THE INSOLVENCY REVIEW

Fifth Edition

Editor
Donald S Bernstein

THE LAWREVIEWS

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The Insolvency Review
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This article was first published in The Insolvency Review, - Edition 5
(published in October 2017 – editor Donald S Bernstein)

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Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK

www.TheLawReviews.co.uk

ISBN 978-1-910813-85-0

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

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ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

ARENDT & MEDERNACH

BAKER MCKENZIE

BERNITSAS LAW

BHARUCHA & PARTNERS

BIRD & BIRD SZEPIETOWSKI I WSPÓLNICY SP K

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Portuguese Insolvency and Recovery Code

Insolvency proceedings in Portugal are mainly regulated by the Portuguese Insolvency and Recovery Code (CIRE). The CIRE was approved by Decree-Law No. 53/2004 and was amended most recently by Decree-Law No. 79/2017.

Pursuant to the CIRE, a company is insolvent when it is unable to pay its debts that have fallen due or when its liabilities are clearly greater than its assets, according to the relevant accounting standards.

A company must file for its insolvency within 30 days of the date it becomes aware of its insolvency or of the date on which it should be aware of its insolvency. When the debtor is the owner of a company, Portuguese law presumes that awareness of the insolvency occurs three months after the general failure to meet debts regarding taxes and social security payment and contributions; debts arising from an employment contract or from the breach or termination of such contract; or rentals for any type of hire, including financial leases; or instalments of the purchase price or loan repayments secured by a mortgage on the debtor's business premises, head office or residence.

Moreover, the debtor's insolvency can also be requested by those who are liable for its debts, by any creditor or by the Public Prosecutor if certain events indicative of an insolvency happen.

The court within the territory of which the debtor's head office or centre of main interest is situated has jurisdiction to open the insolvency proceeding, which begin with the filling of a written petition by one of the above-mentioned entities.

The petition must indicate the facts on which it is based. The contents of the petition will depend on who is the petitioner; the debtor or someone else. The debtor may acknowledge its insolvency. In this event, it can file a petition with the court, which must declare the debtor's insolvency immediately. If the petition is filed by a creditor, the petitioner must allege and prove the source, nature and amount of its credit or its liability for the debts of the insolvent and disclose any known facts related to the debtor's assets and liabilities.

The court decides on the admissibility of the petition. Furthermore, at the insolvency petitioner's request, the court may adopt interim measures whenever it is necessary to protect

1 José Carlos Soares Machado is a partner and Vasco Correia da Silva is a managing associate at SRS Advogados – Sociedade Rebelo de Sousa e Associados, RL.

the debtor's assets until the insolvency is declared. For instance, the court may name an interim administrator for the company with powers to manage the company or to assist in the management.

When the creditor's petition is considered to be well-founded and unless the debtor cannot be located, the court will notify the debtor to file its opposition within 10 days. If the opposition is not filed, the facts on which the petition is based shall be accepted and the insolvency declared.

The opposition must include a list of the debtor's five major creditors. The debtor has the burden of proving its solvency. If the debtor opposes the petition or cannot be located, the court shall schedule a hearing, notifying the petitioner and the debtor and its directors to personally attend the hearing or to be represented by someone else with powers to act on their behalf. In the event the debtor does not attend the hearing, the facts on which the petition is based shall be accepted and the insolvency declared. When the petitioner is a creditor, in the event it does not attend the hearing, the court closes the insolvency proceeding. After the hearing, the court gives its decision on the insolvency of the debtor.[2]

The court's decision can be challenged by means of an application to the lower court or by means of an appeal to a higher court. The application must indicate additional facts or proofs that were not previously presented and that, if presented, would impose a different decision on the debtor's insolvency. The appeal shall indicate why the court's decision should have been different in light of the facts that were proved.

