

## **Decree-Law 227/2012, of 25 October**

Responsible lending principles should guide the conduct of all credit institutions. The economic and financial crisis affecting most European countries has emphasised the importance of prudent, correct and transparent conduct by the above entities in all phases of the credit relationships they establish with their customers, in their quality as consumers, pursuant to the Law on Consumer Protection, approved by Law 24/96, of 31 July, as amended by Decree-Law 67/2003, of 8 April.

The deterioration of economic and financial conditions felt in different countries and the increase in credit default rates led the authorities to pay particular attention to permanent and systematic monitoring of credit agreements on the part of public and private institutions, to the development of measures and procedures aiming to promote the settlement of arrears situations, and also to the promotion of responsible conduct by credit institutions and bank customers, with a view to reducing household indebtedness levels.

This Decree-Law lays down a set of measures which reflect international best practices in promoting arrears prevention and the settlement of arrears situations arising from credit agreements concluded with consumers who, due to several factors, including unemployment and the anomalous fall in earnings resulting from the current economic difficulties, prove to be incapable of complying with their financial commitments.

In particular, this Decree-Law establishes that each credit institution must develop a Pre-Arrears Action Plan (PRAP), featuring procedures and measures according to rules defined in this Decree-Law for monitoring credit agreements. The main purpose of this measure is to enable the early discovery of pre-arrears indicators and assist consumers experiencing difficulties in complying with their obligations under credit agreements, and promote swift measures designed to prevent arrears situations.

It also defines an Out-of-court Arrears Settlement Procedure (OASP). This procedure requires credit institutions to distinguish between one-off or ongoing default, to assess consumers' creditworthiness and where viable, to present proposals which are suitable to each customer's financial situation, goals and needs.

Moreover, the Decree-Law also sets out that, in cases where the OASP does not end with an agreement between the parties, and the intervention from the Credit Mediator is

requested, under Decree-Law 144/2009, of 17 June, the bank customer may in certain circumstances, continue to be entitled to the guarantees provided under the OASP. The mediation process conducted by the Credit Mediator is governed by above referred Decree-Law.

Given the information asymmetry between consumers and credit institutions, the effective implementation of these measures requires the creation of a system to assist consumers in financial difficulties, specifically by providing information, advice and assistance throughout the negotiation with credit institutions. Contributing to that purpose, this Decree-Law establishes a system to assist consumers, in the context of arrears prevention and settlement of arrears situations, with a view to informing, advising and assisting customers in pre-arrears or arrears on obligations arising from credit agreements. This assistance system shall include private or public legal persons fulfilling the conditions of access provided for in this Decree-Law and accredited for the purpose by the Directorate-General for Consumers, following an opinion of *Banco de Portugal*, thereby promoting the creation of a nationwide network. Recourse to the system is free of charge for consumers, which removes any barriers to access this future system.

Thus, this Decree-Law aims to promote appropriate protection of consumers' interests and prompt action by credit institutions to find measures that contribute to resolving bank customers' difficulties in complying with their responsibilities.

Without prejudice to the tasks assigned to the Directorate-General for Consumers with respect to the assistance system, *Banco de Portugal* is responsible for overseeing, assisting and regularly evaluating compliance with this Decree-Law, and defining the rules and regulations required to execute it, as well as the guidelines deemed necessary for the conduct of credit institutions.

*Banco de Portugal* and the Portuguese Banking Association have been heard.

A hearing of the National Consumption Council has been promoted.

Therefore:

Under Article 198(1) (a) of the Constitution, the Government decrees the following:

## **CHAPTER I**

### **General provisions**

#### **Article 1**

##### **Object**

1 - This Decree-Law defines principles and rules to be observed by credit institutions:

- (a)* in monitoring and managing pre-arrears situations; and
- (b)* in the out-of-court settlement of arrears situations concerning bank customers who have breached their contractual obligations to repay principal or pay interest, as regards the credit agreements mentioned in Article 2(1) below;

2 - This Decree-Law also establishes the creation of a system to assist bank customers in arrears prevention and the out-of-court settlement of arrears situations arising from credit agreements.

