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Bankruptcy, Insolvency & Rehabilitation Proceedings in Portugal

ILN RESTRUCTURING & INSOLVENCY GROUP

KEY FACTS OF BANKRUPTCY, INSOLVENCY & REHABILITATION PROCEEDINGS UNDER PORTUGUESE LAW

I. INTRODUCTION – KEY ASPECTS OF PORTUGUESE LAW - DEFINITION OF INSOLVENCY AND LEGAL FRAMEWORK

Insolvency proceedings consist of a universal enforcement process, with the objective of satisfying creditors in the best possible way in an bankruptcy scenario, either by an insolvency plan based on the recovery of the company via the insolvency assets, or, when this is not possible, by liquidating the debtor's assets and sharing its result among the creditors.

Insolvency proceedings in Portugal are only triggered in the case of a debtor's insolvency, which is defined, in general, as the inability of the debtor to fulfill its obligations as they fall due (cash flow criteria). Aside from this, and in the case of legal entities, the debtor is also considered to be in an insolvency situation when, according to accounting criteria, the liabilities of the debtor clearly exceed its assets (balance sheet criteria).

Under Portuguese Law, the most relevant laws and statutory regimes that apply to the financial restructuring, reorganizations, liquidations, and insolvencies are the following:

- Insolvency and Recovery Code ("*Código da Insolvência e da Recuperação de Empresas*" – hereinafter "CIRE"), approved by the Decree-Law No. 53/2004, dated 18.03.2004 and last amended at 11.09.2022 by the Law No. 9/2022, on recovery and insolvency judicial proceedings, including the Special Revitalization Proceedings ("*Processo Especial de Revitalização* – hereinafter "PER";
- Civil Code ("*Código Civil*") approved by the Decree-Law No. 47344, dated 25.11.1966 and last amended on 03.09.2019;
- Commercial Companies Code ("*Código das Sociedades Comerciais*"), approved by the Decree-Law No. 262/86, dated 02.09.1986 and last amended on 14.08.2018, on dissolution and liquidation of commercial companies;
- Extra-Judicial Regime for Corporate Recovery ("RERE"), approved by Law no. 8/2018, of March 2nd, providing a specific legal regime for out-of-court recovery agreements;
- Statute of the Insolvency Administrator ("*Estatuto do Administrador de Insolvência*"), approved by the Law No. 22/2013, dated on 26.02.2013 and last amended at 11.01.2022 by the Law No. 9/2022;
- Law of the Companies of Insolvency Administrators ("*Regime Jurídico das Sociedades de Administradores da Insolvência*"), approved by the Decree-Law No. 54/2004, dated 18.03.2004;
- Directive (EU) 2019/1023 of the European Parliament and of the Council, of June 20th, 2019, on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt;
- Law No. 9/2022 was published on 11 January 2022. This new law establishes measures to support and speed up corporate restructuring processes and payment agreements. It is the result of the incorporation into Portuguese law of Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 ("Directive (EU) 2019/1023"). Furthermore, it amends the Insolvency and Corporate

Recovery Code ("CIRE"), the Companies Code ("CSC"), the Commercial Registration Code, and other related legislation.

- Regulation (EU) 2015/848 of the European Parliament and of the Council, of May 20th, 2015, on insolvency proceedings.

The insolvency proceeding governed by the CIRE may be voluntary or involuntary, as it may be commenced on the debtor's initiative or on any creditor's initiative. In addition to the insolvency procedure itself, CIRE also provides for two special procedures. The first one is the PER (a voluntary procedure which only applies to companies), considering that only the debtor may submit the request to the court, pursuant to article 17-A of the CIRE. Such request must include a written statement of the debtor and at least one of its creditors, expressing the intention to engage in negotiations leading to its revitalization through the approval of a recovery plan. The second special procedure is the special payment agreement procedure (which may apply to any debtor other than a company). The RERE is also a voluntary proceeding commenced by the debtor's initiative.

II. 1. STATUTORY INSOLVENCY AND LIQUIDATION PROCEEDING

A debtor must request a declaration of insolvency within 30 days after the date of becoming aware of such insolvency, or on the date when he should have been aware thereof. The application must contain a series of mandatory elements and meet several requirements.

