

# Increasing the speed of Portuguese insolvency

The provision of additional resources to help unblock Portugal's dedicated insolvency courts means that company insolvency and restructurings are finally now beginning to be resolved efficiently, says Frederico Gonçalves Pereira at Vieira de Almeida in Lisbon.



**T**he enactment of a new Insolvency Code in Portugal in 2004 was both well intentioned and welcomed by the legal community but it is only now, four years on, that lawyers are beginning to see how it actually works in practice, says Frederico Gonçalves Pereira, head of litigation at Vieira de Almeida in Lisbon.

The main intention behind the introduction of the new Code was to enable creditors to have a much stronger say in deciding whether a company was insolvent or alternatively whether a restructuring was viable, and to be able to do so at a much earlier stage than was previously allowed, he says.

"The issue has been however that until very recently the courts assigned to deal with insolvencies have been so over-burdened that they have been unable to implement the process in any meaningful way."

The 2004 Code places emphasis on two main courts to manage the majority of Portuguese insolvency issues, explains Frederico Gonçalves Pereira, the Lisbon Commercial Court and Vila Nova de Gaia Commercial Court, near Porto.

"These courts are located sensibly within the areas of most economic activity in Portugal and an emphasis has been made on increasing the specialism of the presiding judges," he says.

## Standstill

The result, he says, had been a virtual standstill in insolvency processes, and processing, ever since the enactment of the new law. The courts have been overworked and understaffed and a simple injunction, for example, to stop the contested sale of an asset, could take up to a year to be heard.

A problem that has been made worse, he says, by the continuing interventionist mindset of companies and even many insolvency administrators.

"Under the old law a judge was required to agree any decision between the parties, and even to take the lead in many respects of an insolvency. The new Code specifically empowers the creditors, and the administrators, to manage many more issues themselves but there remains a tendency to automatically resort to a judge to approve the decisions they make."

This tendency to continue to resort back to the courts coupled with the fact that they are overloaded has meant that it has therefore been very difficult to even assess whether the new law was working, says Frederico Gonçalves Pereira.

In an effort to tackle the situation, and in recognition of the increased momentum towards a further upturn in company insolvency issues in the face of a more challenging economic situation, the

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Authorities have however now intervened and is giving extra funding to increase the number of judges, clerks and the time assigned to insolvency hearings.

The results are already now being felt, believes Frederico Gonçalves Pereira, "A process that in practical terms had been frozen since 2005 has finally begun to come unstuck. We are seeing greater emphasis being placed on the timetables and schedules laid out in the Code and matters as a result are beginning to move at the correct pace."

The Code specifies that an initial decision on an insolvency application – made voluntarily or by a creditor – must be made within five days, with a subsequent 30 days to enable other creditors to make a claim, and an additional 30 days for a committee of creditors to be established and decide a course of action.

"Our impression is that an insolvency proceeding, for example, begun today, will have a much greater chance of adhering to the official timetables, to enable the creditors to play a more prominent role and for decisions to be made and matters to be resolved more efficiently. Now is the time for us to really begin to truly appreciate the benefits of the new law and begin to understand and address any of the disadvantages."

A pesar de la promulgación de una nueva ley de insolvencia en 2004, más favorable a los acreedores, su impacto se ha visto limitado por la ineficacia de los tribunales, apunta Frederico Gonçalves Pereira, responsable del área de procesal en Vieira de Almeida, en Lisboa. La falta de personal y la incapacidad para programar actuaciones de manera lógica se han traducido en un estancamiento virtual de los procesos de insolvencia. La intervención del Ministerio de Justicia y la asignación de un fondo para incrementar el número de jueces, secretarios y el espacio dedicado a las audiencias de las insolvencias, deberían servir para el desbloqueo de los tribunales y para que las verdaderas ventajas de la nueva ley se vean materializadas.