#### **Article 2**

##### **Scope**

1 - This Decree-Law shall hold force over the following types of credit agreements:

- (a)* Credit agreements the purpose of which is to purchase, build or renovate first or second owner-occupied or to-let homes, as well as to purchase land to build owner-occupied homes;
- (b)* Credit agreements secured by a mortgage on immovable property;
- (c)* Credit agreements covered by Decree-Law 133/2009, of 2 June, as amended by Decree-Law 72-A/2010, of 18 June, except for leasing agreements where an obligation to purchase the object of the agreement is laid down either by the agreement itself or by any separate agreement;
- (d)* Credit agreements falling under Decree-Law 359/91, of 21 September, as amended by Decree-Laws 101/2000, of 2 June, and 82/2006, of 3 May, with the exception of agreements where one of the parties undertakes to allow the other the enjoyment of durable goods during a certain time in exchange for a certain sum, and where the right of the lessee to purchase the object of the agreement is envisaged, for an agreed period of time, possibly against payment, as set forth

under the agreement;

- (e) Credit agreements in the form of overdraft facilities and where the credit has to be repaid within one month.

2 - The provisions of this Decree-Law shall be without prejudice to the regime governing over-indebtedness systems set forth by Executive Order 312/2009, of 30 March.

### **Article 3**

#### **Definitions**

For the purposes of this Decree-Law:

- (a) 'Bank customer' shall mean a consumer within the meaning laid down in Article 2(1) of the Law on Consumer Protection, approved by Decree-Law 24/96, of 31 July, as amended by Decree-Law 67/2003, of 8 April, intervening as a borrower in a credit agreement;
- (b) 'Fees' shall mean the monetary sums payable by bank customers to credit institutions as compensation for services provided by the latter, or contracted to third parties as part of their activity;
- (c) 'Credit agreement' shall mean an agreement signed between a bank customer and a credit institution having its head office or branch in the Portuguese territory that, pursuant to Article 2(1) above, falls under the provisions of this Decree-Law;
- (d) 'Expenses' shall mean any amounts borne by credit institutions, payable to third parties, which credit institutions may legitimately pass on to bank customers, such as taxes or payments to records and registrations offices;
- (e) 'Credit institution' shall mean any entity empowered to carry out lending operations in Portugal, pursuant to the Legal Framework of Credit Institutions and Financial Companies approved by Decree-Law 298/92, of 31 December, as amended by Decree-Laws 246/95, of 14 September, 232/96, of 5 December, 222/99, of 22 June, 250/2000, of 13 October, 285/2001, of 3 November, 201/2002, of 26 September, 319/2002, of 28 December, 252/2003, of 17 October, 145/2006, of 31 July, 104/2007, of 3 April, 357-A/2007, of 31 October, 1/2008, of 3 January, 126/2008, of 21 July and 211-A/2008, of 3 November, Law 28/2009, of 19 June, Decree-Law 162/2009, of 20 July, Law 94/2009, of 1

September, Decree-Laws 317/2009, of 30 October, 52/2010, of 26 May and 71/2010, of 18 June, Law 36/2010, of 2 September, Decree-Law 140-A/2010, of 30 December, Law 46/2011, of 24 June, and Decree-Laws 88/2011, of 20 July, 119/2011, of 26 December and 31-A/2012, of 10 February (Legal Framework of Credit Institutions and Financial Companies);

(f) ‘Obligations under the credit agreement’ shall mean the principal repayment or interest payment obligations taken on by bank customers under a credit agreement;

(g) ‘Arrears management service provider’ shall mean any natural or legal person who provides, under a contract with a credit institution, credit agreement arrears management services in that institution’s name at a phase prior to recourse to legal proceedings;

(h) ‘Durable medium’ shall mean any instrument which enables the bank customer to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored.

#### **Article 4**

##### **General principles**

- 1 - Credit institutions shall proceed with diligence and loyalty when complying with the provisions of this Decree-Law, adopting the appropriate measures for preventing credit agreement arrears and, where obligations under those agreements are not complied with, making the necessary effort for the settlement of arrears situations.
- 2 - Bank customers shall manage their credit obligations responsibly and act in good faith, alerting the credit institutions in good time to the risk of breaching obligations under credit agreements and working with credit institutions to find out-of-court alternatives for compliance with those obligations.

#### **Article 5**

##### **Credit agreement arrears management**

- 1 - Credit institutions shall monitor credit agreements in which they are lenders and adopt the necessary measures and procedures, in accordance with the provisions of Articles 9

to 11, for preventing arrears on obligations under those credit agreements.

