GRR

EUROPE, MIDDLE EAST AND AFRICA RESTRUCTURING REVIEW 2022

Edited by
Céline Domenget Morin

Europe, Middle East and Africa Restructuring Review 2022

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Preface

Welcome to the *Europe, Middle East and Africa Restructuring Review 2022* – a Global Restructuring Review special report.

Global Restructuring Review is the online home for all those who specialise in cross-border restructuring and insolvency, telling them all they need to know about everything that matters.

Throughout the year, the GRR editorial team delivers daily news, surveys and features; organises the liveliest events ('GRR Live') – covid-19, etc, allowing; and provides our readers with innovative tools and know-how products. In addition, assisted by external contributors, we curate a range of comprehensive regional reviews – online and in print – that delve deeper into developments than the exigencies of journalism allow.

The *Europe, Middle East and Africa Restructuring Review 2022*, which you are reading, is part of that series. It contains insight and thought leadership from 14 pre-eminent practitioners from those regions.

This edition comprises seven exceptionally well-written chapters and provides an invaluable retrospective and primer on restructuring practice in different markets, with a little crystal ball gazing thrown in. All contributors are vetted for their standing and knowledge before being invited to take part. Contributions are supported by footnotes and relevant statistics.

This edition covers England and Wales, Greece, the Netherlands, Portugal, Switzerland and the UAE.

A close read of these reviews always yields many nuggets. For this edition, these include the following:

- In England, there may now be distinction between term loans and revolving credit facilities in how they are treated under the new moratorium. Term loans may be the safer option.

- In the Netherlands, the new restructuring tools in the WHOA have, so far, served more as a 'stick' for large restructurings, as in an unpalatable option used to shepherd stakeholders somewhere else (in this case to a UK-centred restructuring), than the carrot in their own right. But as jurisprudence builds from SME-related work – and there are 65 rulings now – that may well change.
- Recognition of foreign proceedings in the UAE looks ripe for some lawyerly innovation, with definite scope to exploit differences on recognition between the offshore and onshore systems that appear to exist.

We are indebted to our wonderful contributors, including the review's editor, GRR editorial board member Céline Domenget Morin, for their efforts. If you have any suggestions for future editions or want to take part – the review is put out annually – my colleagues and I would love to hear from you.

Please write to insight@globalrestructuringreview.com.

David Samuels
Publisher
February 2022

Debt Restructuring in Portugal: Stand by for the New Wave

Maria João Ricou and Manuel Requicha Ferreira
Cuatrecasas

IN SUMMARY

Owing to the covid-19 pandemic and the government's enduring backup and relief measures, the expected wave of Portuguese restructurings and insolvencies did not take place in 2021. However, there are signs that historical companies have begun insolvency proceedings and, following the end of the moratorium period in September 2021, it will be necessary to manage the debt restructuring processes of these companies swiftly and effectively. This chapter discusses the existing and anticipated future tools available for creditors and debtors to restructure their debt through out-of-court and in-court proceedings.

DISCUSSION POINTS

- In-court restructuring: PER and insolvency
- Out-of-court restructuring: RERE
- PEVE regime created during the pandemic
- Impact of the pandemic and government measures affecting restructuring and insolvency
- Overview of routes for debt restructuring

REFERENCED IN THIS ARTICLE

- Insolvency and Corporate Recovery Code
- Proposal of Law No. 53/XIV
- Preventive Restructuring Frameworks
- Extrajudicial Recovery Procedure Legal Framework
- Conversion of Debt into Equity Legal Framework
- Moratorium on Credits Legal Framework
- Appeal Court of Coimbra on 13 July 2020, Case No. 4166/19.8T8LRA-C.C1

Global overview and recent developments

During the past decade, the Portuguese insolvency and restructuring regime has been subject to significant reforms, mainly intended to create swift and simple restructuring procedures either in court or out of court. The intention was to provide companies and creditors with legal tools that allow them to efficiently manage financially distressed companies.

The first version of the Portuguese Insolvency Code, approved in 2006, was more insolvency-driven and did not adequately tackle the need to have proper, efficient recovery proceedings. The only judicial recovery proceedings legally foreseen were embedded in insolvency proceedings themselves as a type of insolvency plan and were, therefore, subject to the usual delays of insolvency proceedings.

