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Portugal: Rescue procedures in insolvency

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Portugal

Phase:

Management

Type:

Rescue procedures in insolvency

Last modified: 10 December, 2021

Native name:

Código da Insolvência e da Recuperação de Empresas (CIRE); Decreto-Lei n.º 53/2004, alterado pela Lei 6/2018 de 22 de Fevereiro - estabelece o estatuto do mediador de recuperação de empresas e pela Lei 8/2018 de 2 de Março - Regime Extrajudicial de Recuperação de Empresas

English name:

Insolvency and business recovery code; Decree Law no. 53/2004, amended by Law 6/2018 of 22 February - establishes the business recovery mediator and by Law 8/2018 of 2 March - Extrajudicial recovery procedure

Article

17, 215 and 216 of CIRE; Law 6/2018 of 22 February - whole regulation; Law 8/2018 of 2 March - whole regulation

Description

The special process of revitalisation (PER) can be started by a company in financial difficulties or facing imminent insolvency. The special revitalisation process is intended to allow the debtor to prove that, even if in a difficult economic situation or imminent insolvency, there are ways in which the business could be recovered. If permission is given, the company can establish negotiations with its creditors in order to plan a restructuring process.

The special process of revitalisation begins with a written declaration to enter into negotiations with at least one creditor, leading to the adoption of a recovery plan.

The debtor must immediately report to the court that the company wants to start restructuring negotiations. The debtor must make available a list of its creditors, its accounts' documents and remaining information and documentation as required under the relevant provisions of the insolvency and business recovery code (CIRE).

Once the rescue procedure starts, the enforcement and insolvency proceedings that may have been brought against the debtor are suspended (insofar as no decision of insolvency has been declared by the court). In addition, it is not possible to bring enforcement and insolvency proceedings against the debtor for as long as the rescue procedure is running.

Once the application is received, the court immediately appoints a provisional judicial administrator and issues a judicial order which is published in the litigation portal run by the government which is known as 'Citius', and, by registered letter, notified to the debtor and to the creditors. The creditors who did not sign the negotiation agreement initially submitted to the court are granted 20 days as of the publication of the said judicial order to claim their credits and the provisional judicial administrator must prepare a provisory list of credits within 5 days. This list is published in Citius and may be challenged within 5 business days, after which the judge has another 5 business days to decide on the challenges submitted.

Once the term for challenging the credits elapses, the debtor and the creditors have two months to conclude the negotiations. This deadline may be extended for an additional one month by prior written agreement between the appointed provisional judicial administrator and the debtor. The provisional judicial administrator participates in the negotiations, guiding and supervising the works and their adequacy, and must ensure that the parties do not adopt any actions that delay the negotiation process or that are useless or prejudicial for its progression.

The recovery plan must be approved by the same majority required for the approval of the insolvency plan: the creditors who represent at least 1/3 of the total receivables with voting rights must participate in the approval and the approval votes must represent more than 2/3 of the total of the votes cast and more than 1/2 of the votes cast corresponding to non subordinated credits, abstentions not being considered.

The judge must validate the approval of the plan within 10 days as of receiving the documentation evidencing the respective approval. The validation of the approval may be refused in accordance to the same rules applicable to the insolvency procedure.

Extrajudicial Recovery Procedure (Law 8/2018 of 2 March)

If creditors represent at least 15% of the debtor non-subordinated debt, they may, together with the debtor, subject negotiations to an extrajudicial recovery procedure (Regime Extrajudicial de Recuperação de Empresas - RERE), signing for this purpose a memorandum of negotiation. With RERE, the intervention of IAPMEI in the negotiation process is no longer required. The negotiations may now take place between the debtor and the creditors. However, a business recovery mediator ([Law 6/2018 of 22 February](#)) can be appointed to provide assistance to the debtor, particularly in the negotiations with the creditor. A declaration from a statutory auditor certifying that the debtor is not the subject of insolvency proceedings, on the date the agreement is executed, and confirming the total liabilities of the debtor, has to be attached to the restructuring agreement. If the restructuring agreement is currently or eventually subscribed by creditors that represent the majorities required by the special revitalisation procedure, the debtor has the possibility of initiating this proceedings in order to obtain the restructuring agreement's approval by the court.

The extrajudicial recovery procedure (Regime Extrajudicial de Recuperação de Empresas, RERE) is a mechanism that replaces the out-of-court business recovery system (Sistema de Recuperação de Empresas por Via Extrajudicial, SIREVE) and seeks to enable entities in a difficult financial situation or that are in a situation of imminent insolvency to negotiate a restructuring agreement with their creditors, in order to guarantee their economic recovery. This procedure is part of the 'Capitalizar Programme'.

RERE applies to all entities that may be subject to insolvency procedures (with the exception of natural persons who are not holders of companies), thus having a wider scope of application than SIREVE, which only applied to companies and to sole traders with organised accounts. Exceptionally, and only during the first 18 months of RERE implementation, entities that are already in a situation of insolvency may also make use of these legal regime.