- 2 - When the obligations under the credit agreements in which they are lenders are not complied with, credit institutions shall immediately set in motion the procedure laid down in Articles 12 to 21, in order to obtain, where possible, the out-of-court settlement of arrears situations.

## **Article 6**

### **Bank customer assistance**

- 1 - Bank customers in pre-arrears or arrears on obligations under credit agreements shall have the right to obtain, without charge, information, advice and assistance from the entities accredited for this purpose, within the scope of the out-of-court system to assist bank customers, under the terms and conditions defined in this Decree-Law.
- 2 - Credit institutions shall provide bank customers with information concerning the entities referred to in the foregoing paragraph, especially information on their activities and contact details, under the terms to be defined in a Notice published by *Banco de Portugal*.

## **Article 7**

### **Information on default of credit agreements**

- 1 - Without prejudice to the foregoing Article, credit institutions are obliged to provide information, in particular pre-contractual information, to bank customers and other interested parties about the risks of excessive indebtedness and the consequences of credit agreement default, as well as the procedures in place for the settlement of arrears situations arising from the rules laid down in this Decree-Law.
- 2 - For the purposes of the foregoing paragraph, *Banco de Portugal* shall publish a Notice defining the information to be provided by credit institutions to bank customers and to the public about the risks of excessive indebtedness, the consequences of arrears on credit agreements and the procedures in place for the settlement of arrears situations, as well as the appropriate means for its release.

## **Article 8**

### **Prohibition from imposing fees**

1 - Credit institutions are prohibited from imposing fees concerning the renegotiation of credit agreements under this Decree-Law, specifically for the analysis and formalisation of that renegotiation.

2 - The provisions of the foregoing paragraph do not prevent the institution from passing on to the bank customer any expenses, as defined in Article 3(d), provided that the relevant documentary justification is presented.

## **CHAPTER II**

### **Management of pre-arrears situations**

## **Article 9**

### **Credit monitoring**

1 - Without prejudice to the adoption of other appropriate measures and procedures for the permanent and systematic monitoring of credit agreements, credit institutions shall:

- (a) Implement IT systems that identify, in a timely manner, the occurrence of facts which indicate a deterioration in the bank customer's creditworthiness, and issue the relevant warnings;
- (b) Define the procedures to be followed by their employees when they become aware of the occurrence of facts which indicate the deterioration in the bank customer's creditworthiness;
- (c) Establish the procedures to be adopted by their front-office employees when they are informed personally by the bank customer of facts which indicate a pre-arrears situation.

2 – For the purposes of this Decree-Law, default as recorded in *Banco de Portugal's* Central Credit Register, the return and prohibition of the use of cheques and the corresponding insertion in the List of Cheque Defaulters, debts to the tax and social security authorities, insolvency, legal proceedings and disputes, attachment of bank accounts and arrears on

other credit agreements concluded with the credit institution shall be considered, inter alia, as signs of deterioration in the bank customer's creditworthiness.

## **Article 10**

### **Assessment and presentation of proposals**

- 1 - Whenever the credit institution detects signs of deterioration in the bank customer's creditworthiness in regard to the credit agreement or the bank customer informs it of facts indicating a pre-arrears situation, it shall undertake due diligence to assess those signs, evaluating the existence of an actual pre-arrears situation and its extent.
- 2 - For the purposes of the foregoing paragraph, the credit institution shall assess the bank customer's creditworthiness and it may request the strictly necessary and appropriate information and documents for that purpose.
- 3 - The bank customer shall provide the information and documents requested by the credit institution within 10 days.
- 4 - When the credit institution, following the assessment referred to in paragraph 2 above, concludes that the bank customer has the financial capacity to repay the principal or pay the interest due on the credit agreement, in particular through the renegotiation of the credit agreement's terms and conditions or credit consolidation, it shall present the bank customer with one or more proposals suitable to his financial situation, goals and needs.
- 5 - The proposals mentioned in the foregoing paragraph shall be presented to the bank customer via durable medium and credit institutions are obliged to observe the information requirements laid down in the specific legislation and regulations.
- 6 - Without prejudice to the provisions of Article 9(2), *Banco de Portugal* shall publish a Notice defining the criteria to assess the bank customer's creditworthiness and its deterioration, to be used by credit institutions for the purpose of this Decree-Law.

