The Restructuring Review

Seventh Edition

Editor
Christopher Mallon

Law Business Research

The Restructuring Review

The Restructuring Review

Reproduced with permission from Law Business Research Ltd.
This article was first published in The Restructuring Review - Edition 7
(published in August 2014 – editor Christopher Mallon).

For further information please email
Nick.Barette@lbresearch.com

The Restructuring Review

Seventh Edition

Editor
Christopher Mallon

Law Business Research Ltd

THE LAW REVIEWS

THE MERGERS AND ACQUISITIONS REVIEW

THE RESTRUCTURING REVIEW

THE PRIVATE COMPETITION ENFORCEMENT REVIEW

THE DISPUTE RESOLUTION REVIEW

THE EMPLOYMENT LAW REVIEW

THE PUBLIC COMPETITION ENFORCEMENT REVIEW

THE BANKING REGULATION REVIEW

THE INTERNATIONAL ARBITRATION REVIEW

THE MERGER CONTROL REVIEW

THE TECHNOLOGY, MEDIA AND
TELECOMMUNICATIONS REVIEW

THE INWARD INVESTMENT AND
INTERNATIONAL TAXATION REVIEW

THE CORPORATE GOVERNANCE REVIEW

THE CORPORATE IMMIGRATION REVIEW

THE INTERNATIONAL INVESTIGATIONS REVIEW

THE PROJECTS AND CONSTRUCTION REVIEW

THE INTERNATIONAL CAPITAL MARKETS REVIEW

THE REAL ESTATE LAW REVIEW

THE PRIVATE EQUITY REVIEW

THE ENERGY REGULATION AND MARKETS REVIEW

THE INTELLECTUAL PROPERTY REVIEW

PUBLISHER
Gideon Roberton

BUSINESS DEVELOPMENT MANAGERS
Adam Sargent, Nick Barette

SENIOR ACCOUNT MANAGERS
Katherine Jablonowska, Thomas Lee, James Spearing

ACCOUNT MANAGER
Felicity Bown

PUBLISHING COORDINATOR
Lucy Brewer

MARKETING ASSISTANT
Dominique Destrée

EDITORIAL ASSISTANT
Shani Bans

HEAD OF PRODUCTION
Adam Myers

PRODUCTION EDITOR
Jo Morley

SUBEDITOR
Anna Andreoli

MANAGING DIRECTOR
Richard Davey

Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK

www.TheLawReviews.co.uk

ISBN 978-1-909830-17-2

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

AFRIDI & ANGELL

AKINWUNMI & BUSARI LEGAL PRACTITIONERS

ASTREA

BAKER & McKENZIE

BÄR & KARRER AG

CASTRÉN & SNELLMAN ATTORNEYS LTD

CHARLES ADAMS RITCHIE & DUCKWORTH

CLIFFORD CHANCE

CMS CAMERON MCKENNA LLP

DHIR & DHIR ASSOCIATES,
ADVOCATES & SOLICITORS

FASKEN MARTINEAU

GARRIGUES

GILBERT + TOBIN

GRIMALDI STUDIO LEGALE

KIM & CHANG

KVALE ADVOKATFIRMA DA

LEONHARDT RATTUNDE

LINKLATERS LLP

MORAIS LEITÃO, GALVÃO TELES,
SOARES DA SILVA & ASSOCIADOS

MOTIEKA & AUDZEVIČIUS

OPF PARTNERS

RITCH, MUELLER, HEATHER Y NICOLAU SC

RØNNE & LUNDGREN

ROSCHIER ADVOKATBYRÅ AB

SHEARN DELAMORE & CO

SKADDEN, ARPS, SLATE, MEAGHER & FLOM

SOARES BUMACHAR CHAGAS
BARROS ADVOGADOS

WILLIAM FRY

WOLF THEISS ATTORNEYS-AT-LAW

CONTENTS

EDITOR'S PREFACE

I am very pleased to present this seventh edition of *The Restructuring Review*. As with the previous editions, our intention is to help general counsel, government agencies and private practice lawyers understand the conditions prevailing in the global restructuring market in 2014 and 2015 and to highlight some of the more significant legal and commercial developments and trends that have been evident in recent years, and that are expected to be significant in the future.

