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The International Comparative Legal Guide to:

Securitisation 2013

6th Edition

A practical cross-border insight into securitisation work

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Published by
Global Legal Group Ltd.
59 Tanner Street
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EDITORIAL

Welcome to the sixth edition of *The International Comparative Legal Guide to: Securitisation*.

This guide provides the international practitioner and in-house counsel with a comprehensive worldwide legal analysis of the laws and regulations of securitisation.

It is divided into two main sections:

Five general chapters. These are designed to provide readers with a comprehensive overview of key securitisation issues, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in securitisation laws and regulations in 36 jurisdictions.

All chapters are written by leading securitisation lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor, Mark Nicolaides of Latham & Watkins LLP, for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The International Comparative Legal Guide series is also available online at www.iclg.co.uk.

Alan Falach LL.M.
Group Consulting Editor
Global Legal Group
Alan.Falach@glgroup.co.uk

Chapter 32

Portugal

Paula Gomes Freire

Benedita Aires

Vieira de Almeida & Associados

1 Receivables Contracts

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

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

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

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

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

(a) As a general rule, the Portuguese Civil Code foresees a legal interest rate. This rate is currently set at 4 per cent. Any stipulation of an interest rate superior to the legal rate must be made in writing. Also, stipulated rates may not exceed the legal interest rate by more than 3 per cent (if the obligation is secured) and by more than 5 per cent (if it is not). Interest stipulated over these limits is deemed reduced to the aforementioned maximum rates.

The general rules described in the previous paragraphs do not apply to credit institutions. However, in accordance with the Portuguese legal framework for consumer credit (Decree-Law no. 133/2009, dated 2 June 2009, implementing Directive 2008/48/CE on consumer credit agreements), the Annual Percentage Rate of Charge charged by credit institutions to consumers (including in relation to leasing transactions) is limited to a three-month average disclosed by the Bank of Portugal plus one third of that average. For the second quarter of 2013, this means that the maximum Annual Percentage Rate of Charge for consumer credit is (i) 26.5 per cent, for personal loans (other than loans for specific purposes such as health or education, or financial leases of equipment) and for credit cards, credit lines, current accounts or overdraft facilities, and (ii) between 8.9 and 16.9 per cent for automobile loans (depending on whether the vehicle is new or used. An amendment to Decree-Law no. 133/2009 shall enter into force on 1 July 2013 limiting the maximum Annual Percentage Rate of Charge for consumer credit regarding (i) personal loans (other than loans for specific purposes such as health or education, or financial leases of equipment) to 19.5 per cent, and (ii) credit cards, credit lines, current accounts or overdraft facilities to 27.5 per cent.

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

However, under the Portuguese Commercial Code, where the creditor is a commercial company (which may be a legal or a natural person, for instance an individual merchant acting as such) a special delay interest rate applies. At the moment, this rate is set at 7.75 per cent. The limitations to stipulated delay interest rates mentioned in the previous paragraphs also apply, with the legal rate being 7.75, instead of 4, per cent.

With regard to credit institutions, there is a special framework (Decree-Law no. 344/78, dated 17 November 1978) which also limits the delay interest rate which may be charged. In accordance with this special framework, credit institutions may stipulate delay interest rates of up to 4 per cent over (i) the rate which would be applied to the transaction if it had been renewed, or (ii) to the maximum permitted interest rate for active transactions of similar maturity. An amendment entering into force on 1 July 2013 shall lower this limit to 3 per cent.

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

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

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

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

2 Choice of Law - Receivables Contracts

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

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

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

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

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

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

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

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

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

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

2.4 CISG. Is the United Nations Convention on the International Sale of Goods in effect in Portugal?

As of 23 March 2012, the United Nations Convention on the International Sale of Goods is not in effect in Portugal.

3 Choice of Law - Receivables Purchase Agreement

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

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

In any case, given Article 14 of the Rome I Regulation (and, when the Rome I Regulation does not apply, the risk that a Portuguese court would attempt to enforce a solution similar to that which is set out therein), the parties to an assignment of Portuguese-originated receivables should comply with the obligor notification procedures set out in the Portuguese Civil Code (to the extent not covered by the exemption of notification procedures set out in the Securitisation Law).

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

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

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

From a Portuguese law perspective, we understand that the fact that the obligor or the purchaser are located outside Portugal would not cause a Portuguese court to decide differently from Example 1, however any mandatory foreign law requirements would need to be complied with.