Among other things, the court's decision nominates an insolvency administrator, establishes a deadline for filing the credits claims and schedules a creditors' general meeting. This decision has several effects on the debtor and its directors,[3] on the pending proceedings,[4] on its debts,[5] on the agreements not yet fulfilled[6] and on any acts prejudicial to the debtor's assets.[7] Further, the debtor's assets at the date of declaration of insolvency are seized, as well as any assets and rights obtained by the debtor while the insolvency proceeding is pending.

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2 The insolvency proceeding cannot be subject to suspension, unless another insolvency petition was previously filed.

3 Generally, the debtor and its directors lose their powers to manage and dispose of the debtor's assets.

4 For instance, the pending enforcement proceedings filed by the creditors against the debtor or other proceedings affecting the debtor's assets are suspended, unless these proceedings were also filed against others debtors (aside from the debtor that was declared insolvent). In this event, the proceedings shall continue but only against the other debtors.

5 Usually, with the declaration of insolvency all debts of the insolvent fall due.

6 As a rule, the agreements not yet fulfilled by any party are suspended until the insolvency administrator decides whether or not the insolvent will comply with them. There are special provisions for several agreements, for instance: sale of goods agreements with a retention of title clause; promissory sales agreements; sales agreement where the goods have not been delivered; lease agreements; forward transactions; mandate agreements; long-term service agreements; powers of attorney; and current account agreements.

7 Any acts that are prejudicial to the debtor's assets and that were carried out in bad faith within the two years prior to the declaration of insolvency can be set aside. For this purpose, all acts that reduce, make it more difficult or impossible, jeopardise or delay payment to the creditors are considered prejudicial to the debtor's assets. There are certain acts that are presumed to be prejudicial to the debtor's assets. There are also certain acts that are presumed to have been carried out in bad faith, namely those carried out by, or with benefit to, a person specially related to the debtor in the two years prior to the initiation of insolvency proceedings. In this context, bad faith is understood to arise from: (1) the knowledge of the debtor's insolvency; (2) the knowledge of the damage caused by the act; (3) the knowledge of the debtor's imminent

Within the period set out in the court's decision, all creditors, including those whose credit has already been recognised by a court decision, must file a credit claim. This claim must indicate the source of the credit, date on which the credit is due, the amount, contractual and legal interest, any conditions, nature of the credit and connected guarantees. Fifteen days after the deadline for filing the claims, the insolvency administrator must present a list of credits including those that have been recognised and those that have not. This list can be challenged within 10 days of its publication. If there are no challenges, the court must immediately deliver its decision on the credits recognised and their priority. If a challenge is filed, any creditor is allowed to respond. Afterwards, the creditors' committee[8] has 10 days to deliver its opinion on the oppositions filed by the creditor. Subsequently, the court must schedule an attempt at conciliation and a hearing and finally deliver its decision on the credits and their order of priority.

Portuguese law establishes four classes of credits: secured; preferential; subordinated; and non-secured. Secured credits are those with security over seized assets up to the value of such assets. Preferential credits are those with a right to be preferentially paid up to the value of the assets over which such preference exists. Pursuant to the Civil Code, some preferential credits (special preference credits) take priority over all others, including secured credits. Other preferential credits (general preference credits) only take priority over non-secured credits. Subordinated credits are those that will be settled only after the non-secured creditors have been paid in full. The subordinated credits are listed in the CIRE.

In any event, the credits related to the insolvency proceeding, namely court fees or the remuneration of the insolvency administrator, take priority over all other credits.

As previously mentioned, the court's decision schedules a creditors' general meeting, which all creditors can attend. The creditors have a number of votes in proportion to the amount of their credits: (1) if they were previously recognised by a court decision, (2) if they were previously claimed or (3) if they are claimed during the creditors' general meeting when the deadline for filing the credits' claim has not yet ended and the insolvency administrator or the other creditors do not oppose to the credit's recognition. Subordinated credits can only vote to approve or reject a recovery plan. Generally, the decisions of the creditors' general meeting are taken by a majority of the votes, without taking into account the abstentions.