Following the international financial crisis, the need for such proceedings became evident, and the government decided to create a new judicial recovery process called a special revitalisation proceeding (PER), partially based on the concept of Chapter 11 of the US Bankruptcy Code. The creation of the PER changed the landscape, and companies started to use it frequently to ensure legally protected and efficient judicial proceedings for their recovery and the restructuring of debt, in particular bank debt of large and medium-sized corporates. The PER also allows for the cramdown of dissenting creditors, forcing the restructuring of debt that is approved by a certain majority of the creditors.

In 2016, the government decided, under the Revitalisation Programme (which aims to capitalise companies), to further develop the recovery regimes and to offer investors more efficient legal mechanisms to revitalise companies, particularly mechanisms that could be implemented out of court and that offered similar legal protection to those executed in court. This programme led to substantial changes being enacted in 2016 to the PER and the insolvency regime as well as the creation of new out-of-court company recovery mechanisms: the extrajudicial recovery process (RERE) and the legal framework for conversion of debt into equity.

In 2020 and 2021, and given the profound impact of the covid-19 pandemic on the economy and the financial situation of companies, the Portuguese government adopted and extended several measures targeting not only the Portuguese economy in general but also, in particular, the financial situation of companies. An important part of these measures focuses directly on the restructuring of companies, namely through the granting of moratoriums on credit operations and the modelling of some rules of the existing restructuring procedures. Additionally, the government approved the creation of a new (and temporary) restructuring proceeding called the extraordinary viability procedure for companies (PEVE).

The new legislation adds new tools to the existing ones that can be used in or out of court to deal with the debt restructuring and recovery of companies. This has led to a more competitive market for restructuring and successful restructuring transactions. Furthermore, the transposition of Directive (EU) 2019/1023 will have a significant impact on the existing restructuring mechanisms and procedures, in particular concerning the protection conferred to the financing granted to companies prior to the (eventual) insolvency declaration.

Notwithstanding additional measures taken by the government, Portuguese companies are, in cases where the moratorium regime cannot apply (eg, issuance of notes or debt in capital markets), reaching private solutions and agreements with their creditors and stakeholders through consent solicitation processes to delay repayment of principal or to waive breaches of, among other things, financial covenants, namely debt service cover tests, interest and cash flow covers, all of which rely directly or indirectly on the operational performance of the company (earnings before interest, taxes, depreciation and amortisation).

The easier route for a debt restructuring, in the case of notes or debt issued in capital markets, is through a resolution of the bondholders approving amendments to the terms and conditions of the notes, which legally (unless the terms and conditions foresee otherwise) only requires half of the bondholders to vote in favour of them and is binding on all bondholders (even those that voted against them). This is a swift and easier way to achieve a successful restructuring.

In respect of other types of debt (eg, loans and commercial debt), the solutions below are the best routes available for companies and creditors to restructure the debt.

PER

Type of proceeding

The aim of the PER is to allow companies that are in financial difficulty or facing imminent insolvency, but that are still recoverable, to enter into negotiations with their creditors for the purposes of renegotiating and restructuring their debt. Companies in financial difficulty are defined as companies that struggle to pay their obligations as they fall due for liquidity reasons or because they are not able to obtain financing.

Main benefits: moratorium and cramdown of dissenting creditors

The main benefit for companies is that they are granted a legal moratorium and a freeze of enforcement proceedings upon filing the initial request, which gives them time to have a discussion with the creditors. For creditors, this proceeding allows for a cramdown of dissenting creditors and, particularly for banks with secured debt, it is a way of potentially writing off the debt owed to common creditors as they become subject to the decision of the majority. Furthermore, it grants legal protection from clawback actions and prior ranking privilege regarding acts approved in the restructuring, such as sale of assets or granting of new security or new credit.

The PER is a voluntary proceeding, which means the request must be filed by the debtor. In turn, and to avoid the debtor implementing delay tactics with regard to the insolvency declaration, the debtor cannot file the PER alone; at a minimum, it requires the support of unsubordinated creditors that are not specially related to the debtor, which represent at least 10 per cent of the unsubordinated debt.

