



Credit Agreements related to Residential Immovable Property

On June 23rd, the Decree-Law n. 74-A/2017 was published in the Portuguese Official Gazette, which approves the regime of the credit agreements related to residential immovable property, establishing the rules applicable to the credit for consumers secured by a mortgage or by other right related to the residential immovable property (the “Decree-Law”), partially transposing into Portuguese law the Directive 2014/17/EU, of the European Parliament and of the Council, on credit agreements for consumers relating to residential immovable property (the “Directive”).

Scope of application

The present Decree-Law applies to the following credit agreements:

- For the acquisition or construction of owner-occupied, secondary place of residence or rental housing;
- For the acquisition or maintenance of property rights on lands or on existing or projected buildings;
- Credit agreements which, regardless of their purpose, are secured by a mortgage or by other comparable security commonly used on immovable property, or secured by a right related to the immovable property;

Financial lease agreements of owner-occupied, secondary place of residence or rental immovable property are also covered by this Decree-Law, in order to protect consumers' interests.

“ It is now required that the employees (and service providers) have an advanced level of knowledge and competence in the drafting, trading and conclusion of mortgage credit agreements for consumers and in the respective ancillary services, in order to be able to fully clarify all the doubts of the consumers.”

Main amendments

Considering the main amendments introduced by this new Decree-Law, we would highlight the following:

Credit for works not secured by mortgage

The legal provisions of the regime of the credit agreements for consumers which are laid down in Decree-Law n. 133/2009, of 2 June are now applicable to credit agreements for the purpose of works in residential immovable property, not secured by mortgage.

Assessment of consumer's creditworthiness

The provisions related to the assessment, to be made before the conclusion of the agreement, of the consumer's capacity to reimburse the mortgage credit are now strengthened, by comparison with other types of credit for consumers, considering the income and expenses of the consumers and other economic circumstances related to them. For such purpose, the creditor shall collect and assess information from the consumer and also through the consultation of relevant credit liabilities' databases, of the judicial executions public list, among others, including the database of creditors operating in other Member States.

This assessment shall not rely predominantly on the value of the immovable property exceeding the amount of the credit, nor on the assumption that the immovable property will increase in value and shall be stored in individual proceedings related to each consumer in order to allow an independent review.

Harmonisation and comparability of the contractual and pre-contractual information

The general and customised pre-contractual information, as well as all aspects related to the duty to assist the consumer shall be provided by means of a European standardised format, which is included in the European Standardised Information Sheet ("ESIS") in the model attached to Decree-Law, which replaces the current Standardised Information Sheet ("SIS").

Such information shall be provided on paper or on another durable medium and if the credit is secured by a surety, the creditor is also bound to deliver a copy of the ESIS and of the draft of the agreement to the guarantor and to provide him with adequate explanations, granting him a reflection period equal to the one granted to the borrowers in order to allow him to consider the implications of the credit agreement and of the provision of the guarantee.

Professional qualification and training applicable creditors' staff

It is now required that creditors' employees (and service providers) have an advanced level of knowledge and competence in the drafting, trading and conclusion of mortgage credit agreements for consumers and in the respective ancillary services which may be included in these agreements, in order to be able to fully clarify consumers' doubts.

Until March 21st, 2018, it is assumed that the referred employees have adequate knowledge and skills if they have worked, for at least 3 years, either consecutive or intermittent, in the conclusion of this kind of agreements. From such date, they the same will have to complete the compulsory schooling with professional certification or academic level with a curriculum plan, including the minimum training content, to be established by a Government ordinance.

In particular, and for the purposes of the Decree-Law, creditors' employees will have to master the following matters; (i) Features of the credit products traded and of the ancillary services usually proposed in association with those products; (ii) Legislation applicable to credit agreements, in particular in relation to consumer protection; (iii) Immovable property purchasing process; (iv) Security valuation; (v) Organization and functioning of land registers; (vi) Market of mortgage credit in Portugal; (vii) Assessment of consumers' creditworthiness; (viii) Business ethics; (iv) Fundamental concepts of economics and finance.