In many jurisdictions the general economic trends are now more positive than they have been for many years. Against this background, the trend of diminished large-scale restructuring activity has continued in many markets. This picture may suggest a global economy in robust health after the long and difficult years of recession but it would be naïve to think that stability has returned for the long term as several warning signs remain.

First, the dramatic growth of high-yield issuances of past years may lead to unknown consequences further down the road. In the United States, 2012 and 2013 were each record years for high-yield issuance, and across the Atlantic this market is finally achieving a similar stage of development. At the time of writing, total European high-yield issuances for 2014 had already surpassed the annual totals for every year before 2013, and Credit Suisse was forecasting a record level of issuances for the year. As has happened in the past, it is inevitable that such large increases in economic activity will include inappropriate or unfortunate deals, the effects of which will need to be unpicked in future years with the help of restructuring professionals. The same will no doubt apply to the surge in M&A activity that has recently been observed in many developed economies.

A further factor to note is the continued employment of unorthodox monetary policy by many central banks. There remains considerable uncertainty as to the broader economic effects when quantitative easing is unwound and when interest rates return nearer to the long-term average; many commentators expect that when the monetary tide retreats many businesses that until now have managed to conceal their weaknesses may be left dangerously exposed.

With the above in mind, and taking into account also the stresses that continue to lie beneath the surface in the eurozone and some worrying signs of instability in the emerging economies, only the very brave would forecast a prolonged period of calm for the global economy. As such, this work continues to be relevant and important, in particular as a result of the international nature of many corporate restructurings.

I would like to extend my gratitude to the contributors from some of the world's leading law firms who have given such valuable support and cooperation in the preparation of this work, and to our publishers, without whom this Review would not have been possible.

Christopher Mallon
Skadden, Arps, Slate, Meagher & Flom (UK) LLP
London
August 2014

Chapter 22

PORTUGAL

Helena Soares de Moura and Nuno Gundar da Cruz[1]

I OVERVIEW OF RESTRUCTURING AND INSOLVENCY ACTIVITY

The effects of the financial crisis are still being felt in the Portuguese economy, and are also reflected in the number and length of insolvency and restructuring proceedings.

Both restructuring and liquidations are presenting more and more complex situations. The biggest problem for companies is the shortage of liquidity and access to finance for their activities. This has led to a rise in insolvency and restructuring processes since 2008 up to the beginning of 2013. Currently, there appears to be a slight decreasing trend, but the number of new filings is still very high.

In accordance with official data from Ministry of Justice, between the fourth quarter of 2007 and the fourth quarter of 2013 there was an overall increase of approximately 358.5 per cent in the number of new cases; in the fourth quarter of 2013, however, the total number of new cases fell for the first time (7.6 per cent) compared with the corresponding quarter of the previous year.

II GENERAL INTRODUCTION TO THE RESTRUCTURING AND INSOLVENCY LEGAL FRAMEWORK

i Legal framework

In Portugal, insolvency and reorganisation proceedings are governed by the same code: the Insolvency and Corporate Restructuring Code (CIRE), approved by Decree-Law No. 53/2004 of 18 March, which came into force on 15 September 2004.

1 Helena Soares de Moura is a partner and Nuno Gundar da Cruz is a lawyer at Morais Leitão, Galvão Teles, Soares da Silva & Associados.

According to CIRE, there is a single insolvency proceeding, in which the creditors' meeting chooses between one of two possible outcomes:

a the complete liquidation of the insolvent's estate and subsequent distribution to creditors; and

b the company's restructuring, through the approval of a restructuring plan.

