

*Extraordinary Meeting of the Board of Directors of Banco de Portugal*

*3 August 2014*

*8:00 p.m.*

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**Present:**

Governor Carlos da Silva Costa

Vice-Governor Pedro Miguel de Seabra Duarte Neves

Vice-Governor José Joaquim Berberan e Santos Ramalho

Board Members José António da Silveira Godinho and João José Amaral Tomaz

Agenda items:

1. Setting up of Novo Banco, S.A.
2. Transfer of assets, liabilities, off-balance sheet items and assets under management of Banco Espírito Santo, S.A., to Novo Banco, S.A.
3. Appointment of an independent entity to evaluate the assets, liabilities, off-balance sheet items and assets under management transferred to Novo Banco, S.A.
4. Appointment of the members of the Board of Directors and Board of Auditors of Banco Espírito Santo, S.A.

Under Article 146 (1) of the *Regime Geral das Instituições de Crédito e Sociedades Financeiras* – RGICSF (Legal Framework of Credit Institutions and Financial Companies), and in view of the urgent need for the measures that have now been taken to safeguard the financial soundness of Banco Espírito Santo, S.A. and the interest of its depositors, as well as to maintain the stability of the Portuguese financial system, these deliberations are considered urgent under the provisions and for the purposes of Article 103 (1) (a) of the *Código de Procedimento Administrativo* (Administrative Procedures Code), without being subject to prior hearing of the interested parties.

The minutes for these deliberations are approved, with a view to their immediate implementation, under Article 27 (3) and for the purposes of Article 27 (4) of the Administrative Procedures Code.

## **Deliberation:**

Whereas:

1. On 30 July 2014, Banco Espírito Santo, S.A. (hereinafter referred to as 'BES') disclosed, via press release to Comissão do Mercado de Valores Mobiliários – CMVM (Portuguese Securities Market Commission), the results of Grupo Banco Espírito Santo for the first half of 2014, with losses of €3,577.3 millions.

The results disclosed on 30 July reflected the practice of management acts seriously detrimental to the interests of Banco Espírito Santo, S.A. and non-compliance with the determinations issued by Banco de Portugal prohibiting an increase in its exposure to other entities of Grupo Espírito Santo. These facts took place during the mandate of the previous management of Banco Espírito Santo, S.A., mainly deriving from acts undertaken after the replacement of the previous management had already been announced and resulting in additional losses of around €1,500 million compared with what was to be expected following the communication of 10 July by Banco Espírito Santo, S.A. to the market.

Banco Espírito Santo, S.A. justified the abovementioned losses with several factors of an exceptional nature that occurred throughout the first half of the year, particularly in the last quarter (€3,488.1 million). A substantial part of these factors and corresponding losses, which had not been previously reported to Banco de Portugal, led to the losses reaching an amount considerably above the bank's capital buffer determined by Banco de Portugal.

2. Recorded losses considerably changed BES's capital ratios, on an individual and consolidated basis, placing them, overall, at levels that are significantly below those required by Banco de Portugal, currently at 7% for the Common Equity Tier 1 (CET1) and Tier 1 (T1) ratios and at 8% for the total ratio, as presented in the table below:

## Capital ratios on a consolidated and individual basis

Jun-14	Consolidated	Individual
CET1 ratio	5.1%	6.9%
T1 ratio	5.1%	6.9%
Total Capital ratio	6.5%	8.3%

3. There is therefore a serious breach of Banco Espírito Santo, S.A.'s minimum own funds requirements, on a consolidated basis, and thus non-compliance with the minimum capital requirements imposed by Banco de Portugal, pursuant to Article 94 of the Legal Framework of Credit Institutions and Financial Companies, approved by Decree-Law No 298/92 of 31 December 1992 (hereinafter 'RGICSF'), Article 92 of Regulation (EU) No 575/2013 of 26 June and Notice of Banco de Portugal No 6/2013.
4. On 31 July Banco Espírito Santo, S.A. notified Banco de Portugal of the impossibility of implementing the recapitalisation solution for the bank, under the terms and within the time frames requested by Banco de Portugal.
5. Banco Espírito Santo, S.A. is in a situation of severe liquidity shortfall, and from the end of June until 31 July the liquidity position of Banco Espírito Santo, S.A. declined by around €3,350 million. Given that it was impossible for BES to accommodate such sharp pressure on its liquidity through recourse to funds obtained in monetary policy operations, due to exhaustion of the assets accepted as collateral for that purpose and also to the limitation imposed by the ECB with regard to BES's increased recourse to monetary policy operations, Banco Espírito Santo, S.A. was forced to resort to Emergency Liquidity Assistance (ELA) to an amount reaching approximately €3,500 million on 1 August.
6. On 1 August the Governing Council of the European Central Bank (ECB) decided to suspend Banco Espírito Santo, S.A.'s Eurosystem monetary policy counterparty status, effective as of 4 August 2014, and, in parallel, obliged the bank to fully repay its credit with the Eurosystem to an amount of around €10 billion by close of business on 4 August.

