

The Management of Bank Crisis in Portugal

Law and Practice

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The Crisis of the Portuguese Banking System

THE RISE

- Expansion in size, number and profitability
E.g.:
- Third highest branch density in EU
- Sixth highest return on equity rate (average of 15%)





The Crisis of the Portuguese Banking System

THE ORIGINS OF THE CRISIS

- overreliance on wholesale funding
(loan-to-deposit ratio of 172% percent in 2008)
- concentration and misallocation of credit
(loans to real estate and construction sectors accounting for 70% of the total credit portfolio by 2008)
- concentration of ownership

The Crisis of the Portuguese Banking System

THE FALL

- The BPN Case (2008)  Nationalization
- The BPP Case (2010)  Liquidation
- The BES Case (2014)  Resolution
Bridge Institution Tool
- The BANIF Case (2015)  Resolution
Sale of Business Tool
- What's Next?

The Portuguese Law on Bank Crisis

THE REGULATORY FRAMEWORK

“Troika Memorandum” (Portugal –IMF –ECB) of 2011



Reform of 2012

- Titles VIII, VIII-A and IX of the “General Law of Credit Institutions and Financial Companies” (GLCI)
- BRRD and SRM Regulation
- Other Laws / Orders of Bank of Portugal

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LEGAL AVENUES TO BANK CRISIS MANAGEMENT

- Prevention and Earlier Intervention
- Recapitalization
- Nationalization
- Liquidation
- Resolution

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LEGAL AVENUES TO BANK CRISIS MANAGEMENT

Prevention

- Recovery and Resolution Plans (“living wills”)
- Earlier Intervention Measures
- Provisional Administration

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LEGAL AVENUES TO BANK CRISIS MANAGEMENT

Recapitalization

- Law 63-A/2008 (“Law of Recapitalization”)
- BCP: EUR 3.5 billion
- CGD: EUR 1.65 billion
- BPI: EUR 1.5 billion
- BANIF: EUR 1.1 billion

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LEGAL AVENUES TO BANK CRISIS MANAGEMENT

Nationalization

- Law 62-A/2008, of 11 November
- BPN: Nationalized in 2008

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LEGAL AVENUES TO BANK CRISIS MANAGEMENT

Liquidation

- Decree-Law 199/2006 (“Winding-Up Law”)
- BPP: Wound-up in 2010

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LEGAL AVENUES TO BANK CRISIS MANAGEMENT

Resolution

- Articles 145-C to 145-AU of the GLCI
- Multi-tool and multi-goal mechanism for restructuring a failed or failing bank

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LEGAL AVENUES TO BANK CRISIS MANAGEMENT

Resolution: Requirements

- bank failure or likelihood to fail
- lack of reasonable prospect of other alternative successful measures
- the need and proportionality of the resolution measure

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LEGAL AVENUES TO BANK CRISIS MANAGEMENT

Resolution: Goals

- to ensure *continuity of critical financial functions*
- to prevent *grave effects on financial stability*
- to protect *State and taxpayers*
- to protect *depositors*
- to protect *clients' funds and assets.*

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LEGAL AVENUES TO BANK CRISIS MANAGEMENT



Resolution: Guiding Principles

- shareholder subordination
- creditors ranking
- no creditor worse-off
- full protection of covered deposits

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LEGAL AVENUES TO BANK CRISIS MANAGEMENT

Resolution: Tools

- Sale of Business  BANIF (2015)
- Bridge Bank  BES (2014)
- Asset Separation
- Bail-In

Lessons from the Portuguese Bank Crisis

THE OPERATIVE DIMENSION

- the powers of resolution authorities
- systemic risk: BPN nationalization v. BPP liquidation
- scope and limits of powers of transference:
the retransfer of BES' senior bonds

Lessons from the Portuguese Bank Crisis

THE FINANCING DIMENSION

- BES Resolution: EUR 4.9 billion
 - PFR*: EUR 377 million
 - State: EUR 4.5 billion
- BANIF Resolution: EUR 2.2 billion
 - PFR*: EUR 489 million
 - State: EUR 1.7 billion
- The Resolution Fund: the Achilles' heel of the regulatory framework?

* Portuguese Resolution Fund

Lessons from the Portuguese Bank Crisis

THE CROSS-BORDER DIMENSION

- the scope and limits of mutual recognition
- The “Goldman Sach v. Novo Banco” decision (2015)