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

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

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

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

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

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

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

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

3.6 Example 5: If (a) the seller is located in Portugal (irrespective of the obligor's location), (b) the receivable is governed by the law of Portugal, (c) the seller sells the receivable to a purchaser located in a third country, (d) the seller and the purchaser choose the law of the purchaser's country to govern the receivables purchase agreement, and (e) the sale complies with the requirements of the purchaser's country, will a court in Portugal recognise that sale as being effective against the seller and other third parties (such as creditors or insolvency administrators of the seller, any obligor located in Portugal and any third party creditor or insolvency administrator of any such obligor)?

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

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

4 Asset Sales

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

In the context of securitisation, the customary method for a seller to sell receivables to a purchaser is under the framework of the Securitisation Law, approved by Decree-Law no. 453/99, dated 5

November 1999, as amended from time to time (the "**Securitisation Law**"). The Securitisation Law has implemented a specific securitisation legal framework in Portugal, which contains a simplified process for the assignment of credits for securitisation purposes. In fact, the sale of credits for securitisation is effected by way of assignment of credits, such being the customary terminology.

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

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

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

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

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

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

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

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

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

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

4.4 Obligor Notification or Consent. Must the seller or the purchaser notify obligors of the sale of receivables in order for the sale to be effective against the obligors and/or creditors of the seller? Must the seller or the purchaser obtain the obligors' consent to the sale of receivables in order for the sale to be an effective sale against the obligors? Does the answer to this question vary if (a) the receivables contract does not prohibit assignment but does not expressly permit assignment; or (b) the receivables contract expressly prohibits assignment? Whether or not notice is required to perfect a sale, are there any benefits to giving notice – such as cutting off obligor set-off rights and other obligor defences?

In what concerns obligor notification or consent and if the relevant receivables contract is silent in this respect, please refer to question 4.2 above. On the contrary, if the relevant receivables contract expressly requires the consent or notification of the obligors, then such consent or notice is required in order for the assignment to be effective against such obligors. Any set-off rights or other means of defences exercisable by the obligors against the assignee are crystallised or cut-off on the relevant date the assignment becomes effective, (i) regardless of notification when such notice is dispensed as in question 4.2 above, or (ii) upon notification or awareness of the debtor when such is required.

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

Under the Securitisation Law, when applicable, notification to the debtor is required to be made by means of a registered letter (to be sent to the debtor's address included in the relevant receivables contract) and such notification will be deemed to have occurred on the third business day following the date of posting of the registered letter.

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

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

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

4.6 Restrictions on Assignment; Liability to Obligor. Are restrictions in receivables contracts prohibiting sale or assignment generally enforceable in Portugal? Are there exceptions to this rule (e.g., for contracts between commercial entities)? If Portugal recognises prohibitions on sale or assignment and the seller nevertheless sells receivables to the purchaser, will either the seller or the purchaser be liable to the obligor for breach of contract or on any other basis?

Restrictions on assignment existing in the underlying receivables contracts are enforceable in Portugal, even though such contractual prohibitions can only be effective towards the assignee if it were aware of such prohibition on the assignment date, as set out in the Portuguese Civil Code. If a given receivables contract comprises such a contractual prohibition on assignment and nevertheless the seller assigns the receivables to a third party, then the seller will be liable towards the obligor for breach of contract, i.e., wilful default ("*incumprimento culposo*") of an obligation, in accordance with the provisions of the Portuguese Civil Code.

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

The assignment agreement must identify, specifically, the receivables which are being assigned under a given contract, given that the object of the assignment must be determinable in accordance with the Portuguese Civil Code, such usually being done by listing the relevant receivables in a schedule to the assignment agreement. Such list of assigned receivables refers to standard characteristics of the relevant credits, without disclosing personal data of the obligors which would allow their identification, in accordance with the applicable data protection rules. Under the Securitisation Law, bulk assignments are not considered and the seller will not assign all of its undetermined receivables to a given purchaser (or all of its receivables other than a few identified receivables), rather identifying those receivables to be actually assigned and which comply with the Securitisation Law eligibility criteria.

4.8 Respect for Intent of Parties; Economic Effects on Sale. If the parties denominate their transaction as a sale and state their intent that it be a sale will this automatically be respected or will a court enquire into the economic characteristics of the transaction? If the latter, what economic characteristics of a sale, if any, might prevent the sale from being perfected? Among other things, to what extent may the seller retain (a) credit risk; (b) interest rate risk; (c) control of collections of receivables; or (d) a right of repurchase/redemption without jeopardising perfection?

