MARKET AND LEGAL OVERVIEW

THE PORTUGUESE BANKING SECTOR

MACEDO VITORINO

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Since the incorporation of the firm, we have been involved in several high profile transactions in all of the firm's fields of practice, including banking and finance, capital markets, real estate, M&A, complex disputes and corporate restructurings.

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CONTENTS

INTRODUCTION

Since the 2008 financial crisis, the Portuguese banking sector has experienced a complete overhaul. Banco Espírito Santo ("BES"), one of Portugal's oldest and largest banks, collapsed, along with other smaller banks, including BPN and BPP. Banks in general suffered heavy losses caused by troubled assets in their balance sheets and European pressure to increase solvability and capital ratios. As a result, the government owned Caixa Geral de Depósitos ("CGD"), MillenniumBcp and BPI resorted to government help to overcome their difficulties and meet the new requirements.

Between 2007 and 2018 the Portuguese government spent 23.8 billion euros in aids to the banking sector. Private shareholders of domestic banks also paid a steep price for the restructuring of the sector. Between 2008 and 2012, losses of Portuguese banks exceeded 14.8 billion euros and around 9.4 billion euros between 2012 and 2018. Stocks of the surviving banks fell between 60% and 90% since the financial crisis. Since then, CGD, MillenniumBcp, BPI and Novo Banco, which succeeded to BES, have redressed their business and started to generate cash for their shareholders.

The banking sector consolidated around the five largest banks. Only a few small banks survived. Spanish banks now have a very significant presence in the domestic market. Santander continued to grow its market share. In 2016, Bankinter acquired Barclays' branch in Portugal. CaixaBank acquired control of BPI in 2017 and Abanca took over Deutsche Bank's Portuguese operations in 2018.

Between 2015 and 2022, massive sales of non-performing assets have freed banks from bad loans and other assets that heavily burdened their balance sheets. The Portuguese banking sector overall improved significantly. The largest banks generate profits and have stronger balance sheets.

As a setback, Portuguese bank customers now pay higher commissions in a low-competition peripheral market. The size and nature of the Portuguese market and the still fragmented European market severely hinder competition. Also, a consequence of the ECB's interest rises the cost of credit to homeowners and corporations is increasing. However, banks are not giving back any significant income to depositors while increasing their returns on corporate and private loans.

Against this backdrop, Portuguese banks face new challenges. Customers are looking for alternative electronic banking services and higher returns for their savings. This creates the ideal scenario for new technology-savvy entrants who are ready to take customers dissatisfied with traditional banks.

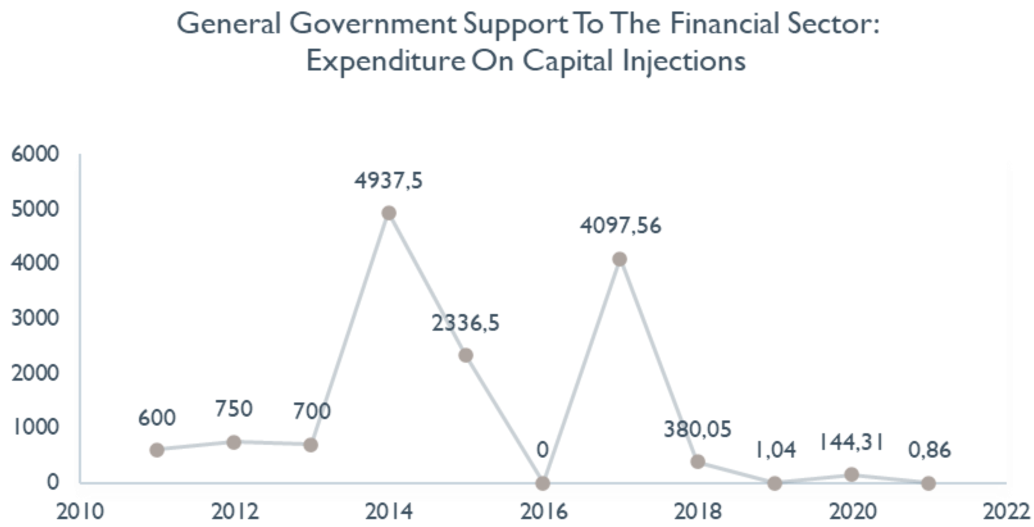
Companies and investors are also looking for alternatives and several investment funds, including alternative investment funds, are taking a bigger role in the financing of investment projects.

In this briefing, we give an overview of the Portuguese banking market and provide a highlight of the legal and regulatory framework.

1. MARKET OVERVIEW

In 2011, the sovereign debt crisis exposed the excessive indebtedness of the economy, which evidenced the over-indebtedness of individuals, companies and the public sector. Refraining from spending decelerated public investment, the financial assistance programme quieted markets and prepared the country to recover its banking sector, but it slowed down the economy and exposed severe failures in several banks.

