MAYER • BROWN

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Summary of Government Interventions
Portugal

Overview

In the context of initiatives that were adopted in the European Union and aiming to strengthen the financial system stability, the access to liquidity and the financial capacity of credit institutions, the Portuguese government created a special scheme for granting guarantees to credit institutions with a registered office in Portugal as well as increased its guarantee of bank deposits. In November, Portugal's parliament also approved a package proposed by the Spanish government to help local banks boost their capital ratios during the global financial crisis.

State guarantee scheme

On 20 October 2008, the Portuguese parliament approved a new law (*Lei* 60-A/2008) which allows the government to guarantee financing agreements and new or refinanced debt of solvent credit institutions incorporated in Portugal up to the aggregate amount of EUR 20bn, in accordance with the above act and Ordinance of 23 October 2008 (1219-A/2008). The guarantees are granted by the government upon recommendation of the Portuguese Central Bank ("**PCB**") and the Portuguese Debt Institute and are available to credit institutions with a registered office in Portugal for borrowings and unsubordinated debt, with maturity from 3 months to 3 years, or exceptionally 5 years only when duly justified by PCB, denominated in Euros.

Until full repayment of the guaranteed debt, the State can, if and to the extent deemed necessary to protect the public interest if the State honours a payment claim presented under the guarantee:

a) convert the credit against the credit institution into share capital, including through the issue of preferential shares;

b) adopt good corporate governance principles on dividend policy and on the remuneration of the officers of the management and supervisory bodies; and

c) appoint one or more temporary directors.

The guarantee scheme can be accessed until 31 December 2009. The fee for guarantee of liabilities with a remaining term to maturity equal to or greater than 3 months but equal to or less than 1 year will be 50 bps per annum of the amount guaranteed. For liabilities with a maturity greater than 1 year the fee will be calculated at the Relevant CDS Spread (as defined in the Annex to the Ordinance of 23 October 2008).

Detailed information on the Portugal guarantee scheme and texts of the applicable laws are available on:

http://www.min-financas.pt/inf_economica/Portuguese_Guarantee_Scheme_23Oct2008.pdf

Bank deposit guarantee

The government increased its guarantee of bank deposits from EUR 25,000 to EUR 100,000 per depositor and institution, in a declaration made by the Minister of Finance on 6 October 2008.

(Re)capitalisation of the credit institutions

The Portuguese Parliament approved, with effect from 25 November 2008, a law establishing measures to improve the financial soundness of Portuguese credit institutions, by making up to EUR 4bn available to Portuguese banks to strengthen their capital ratios.

The Act foresees two different regimes:

(i) an increase in the level of own funds of credit institutions already having an acceptable solvency and stability, seeking to bring them into line with their European counterparts; and

(ii) direct state intervention in the recovery and remedial processes.

The government will offer to acquire preferred, non-voting shares in the companies.

The Portuguese central bank announced that, as part of the EUR 4bn scheme, the minimum tier 1 solvency ratio for Portuguese banks would be lifted to 8 per cent., from a previously implied level of 7 per cent.

Notable developments with commercial banks (and other key financial players)

Caixa Geral de Depositos

Portugal's biggest bank, state-run Caixa Geral de Depositos ("**CGD**"), which holds about one-third of the mortgages in Portugal, will launch an investment fund offering homeowners with arrears on mortgage payments the opportunity to sell their homes to the bank and then rent them back at much lower rates, with an option to buy their homes back in the future. The fund would take advantage of new rules outlined in the government's 2009 budget bill that would offer tax exemptions and other benefits for the scheme. Initially, the fund would be worth EUR 10m.

On 17 December 2008, the Portuguese government decided to hike CGD's capital by EUR 1bn to strengthen its lending capacity.

Banco Português de Negócios

On 11 November 2008, by *Lei* 62-A/2008, the government nationalised the capital stock of Banco Português de Negócios ("**BPN**"), which had run up accumulated losses of EUR 700m and was facing an imminent breakdown of its ability to meet payments. Through this nationalisation, BPN became a public limited company fully owned by the State but continues to be governed by the legal provisions regulating its activity, as well as by its statute, except as otherwise provided for in the legal framework of the State corporate sector and in the above law. BPN management is the responsibility of CGD.

Millennium BCP

On 3 November 2008, Millennium BCP ("**BCP**"), Portugal's largest listed bank, and the European Investment Bank launched credit lines worth EUR 100m for small and medium-sized companies aimed at boosting lending during the financial crisis.

On 18 February 2009, BCP announced it might issue non-dilutive financial debt instruments up to a maximum value of EUR 1.2bn.

BCP said it has met its financing needs for 2009, expects to get enough liquidity to meet its 2010 requirements before the end of 2009 and that it anticipates to end this year with EUR 9bn in liquid assets.

Banco Privado Português

On 2 December 2008, the Portuguese government passed a law enabling a consortium of 6 banks to grant Banco Privado Português ("**BPP**") a EUR 450m loan and to draw on a state guarantee to back the loan. The state guarantee underwriting the loan was approved by the European Commission on 13 March 2009 as a temporary measure and Portugal has committed to provide a restructuring plan for BPP within six months of the law being passed.

On 4 March 2009, Fitch Ratings downgraded BPP's long-term rating to "B-" from "BBB" and its short-term rating to "B" from "F3". Fitch Ratings has also withdrawn all the ratings for BPP and will no longer provide ratings or analytical coverage as a result of the lack of information on the bank's financial and liquidity positions.

Other

Credit rating downgrade

On 21 January 2009, Standard & Poor's cut Portugal's long-term rating to "A+" from "AA-".

Short selling

The Comissão do Mercado de Valores Mobiliários ("**CMVM**") prohibition regarding short selling entered into force on 24 September 2008, with the disclosure requirements entering into force on 22 September 2008 (for naked and covered short transactions) and 29 September 2008 (for naked short positions). Further disclosure regulation in relation to stock lending entered into force on 1 December 2008.

The prohibition applies to members of Euronext Lisbon and PEX and covers naked short selling on Euronext Lisbon and PEX (but not OTC), including transactions in shares and any securities that give the right to acquire, subscribe for or convert into shares.

The CMVM has also approved a regulation requiring investors and financial intermediaries to disclose (to both CMVM and to the issuer) net short positions of 0.25 per cent. or more of the issued share capital of the specified companies or (to CMVM) of any company on the PSI 20 index. There is also a general disclosure requirement for members of Euronext and PEX to report gross short selling transactions to the CMVM (where these are not prohibited).

There is an exemption from the prohibition and from the 29 September 2008 disclosure requirement for market makers as defined in MiFID and in the Euronext Rulebook.

From 8 January 2009 the CMVM repealed instructions which required daily reporting duties of short positions because the gathering and processing of that kind of information is no longer called for in light of the costs involved. However, under its supervisory powers the CMVM may request information from any market member carrying out short-selling transactions on its own or client's behalf, where this is deemed to be nececessary.

Contact us

For further information, please contact

Bruce Bloomingdale

Partner
T: +44 20 3130 3211
E: bbloomingdale@mayerbrown.com

Ed Parker

Partner
T: +44 20 3130 3922
E: eparker@mayerbrown.com

Marcin Perzanowski

Associate
T: +44 20 3130 3306
E: mperzanowski@mayerbrown.com

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