



## LEGAL FLASH



### PARTICIPATING LOANS (*EMPRÉSTIMOS PARTICIPATIVOS*)

Decree-Law no. 11/2022 was published on 12 January, introduced a new mezzanine-like instrument to finance Portuguese companies: the participating loans (*empréstimos participativos*).

Participating loans (“PL”) can be made by way of loan agreements or debt securities.

#### Covered entities

PL may only be granted or subscribed by specific entities, such as private equity and venture capital undertakings, credit institutions and financial companies, specialized alternative investment undertakings of credit and other entities authorized to professionally grant credit.

On the borrowers’ side, PL may be granted to, or issued by, non-financial companies.

#### Requirements and main features

PL may be characterized by the following features:

- ▶ **Nature:** PL will be classified as equity, if their (i) remuneration depends on the financial performance of the borrower and (ii) the repayment or redemption depends on the distribution rules laid out by the Portuguese Companies Code.
- ▶ **Formalities:** PL must be executed in writing and, if carried out through a debt securities issue, they shall be governed by the rules applicable to the issuance of securities.
- ▶ **Approval:** PL are subject to prior approval by the borrower’s shareholders’ general meeting.
- ▶ **Purpose:** PL may be executed for multiple purposes, including, financing of the borrower’s investments, reinforcement of cash flow and debt repayment.
- ▶ **Assignability:** Credits arising from PL may be assigned to third parties, including securitization entities.
- ▶ **Ranking:** PL are ranked as subordinated debt, although ranked above shareholders’ credits.
- ▶ **Collateral:** Borrowers may be requested to provide collateral to secure the payment and reimbursement of the PL.

#### Remuneration and reimbursement

PL must be onerous, and their remuneration shall be, at least partially, indexed to the performance of the borrower –

it may be a fixed or incremental percentage of a pre-determined financial metric agreed by the parties.

Part of the remuneration can also be calculated based on an agreed interest rate.

As a general rule, the borrower may repay the PL at any time, together with the remuneration due until the beginning of the quarter on which the repayment occurs.

Remuneration payments and repayment may only occur if (i) the borrower’s equity does not fall below the sum of the share capital and reserves; and (ii) profits are not needed to cover previous losses or establish legal or statutory reserves.

As long as a PL is in force, the borrower shall not carry out any distributions without the lender’s express consent.

#### Conversion into share capital

The parties may agree in the PL documentation the terms under which the PL is converted into share capital.

Notwithstanding, the lender may request the conversion of the PL credits into share capital if:

- ▶ The borrower does not fully repay the PL on the agreed repayment date;
- ▶ The borrower has not paid the remuneration due and payable for at least 12 months; or
- ▶ The borrower does not register its annual accounts with the Commercial Registry Office for a period longer than 12 months upon the legal deadline.

The procedure to implement the conversion is set out in the PL regime and other legal acts.

For further information on the PL regime please contact us.

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