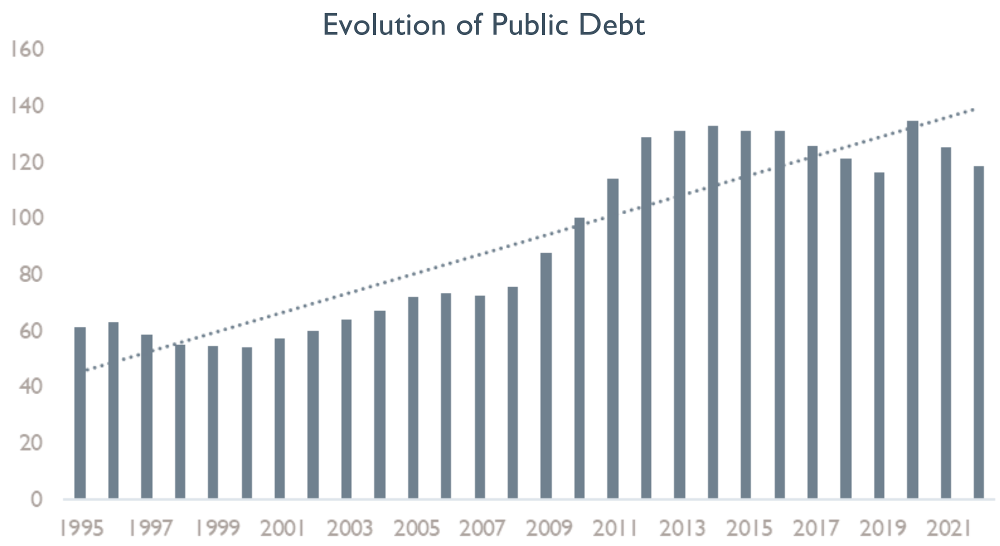
After the fall of two smaller banks, BPN and BPP, in 2008, all four major domestic banks suffered from the fall of economic activity and their excessive exposure to public debt. As a result, between 2009 and 2022, the Portuguese Government was forced to inject over 13.9 billion euros into domestic banks.



Source : BPSTAT PT

In April 2011, the Portuguese government was forced to request financial assistance from the EU and the IMF.

As a condition to the international bailout, Portugal agreed to adopt measures to reduce public spending and other measures to straighten the economy. Among other measures, the bailout programme included specific measures to improve the banking sector's stability, strength and liquidity.



Source : PORDATA PT

In the last decade, the Portuguese government intervened in all significant national banks active in the country. Only a foreign bank, Banco Santander, did not require public support.

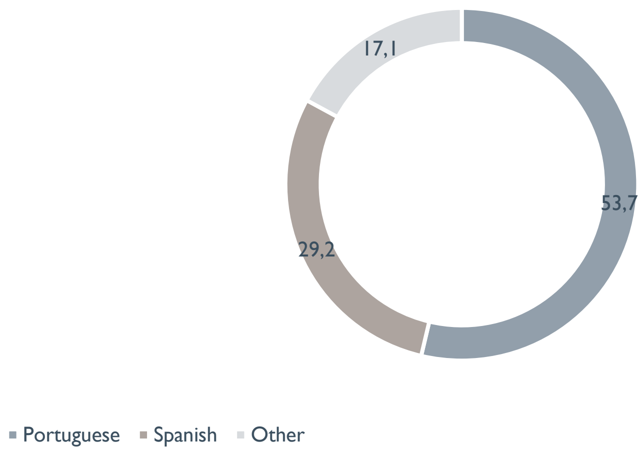
CGD was recapitalised when it failed to reimburse the repayment of contingent convertibles ("CoCos") issued in 2012, ultimately injecting over 5.500 million euros worth of public resources into CGD.

BES, one of the largest and most traditional financial institutions in Portugal, collapsed, making it a case study of the intervention of the regulator, Banco de Portugal ("BoP"), and one of the first resolutions under the European Bank Resolution Directive. The fallout of the Espírito Santo Group's insolvency and BES resolution continue to make shockwaves and are now the object of several unresolved judicial actions.

BPI and BCP had significant capital injections of contingent capital, in the form of convertible bonds, to reinforce their Tier 1 ratio. Banif, a smaller bank, was subject to resolution and sold to Banco Santander.

In the last years, the sector saw the consolidation and transfers of Portuguese banks, which resulted in a more significant participation of Spanish financial institutions in the local market. CaixaBank acquired BPI. More recently, other Spanish banks entered the market, such as Abanca, which purchased Deutsche Bank's Portuguese retail business, and Bankinter, which purchased Barclays's business.