Hence, the ECB's decision to suspend Banco Espírito Santo, S.A. as a counterparty in monetary policy operations has rendered its liquidity situation unsustainable, which had already forced it to resort on an exceptional basis and especially in the past few days to emergency liquidity assistance by Banco de Portugal.

7. The facts described in the foregoing paragraphs place Banco Espírito Santo, S.A. in a situation of serious risk of breach of its obligations in the short term and consequently of non-compliance with its licensing requirements, pursuant to Article 145-C (1) and (3) (c) of the RGICSF. Therefore, if this resolution measure now adopted had not been urgently taken, the bank would inevitably head towards a

suspension of payments and withdrawal of its authorisation pursuant to Article 23 of the RGICSF, with a consequent entry into liquidation proceedings, which would represent a very high systemic risk and a serious threat to financial stability.

8. This situation rendered a measure to protect depositors imperative and inevitable, so as to avoid a threat to the safety of the deposited funds. In addition to this primary objective, it is essential to take into account that the size of Banco Espírito Santo, S.A., its classification as a significant credit institution for European supervisory purposes and its importance within the Portuguese financial system and for the funding of the economy, are factors that have an associated unequivocal systemic risk.
9. In fact, Banco Espírito Santo, S.A. holds a substantial market share in the deposit taking and credit segments in Portugal. With regard to deposit collection, BES holds a market share corresponding to around 11.5% of total deposits collected with persons or entities residing or having their head office in Portugal. With regard to total deposits of persons or entities residing or having their head office outside Portugal, Banco Espírito Santo, S.A. holds a market share corresponding to around 20% of the total.

In turn, with regard to the market share held by Banco Espírito Santo, S.A. in the granting of loans, Banco Espírito Santo, S.A. holds around 14% of total credit granted in Portugal. It is particularly relevant that the share of its funding of financial and insurance activities amounts to 31%, which shows a strong interconnection with the rest of the financial system and the ensuing systemic risk. Furthermore, Banco Espírito Santo, S.A. holds a total of 19% of credit granted to non-financial corporations.

This information shows the primordial role of Banco Espírito Santo, S.A. in the financing of the economy and, as a result, the significant systemic effect that an interruption of its provision of financial services would have.

10. Regarding payment systems, clearing and settlement services, Banco Espírito Santo, S.A. is a direct or indirect member of 31 payments, clearing and settlement systems, including: Target2 (Portugal and Spain); Euro 1; STEP1; STEP2 – SEPA CT; SWIFT; SICOI – Multibanco; SICOI – Cheques; Interbolsa.

In payment systems for example, Banco Espírito Santo, S.A. is directly responsible for around 14% of total payments made through SICOI.

11. In the absence of immediate viable solutions for selling the activity of Banco Espírito Santo, S.A. to another authorised credit institution, the setting-up of a new bank to which is transferred all the activity conducted by Banco Espírito Santo, S.A., as well as a set of its assets and liabilities, off-balance-sheet items and assets under management, is the only measure that ensures the continuity of the provision of its financial services and that allows the new bank to be definitively ring-fenced from the risks created by the exposure of Banco Espírito Santo, S.A. to entities of Grupo Espírito Santo.