Since 2012, there has also been a special revitalisation process (PER), which aims to tackle situations of near-insolvency, or situations of severe economic and financial difficulty, through the approval of a recovery plan by the creditors.

Negotiations to approve the recovery plan take place, in an out-of-court context, within 60 days, which may be extended under certain conditions for an additional 30 days. After being approved (under the same terms and with the same majorities as the insolvency plan) and ratified by a judge within 10 days, the plan becomes binding on all creditors.

There is also an out-of-court system for the recovery of companies (SIREVE) enacted by Decree-Law No. 176/2012, of 3 August. The SIREVE aims at creating conditions for the debtor to negotiate with its creditors the approval of a recovery plan. Instead of being presided over by a court, however, this procedure is conducted by the Institute for Assistance to Small and Medium-sized Companies and Innovation (IAPMEI).

The insolvency procedure aims to pay the creditors, who take on a fundamental role, effectively deciding on the fate of the insolvent debtor.

A declaration of insolvency has an impact on the debtor, on the pending legal procedures, on credits owed by the insolvent party and on the ongoing businesses. The declaration of insolvency has, *inter alia*, the effect of (1) transferring the powers to manage and dispose of assets of the insolvent estate from the insolvent debtor to the insolvency administrator; (2) hindering the filing or the continuation of any enforcement actions filed by insolvency creditors against the insolvent debtor; (3) joining to the insolvency procedure any judicial action that may affect the value of the debtor's assets; and (4) accelerating the insolvent party's obligations to maturity – except for obligations subject to conditions precedent.

From the moment of the declaration of insolvency, creditors may only satisfy their credit within the scope and by means of the insolvency procedure. Also, any mandates granted by the insolvent in favour of a third party will expire upon the opening of insolvency proceedings, meaning, for example, that proxies granted by the insolvent authorising bank account operations by third parties expire upon the opening of the insolvency proceedings.

As an alternative to the full liquidation of the debtor's assets, an insolvency plan can be approved. The plan reflects the majority of the creditors' preferences.[2] The plan

2 By opting to fully liquidate the insolvent party's assets under the terms of CIRE or under the terms of the insolvency plan, or by opting to maintain the activity and restructuring of the company under the ownership of the debtor or of a third party under the terms of a plan.

may be submitted by the debtor, the insolvency administrator, the creditors, or the person legally responsible for the insolvent party's debts.

The plan is discussed and approved in a creditors' meeting and ratified by the judge. The minimum quorum of the meeting will be constituted by at least one-third of the total credits with voting rights and the majority required to approve will be of two-thirds of the total votes issued (with at least half corresponding to non-subordinated credits, not including abstentions).

The insolvency plan follows the principle of equality between creditors, without prejudice to differences justified by objective reasons. Less favourable treatment in comparison with other creditors in an identical situation depends on the consent of the affected creditor, which is considered tacitly granted in the event of a favourable vote.

Any creditor is entitled to request the non-ratification of the insolvency plan but must demonstrate, for such effect, alternatively, that (1) its situation under the plan is predictably less favourable than that that would come about in the absence of any plan, or (2) that the plan provides any particular creditor with economic benefits that are higher than the nominal value of its credits in the insolvency. Also, secured creditors or privileged creditors may oppose the ratification of the insolvency plan in the event the said plan affects, for instance, the guarantees securing their credit.

Although CIRE does not does not contain specific provisions on which measures may be set out in an insolvency plan, and the creditors are free to choose such measures, the plan may: (1) contain provisions concerning the debtor's liabilities, such as the reduction or waiver of debts, either of the principal or of interest, with or without a 'better fortunes clause'; (2) condition the satisfaction of all or part of the debts on the debtor's potential or availability; (3) contain dispositions imposing the granting of securities by the debtor; and (4) determine the sale of assets to creditors.

Unless otherwise provided in the insolvency plan:

a the rights arising from securities *in rem* or credit privileges are not affected by the insolvency plan;

b the subordinated credits are deemed waived; and

c upon fulfilment of the insolvency plan's dispositions, the debtor is deemed discharged of its residual obligations.