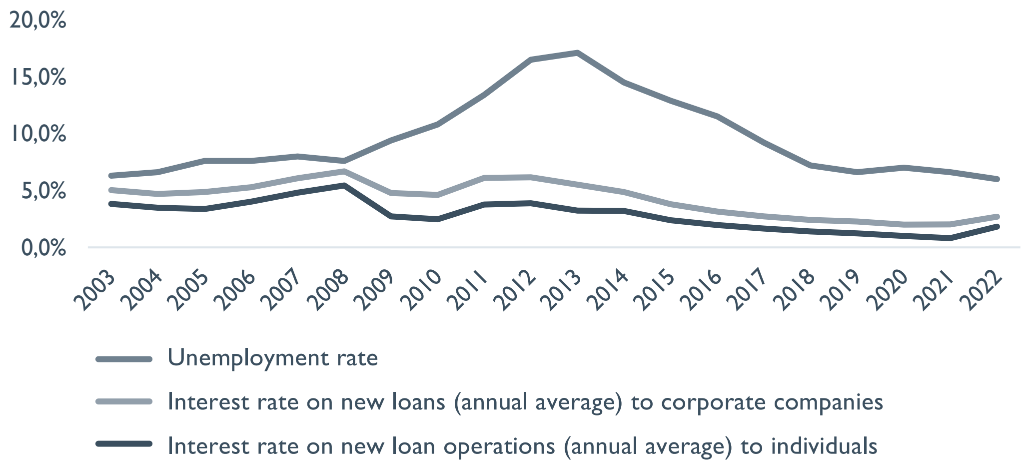
Source: ECO, CMVM
Share in the Portuguese market (%)



Banco CTT, owned by Portuguese formerly state-owned Correios de Portugal, acquired 321 Crédito and became the first local project led by a Portuguese company launched in the last decade.

Since the implementation of the bailout programme, the banking sector has benefited from improvements in the economy, as the unemployment rate started to fall consistently since 2013, while the industrial business volume increased.

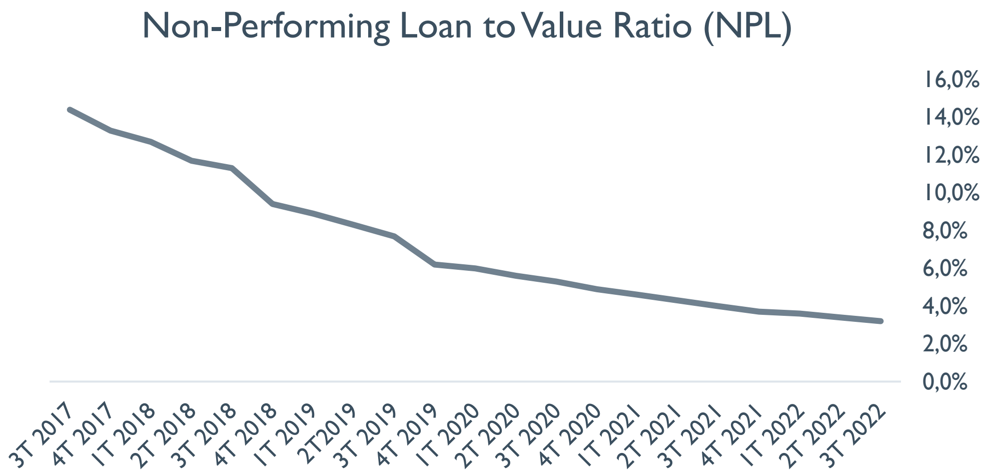
Interest rates on mortgages and consumer credits continued to slow down since 2011until 2021, when they started increasing as a result of the rise of Euribor.



Source : PORDATA PT

Meanwhile, credit institutions have all undergone major deleveraging of portfolios through the disposal of non-performing loans ("NPLs").

At their peak in 2015, NPLs represented 17,5% of the total credit against 3,6% in 2008. In the third quarter of 2022, Portugal's bad credit represented 3,2% of the total credit.



Source: BoP/EBA | NPLs % in total credit

Simultaneously, as banks reach out to recover their health through the sale of non-performing assets, generally, they are confronted with the disruptive power of new technology and regulation within the provision of banking and financial services.

The reputational crisis of traditional industries, of which the banking sector is a part, along with an enlarged, diversified and more agile and customised offer of financial services through new or existent technology, will – and already is – reshaping the banking industry.

The Portuguese banking sector is not an exception to this: 64% of the Portuguese fintech ecosystem comprises companies or start-ups whose core business overlaps that of banks, such as lending and credit, alternative financing, wealth management, payment systems, money transfers, etc.

Today, the sector is driven by online solutions with reduced costs and speedy and agile services, and growing trust in the supporting technology. The market is yet to steer into a truly technological ecosystem where AI and multidisciplinary efforts will build around digital trust.

2. REGULATORY APPROVALS

2.1. BANKING ACTIVITIES

The main rules on the banking activity are set out in Decree-Law 298/92, of 31 December 1992, which approved the Legal Framework of Credit Institutions and Financial Companies ("Banking Law") and Regulation (EU) 575/2013 on prudential requirements for credit institutions and investment firms ("Capital Requirement Regulation" or "CRR").

