
Banking, Finance and Capital Markets

Newsletter Portugal

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I – Securitization General Framework

Law no 69/2019, of August 28 (“**Law 69/2019**”) aimed at implementing into the Portuguese jurisdiction the Regulation (EU) 2017/2402 of the European Parliament and of the Council, of December 12 2017 (“**Regulation**”) was published, establishing a general framework for securitization and creating a specific framework for simple, transparent and standardized securitization (“**STS**”).

Law 69/2019 amends the legal framework for securitization, approved by Decree-Law no 453/99, November 5 (“**Securitization Law**”), and the Portuguese Securities Code.

A. TYPES OF SECURITIZATION

Some of the most relevant amendments set out by Law 69/2019 are (i) the establishment in the Portuguese jurisdiction of a framework for the Non-STS Securitization and (ii) the creation of a specific framework for simple, transparent and standardized securitization (STS Securitization).

These different frameworks seek to fulfill the purpose of separating the complex products from the transactions with greater simplicity and transparency, which are now regulated under the STS securitization framework. In addition to traditional securitization, Law 69/2019 also sets out the synthetic securitization, through the transfer of cash flow, rights and obligations or risks, linked to underlying credits, by the use of credit derivatives or guarantees without the assignment of assets.

> *Non-STS securitization*

Under the terms of Law 69/2019, the assignment of risks and credits (overdue and becoming due) is subject to the requirements set forth in article 4(1) of the Securitization Law, notably: (i) such risks and credits shall be quantifiable or predictable cash flows, in particular on the basis of statistical models, and (ii) that its existence and enforceability is guaranteed by the originator.

Law 69/2019 also sets out new requirements for the entities, namely: (i) servicers shall have sufficient expertise in servicing exposures of a similar nature to those which have been securitized (ii) and have adequate policies, procedures and risk-management controls relating to the servicing of exposures that shall be duly documented.



> *STS Securitization*

Whilst setting out a specific framework for the STS Securitization, type of securitization which aggregates the transactions that fulfill the requirements set forth under articles 20 to 22 or 24 of the Regulation,

Law 69/2019 also establishes an extensive list of misdemeanor penalties, with fines that can range between EUR 25,000.00 to EUR 50,000.00, which may be cumulated with ancillary penalties (such as offender's temporary interdiction from performing its activity).

The supervision of securitization players' compliance with the duties imposed by the Regulation is distributed by market sector, between the Portuguese Securities Market (CMVM), the Portuguese Central Bank (Banco de Portugal) and the Insurance Authority (ASF). The Portuguese Securities Market is also the entity responsible for supervising securitization companies.

> *Synthetic securitization*

The new wording of the Securitization Law expressly foresees that the securitization companies and funds may be used as securitization vehicles for synthetic securitization transactions.

B. OTHER AMENDMENTS

Please find below a summary of the main features and innovations introduced by Law 69/2019:

> *Securitization players*

The only players admitted in securitization transactions are:

- a) Securitization special purpose entity (SSPE) (including securitization funds and securitization companies);
- b) Originator: entities referred in the article 2(3) of the Regulation, including Portuguese State and other public legal persons, credit institutions, financial companies, investment companies, insurance companies, pension funds and management companies of pension funds;
- c) Sponsor: credit institutions or investment companies (different from the originator) with or without registered office in European Union;
- d) Servicer;
- e) Original lender;
- f) Independent entities;
- g) Third parties under the terms of article 27(2) of the Regulation.



➤ *Purchasing and holding of real estate assets*

Securitization funds may purchase or hold (for a maximum of two years) real estate assets, for as long as such real estate assets are acquired following payment in lieu or enforcement of real estate guarantees over such assets.

➤ *Early reimbursement of securitization notes*

Law 69/2019 expressly provides that securitization companies may, more than once, (full and partial) early reimbursing the notes, for as long as equal treatment of noteholders of the same class is ensured. This amendment provide a greater flexibility to credit institutions structure their transaction.

C. ENTRY INTO FORCE

Law 69/2019 has entered into force on August 29, 2019. Securitization transactions carried out prior to the entry into force of Law 69/2019 remain subject to the previous legal framework.



II – Legislation: Institutional and Material Banking Law

National law

Decree-Law No 147/2019 – Official Journal No 187/2019, Series I of 30-09-2019

Approves the contingency measures to be applied in a scenario where the United Kingdom leaves the European Union without an agreement regulating matters related with financial services and social security.

Law No 83/2019 – Official Journal No 186/2019, Series I of 03-09-2019

Approves the Housing Framework Law, admitting, in the context of the home credit, the transfer in lieu of the property as a way of extinguishing the obligations of the debtor, regardless of the value attributed to the property for the purpose, provided that this option is contractually established.

Law No 63/2019 – Official Journal No 156/2019, Series I of 16-08-2019

Promotes the fifth amendment to Law No 24/96, of July 31, 1996, which establishes the legal regime applicable to the defense of consumers, determining that, by option of the consumer, there shall become subject to the necessary arbitration or mediation the consumer disputes with a lower economic value (i.e., up to EUR 5,000), establishing as mandatory the notification of the possibility of representation by lawyer or solicitor in said disputes.

