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## Insolvency & Restructuring - Portugal

### Constitutional Court Grants Procedural Leeway to Creditors

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On January 20 2009 the Constitutional Court struck down as unconstitutional the rule in Article 30(2) of the Insolvency and Corporate Rescue Code which is interpreted to mean that where a debtor's motion in opposition to the initiation of insolvency proceedings does not disclose information about the respondent's main creditors, such a motion must be removed from the records and the respondent may not be given due opportunity to fulfil this requirement retrospectively.

A debtor filed a motion opposing an application for bankruptcy filed by a creditor, but failed to attach a list of its five main creditors. The court of first instance ruled that the debtor's opposition had not been duly received in accordance with the provisions of Article 30(2) and did not allow the debtor to fulfil the requirement by subsequently submitting the list.

The Constitutional Court clarified that Article 20 of the Constitution guarantees that citizens may have recourse to the courts to protect their interests. This guarantee implies that once proceedings are initiated, they will follow the rules of fair and equitable process. The court observed that the legal requirement that a debtor produce a list of its five main creditors is intended to simplify and expedite the procedure. Furthermore, it considered that it would be excessive to penalize a debtor for failing to submit such a list by disregarding the debtor's statement of opposition and consequently deeming the debtor to have accepted the facts as stated in the application, as the debtor would thereby be made subject to a declaration of bankruptcy that took no account of its opposition.

The court held that the rule in Article 30(2) is disproportionate and therefore unconstitutional, as it does not allow a debtor sufficient opportunity to comply with the requirement to produce a list of its five main creditors.

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