Natural persons who are not owners of a company on the date of insolvency are exempted from the duty to declare 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 declaration of insolvency of a debtor may be requested by the person legally responsible for the debts, by any creditor, even if conditional and whatever the nature of the claim, or by the Public Prosecutor's Office, representing the entities whose interests are legally entrusted to it, when any of the following occur:

1. General suspension of payment of due obligations;
2. Non-compliance with one or more obligations which, due to the sum involved or the circumstances of the non-compliance, demonstrate the debtor's incapacity to promptly satisfy most of its obligations;
3. Abscondment of the owner of the company or the debtor's directors or desertion of the company's registered office or place of main business, related to the debtor's lack of creditworthiness and in the absence of the appointment of a substitute of good standing;
4. Dispersal, abandonment, hurried or destructive liquidation of assets and fictitious constitution of credits;
5. Insufficiency of seizable assets to pay the respective claim in enforcement proceedings brought against the debtor;
6. Non-compliance with obligations set out in an insolvency or payment plan;

7. General non-compliance, in the previous six months, with debts of any of the following types: **i)** tax; **ii)** social security contributions and dues; **iii)** debts arising from an employment contract, or breach or termination of such contract; **iv)** payments for any type of lease, including financial leases, payments of the purchase price or of a loan guaranteed by a mortgage, with respect to the place where the debtor carries out his activity or has his registered office or residence;
8. Should the debtor be a legal person, where it has greater liabilities than assets as shown on the last approved balance sheet or is behind by more than nine months in the approval and filing of accounts, if legally required to do so.

The application submitted by a creditor must include information regarding the nature and amount of the credit, the identification of the debtor's managers (both of fact and law) and its five biggest creditors (not including the applicant), and the debtor's commercial registry certificate. If the applicant is the debtor, then it is important to indicate whether the company's situation of insolvency is current or imminent, and to include documents, such as a list of all known creditors and a clear explanation of the company's activity over the last three years and is also required to include with the initial petition for insolvency, a document identifying the companies with which it is in a control or group relationship under the terms of the CSC or which are considered associated companies, and, if applicable, identifying the processes in which its insolvency is requested or has been declared.

The judicial ruling which then declares the insolvency of the debtor grants creditors – as well as the Public Prosecutor Department – a fixed time limit (maximum 30 days) to claim their credits (including conditional credits) before the Insolvency Administrator (filed online). Creditors must lodge their claim accompanied by various documents and elements that legitimize and ground the claim, such as the origin of the credit and its legal classification (e.g., guaranteed or privileged), and its due date, amount and accrued interest. Creditors who have had their credit acknowledged by a previous judicial decision are not exempt from the duty of claiming it in the insolvency proceeding if they wish to obtain payment within said insolvency proceeding. After said time limited has expired, the Insolvency Administrator will assess whether the credits are to be acknowledged.

The declaration of insolvency is registered in the land, commercial and vehicle register in respect of the assets or rights forming part of the insolvent estate.

Within 15 days of the termination of the time limit for credit claims, the Insolvency Administrator prepares a list of the credits that were legally acknowledged (which is published), as well as the respective terms and conditions of each one (e.g., the identification of the creditor, the nature of the credit, the amount and accrued interests, and the existence of personal or real guarantees, amongst others). In parallel, another list comprising the credits that were not acknowledged, and the respective grounds of justification, must also be drafted and published.

Within ten days of the deadline for the Insolvency Administrator to present these lists, any person with a legal interest can challenge the acknowledged creditors list. The court will then issue a ruling, in which it decides on the existence and correct classification of the credits. The credits whose verification or graduation requires the production of further evidence will now be provisionally verified and

graduated in provisional order, instead of relegating the graduation of all credits to the final judgment when the verification of some of them requires evidentiary steps. The aim is thus to simplify the conduct of the phase of verification of liabilities and graduation of claims.

