Decree-Law No. 453/99
of 5 November


Chapter I
Loan Securitisation

Article 1
Scope

1. This decree-law establishes the legal requirements for granting credit for the effects of securitisation and regulates the constitution and functioning of securitisation funds, securitisation firms and the management companies of those funds.

2. Loans granted for the effects of securitisation are considered to be those whereby the granting entity is a securitisation fund or a securitisation fund management company.

3. The provisions of this document shall apply, with the necessary adaptations, to securitisation operations on other assets, and CMVM shall be responsible for defining, by means of a regulation, the rules necessary for the implementation of the respective legal framework.
Article 2
Originators

1. The State and other public legal persons, as well as credit institutions, financial companies, insurance forms, pension funds and pension fund management companies are permitted to grant loans for securitisation purposes, as are other legal persons having had their accounts legally certified by an auditor registered with the Portuguese Securities Market Commission (CMVM) for the previous three years.

2. In duly justified cases, such as that of a legal person subject to foreign law, CMVM may authorise the substitution of the certification referred to in the previous paragraph with an equivalent document, namely an auditor's report drawn up by an internationally recognised auditor, provided that the interests of the investors are protected and the situation of the legal person is properly analysed.

Article 3
Grantees

Only the following are permitted to acquire credit for securitisation:

a) Securitisation funds;

b) Securitisation firms.

Article 4
Loans Suitable for Securitisation

1. Notwithstanding the provisions set down in the following paragraph, only those loans cumulatively fulfilling the following pre-requisites shall be granted for securitisation purposes:

a) Their transmissibility is not subject to legal or conventional restrictions;

b) They are of a pecuniary nature;

c) They are not subject to any conditions;

d) They are not subject to litigation and are not given as a guarantee nor are they judicially pledged or apprehended.

2. Notwithstanding the special legal requirements applicable to the securitisation of tax credits, the State and social security are permitted to grant loans for securitisation purposes even if these loans are subject to conditions or litigation, in which case the originator shall not guarantee that these loans may exist or be an enforceable liability.
3. Future loans may also be granted for securitisation purposes, provided that they arise from established relations and are for a known or estimable amount.

4. Mortgages granted under the terms of any of the legal frameworks provided by Decree-Law no. 348/98, of 11 November, may also be granted for securitisation purposes.

5. Notwithstanding the provisions set down in the previous paragraphs, insurance firms, pension funds and pension fund management companies shall only grant the following for securitisation purposes:
   a) Mortgages;
   b) Loans on the State and other public legal persons;
   c) Loans from pension funds relative to the contributions of their participants, without prejudice to the benefits to be attributed to these parties.

6. The granting must be complete, must not be subject to terms or conditions, except in the cases provided for in Article 28.2 and cases of incomplete subscription of securitisation units or securitised bonds, and the originator or an entity which it controls or is in a group relationship with are not permitted to provide any guarantees or assume responsibilities for compliance, notwithstanding, in relation to the loans presented, the provisions of Article 587.1 of the Civil Code, except in the cases provided for in paragraph 2 of this article.

7. The provision set down in the previous paragraph shall not affect the possibility of loans being guaranteed by a third party or the risk of non-compliance being transferred to an insurance firm.

8. The originator is obliged to reveal to the grantee any material events which could significantly affect the total value of the loan and of which the originator has knowledge on the date on which the loan takes effect.

Article 5
Debt Management

1. When the originator is a credit institution, a financial company, an insurance firm, a pension fund or a pension fund management company, a contract must always be drawn up at the same time as the loan is granted, whereby the originator or, in the case of pension funds, the fund management company is duty bound to carry out, in the name of and in representation of the grantee, all acts which prove to be appropriate to the proper management of the debt and, if such is the case, of the guarantees, being responsible for cover,
administrative services relating to the loan, all relations with the debtors and defensive measures, modifications and terminations related to the guarantees, should any exist.

2. Notwithstanding the circumstance provided for in the following paragraph, debt management may, in all other situations, be provided by the grantee, the originator or by a qualified third party.

3. Management and cover for tax credits granted by the State and social security for securitisation purposes shall be carried out, by means of compensation, by the originator or the State, through the General Directorate for Taxation.

4. In cases which are duly justified, CMVM may, in the situations referred to in paragraph 1, authorise debt management by an entity other than the originator.

5. When the credit manager is not the grantee, the taxation and disposal of loans shall always be automatic, and individually authorised by the grantee.

6. Notwithstanding the responsibilities of the parties involved, the management contract for the loans to be securitised may only be rescinded with just cause, and, in such cases, the debt manager must be substituted in observance of the stipulations of the previous paragraphs.

7. In case of bankruptcy of the debt manager, the sums in its possession arising from payments related to loans granted for securitisation purposes shall not form part of the bankrupt estate.

**Article 6**

**Effects of Granting Credit**

1. Notwithstanding the provisions of paragraph 4, the effective granting of credit for securitisation purposes in relation to debtors depends on their being notified of same.

2. The notification stipulated in the previous paragraph shall be issued by means of a registered letter sent to the debtor's address, as stated in the contract governing the credit granted, and, for all effects, the said notification shall be sent on the 3rd working day prior to the registration of the letter.

3. The substitution of the debt manager, in accordance with Article 5.6, must be communicated to the debtors under the terms stipulated in the previous paragraph.
4. When the originator of the credit is the State, social security, a credit institution, financial company, insurance form, pension fund or pension fund management company, the granting of credit for securitisation purposes produces effects in relation to the respective debtors once it takes effect between the originator and the grantee, regardless of the knowledge, acceptance or notification of the said debtors.

5. In cases which are duly justified, CMVM may authorise the application of the stipulations of the previous paragraph when the entity responsible for liaison with the debtors, even if this is not the originator, takes over the management of the debt.

6. Of the means of defence which may be legally invoked against the originator, the debtors of the loan granted may only oppose the granting of credit to the grantee when this credit stems from a fact which took place prior to the moment at which the approval of the loan became effective between the originator and the grantee.

7. The assignment of loans for securitisation purposes shall always respect the legal position from which the loan emanates, and all the rights and guarantees of debtors enforceable against the assignor of the loan or that which is stipulated in agreements entered into with the debtors, particularly as to the exercising of the respective rights in early redemption, renegotiation of loan conditions, the assignment of contractual rights and obligations and subrogation. The debtors shall maintain all exclusive relations with the assignor, if the latter is one of the entities referred to in paragraph 4. (2)

8. In the case of loans granted for securitisation of any mortgages approved pursuant to any of the stipulations of Decree-Law no. 348/98, of 11 November, the originators of such loans shall assume, for the effects of the granting of the said loan, the right to receive any applicable subventions. The credit systems provided for in that decree-law shall not in any way be affected by the securitisation of the loans in question.

