



# Update

Momentum



Labour

5 May 2015

## THE NEW REGIME OF THE WAGE GUARANTEE FUND

On April, 21, the new regime of the Wage Guarantee Fund (henceforth referred to as WGF) was approved by the Decree-Law No. 59/2015.

In short, the main features of the new regime are the following:

- (i) Unification of the specific legislation regarding the WGF, which was spread out over several legal diplomas;
- (ii) Transposition of Directive No. 2008/94/EC of the European Parliament and of the European Council of October 22, 2008, relating to the protection of employees in the event of the insolvency of their employer (also known as ‘the Employer Insolvency Directive’);
- (iii) Adaptation of the WGF regime to the Program *Revitalizar* in order to ensure that workers belonging to companies that are part of recovery plans have access to the WGF;
- (iv) Insertion of a transitional legal provision which allows access to the WGF by workers who have submitted applications during a Special Recovery Process (PER – Processo Especial de Revitalização) or between September 1, 2012 and the date of entry into force of this new regime, as long as the workers are covered by an insolvency plan approved by a Court decision, in the context of insolvency proceedings, thus extending the scope of the WGF;



- (v) The WGF still ensures the payment of labour credits due to workers and dating from the previous six months from the start of the insolvency procedure or from the submission of the application to PER or to the System of Recovery of Companies by Extrajudiciary Means (SIREVE - **SIREVE** - Sistema de Recuperação de Empresas por Via Extrajudicial). However, the payment of these labour credits is only guaranteed up to 1 (one) year from the day after the termination of employment;
- (vi) Inclusion of an anti-abuse provision that determines that the WGF may refuse the payment of the **guaranteed labour credits** in case of abuse, in particular collusion or simulation, allowing the reduction of the amount of the labour credits in case of non-conformity between the requested amounts and the amounts stated in the declarations of remuneration of the 12 months prior to the date of the application submission, when they relate to effectively received remuneration; and
- (vii) Combining the WGF regime and the legal systems of the labour compensation fund (LCF), the equivalent mechanism (EM) and the labour compensation guarantee fund (LCGF), established by Law No. 70/2013, of August 30.

Thus, following the intention of its genesis at the time of Decree-Law no. 50/85, of February 27, which introduced a wage guarantee system in order to ensure to employees the payment of remuneration due and not paid by the employer declared extinct, bankrupt or insolvent, the WGF has the purpose of ensuring that the payment, to the employee, of claims arising from the employment contract or its breach or termination, as long as a declaration of insolvency of the employer is passed in court, a judge's order designating a provisional judicial administrator, in case of PERs, or an order of acceptance is issued for the application made by the Institute for Support to Small and Medium Enterprises and Innovation (IAPMEI - Instituto de Apoio às Pequenas e Médias Empresas e à Inovação) within the context of the recovery of companies by extrajudiciary means.

However, the payment of the claims referred to above is subject to a double limitation: one of a temporal nature, as the WGF merely ensures the payment of estimated claims that have matured in the six months prior to starting the **insolvency procedure** or to the submission of the **application** in PERs or



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to the application for use of the recovery of companies by extrajudiciary means, and provided that said payment is requested up to 1 (one) year from the day after the date on which the employment contract ceased; and another of a pecuniary nature, as it simply ensures the payment of claims arising from the employment contract up to a maximum amount equivalent to six months' wages, and with the maximum monthly amount corresponding to three times the minimum guaranteed monthly **wage**.

As for the connection of the WGF **regime** with LCF, the LCGF or EM regimes upon payment of the **compensation** due to employees for the termination of the employment contract that is calculated in accordance with article 366 of the Labour Code, directly or by legal reference, the new WGF legal regime establishes that it covers said compensation, except for the part covered by the LCF, the LCGF or by EM, after the WGF has been triggered, except in cases where the latter cannot take place.

Finally, it should be pointed out that the new WGF regime **entered into force** on the **May, 4** and is applicable to **claims** submitted after its entry into force and to the requests submitted pending PER or between September 1, 2012 and the date of its entry into force, by employees covered by an insolvency plan, approved by a court decision, in the context of insolvency proceedings.

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