The first creditors' general meeting is convened to: assess the report of the insolvency administrator produced following to the declaration of insolvency; decide whether the debtor's establishment or establishments must remain open or be closed down; and decide whether the insolvency administrator must prepare an insolvency plan and, therefore, suspend the liquidation and distribution of the assets, or continue with the liquidation and distribution of the assets. In any event, the referred suspension ceases and the insolvency administrator must continue the liquidation and distribution of the assets if the insolvency plan is not submitted within the 60 days following the meeting or if that plan is not approved.

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insolvency; or (4) the knowledge of the commencement of the insolvency proceeding. On the other hand, the agreements that are concluded to allow for the recovery of the company, financing its activity, cannot be set aside.

8 The creditors' committee is composed of three or five members and two alternates, presided over by the biggest creditor, and it is appointed by the court before the first creditors' general meeting to oversee the insolvency administrator's activity. The maintenance of the creditors' committee and of its members depends on the will of the creditors' meeting.

The insolvency administrator (if the creditors' general meetings so decide), the debtor, another person liable for its debts or a group of creditors representing one-fifth of the total amount of the non-subordinated credits recognised can prepare and submit an insolvency plan for the approval of the creditor's general meetings. The insolvency plan can set out how the payment of the debts will be made, or how to liquidate the debtor's assets, or how to restructure or recover the debtor. The content of the insolvency plan can be agreed with the creditors, but the insolvency plan shall treat all creditors equally, unless a difference in treatment is justified. The insolvency plan shall forecast the measures necessary to achieve the goals agreed by the creditors' general meetings to liquidate the debtor's assets or to restructure or recover the debtor – and include the details necessary for its approval by the creditors and by the court. The necessary quorum for approval of the recovery plan is two-thirds of the votes issued at the creditors' general meeting, provided that at least half of the votes issued are not subordinated and that one-third of the total amount of credits with voting rights are represented at the meeting.

Finally, it is important to note that the CIRE sets out a proceeding to punish any fraudulent behaviour by the insolvent or its directors, when their conduct caused or aggravated the insolvency.

Other legislative instruments

EU Regulation No. 2015/848 on Insolvency Proceedings is also an important instrument in Portuguese insolvency law. This Regulation applies to cross-border insolvency proceedings in the EU and it aims to improve the efficiency and effectiveness of these proceedings and avoid forum shopping that affects the proper functioning of the internal market.

Regarding Portuguese legislation related to hybrid procedures meant to encourage the recovery of companies that are struggling with severe financial difficulties, there are two types of procedure that should be highlighted: (1) 'special revitalisation proceedings'; and (2) 'proceedings to approve extrajudicial agreements'. These proceedings were adopted by Law No. 16/2012. Recently, a special proceeding to approve a payment agreement was introduced by Decree-Law No. 79/2017, and it is intended for natural persons that are at imminent risk of insolvency. A new 'extrajudicial procedure for company recovery' is under discussion at the moment and should be approved soon.

ii Policy

An Economic Adjustment Programme was negotiated in May 2011 between the Portuguese authorities and officials from the European Commission, the European Central Bank and the International Monetary Fund. These parties signed a memorandum of understanding[9] that, *inter alia*, listed the need to amend the CIRE 'to better facilitate effective rescue of viable firms'. The CIRE states that the purpose of insolvency proceedings is to satisfy the creditors by means of an insolvency plan, namely to recover the company when this recovery is possible, or by means of the liquidation and distribution of the debtor's assets. However, there was a tendency to liquidate the debtor's assets instead of achieving a restructuring of the company. Subsequently, several amendments of the insolvency law were adopted with the intention of changing this tendency. However, the liquidation of a company continues to be

9 Available at: https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-financial-assistance/which-eu-countries-have-received-assistance/financial-assistance-portugal_en.

the most common option, mostly because the debtor or its directors fail to commence with the insolvency proceedings at an early stage, thus jeopardising the chances of restructuring the company in financial difficulties. In addition, creditors are frequently not willing to take on more risk.

