



## **Companies' Restructuring (last statutory amendments)**

**Law No. 9/2022**, published on 11 January 2022, **has implemented measures to support and expedite debt restructuring procedures**, transposing Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 (the "Directive"), in order to ensure that viable companies and entrepreneurs in financial difficulty have access to effective national preventive restructuring schemes that allow the continuance of their activity. The aim is to prevent the loss of jobs and of feasible economic players, as well as to ensure that insolvent or over-indebted companies may benefit from a full debt discharge after a reasonable period of time, thus giving them a second chance.

This act introduces several amendments across various structural acts, namely the Portuguese Special Revitalisation Process Regime ("PER"), the Portuguese Insolvency and Corporate Recovery Code ("CIRE") and the Portuguese Companies Code ("CSC"), so that the those sectoral rules applicable to debt restructuring become consistent.

We would like to highlight the following amendments:

- The period of suspension of enforcement measures, provided for in PER, with a view to entering into negotiations with creditors has been fixed at 4 months.
- Clauses providing for conditions subsequent or the right to be indemnified or terminate any agreements in case of (i) application for the opening of a special revitalisation procedure, (ii) opening of a special revitalisation procedure, (iii) application for an extension of the suspension of enforcement measures, (iv) the award of the suspension of enforcement measures and (v) the declaration of insolvency of the company, become expressly null and void. However, clauses conferring the same rights to any standing prior to the declaration of insolvency other than those aforementioned shall be lawful.
- As in the regime of the Extraordinary Company Viability Process ("PEVE"), the creditors and shareholders which, within the new PER, finance the activity of the company – making available the capital to make it viable - will now benefit from a preferential claim ("privilegio creditório"), ranked before the preferential claim granted to employees (i.e. an incentive to the capitalisation of companies by shareholders, creditors or any other persons related to the company), being expressly prohibited to legally challenge ("impugnação pauliana") those financings.
- The period of the assignment period ("período de cessão") was reduced from five years to three years in the scope of the incidents of discharge of the remaining liabilities, thus guaranteeing more expeditely the access of the insolvent debtors to a second chance.
- The early alert mechanism regarding the economic and financial standing has been extended to all companies, and not only to micro, small and medium enterprises, including additionally those which do not show signs of activity.
- The requirements for operations to change the share capital have been made more flexible and appropriate to companies undergoing the restructuring procedures set out in the CIRE.

This new legal frame will come into force on 11 April 2022 and will introduce extensive changes in the business practices of companies in difficulties, as well as in the NPL market.

We are at your disposal for any clarification that may be required.