**Article 7**

**Type of Asset Assignment Contract**

1. An asset assignment contract for securitisation purposes may be a private document, which is not officially recorded, even if it entails the securitisation of mortgages.
2. For the purpose of recording the assignment of mortgages in the register, or of other guarantees subject to registration, the private document referred to in the previous paragraph shall constitute sufficient security, provided that it contains proof that the signatures set down therein were witnessed by a notary, or by the secretaries of the intervening companies, if these exist.

3. The stipulations of the previous paragraphs shall also apply to conveysances carried out under the terms of item b) of Article 11, Article 38.5 and Article 45.

**Article 8**

**Tutelage of Loans**

1. The granting of credit for securitisation purposes:
   a) May only be the subject of defence for fraud against creditors if the interested parties prove that the pre-requisites set down in Articles 610 and 612 of the Civil Code are fulfilled. The presumptions legally established in Article 158 of the Code of Special Procedures for Company Recovery and Bankruptcy shall not apply.
   
   b) Must not be resolved to the benefit of the bankrupt estate, except where the interested parties prove that the other party acted in bad faith.

2. Sums paid in relation to loans granted for securitisation purposes, prior to the bankruptcy and which only mature after the bankruptcy, shall not form part of the bankrupt estate of the originator.

**Chapter II**

**Securitisation Funds**

**Section I**

**Securitisation Funds**

**Article 9**

**Notion**

1. Securitisation funds, hereinafter referred to as funds, have stand-alone assets, and belong, under the terms of the special legal requirements for community property regulated by this decree-law, to a group of persons, individual and legal. Funds shall not, under any circumstances, be held responsible for debts incurred by these persons, by entities which, according to the Law, are responsible for the managing them, or entities from which the loans comprising them have been acquired.
2. The funds shall be divided into parts taking the form of book-entry securities with a par value which was established in the management rules and regulations of the fund. The said parts shall be called loan securitisation units, hereinafter referred to merely as securitisation units.

3. The number of securitisation units of each fund is determined in the management rules and regulations.

4. The responsibility of each person entitled to securitisation units as regards the bonds of the fund shall be limited to the value of the securitisation units subscribed.

**Article 10**

**Types of Fund**

1. Funds may have fixed or variable assets.

2. Funds have variable assets when their management rules and regulations provide for the following, cumulatively or exclusively:
   a) The acquisition of new loans, either when the fund has loans with a maturity date shorter than its duration, to substitute those loans on the date of their maturity, or in addition to the loans acquired on constitution of the fund;
   
   b) The carrying out of new issues of securitisation units.

3. Funds have fixed assets when it is not possible, under the terms of the previous paragraph, to modify the respective assets or liabilities.

**Article 11**

**(2)**

**Modification of the Assets of Funds**

1. The Funds with fixed or variable assets may always acquire new loans, provided that the respective management rules and regulations envisage this, and if one of the following takes place:
   
   a) Early redemption of loans held by the fund;
   
   b) Changes to the loan features which determine its integration into the fund’s portfolio, particularly with regard to the renegotiation of the respective conditions between the debtor and the assignor if the fund retransfers the covered loan to the assignor;
   
   c) The existence of latent defects in the loans held by the fund.

2. By means of regulation, the CMVM defines the conditions and limits for the modification of the funds' assets pursuant to sub-paragraph b) of the abovementioned paragraph.
Article 12
Composition of Fund Portfolios

1. Funds must apply their assets in the initial or subsequent acquisition of loans, under the terms of this decree-law and of the respective management rules and regulations. Loans must not represent less than 75% of the assets of a fund.

2. Funds may also, as an accessory activity, apply their liquidity reserves in the acquisition of securities listed in a regulated market and short-term public or private debt securities, provided that this is appropriate to the efficient management of the fund.

3. Assets acquired under the terms of the previous paragraph must possess such characteristics as to guarantee that their being held by the fund does not alter the risk rating assigned to the securitisation units, and CMVM may, by means of a regulation, determine which assets are not eligible for these effects.

4. The liabilities of the fund may incorporate the responsibilities arising from the securitisation units referred to in Article 32.1, from loan agreements, agreements aimed at covering risks and remuneration owing for the services provided to them by the management company and the custodian.

5. Loans held by the fund may not be subject to taxation for any type of disposal, except in the cases envisaged in Article 11/b), /c), Article 13 and Article 38/5, or if dealing with redeemed loans. (2)

6. Loans granted by the State and social security for securitisation purposes are not susceptible to subsequent assignment by the assignee to third parties, except to securitisation funds or securitisation firms, with the consent of the State or social security, when applicable.

Article 13
Loans

1. In order to provide the fund with the necessary liquidity reserves, the management companies may issue loans on behalf of the funds they administer, provided that this is permitted by the management rules and regulations.

2. CMVM may, by means of a regulation, establish the terms and conditions under which, for purposes other than those provided for in paragraph 1, management companies are permitted to issue loans on behalf of the funds they administer, including loans to entities which have conveyed loans to the funds, and may also offer loans held by
the fund as guarantees. The said provisions may include limits relating to the total value of the fund, which may vary according to the means of marketing the securitisation units and the special qualification of investors permitted to hold the said securitisation units.

**Article 14**

**Risk Coverage**

1. Management companies may, on behalf of the funds they manage, under the terms and conditions provided in the management rules and regulations, have recourse to risk coverage techniques and instruments, namely swap contracts on interest rates and currencies.

2. CMVM may, by means of a regulation, establish the conditions and limits under which management companies are permitted to have recourse to risk coverage techniques and instruments.

**Section II**

**Management Companies**

**Article 15**

**Management of Funds**

1. The management of funds must be undertaken by a securitisation fund management company, hereinafter referred to merely as a management company.

2. Management companies must have their headquarters and conduct the management of their operations in Portugal.

**Article 16**

**Management Companies**

1. Management companies must have as their sole object the management of one or more funds on behalf of the holders of securitisation units in those funds.