The assignment of the receivables under a receivables sale agreement is generally construed to constitute a valid and true assignment of receivables from an originator to the assignee.

In terms of economic characteristics of an assignment of receivables, we note that the Securitisation Law requires a true and complete assignment, not being subject to any term or condition. Furthermore, neither the originating entity, nor any of its group companies, may provide any guarantees or enhancement in the context of the assignment or undertake responsibility for payments made by the underlying obligors. As such, the seller retaining credit risk, interest rate risk or control of collections (for its own benefit) or a right of repurchase could be seen as colliding with such true sale concept. In what concerns the control of collections, we would note additionally, that where the seller is a credit institution in the context of a securitisation, usually the purchaser mandates such seller to act as servicer of the receivables and ensure receipt of collections from the borrowers on behalf of the purchaser, it being clear however that any amounts so held by the servicer do not pertain to the servicer (even in a servicer event) and rather belong to the purchaser, in accordance with the Securitisation Law. In this sense, an assignment under the Securitisation Law will typically be a perfected assignment. In terms of repurchase, we would note that the seller would typically have an obligation of repurchase in case of hidden defects or false representations and warranties relating to the assets.

4.9 Continuous Sales of Receivables. Can the seller agree in an enforceable manner (at least prior to its insolvency) to continuous sales of receivables (i.e., sales of receivables as and when they arise)?

Without prejudice to question 4.10 below regarding future receivables, continuous sales would be possible under the Securitisation Law provided they are in compliance with question 4.7 above. However, sellers have rather opted to carry out securitisation transactions with revolving periods for assignment of additional receivables on a periodic basis, against payment out of collections and additional funding by issuance of further notes.

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

Pursuant to Article 4.3 of the Securitisation Law, future receivables may be assigned for securitisation purposes provided such receivables (i) arise from existing relationships, and (ii) are quantifiable (a confirmation of the estimations made by the originator in respect of the quantum of the future receivables that are being securitised usually being sought). In terms of structure, the originator will assign to the purchaser certain rights over the future receivables, in an amount equivalent to a given overcollateralised percentage of the debt service and the originator will guarantee that the future receivables generated during each collection period will be sufficient to cover the agreed debt service and, accordingly, for each interest period it will transfer to the purchaser an amount equivalent to 100 per cent of the debt service in respect of such interest period. Furthermore, in case the originator is unable to originate sufficient future receivables to meet its obligations for a given interest period, it will, in any event, pay to the purchaser an amount equal to such shortfall of future receivables, in order to ensure an amount equal to 100 per cent of the relevant debt service.

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

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

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

5 Security Issues

5.1 Back-up Security. Is it customary in Portugal to take a "back-up" security interest over the seller's ownership interest in the receivables and the related security, in the event that the sale is deemed by a court not to have been perfected?

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

5.2 Seller Security. If so, what are the formalities for the seller granting a security interest in receivables and related security under the laws of Portugal, and for such security interest to be perfected?

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

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

The purchasers in Portuguese securitisation transactions do not usually provide additional security to the noteholders and secured creditors of a given transaction, given that these entities benefit from the legal creditors' privilege mentioned in question 5.1 above. Other than obtaining the relevant approval for incorporation of the fund or asset digit code approval from the Portuguese Securities Market Commission ("**CMVM**") which confirms the applicability of the legal creditors' privilege in respect of a given portfolio of receivables pertaining to certain notes issued, no additional formalities are required in order to perfect such legal creditors' privilege, given that it is not subject to registration.

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

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

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

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

5.6 Trusts. Does Portugal recognise trusts? If not, is there a mechanism whereby collections received by the seller in respect of sold receivables can be held or be deemed to be held separate and apart from the seller's own assets until turned over to the purchaser?

In general, Portuguese law does not recognise the legal concept of a trust. However, in terms of collections received by the seller pertaining to a given securitisation transaction, we refer to the segregation principle and autonomous estate nature as set out in question 7.2 below. Furthermore, in respect of collections held by the servicing entity, we would also refer to question 4.8 above.

5.7 Bank Accounts. Does Portugal recognise escrow accounts? Can security be taken over a bank account located in Portugal? If so, what is the typical method? Would courts in Portugal recognise a foreign-law grant of security (for example, an English law debenture) taken over a bank account located in Portugal?