## **Article 11**

### **Pre-Arrears Action Plan**

- 1 - Credit institutions shall draw up and implement a pre-arrears action plan (PRAP), which shall detail the procedures and measures adopted concerning the monitoring of credit agreements and the management of pre-arrears situations.



2 - In particular, the PRAP shall specify:

- (a) The procedures adopted for permanent and systematic monitoring of credit agreements;
- (b) The facts that, under the procedures mentioned in (a) above, are deemed to indicate the deterioration in the bank customers' creditworthiness in regard to the credit agreement;
- (c) The procedures developed to gather, handle and analyse the information on bank customers in an actual pre-arrears situation;
- (d) The procedures implemented for contacting bank customers in an actual pre-arrears situation, including the time-frame for making the first contact after the facts mentioned in (b) above are discovered, which shall not exceed 10 days;
- (e) The alternatives that may be presented to bank customers in an actual pre-arrears situation;
- (f) The structural units responsible for carrying out the procedures and actions laid down in the PRAP, detailing their respective powers and describing the mechanisms for cooperation with other structural units or entities potentially involved in those procedures and actions;
- (g) The training plans for the employees with responsibilities under the PRAP;
- (h) The arrears management services providers, should they exist, responsible for carrying out PRAP procedures and measures, with detail on the services provided and the mechanisms for cooperation with the structural units or other entities potentially involved in those procedures and measures.

3 - Credit institutions shall make the PRAP available to their employees so that it may be consulted immediately and permanently.

4 - *Banco de Portugal* shall publish a Notice defining the relevant facts and procedures, under the terms of and for the purposes laid down in paragraphs 2(a), (b), (c) and (d).

## **CHAPTER III**

### **Settlement of arrears situations**

#### **SECTION I**

##### **Out-of-court arrears settlement procedure**

###### **Article 12**

##### **Out-of-court arrears settlement procedure**

Credit institutions shall undertake due diligence to implement the out-of-court arrears settlement procedure (OASP) in relation to bank customers who are in arrears on obligations under a credit agreement.

###### **Article 13**

##### **Preliminary contacts**

Within 15 days after an obligation falls into arrears, the credit institution shall inform the bank customer of that fact, detailing the outstanding amounts, and undertake due diligence to ascertain the reasons underlying the arrears situation.

###### **Article 14**

##### **Initial phase**

- 1 - The credit institution shall initiate the OASP, in case arrears persists, between the 31<sup>st</sup> and the 60<sup>th</sup> day following the date in which the relevant obligation became due.
- 2 - Without prejudice to the foregoing paragraph, the credit institution shall initiate the OASP where:
  - (a) The bank customer is in arrears on obligations under the credit agreement and requests, via durable medium, to enter into the OASP. For all purposes, the bank customer is deemed to have entered into the OASP on the date on which the credit institution receives the aforementioned request;
  - (b) The bank customer enters into arrears after having informed the credit institution about the existence of a pre-arrears situation. For all purposes, that customer is deemed to have entered into the OASP on the date of default on the relevant obligation.
- 3 - When the bank customer enters into arrears on obligations under other credit

agreements entered upon with the same credit institution during the OASP, the credit institution shall aim to obtain settlement of the arrears situation through a single procedure and shall inform the bank customer of such fact in accordance with the following paragraph.

4 - Within five days of the occurrence of the events outlined in this Article, the credit institution shall inform the bank customer, via durable medium, of the beginning of the OASP.

5 - *Banco de Portugal* shall publish a Notice defining the information to be included in the communication referred to in the foregoing paragraph.

## **Article 15**

### **Assessment and proposal phase**

1 - The credit institution shall undertake due diligence to ascertain whether the arrears situation is due to specific, one-off circumstances, or if it reflects the bank customer's incapacity to comply, on an ongoing basis, with those obligations under the terms of the credit agreement.

2 - For the purposes of the foregoing paragraph, the credit institution shall assess the bank customer's creditworthiness and it may request the bank customer to provide the strictly necessary and appropriate information and documentation for that purpose, in accordance with the procedures to be laid down in a Notice published by *Banco de Portugal*.

3 - Except where there is an acceptable motive, the bank customer shall provide the information and documents requested by the credit institution within 10 days.

