

# THE 2007 GLOBAL SECURITIZATION GUIDE

*A Compendium of Legal and Market Developments in Securitization*



# SECURITIZATION IN PORTUGAL

## MATURITY OF THE PORTUGUESE SECURITIZATION MARKET AND THE NEW PORTUGUESE SECURITIZATION LAW

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**PORTUGAL HAS CONTINUED** to witness further confirmation of the maturity in its securitization market with the successful closing of several transactions.

Besides the usual larger RMBS transactions—a segment that all Portuguese banking groups that are active in residential mortgage-lending have participated with undeniable success—the market has seen several securitization transactions of a smaller amount, from circa 10 million Euro up to 70 million Euro, involving non-performing loans (“NPL”).

We would also point out that new asset classes are being securitized in the market. Although the traditional asset types still prevail, such as consumer and mortgage loans, one could also witness securitization of future receivables and loans to small and medium enterprises (SME) and, (as aforementioned), of NPLs.

We believe these asset types will be of increasing use and that other asset classes will also be securitized, as a new securitization law is in the pipeline for enactment.

The market has also witnessed the first winding-up of a Portuguese securitization fund further to the exercise of a clean-up call. As usually foreseen in the relevant documentation, this call was enabled by the total amount of receivables then outstanding becoming less than 10% of their initial outstanding amount.

Additionally, the circumstance that it corresponds to an uneventful unwinding of a Portuguese transaction is also a confirmation that the market for these instruments out of our jurisdiction has matured.

The unwinding of more transactions is likely to increase over the next few years, as some issues approach maturity and the market shows that these transactions reach their final stage uneventfully.

Finally, we note that although securitization funds were initially more successful, the market is now much more balanced, as securitization companies are increasingly being used by market players.

This move proves that both types of vehicles are equally reliable and tax efficient, something that seems to be confirmed by the fact that out of the two biggest transactions in the Portuguese market last

year, in the amount of 1,500 million Euro each, one has used a securitization fund and the other a securitization company.

### NEW SECURITIZATION LAW

Last December, the Portuguese Securities’ Market Commission and the Portuguese Ministry of Finance submitted to public consultation a draft of a new securitization law, the enactment of which is expected to take place before year end..

The most relevant changes that are expected are as follows:

- The type of assets that may be securitized will be broader as the draft law allows for securitization of monetary income and of risks arising from any kind of asset, as long as they are quantifiable or foreseeable. Synthetic securitization is now also expressly foreseen;
- The type of entities which may resort to securitization will also be broader, including, in general, all natural and legal persons which have been developing economic activities for at least one year. With the necessary regulatory consent, undertakings of collective investment (UCI), real estate investment and venture capital funds may also securitise. We trust this will contribute to the diversification of the entities resorting to securitization—a market where banks as originators have been widely dominant;
- As an alternative to the issuance of units (a hybrid equity-debt instrument), securitization funds will be able to issue pure debt instruments, such as notes. This means that in the future and contrary to what has been market practice, these notes, instead of notes issued by an Irish SPV which would acquire the units issued by securitization funds, may be directly placed in the market.
- Finally, we would point out that the draft new law foresees a new type of securitization vehicle—the asset securitization company—which may manage both securitization funds and directly issue securitization notes and into which the current securitization fund managers and securitization companies shall be transformed.

In a nutshell, we believe the Portuguese securitization market is increasingly gaining maturity with asset diversification and, after a market confirmation of the soundness of its legal features, it is now ready to implement a revised and even more open minded securitization law, enabling the Portuguese securitization market to continue to be seen as innovative and creative, capable of defeating the constant threats posed by the small size of the country’s economy.