



BANKING AND FINANCE | CAPITAL MARKETS

First steps towards the issuance of tokenised bonds

Decree-Law 66/2023 of 8 August (“**DL 66/2023**”) was published on 8 August, and transposed into Portuguese jurisdiction several EU regulations on financial services, including the Regulation (EU) 2022/858 of the European Parliament and of the Council of 30 May 2022 in relation to the pilot regime for market infrastructures based on distributed ledger technology¹ (“**DLT Regime**”).

In order to implement the European provisions in respect of the use of distributed ledger technology (“**DLT**”) to issue, trade and settle financial instruments issued through DLT, notably in the context of the issuance of debt instruments up to EUR1 billion², DL 66/2023 has established a set of provisions aimed at harmonising and clarifying the applicable requirements set out in the Portuguese Securities Code³. These provisions address the technological challenges linked to the financial disintermediation triggered by the use of DLT.

Given the technological challenges linked to the financial disintermediation triggered by the use of DLT, DL 66/2023 established a set of provisions aimed at harmonising and clarifying the applicable requirements set out in the Portuguese Securities Code.

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- ¹ Under the DLT Regulation, DLT market infrastructures are DLT multilateral trading facilities, DLT settlement systems and DLT trading and settlement systems.
- ² The DLT Regulation sets quantitative limits for financial instruments admitted to trading or registered on a DLT market infrastructure. In the case of debt instruments, the European legislation sets a limit under which the volume of the issuance of bonds, other forms of securitised debt, including depositary receipts in respect of such securities, or money market instruments may not exceed EUR 1 billion.
- ³ Approved by Decree-Law 486/99 of 13 November, as amended.

The issuance of debt instruments using DLT will be subject to the current registration rules for book-entry securities.

Key points of DL 66/2023:

Form of representation of financial instruments issued through DLT

Unlike other European legislation, DL 66/2023 did not create a new form of representation for the digital representation of financial instruments issued through DLT. The Portuguese legislator chose to clarify that DLT representation is a form of book-entry representation. As a result, the issuance of debt instruments using DLT will be subject to the current registration rules for book-entry securities.

Registration systems

Among other innovations, DL 66/2023 adapted the provisions of the Portuguese Securities Code to the characteristics of DLT and, consequently, to the financial disintermediation that this technology entails. Therefore, it establishes an exception to the legal obligation of integration into a centralised system for financial instruments admitted to trading on a DLT multilateral trading system.

Supervision

The Portuguese Securities Market Commission is responsible for supervising and regulating the new legal requirements established by DL 66/202. It will also be the supervisory body with the power to grant and revoke the specific authorisation to operate multilateral trading systems and securities settlement systems based on DLT.

In light of these legislative advances, it is expected that the operators of multilateral trading systems and the operators of securities settlement systems will adapt their rules and internal procedures to the technological and operational infrastructure of DLT. ■