The initiative falls on the debtor and at least one creditor. Once initiated, it will hinder the filing of actions for the collection of debts against the debtor and all ongoing judicial actions will be suspended.

ii Duties of directors of companies in financial difficulties

Corporate officers and directors are not generally liable for the insolvent company's obligations. The tax authorities, however, may revert to them with any of its unsettled tax debts, including shadow directors.

Directors and shadow directors may be sanctioned in civil or criminal terms for their conduct if the insolvency is considered to be due to their mismanagement.[3] There is

3 That is to say, it results from fraudulent action or serious fault on their part.

a legal assumption of serious fault should the directors fail to apply for insolvency within 30 days of the moment when the company was *de facto* insolvent, or fail to draft and submit yearly accounts for the company.

The insolvency may be classified as culpable or fortuitous, when the situation was created or aggravated as a result of the conduct (with *dolus* or with gross negligence) of the debtor or of its directors, in law or in fact, in the three years preceding the commencement of the insolvency proceedings. An insolvency is always classified as culpable when the directors of the debtor have:

a destroyed, damaged, unusable, hidden, or made disappear, in whole or in substantial part, the debtor's assets;

b artificially created or aggravated damages or liabilities, or reduced profits, causing, in particular, the execution by the debtor of ruinous contracts for the benefit of the debtor's directors or people specially related with them (which includes the spouses, descendants or siblings of directors);

c purchased goods on credit, reselling them or delivering them in payment for substantially less than the current price before satisfying the obligation towards the credit lender;

d used the debtor's assets for personal benefit or for the benefit of third parties;

e exercised under the guise of the legal personality of the company an activity for personal benefit or for the benefit of third parties, and to the detriment of the company;

f used the credit or assets of the debtor for personal benefit or for the benefit of third parties and to the detriment of the company, in particular to promote another company in which they have direct or indirect interests;

g for personal benefit or for the benefit of third parties, kept managing the debtor with negative results, despite knowing or having ought to have known that this would likely lead to the insolvency of the debtor;

h failed to comply with the obligation to keep proper account of the debtor, maintained a fictitious accounting of the debtor or committed a fault jeopardising the chance of understanding the financial situation of the debtor; or

i repeatedly violated their obligations to be at court when duly summoned and to cooperate with the insolvency proceedings.

In the event an insolvency is judged culpable, the court may:

a bar the directors from managing the assets of third-parties for between two and 10 years;

b bar the directors from carrying out any commercial activity for between two and 10 years, including holding a position at any statutory body in any commercial or civil company, association or private foundation, public company or cooperative;

c determine the amount of any credits held by the director from the insolvent estate or over the insolvency proceedings, and direct the director to retrieve any assets or rights received as payment of such credits; or

d sentence the director to compensate the creditors of the debtor in an amount equal to their unfulfilled claims, to the extent of its assets, on a joint and several basis.

iii Clawback actions

Such claims may be avoided through a termination notice issued by the administrator with retroactive effects. During the reorganisation of the debtor, such avoidance can be exercised by the administrator prior to the approval of the plan, and after this date if the content of the plan implies that the proceeding will continue, namely through a specific liquidation or partial liquidation.

Creditors or interested parties can file suits to exercise clawback of the relevant transactions. A clawback cannot be initiated or will be stayed if the administrator avoids the transaction in the meantime.

According to CIRE, an act that is detrimental to the insolvent estate can be subject to either of the two types of unilateral revocation: unconditional or conditional revocation. With respect to unconditional revocation, CIRE provides certain abstract categories of acts that may be automatically revoked, without the need to satisfy any other requirements. Alternatively, conditional revocation depends on the fulfilment of some additional requirements. In both cases, the revocation must be made by the insolvency administrator, by registered letter with notice of receipt, within the earlier of six months, counted from knowledge of the act, or two years, counted from the judicial declaration of insolvency. If this right of revocation is not exercised within these time limits, it is extinguished.

