



## **TERMS AND CONDITIONS AND OPERATIONAL REQUIREMENTS OF BANCO DE PORTUGAL WHEN ACTING AS CCB AND AS ACB FOR CREDIT CLAIMS**

### **Terms & Conditions of Banco de Portugal, when acting as CCB**

Counterparties may use credit claims to collateralise Eurosystem credit operations on a cross-border basis (i.e. counterparties may obtain funds from the national central bank of the country where they are located – their home central bank (HCB) – by making use of credit claims governed by a law other than the national law of the HCB). The national central bank of the country whose law governs the credit claim acts as correspondent central bank (CCB).

The following provisions apply when Banco de Portugal (BdP) act as CCB.

Eurosystem counterparties that wish to use as collateral, in credit operations with other Eurosystem NCBs, credit claims governed by Portuguese law have to comply with the following provisions, which complement the terms and conditions currently applicable between counterparties and their respective HCB.

When the HCB provides interface services between its counterparties and the CCB, the HCB is purely acting as the messenger for the counterparty without taking any responsibility. The obligation to comply with the requirements – in particular the legal requirements – remains with the counterparty.

### **Legal requirements**

- a) The legal technique used for the creation of a security interest is pledge.
- b) Notification/registration of the debtor prior to the mobilisation of the credit claims is not required. The notification of the debtor is not imposed by law as a legal requirement for a valid mobilisation of credit claims. In fact, according to the Portuguese Civil Code, the pledge of credit claims is valid irrespective of the notification of the debtor. There is, however, an informal registration of the pledge in the BdP.
- c) When another NCB (which is not the CCB) plays the role of HCB, notification/registration may be required, in accordance with the requirements of the conflict of law rules of the HCB and/or the CCB upon request of the HCB. Registration/notification will be performed according to the rules of the jurisdiction that requires registration/notification.



- d) Upon request of the HCB and in the event of default of the counterparty the BdP will notify the debtor of the mobilised claim for all the effects defined by the HCB (v.g. execution of the pledge).
- e) The credit claim agreement needs to fulfil the general requirements set out in the BdP rules for counterparties.
- f) The other requirements that need to be fulfilled for the purpose of creating valid and enforceable security interest over the credit claim are the following:
- (i) BdP only informs the HCB of the constitution of the pledge after receiving:
    - The counterparty's declaration where it warrants that the credit claims exist, are valid and enforceable and there is not any obligation, charge, restriction or binding on them.
    - The counterparty confirmation and warrant that no credit claim submitted as an underlying asset is being simultaneously used as collateral to the benefit of any third party and that the counterparty shall not mobilise any credit claim as collateral to any third party.
  - (ii) The counterparty shall hold in trust all the credit claims agreements signed between the counterparty and the debtors and given to the HCB as collateral.
  - (iii) The credit claim shall be governed by Portuguese law.
  - (iv) For the enforcement of the pledge (request and acceptance) each party - BdP and the counterparty - must send a written confirmation using any of the means referred in the document "**Table 1 - Handling procedures of NCBs acting as CCB**" of the **Terms and Conditions Template**" published in the ECB website ([http://www.ecb.europa.eu/paym/pdf/collateral/Table1\\_Handling\\_procedures.pdf?c3594475a464b41776e7e0cd0134c583](http://www.ecb.europa.eu/paym/pdf/collateral/Table1_Handling_procedures.pdf?c3594475a464b41776e7e0cd0134c583)).
  - (v) The BdP will not accept credit claims that do not fulfill the eligibility criteria and will inform the HCB thereafter.
  - (vi) In case of counterparty's insolvency, any payment of the loan received by the counterparty is as an agent for the BdP, in order to ensure that the amounts paid to the counterparty will not enter into its insolvency estate .



(vii) The counterparty shall communicate to the BdP any event which materially affects the actual contractual relationship between the counterparty and the NCB in question, in particular if the credit given in guarantee is partially or totally repaid before term, if the rating is downgraded, or the credit reaches maturity or if there are any material changes in its conditions.

