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I – The New Simplified Regime for the Mass Assignment of Credits

In the context of the Capitalize Programme – approved through the Council of Ministers Resolution No. 42/2016, of 18 August 2016 –, it has been recently published Decree-Law No. 42/2019, of 28 March 2019 (“DL 42/2019”), which establishes the simplified regime for the mass assignment of credits comprising innovative amendments in respect of the procedural qualification of assignees and the registry requirements, thus aiming at improving the processes and procedures connected with transactions envisaging the mass assignment of credits with resort to the appropriate technologic means.

This simplified regime of mass assignment of credits will enter into force on 1 July 2019.

Concept of mass assignment of credits

In order to qualify as a mass assignment of credits under the terms and for the purposes of DL 42/2019 a transaction shall meet the following three cumulative conditions:

- the assignee shall be a credit institution, a financial company or a credit securitization company;
- the global sale price of the credits being assigned shall be of at least EUR 50,000.00; and
- the credit portfolio being assigned shall be comprised of at least 50 different credits.

Rules on the procedural qualification of the assignee

In accordance with DL 42/2019’s preamble, the simplified regime now created intends to exempt the procedural qualification of the assignees in each judicial proceedings where a credit is being claimed. Hence, pursuant to article 3(1) of DL 42/2019, the assignee will be deemed “*qualified in all proceedings where the credits object of the assignment are under discussion*”. For said purposes, according to paragraph 2 of the same provision, the assignee shall file with the relevant proceedings a copy of the mass assignment of credits agreement. Notwithstanding the above, the procedural qualification can still be promoted, under the terms of article 356(2) of the Civil Procedural Code, also by the transferor or assignor or by the counterparty (i.e. the debtor of the credits being assigned).

Formal requirements of the mass assignment of credits

In respect of the contractual form of the mass assignment of credits agreement, DL 42/2019 requires that the same is made by means of a private document, which shall constitute a sufficient title for the purposes of the registration of the assignment of mortgage credits, or



of the respective security subject to registration, provided that an on-site certification of the signatures of the assignor and the assignee is attached to the same.

In this context it must be highlighted that, under the terms of article 578(2) of the Civil Code: “[u]nless otherwise provided for in a special law, the assignment of mortgage credits, whenever not made by means of a will and the mortgage is over real estate property, shall be made in a public deed or an authenticated private document”. Thus, DL 42/2019, despite the lack of an express statement in that regard, creates a simplified regime aiming at lightening the formal requirement set forth in general law, provided that the aforementioned certification of the signatures is made.

Registration of the mass assignment of credits transaction

Finally, in respect of the necessary registrations as a result of mass assignment of credits’ transactions, DL 42/2019 establishes the following rules:

- these registrations are performed in a centralized way through a single and expeditious process, by means of the submission of a single application before the registry services;
- the submission of these registrations exempts the presentation of the evidence of the matrix situation referred to in article 31 of the Land Registry Code; and
- the application for registration of mass assignment of credits has an urgent nature.

It shall also be noted that under the terms of article 5(4) of DL 42/2019, the way the aforementioned registration is to be completed will be subject to further regulation by an ordinance of the Government member responsible for the justice sector.

II – Legislation: Institutional and Material Banking Law

National law

Law No. 23/2019 – Official Journal No. 51/2019, Series I of 13-03-2019

Implements into national law Directive (EU) 2017/2399, of the European Parliament and of the Council, of 12 December 2017, determining the rules so that certain debt instruments may be eligible for the purposes of TLAC (*Total Loss-Absorbing Capacity*) minimum requirements, further to granting general and special credit privileges to credits emerging from deposits not guaranteed by the Deposit Guarantee Scheme.

Law No. 16/2019 – Official Journal No. 32/2019, Series I of 14-02-2019

Promotes the fifth amendment to Law No. 52/2003, of 22 August 2003 (Law on the prevention of terrorism), implementing into national law Directive (EU) 2017/541, of the European Parliament and of the Council, of 15 March 2017, which established the minimum rules regarding the determination of the criminal offences and of the sanctions in respect of



terrorist offences, offences related to a terrorist group and offences related to terrorist activities, as well as measures for the protection, support and assistance to terrorism victims.

Law No. 15/2019 – Official Journal No. 30/2019, Series I of 12-02-2019

Amends the Legal Framework of Credit Institutions and Financial Companies clarifying the powers of the parliamentary committees of the Parliament as to the access to banking and supervision information, establishing also the duties of transparency and scrutiny to which are subject the transactions of capitalization, resolution, nationalization or liquidation of credit institutions with resort to, directly or indirectly, public funds.