12. With the setting-up of this new bank, free of the exposure which led to the losses recorded in the half-yearly results of Banco Espírito Santo, S.A. and to a sharp devaluation in its shares on the stock market, the depositors of BES would be able to maintain a stable relationship with their bank and continue to have access to the services it provides.
13. Under Article 153-B of the RGICSF, the Resolution Fund will solely own the equity of the new bank, and will later allow new capital to enter, reestablishing a shareholder base for this bank with the inherent reimbursement of the capital now provided by the fund.
14. Under this solution, the State's resources will only be used in the form of a financing operation to the fund, and not of capitalisation, protecting these resources from risks inherent to a position of shareholder or of a direct creditor of a single credit institution.
15. The reasons given above support the conclusion that this measure, besides being sufficient for achieving the legally defined objectives of protecting depositors, preventing systemic risks and promoting credit to the economy, is also the best solution for safeguarding the interests of taxpayers, compared to a hypothetical public recapitalisation measure, even in the form of a compulsory capitalisation. This latter measure would not be viable in any case, given the urgency of the imminent risk of default of BES's obligations, and would provide neither the necessary segregation in relation to Grupo Espírito Santo, nor the protection of public resources from risks inherent to the banking business. In any case, shareholders, and holders of capital and subordinated debt instrument would necessarily be subject to burden-sharing measures, as a sine qua non condition for any capitalisation operation using public funds.
16. This deliberation of clear and urgent public interest is designed to reduce risks to financial stability and allow the new bank to free itself from the exposures that led to the current situation, removing uncertainties over the composition of its balance sheet and thereby opening the way to the sale of the new bank to private investors.
17. The setting-up of a new capitalised bank under the terms set out is a solution that the European Commission similarly deemed compatible with the domestic market, after it had been notified on the matter under the State Aid Regime.
18. According to the guiding principle set out in Article 145-B (a) of the RGICSF, the shareholders should bear first the losses of the institution. This article enshrines in Portuguese law the no creditor worse off principle, according to which the creditors belonging to the same class should be treated equitably, and that certain creditors receive preferential treatment to others, provided that the latter do not face greater losses than they would have incurred if the credit institution had entered into liquidation.

19. Another relevant guiding principle for ensuring the adequacy and proportionality of the envisaged resolution measure is the rule established in Article 145-I of the RGICSF, according to which any remaining proceeds from the sale of the new bank shall be returned to the original credit institution or its insolvent estate,

The Board of Directors has decided as follows:

### **Point One**

#### **Setting-up of Novo Banco, S.A.**

Novo Banco, S.A. is set up under Article 145-G (5) of the Legal Framework of Credit Institutions and Financial Companies, approved by Decree-Law No 298/92, of 31 December 1992, whose Statute are included in Annex 1 to this Deliberation.

### **Point Two**

#### **Transfer to Novo Banco, S.A. of assets, liabilities, off-balance-sheet items and assets under management by Banco Espírito Santo, S.A.**

Pursuant to Article 145-H (1) of the Legal Framework of Credit Institutions and Financial Companies, approved by Decree-Law No 298/92, of 31 December 1992, in conjunction with Article 17-A of Banco de Portugal's Organic Law, assets, liabilities, off-balance-sheet items and assets under management by Banco Espírito Santo, S.A. are transferred to Novo Banco, S.A., as listed in Annexes 2 and 2A to this Deliberation.

### **Point Three**

#### **Appointment of an independent entity to evaluate the assets, liabilities, off-balance-sheet items and assets under management transferred to Novo Banco, S.A.**

Pursuant to Article 145-H (4) of the Legal Framework of Credit Institutions and Financial Companies, approved by Decree-Law No 298/92, of 31 December 1992, the Board of Directors appoints PricewaterhouseCoopers & Associados - Sociedade de Revisores de Contas, Lda. (PwC SROC), to, within 120 days, evaluate the assets, liabilities, off-balance-sheet items and assets under management transferred to Novo Banco, S.A.

### **Point Four**

#### **Appointment of members of the Board of Directors and Board of Auditors of Banco Espírito Santo, S.A.**

Pursuant to Article 145-D (2) of the Legal Framework of Credit Institutions and Financial Companies, approved by Decree-Law No 298/92, of 31 December 1992, the following members of the governing bodies of Banco Espírito Santo, S.A. are

appointed:

Board of Directors:

Chair – Luís Augusto Máximo dos Santos

Member – César Bento Nunes de Brito

Member – Miguel Morais Alçada

Board of Auditors:

Chair – José Vieira dos Reis

Member – Rogério Manuel Fernandes Ferreira

Member – Vítor Manuel G. Pimenta e Silva

**Governor,**

**Vice-Governor,**

**Vice-Governor,**

**Board Member,**

**Board Member,**

**Secretary to the Boards,**

**Annex 1**

**To the deliberation of Banco de Portugal of 3 August 2014 that ordered the setting-up of Novo Banco, S.A.**



## **By-laws of Novo Banco, S.A.**

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## **General provisions**

### **Article 1**

#### **Business name, nature and duration**

1 — Novo Banco, S.A. is a bank set up under Article 145-G (3) of the *Regime Geral das Instituições de Crédito e Sociedades Financeiras* – RGICSF (Legal Framework of Credit Institutions and Financial Companies), approved by Decree-Law No 298/92 of 31 December 1992.

