

On 28 March 2019 the Portuguese government has published the Decree Law no. 42/2019, which is aimed at simplifying the legal regime applicable to the transfer of large loan portfolios. The Decree-Law will enter into force on 1 July 2019.

### 1. Eligibility requirements

The new regime only applies provided that the following conditions are met:

- *Transferee*: must be a credit institution, other type of regulated financial institution or a securitisation company (hence SPVs and other unregulated companies are excluded);
- *Sale price*: minimum of EUR 50.000;
- *Loans nominal value*: no requirements;
- *Portfolio*: at least 50 separate loans.

### 2. New Regime

In comparison with the simplified regime, the following features of the new regime should be highlighted:

#### a) Execution of the transfer

The transfer may be formalized in a private document signed by the parties, even if it encompasses loans secured by real estate assets.

For registration purposes, it is sufficient to submit the private document with signatures of the parties certified by a lawyer or notary (*reconhecimento presencial de assinatura*), instead of a notarial deed (*escritura*) or authentication (*termo de autenticação*) of the document.

#### b) Registration

The regime establishes a centralised and swift process for registration of loan transfers, on a portfolio basis (and not individually, as would result of the general regime).

The registry of the transfer will be treated as urgent, and registration is not conditional upon existence of the tax status of the real estate assets securing the loans.

This new regime is pending further regulation expected to be enacted by the Government.

#### c) Loans in litigation

The execution of the transfer agreement is sufficient to entitle the assignee to apply for the substitution of the seller as party in pending judicial proceedings in respect of the loans, for such purpose being sufficient the lodging of a copy of the assignment agreement.

This is a relevant change, in that the general regime requires the initiation of a specific process for subrogation in pending proceedings (*incidente de habilitação*), often taking several months to be completed, under which the borrower may challenge the validity of the transfer, and the assignee is only accepted in the proceedings following a decision of the court.