2. Management companies must not, partially or totally, convey the powers to administer the funds which are conferred upon them by law to third parties. They may, nonetheless, have recourse to services provided by third parties, whenever this is convenient to the exercise of their activity, namely for the effects of managing the loans held by the funds and the respective guarantees, as well as the application of liquidity reserves.
**Article 17**

**Constitution**

1. Companies managing securitisation funds are financial companies which adopt public company status.

2. The equity capital of management companies must be represented by registered shares.

3. The management company’s corporate name must include the expression «Sociedade gestora de fundos de titularização de créditos» (securitisation fund management company), or the abbreviation SGFTC.

Members of the board of directors of management companies and persons with whom they have entered into an employment contract are forbidden from exercising any functions in other management companies.

**Article 18**

**Functions of Management Companies**

Management companies shall act on behalf of and in the interest of the holders of the securitisation units of the fund alone, and shall carry out all acts and operations necessary or appropriate to the proper management of the fund, in accordance with criteria of a high level of diligence and professional competence, as follows:

a) Application of the fund’s assets in the acquisition of loans, in accordance with the law and the management rules and regulations; proceeding, in the case provided for in Article 6.1, with the notification of debtors of the assignment of the loan and, in the case of mortgages, ensuring the recording of the conveyance in the real estate register;

b) To practice all acts and enter into any agreements necessary for the issuance of securitisation units;

c) To take out loans on behalf of the fund, pursuant to the terms of Article 13, provided that this is permitted by the management rules and regulations;

d) To manage the sums paid by debtors related to loans comprising the fund;

e) To calculate and have payments made corresponding to income from and redemption of the securitisation units;

f) To pay any expenses which, according to the terms of the management rules and regulations, are payable by the fund;
f) To keep the books of the fund in order;

h) To comply with information duties established by law or by the management rules and regulations.

i) To provide CMVM with information, when it requests it, on the applications referred to in Article 12.2;

j) To practice any acts necessary for proper debt management and the corresponding guarantees, if the management is not carried out by the originator or by a third party;

l) To authorise the disposal and taxation of the fund's loans, in the cases provided for in paragraphs 5 and 6 of Article 12.

Article 19
Equity

The equity of management companies must not be lower than the following percentages of the net asset value of the funds they manage:

a) Up to (Euro) 75000000 -0.5%;

b) Not to exceed -1(per thousand).

Article 20
Access to the Interbank Market

Management companies may, in the exercise of their duties, have access to the interbank market, in accordance with the conditions defined by Banco de Portugal.

Article 21
Prohibited Operations

Management companies are especially prohibited from carrying out the following operations:

a) Issuing loans on their own behalf;

b) Encumbering in any way or disposing of the loans comprising the fund, except in the cases provided for in paragraphs 5 and 6 of Article 12;

c) Acquiring securities of any type on their own behalf, with the exception of public, domestic or foreign funds, and of securities equivalent to these;

d) Assigning credit, including the provision of guarantees, on their own behalf or on behalf of the funds they manage;
e) Acquiring property on their own behalf, apart from that which is essential to their premises and operation.

**Article 22**

**Substitution of the Management Company**

1. In exceptional cases, CMVM may, on joint request by the management company and the custodian, authorise the substitution of the management company, provided that this is in the best interests of the holders of securitisation units in the fund.

2. If the authorisation of the management company is revoked by Banco de Portugal, or if there is another reason for the winding up of the company, CMVM may decide that the management company is to be substituted.

**Section III**

**Custodian**

**Article 23**

**Deposit of Securities Comprising a Fund**

1. The securities comprising a fund must be entrusted to a single custodian, as follows:
   a) The monies received by way of payment of interest or redemption of capital relating to the loans comprising the fund;
   b) Securities acquired on behalf of the fund, under the terms of Article 12.2;
   c) The sums arising from loans issued by the management company on behalf of the fund, in accordance with Article 13, provided that the management rules and regulations permit it.

2. Those credit institutions referred to in items a) to f) of Article 13 of the Legal Framework for Credit Institutions and Financial Companies, established by Decree-Law no. 298/92, of 31 December may be custodians, provided that they have equity of no less than 7500000 million Euro.

3. The custodian must have its headquarters and conduct the management of its operations in Portugal, or, if it has headquarters in another Member State of the European Community, must have a branch established in Portugal.

4. The relations between the management company and the custodian shall be governed by a written contract.
Article 24
Functions of the Custodian

1. The custodian shall be responsible for the following:
   a) Receiving deposits of the fund's securities and keeping all
documentary and other proof relating to the loans comprising the
fund which have not been kept by the originator;

   b) To receive deposits or register securities which, under the terms of
Article 12.2, comprise the fund;

   c) To carry out all applications of the assets of the fund which are
deleagted to it by the management company, in accordance with the
instructions of the latter;

   d) To pay interest and capital on the loans comprising the fund, when
the management rules and regulations provide for this and in
accordance with the instructions of the management company, and to
carry out all other acts which are deemed appropriate to the proper
management of debts;

   e) To pay the periodic returns payable to the holders of the
securitisation units, pursuant to the instructions issued by the
management company, and to redeem those securitisation units;

   f) To carry out any other instructions issued to it by the management
company;

   ) If any of the situations provided for in Article 22.2 arise with regard
to the management company, to propose its substitution to CMVM;

   e) To ensure, in operations relating to the securities comprising the
fund, that payment or other benefits are delivered within the
deadlines and in line with due market practice;

   i) To ensure that the income of the fund is applied in compliance with
the law and the management rules and regulations;

   j) To assume the role of overseer and to guarantee to holders of
securitisation units that the terms of the management rules and
regulations shall be fulfilled.

2. It is the custodian's duty to verify that all instructions issued by
the management company comply with the law and the management
rules and regulations, prior to such instructions being carried out.
3. Acting on behalf of the fund and in accordance with the stipulations of Article 14, the custodian may also enter into swap contracts, interest rate guarantee contracts or any others aimed at ensuring risk cover for the fund with the management company.

4. The custodian is permitted to acquire securitisation units of the funds in relation to which it exercises its duties.

5. The provision set down in Article 22 shall apply to the substitution of the custodian, provided that the request for substitution is made by the management company.

**Article 25**

**Responsibilities of the Management Company and the Custodian**

1. The management company and the custodian shall be jointly responsible for ensuring compliance with all duties set down by law and in the management rules and regulations, and shall act in the interest of holders of securitisation units.