2 — Novo Banco, S.A. is set up for an indeterminate period of time, under Article 145-G (12) of RGICSF.

### **Article 2**

#### **Head office**

Novo Banco, S.A. has its head office in Avenida da Liberdade, 195, Lisbon.

### **Article 3**

#### **Purpose**

1 — The purpose of Novo Banco, S.A. is to manage the assets, liabilities, off-balance-sheet items and assets under management transferred from Banco Espírito Santo, S.A. to Novo Banco, S.A. and to carry on the transferred activities, for the purposes laid down in Article 145-A of RGICSF, and in order to enable the subsequent sale of said assets, liabilities, off-balance-sheet items and assets under management to one or more credit institutions.

2 — In the performance of its activity Novo Banco, S.A. shall comply with management criteria ensuring that low risk levels are maintained and the value of the transferred assets is maximised, under Article 15 of Notice of Banco de Portugal No 13/2012.

### **Article 4**

#### **Share capital**

The share capital of Novo Banco, S.A. amounts to four billion and nine hundred million euros and, by law, is wholly owned by the Resolution Fund.

### **Article 5**

#### **Share capital representation**

The share capital is represented by four billion and nine hundred million nominative shares, with a nominal value of one euro per share.

## **Organisation**

## **General provisions**

### **Article 6**

#### **Corporate bodies**

The corporate bodies of Novo Banco, S.A. are the following:

- (a) General Meeting;
- (b) Board of Directors;
- (c) Board of Auditors.

#### **Article 7**

##### **Appointment, removal and duration of the term of office of members of the corporate bodies**

1 — The members of the Board of Directors and the Board of Auditors are appointed by Banco de Portugal, upon a proposal from the Management Committee of the Resolution Fund, in the deliberation regarding the setting-up of Novo Banco, S.A.

2 — The members of the corporate bodies remain in office for a period of two years, renewable for one year and only as a result of an extension of the duration of Novo Banco, S.A., provided for in Article 1 (2), pursuant to the provisions of Article 145-G (12) of RGICSF.

3 — The members of the Board of Directors and of the Board of Auditors may at any time be removed from office by deliberation of Banco de Portugal, on its own initiative or upon a reasoned proposal from the Management Committee of the Resolution Fund. Banco de Portugal is responsible for the appointment of other persons to replace them, upon a proposal from the Management Committee of the Resolution Fund.

#### **General Meeting**

#### **Article 8**

##### **Constitution of the General Meeting**

1 — The Resolution Fund is represented at the General Meeting of Novo Banco, S.A. by the Chair of the Management Committee or whomever he appoints for this purpose, notwithstanding the fact that any member of the Management Committee may attend the General Meeting and participate in the discussion of the items on the agenda.

2 — All members of the remaining corporate bodies of Novo Banco, S.A. must be present in person at the General Meeting.

3 — In addition, the following persons may also attend the General Meetings without voting rights: persons authorised to be present by the Chair of the General Meeting Board, specifically, and upon a proposal from the Board of Directors, staff of Novo Banco, S.A., in order to clarify specific issues subject to the General Meeting's consideration.

#### **Article 9**

##### **Composition and competences of the General Meeting Board**

1 — The General Meeting Board consists of a Chair, a Vice-Chair and a secretary, to be designated at the first meeting of the General Meeting, which shall be called by the Board of Auditors.

2 — The provisions of Article 7 (2) apply to the term of office of the General Meeting Board members.

3 — The General Meeting Board is responsible for leading the respective meetings and preparing the corresponding minutes.

4 — The Chair of the General Meeting Board is responsible for calling the General Meetings, in compliance with the legal formalities.

5 — In the event of absence or impediment of the Chair, his tasks shall be carried out by the Vice-Chair.

## **Article 10**

### **Calling and convening the General Meeting**

1 — The General Meeting convenes at least once a year and whenever it is called by the Board of Directors, the Board of Auditors or the Resolution Fund.

2 — The General Meeting is called by the Chair of the General Meeting Board, or the person replacing the Chair, by registered letter addressed to the Resolution Fund expressly containing all issues to be assessed.

3 — Decisions falling under the competence of the General Meeting may be made without compliance with the calling and convening requirements of the General Meeting, laid down in (1) and (2) above, by deliberation of the Management Committee of the Resolution Fund.