In Portugal, banking activities may only be carried out on a professional basis by:

- Credit institutions and financial companies with their head office in Portugal;
- Branches of credit institutions and financial companies having their head office abroad; and
- Credit institutions and financial companies with head offices in a Member State under the freedom to provide services.

Alternative investment funds ("AIF") specialised in the granting of loans (the so-called "Loan Funds") are also allowed to grant credit in Portugal.

2.2. CREDIT INSTITUTIONS

Credit institutions having their head office in Portugal must be incorporated as a public limited liability company (*sociedade anónima*) and have the following:

- For sole corporate purpose, the exercise of a banking activity;
- The required minimum share capital;
- Their primary and effective place of administration is located in Portugal;
- Sound corporate governance arrangements, including a clear organisational structure, with well-defined, transparent and coherent lines of responsibility;
- Internal procedures for identifying, managing, controlling and communicating the risks to which it is or may be exposed;
- Appropriate internal control mechanisms, including sound administrative and accounting procedures;

- Remuneration policies and practices that promote and are consistent with sound and prudent risk management;
- Members of the management and supervisory bodies whose suitability, professional qualifications, independence and availability ensure a sound and prudent management of the credit institution on an individual or collective basis.

The decision of the BoP must be notified within six months of receipt of the application or, if applicable, the additional information requested by the BoP, but in any event, no later than 12 months from the date of initial submission of the application to the BoP.

2.3. BRANCHES

Credit institutions authorised in other Member States of the EU may establish a branch in Portugal.

The branch may carry out any of the operations listed in Appendix I to Directive 2013/36/EU of 26 June 2013 ("Banking Directive"), which the credit institution is authorised to perform in its home country.

It is a condition for the establishment of the branch that the BoP receives a communication from the home country's supervisory authority, including the:

- activities programme, indicating, inter alia, the type of operations to be carried out and the organisational structure of the branch, as well as certification that such operations are included in the authorisation of the credit institution;
- address of the branch in Portugal;
- identification of the branch's managers;
- amount of the credit institution's own funds;
- solvency ratio of the credit institution;
- a detailed description of the deposit guarantee scheme in which the credit institution participates and which provides protection for the clients of the branch; and
- a detailed description of the investor compensation scheme in which the credit institution participates to ensure the protection of the investor clients of the branch.

Credit institutions authorised in other Member States of the EU may also establish a branch in Portugal. However, establishing the branch is subject to prior authorisation of the BoP, and the credit institutions must comply with the capital requirements set out for Portuguese resident credit institutions.

2.4. FREEDOM TO PROVIDE SERVICES

Credit institutions authorised in another Member State of the EU may also perform banking activities in Portuguese territory even if they do not have a branch in Portugal.

The activity in the Portuguese territory of credit institutions with a head office abroad must comply with Portuguese law, namely the rules governing transactions with foreign exchange transactions.

It is a condition for the beginning of the provision of services in Portugal that the credit institution notifies the competent authority of its home Member State and the latter sends this communication to the BoP.

The BoP may determine that the institution clarifies publicly its status, characteristics, main elements of activity and financial situation.

2.5. LOAN FUNDS

The Loan Funds were introduced in Portugal in September 2019.

Loan Funds are a specific type of AIF that is authorised to grant loans and acquire performing and non-performing loans held by financial institutions.

Loan Funds must be authorised by the Portuguese Securities Commission ("CMVM") and, therefore, are not subject to the authorisation of the Bank of Portugal.

The Loan Fund assets may consist of the following:

- loans granted or acquired;
- liquidity up to 20% of the total assets;
- debt securities issued by eligible borrowers up to 20% of the total assets; and
- other assets that arise from the satisfaction of credits or that are necessary to maximise their satisfaction.

2.6. ACQUISITION OF QUALIFYING SHAREHOLDINGS

Any investor who intends to own, directly or indirectly, a qualifying holding in a credit institution must inform the BoP of such intention in advance.

Any increases of qualifying holdings must also be previously communicated to the BoP, whenever the increased holding may reach or exceed 10%, 20%, one-third or 50% of the share capital or the voting rights or when the credit institution becomes a subsidiary of the acquiring entity.

The BoP may oppose the proposed acquisition if the proposed acquirer does not fulfil the conditions to ensure a sound and prudent management of the credit institution or if the proposed acquirer has provided incomplete information. For this assessment, the BoP will consider the following criteria:

- The suitability of the proposed acquirer;
- The reputation, professional qualification, independence and availability of the members of the management body of the credit institution to be appointed as a result of the proposed acquisition;
- The financial soundness of the proposed acquirer;
- Whether the credit institution will be able to comply and continue to comply with the applicable prudential requirements;
- Whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing is being or has been committed or attempted, or the proposed acquisition could increase the risk thereof.