Despite this, a creditor may still have other claims acknowledged after this period, and may request the separation or restitution of assets, to be considered in the insolvency proceeding, by means of a judicial application against the insolvent estate. The request for the separation or restitution of assets can be filed at any time until the end of the insolvency proceeding. However, the claim for the acknowledgement of credits can only be filed within six months of the judgment declaring the insolvency becoming final.

These credits may be traded amongst creditors and with third parties prior to, or even throughout, the insolvency proceedings, as the only impact that this action has on the claim is the identification of the creditor.

All pending judicial proceedings regarding the insolvency estate assets filed against the debtor or even third parties, which may determine variations in the value of the insolvency estate, and all judicial proceedings with exclusive patrimonial nature filed by the debtor are to be attached to the insolvency proceeding if the Insolvency Administrator so requests. Enforcement proceedings or other measures requested by the insolvency creditors that affect the insolvency estate, as well as arbitration disputes, shall be suspended.

Furthermore, one of the consequences of the declaration of insolvency is the immediate removal of the (debtor) managers' powers of administration over the assets of the insolvency estate and their subsequent transfer to the Insolvency Administrator, who is authorized by law to carry out all transactions in the ordinary course of business of the debtor.

As a rule of thumb, under article 102 of the CIRE, contracts that have been entered between the debtor and a creditor, and that have not yet been completely performed, are suspended until the Insolvency Administrator determines on their performance or non-performance. In these cases, the respective creditor is given the opportunity to set a reasonable date before which the Insolvency Administrator must issue a decision. If no decision is made by said date, then Portuguese law presumes that the Insolvency Administrator has decided not to perform the contract.

II. 2. AGGRAVATED/CULPABLE INSOLVENCY

Once a court makes a declaration of insolvency, the insolvency may be deemed to be fortuitous or aggravated/culpable (where insolvency is a result of a willful or gross negligence action of the debtor's or of it's in legal directors within the three years prior to the beginning of insolvency proceeding). The law provides for circumstances where **(i)** insolvency is automatically classified as negligent; and **(ii)** where fraud or gross negligence is presumed.

For the purposes of qualifying the insolvency as culpable, Law no. 9/2022, of 11 January, clarified that the presumption of serious fault of the de jure or de facto administrators of the debtor who are not natural persons who fail to comply with the duty to request the declaration of insolvency or the obligation to prepare, submit to supervision or deposit the annual accounts is limited to the existence of seriously culpable behavior.

It is also provided the peremptory nature of the deadline for the opening of the insolvency filing, allowing, however, its extension (which cannot exceed six months from the beginning of the deadline), upon motivated request of the

insolvency administrator or of any interested party.

The suspension of the proceedings in the event of death of one of the proponents affected by the classification of the insolvency is established, opening the door to the to the deduction of a habilitation incident in the general terms of the civil procedural law.

II.3. EFFECTS ON DEBTORS

A declaration of insolvency transfers the power to run a company from its directors to an Insolvency Administrator, who becomes the representative of the debtor for all purposes. Management bodies of a debtor may continue to operate (when requested by the debtor, if the insolvency is voluntary, or with the agreement of the creditors), but actions that might be carried out by the debtor that breach any required supervision of the Insolvency Administrator may be declared null and void. A declaration of insolvency implies that all debts of the insolvent become immediately due. Any judicial proceedings involving patrimonial matters, where the final result may affect the value of the insolvent company's estate, are attached to the insolvency proceeding provided that the Insolvency Administrator requests it. A declaration of insolvency stays (and may then terminate) any pending enforcement proceedings and creditors cannot initiate new enforcement proceedings against the debtor.

II.4. EFFECTS ON NATURAL PERSONS

If the debtor is a natural person, at the debtor's request, he may be granted exoneration from insolvency claims which are not fully paid during the insolvency proceedings or in the three years following closure, as provided for in Articles 235 to 248 of CIRE.

The exoneration of a natural person's liabilities, if allowed, will require the disposable income earned by a debtor to be assigned to a trustee chosen by the court for the five years following the closure of the insolvency proceedings (assignment period). At the end of each year during the assignment period, the trustee uses the sums received: **a)** to pay outstanding costs of the insolvency proceedings; **b)** to reimburse the body responsible for the financial and property management of the Ministry of Justice for the remuneration and expenses of the insolvency practitioner and the trustee as incurred by that body; **c)** to pay his own remuneration and expenses; **d)** to distribute the remainder among the insolvency creditors pursuant to the provisions laid down on payment to creditors in insolvency proceedings.