Adequate benefits and remunerations policies

The Decree-Law will also imply the review of the remuneration and benefits policies of credit institutions' employees who are involved in the drafting, trading and granting of mortgage credit agreements for consumers in order to prevent and manage the occurrence of conflicts of interest, such as by establishing that the remuneration, including possible fees, does not depend, directly or indirectly, on any aspect related to the credit requests approved or credit agreements entered into, in particular, of its monthly or annual number or percentage per employee, amounts, type, applicable rate.

The remuneration policies shall also ensure the compliance with the duties of care, impartiality and loyalty to which these employees are bound to, promoting a sound and prudent risk management, compatible with the business strategy of the institution, its values and long term interests.

Independent evaluators

A new requirement consists of the intervention of independent experts and the application of specific legislation and international rules applicable to the performance of this activity.



Consolidation of several rules regarding the housing credit and the associated mortgage credit, including the respective sanctioning regime

Taking advantage of the transposition of the Directive, the Decree-Law also consolidates several rules regarding the housing credit and the associated mortgage credit, including the respective sanctioning regime, which were scattered across several legal decrees, thus amending: (i) articles 5, 6, 7-A, 7-B, 18 a 22, 23-B, 24, 28-A and 30-A of **Decree-Law n. 349/98, of November 11^{st1}** (ii) **Decree-Law n. 240/2006, of December 22^{nd2}**, (iii) **Decree-Law n. 51/2007, of March 7^{th3}**; (iv) **Decree-Law n. 171/2008, of August 26^{th4}**; (v) **Decree-Law n. 192/2009, of August 17^{th5}**; and (vi) **Decree-Law n. 226/2012, October 18^{th6}**.

The present Decree-Law enters into force on January 1st, 2018, but a significant part of the rules of this Decree-Law shall be subject to materialization by way of implementation rules to be established by notice of the Bank of Portugal, to be issued within 90 days from the publication date of this Decree-Law.

We also take the opportunity to note that, for purposes of implementing this Directive, it was already published on June 2015 the guidelines of the European Banking Authority (EBA) on the creditworthiness assessment and arrears and foreclosure to be implemented by credit institutions.

¹ This decree governs the granting of credit for acquisition, construction and performance of ordinary and extraordinary maintenance works and improvement works of owner-occupied, secondary place of residence or rental housing property, as well as for the acquisition of lands for construction of a permanent owner-occupied housing. The regimes of subsidised credit governed by the present decree are revoked, from 01-01-2004, under the conditions established in DL n. 305/2003, of December 9th.

² This Decree establishes the rules governing the rounding-off of the interest rate, when applied to the credit agreements for acquisition, construction and performance of works in permanently owner-occupied, secondary or rental housing property and for the acquisition of lands for construction of permanent own-occupied housing entered into between credit institutions and their clients. This decree applies to the credit agreements concluded after its entry into force, as well as to the implementation agreements, through the re-fixation of the interest rate, for purposes of rounding-off.

³ This decree governs the commercial practices of credit institutions and ensures the transparency of the information provided by them within the conclusion of credit agreements for acquisition, construction and performance of works in permanent own-occupied, secondary or rental housing, as well as for acquisition of lands for construction of own-occupied housing.

⁴ This decree approves a number of measures for protection of the borrower in housing credit.

⁵ This decree proceeds to the second amendment of Decree-Law n.51/2007, of March 7th, which governs the banking practices in the granting of housing credit, extending its regime to others credit agreements secured by the same immovable property and strengthening the information rights of the consumer, and extends the regime established by Decree-Law n. 171/2008, of August 26th, to these type of credits.

⁶ This decree extends the scope of application of Decree-Law n. 51/2007, of March 7th, to the other credit agreements secured by mortgage, or by other right on the immovable property, and entered into with individual banking clients.

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