2.7. SUITABILITY OF BOARD MEMBERS

The suitability of the board members of credit institutions will be subject to an evaluation throughout their term in office.

In particular, the board members must have the capacity to ensure, at all times, the sound and prudent management of the credit institutions to safeguard the financial system and the interests of their clients, depositors, investors and other creditors.

In addition to the self-assessment that credit institutions must carry out, the suitability of the board members is also assessed by the BoP as part of the authorisation process in relation to the incorporation of credit institutions or the acquisition of qualifying holdings that involve changes to the board of the credit institution.

In addition, whenever new board members are appointed, credit institutions must also request the prior authorisation of the BoP.

The board members must comply with the relevant reputation, professional qualification, independence and availability requirements:

- **Reputation**. Board members must not have been involved in circumstances that affect their reputation (e.g. insolvency, criminal proceedings).
- **Professional qualification**. Board members must possess the necessary skills and qualifications for performing their duties and appropriate professional experience taking into account the nature, complexity and size of the credit institution, as well as the risks associated with the activity carried out by it.

- **Independence**. Board members may not be unduly influenced by other persons or entities and must be able to perform their duties impartially.
- **Availability**. Board members of significant credit institutions are prohibited from accumulating more than one executive position with two non-executive executives or four non-executive positions unless otherwise provided by law or authorised by the BoP.

The suitability assessment will also apply to members of supervisory bodies and persons that will assume positions that may influence the credit institution's management, such as those responsible for the compliance, internal audit, control and risk management functions.

3. RULES OF CONDUCT

Credit institutions must ensure high levels of technical compliance in all activities and ensure a business organisation with the human and material resources required to ensure appropriate quality and efficiency conditions.

In their relations with customers and other credit institutions, the management board and the staff of credit institutions must act with diligence, neutrality, loyalty, discretion and scrupulous regarding the interests entrusted to them.

3.1. ADVERTISING

BoP regulates the information and transparency duties that credit institutions must comply with in advertising, regardless of the means used.

Reference to the deposit guarantee scheme or the investor compensation scheme in advertising must be factual and may not contain any consideration nor make comparisons with deposit guarantee schemes or investor compensation instruments provided by other institutions.

Credit institutions authorised in other EU Member States may advertise their services in Portugal under the same terms and conditions as institutions having their head office in Portugal.

3.2. RETAIL MARKETING

Credit institutions must inform their customers of the remuneration they offer for the funds received, the features of the products offered, charges for services provided, and other costs to be borne by customers.

In particular, institutions authorised to grant consumer credit must provide their customers, before execution of the loan contracts, with adequate information, in printed or other durable formats, on the conditions of the credit and total cost, as well as on obligations and risks associated with default. Furthermore, these institutions must ensure that credit intermediation companies provide the same information.

Credit institutions must adopt codes of conduct and inform customers about their existence, at least on their websites. Said codes must include the principles and rules of conduct governing the various aspects of their relationship with customers, including the mechanisms and internal procedures adopted for assessing complaints.

3.3. REMUNERATION

To prevent potential damage to customers and minimise the risk of conflicts of interest, credit institutions must adopt specific remuneration and assessment policies for the staff with direct or indirect contact with customers in the retail marketing of financial products.

In particular, these policies must ensure that the employees dealing with retail customers will always act in the customer's best interest and may not be remunerated or evaluated in a way that may constitute an incentive for the retail marketing of specific financial products or instruments.

4. PRUDENTIAL SUPERVISION

4.1. SHARE CAPITAL

The minimum share capital of banks is €17,500,000, but the minimum share capital of other credit institutions may vary from €100.000 to €5.000.000.

4.2. OWN FUNDS

Credit institutions' own funds may not fall below the minimum share capital amount.

Credit institutions that were already in existence on 1 January 1993, the amount of own funds of which do not attain the amount of initial capital required, may continue to conduct their activities. Still, the amount of own funds of those institutions may not fall below the highest level reached with effect from 22 December 1989.

The credit institutions' own funds include the base own funds plus the complementary own funds less the amount corresponding to capital allocated to securitisation.

4.3. RESERVES

Part of the net profits of a credit institution for each fiscal year, which cannot be less than 10%, must be allocated to a legal reserve, up to an amount equal to the share capital or the sum of its established free reserves or the carry forward results, if higher.

Credit institutions must also create special reserves to strengthen their shareholders' equity and to cover losses.

4.4. SHAREHOLDINGS

Credit institutions may not own, directly or indirectly, for more than three years a shareholding in an undertaking that corresponds to more than 25% of the voting rights of such undertaking. The limit is five years for indirect holdings owned through venture capital companies and holding companies.

These limits will not apply to shareholdings in other credit institutions, financial companies, financial institutions, ancillary services companies, credit securitisation companies, insurance companies, subsidiaries of insurance companies held according to the law applicable to the latter, brokers and insurance intermediaries, pension fund management companies, venture capital companies and holding companies which only have equity holdings in the companies referred to above, as well as credit institutions' holdings in real estate investment funds for housing rental and real estate investment companies.