Additional requirements introduced in 2018

In 2018, in the context of the Revitalisation Programme reform, the legislature introduced additional requirements regarding the financial situation of companies, which hinder the use of the PER. The company must submit a certificate issued by a statutory auditor certifying that it is not in an insolvency situation in accordance with the criteria defined in section 3 of the Insolvency and Corporate Recovery Code (CIRE). Under article 3 of the CIRE, a situation of insolvency is defined, in general, as (i) the inability of the debtor to fulfil its obligations as they fall due (cash flow test) or (ii) when, according to accounting criteria, the liabilities of the debtor clearly exceed its assets (balance sheet test).

An unbalanced balance sheet can hinder the use of the PER and force a restructuring in an insolvency proceeding that is, in fact, more complex.

Timing and majorities

The PER process is relatively swift. The period for lodging claims is 20 days, and the provisional list of credits is issued within five business days thereafter by the interim judicial administrator. The negotiation period between the company and its creditors is 60 days, which can, as a general rule, be extended by 30 days. Owing to the covid-19 pandemic, the government will approve exceptional extensions of negotiations of one additional month.

A recovery plan within the PER is considered approved when a vote is taken by creditors whose debt represents at least one-third of the total debt with voting rights duly acknowledged in the list of creditors of the PER (the quorum), plus approval by more than two-thirds of the total votes cast, and more than half of the votes cast correspond to unsubordinated debt (voting majority). Alternatively, it can be approved by creditors representing more than half of the debt with voting rights and more than half of the credit being unsubordinated credit.

The plan, once judicially homologated (the court has 10 days to decide), will also be binding on dissenting creditors (ie, those that voted against the plan or that did not participate). The above-mentioned majorities are, therefore, crucial when outlining the strategy for the recovery and restructuring.

The extrajudicial recovery plan

To make the process more efficient, particularly in situations where there is already an agreement in place between the company and its creditors (usually the banks), it is possible for the company to file the PER with an extrajudicial recovery plan signed by creditors that represent the majorities referred to above.

This process avoids the negotiation phase and only has the lodging of credits phase (20 days), which is simpler as the majority of the creditors should have already signed the plan.

The interim judicial administrator must prepare the provisional credits list five days after the credits phase has ended, and creditors may challenge it within five business days. The judge will then have five business days to decide on any challenges and will homologate or refuse the plan (if there are legal grounds) within 10 days.

Legal and judicial effects and protection

Once the recovery plan is homologated by the court, it has immediate effect, with the termination of all legal actions proposed against the debtor relating to its debt, unless otherwise agreed in the plan, and the termination of any pending insolvency proceedings.

In relation to guarantees granted by a third party in respect of the debtor's debt, the prevailing understanding that has been sustained by certain judicial decisions is that the recovery plan only affects the debtor's liability and not that of the guarantors; thus, the rights of the creditors before the third-party guarantors remain unchanged. However, this is still disputed, with some decisions allowing for this possibility only in the event that the plan is approved by a unanimous vote.

There are two important legal protections:

- new money (eg, for liquidity reasons) granted during the PER can benefit from a prior ranking privilege, which ranks prior to special statutory liens over movable assets granted to employees; and
- security approved within the PER is, in principle, protected against any clawback actions if a declaration of insolvency is issued in the next two years.

RERE

Type of proceeding

The RERE allows a company facing a difficult economic situation, or in imminent insolvency, to promote negotiations with one or more of its creditors with the aim of executing a restructuring agreement. The Portuguese government will approve a temporary measure under which companies that become insolvent because of the covid-19 pandemic will have the opportunity to request their restructuring under the RERE. This possibility is, however, subject to the condition that the company's assets exceeded its liabilities on 31 December 2019.

As a voluntary procedure, creditors are free to participate in the negotiations by entering into a negotiation protocol and to approve the restructuring agreement. Moreover, creditors who initially did not participate in the negotiations may adhere to the protocol during the negotiation period.

As a transitory measure, and during the first 18 months only (ie, until June 2019), the law allowed companies in an insolvency situation to resort to this legal regime.

Main benefits: moratorium and tax benefits

The RERE is a desirable option because of the discretion of the creditors, which, in principle, are bound by a duty of confidentiality, and the agreement of the creditors, as it does not allow for a cramdown of dissenting creditors.

