



The amendment proposal of the Insolvency Code establishes a prior insolvency procedure, whose main goal is to promote, by way of an out-of-court arrangement with the creditors, the recovery of the debtor instead of the liquidation of its assets.

The amendment proposal also provides the simplification of the formalities and proceedings of the insolvency procedure.

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The Council of Ministers approves amendment proposal to the Insolvency Code

In order to promote the restructuring of the companies and the simplification of the insolvency procedure, the Council of Ministers has approved the sixth amendment to the Insolvency Code.

This proposal creates a prior insolvency procedure aimed at restructuring companies in economic difficulties or eminent insolvency by way of an out-of-court arrangement with the debtor's creditors: the recovery procedure.

During the recovery procedure, the negotiations may not exceed 3 months, period during which the pending enforcement actions against the debtor are suspended.

If the parties do not reach an arrangement during that period, the procedure will terminate if the debtor is not insolvent after conclusion of the negotiations. Otherwise, the interim insolvency administrator appointed by the court will request the court to order the insolvency to be effective within three business days.

If the parties, with the approval of the majority of the creditors, reach an arrangement for the debtor's recovery, the recovery procedure will be concluded in a short period of time after being sanctioned by the court.

The arrangement will bind all the creditors, including those which are not party to the agreement, provided that the compliance with the legislation on settlement of debts to the Tax and Social Security Authorities and some safeguard conditions of the minority creditors are ensured.

Concerning the insolvency procedure, the proposed revision intends to simplify the formalities and proceedings by reducing deadlines (for instance, the deadline for the debtors present themselves to the insolvency is reduced to 30 days) and some stages (for instance, the incident qualifying the insolvency will be only applicable when there is evidence that the insolvency status was committed with intent) and by adapting the procedure on a case by case basis. In some cases, the court may waive to convene the assembly of creditors, for the appraisal of the report, and in other cases, it may decide to suspend the assembly of creditors for more than once during a maximum period of 15 days.

Concerning the simplification of the formalities, the insolvency procedure will be noticed at the internet site "CITIUS", which will replace the prior notification made in the official gazette "Diário da República".

On the other hand, the proposed revision intends to strengthen the liability of the debtor and management bodies when they are intentionally liable for the insolvency condition and to reinforce the organizational powers of the court concerning the procedure.

The proposal also defines the scope of powers and liability of the insolvency administrator.

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