On the other hand, the judge is allowed to extend the assignment period, up to a maximum of three years, upon the reasoned request of the debtor, a creditor in the insolvency, the insolvency administrator (if still in office) or the trustee who was charged with supervising the debtor's compliance with its obligations. If the judge concludes that there is a serious likelihood of the debtor's compliance with the obligations imposed on him by law, he shall order an extension.

Provision is made for the possibility of a supervening liquidation, once the liquidation of the insolvent's assets has already been completed and the insolvency proceedings are closed. It will now be possible, during the assignment period, for the trustee to seize and sell assets that were also part of the debtor's assets and, subsequently, to allocate the proceeds of the sale to the creditors, in the same manner as the disposable income.

When the assignment period has ended, the exoneration of the debtor may be granted by the court and in such a case, all insolvency claims which still remain at the date exoneration is granted will be cancelled, including those which have not been lodged or verified. However, the

exoneration does not include **a)** maintenance claims; **b)** compensation due for unlawful acts by the debtor which have been claimed as such; **c)** claims for fines and other monetary penalties for crimes or administrative offences; **d)** tax clams.

II. 5. EFFECTS ON CREDITORS

Insolvency proceedings are dynamic and, as a result, there is a lot of information that is constantly being analyzed and put forward to all parties involved – the creditors' right to be provided with a report prepared by the Insolvency Administrator should be noted. This report will be presented at the creditors' general meeting, which will focus on discussing and deciding whether to close or maintain the activity of the establishments comprising the insolvency estate and can empower the Insolvency Administrator to prepare an insolvency plan and determine the suspension of liquidation of the insolvency estate.

To a certain extent, the CIRE is flexible in allowing creditors to opt for the restructuring and maintenance of the company. If the creditors do not approve an insolvency plan or request the Insolvency Administrator to prepare a plan through which the company is to be maintained and the creditors paid, then the proceeding follows in the view of liquidation and the assets of the insolvency estate will be sold in this framework.

One of the keystones of the CIRE is that creditors must receive equal treatment. There are few exceptions to this rule and those permitted by law abide by the rule that "ordinary credits" are considered equal. On this basis, a distinction is made between guaranteed, privileged, ordinary and subordinated credits:

• Guaranteed credits are those secured by a guarantee in rem. They are paid out of the proceeds of the sale of the secured asset once sale expenses and any amount allocated to credits over the insolvency estate are deducted. If the secured assets are insufficient to pay all debts owed to guaranteed creditors, any remaining debt is included in the common credits.

• Privileged credits are those benefiting from general creditor's privilege (e.g., credits arising from an employment contract) over assets comprised in the insolvent estate. Due to their nature, these credits are paid in a pro rata basis with the proceeds of the unsecured assets and according to its inner ranking. In fact, there are several types of privileged creditors that are ranked differently. As a novelty introduced by Law no. 9/2022, of 11 January, the compensatory credits resulting from the termination of the employment contract by the administrator after the declaration of insolvency of the debtor are qualified as automatic insolvency claims.

• Common creditors can only be paid after creditors who rank in priority to them are paid in full. They are paid in a pro rata basis if the proceeds of the insolvency estate are insufficient to fully satisfy the debt.

• Subordinated creditors rank below common creditors. Redefined by Law No. 9/2022 of 11 January as the credits held by persons especially related with the debtor, provided that the special relationship existed already at the time of the credit was born (and not acquired), and by those to whom they may have been assigned in the two years prior to the beginning of the insolvency proceedings.

• In addition, there is another special and prioritized category, known as credits against the insolvency estate, which generally arise after the declaration of insolvency (e.g., court fees, the costs and expenses of administration, and claims resulting from obligations incurred under contracts entered by the Insolvency

Administrator after the judgment opening insolvency proceeding or that the administrator chooses to perform). These credits are not subject to ranking or acknowledgement and, in principle, must be paid by the Insolvency Administrator when they fall due.