4.5. CREDIT GRANTED TO QUALIFYING SHAREHOLDERS.

Credit institutions may not grant credit, including the provision of guarantees, to a person who owns, directly or indirectly, a qualifying shareholding in a credit institution or to companies directly or indirectly controlled by such entity or belonging to the same group over the 10% of the institution's own funds.

The total amount of credit granted to all qualifying shareholders shall not exceed, at any time, 30% of the credit institution's own funds.

This shall not apply to the granting of credit of which the beneficiaries are credit institutions, financial companies or holding companies which are included in the supervision perimeter on a consolidated basis to which the credit institution concerned is subject, nor to pension fund management companies, insurance undertakings, brokers and other insurance mediators that control or are controlled by any entity included in the same perimeter.

4.6. ACQUISITION OF REAL ESTATE

Credit institutions may not, except with the prior authorisation of the BoP, acquire real estate assets other than those required for their setting up and operation or in connection with the performance of their activity.

4.7. GOVERNANCE

The management and supervisory bodies of the credit institutions are responsible, within the scope of their respective functions, for the design and application of governance models, which must ensure the effective and prudent management of the institutions, including the separation of functions within the organisation to prevent conflicts of interest.

When designing the governance model, it is up to the management and supervisory bodies, within the scope of their respective functions, to:

- Take responsibility for the credit institution, approve and supervise the implementation of strategic objectives, risk strategy and government;
- Ensure the integrity of the accounting and financial information systems, including financial and operational control and compliance with legislation applicable to the credit institution;
- Supervise the disclosure and reporting duties to the BoP;
- Monitor and control the activity of the top management.

The management and supervisory bodies of credit institutions are also responsible for defining, approving and controlling the governance models relating to, among others:

- Product and service policies;
- The organisation of the credit institution for the design and sale of deposits and credit products, including qualifications, technical capacity and knowledge of its employees, resources and governance and monitoring procedures, taking into account the nature, scale and complexity of its activities; and
- The remuneration policy of employees who have direct contact with customers in the sale of deposits and credit products, as well as the employees who, directly or indirectly, are involved in the management or supervision of these people.

5. RATIOS

5.1. CAPITAL REQUIREMENTS

According to the Capital Requirement Regulation, which closely follows Basel III standards, as a rule, credit institutions must satisfy at all times the following own fund requirements:

- Common Equity Tier 1 capital ratio of 4,5 %;
- Tier 1 capital ratio of 6%; and
- Total capital ratio of 8%.

These ratios compare the relevant own fund items with the risk-weighted assets ("RWA") in accordance with the CRR.

The Common Equity Tier 1 ("CET1") is a component of Tier 1 capital and includes shares, other capital instruments that rank below all other claims in the event of insolvency, share premium accounts, retained earnings, other reserves and funds for general banking risk.

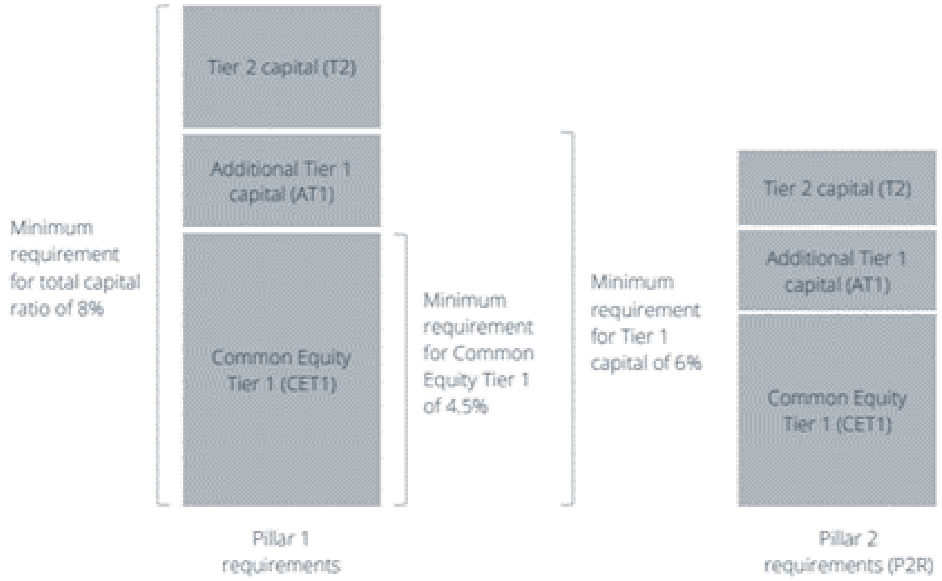
Tier 1 capital includes, in addition to CET1, the Additional Tier 1 ("AT1"), which consists of capital instruments ranking below Tier 2 instruments in the event of insolvency and the related share premium accounts.