## **Article 11**

### **Competences of the General Meeting**

1 — The General Meeting decides on all issues within the remit conferred upon it by law and by the present By-laws.

2 — Specifically, the General Meeting is responsible for:

- (a) Deliberating on the annual report, balance sheet and accounts for the fiscal year and additional documentation legally required;
- (b) Deliberating on the proposal for the distribution of profit;
- (c) Carrying out an overall assessment of the management and supervisory activities of Novo Banco, S.A., on an annual basis;
- (d) Establishing the remuneration of the members of the Board of Directors and the Board of Auditors according to law and under the provisions of Notice of Banco de Portugal No 13/2012;
- (e) Deliberating on any other issues for which it has been called or which fall within its field of competence as determined by law;
- (f) Appointing, upon a proposal from the Board of Auditors, a statutory auditor or audit firm responsible for the legal certification of the accounts.

## **Board of Directors**

### **Article 12**

#### **Composition of the Board of Directors**

The Board of Directors shall be composed of a maximum of fifteen persons, among whom shall be appointed the Chair and the Vice-Chair on the basis of a deliberation by Banco de Portugal, upon a proposal from the Management Committee of the Resolution Fund.

### **Article 13**

#### **Competences of the Board of Directors**

1 — Without prejudice to the provisions of the following paragraph, it shall be incumbent on the Board of Directors to manage the activities of Novo Banco, S.A., according to the objectives set out in Article 3 of Notice of Banco de Portugal No 13/2012 and in the deliberation of Banco de Portugal on the setting-up of Novo Banco, S.A., with full and exclusive powers of representation, and it shall comply with the

deliberations of the General Meeting or the interventions of the Board of Auditors only to the extent required by law or regulations.

2 — The Board of Directors shall comply with the guidelines and recommendations issued by Banco de Portugal under its statutory powers.

3 — It is incumbent on the Board of Directors to:

- (a) Manage its corporate business and perform all acts related to its business purpose that are beyond the scope of other bodies of Novo Banco, S.A.;
- (b) Manage and maximise the value of assets transferred, with a view to their subsequent sale, including the performance of acts that fall within the scope of its management powers, pursuant to Article 16 of Notice of Banco de Portugal No 13/2012;
- (c) Sell specific on-balance-sheet items of Novo Banco, S.A., always taking into account the guiding principles for its activities and market circumstances, without prejudice to the provisions of Article 18 (2) of Notice of Banco de Portugal No 13/2012;
- (d) Set up the company's internal organisation and draw up any regulations and instructions that it deems necessary;
- (e) Appoint representatives with such powers as it may deem fit;
- (f) Implement and enforce legal and statutory precepts as well as deliberations of the General Meeting;
- (g) Represent Novo Banco, S.A., in or out of court, as claimant or defendant, with the power to waive, transact and confess in any legal proceedings;
- (h) Submit to Banco de Portugal, with the contents and frequency established by it, regular reports as envisaged in Article 17 of Notice of Banco de Portugal No 13/2012;
- (i) Provide support to Banco de Portugal in the preparation of the sale of all or part of Novo Banco, S.A.'s property, pursuant to Article 18 of Notice of Banco de Portugal No 13/2012;
- (j) Perform other duties assigned by law or the present By-laws and decide on any other issues that do not fall within the powers of the other corporate bodies.

#### **Article 14**

##### **Delegation of management powers**

The Board of Directors may assign to one or more of its members specific tasks within the competences of the Board of Directors, under the terms and within the limits established by law.

#### **Article 15**

##### **Competences of the Chair and Vice-Chair**

1 — It is incumbent on the Chair of the Board of Directors to:

- (a) Represent the Board of Directors;
- (b) Coordinate the activity of the Board of Directors and convene and lead its meetings;
- (c) Ensure the correct implementation of the Board of Directors deliberations.

2 — The Chair of the Board of Directors is replaced, in his absence or impediment, by the Vice-Chair.

#### **Article 16**

### **Meetings and deliberations of the Board of Directors**

1 — The Board of Directors shall meet regularly at intervals which it shall itself prescribe, but no less than once a month, and extraordinarily whenever convened by its Chair, either on his own initiative or upon the request of two Board Members.

2 — The Board shall be called in writing or verbally, including via telephone call.

3 — In order to make valid decisions, the Board of Directors meetings must be attended by the majority of its acting members, who shall attend in person or by a representative.

4 — To be valid, deliberations of the Board of Directors shall be taken by a majority of members, and, in the event of a tie, the Chair, or his representative, shall have the casting vote.