Decree-Law No. 19/2019 – Official Journal No. 19/2019, Series I of 28-01-2019

Approves the regime of real estate management and investment firms, promoting also the second amendment to Decree-Law No. 77/2017, of 30 June 2017, which created stimulation measures for the capital markets aiming at the diversification of the financing sources of the companies.

Notice No. 2553/2019 – Official Journal No. 32/2019, Series II of 14-02-2019

General Directorate of Treasury and Finance: Publication of the subsidiary rates of default interest in effect in the 1st semester of 2019: (i) the default interest subsidiary rate in relation to credits held by commercial companies, individual or legal persons, under the terms of § 3 of article 102 of the Commercial Code, in effect in the 1st semester of 2019, is of 7%; (ii) the default interest subsidiary rate in relation to credits held by commercial companies, individual or legal persons, under the terms of § 5 of article 102 of the Commercial Code and of Decree-Law No. 62/2013, of 10 of May, in effect in the 1st semester of 2019, is of 8%.

Dispatch No. 615/2019 – Official Journal No. 9/2019, Series II of 14-01-2019

Cabinet of the Secretary of State Assistant and of Finance: Grants a State guarantee to the fulfilment of the responsibilities of the Credit Recovery Fund before the participants, under article 71(2) of Law No. 69/2017, of 11 August 2017.

Parliamentary Activity

Draft Law No. 190/XIII of 20-03-2019

Following the statement of the Council of Ministers of 7 March 2019 it has been submitted before the Parliament Draft Law No. 190/XIII, of the Government's authorship, aiming at the amendment of the financial supervision model in Portugal in line with the existing model at the European level. This piece of legislation intends to create the National Financial Supervision System, also regulating its functioning, thus reorganizing the functions currently attributed to the regulatory and supervision authorities of the banking sector (i.e. the Bank



of Portugal), the insurance and pension funds sector (i.e. the ASF) and the capital markets (i.e. the CMVM).

According to the abovementioned statement, the aim of this piece of legislation is to assure the reinforcement of the coordination between the national supervisory authorities which is to be ensured by the National Council of Financial Supervisors, entity that was created in 2000 and that might come to assume new functions in macro-prudential issues. On the other hand, the aim is also to segregate the resolution funds in order for the resolution to be entrusted to a new authority, the Resolution and Guarantee Schemes Management Authority which will have organic autonomy and that will also include the management of the guarantee schemes that may be activated in connection with a resolution measure (i.e. the Resolution Fund, the Deposit Guarantee Scheme and the Investors Compensation Scheme).

It must be highlighted, however, that this is a piece of legislation still under legislative process and therefore subject to amendments, meaning that its content and the rules provided for therein are not yet definitive.

Community law

Commission Regulation (EU) 2019/412, of 14 March 2019, – EU Official Journal L-73, of 15-03-2019

Amends Regulation (EC) No 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council as regards International Accounting Standards 12 and 23 and International Financial Reporting Standards 3 and 11.

Commission Regulation (EU) 2019/402, of 13 March 2019 – EU Official Journal L-72, of 14-03-2019

Amends Regulation (EC) No 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council as regards International Accounting Standard 19.

Commission Regulation (EU) 2019/237, of 8 February 2019 – EU Official Journal L-39, of 11-02-2019

Amends Regulation (EC) No 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council as regards International Accounting Standard 28.

Commission Delegated Regulation (EU) 2019/411, of 29 November 2018 – EU Official Journal L-73, of 15-03-2019

Supplements Directive (EU) 2015/2366 of the European Parliament and of the Council with regard to regulatory technical standards setting technical requirements on development,



operation and maintenance of the electronic central register within the field of payment services and on access to the information contained therein.

Commission Delegated Regulation (EU) 2019/438, of 25 October 2018 – EU Official Journal L-63, of 04-03-2019

Supplements Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria for assessing the impact of an institution's failure on financial markets, on other institutions and on funding conditions.

Bank of Portugal Regulations

Regulation No. 1/2019 – Official Journal No. 21/2019, Series II of 30-01-2019

Updates the legal framework of the Bank of Portugal on the accountability elements, defining the accountability elements which must be published and sent to the Bank of Portugal, as well as the terms and periodicity of the relevant publication and submission.