Decree-Law No 106/2019 – Official Journal No 153/2019, Series I of 12-08-2019

Promotes the transfer of the deposit guarantee component of the Mutual Agricultural Credit Guarantee Fund to the Deposit Guarantee Fund, amends Decree-Law No 298/92, of December 31, 1992, which approved the General Framework of Credit Institutions and Financial Companies, and revokes Decree-Law No 345/98, of September 11, 1998, which regulates the functioning of the Mutual Agricultural Credit Guarantee Fund.

Ordinance No 239/2019 – Official Journal No 144/2019, Series I of 30-07-2019

Determines the terms and conditions of the exemption of the application of part of the requirements and procedural steps on which depends the authorization of payment institutions, pursuant to Decree-Law No 91/2018, of November 12, 2018, which approved the legal framework of the payment services and electronic money.

Ordinance No 228/2019 – Official Journal No 138/2019, Series I of 22-07-2019

Sets the terms under which shall be promoted the registration of transactions of mass assignment of credits provided for in Decree-Law No 42/2019, of March 28, 2019.

Ordinance No 219/2019 – Official Journal No 134/2019, Series I of 16-07-2019

Regulates the structure and content of the file to be used for the purposes of complying with the obligation of communication of information referring to financial accounts whose



holders or beneficiaries are resident in the national territory, provided for in article 10-A(1) of Decree-Law No 64/2016, of October 11, 2016.

Council of Ministers Resolution No 140/2019 – Official Journal No 158/2019, Series I of 20-08-2019

Creates the coordination council of the national economy support financial institutions.

Notice No 11571/2019 – Official Journal No 135/2019, Series II of 17-07-2019

General Directorate of Treasury and Finance: Publication of the subsidiary rates of default interest in effect in the 2nd 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, 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 May 10, 2013, is of 8%.

European Union law

Directive (EU) 2019/1153 of the European Parliament and of the Council, of 20 June 2019 – EU Official Journal L-186, of 11-07-2019

Lays down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA.

Bank of Portugal Instructions

Instruction No 17/2019 – Official Bulletin No 9/2019, Supplement, of 27-09-2019

Regulates the reporting of statistic information to the Bank of Portugal for compilation of securities statistics, in the component of securities portfolios of financial groups.

Instruction No 16/2019 – Official Bulletin No 8/2019, Supplement, of 11-09-2019

Discloses, for the 4th quarter of 2019, the maximum rates that can be used in consumer financing agreements in the context of Decree-Law No 133/2009, of June 2, 2009.

Instruction No 15/2019 – Official Bulletin No 7/2019, Supplement, of 05-08-2019

Amends Instruction No 3/2015, which established standardized rules for the implementation of the monetary policy of the Eurosystem in accordance with the guidelines of the European Central Bank.

Instruction No 14/2019 – Official Bulletin No 7/2019, Supplement, of 29-07-2019

Promotes the amendment to Instruction No 7/2012, which established the measures of temporary nature on the eligibility criteria for eligible collateral for credit transactions of the Eurosystem.



Instruction No 13/2019 – Official Bulletin No 7/2019, of 15-07-2019

Establishes the procedures of communication to the Bank of Portugal in the context of Regulation (EU) No 648/2012 of the European Parliament and of the council, of 4 July 2012, on OTC derivatives, central counterparties and trade repositories.

Bank of Portugal Circular Letters

Circular Letter No CC/2019/00000061 – Official Bulletin No 7/2019 of 12-07-2019

Recommends to the credit institutions supervised by the Bank of Portugal that they adopt the necessary measures aiming at complying with the guidelines of the European Bank Authority on management of non-performing and forborne exposures (EBA/GL/2018/06), which have entered into force on June 30, 2019.

Decisions of the European Central Bank (ECB)

Decision (EU) 2019/1558 of the ECB, of 12 September 2019 – EU Official Journal L-238, of 16-09-2019

Amends Decision (EU) 2019/1311 on a third series of targeted longer-term refinancing operations.

Decision (EU) 2019/1376 of the ECB, of 23 July 2019 – EU Official Journal L-224, of 28-08-2019

Determines the criteria applicable to the delegation of the power to adopt decisions on passporting, acquisition of qualifying holdings and withdrawal of authorizations of credit institutions.

Decision (EU) 2019/1349 of the ECB, of 26 July 2019 – EU Official Journal L-214, of 16-08-2019

Establishes the procedure and conditions for exercise by a competent authority of certain powers in relation to oversight of systemically important payment systems.

III – Legislation: Institutional and Material Insurance Law

National law

Ordinance No 238/2019 – Official Journal No 144/2019, Series I of 30-07-2019

Establishes the criteria for fixing the minimum capital and further minimum requirements of the professional civil liability insurance or of equivalent guarantee to whose subscription are obliged the entities which file authorization applications to provide services of payment initiation and/or information on accounts.



