

EMEA DC Statement 21 January 2016

The DC met today to continue its discussions regarding whether there is any Successor (as defined in the 2003 Definitions and the 2014 Definitions, as applicable) in respect of Novo Banco, S.A. (the **Reference Entity**) as a result of the transfer of certain obligations of the Reference Entity to Banco Espírito Santo, S.A. on or about 29 December 2015 (the **Transfer**). The DC elected to defer its determination in order to establish up-to-date information in relation to certain obligations of the Reference Entity.

The Successor determination requires a determination of (i) the universe of Relevant Obligations in respect of the Reference Entity immediately prior to the Transfer and (ii) what portion of such Relevant Obligations have been transferred to any potential Successor. The DC has been seeking clarification from the Bank of Portugal and the Reference Entity in relation to the extent and nature of certain obligations of the Reference Entity that may or may not constitute Relevant Obligations.

In particular, the Interim Report and Accounts for Novo Banco Group, first half 2015 (dated 30 June 2015) (the **Half-year Financials**)¹ state at note 34 that Novo Banco had certain “deposits and other funds” from central banks, totalling approximately EUR5.9bn as at 30 June 2015. Given the size of these obligations, the stated value of the obligations that were subject to the Transfer² and the size of the Reference Entity’s other debt obligations as set out in the Half-year Financials, the DC was of the view that whether this central bank funding constitutes Relevant Obligations may well be determinative in establishing whether there is any Successor.

The Bank of Portugal has stated to the DC that central bank funding has been provided to Portuguese entities in the form of the collateralised loan instrument set out at Annex XIII to the Bank of Portugal Instruction n.o 3/2015 (BO n.o 5 of 15 May 2015)³ and the Reference Entity has confirmed that its funding operations from the ECB are guaranteed by pledges and are not through repos (and, in each case, has confirmed that this information may be made publicly available). This instrument is a form of credit agreement that the DC has been advised by its Portuguese counsel would constitute a Loan (as defined in the 2003 Definitions and the 2014 Definitions, as applicable).

The Bank of Portugal and the Reference Entity did not confirm the amount of funding that was made available to the Reference Entity under the form of such instrument as at the time of the Transfer. Accordingly, the most up-to-date indication of the amount of the central bank funding in relation to the Reference Entity appears in the Half-year Financials.

Given that the Half-year Financials were prepared as at 30 June 2015, the DC decided that it was prudent to wait and make further attempts in order to establish up-to-date information on the outstanding principal amount of the Relevant Obligations in relation to the Reference Entity, including in particular the central bank funding, before making a determination. Accordingly, the DC extended the deadline for making a determination to 12 February 2016.

¹ Available at <https://www.novobanco.pt/site/cms.aspx?srv=207&stp=1&id=760354&fext=.pdf>

² See the Bank of Portugal announcement of 29 December 2015, English translation available at <https://www.bportugal.pt/en-US/OBancoeoEurosistema/ComunicadoseNotasdeInformacao/Pages/comb20151229-2.aspx>

³ Available in Portuguese at <http://www.bportugal.pt/sibap/application/app1/docs1/historico/textos/3-2015i.pdf>