

## Insolvency & Restructuring - Portugal

### Lisbon Court of Appeal Confirms Criteria for Insolvency Application

September 25 2009

The financial crisis has led to greatly increased use of insolvency proceedings in Portugal. However, such proceedings are not only slow and inefficient, but also open to misuse, as many recent applications for declarations of corporate insolvency have failed to fulfil specific legal requirements.

In accordance with Article 3(1) of the Insolvency and Corporate Rescue Code, insolvency occurs where a debtor is unable to pay claims that have become due. Article 20 of the code provides that any creditor may petition for a declaration of the debtor's insolvency, irrespective of the type of claim. This provision covers a debtor's failure to pay one or more of its debts that, in view of their amount or the circumstances of the debtor's non-payment, show that the debtor is unable to pay a majority of its debts in full (Article 20(1)(b)).

Several parties have filed petitions against their debtors on the grounds that in addition to the debts owed, enforcement proceedings are pending against the debtors.

The Supreme Court has previously ruled that:

*"the decisive factor in a debtor's insolvency is the inability to pay debts that, due to their amount, their relevance in relation to its liability as a whole or the circumstances of its failure to pay, reveal [the debtor's] inability fully to pay the majority of its debts, both in terms of amount and number."*<sup>(1)</sup>

Thus, an application for insolvency proceedings based on failure to pay a debt cannot be upheld unless the applicant provides sufficient evidence that the debtor is unable to pay the majority of its debts. Furthermore, the application may be dismissed if the applicant cannot precisely indicate the failure to pay that gave rise to the enforcement proceedings pending against the debtor.

This ruling has recently been applied to an application to the Lisbon Court of Appeal,<sup>(2)</sup> which found that none of the requirements for a declaration of insolvency had been met and therefore dismissed the application.

For further information on this topic please contact [mesperanapina@gpcb.pt](mailto:mesperanapina@gpcb.pt) at Cuatrecasas Gonçalves Pereira by telephone (+351 21 355 3800), fax (+351 21 352 5212) or email ([mesperanapina@gpcb.pt](mailto:mesperanapina@gpcb.pt)).

#### Endnotes

(1) Supreme Court decision of June 11 2002.

(2) Decision of July 9 2009.

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).

ILO is a premium online legal update service for major companies and law firms worldwide. In-house corporate counsel and other users of legal services, as well as law firm partners, qualify for a free subscription. Register at [www.iloinfo.com](http://www.iloinfo.com).

#### Author

Miguel Esperança  
Pina