2. The management company and custodian are also jointly responsible for ensuring the holders of the securitisation units of the veracity, rigour and sufficiency of the information contained in the management rules and regulations, and also that this information is up-to-date.

3. The responsibility of the custodian shall not be affected in cases where the guardianship of the securities of the fund is entrusted by it to a third party, either partially or totally.

**Article 26**

**Expenses of the Fund**

The management rules and regulations must provide for all expenses and costs to be met by the fund, in particular remuneration for services to be provided by the management company, the custodian, or by third parties, if this is permitted by law.

**Section IV**

**Constitution of Securitisation Funds and Management Rules and Regulations**

**Article 27**

**Authorisation**

1. The constitution of funds requires prior authorisation by CMVM.
2. The request for authorisation, to be made by the management company, shall be accompanied by the following documentation:
   a) A draft of the management rules and regulations;
   b) A draft of the contract to be entered into with the custodian;
   c) The contracts of purchase for the loans comprising the fund;
   d) A draft of the credit management contracts to be entered into under the terms of Article 5, if applicable;
   e) The provisional financial plan for the fund, with details of financial flows forecast for the entire duration of the fund and a declaration of how this is expected to affect the holders of the securitisation units.

3. If the securitisation units are aimed at being issued with recourse to public subscription, the request should also be accompanied by the following documents:
   a) A draft prospectus;
   b) The placement contract;
   c) A report drawn up by a risk rating agency registered with CMVM.

4. The risk rating report referred to in item c) of the previous paragraph must at least contain the following elements, as well as any other which CMVM may stipulate in a regulation:
   a) A statement on the types of loans comprising the fund, and, if other types of loans are held, an analysis of the characteristics of each category of loan held;
   b) Confirmation of the budget and consistency of the projected performance of the assets, on the basis of which the financial plan for the project was drawn up;
   c) The adequateness of the structure of the operation, including the means necessary for debt management purposes;
   d) The nature and suitability of any guarantees from which the holders of the securitisation units come to benefit;
   e) The risk of insolvency inherent to each securitisation unit.

5. If the originator of the loans to be acquired by the fund is a credit institution, a financial company, an insurance firm, a pension fund or a pension fund management company, authorisation depends on a favourable statement of opinion from Banco de Portugal or the Portuguese Institute of Insurance (Instituto de Seguros de Portugal), depending on the case.
6. The deadline for issuance of the statements of opinion referred to in the previous paragraph is 30 days from the date of receipt by Banco de Portugal or the Portuguese Institute of Insurance, depending on the case, of a copy of the proceedings sent to them by CMVM.

7. CMVM may request any clarification and supplementary information it deems necessary from the management company, as well as any necessary alterations to the documents accompanying the request.

8. The petitioner must be notified of CMVM's request within 30 days of the date of receipt of the said request or, if such be the case, of receipt of the statements of opinion stipulated in paragraph 5 or of the supplementary information or amended documents referred to in the previous paragraph. However, the said notification must never be issued more than 90 days after the date on which the request was issued.

9. When the managing company requires that the issue of securitisation units be made through a public offer, the grant of the authorisation implies approval of the corresponding prospectus. (1)

**Article 28**

**Constitution**

1. The fund shall be considered to be constituted on financial settlement of the subscription of the securitisation units.

2. The contract of purchase of the loans and the contract with the custodian shall have effect from the date on which the fund is constituted.

3. Within three days of the constitution of the fund, the management company shall make this public by means of an advertisement in the listing bulletin of a regulated market situated in or operating within the national territory or through the information disclosure system provided for in Article 367 of the Portuguese Securities Code.

**Article 29**

**Management Rules and Regulations**

1. The management company shall draw up management rules and regulations for each fund it administers.
2. The management rules and regulations must, at least, contain the following information:
   a) The name and duration of the fund, as well as details of the decision which authorised the constitution of the fund;
   b) Details of the management company and the custodian;
   c) The characteristics of the loans, or categories of identical types of loan comprising the fund and its management structure, if the management service is provided to the fund, through the management company or custodian, by the originator or a qualified third party;
   d) The rights inherent to each category of securitisation unit to be issued by the fund, namely those referred to in Article 32;
   e) Rules relating to the order of priority for payments to be made by the fund;
   f) The terms and conditions for the liquidation of the fund, in particular as regards the conveyance of loans held by the fund on the date on which it is liquidated;
   g) Contracts to be entered into by the management company, on behalf of the fund, with a view to ensuring coverage of any foreseeable risks, in particular the risk of insufficiency of income received from the fund's debtors to comply with the duty to pay periodic returns and for the redemption of the securitisation units;
   h) The terms and conditions of loans which the management company is permitted to issue on behalf of the fund;
   i) The remuneration for the services of the management company and the custodian, the means of calculating and making these payments, as well as any other expenses and charges which must be met by the fund;
   j) The duties of the management company and the custodian;
   l) The terms and conditions under which the disposal of matured loans is permitted.

3. In the case of funds with variable assets, with relation to which item a) of Article 10.2 provides for the subsequent acquisition of loans, the management rules and regulations must also contain information relating to the loans to be acquired subsequent to the constitution of the fund, as follows:
   a) The characteristics of the loans;
b) The maximum value of loans to be acquired;

c) The dates for which the acquisitions are planned and the value of each;

d) The procedures to be adopted if, for exceptional reasons, it is not possible to implement the planned acquisitions.

4. In the case of funds with variable assets for which the issuance of new securitisation units is planned, pursuant to the terms of item b) of Article 10.2, the management rules and regulations must also contain information on the rights conferred by the securitisation units to be issued, the value of such issues, the dates for which the issues are planned and any potential consequences of the new issues for the existing securitisation units.

5. If the management rules and regulations permit the modification of the assets of the fund, in accordance with the terms of Article 11, the terms and conditions for such a modification must be established.

6. Information to be provided on the characteristics of the loans must never allow the debtors to be identified.

7. Amendments to the management rules and regulations require prior authorisation by CMVM, with the exception of those arising from the cases provided for in item b) of Article 10.2, which are only required to be communicated to CMVM.

Article 30
Domicile

Those funds which are administered by a management company with headquarters situated within the national territory are considered to be domiciled in Portugal.

Section V
Securitisation Units

Article 31
Nature and Issuance of Securitisation Units

1. Securitisation units are securities, and must be of the book-entry type.

2. The legal requirements governing book-entry securities shall apply to the registration and monitoring of securitisation units.
3. Securitisation units must not be issued without the sum corresponding to the issue price effectively forming part of the assets of the fund.