The following acts may be unilaterally revoked without any other requirements:

a the division of assets between heirs of an individual entered into within the year prior to the beginning of insolvency proceedings, if the portion of assets attributed to the insolvent entity consists of easily concealable assets, while the remaining heirs are granted most of the immoveable or nominative assets;

b acts or contracts entered into on a gratuitous basis by the insolvent party within the two years prior to the date on which the insolvency proceedings have been initiated;

c security *in rem* created, replaced or increased by the insolvent party in relation to pre-existing obligations within the six months prior to the beginning of insolvency proceedings;

d guarantees and sub-guarantees *in personam* granted by the insolvent party within the six months prior to the beginning of insolvency proceedings, provided such guarantees have been granted in respect of a transaction of no serious interest to the insolvent party;

e security *in rem* created simultaneously with the secured obligations within the 60 days prior to the beginning of insolvency proceedings;

f payments or any other legal act of extinction of obligations (e.g., set-off), with a maturity date after the starting of insolvency proceedings, made within the six months prior to the beginning of such proceedings or made after such beginning of proceedings but prior to maturity;

g payments or any other legal form of extinction of obligations (e.g., set-off) that the corresponding creditor would not be entitled to claim, made within the six months prior to the beginning of insolvency proceedings in terms legally considered 'unusual';

h acts or contracts onerously entered into by the insolvent entity within the year prior to the beginning of insolvency proceedings, according to which the obligations undertaken by the latter clearly exceed those undertaken by its counterpart; and
i reimbursement of shareholder loans within the year prior to the beginning of insolvency.

Any act referred to above that would be subject to unconditional revocation but that it is not revoked because it was performed outwith the aforementioned time limits is automatically deemed detrimental to the insolvent estate, but may still be subject to conditional revocation if certain other requirements are met. Such detrimental acts to the insolvent estate may be revoked by the insolvency administrator provided that:
a the act took place in the two years prior to the commencement of insolvency proceedings;
b the act is detrimental to the insolvent estate (meaning that it endangers, makes more difficult, delays, makes impossible or reduces the payment of the creditors); or
c the third party is in bad faith.

The third party is considered in bad faith if it had knowledge, at the time the act took place, of any of the following:
a that the party carrying out the act was in an actual and factual state of insolvency, as set out in CIRE, irrespective of the existence of judicial proceedings;
b that the act was detrimental to the insolvent estate and that the counterparty was in an imminent state of insolvency; or
c that there was an insolvency proceeding already initiated against the counterparty.

The law presumes (allowing proof of the contrary) the third party is in bad faith if the act occurred within the two years prior to the beginning of the insolvency proceedings and the third party – that is involved in the act or that benefits from it – and the insolvent party have a special relationship,[4] even if such special relationship did not exist when the act was carried out.

III RECENT LEGAL DEVELOPMENTS

The most recent legislative developments are:
a the creation of the PER, enacted by Law No. 16/2012 of 20 April; and
b the creation of SIREVE enacted by Decree-Law No. 176/2012 of 3 August.

4 Those who are considered to have a special relationship with the insolvent debtor are (or have been in the two years before the commencement of insolvency proceedings) in a group relationship with the insolvent party or that have control over it, as defined in Article 21 of the Portuguese Securities Code (PSC). According to this article, control exists, in any case, when a natural or legal individual (1) holds majority voting rights; (2) may exercise majority voting rights, according to the terms of the shareholders' agreement; or (3) may appoint or dismiss the majority of the members of the board of directors or supervisory committee.

Until 2012, the main goal of Portuguese insolvency proceedings was to satisfy the creditors' rights by the adoption of the most efficient approach to doing so. This goal could be reached through the liquidation of the debtor's assets or by the approval of an insolvency plan the purpose of which could be the liquidation of the debtor's assets or its recovery. With the enactment of Law No. 16/2012, the Portuguese insolvency procedure now favours the approval of an insolvency plan the main purpose of which is the recovery of the debtor.