5 — At Board meetings, any Board Member may be represented by another member of the Board, by means of a letter addressed to the Chair, but each proxy instrument shall not be used more than once.

### **Article 17**

#### **Management policy**

1 — Without prejudice to the provisions of Article 16, and pursuant to Article 3 (2), Novo Banco, S.A. shall be managed in a commercially neutral manner vis-à-vis the other credit institutions operating in the domestic and European markets and in such a way as not to increase the own funds requirements to which it is subject.

2 — For the purposes of the foregoing paragraph, the management of Novo Banco, S.A. shall at least take into account the need to ensure that:

- (a) Remuneration rates on deposits offered upon renewal of such deposits shall be in line with the banking system's average;
- (b) Interest rates on new loans shall be in line with the banking system's average.

### **Article 18**

#### **Commitment of Novo Banco, S.A.**

Novo Banco, S.A. shall be legally bound by:

- (a) The signature of two members of the Board of Directors;
- (b) The signature of two or more appointed representatives, within the scope and limits of the respective mandates;
- (c) The signature of only one Delegate Director, in the context of transactions concluded under and within the limits of the delegation of powers by the Board of Directors.

### **Board of Auditors**

### **Article 19**

#### **Composition of the Board of Auditors**

1 — The oversight of Novo Banco, S.A. shall be entrusted to a Board of Auditors.

2 — The Board of Auditors consists of a Chair and two members in office,

appointed by Banco de Portugal, upon a proposal from the Management Committee of the Resolution Fund.

## **Article 20**

### **Competences**

1 — In the exercise of its supervisory tasks, the Board of Auditors shall take into account the guiding principles of Novo Banco, S.A.'s activities, pursuant to Article 3 (2) of these By-laws and Article 15 of Notice of Banco de Portugal No 13/2012, as well as the principles for action and strategic goals established by Banco de Portugal for the institution.

2 — In addition to the competences defined by law and in these By-laws, it shall be incumbent on the Board of Auditors to:

- (a) Attend the meetings of the Board of Directors whenever deemed appropriate;
- (b) Attend General Meetings;
- (c) Issue its opinion on any matter submitted by the Board of Directors;
- (d) Submit any issue to the Board of Directors for consideration; and
- (e) Submit a report on its activities to the Resolution Fund and Banco de Portugal, with the contents and frequency established by Banco de Portugal, pursuant to Article 17 of Notice of Banco de Portugal No 13/2012.

## **Article 21**

### **Meetings and deliberations of the Board of Auditors**

1 – The Board of Auditors shall meet regularly at intervals which it shall itself determine, but no less than once every two months, and extraordinarily whenever convened by its Chair, either on his own initiative or at the request of any other member.

2 – The Chair of the Board of Auditors is responsible for calling and leading the Board of Auditors' meetings, and shall have the casting vote.

3 — Deliberations of the Board of Auditors shall be valid only if the majority of its acting members are present or represented.

## **Final provisions**

### **Article 22**

#### **Amendments to the By-laws**

The present By-laws may be amended by deliberation of the General Meeting, provided the provisions of Article 4 (2) of Notice of Banco de Portugal No 13/2012 are complied with.

### **Article 23**

#### **Winding-up and liquidation**

1 – Novo Banco, S.A. shall be wound-up, by deliberation of Banco de Portugal, subject to the provisions of Article 21 (a) of Notice of Banco de Portugal No 13/2012, following the sale of all assets, liabilities, off-balance-sheet items and assets under management transferred to it and upon allocation of the proceeds of the sale, pursuant to Article 145-I (3) and (4).

2 – Banco de Portugal may determine the winding-up of Novo Banco, S.A. prior to the sale of all property in paragraph 1, where it concludes that it is not viable, pursuant to Article 21 (d) of Notice of Banco de Portugal No 13/2012.

3 – In the situation described in the foregoing paragraph, Novo Banco, S.A. shall immediately go into liquidation in accordance with the rules applicable to the non-judicial liquidation of credit institutions, and the members of the Board of Directors shall act as liquidators.

4 – Novo Banco, S.A. shall also be dissolved upon sale of the total share capital.

