

C A D W A L A D E R

Claims Filing Requirements

Questions & Answers regarding Portuguese claims to be filed in the Liquidation of **BANCO ESPÍRITO SANTO, S.A.**

The information herein is provided in conjunction with **Gómez- Acebo & Pombo**, Lisbon and is for information purposes only.

No.	QUESTION	ANSWER
1.	Claims filing deadline?	22 August 2016 , plus 5 days for publications (26 August). Counsel recommends claims are filed by 22 August 2016 .
2.	Claims time-barred after this deadline?	Yes , claims filed after this date may be time barred.
3.	Who should file a claim? Non-exhaustive list ISINs with claims against BES: PTBERYOM0012 PTBEQFOM0016 PTBEQJOM0012 XS0171467854 XS0207754754 XS0147275829 PTBENBOM0021 PTBENDOM0029 PTBEROOM0030 PTBENCOM0020	Any creditor of Banco Espirito Santo, S.A. ("BES"). BES is an issuer of bonds, and may be a guarantor of bonds issued by other entities (e.g. BES Finance Ltd). If you hold bonds that were retransferred from Novo Banco to BES, ISINs: PTBEQBOM0010 PTBEQKOM0019 PTBENJOM0015 PTBENKOM0012 PTBENIOM0016 then you need to file a claim.
4.	What if my bonds were transferred to Novo Banco?	You do not need to file if your bonds were transferred and remained at Novo Banco.

Filing Requirements

1.	Proof of Claim to be filed in Portuguese by local lawyer	There is no standard form of claim under Portuguese law or procedures issued by BES. Clients are advised to complete the data form provided in English, which will be supplied to Portuguese lawyers to support drafting the filings to be made in the Commercial Sections of the Judicial Court of Lisbon.
2.	Power of Attorney ("POA") required?	Yes. Form of POA attached, together with English translation.
3.	Claims filed by the individual claimants or the trustee/agent?	Counsel recommends that individual clients file claims. Portuguese bonds should have a Common Representative, but it may have resigned.
4.	Does the bond need to be accelerated before filing a claim?	Acceleration is automatic under Portuguese law from 13 July 2016 (date of revocation of license).
5.	Nature of Claim and Order of Priority (general overview of waterfall on insolvency to be assessed on a case-by-case basis): (i) Fees and expenses of the liquidation proceedings – 51. ^º and 46. ^º CIRE	Examples: Court and liquidators fees; and other expenses related to the liquidation proceedings.

C A D W A L A D E R

	(ii) Secured and preferential claims – 47.º, paragraph 4 (a) CIRE ((ii) is a complex ranking and there are plenty of dispersed rules)	Mortgage; tax and social security contributions; and employment-related claims.
	(iii) Common claims - 47.º, paragraph 4 (c) CIRE	All claims that are neither secured/preferential nor subordinated.
	(iv) Subordinated claims - 47.º, paragraph 4 (b) and 48.º CIRE	Subordinated bonds; <i>interest</i> of any kind to the extent it is unsecured and which has accrued since 13 July 2016; related parties claims; claims resulting from a clawback by the liquidators against bad faith counterparties; shareholders' loans.

Claim Amounts: Principal, Interest and Costs

1.	Does principal rank as secured, unsecured or subordinated claim?	Check bond documentation.
2.	Does interest rank as a secured, unsecured or subordinated claim?	All interest accrued up to 13 July 2016 will rank in accordance with the bond documentation. Interest post 13 July 2016 will be subordinated.
3.	Rate of interest?	At the contractual rate under the bond documentation. If no interest rate applies under the bond documentation, default interest can be claimed at the statutory rate of 7.00% (reviewed each semester).
4.	Default interest?	Yes, though the date as of a default has occurred may be debatable. The contractual default rate of interest will apply from 13 July 2016. If no contractual default rate applies under the bond documentation, claimants can claim the statutory rate of 7.00% (reviewed each semester).
5.	Can legal costs be claimed?	No. There is no right to claim for costs of enforcement including legal action in Portugal.
6.	Does automatic set-off apply?	No. As there may be limitations to the set-off right, it would be advisable to claim the credits and afterwards exercise the compensation right.
7.	What documentation should be filed in support of the claim?	(i) The underlying bond documentation; and (ii) Verification of holding issued by the custodian bank/Interbolsa/Euroclear.
8.	Original executed claims documents required?	Original signatures to the POA will be required. The lawyer will file the claim on your behalf under the POA. The claim will be filed with the Commercial Sections of the Judicial Court of Lisbon.
9.	What, if any, acknowledgement of claim filing will be received from the liquidator?	Claim forms will be delivered by registered mail with acknowledgment of receipt as evidence of delivery. Formal confirmation of receipt will be requested from the liquidator; however, it is unlikely that claimants will receive any formal acknowledgment.
10.	Other Litigation Proceedings	If you are party to litigation proceedings in connection with your bonds, these should be disclosed to your advisors. A reservation of rights provision should be specifically included in your particulars of claim to avoid any compromise of your rights in other litigation