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

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

The Bank Accounts of the transaction may naturally be subject to security to the benefit of the transaction creditors. No specific or autonomous security is usually required as in in fact, Portuguese securitisation transactions have the benefit of a legal special creditor's privilege ("*privilégio creditório especial*") detailed in response to question 7.2 below, which exists in respect of all assets forming part of the portfolio allocated to each transaction related to an issuance of notes (including the transaction bank accounts) and therefore has effect over those assets existing at any given moment in time for the benefit of the STC that are allocated to the relevant issuance of securitisation notes (including the transaction bank accounts). Upon enforcement, the common representative of the noteholders or the trustee will control the cash flowing into the bank accounts on behalf of the secured creditors and noteholders and will ensure that they are repaid in full.

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

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

6 Insolvency Laws

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

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

This means that the assignment of the receivables under the Securitisation Law constitutes a valid and true assignment of receivables from the seller to the purchaser, namely to the extent that the insolvency of the seller will not cause the sale or assignment to be declared void from a legal stand point and neither any insolvency official, any borrower nor any creditor of the seller would be able to have set aside such assignment unless it could provide evidence as to the fact that the assignment had been made in bad faith (*vd*. Article 8 of the Securitisation Law). To set aside the assignment conducted on these terms, this would have to be made either by evidencing, in the context of the insolvency, the parties' bad faith or, within the period of five years following completion of the sale of the receivables, through an application for an unenforceability judgment ("*impugnação pauliana*") of such assignment and only providing the claiming party is capable of proving that: (i) the sale of the receivables has decreased the assets or increased the liabilities of the originator; (ii) the claim of the relevant creditor has arisen before completion of the sale of the receivables (although claims arising after completion of the date of receivables may also be affected to the extent that the relevant creditor provides evidence that such sale has been entered with for the specific purpose of avoiding the payment satisfaction of the creditors' claim); (iii) completion of the sale of the receivables has caused or worsened the insolvency situation of the originator; and (iv) both the originator and the purchaser acted in bad faith, that is, both of them were aware that completion of the sale of the receivables would have the effect described in subparagraph (iii) above.

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

Other than as indicated in question 6.3 below, and on the assumption that a true sale is in place, the only means to prohibit the exercise of rights by the purchaser would be through an injunction (*providência cautelar não especificada*) followed by the competent main court action.

6.3 Suspect Period (Clawback). Under what facts or circumstances could the insolvency official rescind or reverse transactions that took place during a "suspect" or "preference" period before the commencement of the insolvency proceeding? What are the lengths of the "suspect" or "preference" periods in Portugal for (a) transactions between unrelated parties and (b) transactions between related parties?

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

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

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

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

(c) that insolvency proceedings had commenced.

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

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

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

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

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

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

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

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

(h) reimbursement of shareholder loans occur, if made in the year that precedes the commencement of the corporate insolvency proceedings.

In any event, it must be noted that, should an assignment of receivable have been made under the Securitisation Law, the burden of proving bad faith is reversed as the assumption that the above typified acts were made in bad faith will not apply. If an assignment of receivables has been made under the Securitisation Law, the relevant interested parties must always prove bad faith in order for the assignment to be declared void.

6.4 Substantive Consolidation. Under what facts or circumstances, if any, could the insolvency official consolidate the assets and liabilities of the purchaser with those of the seller or its affiliates in the insolvency proceeding?

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

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

If the assignment of future receivables is made under the Securitisation Law then the indications provided under question 6.1 above will also apply and therefore such future receivables will not form part of the insolvency estate of the seller even when they only become due and payable or come into existence after the date of declaration of insolvency of the seller, provided that the requirements for assignment of future receivables as set out in question 4.10 are duly complied with prior to the date of declaration of insolvency of the seller.

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

7 Special Rules

7.1 Securitisation Law. Is there a special securitisation law (and/or special provisions in other laws) in Portugal establishing a legal framework for securitisation transactions? If so, what are the basics?

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

A special securitisation tax regime is also in place. It was established through Decree-Law 219/2001 dated 4 August 2011 (as amended from time-to-time) (the "**Securitisation Tax Law**").

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

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

The FTC structure is necessarily a tripartite one - (a) the Fund which must be managed by a (b) Fund Manager, pursuant to the terms of the applicable fund regulation and one sole (c) Depository, qualifying as a credit institution, must hold the assets of the Fund.