4 - Within 30 days of the entry of the bank customer into the OASP, the credit institution shall, via durable medium:

(a) Inform the bank customer of the result of the assessment undertaken under the terms of the foregoing paragraphs, when it verifies that the bank customer does not have the financial capacity to resume compliance with the obligations under the credit agreement, nor to settle the arrears situation, in particular through the renegotiation of the credit agreement's terms and conditions or credit consolidation, and agreement under the OASP is unfeasible; or

*(b)* Present the bank customer with one or more settlement proposals suitable to his/her financial situation, goals and needs, when it concludes that the bank customer has the financial capacity to repay the principal or pay the interest due on the credit agreement, in particular through the renegotiation of the credit agreement's terms and conditions or credit consolidation.

5 - When presenting proposals to bank customers, credit institutions shall observe the information requirements laid down in the specific legislation and regulations.

## **Article 16**

### **Negotiation phase**

1 - If the bank customer refuses the proposals presented and the credit institution considers that other suitable alternatives to the bank customer's situation exist, it shall present a new proposal.

2 - When the bank customer proposes amendments to the initial proposal, the credit institution shall communicate its acceptance or refusal, via durable medium, within 15 days, and may also present a new proposal, observing the provisions in Article 15(5).

3 - The bank customer shall respond to the proposals presented within 15 days of receiving them.

## **Article 17**

### **Termination of the OASP**

1 - The OASP terminates:

*(a)* Upon full payment of the sums in arrears or upon termination, for any other reason provided for by law, of the relevant obligation;

*(b)* Upon agreement between the parties on the full settlement of the arrears situation;

*(c)* On the 91<sup>st</sup> day after the beginning of the OASP, unless the parties agree in writing to extend the procedure; or

*(d)* Upon the bank customer's declaration of insolvency.

2 - The credit institution may, on its own initiative, terminate the OASP where:

*(a)* Seizure or preventive seizure of the bank customer's assets takes place in favour

of third parties;

- (b) A judicial decision is issued appointing a provisional receiver, under the terms and for the purposes of Article 17-C(3) (a) of the *Código da Insolvência e da Recuperação de Empresas* (“Insolvency Code”);
- (c) The credit institution concludes, as a result of the assessment undertaken under Article 15, that the bank customer does not have the financial capacity to settle the arrears situation, notably due to the existence of enforcement measures or tax execution procedures against the bank customer that have a proven significant impact on his/her financial capacity, whereby maintaining the OASP is no longer enforceable;
- (d) The bank customer does not cooperate with the credit institution, particularly in regard to providing information or documents requested by the credit institution under Article 15 within the deadlines set therein and in responding, in a timely manner, to the proposals presented under Article 16;
- (e) The bank customer commits acts which may jeopardise the credit institution’s rights or guarantees;
- (f) The bank customer refuses the proposal presented by the credit institution, without prejudice to Article 16(1); or
- (g) The credit institution refuses the amendments suggested by the bank customer to the proposal presented, without prejudice to Article 16(2).

3 - The credit institution shall inform the bank customer, via durable medium, of the termination of the OASP, describing the legal basis for such termination and why it considers that this procedure cannot be maintained.

4 - The OASP’s termination takes effect only after the communication referred to in the foregoing paragraph, except where the ground for termination is that laid down in paragraph (1)(b).

5 - *Banco de Portugal* shall publish a Notice defining the information to be included in the communication referred to in paragraph 3.

## Article 18

### Bank customer guarantees

- 1 - From the date the bank customer enters into the OASP to the date of the OASP's termination, the credit institution is prevented from:
  - (a) Terminating the credit agreement;
  - (b) Initiating legal proceedings against the bank customer;
  - (c) Assigning a part or all of the credit to a third party; or
  - (d) Transferring its contractual position to a third party.
- 2 - Without prejudice to Article 18(1) (b), (c) and (d), the credit institution may:
  - (a) Use appropriate precautionary procedures to ensure validity of its credit;
  - (b) Transfer the credit for securitisation purposes; or
  - (c) Transfer the credit or its contractual position to another credit institution.
- 3 - Should the credit institution transfer the credit or its contractual position under (c) above, the recipient credit institution shall continue the OASP, resuming it at the same stage as on the date on which the credit or contractual position were transferred.
- 4 - In the 15 days following the notification on the OASP's termination, the credit institution is also prevented from practising the acts referred to in the foregoing paragraphs, in the case of the agreements envisaged in Article 2(1)(a) and if the termination of that procedure was caused by any of the situations listed in Article 18(1) (c) and (2) (c), (f) and (g).