Tier 2 ("T2") includes, among others, subordinated instruments and related share premium accounts ranking below CET1.

In addition to the minimum capital requirements above (the so-called "Pillar 1" requirements), credit institutions must also comply with the Pillar 2 requirement ("P2R"), which covers risks that are underestimated or not covered by the Pillar 1 requirements. The P2R results from the Supervisory Review and Evaluation Process ("SREP") carried out by the European Central Bank.

The capital demand resulting from the SREP also includes the Pillar 2 Guidance ("P2G"), which indicates the adequate level of capital to be maintained to provide a sufficient buffer to withstand stressed situations. However, unlike the P2R, the P2G is not legally binding.

Below is an overview of the minimum capital requirements (Pillar 1 and Pillar 2 requirements):



5.2. CAPITAL BUFFERS

On top of the 4.5% CET1 ratio, credit institutions must also hold the following capital buffers:

- Capital conservation buffer ("CCoB") of up to 2.5% of RWA.
- Global Systemically Important Institutions ("G-SIIs") capital buffer with no upper limit. Presently, no G-SIIs are carrying out banking activity in Portugal.
- Other Systemically Important Institutions ("O-SIIs") capital buffer of up to 3%. In Portugal, this buffer applies to certain institutions and ranges between 0.188% and 0.75%.
- Countercyclical capital buffer ("CCyB") between 0% and 2.5% of RWA. This buffer requires banks to accumulate capital when cyclical systemic risk is increased to improve their resilience during stress periods when losses materialise.
- Systemic risk buffer ("SyRB") in intervals of 0.5% of all or some of the exposures, subject to a cap of 5%, which applies to the sum of G-SII/O-SII and SyRB buffers. This buffer is intended to prevent and reduce systemic risks not covered by other instruments.

If the institution breaches any of these buffers, automatic safeguard measures will apply to limit the amount of dividend and bonus payments until compliance is restored.

5.3. OTHER RATIOS

In addition to capital ratios and buffers, credit institutions must also meet a Liquidity Coverage Ratio ("LCR") of at least 100% as required by the LCR Delegated Regulation.

Banks should also have sufficient capacity on their balance sheet to absorb losses (loss-absorbing capacity) and, in case of resolution, to ensure recapitalisation. As of January 2022, credit institutions will also have to comply with the Minimum Requirements for own funds and Eligible Liabilities ("MREL").[1]

As of 28 June 2021, the following ratios will have to be met:

- Leverage Ratio ("LR") of 3%;[2] and
- Net Stable Funding Ratio ("NSFR") of at least 100%.[3]

The LR measures a bank's core capital to its total assets to determine how leveraged a bank is in relation to its consolidated assets.

The NSFR is aimed at forcing banks to finance long-term assets with long-term money to avoid the liquidity failures seen during the 2007/08 global financial crisis.

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[1] G-Sibs are required to hold a Total Loss Absorbing Capacity ("TLAC") of 16% of RWA or 6% of the leverage exposure measure and 8% of RWA or 6.75% of leverage exposure by 1 January 2022.

[2] G-SII must meet higher leverage ratio buffer equal to the total exposure measure multiplied by 50% of the G-SII buffer rate, which must be met with Tier 1 capital only.

[3] Regulation 2019/876

6. SUPERVISORY MEASURES

The BoP reviews the strategies, policies, procedures and systems implemented by credit institutions to comply with the banking regulations and assesses:

- the risks to which credit institutions are or may be exposed;
- the exposures to the financial system that a credit institution faces, taking into account the identification and quantification of systemic risk under Regulation (EU) 1093/2010 of the European Parliament and of the Council of 24 November 2010 or, as the case may be, the recommendations of the European Systemic Risk Board; and
- the risks revealed by stress tests, considering the nature, level and complexity of the credit institutions' activities.

In particular, the BoP must determine whether the strategies, policies, procedures and systems implemented by the credit institutions and the own funds and liquidity they hold guarantee the sound management and cover their risks.

The BoP determines, in accordance with the principle of proportionality, the frequency and intensity of the assessment, considering the size, systemic importance, nature, level and complexity of the activities of the credit institution in question.

6.1. CORRECTIVE MEASURES

The BoP may require credit institutions that do not comply with the banking regulations or that are at risk of breaching such regulations within one year, to adopt immediately the measures or actions necessary to remedy or prevent such breach, such as:

- Holding own funds over the minimum requirements;
- Strengthening of the strategies, policies, procedures and systems put in place for corporate governance, internal control and self-assessment of risks;
- Applying specific provisioning or asset treatment policy for capital requirements purposes;
- Restricting or limiting the activities, operations or branches or the divestment of activities that present excessive risks to their soundness;
- Limiting the variable remuneration as a percentage of net profits where such remuneration is not consistent with maintaining a sound capital base;

- Limiting or prohibiting interest or dividend payments to shareholders or holders of AT1 instruments;
- Imposing additional or more frequent reporting, including on the capital and liquidity position;
- Imposing specific liquidity requirements, including restrictions on maturity mismatches between assets and liabilities;

The application of measures is subject to adequacy and proportionality principles and should take into account the risk or degree of non-compliance and the seriousness of the consequences on the financial soundness of the institution concerned, interests of depositors or the stability of the financial system.