Bank of Portugal Instructions

Instruction No. 6/2019 – Official Bulletin No. 2/2019, Supplement of 13-03-2019

Discloses, for the 2nd semester of 2019, the maximum rates that can be used in consumer financing agreements in the context of Decree-Law No. 133/2009, of 2 June 2009.

Instruction No. 5/2019 – Official Bulletin No. 1/2019, 2nd Supplement of 30-01-2019

Defines the information requirements to report periodically to the Bank of Portugal by entities subject to its supervision in the context of the prevention on money laundering and terrorist financing, including as an annex to it the template of the report on the prevention of money laundering and terrorist financing (AMLR).

Instruction No. 4/2019 – Official Bulletin No. 1/2019, Supplement of 25-01-2019

Amends Instruction No. 15/2014, whose addressees are credit institutions, regarding decentralized deposits and withdrawals of euro notes and coins.

Instruction No. 3/2019 – Official Bulletin No. 1/2019, Supplement of 25-01-2019

Determines the procedures regarding the internal capital self-assessment process (ICAAP) and establishes the respective information reporting templates regarding ICAAP, revoking Instruction 15/2007 establishing that institutions should have a self-assessment process in respect of the internal capital's adequacy aiming at ensure that the risks are assessed and that the internal capital is adequate to the risk profile.

Instruction No. 2/2019 – Official Bulletin No. 1/2019, Supplement of 25-01-2019

Determines the procedures regarding the internal liquidity adequacy self-assessment process (ILAAP) and establishes the respective information reporting templates regarding ILAAP.



Instruction No. 1/2019 – Official Bulletin No. 1/2019, of 15-01-2019

Regulates the reporting duty regarding incidents of severe nature related with the provision of payment services under the Second Payment Services Directive.

Bank of Portugal Circular Letters

Circular Letter No. CC/2019/00000025 – Official Bulletin No. 2/2019, of 15-02-2019

Communicates that credit institutions and investment firms shall meet the requirements provided for in the Recommendations of the European Banking Authority (EBA) regarding the external outsourcing of cloud computing services' providers, and that they shall communicate to the Bank of Portugal the hiring of such services in respect of activities deemed material, via BPnet Portal.

III – Legislation: Institutional and Material Insurance Law

National law

Law No. 7/2019 – Official Journal No. 11/2019, Series I of 16-01-2019

Approves the legal framework on insurance and reinsurance distribution, implementing into national law Directive (EU) 2016/97, amends Law No. 147/2015, of 9 September 2015, which approves the legal framework on the access and pursuit of the insurance and reinsurance activity, as well as the procedural regime applicable to the special offences in the pension funds and insurance sector and to the administrative offences whose processing is of the responsibility of the Insurance and Pensions Funds Supervisory Authority, and revokes Decree-Law No. 144/2006, of 31 July 2006.

Decree-Law No. 37/2019 – Official Journal No. 53/2019, Series I of 15-03-2019

Clarifies the transitional regime on the supervision of mutualist associations.

Regulatory standards of the Insurance and Pension Funds Supervisory Authority (ASF)

ASF Standard No. 8/2018-R – Official Journal No. 12/2019, Series II of 17-01-2019

Regulates the direct payment of pensions by the pension fund determining, for the purposes of article 8(7) of Decree-Law No. 12/2006, of 20 January 2006, the terms under which pensions resulting from defined-contribution pension plans may be paid directly by the pension fund.



IV – Legislation: Institutional and Material Capital Markets Law

Community law

Regulation (EU) 2019/452 of the European Parliament and of the Council, of 19 March 2019 – EU Official Journal L-79 I, of 21-03-2019

Establishes a framework for the screening, by Member States, of foreign direct investments into the Union on the grounds of security and public order and establishes a mechanism for between the Member States and the Commission.

Commission Implementing Regulation (EU) 2019/365, of 13 December 2018 – EU Official Journal L-81, of 22-03-2019

Lays down implementing technical standards with regard to the procedures and forms for exchange of information on sanctions, measures and investigations in accordance with Regulation (EU) 2015/2365 of the European Parliament and of the Council, on transparency of securities financing transactions and of reuse.

Commission Implementing Regulation (EU) 2019/364, of 13 December 2018 – EU Official Journal L-81, of 22-03-2019

Lays down implementing technical standards with regard to the format of applications for registration and extension of registration of trade repositories in accordance with Regulation (EU) 2015/2365 of the European Parliament and of the Council, on transparency of securities financing transactions and of reuse.