C A D W A L A D E R

		proceedings.
General Liquidation Q's under Portuguese Law		
1.	How does the liquidation affect the ability of creditors to enforce their rights?	Creditors may not enforce against BES other than in accordance with the liquidation proceedings. The liquidators will make distributions to all eligible creditors in due course in accordance with the priority rights under Portuguese law.
2.	Do management / directors retain control?	The Liquidation Committee is now in control of BES. The directors/management no longer has control.
3.	What is the claw-back regime and when does it commence?	The liquidators have the right to clawback acts performed in a period of two years prior to the commencement of the liquidation (13 July 2016), which are detrimental to BES and performed with bad faith. Unconditional clawback where bad faith is not required allows the challenging of certain acts performed during certain periods of time prior to the liquidation.
4.	What public information is available?	The liquidators will publish a list of creditors in due course which will be published on the official website of the Portuguese courts (<i>Citius</i>). Timing unknown. It is unlikely that the list will be regularly updated.
Trading Claims in the Liquidation		
1.	Will the bonds be frozen for trading via Interbolsa (or the relevant settlement platform)?	Possibly - but only after a creditors list is published by the Liquidators. Trading may continue through the settlement system, however, the right to file arises on 13 July 2016. New trades after 13 July 2016 are recommended to be entered into on LMA (Claims) terms including a condition for the Seller to file a valid claim prior to the bar date .
2.	Once claims have been filed are they transferable under local law and would a buyer receive the equivalent rights of the original claim holder, including the right to vote?	Yes. Claims are assignable under Portuguese law including all rights to vote. Please see 9 below.
3.	Can claims be transferred in part under Portuguese law?	Yes. Partial claims can be transferred. Once the assignee has been recognised by the court as the holder they will be entitled to vote separately from the other claim holders (N.B. see answer to question 9 below).
4.	Do all requirements under the underlying bond documentation in relation to transfers continue to apply after filing for the process?	Unclear, depends if Interbolsa freezes the bonds post the publication of the list of creditors.
5.	Is there any equitable subordination risk if the buyer of a claims purchases from a seller that was a connected party / shareholder of the borrower?	Yes. This risk should be addressed in the trading documentation.
6.	Is the liquidation considered an insolvency process which is likely to trigger typical insolvency "Events of Default" under the bonds?	Yes. The liquidation of BES will be considered an Event of Default under the bond documentation. This will apply as of the date of the revocation of the license (13 July 2016). However, Portuguese law shall prevail over the bond documentation.
7.	Are there any taxes applicable to the transfers of claims / payments of distributions on claims?	True sale (with no recourse) transfer of claims does not trigger stamp duty. As to payments of distributions on claims there will be Portuguese Income Tax

C A D W A L A D E R

		applicable to the interest. The rate depends on the status of the creditor on a case-by-case basis (25%-28% for Portuguese residents) and may be reduced under a double taxation treaty.
8.	What is the recommended process to transfer a bond?	(i) LMA Trade Confirmation (Claims) English law; (ii) LMA Assignment Agreement (Distressed/Claims) Portuguese law; (iii) Notice to the Liquidators; (iv) Request to be recognised as a party in the liquidation proceedings by the Lisbon Commercial Court in connection with the Purchased Assets (this can take several months)
9.	Is there a court process for transferring claims?	The assignee would need to apply to the court to be recognised as party in the liquidation proceedings. NB – it can take several months for a new holder to be formally accepted as the claimant in the Lisbon court. Accordingly, it is advisable to have voting and other arrangements in place under the trade documentation to cover this period.
10.	What is the court fee to transfer a claim?	Ranging between EUR 100.00- EUR 300.00
11.	Will the court require original executed copies of the assignment agreement to recognise the assignee?	No. A scanned copy is acceptable along with a translation into Portuguese. If the assignment is challenged an original or a notarised copy will be required.

Disclaimer of Liability: Legal advice should be taken in respect of any specific claim. Cadwalader is not authorised or regulated in Portugal and does not accept any liability for any claim against BES or for the information included in this memorandum.

For assistance with filing claims or any queries in respect of the Portuguese Liquidation of BES, please contact our team working in conjunction with Gómez- Acebo & Pombo:

Louisa Watt: 020 7170 8678 / louisa.watt@cwt.com

Shelley Kay: 020 7170 8664 / shelley.kay@cwt.com

Adam Colman: 020 7170 8633 / adam.colman@cwt.com

Tracy Dariane: 020 7170 8650 / tracy.dariane@cwt.com

Faye Harvard-Jones: 020 7170 8548 / faye.harvard-jones@cwt.com