4. On the date of constitution of the fund, the subscription accounts of the securitisation units shall be transformed into accounts of registration of securities, pursuant to the terms of the Portuguese Securities Code.

5. The subscription of securitisation units implies acceptance of the management rules and regulations and confers upon the management company the powers necessary for acts related to the management of the fund.

6. The originators may acquire securitisation units of funds to which they have conveyed loans.

**Article 32**

**Rights conferred by Securitisation Units**

1. Securitisation units confer upon their holders the following cumulative or exclusive rights, under the terms and conditions established in the management rules and regulations:

   a) The right to payment of periodic returns;

   b) The right to redeem the par value of the securitisation units;

   c) The right, on termination of the liquidation of the fund and apportionment of the proceeds thereof, to receive a quota of the total remaining after payment of periodic returns and all other expenses and charges met by the fund and proportionally owing to them.

2. Notwithstanding the right to demand compliance with the law and the terms of the management rules and regulations, the holders of securitisation units are not permitted to issue instructions to the management company as regards the administration of the fund.

3. If provided for in the management rules and regulations, funds may issue securitisation units of different categories conferring equal rights but different to those conferred by the other securitisation units, in particular as regards the level of preference for payment of periodic income, the redemption of the par value or payment of the proceeds of liquidation.

4. The risk of simple delay or failure to comply with the duties corresponding to the loans comprising the fund is incurred by the holder of securitisation units. The management company shall not be held responsible for delay or failure to comply with the duties referred to in paragraph 1 which are caused by the said circumstances, notwithstanding the stipulations of paragraphs 1 and 2 of Article 25.
Article 33
Early Redemption of Securitisation Units

The management company may, if the relevant provision is set down in the management rules and regulations, proceed with partial or full redemption of the securitisation units prior to the liquidation of the fund and the apportionment of the proceeds thereof, provided that equal treatment of the holders of units of the same category is guaranteed.

Article 34
Public Offering for Subscription of Securitisation Units

1. Securitisation units may be issued with recourse to public subscription, to which the provisions set down in the Portuguese Securities Code shall apply.

2. The public offer for subscription shall be launched by the management company by disseminating a prospectus in the terms of Regulation no. 809/2004/EC of the Commission of 29 April. (1)

3. Through regulation, the CMVM shall determine the information to be included in prospectuses of securitisation funds with variable assets and liabilities, notably: (1)

   a) The entire contents of the management rules and regulations;

   b) The parts of the risk rating report alluded to in item c) of Article 27.3 which are required to be reproduced;

   c) An abstract of the provisional financial plan for the fund;

   d) An auditing report on the budget and consistency of the provisional plan for the fund.

Article 35
Trading on a Stock Exchange

Securitisation units in securitisation funds may be admitted to listing on a stock exchange.

Section VI
Accounts, Information and Supervision of the Fund

Article 36
Fund Accounts

1. Fund accounts shall be organised in accordance with standards issued by CMVM.
2. Fund accounts shall be closed on an annual basis, with reference to 31 December, and must be certified by an auditor registered with CMVM, which auditor shall not sit on the supervisory board of the management company.

3. Before 31 March of each year, the management company must place the balance sheet and profit and loss account of each fund it manages at the disposal of all interested parties, at its headquarters and the headquarters of the custodian. The said documents must be accompanied by a report drawn up by the management company and a legal certificate for the accounts referred to in the previous paragraph.

4. The report from the management company referred to in the previous paragraph shall contain a description of the activities for the financial year in question and any material information permitting the holders of securitisation units to monitor the development of the funds activities.

5. Management companies must submit all documents referred to in paragraph 3 to CMVM before 31 March each year, or as soon as the said information is disclosed to the interested parties.

**Article 37**

**Supervision and Disclosure of Information**

1. CMVM is responsible for the supervising the activities of funds. However, *Banco de Portugal* has supervisory powers over the management companies of funds.

2. CMVM may, by means of a regulation:

   a) Define the minimum contents of the risk rating report provided for in item c) of article 27.3 and the terms under which this rating must be reviewed;

   b) Lay down the conditions in which approval of a preliminary prospectus of a public offer for subscription of securitisation units in a fund under creation may be granted, on the basis of which the management company may undertake market prospecting and awareness actions, with a view to assessing feasibility and verifying the terms in which the fund may be created and the offer launched; (1)

   c) Define the frequency and contents of information to be disclosed by the management company to CMVM and to the public;

   d) Establish rules as regards the liquidation of the securitisation funds and apportionment of the proceeds thereof.
Section VI
Liquidation of Funds and Apportionment of Proceeds

Article 38
Liquidation and Apportionment

1. The holders of securitisation units do not have the power to demand the liquidation of funds and the apportionment of the proceeds thereof.

2. Funds shall be liquidated and the proceeds apportioned on expiry of the duration of the fund. Funds may only be liquidated and the proceeds apportioned prior to the end of the said term if this is permitted by the management rules and regulations, namely in cases where all securitisation units are held by a single entity.

3. Funds may also be liquidated and the proceeds thereof apportioned prior to the end of the duration of the fund if CMVM makes a decision to this effect, if the authorisation of the management company is revoked or if there is another reason for winding up the company, if the management company is not substituted.

4. The liquidation account of the fund and the application of the proceeds must be observed by an auditor registered with CMVM.

5. Loans comprising the fund on the date of its liquidation must be conveyed under the terms and conditions provided for in the management rules and regulations.

Chapter III
Securitisation Companies

Section I
On securitisation Companies

Subsection I
General Requirements

Article 39
Type and Social Object

Securitisation firms shall adopt public company status and have as their sole object the performing of loan securitisation operations, by means of the acquisition, management and conveyance of loans and the issuance of securitised bonds in order to repay the loans contracted.
Article 40
Corporate Name and Equity Capital

1. The corporate name of securitisation firms must include the expression «Sociedade de titularização de créditos» (securitisation company) or the abbreviation STC, which abbreviation, or others mistaken for it, must not be used by any other entity.

2. The equity capital of securitisation firms must be represented by registered shares.

3. The Minister of Finance is responsible for establishing the minimum equity capital of securitisation firms in a ministerial decree.