Since that date, relaunching the economy has been one of the main objectives of the government, namely through the improvement of conditions for private investment. More recently, the Ministry of Justice has been taking a series of measures aimed at simplifying the procedures for company restructuring, perfecting and improving the efficiency of the revitalisation and insolvency procedure. With this goal in mind, the CIRE was amended by Decree-Law No. 79/2017, which also adopted the new rules of EU Regulation No. 2015/848. This amendment introduced changes in the legal regime of the special revitalisation proceedings, so as to make them more transparent and credible, as well as in several rules of the insolvency proceedings (namely, rules regarding the intervention of the creditors general assembly, the deadline to request that the culpability of the insolvent be examined, the nomination of the insolvency administrator, the judgment verifying and ranking credits and the liquidation phase). Finally, it provided for full electronic access to the insolvency proceedings.

iii Insolvency procedures

Procedures to wind up or rescue the companies

Portuguese law sets out judicial and hybrid procedures to recover a company and a judicial procedure to liquidate a company.

As concerns the recovery of the company, there are different procedures the applicability of which depends on the seriousness of the financial situation of the company. If the company is in a pre-insolvency situation and its recovery is still conceivable the CIRE (pursuant to Law No. 16/2012) sets out two alternatives to the insolvency proceeding: special revitalisation proceedings and proceedings to approve extrajudicial agreements. Special revitalisation proceedings allow a company that is in a difficult financial situation or that is at imminent risk of insolvency to negotiate with all its creditors and prepare a recovery plan without having to be declared insolvent. These proceedings are only available to companies, but there are equivalent procedures for natural persons in imminent risk of insolvency, referred to as a special proceeding to approve a payment agreement. Proceedings to approve extrajudicial agreements allow a company that is in a difficult financial situation or that is at imminent risk of insolvency to submit a prearranged plan signed by the debtor and its creditors for the court's approval. If the company is already insolvent, the recovery of the company will have to take place in an insolvency proceeding and depends on the approval of a recovery plan by the creditors' general meeting and the court.

Besides the recovery of the company, the insolvency law establishes a liquidation procedure for insolvent companies. When a company is declared insolvent, the Portuguese creditors can vote the company's liquidation. The decision to liquidate is taken in the creditors' general meeting. After the company's liquidation by the insolvency administrator, the product of the sale of assets is distributed according to the priority of the credits and the insolvency closed.

Ancillary proceedings

Portuguese insolvency law allows for ancillary proceedings when the main proceeding is pending in another EU Member State and under the rules established in Regulation

No. 2015/848 and in the CIRE. Under Regulation No. 2015/848, the effects of an ancillary proceeding are limited to the extent of the insolvent's assets that are located in the territory of that EU Member State. In short, when the insolvent has its head office or centre of main interests in another EU Member State the ancillary proceeding only covers assets located in Portugal.

Time frames

According to the most recent official statistics on insolvency proceedings in Portugal,[10] the approximate time frame of a proceeding has been decreasing since 2007. In the first trimester of 2017 the average time frame between the commencement of the proceeding in court and the declaration of insolvency was two months. The average time taken for the subsequent stages of proceedings up to a full conclusion is 43 months.

iv Starting proceedings

Who may commence plenary proceedings and how

The plenary insolvency proceedings commence with the submission of a written petition requesting the declaration of insolvency. A petition can be filed by: the debtor; those who are liable for its debts; the creditors; or the public prosecutor.

How concerned parties may oppose

If the declaration of insolvency is requested by the debtor itself the insolvency will be immediately declared. Otherwise, the court will notify the debtor to file its opposition; if it does not do so, the facts on which the petition is based shall be accepted and the insolvency declared.