Once the judgment declaring the insolvency has become final and the creditors' meeting for the distribution report has been held, the Insolvency Administrator promptly proceeds with the negotiation and sale of the assets. And has the duty to present, within 10 days of that meeting, a liquidation plan for the sale of the assets, containing defined time goals and a list of the concrete steps to be taken. The failure to present or the seriously culpable failure to comply with the liquidation plan constitutes just cause for the dismissal of the insolvency administrator.

The purchasers acquire the assets *f*ree and clear of claims and liabilities. However, the CIRE establishes a set of rights for guaranteed creditors:

- The guaranteed creditor shall be heard regarding the sale's mode and shall also be informed about the initial base value or price of the proposed sale to a certain entity. However, the Insolvency Administrator is not bound to accept the secured creditor's position;

- The guaranteed creditor may propose to purchase the asset, either directly or through a third party, for a price higher than the projected sale price or the initial base value. If such proposal is not accepted by the Insolvency Administrator and the asset is sold at a lower price, the Insolvency Administrator is required to guarantee that the guaranteed creditor is in the situation he would be in if the asset had been sold at the proposed price;

- The proceeds of the sale of assets shall revert immediately to the guaranteed creditors, before any payment is made to any other creditor.

Once insolvency proceedings have commenced, transactions that unfairly favor one creditor over the others or any acts that reduce, make it more difficult or impossible, jeopardize or delay payment to the creditors can be set aside by the insolvency administrator. Two requirements must be fulfilled: the acts must have been carried out in bad faith (with the knowledge of the debtor's insolvency or of the damage that act could cause) and within the two years prior to the initiation of the insolvency proceedings. The insolvency administrator can terminate contracts that fulfil these criteria by means of a registered letter within six months as of the knowledge of their existence. The termination has retroactive effects. The insolvent debtor or the third party which received the communication of termination can challenge it, filling a judicial action within three months after receiving the communication.

One of the biggest novelties of Law 9/2022, of 11 January, is the introduction of compulsory partial distribution of amounts to creditors, whenever, cumulatively:

a) The decision declaring the insolvency has become final and the process has continued for liquidation of assets;

(b) the time limit for contesting the list of recognized creditors has expired without any contestation having been filed, or, if a contestation has been filed, the contestation in question has already been decided, whether for lack of response to the contestation or by a court decision which may not be final;

c) The amounts deposited to the order of the insolvent estate are equal to or greater than EUR 10,000.00 and their ownership is not disputed;

d) The process is not in a condition to prepare the final distribution.

Once these conditions are met, the insolvency administrator shall prepare and publish the partial distribution list, and the creditors and the creditors (if any) shall have 15 days to reply to it. At the end of this period, the process is concluded with the judge, who decides on the payments that he considers justified.

III. STATUTORY RESTRUCTING, REHABILITATIONS AND REORGANISATIONS

The PER ("*Processo Especial de Revitalização*") is a special revitalisation proceeding for companies facing a situation of imminent insolvency or economic distress and is not to be used as a substitute for insolvency proceedings. The PER is initiated by a written request subscribed to by the debtor and creditors representing at least 10% of non-subordinated credits (or a lower percentage in certain limited cases), which includes the following:

• A declaration by the company of its ability to recover;

• A joint declaration of the debtor and the abovementioned percentage of creditors expressing the will to engage in negotiations;

• A declaration by a certified accountant attesting that the company is not insolvent;

• Auxiliary documents required in insolvency proceedings (e.g., a list of creditors, pending lawsuits, shareholders, assets and employees; a description of the debtor's activities; and annual accounts, management and audit reports and legal certification for the last three years);

• A proposal of recovery plan, with a description of the company's situation in terms of assets, financing and revenue cash flows, and

• Introduced by the Law No. 9/2022, 11th January, in order to ensure a more equitable treatment of creditors on whom the effective restructuring of companies will depend, companies other than micro, small and medium-sized enterprises will be required to present, with the respective request for submission to the PER, a proposal for the classification of creditors affected by the recovery plan in distinct categories, according to the nature of the respective credits, into guaranteed, privileged, common and subordinated creditors and, among these, reflecting the universe of creditors of the company according to the existence of sufficient common interests, namely:

i. Workers, without distinction of the type of contract;

ii. Shareholders;

iii. Bank entities that have financed the company

iv. Suppliers of goods and service providers;

v. Public creditors.