Strictly speaking, the PER does not foresee the possibility of several companies initiating a single judicial recovery procedure, especially when they do not formally constitute a group. Recently, however, the Portuguese courts have accepted a small number of requests presented by debtors to initiate a single judicial recovery procedure for several companies that formally or informally form a group. This specific approach was taken in these cases as it increased the likelihood of approval of a recovery plan by the creditors.

These cases had the effect on the market of increasing the probability of a successful negotiation, and debtors (and lawyers) now may pursue option of negotiating with the creditors a single recovery plan for several companies whenever they formally or informally form a group. These decisions were, however, issued very recently; there is therefore no established case law or doctrine concerning this matter.

IV SIGNIFICANT TRANSACTIONS, KEY DEVELOPMENTS AND MOST ACTIVE INDUSTRIES

As a result of the global financial crisis, a significant number of companies have undergone restructuring in Portugal. This trend crosses all the main sectors of activity, from manufacturing to sports. Construction and real estate were those most affected.

The following case, however, concerns six Portuguese companies involved in metallurgy and ironwork, and also in the development and manufacturing of products used in the automobile and building industries (the companies). Although the companies are connected, as they have broadly the same shareholders and directors, according to Portuguese law they do not constitute a formal group of companies.

Since late 2008, as a result of the subprime crisis and the slowdown in the steel and metals market, the companies faced several difficulties. In 2013, the companies found themselves in serious financial trouble, owing several million euros to their creditors.

As a result, on 21 October 2013, the companies filed a single request with a Portuguese court to initiate a single judicial recovery procedure, and on 29 October 2013, the court accepted this request to. This initiative was particularly noteworthy because:

a in theory, this procedure does not foresee the possibility of several companies initiating a single judicial recovery procedure, in particular when formally they do not constitute a group;

b when the decision to file a single request for the companies was taken, the lawyers were not aware of any similar case in Portugal; and

c the aforementioned judicial recovery procedure came into force very recently, so there is no established case law or doctrine concerning this procedure.

This specific approach was taken as it was seen as the best option to increase the probability of approval by the creditors of a recovery plan. There was a fixed financial circuit between these companies, which is explained by the interdependence of the economic activities of each. Besides this, the companies share the same key creditors and, in some cases, the assets of one of the companies guarantee one or more of the companies' loans. There are also direct credits and debts among the companies. Hence, it was not advisable to restructure each companies individually, because the most important creditors – the banks – treat these companies as a single entity.

In our view, this innovative solution responds to a very specific market change: the importance of providing the opportunity to informal company groups of negotiating and approving single recovery plans within the judicial recovery procedure.

V INTERNATIONAL

Portugal did not adopt the UNCITRAL Model Law. Council Regulation (EC) No. 1346/2000 of 29 May 2000 on insolvency proceedings is applicable in Portugal, the main goal of which is to ensure that cross-border insolvency proceedings operate efficiently and effectively.

According to the Council Regulation, it is necessary, for the proper functioning of the internal market, to avoid incentives for parties to transfer assets or judicial proceedings from one Member State to another, seeking to obtain a more favourable legal position ('forum shopping').

Although Council Regulations automatically have binding legal force throughout every Member State (including Portugal) at the same level as domestic law, Portugal also implemented Council Regulation (EC) No. 1346/2000 through Articles 271 to 274 of Decree-Law No. 53/2004 of 18 March, which approved CIRE.

Article 271 of CIRE determines that in the event that the procedure uncovers the existence of a debtor's assets located in another Member State of the EU, the judgment declaring the insolvency of the debtor should state the factual and legal reasons that justify the jurisdiction of the Portuguese courts.