Parliamentary activity

Draft Law No 209/XIII – Parliament Official Journal, Series A, No 126/XIII/4, of 12-07-2019

Approves the new legal framework for the creation and functioning of pension funds and managing entities of pension funds, implementing Directive (EU) No 2016/2341.

European Union law

Commission Implementing Regulation (EU) 2019/1285, of 30 July 2019 – EU Official Journal L-202, of 31-07-2019

Lays down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 30 June 2019 until 29 September 2019 in accordance with Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of insurance and reinsurance.

Standards of the Insurance and Pension Funds Supervisory Authority (ASF)

ASF Regulatory Standard No 6/2019-R (pending publication on the Official Journal)

Establishes, in the context of the legal framework on insurance and reinsurance distribution, approved by Law No 7/2019, of January 16, 2019, the minimum contents in terms of adequate qualification, training and continuous professional improvement and determines the procedures to be followed by those who pursued the activity under the previous regime and that intend now to conform the respective qualification with the new requirements in this regard.

ASF Regulatory Standard No 5/2019-R – Official Journal No 185/2019, Series II, Part E, of 26-09-2019

Establishes the quarterly indices of capital updates for the policies of the «Fire and forces of nature» class of insurance with beginning or maturity date in the fourth quarter of 2019.

IV – Legislation: Institutional and Material Capital Markets Law

National law

Decree-Law No 144/2019 – Official Journal No 182/2019, Series I of 23-09-2019

Promotes the transfer to the Securities Market Commission of the supervision competences over the managing entities of investment funds and securitization funds, creates the credit specialized alternative investment undertakings, and the amendment to various pieces of legislation of the financial sector.



Law No 97/2019 – Official Journal No 169/2019, Series I of 04-09-2019

Promotes the first amendment, by parliamentary appreciation, to Decree-Law No 19/2019, of January 28, 2019, which approved the regime of real estate investment and management companies.

Regulation No 686/2019 – Official Journal No 167/2019, Series II of 02-09-2019

Authority for the Economic and Food Safety: Regulates the specific duties on the prevention of money laundering and terrorist financing of the managing entities of crowdfunding platforms by donation or reward.

European Union law

Regulation (EU) 2019/1156 of the European Parliament and of the Council, of 20 June 2019 – EU Official Journal L-188, of 12-07-2019

Facilitates cross-border distribution of collective investment undertakings (“CIUs”), establishing standardized rules on the publication of national provisions in terms of marketing requirements for CIUs and on promotional communications addressed to investors. Amends Regulations (EU) No 345/2013 and (EU) No 346/2013, of 17 April 2013, on European venture capital funds and European social entrepreneurship funds, respectively, as well as Regulation (EU) No 1286/2014, of 26 November 2014, on key information documents for packaged retail and insurance-based investment products (PRIIPs).

Directive (EU) 2019/1160 of the European Parliament and of the Council, of 20 June 2019 – EU Official Journal L-188, of 12-07-2019

Amends, with regard to cross-border distribution of collective investment undertakings, Directive 2009/65/EC, of 13 July 2009, on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), and Directive 2011/61/EU, of 8 June 2011, on alternative investment fund managers.

Regulations of the Securities Market Commission (CMVM)

CMVM Regulation No 6/2019 – Official Journal No. 152/2019, Series II of 09-08-2019

Establishes the procedures and contents regarding the provision of information to the CMVM by the entities qualified as settlement internalizers, regarding the internalization of settlements they perform.

Circulars of the Securities Market Commission (CMVM)

Circular of the CMVM of 29-08-2019

CMVM recommendations on the provision, in the situations foreseen in articles 60 and 62 of the General Framework of Collective Investment Undertakings, approved by Law No 16/2015, of February 24, 2015, of the opinion of the auditor of the collective investment



undertaking which expressly addresses the evaluation of the assets of the alternative investment undertaking.

Circular of the CMVM of 01-08-2019

CMVM recommendations on the entry into force of Regulation (EU) 2019/834 of the European Parliament and of the Council, of 20 May 2019, which amends Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories.

V – Relevant Case Law

Judgement of the Supreme Court of Justice, of 11 July 2019 (proceedings No 901/17.7T8VRL.G2.S1)

The information to be provided by a financial intermediary to its client has intensity levels, depending on the type of service provided by the intermediary: if the intermediary recommends an investment, the information duties are especially intense; if the intermediary provides a “counter” service of the type of receiving subscriptions of financial products, opening of securities account or its operation, the intensity is another. In any case, however, irrespectively of the intensity and the type of information detail, the duties regarding the veracity of the information and remainder features associated therewith do not vary.

The duty to provide information falling on the financial intermediary does not exempts – completely – the investor of adopting a diligent behavior, aiming at its total enlightenment. There has to exist a minimum level of care by the client who goes to a bank to subscribe a financial product.



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