Despite not having the option of a cramdown, the deposit of the negotiation protocol before the Commercial Registry Office has the following benefits:

- the debtor will, up to the end of the negotiation period, benefit from a legal moratorium and freezing of the enforcement proceedings in respect of the adhering creditors, which are bound by the protocol;
- essential service providers, irrespective of being parties to the negotiation protocol, are prevented from interrupting the supply of the services grounded on non-payment; and
- if the debtor becomes insolvent, the time limit for submission of the debtor for insolvency only begins after the end of the negotiation period.

Timing and majorities

The debtor must have the support of creditors representing at least 15 per cent of its unsubordinated debt to file for the RERE.

The negotiations must be concluded within three months, counted from the deposit of the negotiation protocol, which may be extended unless the debtor becomes insolvent. As a consequence of the covid-19 pandemic, the government will exceptionally extend the negotiations deadline by an additional month.

Legal and judicial effects and protection

Upon deposit of the protocol, the debtor stays in possession of its business but is prevented from performing acts of special importance as defined in the CIRE, unless otherwise provided in the negotiation protocol or if previously authorised by all creditors directly or through the creditors' committee.

After the restructuring agreement has been filed with the commercial registry, the following takes place.

Credit rights of the debtor and collateral on its assets are amended only in accordance with the terms specifically provided for in the restructuring agreement, provided that the respective holders are parties thereto.

The judicial, declaratory, enforcement or precautionary claims, relating to credit included in the restructuring agreement and insolvency proceedings, where insolvency has not yet been declared, that have been instituted by a party to the restructuring agreement are immediately extinguished.

Any fresh money and attached guarantees explicitly referred to in the restructuring agreement or in the negotiation protocol (not used by the debtor for the benefit of the corresponding financial entity or an entity especially related to it) are ring-fenced from clawback actions, provided that a declaration is issued by a statutory auditor declaring that the restructuring agreement includes the restructuring of credit corresponding to at least 30 per cent of the total unsubordinated liabilities of the debtor and that, as a result of this, the financial situation of the debtor is more balanced, owing to a proportionate increase in assets over liabilities, and the debtor's equity is greater than its share capital.

The restructuring agreement reached under the RERE provides for direct consideration as expenses or losses of the fiscal year of the value of the credit that is subject to reduction for the purpose of calculating the taxable income as long as the impairment loss has not been admitted or is insufficient. It also provides the right to deduct the tax relating to the credit covered by those agreements. For those purposes, the restructuring agreement must be accompanied by a statement issued by the statutory auditor certifying that the agreement includes the restructuring of credits corresponding to at least 30 per cent of the total unsubordinated liabilities of the debtor and that, as a result, the financial situation of the company is more balanced by the increase of the proportion of the assets over the liabilities, and the equity capital is higher than the share capital.

There is the possibility of applying for the PER to obtain the judge's approval of the restructuring agreement and to enforce it on all creditors, irrespective of their acceptance, if the restructuring agreement is subscribed to by creditors representing the majorities required by the PER.

It is still too early to evaluate the impact of the RERE, which requires some fine-tuning. Nevertheless, it represents a breath of fresh air for Portuguese companies and may potentially result in a drop in the number of insolvency proceedings.

Debt-for-equity swaps

Type of proceeding

This new legal framework allows for conversion of companies' credit into capital, provided that the companies have a turnover equal to or higher than €1 million and the credits are not qualified as excluded credits.

The law foresees 'loan-to-own' strategies, allowing for the acquisition of debt of a company with a view to its future conversion into share capital, thus enabling creditors to acquire shares in the debtor company.

Timing and majority

The majority required corresponds to creditors whose credit represents at least two-thirds of the company's total liabilities and a majority of unsubordinated credit and provided that, cumulatively:

- the company's equity is below its share capital; and
- 10 per cent or more of total unsubordinated debt (or, in the case of partial repayments of principal or interest, when related to 25 per cent or more of total unsubordinated debt) is in default for more than 90 days.

The proposal for conversion must be discussed at a general meeting of the debtor, held within 60 days of receipt of the proposal. In this period, the directors and managers of the company are entitled to begin negotiations with creditors. If no meeting is held within 60 days, if the conversion proposal is rejected or if the approved resolutions are not enforced within 90 days, the creditors may file for judicial enforcement of the resolutions.

Legal and judicial effects and protection

The shareholders are protected by a pre-emption right if debt is converted into capital by means of a capital increase. In this case, capital contributions by the shareholders must be in cash and must be applied in the payment of the debt, which would be converted into capital, in accordance with the proposal submitted by the creditors. With regard to a capital increase, the equity must exceed the share capital amount at the time of the proposal.