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

As Fund Managers are financial companies, their incorporation is subject to approval by the Bank of Portugal and their activity is generally subject to supervision by this regulatory authority.

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

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

Of relevant notice is also the fact that fund managers are subject to specific capital adequacy requirements. A minimum share capital requirement of Euro 250,000 applies while they must have own funds which are equal to, or higher than, a certain percentage of the net value of all funds managed: up to Euro 75 million – 0.5 per cent, in excess of Euro 75 million – 0.1 per cent.

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

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

STCs are also subject to specific capital adequacy requirements. A minimum share capital requirement of Euro 250,000 applies while they must have own funds which are equal to, or higher than, a certain percentage of the net value of issued outstanding securitisation notes: up to Euro 75 million – 0.5 per cent; and in excess of Euro 75 million – 0.1 per cent.

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

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

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

7.3 Non-Recourse Clause. Will a court in Portugal give effect to a contractual provision (even if the contract's governing law is the law of another country) limiting the recourse of parties to available funds?

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

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

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

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

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

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

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

8 Regulatory Issues

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

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

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

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

In case a third party replacement servicer is appointed to replace the seller as original servicer or a back-up servicer is required to be put in place, CMVM's approval to this effect is required whenever the seller is a credit institution, a financial company, an insurance company, a pension fund or a pension fund manager (as in these cases the law actually imposes that the seller remains as servicer).

When the seller is not one of any of the above types of entities, any third party may take on the servicing role, provided it is a reliable entity for the purposes of the Securitisation Law and it is approved by the CMVM.

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

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

Law no. 67/98 of 26 October 1998, (the "**Data Protection Law**"), which implemented Directive 95/46/EC, of 24 October 1995, provides for the protection of individuals regarding the processing and transfer of personal data.

Pursuant to the Data Protection Law, any processing of personal data requires express consent from the data subject, unless the processing is necessary in certain specific circumstances as provided under the relevant laws.

The entity collecting and processing personal data must obtain prior authorisation from the *Comissão Nacional de Protecção de Dados* (the "**CNPD**"), the Portuguese Data Protection Authority, before processing such data.

Transfer of personal data to an entity within a Member State does not require authorisation by the CNPD but must be notified to the relevant data subjects.

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

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

Decree Law no. 446/85, dated 25 October 1985, as amended by Decree Law no. 220/95, dated 31 July 1995 and Decree Law no. 249/99, dated 7 July 1999 (which implemented Directive 93/13/CEE of 5 April 1993) and Decree Law no. 323/2001, dated 17 December 2001 known as the *Lei das Cláusulas Contratuais Gerais* (the Law of General Contractual Clauses) prohibits, in general terms, the introduction of abusive clauses in contracts entered into with consumers. Pursuant to this law, a clause is deemed to be abusive if such clause has not been specifically negotiated by the parties and leads to an unbalanced situation insofar as the rights and obligations of the consumer (regarded as the weaker party) and the rights and obligations of the counterparty (regarded as the stronger party) are concerned and the law provides for an extended list of prohibited clauses. The use of such clauses that are prohibited will cause the relevant clauses to be considered null and void.

Decree Law no. 220/94, dated of 23 August 1994 states the minimum level of information to be included in loans, such as the annual effective.

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

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

9 Taxation

9.1 Withholding Taxes. Will any part of payments on receivables by the obligors to the seller or the purchaser be subject to withholding taxes in Portugal? Does the answer depend on the nature of the receivables, whether they bear interest, their term to maturity, or where the seller or the purchaser is located?

The Securitisation Tax Law has established the tax regime applicable to the securitisation transactions carried out under the Securitisation Law. Its main goal was to ensure a tax neutral treatment to the securitisation transactions set up by each one of the securitisation vehicles provided for in the Securitisation Law. Therefore, under Articles 2(5) and 3(4) of the Securitisation Tax Law, there is no withholding tax on (i) the payments made by the purchaser (either an STC or an FTC) to the seller in respect of the purchase of the receivables, (ii) the payments by the obligors under the loans, and (iii) the payments of collections by the servicer (who usually is also the seller) to the purchaser are not subject to Portuguese withholding tax. The nature or the characteristics of the receivables and the location of the seller do not have any influence on the tax regime referred to above. However the purchaser must be an STC or an FTC resident for tax purposes in Portugal in order to benefit from the special tax regime.

