PARTICIPATING LOANS

Portuguese banks, venture capital funds and other specialized lenders are now authorised to grant participating loans with remuneration indexed to the borrower's financial results and convertible into shares.

Portugal approved a new law regulating participating loans through Decree-Law 11/2022 of 12 January 2022, which has the purpose of fostering investment and capitalise businesses.

Participating loans are onerous credit agreements, in the form of loans or debt securities. Their remuneration and repayment may depend partially or entirely on the borrower's financial results. Participating loans may be converted into equity if the agreement so allows.

Participating loans are "quasi-equity" instruments that present a higher risk than senior debt and lower risk than common equity, that results from the following:

- Participating loans may be classified as equity, provided their remuneration depends on the financial results of the borrower/issuer and the repayment or amortization depends on the satisfaction of the conditions for the distribution of profits set out in Articles 32 and 33 of the Portuguese Companies Code;
- The borrower cannot, among other things, repay shareholder's loans or ancillary/supplementary capital contributions, amortizing shares or reducing the share capital without the express authorisation of the lender while the contract or securities representing the debt are not fully amortised; and
- In the event of insolvency of the borrower/issuer, they are treated as subordinated claims, but ranked above the claims of shareholders and other persons specifically related to the debtor.

In addition to the possibility of participating in the borrower's financial results, participating loans may include equity conversion rights, such as breach of payments obligations.

This type of instrument is not new. There is a similar regime in Spain, where this type of loan is, however, limited to shareholders. Unlike Spain, Portugal restricted the granting of participating loans to entities that are licensed to provide credit on a professional basis, such as banks, loan funds and venture capital funds, as well as certain securities investment companies. This distinction may imply a different approach in each country.

For banks, participating loans can be a tool used in the restructuring of credits of distressed companies whereas for investment funds and other entities, these loans will be an alternative to shares or convertible bonds as investment instrument.

For borrowers, it is an alternative financing instrument which allows lenders to received a variable remuneration indexed to the borrower's results, with a positive impact on the borrower's equity, without necessarily implying the opening of the share capital to those lenders.

CONTACTS

ANTÓNIO MACEDO VITORINO

AVITORINO@MACEDOVITORINO.COM

ANDRÉ DIAS

ADIAS@MACEDOVITORINO.COM

JOÃO COMENDA

JCOMENDA@MACEDOVITORINO.COM