## Article 19

### Procedural duties

- 1 - Credit institutions shall draw up an internal document that describes, in simple and clear terms, the procedures adopted under the implementation of the OASP.
- 2 - Without prejudice to the inclusion of other information, the document to be drawn up by credit institutions shall specify:
  - (a) The procedures for contacting bank customers in the various phases of the OASP;

- (b) The procedures developed to gather, handle and analyse the information on bank customers;
- (c) The alternatives to be proposed to bank customers in arrears situations;
- (d) The structural units, or, where appropriate, the arrears management services providers responsible for carrying out procedures and measures outlined in the OASP, indicating the respective responsibilities with necessary detail and describing the mechanisms defined for cooperation with other structural units or entities potentially involved in those procedures and measures; and
- (e) The training plans for the employees with responsibilities under the OASP.

3 - Credit institutions shall make the document mentioned in the foregoing paragraphs available to their employees so that it may be consulted immediately and permanently.

## **Article 20**

### **Personal files**

- 1 - Credit institutions shall create personal files via durable medium for the bank customers who have entered into the OASP, which shall contain all the relevant documentation under this procedure, namely the communications between the parties, the assessment report on the customer's creditworthiness and the proposals presented to the bank customer.
- 2 - Credit institutions shall retain the personal files for five years from termination of the OASP.

## **Article 21**

### **Guarantor**

- 1 - Where the credit agreement is covered by a guarantee, and within 15 days after an obligation falls into arrears, the credit institution shall inform the guarantor of that fact, detailing the outstanding amounts.
- 2 - The credit institution invoking a guarantor to comply with the obligations under the credit agreement in arrears shall initiate the OASP with that guarantor whenever the latter requests it, via durable medium, within 10 days of the aforementioned invocation. For all purposes, the OASP is deemed to have started on the date on which the credit

institution receives the aforementioned communication.

- 3 - At the time the guarantor is invoked to comply with the obligations under the credit agreement in arrears, the credit institution shall inform the guarantor about the right described in the foregoing paragraph, mentioning the conditions for its exercise.
- 4 - The provisions of Article 14(4) and Articles 15 to 20 shall apply to the OASP initiated on request of the guarantor, duly adapted, regardless of it being a procedure autonomous from the OASP.

## **SECTION II**

### **Mediation**

#### **Article 22**

##### **Mediation of arrears situations**

- 1 - Without prejudice to Decree-Law 144/2009, of 17 July, where the parties have not reached an agreement that allows the arrears situation to be settled, the bank customer who, within 5 days of the notification established in Article 17(3), requests the intervention of the Credit Mediator shall be entitled to the guarantees described in Article 18, provided that all of the following conditions are satisfied:
  - (a) The termination of the OASP was caused by any of the situations referred to in Article 17(1) (c), (2) (c), (f) and (g);
  - (b) The credit agreement subject to the OASP was a home loan, as defined in Article 2(1) (a);
  - (c) The bank customer is also a borrower in credit agreements granted by different credit institutions.
- 2 - The guarantees described in Article 18 shall apply during the 30 days following the notification addressed by the Credit Mediator to all credit institutions mentioned in the application submitted by the bank customer.
- 3 - The guarantees described in the foregoing paragraph may cease, where decided by the credit institution, if any of the following events occurs:
  - (a) The bank customer is declared as insolvent;
  - (b) Seizure or preventive seizure of the bank customer's assets takes place in favour



of third parties;

(c) A judicial decision is issued appointing a provisional receiver, under the terms and for the purposes of Article 17-C(3) (a) of the *Código da Insolvência e da Recuperação de Empresas* (“Insolvency Code”); or

(d) Enforcement measures or tax execution procedures have been brought against the bank customer that have a proven significant impact on his/her creditworthiness, whereby maintaining the mediation process is no longer enforceable.

4 - For the purposes of the foregoing paragraph, the credit institution shall inform the Credit Mediator, via durable medium, that the guarantees of the bank customer have ceased, describing the relevant legal basis and why it considers that they cannot be maintained. The guarantees are deemed to be ceased on the date on which the Credit Mediator receives the aforementioned communication.