The existing capital loss framework foreseen in article 35 of the Portuguese Companies Code, which has more stringent requirements for the declaration of capital loss, only sets forth a duty of information of the management body on the company shareholders who will be free to remedy the situation, if they choose to do so. However, the new legal framework, which aims to protect creditors' interest, allows creditors to resort to using this extrajudicial restructuring instrument and to force a cramdown of the equity by restructuring the balance sheet of companies with negative equity capital and strengthening their equity, and to enforce it judicially if necessary.

This legal framework excludes certain types of credit, such as credit from financial companies, credit institutions, investment firms, publicly held companies and entities integrated in the public business sector.

The novelty of this framework will require adaptation by companies, shareholders and creditors. There are doubts about the scope of some of the new provisions, and there may also be problems when it comes to applying these provisions as the effects of implementation, in practice, have not been addressed.

Insolvency procedure

Type of proceeding

Insolvency procedures are universal enforcement procedures, the purpose of which is to satisfy creditors' claims through the implementation of an insolvency plan or the liquidation and judicial sale of the insolvent's assets.

Timing and majority

The insolvency request may be filed by:

- the debtor within 30 days of becoming aware of the insolvency situation or upon the moment it should have been aware (voluntary insolvency); or
- the creditors, at any time, based on the occurrence of certain events that determine the existence of an insolvency situation (mandatory insolvency).

In the context of the covid-19 pandemic, the Portuguese government approved an exceptional and temporary measure pursuant to which the debtor is not obliged to apply for the declaration of insolvency; however, as confirmed recently by the Coimbra Court of Appeal on 13 July 2020 in Case No. 4166/19.8T8LRA-C.C1, the debtor can still be declared insolvent following a request of the creditors to that effect. In other words, the declaration of insolvency has not been suspended, only the obligation of the debtor to file for insolvency has.

Within three days of the insolvency request filed by the debtor and provided the debtor meets the necessary criteria, the court declares the insolvency. If a creditor files for insolvency, the debtor will be notified so that it may oppose the request, upon which the court makes a decision.

After the declaration of insolvency, an insolvency administrator will be appointed, and the deadline for filing the credit claims (a maximum of 30 days is permitted) and the schedule of the creditors' general meeting will be determined.

Legal and judicial effects and protection

The insolvency declaration will have an impact on the debtor and its directors, including on its debts and agreements that have not yet been paid, on any pending proceedings and on any acts that are prejudicial to the debtor's assets.

The appointment of the insolvency administrator deprives the debtor of administration and disposal powers over its assets, although the management bodies may remain in place. However, in the event of voluntary insolvency and upon request by the debtor or as agreed by the creditors, the debtor may ensure the administration of its assets.

The administrator evaluates and suggests whether the debtor should enter into liquidation or if an insolvency plan could be proposed, although the final decision belongs to the creditors' assembly, which will vote on the administrator's recommendation.

Insolvency plan

The insolvency plan is the only mechanism of recovery for a company within an insolvency procedure or after the declaration of insolvency of a company. It is the final tool that can be used to avoid full closure of the company.

The insolvency plan will be voted on at the creditors' general meeting (a quorum of one-third of the total debt with voting rights). Approval requires two-thirds of the votes, provided that half of the votes correspond to unsubordinated debt. The plan will be binding on all creditors, regardless of whether they have taken part in the negotiations. The government has approved an exceptional measure pursuant to which, if so requested, the judge may grant to the proponent of the insolvency plan an additional 15 business days to adapt the insolvency plan in the context of the covid-19 pandemic.

If the debtor defaults on the plan, any standstill and releases are rendered void, and all credit becomes due. The Portuguese legal system does not allow the court to amend, on its own initiative, the recovery plan negotiated by the creditors.

If the insolvency plan is rejected by the creditors, liquidation will commence, and the insolvent assets are sold to pay the creditors according to the respective ranking of credit.

Corporate group

Since June 2017, if an insolvent company has a control or group relationship with other companies, in respect of which insolvency proceedings exist, the judge, unofficially or by request, may designate the same insolvency administrator for all companies and designate another insolvency administrator with restricted functions who assesses the claims between debtors of the same group.

