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SOCIEDADE DE ADVOGADOS, RL

GENERAL CONTRACTUAL TERMS

FORBIDDEN CONTRACTUAL TERMS – BANK LOAN CONTRACTS

UNIFICATION OF JURISPRUDENCE: CREDIT COMPENSATION, CONTRACTUAL ASSIGNMENT AND INHIBITORY JUDICIAL ACTION

The Portuguese Supreme Court of Justice has, through Decision 2/2016, decreed as forbidden the following general contractual terms:

- the clause authorizing the bank to set-off its credit over a client with the balance deposited in a joint omnibus account, in which the client is or has become a co-holder, as such violates the principle of good faith, in accordance with the disposition of article 15 of the General Contractual Terms legal regime (GCT);
- the clause authorizing the bank to assign in total or part its contractual position to other entities of the relevant group, with registered offices located in Portugal or abroad, in accordance with article 18 line a) of the GCT.

The said Decision has also decreed that the nullity of the choice of court clause can be declared through an inhibitory judicial action, taking into consideration the assessment of the standard contractual terms and not only in the scope of concrete contracts.

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