On the other hand, payments of interest and principal in respect of the various series of securitisation notes/units the purchaser issues are exempt from Portuguese income tax, including withholding tax, provided the relevant noteholder or unitholder qualifies as a non-Portuguese resident having no permanent establishment in Portugal. This exemption shall cease to apply if, for some reason: (i) more than 25 per cent of the share capital of the relevant noteholder or unitholder is held, either directly or indirectly, by Portuguese residents; or (ii) the relevant noteholder or unitholder becomes a resident of a jurisdiction listed as a tax haven in Ministerial order no. 292/2011 of 8 November 2011. To qualify for the exemption, noteholders or unitholders will be required to provide the Issuer with an adequate evidence of non-residence status prior to the respective interest payment date, according to requirements and procedures set forth in the Securitisation Tax Law.

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

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

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

Pursuant to the Securitisation Tax Regime, no stamp duty is due on: (i) the sale of receivables being securitised; or (ii) the fees and commissions which fall under Article 5 (i.e. referring to acts necessary to ensure a good management of the receivables and, if applicable, of the respective guarantees, and to ensure collection services, the administrative services relating to the receivables, all relations with the debtors and also maintaining, modifying and extinguishing acts related to guarantees, if any) and under Article 24 (i.e. referring to any of the described attributions of the depositary), both of the Securitisation Law, that may be charged by the servicer to the purchaser. In addition, no documentary taxes are due in Portugal.

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

The sale of receivables is VAT exempt under Articles 9(27)(a) and (c) of the Portuguese VAT Code, which are in line with Article 135(a) and (c) of the VAT Directive (EC Directive 2006/112/EC). Pursuant to the Securitisation Tax Regime, no Value Added Tax is due on the administration or management of securitisation funds and also on the fees and commissions regarding management services which fall under Article 5 and transactions undertaken by depositary entities pursuant to Article 24 of the Securitisation Law, as described in question 9.3 above.

9.5 Purchaser Liability. If the seller is required to pay value added tax, stamp duty or other taxes upon the sale of receivables (or on the sale of goods or services that give rise to the receivables) and the seller does not pay, then will the taxing authority be able to make claims for the unpaid tax against the purchaser or against the sold receivables or collections?

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

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

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

Paula Gomes Freire

Vieira de Almeida & Associados
Av. Eng.º Duarte Pacheco, no. 26
1070-110 Lisboa
Portugal

Tel: +351 21 311 3479
Fax: +351 21 352 2239
Email: pgf@vda.pt
URL: www.vda.pt

Law degree, University of Lisbon, Faculty of Law.
Post-graduate studies in English Commercial Law, College of Law, London University.
Joined Vieira de Almeida & Associados in 1996. She is a partner in the Banking & Finance area of practice where she has been actively involved in several transactions, in Portugal and abroad, mainly focused on the issue and placement of debt and equity instruments, namely EMTN programmes, commercial paper, preferential shares and public offerings. She has also been actively working on securitisation transactions and other types of asset-backed transactions.
Before joining the firm she worked as an associate at McKenna&Co, in London and at Azevedo Neves, Benjamim Mendes, Pereira de Miranda & Associados, in Lisbon.
Admitted to the Portuguese Bar Association and the Law Society of England and Wales.

Benedita Aires

Vieira de Almeida & Associados
Av. Eng.º Duarte Pacheco, no. 26
1070-110 Lisboa
Portugal

Tel: +351 21 311 3538
Fax: +351 21 352 2239
Email: bla@vda.pt
URL: www.vda.pt

Law degree, University of Oporto, Faculty of Law.
Post-graduate degree in Banking Law, University of Lisbon, Faculty of Law.
Post-graduate degree in Commercial Law, Portuguese Catholic University, Faculty of Law.
LL.M. Advanced Master of Law, Católica Global School of Law.
Joined Vieira de Almeida & Associados in 2003 and is currently a senior associate in the Banking & Finance practice area where she has been actively involved in several transactions, in Portugal and abroad, mainly focused on the issue and placement of debt and equity instruments and other structured financial products and classic financing. She has also been actively working in securitisation transactions, covered bonds issuances and other types of asset-backed transactions and recently in bank recapitalisation transactions.
Seconded to Clifford Chance LLP, London office, integrating the Structured Debt team from 2007 to 2008.
Admitted to the Portuguese Bar Association and registered as a European Registered Lawyer.

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GLG

Global Legal Group

59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: sales@glgroup.co.uk

www.iclg.co.uk