



Update

Momentum



Litigation and Arbitration

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CAPITALIZE PROGRAM: CORPORATE RESTRUCTURING MEASURES

With the objective of relaunching the Portuguese economy, through the reduction of the high level of debt and the improvement of investment conditions for companies, the Portuguese Government created at the end of last year the Task Force for the Capitalization of Companies (Task Force). The Task Force is now responsible for formulating measures intended to support the capitalization of Portuguese companies.

After developing an analysis on the current situation of national companies, the Task Force presented a set of measures structured in five strategic axes: Administrative Simplification and Systemic Framework, Taxation, Corporate Restructuring, Increasing Funding and Investment and Capital Markets Development.

Based on these strategic axes, the Portuguese Government approved, by the resolution of the Council of Ministers No. 42/2016, published on 18th August, the Capitalize Program, which includes a list of measures to be implemented until the end of 2016 and during 2017. Other measures to be proposed by the Task Force may be added, after an assessment of their opportunity and budgetary impact.

We will focus on the Corporate Restructuring axis, by pointing out, first of all, the measures that shall have greater impact on the access to the Special Recovery Procedure (SRP); the deadline for the implementation of these measures is the 1st quarter of 2017:

- Increase the criteria for the agreement that initiates the SRP, by requiring it to be signed by creditors representing at least 10% of non-lower-ranking claims;



- Require that the application for SRP is accompanied by (i) a proposal of a recovery plan and (ii) a declaration either by a Certified Public Accountant or a Chartered Accountant certifying that the debtor is not insolvent;
- Limit the use of the SRP for only legal persons;
- Clarify the consequences arising from the effect of a SRP, especially by clearing any doubts that may result from the interpretation of the applicable law.

Secondly, it is important to focus on a measure that will be, in many cases, crucial to the success of a SRP. Its implementation is scheduled for the 3rd quarter of 2017 and it is meant to provide flexibility in terms of available alternatives for the restructuring of the Tax Authority's and Social Security's claims. Particularly, it aims to allow the acceptance of more favorable payment plans for recovering companies, with longer payment terms, grace periods, interest forgiveness and guarantee waivers, by considering the debtor's concrete situation, financial viability and overall position of all creditors.

Finally, we emphasize two measures with potential to capitalize the companies that may prevent the use of a SRP or help those who already have used the SRP. The implementation of these measures is scheduled for the beginning of 2017:

- Evaluate the possibility of creating investment funds with public resources to invest in companies with financial difficulties. It may involve the participation of private companies and layered capital structures to attract different classes of investors, who can promote the companies' consolidation and strengthen management capacity;
- Evaluate the creation of a public funding line for companies that have undergone a restructuring process, to allow access to the necessary liquidity required for their activities.

We shall be watching to developments of the Capitalize Program, particularly the legislative initiatives that implement these (and other) capitalization measures.

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