## **Annex 2**

**To the deliberation of Banco de Portugal of 3 August 2014 that ordered the transfer of the assets, liabilities, off-balance-sheet items and assets under management of Banco Espírito Santo, S.A., to Novo Banco, S.A.**



**Assets, liabilities, off-balance-sheet items and assets under management of Banco Espírito Santo transferred to Novo Banco, S.A.**

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Assets, liabilities, off-balance-sheet items and assets under management of BES, recorded in the accounts that will be transferred to Novo Banco, S.A., according to the following criteria:

- (a) All assets, licences and rights, including property rights of BES will be transferred in full to Novo Banco, S.A. with the exception of:
  - (i) Shares representing the share capital of Banco Espírito Santo Angola, S.A.;
  - (ii) Shares representing the share capital of Espírito Santo Bank (Miami) and credit claims on this bank;
  - (iii) Shares representing the share capital of Aman Bank (Libya) and credit claims on this bank;
  - (iv) Own shares of Banco Espírito Santo, S.A.;
  - (v) Credit claims on Espírito Santo International and its shareholders, the shareholders of Espírito Santo Control, the entities which are in a control or group relationship, in accordance with the provisions of Article 21 of the Securities Code (*Código dos Valores Mobiliários*), with Espírito Santo International and claims on Espírito Santo Financial Group (hereinafter called Grupo Espírito Santo), with the exception of claims on entities included in the perimeter of consolidated supervision of BES (hereinafter called Grupo BES, and claims on insurance undertakings supervised by the Insurance and Pension Funds Supervisory Authority (*Instituto de Seguros de Portugal*), namely: Companhia de Seguros Tranquilidade, Tranquilidade-Vida Companhia Seguros, Esumédica, Europ Assistance e Seguros Logo;
  - (vi) Available funds (*Disponibilidades*) in the amount of €10 million, to enable the management of Banco Espírito Santo, S.A., to take the necessary steps to recover the value of its assets.
  
- (b) BES' responsibilities to third parties that are liabilities or off-balance-sheet items will be transferred in full to Novo Banco, S.A., with the exception of the following ("Excluded Liabilities"):
  - (i) liabilities to (a) the respective shareholders, whose participation is equal to or higher than 2% of the share capital or to persons or entities which in the two-year period preceding the transfer held a participation equal to or higher than 2% of the capital of BES, members of the Board of Directors and Board of Auditors, certified auditors or certified audit firms or persons with similar status in other companies which are in a control or group relationship with the institution, (b) persons or entities that have been shareholders, performed the functions or provided the services referred to in the foregoing subparagraph in the four years before the setting-up of Novo Banco, S.A., and whose action or failure to act was at

the origin of the financial difficulties experienced by the credit institution or which contributed to aggravate that situation, (c) the spouses, first degree natural or in-law relatives or third parties acting on behalf of the persons or entities referred to in the foregoing subparagraphs, (d) persons responsible for facts related to the credit institution, or that have profited from these facts, directly or through a third party, and which were at the origin of the financial difficulties or contributed to aggravate that situation, due to action or failure to act in the performance of their functions, according to Banco de Portugal's understanding;

- (ii) Any obligations towards entities that are part of Grupo Espírito Santo, except the entities that are part of Grupo BES, excluding Banco Espírito Santo Angola, S.A., Espírito Santo Bank (Miami) and Aman Bank (Libya), with a view to preserving the value of the assets to be transferred to Novo Banco, SA;
- (iii) Any obligations towards, or guarantees provided to third parties regarding any type of liability held by entities integrating Grupo Espírito Santo, except the entities that are part of Grupo BES;
- (iv) All liabilities for subordinated credits resulting from the issue of instruments used in the context of BES own funds, whose conditions have been approved by Banco de Portugal;
- (v) Any liabilities or contingencies resulting from wilful misconduct, fraud and breaches of regulatory, criminal or administrative provisions;
- (vi) Any liabilities or contingencies of BES related to the issue of shares or subordinated debt;
- (vii) Any liabilities or contingencies related to the trading, financial intermediation and distribution of debt instruments issued by entities integrating Grupo Espírito Santo.

BES liabilities that are not transferred will be maintained within the legal framework of BES.

- (c) All the other off-balance-sheet items of BES will be transferred in full to Novo Banco, SA, except those related to Banco Espírito Santo Angola, S.A., Espírito Santo Bank (Miami) and Aman Bank (Libya);
- (d) The assets under management of BES will be assets under management of Novo Banco, SA;
- (e) All employees and service providers of BES will be transferred to Novo Banco, SA.

After the transfer referred to in the foregoing subparagraphs, Banco de Portugal may at any time transfer or re-transmit assets, liabilities, off-balance-sheet items and assets under management between BES and Novo Banco, SA, in accordance with Article 145-H (5) of the Legal Framework.

