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# Banking & Finance 2022

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**Portugal: Trends & Developments**

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## Trends and Developments

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### **An Introduction to and Snapshot of the Portuguese Banking Sector**

#### *Introduction*

With much of the world still reeling in the wake of the COVID-19 pandemic, 2022 brought yet more unexpected challenges and tensions to individuals and businesses alike in Portuguese banking.

The current political and economic landscape carries substantial uncertainty. From the now long-lasting trade tensions to the persistent frailty in the manufacturing sector and supply chain issues, and galloping global inflation, all these factors are contributing to undermining confidence, economic growth and job creation.

The restructuring capacity of businesses, particularly small and medium-sized enterprises will depend to a great extent on the soundness of the financial sector and this will be key for the Portuguese economy to thrive in adversity.

In parallel, the acceleration of the digital transformation and the strengthening of ESG-related concerns are good examples of major trends that are very likely to continue to shape the agenda of the finance sector regardless of the economic context.

Finally, there are fundamental regulatory changes around the corner that deserve the undivided attention of all players in the banking and finance sectors in Portugal.

#### *Snapshot of the Portuguese banking sector*

As a backdrop to the global context and the trends described above, the Portuguese banking

sector has recently displayed signs of robustness. The first half of 2022 witnessed the major Portuguese banks' results sky-rocketing above 2021's figures. Millennium BCP, Caixa Geral de Depósitos, Novo Banco, Santander Totta and BPI produced aggregate net positive results of over EUR1 billion. This was well above the EUR678 million they achieved in the same period of 2021.

These are encouraging results and a positive sign in the face of the global tensions building around the Portuguese economy. It is worth noting that most COVID-related moratoriums expired almost a year ago, in September 2021. Therefore, there seem to be no significant loan impairment charges overhanging Portuguese major banks that could render these results as irrelevant or even misleading.

This is particularly significant as credits benefiting from the legal moratorium in Portugal represented a significant proportion (15%) of total bank credit. This was well above the average of their European counterparts. For some players, this proportion was as high as 20%, or even slightly above that.

Given the economic context, both domestic and global, the apparent soundness and solidity of the banking sector is not only a positive sign, but a key tool in successfully tackling the challenges that lie ahead.

#### **Restructuring and Recovery**

The pandemic crisis forced most businesses into accumulating debt at record levels as the

only path towards survival. The huge rise in inflation is now creating additional pressure on the viability of these businesses.

In the context of this perfect storm, Portugal is likely to witness recourse to restructuring tools as a generalised trend across multiple sectors. From debt-for-equity recapitalisations and fund injections, both from distressed-debt and private equity investors, to the plain vanilla extension of facilities and mergers and acquisitions (looking for consolidation and scale), these will be some of the most common tools businesses will use.

While for some businesses the implementation of insolvency and recovery plans will end up being inevitable, all businesses, whatever their sector or debt level, will benefit from looking for medium to long-term sustainability solutions, be that with their stakeholders, their business partners, investors, or with the banking industry.

## ESG in the Financial Sector – Greenwashing Concerns

A major trend across the board for some time now, ESG concerns are also an increasingly central factor in the financial sector.

Year after year, Portugal has been witnessing a steady growth, both in number and size, of green products and projects. But if sustainable finance has been at the top of the agenda in recent times, there are growing concerns that the existing efforts are not meeting the required standards.

Recent extreme weather phenomena across the globe have brought added emphasis to the discussion and this is likely to create additional pressure, on the one hand, and scrutiny, on the other, of current practices.

The additional sense of urgency in this respect may lead to detrimental effects. It is key for all players in the financial sector for the increasingly pronounced preference of investors for greener investments to be recognised via effective channelling of funds into instruments and projects with the greatest impact against climate change.

Greenwashing will certainly be a concern over coming months, and it is fairly safe to expect that regulators will tighten the net. Regulations, industry standards and scrutiny are bound to become more mature and effective over time. Financial players that have the agility to stay ahead of the game and impose their own standards are the ones most likely to thrive in a sector that is changing as swiftly as its backdrop.

## The Directive on Credit Servicers and Credit Purchasers

The legislative process for the approval of the Directive on Credit Servicers and Credit Purchasers has finally reached its end with the publication of the final text in the EU Official Journal.

This Directive, which regulates the sale, purchase and servicing of non-performing loans (NPLs) originated by EU banks will be incorporated by EU member states into their national laws during 2023. Hence, the next few months will be key for players acting in this market, which have been active in Portugal in recent years, to adapt themselves to the new paradigm.

The Directive will bring to life a set of obligations for credit servicers and credit purchasers. Credit servicers are legal entities that manage and enforce the rights and obligations related to a creditor's rights under a non-performing credit agreement, or to the non-performing credit agreement itself, on behalf of a credit purchaser. Credit purchasers are any individu-

als or legal entities, other than credit institutions, that purchases a creditor's rights under a non-performing credit agreement, or the non-performing credit agreement itself, in the course of their business.

The Directive sets out the requirement for credit servicers to obtain an authorisation prior to starting their activities. It also establishes the freedom to provide credit servicing in other member states after the authorisation has been obtained in their home member state. Credit servicers must also notify borrowers of an NPL sale and ahead of the first collection, providing specific information.

As to credit purchasers, while they are not subject to an authorisation procedure, they are required to inform the relevant authorities if they transfer a credit agreement to another credit purchaser. In respect of non-EU credit purchasers acquiring EU originated NPLs, there is an obligation to designate a representative established in the EU to be responsible for the credit purchaser obligations.

## The New Portuguese Banking Law

In 2020, there was a public consultation process regarding the approval of a new banking law. Besides a long overdue reorganisation of the provisions resulting from successive enactments of EU directives over the years, this law is intended to ensure that the Capital Requirements Directive V and the Bank Recovery and Resolution Directive II are incorporated into national law, and the Bank of Portugal has now issued a report with its main conclusions.

In short, the key amendments that are expected to be introduced include:

- adoption of a single type of financial company;
- significant corporate governance amendments;
- wider Bank of Portugal powers with regard to cross-border transactions and qualified shareholdings; and
- important amendments concerning banks portfolio composition (namely real estate assets and shareholdings).

The proposal for a new banking law is currently pending approval by the Portuguese Parliament and this is expected during the course of 2022.

Contributed by: Hugo Nunes e Sá, **PLMJ**

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## Author



**Hugo Nunes e Sá** is a senior professional support lawyer in **PLMJ's** banking and finance and capital markets practices. With over 15 years' experience, he has focused his practice on finance, namely on corporate and asset finance, and sale and acquisition of loan and

property portfolios, as well as on debt and equity segments of capital markets, ranging from IPOs and rights issues to the issuance of debt (including structured debt and hybrid securities), mergers and acquisitions, and also investment funds. He was an assistant to the Secretary of State for the Treasury of the 19th Constitutional Government of Portugal.

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