5 - The rules established in this Article are also applicable, *mutatis mutandis*, to the guarantor of credit agreements referred to in Article 1(2) (a) who has requested the OASP under the foregoing Article.

6 - The intervention of the Credit Mediator is subject to the terms and conditions established in specific legislation.

## **CHAPTER IV**

### **Out-of-court system to assist bank customers**

#### **SECTION I**

#### **Entities comprising the out-of-court system**

##### **Article 23**

##### **Accreditation**

The out-of-court system to assist bank customers is comprised of private or public legal persons, who fulfil the conditions set out in this Chapter and are accredited by the General Directorate for Consumers, following an opinion of *Banco de Portugal*.

## **Article 24**

### **General conditions**

As at the date of request for accreditation, the requesting entity shall meet all of the following conditions:

- (a) Be legally established;
- (b) Be in compliance with its tax and social security obligations;
- (c) Appoint one person in charge of the service to be provided.

## **Article 25**

### **Employees**

1 - Employees or other individuals collaborating with entities requiring accreditation who provide assistance to bank customers on arrears prevention and the settlement of arrears situations concerning credit agreements shall comply with all of the following requirements:

- (a) Be recognised as suitable to perform the tasks in question;
- (b) Have completed compulsory education;
- (c) Have adequate technical knowledge in the financial, economic and banking areas.

2 - It shall indicate lack of suitability if the person in question is in one of the situations envisaged in Article 30(3) of the Legal Framework of Credit Institutions and Financial Companies.

3 - The provisions of this Article shall also apply to the employees taking up duties with the entities after their accreditation when they provide assistance to bank customers on arrears prevention and the settlement of arrears situations concerning credit agreements.

## **Article 26**

### **Regulations**

The regime and procedure applicable to the accreditation of entities comprising the out-of-court system to assist bank customers shall be regulated by an executive order of the Government members responsible for finance, justice and consumer protection.

## SECTION II

### Activity of entities comprising the system

#### Article 27

##### Sphere of activity

- 1 - Entities comprising the out-of-court system to assist bank customers shall be entrusted with informing, advising and assisting bank customers in pre-arrears situations or who are in a negotiation process with the credit institution due to arrears on obligations under credit agreements.
- 2 - Entities comprising the out-of-court system to assist bank customers shall be entrusted, in particular, with:
  - (a) Informing bank customers in pre-arrears or arrears situations on their rights and duties;
  - (b) Assisting bank customers with respect to the analysis of proposals presented by credit institutions under the PRAP and the OASP, notably regarding their suitability to the bank customers' financial situation, goals and needs;
  - (c) Assisting bank customers in the negotiation process before credit institutions under the PRAP and the OASP;
  - (d) Providing other information on indebtedness and over-indebtedness;
  - (e) Assisting bank customers in the assessment of their creditworthiness, taking into account the information they provide for that purpose.
- 3 - The entities referred to in paragraph 1 may also assist bank customers under other measures applicable to arrears situations, established in specific legislation.
- 4 - The above entities shall not:
  - (a) Act in representation or on behalf of bank customers before credit institutions, notably in the negotiation of the proposals presented under the PRAP and the OASP; and
  - (b) Adopt mechanisms for negotiation, conciliation, mediation or arbitration with a view to obtaining an agreement between bank customers and credit institutions.

- 5 - Intervention by entities comprising the out-of-court system to assist bank customers shall cease as soon as they are notified that legal proceedings related to the credit agreement at stake have been brought against the bank customer.
- 6 - For the purposes of the foregoing paragraph, the bank customer shall inform the credit institution with which he/she has a credit agreement that he/she has resorted to an entity belonging to the out-of-court system to assist bank customers, under paragraph 2 (c).
- 7 - The bank customer shall inform the entity to which he/she has resorted under the out-of-court system to assist bank customers whenever legal proceedings related to the credit agreement have been brought against him/her.

#### **Article 28**

##### **Charges**

Access to the out-of-court system shall be free of charge for bank customers.

#### **Article 29**

##### **Operating principles**

- 1 - Entities comprising the out-of-court system to assist bank customers shall ensure observance of the principles of independence, impartiality, legality and transparency throughout the procedure.
- 2 - The procedure to assist bank customers shall be swift and comply with strict technical criteria.