Furthermore, there is the possibility of piecing together the debtor's insolvency proceedings with another entity that is liable for the former's debts.

PEVE

Type of proceeding

The PEVE, created by Law No. 75/2020 of 27 November 2020, was a temporary judicial procedure of an extraordinary and urgent nature, intended exclusively for companies that were in a difficult economic situation or insolvency (imminent or current) by virtue of the covid-19 pandemic.

The PEVE was available to companies in financial distress as a result of the covid-19 pandemic, that had no PER pending and that were possible to recover or, according to the PEVE's own wording, that were susceptible to being 'viable'. To demonstrate these requisites, companies had to prove that, as of 31 December 2019, they had a positive net situation (assets greater than their liabilities) in accordance with the applicable accounting rules. This last requisite did not apply to micro and small companies in certain cases.

Given its temporary nature, the PEVE was only available from 28 November 2020 to 31 December 2021, although Law No. 75/2020 allows for future extensions after this date.

The PEVE could only be used once and its sole purpose was to obtain homologation by the courts of an agreement reached extrajudicially between the company and its creditors.

Timing and majority

The PEVE was an urgent procedure with priority over the remaining insolvency procedures and the PER, including in the appeal phases.

To ensure the procedure was efficient, the PEVE waived the negotiations and lodging of claims phases and began with the appointment of the provisional judicial administrator by the court. It set forth tight deadlines for the court to pass decisions on several matters.

Companies had to file with the court the extrajudicial agreement approved by the majority of its creditors, which was similar to the PER regime: that the plan, being voted by creditors whose debt represents at least one-third of the total debt related to voting rights, collect the favourable vote of more than two-thirds of the total votes cast and more than half of the votes cast corresponding to unsubordinated debt, or that the plan collects the favourable votes of creditors whose debt represents more than half of the total debt related to voting rights and more than half of these votes corresponding to unsubordinated debt.

Legal and judicial effects and protection

The appointment of the provisional judicial administrator triggered the application of a set of rules that had a direct effect on the company's management and ongoing and eventual judicial procedures.

On the one hand, the company was prevented from performing actions of special importance without previous authorisation from the provisional judicial administrator. The performance of these actions required a written request, which had to be decided within five days by the provisional judicial administrator.

On the other hand, any procedures that, directly or indirectly, intended to assert credit rights against the company were prohibited and any outstanding procedures with the same purpose were suspended.

The homologation of the agreement by the court implied the extinction of the procedures that were previously suspended. The only exception was if the homologated agreement provided for the continuation of the previous procedures or when the credits in those procedures were not covered by the homologated agreement.

The PEVE fostered the use of own or equity funds as it extended to shareholders (or other specially related persons) who financed the company's activity (including through supplementary contributions) with a general credit privilege (graduated before the credit privilege granted to workers), which was already provided for the financing granted by creditors not specifically related to the company.

Finally, the PEVE foresaw several tax benefits for the company and the creditors that signed the agreement, provided that the agreement included the restructuring of credits corresponding to at least 30 per cent of the company's total non-subordinated liabilities and that certain conditions were met. The tax benefits included the exemption of certain income from personal income tax and corporate income tax, allowed for the deduction of the value of credits as costs or losses, exempted certain acts from stamp duty and exempted certain onerous transfers of real estate from municipal tax on onerous real estate transfers.

Covid-19: exceptional legislation and other private mechanisms to reach a successful restructuring

According to the 'Fast and Exceptional Companies Survey' launched in July 2020 by Statistics of Portugal and the Bank of Portugal, only some Portuguese companies had adhered to the moratorium on credits framework, as approved by the government in the context of covid-19 pandemic. In fact, according to a recent version of the survey dated 26 February 2021, only 24 per cent of companies benefited from the moratorium.

The moratorium legal framework comprised the following contractual provisions, which were effective until 31 March 2021 (or until 30 September 2021 in respect of the suspension of payments of principal):

- prohibition of termination, in whole or in part, of the facilities and loans;
- extension of credits with repayment of principal at the end of the contract, together with all ancillary elements; and
- suspension of payments of principal, rent and interest in relation to credits or amounts to be repaid or paid in instalments (being the contractual payment or repayment plan and all elements associated with it covered by the moratorium, including guarantees, automatically extended).