4. Securitisation firms may be constituted by a single shareholder.

Article 41
Competence, Availability and Professional Experience of Members of the Board of Directors and Supervisory Board

1. The members of the administrative and supervisory boards of securitisation firms must be persons, the competence and availability of which guarantee the healthy and prudential management of the company, and which possess adequate professional experience for the performance of their functions.

2. In appraising the competence of the members of the administrative and supervisory boards, attention must be paid to the manner in which each person normally conducts business or exercises their profession, especially as regards those aspects which reveal the inability to make informed and solid decisions, or a tendency to not carry out their duties punctually, or behaviour which is incompatible with the safeguarding of the confidence of the market.

3. Among other circumstances, the following shall be considered to indicate a lack of competence:

   a) If the person has been condemned for the crime of money laundering, market abuse, insider information, falsification, theft, abuse of trust, robbery, swindling, extortion, infidelity, usury, concealment of assets to evade payment of loans, fraudulent or unintentional bankruptcy, favouring of creditors, receiving stolen goods, illicit appropriation, corruption or issuing bounced cheques;

   b) Declared bankrupt or bust or found to be responsible for the bankruptcy of a legal person, under the terms set down in Articles 126-A and 126-B of the Code of Special Procedures for Company Recovery and Bankruptcy;
c) Convicted in administrative infraction proceedings brought by CMVM, Banco de Portugal or the Portuguese Institute of Insurance (Instituto de Seguros de Portugal);

d) Removed from office by means of full or partial preventative suspension, under the terms of item a) of Article 412.1 of the Portuguese Securities Code, until such time as the suspension is lifted.

**Article 42**

**Competence of Holders of Qualifying Holdings**

1. Those interested in having qualifying holdings in a securitisation firm must fulfil the conditions guaranteeing the healthy and prudential management of that company.

2. For the effects of this document, the concept of qualifying holding is that which is defined in the Legal Framework for Credit Institutions and Financial Companies, established by Decree-Law no. 298/92, of 31 December.

3. The conditions referred to in paragraph 1 shall be considered not to exist when any of the following circumstances arise:

a) If the means by which the person in question habitually conducts his/her business or the nature of their professional activity shows a marked propensity for assuming excessive risks;

b) If the economic and financial situation of the person in question is inadequate to the holding which he/she wishes to obtain;

c) If CMVM has well-founded suspicions regarding the legality of the source of funds used to acquire the holding or the true identity of the owner of those holdings;

d) In the case of individual persons, if any of the facts indicating incompetence and unfitness, under the terms of paragraph 3 of the previous article, arise.

**Article 43**

**Equity**

1. The equity of securitisation firms must not be lower than the following percentages of the net value of securitised bonds it issues and which are in circulation:

   a) Up to (Euro) 75000000 -0.5%;

   b) Not to exceed -1(per thousand).

2. CMVM may, by means of a regulation, establish the elements which may comprise the equity of securitisation firms.
Article 44
Financial Resources

1. Except as provided in the following paragraph, securitisation firms must finance their activity with equity and by means of the issuance of securitised bonds, in accordance with Articles 60 et seq.

2. In order to satisfy the liquidity needs for the purpose of the redemption and reimbursement of securitised bonds, securitisation firms may, on behalf of the assets referred to in Article 62, have recourse to financing from third parties.

3. Without prejudice to the acquisition of new loans or the amortisation of securitised bonds, under the terms of Article 61, the proceeds of the redemption of securitised loans and income from the same may only be applied to instruments with low risk and high liquidity, to be defined by CMVM in a regulation.

Article 45
Conveyance of Loans

1. Without prejudice to the provisions of the following paragraphs, securitisation firms may only grant credit to securitisation funds and other securitisation firms.

2. Securitisation firms may also convey loans of which they are the holders, in the following cases:
   a) Non-compliance of the duties corresponding to the loans;
   b) Retransfer to the assignor and acquisition of new loans in replacement, if there are changes to the loan features when renegotiating the respective conditions between the debtor and the assignor entity;
   c) Re-conveyance to the originator, in cases where latent defects arise;
   d) When the disposal is extended to all loans still comprising the standalone assets affected by the redemption of an issue of securitised bonds, which loans must not represent 10% of the initial value of the said standalone assets.

3. By means of regulation, the CMVM defines the conditions and limits for the modification of securitisation companies’ assets pursuant to sub-paragraph b) of the abovementioned paragraph.

4. Loans granted by the State and social security for securitisation purposes are not susceptible to subsequent assignment by the grantee to third parties, except to securitisation funds or securitisation firms, with the consent of the State or social security, when applicable.
Article 46
Activity

The rules set down in paragraphs 2 and 4 of Article 304, Articles 305, 308, 309, 314.1, 316 and 317 of the Portuguese Securities Code shall apply to securitisation firms, with any necessary adaptations.

Sub-section II
Authorisation

Article 47
Authorisation

The constitution of securitisation firms depends on prior authorisation by CMVM.

Article 48
Documents to accompany the Request for Authorisation

1. Requests for authorisation shall be accompanied by the following elements:

a) A draft of the company’s articles of association;

b) Information relating to the business plan;

c) The name of the founding shareholders and the amount of capital to be subscribed by each one;

d) The names of the members of the administrative and supervisory boards.

2. The following information must also be provided in relation to those founding shareholders who are legal persons and holders of qualifying holdings in the securitisation firm to be constituted:

a) A copy of the updated by-laws and the names of the members of the governing body;

b) A copy of the annual reports and accounts, the statements of opinion of the supervisory bodies and of the legal certification of the accounts, for the previous three years, accompanied by the auditing reports for the same period;

c) The names of holders of qualifying holdings;

d) The relationships of the company in which the legal person has qualifying holdings, as well as an illustrative diagram of the structure of the group to which it belongs.
3. CMVM shall, by means of a regulation, establish the elements and information necessary for the identification of the founding shareholders who are individual persons and of the members of the governing and supervisory bodies and the appraisal of the requisites as regards competence, availability and professional experience established under the terms of Articles 41 and 42.

4. The compiling of the documents may be substituted by an indication that the updated versions are already in CMVM's possession.

5. CMVM may request from the petitioners any other supplementary information which is necessary for the appraisal of the request for authorisation.

6. Prior to making its decision, CMVM shall request information from Banco de Portugal and the Portuguese Institute of Insurance (Instituto de Seguros de Portugal) with regard to the competence, availability and professional experience, if applicable, of the members of the administrative and supervisory bodies and the parties having qualifying holdings. In such cases, the said entities shall furnish the information requested within 10 days.

