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Insolvency & Restructuring - Portugal

Porto Court of Appeal Clarifies Rules on Reduction and Waiver of Debts

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On September 10 2009 the Porto Court of Appeal ruled that Article 192(2) of the Insolvency and Corporate Rescue Code does not preclude the reduction or waiver of debts, as these measures have an effect on liabilities and are expressly provided for in Article 196(1)(a) of the code.⁽¹⁾ This provision does not establish an exceptional scheme for preferential or secured claims or claims held by public entities (including the state), except as Article 192(2) explicitly provides.

This interpretation does not imply a derogation from mandatory legal provisions (eg, tax regulations or other provisions) by the creditors or parties, since the derogation arises from the nature and terms of insolvency law. Insolvency legislation establishes a special legal framework and, to the extent that this constitutes a specific law, it overrides general provisions, which is the result of a political and legislative choice.

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Endnotes

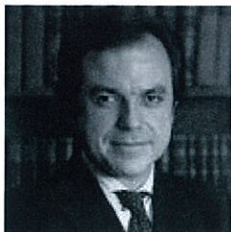
(1) Case 485/08.7TYVNG.P1.

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