

The Law 69/2019 dated as of 28 August (the “Law”) amends and republishes the Decree-law 453/99, dated as of 5 of November, which sets forth the general legal framework for securitisation (*Regime Geral da Titularização de Créditos* - “RGTC”). The amendments resulting of this law procure to adapt the RGTC to the EU Regulation 2017/2402 of the European Parliament and of the Council (the “Securitization Regulation”) and aim at the harmonization of language between the Portuguese Securities Code and the RGTC. The Securitization Regulation, which is directly applicable in Portugal, lays down a general framework for securitisation and creates a specific framework for simple, transparent and standardised securitisation (“STS”).

Nonetheless, we may highlight the amendments below which have relevant impacts in the RGTC:

Scope of Securitization

The Law broadens the spectrum of rights which may be securitised. Consequently, to the possibility of securitising credits the law also adds the general concept of “risks” as being capable of being securitised. In that sense, both credits which are due or which will fall due may be securitised. It also adds two new paragraphs which sets forth the following requirements: (1) the credits and risks to be securitised must have predictable or measurable monetary flows, even if only based on statistical models and (2) the existence and enforceability must be ensured by the originator.

Future credits or monetary flows can also be subject to securitisation transactions if their value is somehow known or predictable.

These changes to the RGTC do not result directly from the Securitisation Regulation. Nevertheless, the regulation sets forth specific rules regarding synthetic securitisations. Hence, the RGTC had to be changed in order to allow the sale of risks (synthetic securitisation) otherwise, the current legal framework in Portugal would require the actual sale of the credit. This amendment simplifies the possibility of structuring synthetic securitisations in Portugal.

Originators

The RGTC enshrines the possibility for every entity to act as originator, now disregarding the requirement of the originator to have accounts approved and certified with respect to the last three years by an auditor registered with the CMVM (although this was already foreseen in the Securitization Regulation). Consequently, any entity may act as an originator if (i) it is directly or indirectly a party to the initial agreement which originated the obligations which gave rise to the securitised exposures or (ii) if it has purchased the exposure values from a third party.

Naturally, the RGTC is completed by the applicable requirements resulting of the Securitization Regulation.



Protection of Securitised Assets

The Law also implements new rules regarding the protection of the securitised assets:

- A three year limitation period to challenge actions that compromise the creditor's right, counted as from the date of the occurrence of such actions;
- The rules on the ring-fencing of synthetic securitizations are set forth and, therefore, the reference assets in synthetic securitisation transactions:
 - (a) constitute a segregated asset which may not be used for the payment of any originator's debts until investors are repaid in full and all the expenses and operation costs of the transaction are paid; and
 - (b) If the winding-up and dissolution of the originator occurs, it leads to the separation from the insolvent estate with the purpose of being autonomously managed.

Portfolio of Securitisation Funds

With the new amendments – beyond the cases already foreseen in law – the securitised assets composing the portfolio of the securitisation funds may also be transferred or encumbered:

- In case of default of the fund;
- In case of performing credits, transferred to other securitisation funds, to securitization companies or to credit institutions and finance companies, authorised to grant credit.

As a result of the amendments operated by the Law, securitization funds may also own real estate assets provided that its acquisition results from a transfer in lieu of payment or from the enforcement of property guarantees connected to the securitised credits. In those cases, the acquired real estate properties must be transferred within two years from the fund Portfolio – it is possible that this period may be extended in certain cases, subject to the terms to be regulated by the Portuguese Securities Commission ("CMVM").

Servicer

In transactions where there is no sponsor (a credit institution or an investment company who does not intervene as originator) and where the originator is a credit institution, finance company, insurance company, pension fund or a pension fund managing company, simultaneously with the sale of the securitised assets it must be executed an agreement granting the servicer powers for the management of the assets, collection of receivables and, if applicable, enforcement of any guarantees.

In any other circumstances, the securitised assets may be managed by the acquirer or by the assignor or by a third party.

In transactions which are not STS the servicer must have specific expertise in the management of assets of a similar nature to the ones being securitised and must, as well, have adequate and written policies, procedures and risk management control mechanisms.

In case the servicer is insolvent, the amounts emerging from payments regarding the securitised assets are not included in the insolvent estate.



Depositaries

The depositary, as an entity in a securitization transaction, is eliminated from RGTC. From the 29th of August onwards the asset securitisation fund managing companies can keep the depositary or serve prior notice the CMVM of the changes to the fund regulation regarding the elimination of the depositary.

Misdemeanours

The Law also sets forth the competence of the CMVM to issue sanctions related to the failure to comply with the Securitisation Regulation.

Hence, it establishes sanctions that may vary from EUR 25.000 to EUR 5.000.000 or EUR 12.500 to EUR 2.500.000 depending on the importance of the breached rule. These limits can be increased to an amount equivalent to a third of the economic benefit resulting from the breach or to 10% of the turnover of the defendant.

Transitional rules

The previous legal framework is applicable as from the 29th of August and including to securitisation transactions which are ongoing.