

PORTUGAL: An Introduction to Restructuring/Insolvency

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Having undergone a severe economic and financial crisis in 2011, which catapulted several Portuguese companies into insolvency and judicial restructuring proceedings (“Processo Especial de Revitalização” or “PER”), Portugal’s economic activity has largely improved and, in particular, economic growth, investment and consumer spending have finally reached pre-crisis levels. It may now be said that the Portuguese economy has recovered and returned to the levels of 10 years ago, propelled mainly by the ever-growing tourism in Portugal and a significant international trade growth in goods and services.

There has been a significant increase in the Portuguese enterprise sector (circa 45,000 new companies were created). On the other hand, there is a continuous reduction in the number of insolvency and judicial recovery proceedings launched with the Portuguese courts and conclusion of pending proceedings has also accelerated.

In 2018, approximately 8,500 companies filed for insolvency in Portugal. These numbers arise mainly from the construction, trade, retail, process industry and services sectors. Geographically, the areas with biggest decrease in insolvency and restructuring proceedings are Lisbon and Oporto, though these cities still have with the highest level of proceedings of this nature in the country.

As to restructuring proceedings themselves, 2018 brought on the highest decrease (around 50%) of cases in the last 5 years, as a means to prevent insolvency. This is, of course, a direct result of the economy’s rebound. However, it must also be attributed to the new rules applicable to PER proceedings that entered into force in the country in July 2018, and that now impose a much more meticulous and rigorous mechanism to allow companies to resort to such measures. These rules are envisioned to guarantee the company’s capacity and effective turnaround rather than act as a preliminary stage of insolvency. Hence, only companies with a real shot at surviving a moment of distress or circumventing imminent insolvency are capable of resorting to these proceedings.

This means that the environment of economic recovery which was strengthened with numerous legislative initiatives, seeking to reform and develop several crucial aspects of the existing restructuring and insolvency law, has been successful. Under such a context, it falls to the legal advisers to keep clients well informed as to the options available to safeguard and ensure company viability.

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 2018, 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 the 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 March 2018, the "*Regime Extrajudicial de Recuperação de Empresas*" or "*RERE*", allowing for out-of-court recovery of companies, was put into force. 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 outside court. 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.

In addition, two other measures flowing from the 2017 Program "*Capitalizar*" were also put into effect, although to date, no statistics on these mechanisms are yet available. These are as follows:

- 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;
- 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 secure 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.

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