Who may commence ancillary proceedings and how

Pursuant to EU Regulation No. 2015/848, the opening of secondary proceedings may be requested by: the practitioner in the main insolvency proceedings; any person empowered under the national law of that Member State to request the opening of secondary insolvency proceedings.

v Control of insolvency proceedings

Insolvency proceedings are controlled by the court from beginning to end. Although the CIRE and its amendments reduced the extent of the courts' intervention, the courts still have power to control the insolvency proceedings.

The court's main interventions are the declaration of insolvency, the ratification of the insolvency plan and the decisions concerning the recognition of credits and their order of priority.

vi Special regimes

There are several entities excluded from the insolvency regime adopted in the CIRE whenever their specific regime is not compatible, namely: (1) legal persons of public law and

10 Available at: www.dgpj.mj.pt/sections/siej_pt/destaques4485/estatisticas-trimestrais/downloadFile/file/Insolv%C3%AAncias_trimestral_20170726.pdf?nocache=1501431584.41.

state-owned companies; and (2) insurance companies, credit institutions, finance companies, investment undertakings that provide services involving the holding of funds or securities for third parties and collective investment undertakings.

For instance, the insolvency regime of the credit institutions and finance companies is regulated by Decree-Law No. 199/2006 of 25 October, recently reviewed by Decree-Law No. 31-A/2012 of 10 February.

vii Cross-border issues

As to cross-border issues, the rules of EU Regulation No. 2015/848 apply in Portugal. The provisions of this EU Regulation apply only to insolvency proceedings initiated after 26 June 2017. The main purpose of the new EU Regulation is to prevent forum shopping, avoiding incentives for parties to transfer assets or judicial proceedings from one Member State to another, seeking to obtain a more favourable legal position to the detriment of the general body of creditors.

II INSOLVENCY METRICS

Portugal was one of the EU Member States that suffered the most from the world economic crisis that began in 2008. Despite that fact, the country was able to complete the bailout funding programme in May 2014. After a strong performance in the second half of 2016, Portugal's economic growth is set to rise further in 2017. The labour market is also expected to improve, with unemployment falling from 16.3 per cent in 2013 to 11.2 per cent in 2016 and to 9.1 per cent in July 2017.[11] After decreasing to 2 per cent of the GDP in 2016, the general government deficit is set to remain below 2 per cent in 2017.

In August 2014, and after a loss of €3.6 billion, the Portuguese Central Bank intervened in Banco Espírito Santo, Portugal's largest listed lender by assets, splitting it into a new surviving good bank (Novo Banco) and a run-off bad bank. The healthy business was transferred to the new bank as part of a €4.9 billion rescue plan. This, however, had a negative effect on the availability of credit for companies and families.

According to the most recent statistics,[12] dated from the first trimester of 2017, the number of insolvencies declared by Portuguese courts decreased in 2013 for the first time since 2007, in a homologous comparison.[13] This means that the impact of the crisis appears to have slowed down and that confidence and investment are returning.

According to the same source, 10.9 per cent of insolvency proceedings had a value of €50,000 or higher and 44.7 per cent of insolvency proceedings had a value of between €1,000 and €49,999. This means that a large majority of this type of proceeding concerns small companies.

In the same period, the most affected industry was the wholesale, retail and vehicle repair industry, which accounted for 26.4 per cent of all companies that were declared insolvent. This sector of the economy was followed by the construction industry, which accounted for 14.1 per cent of all insolvent companies.

11 Available at: www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_destaques&DESTAQUESdest_boui=281091786&DESTAQUESmodo=2.

12 Available at: www.dgpj.mj.pt/sections/siej_pt/destaques4485/estatisticas-trimestrais/downloadFile/file/Insolvências_trimestral_20170726.pdf?nocache=1501431584.41.

13 2014: 5,327; 2015: 5,118; 2016: 4,346; 2017: 3,862.

