



Europe Guide

RESTRUCTURING/INSOLVENCY — PORTUGAL

Overview

PORTUGAL: An Introduction to Portugal

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In recent years, Portugal went through a severe economic and financial crisis which had a significant social and economic impact. Economic activity in general was largely affected and in particular, economic growth, investment and consumer spending were affected negatively.

This environment of uncertainty and economic constraint impacted the daily activity of Portuguese companies. The deceleration in the market felt by these companies forced them into price reductions, leading to lower income, lower margins and lower revenue. At the same time, the market fair value of their assets suffered a tremendous reduction. What is worse, this happened at a time when Portuguese banks did not have access to financing and could not provide the necessary support to the companies.

Under these circumstances, many companies could not comply with their due obligations towards their creditors. Others faced negative equity as a result of the increase of their liabilities followed by a loss of value of their assets. Consequently, the number of companies filing for insolvency proceedings increased significantly, many of them without any chance of rehabilitation.

This environment of economic crises assumed particular relevance in respect of the financial creditors. The level of non-performing loans (NPLs) increased dramatically and Portugal experienced a significant change in the approach by Portuguese banks to the companies' inability to comply with their obligations. Portuguese banks had to work, along with the companies facing difficulties, in joint solutions towards debt restructuring. As the level of NPLs was so high, banks could not enforce all rights and securities without criteria, as their own ratios of capital could be put at risk if drastic measures were adopted in respect of the NPLs portfolio.

In addition to this, one must highlight that during the years preceding the crisis, Portugal experienced very relevant public and private investment. Consequently, a significant portfolio of valuable assets was linked to projects that became bankrupt within the crisis times as the

economic crisis dictated no market and no investors to maintain such assets as economically productive.

This is precisely where an opportunity was created for legal advice in restructuring matters. In a scenario where debtors were in trouble and unable to comply with their obligations, creditors aiming to enforce their claims were experiencing limitations resulting from their need to meet their own capital ratios, the market provided a very poor answer to consumption and Portugal was incapable of offering guarantees to foreign investors, efforts had to be made to devise a joint solution, alternative to insolvency and liquidation.

It was from 2011 onwards that all these players found platforms of joint cooperation aimed at extracting the maximum value of the companies' activity as well as of their relevant assets. It was then common perception that both creditors and debtors could gain more if they reached a common agreement towards the restructuring of certain projects which would allow companies to continue pursuing their activity as an alternative to liquidation. The assistance provided to clients – debtors and creditors – under these circumstances was of crucial importance for the success of the restructuring projects. In some cases, these restructuring transactions revealed themselves as important opportunities for investors, yet these transactions' success relied heavily on special legal skills and expertise.

Having all this in mind, several rehabilitation plans comprising debt, economic and corporate restructuring were agreed on between debtors and their relevant creditors. Some of these restructurings had to be implemented through court proceedings, not only when obligations to file for insolvency applied, but also when cramdown on dissenting creditors had to be imposed. Based on this last purpose, as means to avoid the opening of insolvency proceedings, most companies made use of the Special Revitalisation Proceedings (“Processo Especial de Revitalização” or “PER”) available to them. These proceedings are comprised of a negotiation procedure supervised by the Court, under which creditors are allowed to negotiate an agreement aimed at ensuring their continued activity.

We take the view that currently, in 2017, many companies facing difficulties have already found their way either through market exit or restructuring. However, there are still a relevant number of entities unable to comply with their due obligations towards banks, many resulting from over-indebtedness in very substantial amounts carried over from the pre-crisis period, others from failed restructurings.

Despite the reasons behind the pending indebtedness, it is now important to deal with what we believe will be one of the main challenges of the Portuguese economy within the next year: to find

a solution at the lowest cost possible for the very high level of non-performing loans in the post-crisis period.

In addition, it will be important to create incentives to avoid relapsing into this same situation in the coming years. In a moment when a reform of the insolvency and debt restructuring legal framework is ongoing, it will be important to create legal incentives towards the anticipation of debt and corporate restructurings. The earlier the companies understand their need for restructuring, the higher the chance of achieving a proper and successful rehabilitation.

Although failure is part of the economic process, transparency and accuracy in the treatment of the financial matters should be a priority to all stakeholders and anticipation should be the rule when a company starts facing economic and financial stress. We believe that multiple cultural factors prevented Portuguese companies from dealing with restructuring proceedings properly: failure is not seen as an acceptable result of the economic activity and there is shortage of transparency in the relationship with creditors. This calls for the need for a change in Portuguese culture and perception of reality, one which may take time but is certainly easier to implement in post-crisis times.

In addition, it is important to stress that when companies face problems of this kind, the commitment of all creditors – including public creditors and banks – is crucial for the success of the rehabilitation. And the commitment should be the consequence of the acknowledgement that the involvement of all creditors in restructuring procedures results in a higher level of debt recovery than liquidation would allow.

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

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