When applying Article 271 of CIRE the court should take into consideration Article 3(1) of the Council Regulation, which states that the courts of the Member State within the territory of which the centre of a debtor's main interests (COMI) is situated shall have jurisdiction to open insolvency proceedings. In the case of a company or legal person, the place of the registered office is presumed to be the centre of its main interests in the absence of proof to the contrary.

In 2011 the European Court of Justice judged that for the purposes of determining a debtor company's COMI, the second sentence of Article 3(1) of Regulation No. 1346/2000 must be interpreted as follows:[5] a debtor company's COMI must be determined by attaching greater importance to the location of the company's central administration, as may be established by objective factors that are ascertainable by third parties. In the event that the bodies responsible for the management and supervision of

5 *Re Interedil Srl (in liquidation)*, Case C-306-09, 20 October 2011.

a company are in the same place as its registered office and the management decisions of the company are taken, in a manner that is ascertainable by third parties, in the same place, such presumption cannot be rebutted. Where a company's central administration is not in the same place as its registered office, the location of company assets and the existence of contracts for their financial exploitation in a Member State other than that in which the registered office is situated cannot be regarded as sufficient factors to rebut the presumption unless a comprehensive assessment of all the relevant factors makes it possible to establish, in a manner that is ascertainable by third parties, that the company's actual centre of management and supervision, and of the management of its interests, is located in the other Member State.

According to Article 272(3) of CIRE, if a court of an EU Member State refuses to open an insolvency proceeding based on the argument that Portugal is the competent jurisdiction, then the Portuguese courts cannot refuse the request for the declaration of insolvency on the ground that jurisdiction belongs to the courts of that other state.

Articles 275 to 296 of CIRE lay down rules of private international law designed to resolve conflicts of law in respect of matters related to insolvency. Article 275 of CIRE states that these legal provisions (Articles 275 to 296) will only apply provided that they do not contravene the provisions of Council Regulation (EC) No 1346/2000.

The general principle foreseen in Article 276 of CIRE is that in the absence of a statutory provision stating the contrary, the insolvency procedure will use the law of the state in which the case was initiated (*lex fori concursus*).

Article 288 of CIRE establishes that the declaration of insolvency proceedings abroad will be recognised in Portugal except in the event that (1) the jurisdiction of the foreign court is not based on either of the following criteria: debtor headquarters or debtor's COMI, or (2) such recognition would lead to a result that is clearly contrary to the fundamental principles of Portuguese law.

According to Article 293 of CIRE, any decision issued during a foreign insolvency procedure can only be executed in Portugal after being reviewed and confirmed by the competent Portuguese court. *Res judicata* of the decision is not required for the confirmation.

VI FUTURE DEVELOPMENTS

Officially, there is no pending legislation over restructuring and insolvency; however, according to reports in the media, it is likely that the Portuguese government will create early warning tools that will be available for debtors, the purpose of which is to warn debtors about imminent difficult financial situations.

It has also been reported in the media that the Portuguese government will create a summary insolvency proceeding that will apply specifically to SMEs.

Appendix 1

ABOUT THE AUTHORS

HELENA SOARES DE MOURA
Morais Leitão, Galvão Teles, Soares da Silva & Associados
Helena Soares de Moura is a non-equity partner in the firm. She has significant experience in litigation, focusing her practice on civil and commercial litigation, bankruptcy, and insolvency litigation.

NUNO GUNDAR DA CRUZ
Morais Leitão, Galvão Teles, Soares da Silva & Associados
Nuno Gundar da Cruz is developing his work in the areas of civil litigation, commercial litigation, criminal litigation, arbitration, consumer law, insolvency and restructuring.

MORAIS LEITÃO, GALVÃO TELES, SOARES DA SILVA & ASSOCIADOS
Rua Castilho, 165
1070-050 Lisbon
Portugal
Tel: +351 21 381 7400
Fax: +351 21 381 7499
hsmoura@mlgts.pt
ncruz@mlgts.pt
www.mlgts.pt