#### **Article 30**

##### **Professional secrecy**

- 1 - The procedure of informing, advising and assisting bank customers shall be confidential, and all intervening parties shall be bound by professional secrecy as regards the facts of which they become aware in that context.
- 2 - The obligation of secrecy shall not cease with the termination of office or provision of services.

#### **Article 31**

##### **Guarantors**

- 1 - Where credit institutions initiate the OASP with the credit agreement's guarantor, the latter may resort to the out-of-court system.
- 2 - The rules in this Chapter shall apply to the cases provided for in the foregoing paragraph, duly adapted.

### **SECTION III**

#### **Financial education**

##### **Article 32**

##### **Financial education activities**

The entities comprising the out-of-court system to assist bank customers may also carry out financial education activities, in order to improve their financial knowledge.

### **CHAPTER V**

#### **Supplementary, transitional and final provisions**

##### **Article 33**

##### **Report by credit institutions**

- 1 - Within 30 days of this Decree-Law entering into force, credit institutions shall submit to *Banco de Portugal* the documents described in Articles 11 and 19, under the terms to be defined in a Notice published by *Banco de Portugal*.
- 2 - Credit institutions must also inform *Banco de Portugal*, at least 15 days in advance of their application date, of any alteration subsequently introduced to the documents mentioned in the foregoing paragraph.

##### **Article 34**

##### **Report of statistical data on the out-of-court system to assist bank customers**

- 1 - The entities comprising the out-of-court system to assist bank customers shall provide to the General Directorate for Consumers a quarterly statistical data report on the treatment of requests for information, assistance and monitoring of bank customers.
- 2 - Based on these data, the General Directorate for Consumers shall, every six months, deliver a report to the Government member responsible for consumer protection.

##### **Article 35**

## **Assessment**

- 1 - Implementation of the rules and principles laid down in this Decree-Law shall be assessed by *Banco de Portugal*, which must publish the assessment results on a regular basis
- 2 - Without prejudice to the provisions of the foregoing paragraph, the General Directorate for Consumers shall be responsible for assessing the out-of-court system to assist bank customers. The entities comprising the out-of-court system to assist bank customers shall provide all the clarifications and information requested by the General Directorate for Consumers within the time-frame set for the purpose, which shall not be less than 10 days.

## **Article 36**

### **Sanctions**

- 1 - Infringement by credit institutions of the provisions of Article 7(1), Articles 8 and 9, Article 10(2), (4) and (5), Articles 11 and 13, Article 14(1) to (4), Article 15(1), (2), (4) and (5), Article 16(1) and (2), Article 17(2) and (3), Articles 18 to 21 and Article 33 of this Decree-Law shall constitute an offence punishable under Article 210 (m) and Article 212 of the Legal Framework of Credit Institutions and Financial Companies.
- 2 - Negligence shall be punishable, with the applicable penalty limits reduced by half.
- 3 - The attempted violation shall be punishable with an exceptional mitigation of the penalty applicable to actual violation.

## **Article 37**

### **Competence**

- 1 – *Banco de Portugal* is the authority responsible for monitoring compliance by credit institutions with the provisions of this Decree-Law, and for the enforcement, where appropriate, of the applicable penalties.
- 2 – The enforcement of the applicable penalties shall comply with the process set out by the Legal Framework of Credit Institutions and Financial Companies.

## **Article 38**

### **Regulations**

Without prejudice to the responsibilities specifically attributed to it, *Banco de Portugal* shall be responsible for defining the regulations needed for the execution of this Decree-Law.

### **Article 39**

#### **Application in time**

- 1 - Bank customers who are in arrears on their obligations under credit agreements on the date this Decree-Law enters into force shall automatically enter into the OASP, where the obligations' due date fell more than 30 days before the above date.
- 2 - In the situations referred to in the foregoing paragraph, the credit institution shall inform the bank customers of their entry into the OASP within 15 days of this Decree-Law entering into force, under the terms of Article 14(4).
- 3 - Bank customers who are less than 31 days in arrears on their obligations under the credit agreement on the date this Decree-Law enters into force shall enter into the OASP under the terms defined in Article 14(1).

### **Article 40**

#### **Entry into force**

This Decree-Law shall enter into force on 1 January 2013.