve amount. However, the remaining shareholders may acquire the State's conversion rights, if certain conditions to be established on a Ministerial Order are met.

This regime is applicable to the Expenses and NAV accounted in tax periods that begin in or after 1 January 2015, and to DTA registered in the annual accounts of the 2014 tax period.

A FURTHER STEP TOWARDS THE HARMONISATION OF THE PROSPECTUS REGULATION

THE OMNIBUS II AND ESMA GUIDELINES

Benedita Lima Aires / Ana Moniz Macedo

Directive 2014/51/UE of the European Parliament and of the Counsel dated 16 April 2014, the so called Omnibus II, amended the Prospectus Directive to attribute competence to ESMA to produce Regulatory Technical Standards (RTS) in relation to technical aspects of the Prospectus and public offers regimes which remain unregulated.

ESMA initiated then a public consultation of the applicable RTS which introduces relevant measures aiming at harmonizing the prospectus' approval procedures that were, up to now, more within the scope of national supervisory authorities. The measures which are now subject to consultation may be consulted here and, the main novelties to the market players may be summarised as follows:

APPROVAL OF THE PROSPECTUS	• Submission of documentation: file of complete versions of prospectus in electronic format together with the cross references table and the documents incorporated by reference; subsequent versions shall show the changes introduced and required to state that all the amendments are duly identified • Submission of cross references table or identification in the prospectus the strict compliance of the regulation requirements • Comments from the authorities shall be notified in writing, oral comments being only admissible in case of simple and/or urgent comments; amendments introduced in the preliminary versions of a prospectus shall also be explained in writing • Time limits may be adjusted upon certain objective criteria • National authorities may request the submission of ancillary documentation for the prospectus to be approved (it is important to maintain a degree of flexibility regarding the prospectus approval process)
INCORPORATION BY REFERENCE	• Information approved or filed to the supervisory authority pursuant to Prospectus and Transparency Directives • RTS identifies the information which may be incorporated by reference
PUBLICATION OF THE PROSPECTUS	• Proposal of revocation of articles 30 to 32 of the Prospectus Regulation and inclusion of a revised version of its content in the relevant RTS • Final Terms of any issuance under a base prospectus and, when applicable, the summary of the issuance, are mandatorily published through the same electronic means of the prospectus • Publication of information incorporated by reference and its consultation through hyperlinks to the relevant documents / websites directly inserted in the prospectus
DISSEMINATION OF ADVERTISEMENTS / ADMISSION TO TRADING	• RTS identifies new rules on advertisement means • The categories of advertisement foreseen in article 34 of the Prospectus Regulation will be grouped and regulated in four main categories: print, broadcast, digital and oral advertising • When an advertisement / information, transmitted orally or in writing, is inaccurate or misleading, it must then be amended and disclosed by the same means (except some particular cases in which the disclosure by another means is acceptable)

The public consultation is underway until 19 December 2014 and considering the contents and the impact of such measures in the administrative procedures carried out by the several supervisory authorities (such as, for instance, the different procedures followed between Portuguese, English, Luxembourgish and Irish authorities) we certainly recommend active participation by the capital market players. The suggested rules wish indeed to take a step forward in the market harmonisation and aim at implementing a much more demanding market both to participants and to supervisors.

CHANGES IN THE CREDIT INSTITUTIONS AND FINANCIAL COMPANIES LEGAL FRAMEWORK

Tiago Correia Moreira / António Vieira de Almeida

Decree Law no. 114-A / 2014, August 1, and Decree-Law no. 114-B / 2014 of 4 August, amended the article 145-A and subsequent articles of the Credit Institutions and Financial Companie: Legal Framework ("**RGICSF**"). Such articles are related to the resolution measures that Bank of Portugal ("**BdP**") may take regarding the credit institutions incorporated in Portugal. These amendments are intended to partially implement in Portuguese jurisdiction the Directive No. 2014/59 /EC of May 15, 2014, in particular on its guiding principle which is to safeguard the legitimate interests of the creditors affected by the implementation of such resolution measures.

Bringing further amendments to RGICSF, Decree-Law No. 157/2014 of 24 October ("**DL 157/2014**") was published in order to transpose Directive No. 2013/36 / EC, of June 26, which constitutes, together with Commission Regulation (EC) no. 575/2013, of 26 June, the foundations of the EU legal framework regulating the access to credit institution`s activity, as well as the supervisory framework and prudential rules applicable to credit institutions and investment firms.

The following topics constitute the most significant changes introduced by DL 157/2014:

i. Definition of Credit Institution: the concept of credit institution is limited in order to obtain a more harmonized application at European level.

ii. Corporate Governance: a set of rules is created so to govern the adequacy of office holders with the functions of administrating and supervising credit institutions.

iii. Remuneration policies: the Directive 2006/48 determines the obligation to establish and maintain policies and practices of remuneration that are consistent with an effective risk management of the same.

iv. Sanctions regime: the sanctions regime of RGICSF is reformulated in order to make it more suitable and efficient, namely through the rationalisation of proceedings and the reinforcement of BdP`s intervention powers.

v. Reinforcement of BdP`s powers: increase in the range of corrective measures that BdP may impose in the event of non-compliance with rules governing the activity of the institutions.