Upon the receipt of said request, the judge appoints a provisory judicial administrator ("PA"). The court's order is published, formally initiating the PER. Subsequently, within 20 days of said publication, the creditors make their credit claims to the PA. Within five days, the PA drafts a provisional creditors list, which is published and may be contested in court on the next five business days. Oppositions are decided by the court within the same term, and the definitive list is defined.

Once the definitive list is determined, negotiations between creditors and the debtor shall start and be concluded within a term of two months, which may be extended once for one month.

Being a dejudicialized proceeding, negotiations are organised and supervised by the PA. The court's main role is to decide on the oppositions to the creditors list and to ratify (or refuse to

ratify) the recovery plan approved by creditors. Non-ratification occurs if there is any infringement of non-neglectable procedural rules or infringement of material rules (notably, creditors shall be treated equally and creditors' positions shall not, without their consent, be less favourable to the positions they would have in a non-approval scenario). The recovery plan approved by the creditors and ratified by the court is binding for all parties, including creditors that have not claimed credits and creditors that did not participate in the negotiations or voted against the plan.

The plan's approval requires a vote of creditors through three systems of majority formation:

1. Applicable to cases in which there is classification of creditors in distinct categories (large companies): the rule of the favourable vote, in each of the categories of creditors, of more than 2/3 of the total votes cast (abstentions are not considered as such);
2. Applicable to all other cases (micro, small and medium enterprises): rule of approval of the plan which, being voted by creditors whose credits represent at least 1/3 of the credits related to voting rights (abstentions are not considered), obtains the favourable vote of *(i)* more than 2/3 of the total votes issued and *(ii)* more than 50% of the votes issued corresponding to non-subordinated credits related to voting rights. ;
3. Applicable in all cases (whatever the size of the company): approved the plan that collects cumulatively (without considering abstentions) the favourable vote (i) of creditors whose credits represent more than 50% of the total credits related to voting rights and (ii) of more than 50% of the votes issued corresponding to non-subordinated credits related to voting rights.

The recovery plan must include the following mandatory information:

i. The parties affected by the plan, designated individually and broken down by classes in general terms or, if applicable, by categories, and the amounts of their respective claims or interests covered by the plan;

ii. The parties, designated and apportioned pursuant to the preceding paragraph, that are not affected by the plan, together with a description of the reasons why the proposed plan does not affect them;

iii. The arrangements for informing and consulting employees' representatives, the position of employees within the undertaking and, where appropriate, the general consequences as regards employment, such as dismissals, temporary reduction of normal working hours or suspension of employment contracts;

iv. Any new funding envisaged and the reasons why such new funding is necessary to implement the plan;

v. A statement of reasons containing a description of the causes and extent of the company's difficulties and explaining why there is a reasonable prospect that the recovery plan will prevent the company from becoming insolvent and ensure its viability, including the preconditions necessary for the plan's success.

In the judgment of approval or non-approval of the restructuring plan, the judge must necessarily assess:

i. Whether the recovery plan has been approved (i.e., whether the majorities provided for by law have been respected);

ii. If, in the event of classification of creditors in different categories, creditors in the same category are treated equally and in proportion to their claims

iii. Whether, in the case of classification of creditors into separate classes, the dissenting voting classes of creditors affected receive treatment at least as favourable as that of any other class of the same rank and more favourable than that of any class of lower rank;

iv. That no class of creditors may, under the plan of reorganisation, receive or retain more than the amount corresponding to the totality of their claims;

v. Whether the situation of the creditors under the plan is more favourable than it would be in a scenario of liquidation of the company, if there are requests for non-approval on this ground

vi. If applicable, that the new financing necessary to implement the restructuring plan does not unfairly harm the interests of the creditors;

vii. Whether the rescue plan holds out reasonable prospects of preventing the insolvency of the company or ensuring its viability.