**Article 49**

**Decision**

1. CMVM's decision must be communicated to the petitioner within 15 days of the following:

   a) The expiry of the period referred to in paragraph 6 of the previous article; or

   b) Of receipt of the supplementary information referred to in paragraph 5 of the previous article, if this occurs before the date stipulated in item a).

2. Failure to provide notification within the period stipulated in the previous paragraph shall constitute tacit denial of the request.

**Article 50**

**Denial of Authorisation**

1. Authorisation is refused whenever:

   a) The request for authorisation is not accompanied by all necessary information and documentation;

   b) Any of the documents accompanying the request is false or not in conformity with the legal or regulatory requirements;
c) CMVM does not consider that it has been demonstrated that all persons with qualifying holdings or all members of the administrative or supervisory bodies satisfy the pre-requisites established in Articles 41 and 42.

2. Prior to its denial, CMVM must notify the petitioner, so that rectifiable defects may be overcome within a reasonable period of time.

**Article 51**

**Expiry of Authorisation**

1. Authorisation shall expire if the securitisation firm does not commence its activities within nine months of notification of the authorisation.

2. CMVM may, on request by interested parties, extend the term referred to in the previous paragraph by a period of equal length.

**Article 52**

**Revocation of Authorisation**

1. CMVM may revoke the authorisation of a securitisation firm for the following reasons:
   a) If it was obtained by means of false declarations or other illicit means;
   b) If any of the pre-requisites on which the granting of authorisation depends ceases to be fulfilled;
   c) If the activity of the securitisation firm does not correspond to the legally established company object;
   d) If serious irregularities arise as regards the administration, supervision or accounting of the securitisation firm;
   e) If the securitisation firm violates the laws and regulations governing its activity or fails to respect the decisions of CMVM, in such a way as to put the interests of holders of securitised bonds at risk.

2. Revocation of authorisation implies the winding up and liquidation of the securitisation firm.

**Sub-section III**

**Registration**

**Article 53**

**Registration**

Authorisation by CMVM is required prior to the commencement of activity by a securitisation firm.
Article 54  
Elements subject to Registration

The registration of a securitisation firm shall contain the following elements:

a) The corporate name;

b) Company object;

c) Date of constitution;

d) Headquarters;

e) Equity capital;

f) Paid-up capital;

g) The names of persons with qualifying holdings;

h) The percentage of the equity capital held by those persons with qualifying holdings;

i) The names of the members of the administrative and supervisory bodies and the board of the general meeting;

j) The names of the solicitors of the securitisation firm;

l) The date of commencement of activity;

m) Shareholder agreements entered into by persons with qualifying holdings;

n) Contracts entered into with third parties for debt management and the guarantees associated with this, or for the practice of any of the acts referred to in Article 5.1;

o) Amendments to the elements stated in the previous paragraphs.

Article 55  
Registration Procedure

1. The request for registration must mention which elements are to be registered and must be accompanied by any documents necessary for this purpose.

2. Registration must only be carried out following the granting of the authorisation provided for in Article 47.

3. The compiling of the documents may be substituted by an indication that the updated versions are already in CMVM's possession.
4. Elements subject to registration shall be communicated to CMVM, unless there are legal provisions to the contrary, within 30 days of verification of the same, with a view to their registration.

5. Registration shall be considered to be complete if CMVM does not refuse it within 45 days of receipt of the request or of any supplementary information which was requested.

**Article 56**
Denial of Registration or Recording on the Register

1. Apart from other elements stipulated by law, registration shall be refused whenever:
   a) The request for registration is not accompanied by all necessary elements, information and documentation;
   b) Any of the documents accompanying the request is false or not in conformity with the legal or regulatory requirements;

2. Prior to its denial, CMVM must notify the petitioner, so that rectifiable defects may be overcome within a reasonable period of time.

**Article 57**
Cancellation of Registration

Apart from the elements stipulated by law, the following shall constitute cancellation of a registration by CMVM:

a) The verification of any circumstance which would prevent the registration if this circumstance were not rectified within the period of time stipulated by CMVM;

b) Revocation or expiry of the authorisation;

**Article 58**
Registration of the Members of the Administrative and Supervisory Bodies

1. The registration of members of the administrative and supervisory bodies must be petitioned, subsequent to their appointment, by means of a request issued by the securitisation firm.

2. The obtaining of registration is a precondition for the exercise of the functions referred to in the previous paragraph.

3. In case of renewal, this shall be recorded in the register, at the request of the securitisation firm.

4. The request referred to in paragraph 1 must be accompanied by the elements and information stipulated in a regulation issued by CMVM, under the terms of Article 48.3.
5. Prior to making its decision, CMVM shall request information from Banco de Portugal and the Portuguese Institute of Insurance (Instituto de Seguros de Portugal) with regard to the competence, availability and professional experience of the members of the administrative and supervisory bodies, and the said entities must, if necessary, provide said information within 10 days.

6. A lack of adequate competence, availability or professional experience on the part of the members of the administrative and supervisory bodies is grounds for refusal of registration.

7. The incidental occurrence of lack of fitness on the part of the members of the administrative and supervisory bodies shall result in the cancellation of the registration.

8. Refusal or cancellation of registration on the basis of the facts referred to in paragraphs 6 and 7, respectively, shall be communicated to the interested parties and to the securitisation firm, which shall take adequate steps to ensure that the persons failing to fulfil the said pre-requisites give up their functions with immediate effect.

Article 59
Communication and Registration of Qualifying Holdings

1. Whomsoever shall intend to have, directly or indirectly, a qualifying holding in a securitisation firm, must inform CMVM of that intention prior to acting on it, for the purposes of appraising the pre-requisites established in Article 42.

2. The communication referred to in the previous paragraph must be accompanied by the elements and information stipulated in a regulation issued by CMVM, under the terms of Article 48.3.

3. Prior to making its decision, CMVM shall request information from Banco de Portugal and the Portuguese Institute of Insurance (Instituto de Seguros de Portugal) with regard to the fitness of the persons with qualifying holdings, and the said entities must, if necessary, provide said information within 10 days.

4. Within a maximum of 15 days of the end of the period referred to in the previous paragraph, CMVM shall express its opposition to the plan if it does not consider that the person in question fulfils the pre-requisites established in Article 42.

