

Portugal welcomes fresh money



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Given the pandemic context in which we all have been living for almost two years now and that has seriously affected companies worldwide, mechanisms to help companies cope with the economic crisis, such as preventive restructuring procedures as well as effective and swift insolvency proceedings have gained renewed importance.

Therefore, the confirmation of the long awaited transposition of the Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 by Portugal has been received with great enthusiasm. To that end, the Portuguese Parliament approved the Law 9/2022 of 11 January 2022, which introduced several legislative novelties and established measures to support and accelerate corporate preventive restructuring processes and payment agreements, and, consequently, amending the Insolvency and Corporate Recovery Code, the Commercial Companies Code and related legislation.

One of the most interesting changes in the text is related to financing incentives with positive and direct impact in the investors' sphere within recovery processes. In short, companies in Portugal that are in a proven difficult economic situation or in a situation of imminent insolvency, but still susceptible to recovery, may resort to an alternative to the typical insolvency process: the Special Revitalization Process (PER).

This alternative process aims, essentially, to implement negotiations between the company and its creditors, approve a recovery plan and promote the revitalization of the company, and thus allow for the

continuity of activity.

The success of a recovery plan often depends on obtaining financial backing for a company subject to the PER. In order to promote and encourage such bankrolling, the new legislation applies to creditors who, in the course of the recovery proceeding of a given company (new financing) or in the execution of a recovery plan (interim financing), finance its activity by providing it with capital for its revitalization. These creditors will have a claim against the insolvent estate up to an amount corresponding to 25% of the company's non-subordinated liabilities at the date of the declaration of insolvency, provided this is declared within two years as from the date of the final and unappealable decision approving the recovery plan.

Furthermore, lending made available to companies over that percentage will benefit from a general preferential ranking before the general preferential ranking granted to employees (one of the top ranked creditors). Similar treatment applies to debts arising from financing made available to the company by creditors, shareholders or any other entities specially related to the company subject to the recovery plan.

The aforementioned law also establishes that the financing acts referred to are protected against any challenges, executions or declarations of nullity. Moreover, the providers of new financing or interim financing cannot incur civil, administrative or criminal liability on the grounds that such financing is detrimental to the creditors as a whole, except in cases expressly provided for by law.

These legislative innovations are, therefore, an excellent opportunity for companies in

difficult economic situations or facing imminent insolvency to attract external financing and investment to help them overcome the adverse conditions they face.

In the same vein, the newly introduced amendments are also positive from the point of view of creditors and possible financiers, as they will be able to promote the faster recovery of their debtors or financed companies by having protection through the rights now granted to them. This brings certainty to and provides the economic interest for new funding and business in general which have been completely forgotten so far!

Due to the aforementioned extra layers of protection for the company's financial backers, it is expected that, once the new law comes into force (11 April 2022), financing companies in difficulty will become more attractive to third parties, as well as to shareholders. This will consequently provide higher chances of success for PERs and necessarily improve the turnaround statistics for companies that will now have other sources of funding.

Such expected results would confirm the effectiveness of the legislation described above and the consequent success of this type of proceeding, both from the point of view of the recovered company and its creditors. ■