

29 DECEMBER 2020

COVID 19

EXTRAORDINARY BUSINESS ENABLEMENT PROCESS

Law n.º 75/2020 of November 27th 2020 establishing the Extraordinary Business Enablement Process for companies affected by the economic crisis caused by the Covid-19 pandemic came into force on November 28th 2020.

The law also provides for other measures applicable to the Insolvency Proceedings, the Special Revitalisation Proceedings (PER) and the Extrajudicial Business Recovery Scheme (RERE), considering the impact this disease has had on the Portuguese business fabric.

WHAT IS THE EXTRAORDINARY BUSINESS ENABLEMENT PROCESS?

The Extraordinary Business Enablement Process is aimed at companies which have been shown to be in a difficult economic situation or in an imminent or current state of insolvency as a result of the Covid-19 disease pandemic, but which are still likely to become viable, and whose purpose is to provide an opportunity to conclude an agreement with their creditors with a view to their recovery. This procedure is of a temporary nature and is urgent.

WHICH COMPANIES ARE COVERED BY THE EXTRAORDINARY BUSINESS ENABLEMENT PROCESS?

The companies which are covered by the Extraordinary Business Enablement Process are:

1. Companies which, at the date of filing of the application in court, do not have a Special Revitalisation Proceedings or a Special Payment Agreement Procedure pending, meet the conditions necessary to make it viable and which demonstrate that they have, on December 31st 2019, an asset in excess of their liabilities.
2. Small and micro enterprises which, even if they did not have assets in excess of their liabilities on December 31st 2019, **(i)** have no outstanding a Special Revitalisation Proceedings or a Special Payment Agreement Procedure at the time of filing of the

- application in Court; **(ii)** have received rescue aid in the context of the Covid-19 pandemic and the aid has not been repaid; and **(iii)** are covered by a restructuring plan under the State aid rules.
3. Companies which, as at December 31st 2019, have not had their assets in excess of their liabilities, have regularized their situation by using the transitional arrangement provided for the Extrajudicial Business Recovery Scheme and provided that they have deposited the restructuring agreement in good time.

HOW IT IS PROCESSED?

The procedure begins with the company submitting an application to the Court accompanied by **(i)** a declaration that its difficult economic situation is due to Covid-19 disease and that it meets the conditions necessary for it to be viable; **(ii)** certain documents relating to the company; **(iii)** a list of all its creditors signed by the company's management body and a certified accountant or auditor and **(iv)** a viability agreement signed by the company and its creditors (representing certain majorities provided for in the CIRE).

On receipt of the application, the judge appoints an Interim Judicial Administrator (AJP), the order appointing the AJP, the list of creditors and the viability agreement will be immediately published by the Court's registry in the area of Digital Court Services (available on "Portal Citius").

The creditors may, within 15 days from the publication of the list of creditors on the "Portal Citius", contest the list of creditors submitted by the company and request that the agreement not be approved.

The judge will decide the objections and assess the agreement, considering the creditors' opinion and the AJP's opinion, and will approve the agreement if certain conditions are met, including the majority required to approve the agreement. The judge's decision will be published on the "Portal Citius".

Any creditor not included in the final list of creditors may, within 30 days of publication of the list of creditors on the "Portal Citius", express, by a mere declaration, his intention

to accede to the approved agreement.

EFFECTS OF THE EXTRAORDINARY BUSINESS ENABLEMENT PROCESS

The following effects of the Extraordinary Business Enablement Process have particular importance:

- a) The appointment of the AJP prevents the initiation of debt recovery proceedings and determines the suspension of ongoing proceedings for the same purpose, which will be terminated as soon as the viability agreement is approved, except where the agreement provides for their continuation or where the claims in question are not covered by the agreement;
- b) With the appointment of the AJP, the company is prevented from carrying out acts of particular importance without obtaining prior written authorisation from the AJP;
- c) The guarantees agreed between the company and the creditors in order to provide the necessary means for the development of its activity, are maintained even if the company is declared insolvent within 2 years;
- d) The creditors, partners, shareholders or any other persons related to the company, who finance the activity of the company by providing them with capital to make it viable, benefit from a general movable credit privilege, graduated before that granted to the workers;
- e) In the event of insolvency of the company, any business concluded with the company which includes the effective provision of new credits and respective guarantees and which are included in the agreement may not be settled for the benefit of the mass;
- f) Tax and social security credits are unavailable, only if a reduction in default interest is allowed;
- g) The viability agreement which includes the restructuring of credits corresponding to at least 30% of the company's total non-subordinated liabilities, and which implies a balancing of the company's financial situation, by increasing the proportion of assets over liabilities, the debtor's equity being greater than its share capital (which will have to be certified by a Chartered Accountant), grants the parties tax benefits relating to income tax, stamp duty and property transfer tax.

OTHER MEASURES OF THE EXTRAORDINARY BUSINESS ENABLEMENT PROCESS

Law n.º 75/2020 establishes other measures, such as:

1. In the Special Revitalisation Proceedings and Special Payment Agreement Procedure, the judge may grant an extension of the deadline for the conclusion of the negotiations, for a single time and for one month, considering the context of Covid-19 disease;
2. The partners, shareholders or any other persons related to the company who, within the scope of the Special Revitalisation Proceedings dealt with during the validity of this law, finance their activity, enjoy a general security credit privilege, graduated before the general security credit privilege granted to employees;
3. In the context of the insolvency proceedings, the judge may grant a period of up to 15 working days to adapt the proposed insolvency plan to the context of Covid-19 disease;
4. In all pending insolvency proceedings, partial prorating is compulsory, provided that, among other requirements, the amounts deposited in the order of the mass are equal to or greater than EUR 10,000.00.

This diploma is valid until December 31st 2021.

PARES | Advogados is available to provide information on the implementation of these new measures to mitigate the effects of Covid 19, in a more concrete and appropriate way to the reality of each client, being able to provide all the necessary support in matters of insolvency and corporate recovery.

Raquel Capela e Silva
rca@paresadvogados.com

Madalena Moreira dos Santos
mms@paresadvogados.com

This Newsletter is addressed to clients and lawyers and does not constitute advertising, being prohibited its copy, circulation or other form of reproduction without the express authorization of its authors. The information provided is generic and does not dispense the need of legal advice prior to any decision regarding the matter in question. For further information please contact geral@paresadvogados.com