

FIRMS IN PORTUGAL BRACED FOR BES FALLOUT

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The substantial losses announced by the Portuguese bank means lawyers will pick up work relating to BES' restructuring

The crisis at Banco Espírito Santo (BES) is set to lead to a raft of instructions for the nation's banking lawyers after Portugal's second largest bank posted a massive €3.6 billion loss.

In response to the losses, the country's state bank, Bank of Portugal, confirmed that €4.9 billion – most of which will come from the country's EU bailout money – will be spent on rescuing the bank. Under the terms of the plan, the bank's healthy businesses will be spun off into a 'good bank', while the toxic assets will be hived off into a 'bad bank'. The good bank, named Novo Banco, will be recapitalised with the €4.9 billion – the Bank of Portugal claimed that the plan would be at no cost to the public purse because the loan would be temporary and ultimately the state would be reimbursed when Novo Banco is sold to investors.

After BES posted the loss in July, the bank's shares nose-dived by 38 per cent. Bank of Portugal announced that BES' management could face the legal – both criminal and regulatory –

consequences of acts that were in violation of the central bank's rules, referring to its exposure to the Espírito Santo group. Consequently, BES managers with responsibility for 'auditing, compliance and risk management' were suspended, along with the supervisory board.

A statement issued by the Bank of Portugal on 30 July pronounced that there had been management acts that were "seriously prejudicial to the interest of BES and a clear breach of determinations issued by the Bank of Portugal". The state bank went on to confirm that it is carrying out a "forensic audit ... to assess responsibilities, including the former CEO, former director of financial affairs, and other members of the Executive board".

Lawyers in Portugal are now bracing themselves for instructions relating to the restructuring of the bank. While those firms already established in the Portuguese banking sector are expected to be the main beneficiaries, international firms are also expected to pick up work where conflicts of interest arise.

Shortly before the announcement of BES' losses, it was revealed that Goldman Sachs and D.E. Shaw, a New York-based hedge fund, had taken 2.8 per cent and 2.7 per cent stakes respectively in BES – this brought some short-lived positivity to the market. Goldmans' investment in BES, which is understood to be due to the 'facilitation of client transactions', was widely regarded as some good news for the troubled bank, which has been facing intense scrutiny due to the financial problems of its biggest shareholder, the Espírito Santo Financial Group.

The news of Goldman's investment briefly revived optimism regarding the prospects for the Portuguese banking sector, with one Lisbon-based banking lawyer remarking: "It's a sign of trust in the Portuguese banking market – someone has to lead, and we really hope that others will follow." However, within days, the feel-good factor had been wiped out with the news of BES' significant losses.

A crisis is an opportunity

Some banking lawyers in Portugal are reluctant to publicly discuss the situation at BES due to the sensitive nature of the investigation into the conduct of some of BES' management team, but João Caiado Guerreiro, managing partner at Caiado Guerreiro says: "We are all sad about what is happening at the BES – however, as lawyers, the immediate implications will be to bring in more work." He adds: "I like to think of any crisis as an opportunity. Certainly in the short term, there will be work for lawyers relating to the restructuring of the bank." It is understood Allen & Overy, Linklaters and Vieira de Almeida have picked up BES-related instructions.

Interest from overseas investors in BES shares remains, according to the Bank of Portugal, which is also expected to translate into more work for lawyers. One Lisbon-based partner says the firms most likely to receive instructions are those domestic firms that already have a reputation for banking work. However, he adds that there might potentially be more opportunities for international firms where conflicts of interest arise.