Commission Implementing Regulation (EU) 2019/363, of 13 December 2018 – EU Official Journal L-81, of 22-03-2019

Lays down implementing technical standards with regard to the format and frequency of reports on the details of securities financing transactions (SFTs) to trade repositories in accordance with Regulation (EU) 2015/2365 of the European Parliament and of the Council and amending Commission Implementing Regulation (EU) No 1247/2012 with regard to the use of reporting codes in the reporting of derivative contracts.

Commission Delegated Regulation (EU) 2019/362, of 13 December 2018 – EU Official Journal L-81, of 22-03-2019

Amends Delegated Regulation (EU) No 150/2013 as regards regulatory technical standards specifying the details of the application for registration as a trade repository.

Commission Delegated Regulation (EU) 2019/361, of 13 December 2018 – EU Official Journal L-81, of 22-03-2019

Amends Delegated Regulation (EU) No 151/2013 with regard to access to the data held in trade repositories.



Commission Delegated Regulation (EU) 2019/359, of 13 December 2018 – EU Official Journal L-81, of 22-03-2019

Supplements Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the application for registration and extension of registration as a trade repository.

Commission Delegated Regulation (EU) 2019/358, of 13 December 2018 – EU Official Journal L-81, of 22-03-2019

Supplements Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to regulatory technical standards on the collection, verification, aggregation, comparison and publication of data on securities financing transactions (SFTs) by trade repositories.

Commission Delegated Regulation (EU) 2019/357, of 13 December 2018 – EU Official Journal L-81, of 22-03-2019

Supplements Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to regulatory technical standards on access to details of securities financing transactions (SFTs) held in trade repositories.

Commission Delegated Regulation (EU) 2019/356, of 13 December 2018 – EU Official Journal L-81, of 22-03-2019

Supplements Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of securities financing transactions (SFTs) to be reported to trade repositories.

Commission Delegated Regulation (EU) 2019/397, of 19 December 2018 – EU Official Journal L-71, of 13-03-2019

Amends Delegated Regulation (EU) 2016/2251 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council as regards the date until which counterparties may continue to apply their risk-management procedures for certain OTC derivative contracts not cleared by a CCP.

Commission Delegated Regulation (EU) 2019/396, of 19 December 2018 – EU Official Journal L-71, of 13-03-2019

Amends Delegated Regulation (EU) 2015/2205, Delegated Regulation (EU) 2016/592 and Delegated Regulation (EU) 2016/1178 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council as regards the date at which the clearing obligation takes effect for certain types of contracts.



Regulations and Circulars of the Securities Market Commission (CMVM)

CMVM Regulation No. 3/2019 – Official Journal No. 61/2019, Series II of 27-03-2019

First amendment to CMVM Regulation No. 2/2016, of 18 July 2016, which regulates the procedures on the handling of complaints filed by non-qualified investors in respect of entities subject to CMVM's supervision and the resolution of patrimonial conflicts regarding financial instruments.

CMVM Regulation No. 2/2019 – Official Journal No. 59/2019, Series II of 25-03-2019

Deepens the Legal Regime of Securities Investment Firms for the Development of the Economy (SIMFE).

CMVM Regulation No. 1/2019 – Official Journal No. 50/2019, Series II of 12-03-2019

Extends the scope of application of CMVM Regulations 4/2007 and 5/2007 to the organized trading systems, regulates the communication of the members of the supervisory and management body of the managing entities of organized or multilateral trading systems and approaches the communication of holders of qualified shareholdings in entities of organized or multilateral trading systems.

Decisions of the European Securities and Markets Authority (ESMA)

ESMA Decision (EU) 2019/509 of 22 March 2019 – EU Official Journal L-85, of 27-03-2019

Renews the temporary prohibition on the marketing, distribution or sale of binary options to retail clients.

ESMA Decision (EU) 2019/155 of 23 January 2019 – EU Official Journal L-27, of 31-01-2019

Renews the temporary restriction on the marketing, distribution or sale of contracts for differences to retail clients.

V – Relevant case-law

Judgement of the Appealing Court of Coimbra, of 15 January 2019 (proceedings No. 5600/11.0TBLRA.C1)

Without proof that the client acted with fraud, or that it has not complied with its obligation to use the payment instrument in accordance with the terms and conditions regulating its issuance and use, either with intent or gross negligence, namely the rules on the access key to the *homebanking* service, the responsibility for the fraudulent use of a bank account, through the internet, lies with the bank, under the terms of the Legal Framework of Payment Institutions and Payment Services (at the time enshrined in Decree-Law No. 317/2009, of 30 October 2009).



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