III PLENARY INSOLVENCY PROCEEDINGS

Within the scope of Portuguese case law, it is possible to single out several recent and significant proceedings, all featuring different substantive and procedural characteristics.[14] It is important to note that, in this brief reference to significant proceedings, the proceedings were selected considering not only their a particular economic significance, but also their specific characteristics and the degree of media exposure.

i Soares da Costa – revitalisation proceeding

Sociedade Soares da Costa, SA (SSC) is one of the largest companies in the construction industry and public works sector operating in Portugal, as well as in Angola and Mozambique. In the face of a difficult economic situation, SSC initiated a special revitalisation proceeding in August 2016.[15] On that date, several public protests had already erupted, as the company owned five months' wages to the majority of its 550 workers in Portugal and up to eight months to those in Angola and Mozambique.

The total amount of credits claimed in the revitalisation proceeding was €1.4 billion, of which the provisional judicial administrator recognised about €711 million. A total of about 1700 creditors intervened in the proceeding.

The revitalisation plan presented by the company in early 2017 proposed a substantial haircut on its debt: in the case of debt to credit institutions, the haircut ranged from 20 per cent, when the credit was granted in AOA or MZN, to 60 per cent of the debt, when the credit was granted in euros. The payment of the remaining debt would be made over a period of 18 years. The company further managed to secure financing for its restructuring in the amount of €45 million, to be granted by Banco Millennium Atlântico, SA.

This plan was voted by 98 per cent of the creditors (an unusually high percentage of voters) and was approved by a close 51.08 per cent of favourable votes. It is worth noting that its biggest creditor, the Portuguese publicly owned bank Caixa Geral de Depósitos, voted against the approval of the plan.

However, this plan did not obtain the required judicial homologation. In a judgment issued on May 2017, the Commerce Court of Vila Nova de Gaia decided not to approve the revitalisation plan that had been voted favourably by the majority of creditors owing to what it considered to be unequal treatment between the creditors that would receive in euros and those that would receive in Angolan kwanzas or Mozambican meticais. In fact, Article 194 of CIRE enshrines the principle of equality of creditors, applicable both to insolvencies and to special revitalisation proceedings, requiring that a plan treats all creditors in an equal manner, unless a different treatment is justified by objective reasons. As seen above, the revitalisation plan of SSC provided for a higher haircut for that part of the debt that would be repaid in Angolan kwanzas or Mozambican meticais. The company had argued that the different percentages were justified so as to account for the devaluation of those currencies (the Angolan kwanza and Mozambican metical) and that it did not amounted to a substantially

14 The information concerning the proceedings that are described in this chapter, results from interviews with parties that are directly involved in the proceeding. As such, the information hereby provided does not dismiss a further consultation of the judicial proceedings in court.

15 Case No. 6628/16.0T8VNG, Commerce Court of Vila Nova de Gaia.

different treatment. However, the court considered otherwise, and it refused to homologate the plan, recommending that SSC initiated new proceedings so as to present a plan where these inequalities were corrected.

In June 2017, SSC initiated a new special revitalisation proceeding, and it declared the reformulation of the plan. This proceeding is still in its early stage.

Throughout this period, although in serious difficulty, SSC has been able to continue its operation, reducing costs and attempting to increase its efficiency.

ii Banco Espírito Santo insolvency

Banco Espírito Santo, SA (BES) had been the subject of a resolution by the Bank of Portugal in August 2014, which saw the transfer of almost all assets, liabilities, off-balance sheet and assets under management to a new bank – the Novo Banco, SA.

BES (the bad bank) retained a residual set of assets (loans on GES group entities and branches with complex situations) and liabilities (a series of senior bonds, liabilities to related entities, subordinated bonds and contingent liabilities).

In July 2016 the European Central Bank revoked BES' authority to carry out the exercise of banking activity. According to the applicable law, this fact implies that the bank be placed into liquidation.

Although the power to revoke the authorisation of credit institutions is with the European Central Bank, the settlement system for Portuguese credit institutions continues to be governed by the provisions of Decree-Law No. 199/2006. Accordingly, that withdrawal of the authorisation produces the effects of a declaration of insolvency and the liquidation of BES will be governed both by the provisions of the referred Decree-Law No. 199/2006 and by CIRE (the bulk of legislation applicable to the liquidation of credit institutions in Portugal).