The BoP may also determine the application of more specific measures, within a period that it deems appropriate, including, without limitation:

- Preparation and presentation of an action programme that identifies and proposes scheduled solutions to ensure compliance;
- Submission of a restructuring plan by the credit institution;
- Appointment of a supervisory board or a single auditor;
- Restrictions on granting of credit and the application of funds in certain types of assets, in particular in respect of transactions carried out with subsidiaries, their parent undertakings or subsidiaries thereof, as well as with entities domiciled in offshore jurisdictions;
- Restrictions on deposits, their types and remuneration;
- Approval of certain transactions by BoP;
- Presentation of a plan for the negotiation of debt restructuring with its creditors;
- Carrying out an audit of all or part of the activity of the credit institution, by an independent entity appointed by BoP, at the institution's expense;
- Changes in the functional structures of the credit institution, namely by eliminating or changing top management positions or by terminating the assignment to that position of the respective holders;
- Changes to the management strategy of the credit institution;
- Carrying out on-site inspections and preparing for potential resolution of the credit institution.

6.2. RESOLUTION MEASURES

If the corrective measures applied are not sufficient to ensure the recovery of the credit institution the BoP may, as an alternative:

- Suspend or dismiss members of the management body and appoint new members;
- Apply a resolution measure; and
- Revoke the institution's authorisation.

BoP may apply the following resolution measures:

- Partial or total transfer of the business;
- Partial or total transfer of the business to a bridge institution;
- Segregation and partial or total transfer of the business to an asset management vehicle;
- Internal recapitalization.

When implementing a resolution measure, the BoP must:

- Ensure the continuity of the provision of financial services essential to the economy;
- Prevent serious consequences on the financial stability;
- Safeguard the taxpayers' interests and minimize recourse to extraordinary public financial support;
- Protect depositors whose deposits are guaranteed by the Deposit Guarantee Fund and investors whose claims are covered by the Investor Compensation Scheme;
- Protect the funds and assets held by credit institutions in the name and on behalf of their clients and the provision of related investment services.

The BoP will determine the resolution measures that best achieve these purposes on a case-by-case basis.

The BoP must also ensure that:

- Shareholders will bear the losses of the institution;
- Creditors will bear the losses on equitable terms, in accordance with the ranking of their claims;
- No shareholder or creditor will bear a loss exceeding that which it would have incurred had the credit institution went into liquidation ("no worst off" rule); and
- Depositors will not bear a loss on deposits guaranteed by the Deposit Guarantee Fund.

6.3. SANCTIONS

Any person who pursues an activity consisting of receiving deposits or other repayable funds from the public, on his account or on behalf of others, without the necessary authorisation shall be punished by imprisonment of up to five years.

Anyone refusing to comply with the legitimate orders or warrants of BoP, issued within the scope of their functions, or creating, in any way, obstacles to their execution, shall be liable to the penalty provided for the crime of qualified disobedience if BoP or an official has issued a warning of such commission.

Some offences are punishable by a fine ranging from €3,000 to €1,500,000 (or €1,000 to €500,000, in case the offence is committed by a natural person), such as:

- the exercise of an activity in breach of the rules on registration with the BoP;
- the infringement of the rules on the subscription or paying-up of share capital;
- non-compliance in relation to the prudential limits determined by law, the Ministry of Finance or the BoP;
- failure to comply with accounting rules and procedures determined by law or the BoP; and
- the omission of information and communications due to Banco de Portugal, within the established deadlines, and the provision of incomplete information.

Other severe offences are punishable by a fine of € 10,000 to € 5,000,000 (or € 4,000 to €5,000,000, in case the offence is committed by a natural person), namely, and among others:

- the unauthorised practice by any individual or entity of transactions reserved for credit institutions or financial companies;
- the fraudulent payment of the capital;
- falsifying accounts and the non-existence of organised accounting, as well as non-compliance with other applicable accounting rules determined by law or BoP;
- breach of rules on credit granted to holders of qualifying holdings;
- wilful acts of ruinous management, to the detriment of depositors, investors and other creditors, practised by members of the corporate bodies;
- failure to comply with the obligations to contribute to the Deposit Guarantee Fund or the Resolution Fund;
- the acquisition of a qualifying holding despite the opposition of the competent authority;
- failure to comply with the capital adequacy ratios;
- failure to comply with the limits to large exposures.

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