In the absence of approval of a restructuring plan and when the provisional judicial administrator issues an opinion concluding that the company is insolvent, the company shall have a period of five days to oppose it.

Alternatively, the PER may follow a shorter form, being initiated by the presentation of an extrajudicial recovery agreement (signed by the debtor and creditors representing the majority referred to above for the plan's approval), with all ancillary documents. In such cases, following the PA's appointment and the notification of non-subscriber creditors for oppositions to the provisional creditors list, the judge decides on the plan's ratification in the same terms described above. These shorter proceedings may be concluded (upon the final ratification decision) within two to four months on average. Regular proceedings last around six to eight months.

Ratification (or non-ratification) of the recovery plan may be contested through a single appeal to an appeal court (whose decision is final), based on formal or material grounds. Upon the ratification of the recovery plan, the debtor and all creditors (including non-voting, unknown creditors, creditors that have not claimed or have contingent claims regarding facts that occurred on or prior to the PA's appointment) are bound to its terms.

If the recovery plan is not approved, the PA shall communicate the end of negotiations and give an opinion on whether the company is insolvent. If the company is deemed to be insolvent by the PA, the PER is extinguished, and insolvency proceedings are initiated (three business days). If the PER is extinguished the debtor cannot initiate a new PER for the next two years.

These proceedings are not confidential, being available for consultation by interested parties. The main decisions regarding the proceedings are made public.

After the appointment of the PA, any pending enforcement proceedings filed against the debtor shall be suspended, for a period of four months, extendable by one month, and no further proceedings shall be filed for the same purpose after such date (except for claims related to labour credits). The company shall

continue to operate its business, under the PA's supervision. The PA's prior written authorization is required for "acts of special importance", without that approval the transactions have no effect.

IV. OUT OF COURT RESTRUCTURINGS AND CONSENSUAL WORKOUTS

Creditors and debtors favor extrajudicial restructuring proceedings over statutory proceedings because the latter are necessarily prejudicial to the company's image, harming the regular continuation of the business. Moreover, out-of-court proceedings secure greater value for creditors and maximize the recovery of credits. Out of court restructurings may occur within pure informal and dejudicialized negotiations and agreements, or within a proceeding following an Extrajudicial Company's Recovering Regime, set out in Law no. 8/2018 ("RERE"). If the debtor's restructuring inevitably entails the reduction of a debt, then insolvency proceedings or the PER (statutory in-court recovery proceedings) are chosen over out-of-court proceedings.

Simple restructurings are usually concluded within three to four months, and more complex restructurings in eight to 12 months. Creditors do not generally accept any compromise on the suspension or limitation of their rights (e.g., enforcement rights), but, in practice, they refrain from exercising such rights while negotiations are ongoing. Banks generally require full disclosure during negotiations (typically regarding accounts, assets and the business of the debtor). In more complex restructurings, banks sometimes require an audit and a viability plan made by specialized entities. Restructuring agreements typically include solutions such as a restructuring of the payments schedule (periods of grace, extension of repayment dates, decrease of interest rates), a sale of assets, a reduction in activity, and increased compromise by the owners.

Out of court restructuring agreements only bind the signatory parties (they cannot be imposed on non-parties) and cannot modify any rights of non-subscriber creditors or owners. Only PER or insolvency proceedings are binding for all stakeholders, including creditors and owners.

V. MULTINATIONAL CASES

The effects of restructuring or insolvency proceedings opened in an EU Member State are automatically recognized in all other Member States, according to Regulation (EU) 2015/848 (Recast Insolvency Regulation).

However, the CIRE requires foreign judgments to comply with certain formalities before they can be recognized:

- Insolvency has been declared by a foreign court;
- Foreign court's decision is final and binding;
- Decision is adopted by the court where the debtor's center of main interests is located;
- Decision is not illegal under Portuguese law.

Portuguese courts must normally apply the principle of reciprocity when recognizing foreign insolvency decisions.