



The Council of Ministers approved the general principles by which debtors and creditors should be based on the context of out-of-court proceedings for debtors' recovery, making this one of the first measures to encourage out-of-court mechanism as an alternative to insolvency proceedings.

Contacts

António de Macedo Vitorino

avitorino@macedovitorino.com

Cláudia Martins

cmartins@macedovitorino.com

This information is provided for general purposes only and does not constitute professional advice. If you have any question on a matter of Portuguese law you should contact a lawyer licensed to practice law in Portugal. If you are a client of Macedo Vitorino & Associados please contact your usual contact partner or any of the lawyers listed in the contacts section.

General principles of out-of-court proceedings for debtors' recovery

In compliance with the bail-out programme agreed by the Portuguese State and the IMF/EU/BCE, in which it was agreed to set the general principles of out-of-court proceedings for restructuring of companies, the Council of Ministers approved, by way of resolution, the general principles of out-of-court proceedings for debtors' recovery on October 25, 2011.

This resolution establishes as general principles, among others, the following:

- (a) Negotiation in order to obtain a settlement which allows the effective recovery of the debtor;
- (b) Cooperation between the parties in order to grant the debtor a "standstill period", during which the debtor may obtain all relevant information and make any proposals in order to solve their financial situation;
- (c) Creditors must refrain from introducing new judicial proceedings against the debtor and must suspend the pending lawsuits and the debtor must refrain from adopting measures which may harm creditors;
- (d) The proposals for debtor recovery should be based on a realistic and consistent business plan, containing information regarding the steps to be adopted by the debtor in order to overcome their financial situation; and
- (e) In case additional funding is granted to the debtor, the remaining credit should be guaranteed by the parties.

These principles constitute one of the measures of a reform, which is expected to be soon adopted, as to companies' restructuring proceedings.

These principles are included in a wider set of measures for the recovery of companies in economic and financial difficulty situation without the companies having to resort, at least initially, to insolvency proceedings.

It is therefore expected that the Portuguese Insolvency Code ("CIRE") is amended in order to introduce new rules for approval of restructuring plans negotiated out-of-court and the current conciliation proceeding with the IAPMEI be reviewed accordingly.

As adopted in other countries, such as the case of the UK schemes of arrangement, it is anticipated that these measures may promote effective out of court proceedings, which, in our opinion, might pass by convening with the creditors agreements, with the voting majority specified in the CIRE, and since approved by a court, with the same enforceability of the decisions taken in insolvency proceedings.

By this way, it would be opened the possibility of reducing the amounts of the debts and the share capital of companies in economic and financial difficulties by way of an alternative mechanism without having to resort to insolvency proceedings.

© 2011 Macedo Vitorino & Associados