

PORTUGAL: An Introduction to Restructuring/Insolvency

Authors: Frederico Gonçalves Pereira, Teresa Pitorra

[View firm profile](#)

Portugal is now in recovery from the severe economic and financial crisis it has faced since 2011. In the past year, economic activity in general has largely improved and, in particular, economic growth, investment and consumer spending have reached pre-crisis levels. This environment of economic growth has allowed several Portuguese companies that underwent severe distress during the economic and financial crisis to finally recover therefrom.

From a set-up in which many companies were unable to comply with their due obligations, the Portuguese economy has evolved to a pro-recovery context. Amongst other things, this new economic context has resulted in a reduction of the number of insolvency and judicial recovery proceedings launched with the Portuguese courts and has accelerated the conclusion of pending proceedings.

This environment of economic recovery has been strengthened with numerous legislative initiatives, seeking to reform and develop several crucial aspects of the existing restructuring and insolvency law. This is the precise stage where opportunities concerning legal advice on restructuring matters bloom.

From a scenario in which debtors were in trouble and unable to comply with their obligations, and creditors aiming to enforce their claims were experiencing limitations resulting from their need to meet their own capital ratios, we have evolved to a stage where companies aim to solidify their economic and financial situation whilst keeping creditors satisfied. In 2017, many companies successfully recovered from financial hardship through restructuring measures.

There is acknowledgement that joint co-operation results in extracting the maximum value of the companies' activity and their relevant assets, and that this benefits all relevant parties. This acknowledgement, allied with the common perception that both creditors and debtors gain more in working towards allowing companies to keep pursuing their activity, as an alternative to liquidation, has boosted the number of successful restructuring operations, namely through Special Revitalisation Proceedings ("Processo Especial de Revitalização" or "PER").

The assistance provided to clients - debtors and creditors - is crucial to the success of restructuring projects, in both the former and the present contexts. Besides this, restructuring transactions often represent key opportunities for investors, the success of which heavily relies on the expertise and legal skills of those advising them.

In addition, in March 2017, the Council of Ministers enacted a series of measures concerning Corporate Restructuring under the Program "*Capitalizar*", some of which are still to be implemented. Due to their relevance and practical utility, it is important to emphasise the following:

(i) A "*Regime Extrajudicial de Recuperação de Empresas*" or "RERE", allowing for out-of-court recovery of companies, has been set-up. These proceedings aim to regulate the terms and effects of a restructuring agreement negotiated and entered into between a debtor that is in financial distress, or imminently insolvent, and one or more of its creditors. The deposit of the final agreement attained between all relevant parties under these proceedings implicates that any pending suits regarding the credits that are dealt with in the agreement be terminated. Unless debtor and creditors unanimously agree otherwise, the underlying negotiations are confidential; (ii) Significant changes to the PER

system have been made, namely, the fact that it is now limited to companies in a difficult financial situation or facing imminent insolvency (so long as duly certified by an independent auditor), there is greater flexibility regarding the restructuring of tax and social security debts and also an opportunity to attach PERs relating to companies in the same group of companies which have the same appointed Receiver (this measure being available in insolvency proceedings as well);

(iii) There is now a legal framework which allows companies with negative equity to restructure their balance sheet creditors by converting creditor claims into capital, so long as the majority of the company's creditors so request it;

(iv) Debtors may resort to a Mediator appointed by IAPMEI, upon request, who will assist the company to diagnose its current financial situation and monitor negotiations with its creditors as a means to securing the company's recovery via an extrajudicial recovery agreement.

At a point where a reform of the insolvency and debt restructuring legal framework is being put into place, where legal incentives towards the anticipation of debt and corporate restructurings have been provided for and extrajudicial recovery mechanisms are at hand, it is crucial that companies, and economic groups as a whole, fully understand the need for and the benefits of sound restructuring. Legal advisers are of course vital in this process, providing high quality legal counselling and adding value within the underlying operations.

We believe the legal assistance to clients provided in the context of restructuring proceedings can be the key to success and will certainly help identify and implement the appropriate legal tools for a successful rehabilitation.