BES will sign an agreement with Novo Banco, SA, confirming the transfer of the assets and liabilities governed by foreign law and/or located abroad, under the terms defined by Banco de Portugal. This will include BES obligation to ensure that it will comply with all the formalities and procedures necessary for that purpose.

Considering that all the rating procedures within the scope of the permission under the IRB approach granted to BES on a consolidated basis, as from 31 March 2009, are fully transferred to Novo Banco, SA, Banco de Portugal, satisfied that the requirements provided for in Part II, Title II, Chapter 3 of Regulation (EU) 575/2013 of the European Parliament and of the Council of 26 June 2013 (CRR) are met, and that the systems for the management and rating of credit risk exposures are sound and implemented with

integrity, decides, under Article 143 (1) of the same Regulation to permit Novo Banco, S.A. to calculate its risk-weighted exposure amounts using the IRB approach, with immediate effect and under the terms of the permission granted to BES.

The assets, liabilities and off-balance-sheet items are transferred at their book value, and the assets are adjusted in compliance with the values listed in Annex 2A, in order to ensure a conservative valuation, to be confirmed in the audit referred to in Point 3.

Based on this valuation, the capital requirements for Novo Banco, SA, are calculated to be €4.9 billion.

**Annex 2A**

**To the deliberation of Banco de Portugal of 3 August 2014 that ordered the transfer of the assets, liabilities, off-balance-sheet items and assets under management of Banco Espírito Santo, S.A., to Novo Banco, S.A.**

**BALANCE SHEET AS AT 30 JUNE 2014 (BES ON AN INDIVIDUAL BASIS)  
ADJUSTMENTS AT THE TIME OF TRANSFER (PRELIMINARY)**

<b>BALANCE SHEET</b>	<b>Net value</b>	<b>Items excluded</b>	<b>Adjustments</b>
1.Cash and claims on central banks	783,330		0
2.Claims on other credit institutions	247,539		0
3.Financial assets held for negotiation	1,236,169		-20,000
4.Other financial assets at fair value through profit or loss	1,478,768		-34,500
5.Available-for-sale financial assets	8,660,293		-116,750
6.Investment in credit institutions	6,758,371		-3,330,400
	34,235,27		
7.Credit to customers	5		-1,312,868
8.Investment held to maturity	552,377		0
9.Assets under repurchase agreements	0		0
10.Hedging derivatives	344,045		0
11.Non-current assets held for sale	1,305,112		-195,767
12.Investment property	0		0
13.Other tangible assets	317,403		0
14.Intangible assets	102,566		0
15.Investment in subsidiaries, associates and joint ventures	2,720,312		-549,577
16.Current tax assets	14,863		0
17.Deferred tax assets	1,732,289		1,140,319
18.Other assets	3,518,894		0
<b>TOTAL ASSETS</b>	<b>64,007,606</b>		<b>-4 419 543</b>
1.Resources from central banks	8,339,115		0
2.Financial liabilities held for negotiation	1,146,931		0
3.Other financial liabilities at fair value through profit or loss	0		0
4.Resources from other credit institutions	6,238,720		0
	31,955,05		
5.Resources from customers and other loans	3		0
6.Liabilities represented by securities	8,057,182		0
7.Financial liabilities associated with transferred assets	295,958		0
8.Hedging derivatives	91,555		0
9.Non-current liabilities held for sale	0		0
10.Provisions	1,722,503		145,450

11.Current tax liabilities	14,478		0
12.Deferred tax liabilities	72,261		-42,908
13.Equity instruments	0		0
14.Other subordinated liabilities	902,535	-902,535	-902,535
15.Other liabilities	1,091,990		0
<b>TOTAL LIABILITIES</b>	<b>59,928,281</b>	<b>-902,535</b>	<b>-799,993</b>
16.Capital	6,084,696	-	6,084,696
		6	
		-	
		1,039,27	
17.Share premium accounts	1,039,273	3	
18.Other capital instruments	191,512	-191,512	
19.Own shares	-801	801	
		1,051,30	
20.Revaluation reserves	-1,051,304	4	
21.Other reserves and profit/loss brought forward	356,243	-356,243	
		2,540,29	
22.Profit/loss for the year	-2,540,294	4	
23.Interim dividends	0	0	
<b>TOTAL CAPITAL</b>	<b>4,079,325</b>	<b>4,079,325</b>	
		5	
<b>TOTAL LIABILITIES + CAPITAL</b>	<b>64,007,606</b>		