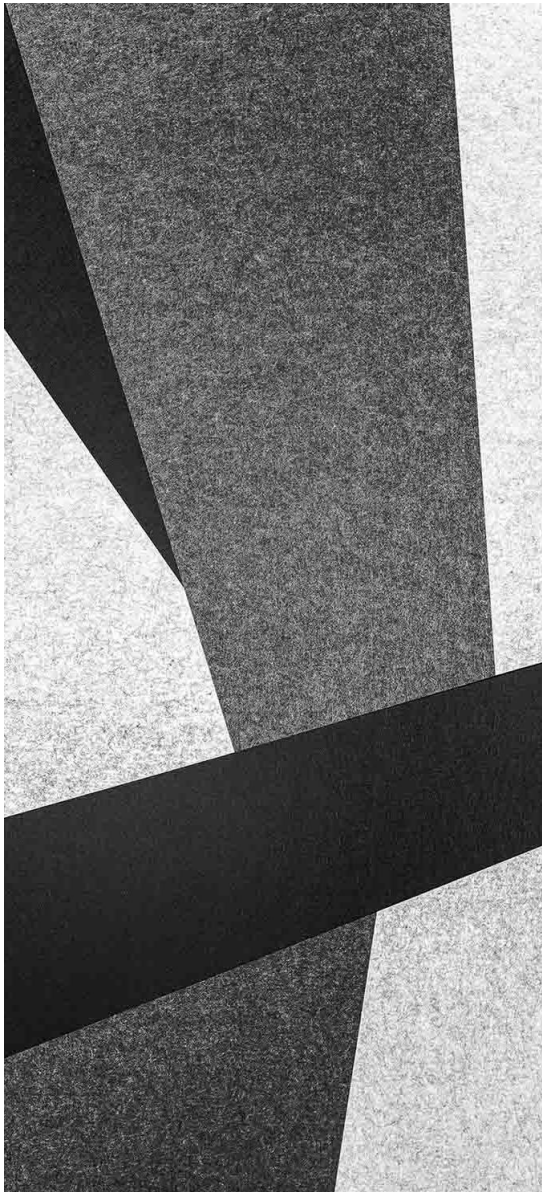

CMVM Regulation 2/2023: Covered bonds

CMVM Regulation 2/2023, published in the Official Gazette of the Portuguese Republic on July 28, 2023, implements the requirements of the Legal Regime on Covered Bonds and Decree-Law 59/2006 of March 20, which lays down the regime for covered bonds and mortgage credit institutions.

Portugal - Legal Update

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Key aspects

- > The Legal Regime on Covered Bonds approved by Decree-Law 31/2022 of May 6 (the "**LRCB**") gives the CMVM the power to supervise all covered bond programs. It also transfers to that regulatory entity the power to supervise mortgage bond and public sector bond programs approved under the previous legal regime—Decree-Law 59/2006 of March 20.
- > CMVM Regulation 2/2023 (the "**Regulation**") implements the required specific regulatory framework for covered bond programs.
- > The Regulation replaces the regulatory framework for mortgage bond and public sector bond programs and issues approved under the previous regime.



Main features of CMVM Regulation 2/2023

> Target entities

The Regulation applies to issuers of covered bonds and to issuers of mortgage bonds and public sector bonds with current programs and issues approved under the previous legal regime, but also to auditors and to the organic units of issuers that are responsible for monitoring the cover pool for covered bonds (article 1).

> Documentation and information that must be submitted with the application for authorization of covered bond programs and issues

Articles 2 and 3 of the Regulation list the documentation and information that must be submitted to the CMVM together with the application for authorization of covered bond programs and issues.

These include:

1. the report issued *(i)* by an auditor other than the auditor responsible for legally certifying the issuer's accounts, or *(ii)* by an organic unit of the issuer that, among other requirements, is not involved in the credit decision process (article 2(1)(h) of the Regulation and article 17 of the LRCB); and
2. the declaration from the issuer's management body stating that the requirements for application to authorize the program have been met (article 3).

For programs admitted to trading, and to simplify and streamline the regulation for the listing of securities, the CMVM allows the information contained in some required documents to be included in the prospectus (article 2(3)).

> The criteria for legal, contractual, or voluntary overcollateralization

The Regulation establishes the criteria to be met by covered bond programs and issues subject to the overcollateralization regime—i.e., for the legal, contractual or voluntary guarantee for the covered bonds to exceed the legal coverage requirement—which, under the LRCB, is limited to covered bonds secured by credits over or backed by state-owned companies not included in the scope of article 129 of Regulation (EU) 575/2013 of the European Parliament and of the Council of June 26, 2013 (the “**Capital Requirements Regulation**” or “**CRR**”) (article 4).

> Issuers' duties of information and bondholders' right of access to information about the cover pool

In addition to the duties of information to investors and to the CMVM provided in the LRCB, issuers are subject to periodic information duties to the CMVM. Every six months, they must prepare and



send to the CMVM (i) a chart showing the detailed composition of the cover pool for current programs and issues (article 5), and (ii) a liquidity chart for each current program (article 6).

The Regulation establishes the bondholders' right of access to information about the assets that comprise the cover pool for the covered bond programs and issues. The bondholders' common representative can ask the CMVM for access to that information in the following circumstances (article 8):

- a) Resolution, liquidation or revocation of the authorization of the issuing credit institution or the credit manager;
- b) Early maturity of covered bonds decided by a bondholders meeting; and
- c) Failure to pay the interest or principal of the issued covered bonds.

The Regulation clarifies that the duty to inform the CMVM of each covered bond issue and the established conditions within five days (article 31(2) of the LRCB) is considered to be performed upon disclosure of that information through the CMVM's information disclosure system.

> **Regulating non-converted covered bonds and public sector bonds**

Articles 12 to 19 of the Regulation lay down the regulatory framework for covered bond and public sector bond programs and issues approved under the previous regime—Decree-Law 59/2006 of March 20—and which are not the subject of conversion under article 7(5) of the LRCB.

This regulatory framework replaces the rules approved by the Bank of Portugal which cease to apply upon approval of the Regulation, as established in article 7(9) of the LRCB.

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