COVID-19: New extraordinary and temporary measures within the area of the recovery of companies suffering financial hardship or insolvency (Law 75/2020 of 27 November)

[Law 75/2020 of 27 November](#) is in force from 28 of November 2020 to 31 December of 2021, and it has established the following:

- An exceptional temporary regime for extending the period for concluding the negotiations undertaken with a view to the approval of the recovery plan or payment agreement, and granting an adjustment period for the insolvency plan proposal, within the scope of the COVID -19 pandemic. On the justified requested of the company and the temporary court-appointed receiver, the judge may grant a further extension of the period, only once and for one month, for concluding the negotiations undertaken with a view to the approval of a recovery plan within the scope of the PER.
- Extending the right established under article 17-H No. 2 of the Insolvency and Business Recovery Code (*Código da Insolvência e da Recuperação de Empresas* - CIRE) to the members, shareholders or any other persons specially related to the company that finance its activity during the special process of revitalisation (PER).
- Establishing the application of the extrajudicial recovery procedure (RERE), approved by Law nº 8/2018, dated March 2, to companies that are currently in a position of insolvency due to the COVID -19 pandemic. This measure aims to eliminate, albeit temporarily, the restriction on access to the RERE by companies currently in a position of insolvency, and, apart from companies undergoing financial hardship or imminent insolvency, to also allow companies currently in a position of insolvency due to the COVID-19 pandemic, but which are still subject to being viable, to be able to bring about their recovery through a non-judicial process, provided (i) they show that, as at December 31, 2019, they had more assets than liabilities, or (ii) if they did not have more assets than liabilities at December 31, 2019, they have been able to adjust their situation within 18 months and have submitted their restructuring agreement in due time.
- Creating an extraordinary viability process for companies affected by the financial crisis arising from the COVID-19 pandemic: a new extraordinary business viability process (*Procedimento Extraordinário de Viabilização de Empresas* - PEVE) has been created, which is both exceptional and temporary and can be used by any company which, when not having any special revitalisation, insolvency or payment agreement process pending, is in a position of financial hardship or imminent or current insolvency, arising from the financial crisis caused by the COVID-19 pandemic, provided that, in particular, (i) the company shows that it is still subject to being viable and that, according to applicable accounting regulations, it shows that, as at December 31, 2019, it had more assets than liabilities, or (ii) if it did not have more assets than liabilities at December 31, 2019, it has been able to adjust their situation within 18 months and has submitted its restructuring agreement in due time. The PEVE is characterised above all by a rapid processing through the removal of the credit claim stage and the attributing of priority in the processing of this extraordinary process over any other judicial processes that are also urgent (insolvency proceedings, PER and special payment agreement processes (*Processo Especial para Acordo de Pagamento/PEAP*)).
- Establishing the obligatory nature of partial apportionments (rateios parciais) in all pending insolvency proceedings with a deposited liquidation proceeds above €10,000.
- Attributing priority in the processing of requests for the release of deposits or security provided within insolvency proceedings, special revitalization processes or special payment agreement processes.

Comments

Revitalisation processes have been available since 2012. From 2015, there was decrease in the number of special revitalisations, due to the creation of the special process for payment agreement. At the end of the fourth quarter of 2020, there were 188 pending processes (around 79.5% less than in fourth quarter of 2013).

In the first quarter of 2019, 134 requests for entry into the special revitalisation process (PER) were made, representing an increase of 20.7%, compared with the previous year (2018).

The RERE procedure allows the negotiations to take place between the debtor and the creditors, since the intervention of the Agency for Competitiveness and Innovation (IAPMEI) in the negotiation process is no longer required.

Considering the period from the first quarter of 2007 and the first quarter of 2019 the number of processes of bankruptcy, insolvency and recovery of companies increased by 229,6%, corresponding to a total of 3,270 processes in 2019.

In 2013, there was a decrease in the number of processes involved (44 less than in 2012).

From the third quarter of 2007 to the third quarter of 2012, the number of bankruptcy, insolvency and recovery cases of companies entered in the courts of first instance increased significantly (from 992 in 2007 to 5,472 in 2012).

Cost covered by

Not applicable

Involved actors other than national government

Other






Involvement others

Court or business recovery mediator, creditors

Thresholds

No, applicable in all circumstances

Sources

-  [Special revitalisation process](#)
-  [Insolvency and business recovery code \(Código da Insolvência e da Recuperação de Empresas -CIRE\)](#)
-  [Law 8/2018 of 2 March](#)
-  [Law 6/2018 22 February](#)
-  [Insolvency statistics 2020](#)
-  [Statistics on Justice - insolvency, bankruptcy and company recovery processes and special revitalisation processes](#)
-  [Insolvências em Portugal caem 20% no primeiro trimestre de 2017 - press release \(COSEC\)](#)
-  [Statistical release on insolvency 4º quarter 2020 - DGPJ](#)

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