### **Operational requirements**

- (a) The counterparty has to inform the BdP about the identity of authorized persons to send communications to it directly/via de HCB, as well as the list of authorized signatures.
- (b) The counterparty has to indicate to the BdP the ECAF sources/system used for assessing credit claims, when sending the information on credit claims to the BdP.
- (c) To use credit claims on a cross-border basis, the counterparty has to send the information listed in the document **“Table 2 - List of claim details to be communicated to the CCB”** ([http://www.ecb.europa.eu/paym/pdf/collateral/Table2\\_cc\\_details.pdf?3447c4bb4d0f17b4d1362d0a34c42122](http://www.ecb.europa.eu/paym/pdf/collateral/Table2_cc_details.pdf?3447c4bb4d0f17b4d1362d0a34c42122)), in relation to BdP according to the template/format message presented in the BdP rules for counterparties.

The preferred communication channel to submit the relevant information about credit claims is SWIFTNet, messages type MT599. Each message successfully received will be followed by a return receipt.

In the case of non-availability of the SWIFTNet channel, the required information can be sent via fax to +351 213 144 691.

In case of increasing number of transmissions, BdP might change the primary communication channel in order to allow the transmission of extended mark-up language (xml) messages according to a predefined ‘data schema’. The delivery of the credit claim agreement is not required.

- (d) Each credit claim and debtor/guarantor has to be assigned a standard identification number. This is assigned by the counterparty, in accordance with the rules mentioned on “Table 1 - Handling procedures of NCBs acting as CCB”.
- (e) Credit claims will be accepted once their eligibility has been checked and informal registration in the BdP is done. If the information received is considered to be insufficient or any doubts arise as regards the eligibility, BdP has the right to ask the counterparty for clarification.



When a credit claim does not fulfil the eligibility criteria, the BdP will notify the counterparty and informing about the reasons underlying such a decision. The BdP reserves the right to set up (and update) a database of ineligible credit claims.

- (f) By the end of the business day following the acceptance, counterparties will receive confirmation about the value assigned to the accepted claims from the CCB/HCB, which will then be available for use in credit operations with the respective HCB. The template/format message will be sent by SWIFT/ fax to the HCB/counterparty.
- (g) Counterparties have to promptly communicate to the BdP any change which affects the eligibility and valuation of the claim.
- (h) The mobilization of credit claims in the context of CCBM involves costs to the counterparties. Further information on this topic may be found at the ECB website, under the Tab 'Payments and Markets' (<http://www.ecb.europa.eu/paym/ccbm/html/index.en.html>).

### **Contacts for operational questions**

The following contacts can be used to clarify any aspect related with the handling of credit claims, between 8.30 a.m. to 5.30 p.m. (local time - GMT):

Phone number of the CCBM unit: + 351 213 140 312

Fax number of the CCBM unit: +351 213 144 691

E-mail: Monetary.Policy.Operations@bportugal.pt

Phone number for credit claims eligibility related issues: +351 213 130 801

### **Terms & Conditions of Banco de Portugal, when acting as Assisting Central Bank**

The following provisions apply when BdP acts as Assisting NCB (ACB), i.e. in those situations where the credit claim agreement is governed by the law of an HCB, and the debtor and/or the guarantor and/or the creditor of a credit claim is located in Portugal.

These provisions complement the terms and conditions currently applicable between counterparties and their respective home central bank (HCB).

- (a) Notification/registration of the debtor prior to the mobilisation of the credit claims is not required. However the pledge is submitted to an informal registry in the BdP.



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- (b) When other NCB plays the role of HCB, notification/registration may be required, in accordance with the requirements of the conflict of law rules of the HCB and/or the ACB. Upon request of the HCB registration/notification will be performed according to the rules of the jurisdiction that requires registration/notification.
  
- (c) Notification/registration of the debtor after the mobilisation of the credit claims is required immediately following a credit event (i.e. default or similar events).

Lisboa, 28 January 2015