New developments in european financial regulation: CRD IV, CRR and BRRD

In a prodigal year of legislative novelties in the European financial sector, have been published namely: Directive 2013/36/UE, transposed into Portuguese Law by Decree Law no. 157/2014, Regulation (**EU**) 575/2013 (**CRD IV** and **CRR**, respectively) on the access to the activity and prudential supervision of cre-dit institutions and investment firms (including capital adequacy requirements), and Directive 2014/59/UE (**BRRD**) on recovery and resolution of credit ins-titutions and investment companies, expected to be shortly transposed onto Portuguese jurisdiction. The Portuguese general banking framework (**RGICSF**) already provides for an exhaustive resolution regime to a large extent much aligned with the latter Directive. However, it should be highlighted that other than the direct sale of the activity and the set-up of bridge banks, which the Portuguese law already provides for, the BRRD Directive additionally enshrines two other resolution tools (the bail-in and the segregation of assets). In this respect should also be mentioned Regulation (EU) 806/2014 which establishes uniform rules and procedures within the framework of the Single Resolution Mechanism.

Financial Institution for Development

The Decree-Law no. 155/2014, of 21 October incorporated the Financial Institution for Development ("**IFD**") and approved its respective by laws.
The IFD's share capital is of € 100.000.000 (one hundred million euros), being exclusively held by the Portuguese State. IFD`s mission is to address market failures in the financing of viable small and medium non-financing enterprises.
As such, the IFD will have as its corporate purpose the management and administration of investment funds, other autonomous estates or similar instruments, all sustained by public funds to support the economy. Moreover, IFD will undertake credit tran-sactions, including the issuance of guarantees and other commitments. The IFD`s competences include the management of structural and investment funds related to the European Support Framework 2014-2020.

Retail deposits subject to different outflows for the purposes of liquidity reporting

It was published Bank of Portugal Instruction no. 7/2014, which establishes the obligation of credit institutions authorized to receive deposits to adopt the guidelines published by the European Banking Authority in respect of the reporting to the Bank of Portugal of outflows regarding retail deposits for liquidity purposes.
The present instruction is not applicable to savings banks with assets lower than EUR 50 million, having entered into force on 16 April 2014.

Ministerial Order no. 140/2014

On 8 July 2014, it was published the Ministerial Order no. 140/2014, by which it are defined the required implementation procedures of Law no. 63-A/2008, of 24 November, in the scope of new capitalisation transactions of credit institutions with recourse to State funds, namely through the:
(i) Establishment of new capital increase measures to be included in capital enhancement plans;
(ii) Definition of the additional elements to be included in a restructuring plan; and
(iii) Amendment of the rules pertaining to the remuneration of financial instruments subscribed by the State under the recapitalisation of credit institutions.

Basel Committee – Corporate Governance Principles for Banks

The Basel Committee (the "**Committee**") has published a consultative document on "Corporate Go-vernance Principles for Banks" to be submitted until 9 January 2015. This comes further to the Committee's initiative on "Principles for Enhancing Corporate Governance", dated 2010, and the document "Thematic Review on Risk Governance" issued on February 2013 and drafted by the Financial Stability Board.
It is in this context that the Committee has decided to review the 2010 guidance in order to (i) explicitly reinforce the collective oversight and risk governance responsibilities of the boards of directors, (ii) emphasize key components of risk governance such as risk culture, risk appetite and their relationship to the relevant banks' risk capacity, (iii) delineate the specific roles of the boards, board risk committees, senior management and control functions inclu-ding the CRO and internal audit, and (iv) strengthen overall checks and balances of the banks. Finally, it is also the intention of the Committee to establish and facilitate the identification of responsibilities of different parts of the organisation for addressing and managing risk.

Regulation of financial entities encompassed in a financial conglomerate

It was enacted Decree-Law no. 91/2014, of 20 June 2014, which partially transposes into Portugal the Directive no. 2011/89/EU of the European Parliament and of the Council, of 16 November 2011, regarding the supplementary supervision of financial entities in a financial conglomerate.
The main modifications produced by this diploma are to (i) guarantee that financial conglomerates are subject to supervision supplementary to supervision on a stand-alone, consolidated or group basis, without duplicating or affecting the group and regardless of the legal structure of the group (ii) avoid the implementation of supplementary supervision based on the risk and (iii) implement the required monitorisation and control of potential group risks posed to the financial conglomerate arising from share participations in other companies.

CMVM Regulation no. 2/2014

It was enacted CMVM Regulation no. 2/2014 which complements the legal framework contained on the current version of Decree-Law no 69/2004, of 25 March, being highlighted, in particular, the definition and computation formula to calculate the adequate financial autonomy ratio for the issuance of commercial paper, the mandatory elements regarding the semi-annual report to be published in case the issuances are not admitted to trading on a regulated market and the concretization of the report duty regarding the disclosure of material facts which may put at risk the repayment capacity and price of the commercial paper.

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