Within the sphere of its competence, the Bank of Portugal has applied to the Court of Commerce of Lisbon for the judicial settlement of BES[16] and proposed the appointment of a liquidation commission, which was approved following the order to proceed with the liquidation.

The judicial proceeding of BES is presently at the stage of lodgement of credit claims.

iii Urbanos Grupo, SGPS, SA

Urbanos group operates mainly in the logistics and transport sectors, being one of the biggest groups to operate in this market in Portugal. However, in 2016 Urbanos Grupo SGPS, SA had a recognised debt of about €44 million.[17] As a consequence, five companies of the group initiated special revitalisation proceedings simultaneously in that same year. Following negotiations with the creditors, the revitalisation plans were approved by the creditors of these companies, and the documents were taken up to court – to the different judges in the five proceedings – for judicial homologation.

The courts decided to homologate only one of the five plans, and delivered different judgments for each of the cases.

A first point worth noting relates to the proposal, inserted in the approved plan, for the release of the personal guarantees from the shareholders of Urbanos Grupo, SGPS. These

16 Case No. 18588/16.2T8LSB.

17 Case No. 18871/16.7T8LSB, Commerce Court of Lisbon.

shareholders are third parties to the proceedings, as they are neither debtors nor creditors of the company facing a revitalisation proceeding. The court took the view that this provision was invalid. The termination of the personal guarantees from third parties is outside the scope of the revitalisation proceedings, which takes place only between the debtor and its creditors.

However, the court further considered that this provision would be admissible, by application of the principle of contractual freedom, in case the plan had been unanimously approved, with the agreement of all interested parties. Given that such unanimity was not verified, the judge proposed as a solution that the particular clause providing for this termination was declared void and excluded from the plan, which could then be homologated.

However, in its further reasoning the court found two other reasons that prevented the homologation of the plan. First, it considered that the principle of equality of creditors was violated in a relevant manner, as the creditors from the real estate investment funds were not provided with any objective reasons for the treatment conferred to its credits, unlike all other groups of creditors with non-subordinated claims. Indeed, the plan contained no reasoning as to why the real estate investment funds would be paid in the same manner as the bank creditors – a grace period of 24 months followed by 96 monthly instalments – but without benefiting from the payment of interest; or as to why their payments would not start earlier, as those of the suppliers. This differentiation in treatment was considered as disadvantageous and, lacking a proper justification, was considered to be a reason to deny homologation.

Second, the debtors had declared in the plan that the subordinated credits would be paid in the end, and without a haircut, given that a cut in these credits would negatively impact the share capital and activity of the company. The judge did not follow this argument, taking the understanding that it is not admissible to provide for a pardon of around 60 per cent (on average) of the non-subordinated part of the debt and, simultaneously, do not provide for any pardon for the subordinated part of the debt.

IV TRENDS

According to the data available on the website of the Ministry of Justice, the number of insolvency proceedings in the first trimester of 2017 was slightly lower than the number of insolvency proceedings in the same period in 2016.

The introduction of legislative changes in June 2017 (which impacts the regulation of insolvency instruments, particularly affecting the regulation of special revitalisation proceedings, for which access requirements are made more demanding) might cause a decrease of the number of proceedings initiated. Furthermore, the novelty of the legislative changes will undoubtedly require a few months of adaptation for economic agents, while there are doubts about the scope of some of the new provisions, problems of practical application and questions of transitional application are discussed.

Appendix 1

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José Carlos Soares Machado is a former president of Lisbon Bar Council, as well as a member of the Portuguese Bar Association National Board of Directors, and of its National Supreme Council. He is also an arbitrator at its arbitration centre.

He is the author of several published works on constitutional law, corporate law, real estate law and professional ethics.

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ISBN 978-1-910813-85-0