There are other private mechanisms available that allow for restructuring and recovery during periods of economic difficulty, such as those triggered by the covid-19 pandemic. In this regard, a distinction is often made between two types of strategies: the liability management exercise and the debt write-off.

Under the liability management exercise, companies commonly adopt a debt re-profiling strategy, typically by means of the extension of the maturity terms and the renegotiation of the terms and conditions of the agreements. The renegotiation, in particular of facility agreements, is carried out through obtaining grace periods or the moratorium on repayment obligations. Refinancing of the existing debt via new cash or fresh money (for treasury needs) or debt rollover (to repay the existing debts) is also common in the Portuguese loan market.

On debt write-off processes, companies usually structure with their main creditors a debt haircut, the conversion of debt to equity (loan-to-own strategies), the sale of assets (under which the respective proceeds are applied in the repayment of the existing debts) and delivery in lieu of payment with the inherent extinction of certain repayment obligations. Some of these processes may be agreed with all creditors or only with the largest creditors where, for example, the bank debt is the most relevant debt in the debt profile of the companies.

Conclusion

The economic and financial impact of the covid-19 pandemic in respect of the financial and business strength of Portuguese companies has maintained a focus on the restructuring of companies and the ways to overcome financial difficulty. This will be more intense now that the moratorium period approved by the government has ended.

The current insolvency and restructuring legal framework in Portugal will continue to favour and expedite out-of-court recovery processes, encouraging consensual solutions and ensuring a balance between the interests of the parties involved in a restructuring process and being in line with EU insolvency legislation.

The incentive to pursue out-of-court restructuring proceedings will continue to drive future changes as they will be concluded much faster than court proceedings. This is a crucial aspect to consider.

The existing and new mechanisms allow highly leveraged debtors to restructure their financial debt in a more efficient, structured and protected way to the extent that they have the necessary support of the required majority of creditors.

Nevertheless, the choice between proceedings in court and out of court for upcoming restructuring processes will depend on the nature of the credit, the sustainability of the debtor, and the number of creditors and how sophisticated they are.

MARIA JOÃO RICOU

Cuatrecasas

Maria João Ricou is the managing partner of Cuatrecasas in Portugal. She is a member of the firm's executive board and head of the banking, finance and capital markets practice.

With extensive experience and in-depth knowledge of the banking, finance and capital markets sectors, Maria João has focused her practice mainly on banking operations, regulatory matters, debt restructurings, structured finance (particularly securitisation structures), corporate finance and all kinds of equity and debt capital markets transactions.

Maria João is considered a lead partner in the European Banking & Finance Deal of the Year 2017 by *The Lawyer*.

She holds a law degree from the Catholic University of Lisbon Law School, which she obtained in 1984. She has been a member of the Portuguese Bar Association since 1984 and is a member of the International Bar Association.

MANUEL REQUICHA FERREIRA

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Manuel Requicha Ferreira has been a partner in the banking, finance and capital markets practice of Cuatrecasas in Portugal since 2016 and has been with the firm since 2004.

The main projects on which he has advised in recent years include structured finance and corporate finance and financing operations through simple or structured debt issues, from public or private entities and public offers of distribution or takeovers. He has extensive experience in, and in-depth knowledge of, debt restructuring on both the lender and the corporate side, as well as on distressed debt and non-performing loan transactions.

Manuel holds a law degree from the University of Coimbra Law School, which he obtained in 2004, a postgraduate degree in securities law from the University of Lisbon Law School, obtained in 2007, and a master's degree in banking and capital markets law from the University of Lisbon Law School, obtained in 2011.

In 2007, Manuel won the CMVM (the Portuguese Securities Market Commission) Award.

Cuatrecasas is a law firm present in 13 countries, with a strong focus on Portugal, Spain and Latin America. It has a multidisciplinary team of over 1,000 lawyers that advises on all areas of business law, organised by business and industry-specific practice areas. It combines maximum technical expertise with business vision.

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As well as daily news, Global Restructuring Review curates a series of comprehensive regional reviews. This volume, the *Europe, Middle East and Africa Restructuring Review 2022*, contains insight and thought leadership from 14 pre-eminent practitioners. Inside you will find chapters on England and Wales, Greece, the Netherlands, Portugal, Switzerland and the UAE, highlighting changes in law and practice, and identifying some of the unresolved issues of the day.

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