



BUSINESS RECOVERY - RENEGOTIATION AND REVITALIZATION SOLUTIONS

Answers to key questions from companies facing the economic impacts of the COVID-19 pandemic

The Covid-19 pandemic has jeopardized the livelihood of many companies in Portugal, and there is already a widespread increase in non-compliance with obligations. Is your company in any of these situations?

- ◆ **It is unable to pay invoices due in the coming months.**
- ◆ **You already have overdue and unpaid invoices, but recovery is feasible.**
- ◆ **In view of the amount of debts, and the difficulty of obtaining new financing, the recovery is not viable.**

My company still does not have arrears, but next month we will not be able to pay suppliers

If so, in this article we will show you some solutions to renegotiate debts and revitalize your company.

In this situation, your company will probably be able to resort to **the Special Revitalization Process (PER)**.

The PER is intended to enable companies that are proven to be in a difficult economic situation or in a situation of merely imminent insolvency, but that are still susceptible to recovery, to enter into negotiations with their creditors with a view to concluding a settlement agreement with them. payment.

One of the most important consequences of PER is that it makes it impossible to initiate any actions to collect debts against the company. During the negotiations, ongoing actions for the same purpose are also suspended.

The PER starts with the will of the company and creditors that are not especially related to the company, hold at least 10% of non-subordinated credits.

After receiving the request, the Court appoints a Provisional Judicial Administrator of the company and the period of twenty days for creditors to claim their credits begins.

This is followed by the period of negotiations with creditors, after which it must present a final version of the **Revitalization Plan**. This plan may provide for the forgiveness of interest and / or part of the outstanding debt and, most importantly, the payment in installments of your debts.

By obtaining the approval of the Revitalization Plan, you will be able to maintain the activity of your company.

- **But there are other alternative procedures to the PER that you can also consider**

Your company will probably also be able to resort to the **Extrajudicial Regime for the Recovery of Companies (RERE)**.

This regime aims to allow companies to negotiate with their creditors with a view to approving a restructuring agreement. The agreement will aim at changing the composition, conditions or structure of the asset or liability, or any other part of the debtor's capital structure, including the share capital, with the aim of allowing the company to survive all or in part.

One of the main differences of this process in relation to the PER, is that the RERE is not a process that runs in the Judicial Courts, but in the Commercial Registry Office.

The process begins with the signing of a recovery protocol by the company and by creditors representing at least 15% of the company's liabilities.

Creditors' adherence to RERE is voluntary, and the restructuring agreement does not affect creditors who have not subscribed to it.

My company was closed due to the Covid-19 pandemic, which led to a decrease in revenues. As a result of this decrease in revenues, our company already has overdue invoices to suppliers, as well as some installments to banks. However, we believe that the revitalization of the company is still possible.

Knowing that the Covid-19 pandemic would have consequences for the economic situation of companies, a special regime was created for the recovery of companies in a difficult economic situation due to the Covid-19 pandemic, the **Extraordinary Company Feasibility Process (PEVE)**.

PEVE is aimed at companies that are proven to be in a difficult economic situation or in a situation of imminent or current insolvency, due to the Covid-19 pandemic, but that are still susceptible to recovery.

Gathering these requirements, your company can resort to this process if:

- You have no PER pending, and
- Demonstrate that, on December 31, 2019, an asset exceeds the liability, being certain that the law provides for exceptions for some companies, such as micro or small companies.

This is also a process that takes place in the Judicial Courts, with the feasibility agreement being ratified by the judge if (i) it is approved by the majority of creditors; (ii) present reasonable prospects for ensuring the company's viability; and (iii) there is no circumstance that allows the non-approval.

One of the advantages pointed out to PEVE is the fact that it does not have legal costs. However, the company presenting itself to PEVE will have to bear the remuneration of the Provisional Judicial Administrator, which is fixed by the judge between 300 EUR and 3,000 EUR.

My company has several supplier invoices already past due, as well as overdue employees' salaries, and we do not anticipate that the company recovery is possible.

In the current legal framework, the debtor who is unable to fulfill his overdue obligations is considered insolvent. The debtor must apply for his declaration of insolvency within 30 days after the date of knowledge of that situation.

Since your company is unable to fulfill its past due obligations, it seems to us that it may already be in a situation of insolvency.

Submission to insolvency is done by written declaration addressed to the Court. Insolvency is subsequently declared by the Court.

In the judgment declaring insolvency, the Court appoints an Insolvency Practitioner, as well as designating a period for creditors to claim their claims.

In this specific case, since the company no longer has the capacity to continue its activity, the outcome will be the continuation of the process for liquidating the company.

However, it should be noted that when it proves feasible, it is also possible to revitalize a company in insolvency proceedings, through the approval of an insolvency plan by creditors ●

Article written in accordance with the legislation in force on May 6, 2021.