5. Once 15 days have elapsed since the acquisition of the qualifying holdings, the holder must request the relevant registration from CMVM.
Section II
Issuance of Securitised Bonds

Article 60
General Requirements

1. Securitised bonds may be of different categories, as regards the guarantees established in favour of their holders, rates of remuneration, which may be fixed or variable, and the level of preference. They must have maturity dates appropriate to the maturity of the underlying loans.

2. Issues of securitised bonds are not subject to commercial registration.

3. Public and private offers of securitised bonds shall be subject to the provisions of title III of the Securities Code and any provisions that supplement it. (1)

4. The request for approval of a prospectus of a public offer for distribution of securitised bonds shall be supported by a risk rating report whose content must comply with the provisions of no. 4 of Article 27, all necessary changes being made. (1)

Article 61
Redemption of Securitised Bonds and Payment of Issue Expenses

The redemption and remuneration of securitised bonds issued and the payment of expenses and charges related to the issuance shall only be guaranteed by loans directly related to them, by the proceeds of their redemption, by the income arising from them or by other guarantees or risk coverage instruments undertaken with regard to their issuance. The remaining assets of the securitisation firm issuing the securitised bonds shall not be used to such effect.

Article 62
Principle of Segregation

1. Loans affected by the redemption of an issue of securitised bonds, as well as the proceeds of the said redemptions and any income arising thereof constitute standalone assets, which shall not be used with regard to any debts incurred by the securitisation firm until the total amount owing to the holders of the securitised bonds comprising that issue is paid in full, together with any expenses and charges related to same.
2. The goods which at any given time comprise the standalone assets affected by the issue must be adequately described in the company's segregated accounts and identified in codified form in the documentation relating to the issue, except in the case of tax credits, when the means of description and identification of those assets is defined in such a way as to guarantee the confidentiality of the personal data of contributors, by means of a decree issued by the Ministry of Finance and by the minister with powers related to the ownership of loans conveyed for securitisation purposes.

3. If no provision to the contrary is established by law or agreed in the contract for the corresponding securitisation operation, the securitisation firm has the right to the standalone assets affected by the payment of each issue of securitised bonds remaining after payment in full of the sums owing to the holders of the securitised bonds comprising that issue and of any expenses and charges related to it.

4. In the event of foreclosure brought against the securitisation firm, the creditor is only permitted to pledge the right to what remains of each separate standalone asset if it proves the insufficiency of the other assets of the company.

5. The key to the code referred to in the first part of paragraph 2 is entrusted to CMVM, which shall establish, by means of a regulation, the conditions under which the holders of securitised bonds shall have access to them in case of default.

**Article 63**

**Guarantee of Bond Creditors and other Creditors of the Issue**

1. The holders of securitised bonds and entities providing services related with the issuance of same shall enjoy special credit privileges over the goods comprising the standalone assets affected by that issue at any given time, and shall have precedence over all other creditors.

2. The privilege referred to in the previous paragraph is not subject to recording in the register.

**Article 64**

**Pre-requisites and Limits of Issuance**

Issues of securitised bonds are not subject to the pre-requisites and limits established in Article 348.2 and Article 349 of the Commercial Company Act.
Article 65
Common Representative of Bondholders

1. The conditions set down with regard to each issue of securitised bonds may identify a common representative for the bondholders of that issue. For this effect, one of the entities referred to in Article 357.2 of the Commercial Company Act must be appointed, or a credit institution or other entity authorised to provide the service of representing investors in any Member State of the European Union. These entities must not control the originator of loans or securitisation firm, or be in a group relationship with the originator, as stipulated in Article 21 of the Portuguese Securities Code.

2. The terms of the appointment provided for in the previous paragraph shall be established in the conditions for issuance of the securitised bonds, in particular as regards the remuneration of the common representative, costs and charges inherent to the exercise of their duties, expenses arising from the convocation and holding of bondholder meetings, the limits applicable to the responsibilities of the common representative and the terms of the responsibilities which are to be assumed by the securitisation firm and other entities intervening in the issue in question.

3. The meeting of bondholders shall deliberate on the appointment, remuneration and removal from office of the common representative of bondholders, and on the alteration of the initial conditions of that appointment.

4. The remuneration of the common representative, any other costs and charges inherent to the exercise of their duties, expenses arising from the convocation and holding of the meeting of bondholders, when incurred with regard to the conditions of issue, shall be covered by the standalone assets corresponding to the issue. The rest of the assets of the securitisation firm shall not be utilised to such ends, and shall benefit from the credit privileges provided for in Article 63.1.

5. The terms and conditions of the issue may establish the powers of representation of bondholders conferred upon the common representative and the means by which the latter interacts with the meeting of bondholders. The following powers may be conferred upon the common representative:

a) To implement the resolutions of the meeting of bondholders which decreed the early maturity of the bonds in question;

b) To exercise, on behalf of and in representation of the bondholders, all rights conferred upon them by this law or by the terms and conditions of the issue;
c) To represent the bondholders in court, in any type of action.

6. The terms and conditions of the issue may place limitations on the exercise in isolation of bondholder rights, whenever these are contrary to the resolutions of the meeting of bondholders.

7. The provisions regarding the common representative of bondholders established in the Commercial Company Act shall also apply, in a subsidiary capacity.

**Article 66**
**Supervision and Regulation**

1. CMVM is responsible for the supervision of securitisation firms.

2. CMVM may, by means of a regulation establish the following:
   a) Prudential rules and accounting standards for securitisation firms;
   b) Information duties towards CMVM and the public;
   c) Rules relating to the procedure for authorisation of registration;
   d) Pre-requisites relative to the human, material and technical means required of securitisation firms;
   e) Rules relating to conflicts of interests, in particular on the maximum percentages of holdings permitted to the originators of loans in a securitisation firm.

**Chapter IV**
**Final Provisions**

**Article 67**
**Activity of Intermediation in Transferable Securities**

The creation and administration of securitisation funds is considered to be an activity of financial intermediation when carried out on a professional basis.

**Article 68**
**Infractions of a Mere Administrative Nature**

The violation of the rules set down in this document and those of regulation related to it coming under the scope of CMVM’s powers shall be governed by the provisions of the Portuguese Securities Code relating to infractions of a merely administrative nature.

---

(1) Wording provided by Article 9 Decree-Law No. 52/2006, of 15 March
(2) Amended by Article 11 Decree-Law No. 211-A/2008, of 3 November