

CAPITALISATION PROGRAMME AIMS TO INCREASE COMPANIES' COMPETITIVENESS - PBBR

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The Portuguese government has recently been very active approving new legal measures that relate to the corporate world. Most of these measures were outlined in the Capitalisation Programme (Programa Capitalizar) that was approved by the Government last year.

The Capitalisation Programme includes 64 measures that are in the process being implemented. The most significant measures aim to increase the competitiveness of Portuguese companies. Reduction of bureaucracy is also one of the goals, as well as the creation of alternative ways to obtain financing. The main beneficiaries of these measures will be small and middle-sized companies.

Under this programme, the following measures have already been approved: (i) a more expeditious procedure for converting shareholder loans into share capital, (ii) the creation of special investment vehicles (SIMFE – Sociedades de Investimento Mobiliário para Fomento da Economia), (iii) the creation of the so-called short term debt certificates, (iv) changes to the legal regime of commercial paper and also (v) changes to the current insolvency regime.

The most significant changes relate to the new investment vehicle (SIMFE) and also the Insolvency Code, namely concerning the conditions of access to the restructuring procedure (Processo Especial de Revitalização) and its legal regime.

The new investment vehicles (SIMFE) must be listed companies and have at least 70 per cent of their investment in (i) small and mid-sized companies within the guidelines set out in Recommendation nr. 2003/361/CE, or (ii) listed companies with a market capitalisation lower than € 50,000,000; or (iii) companies that, according to Portuguese Decree-Law nr. 81/20017, qualify as Mid-Caps or Small-Caps.

On the restructuring side, we believe that some of the approved measures will have a relevant impact as the conditions for access to restructuring processes will be tighter. This means, in practical terms, that companies that are not ready to be restructured will not be able to delay insolvency.

The government has just approved Decree – Law nr. 89/2017 in order to transpose to Portuguese Law the Directive nr. 2014/95/UE under which the so-called big companies will have (from 1 January, 2018) to publish new reports on non-financial information that will cover measures impacting on non-financial matters, such as (i) environmental issues, (ii) non-discrimination, (iii) health, (iv) the protection of employees, (v) conciliation between working and family life. This is a sound measure as corporations have an increasing role in people's life but it will increase bureaucracy and costs.

We believe that the main need of Portuguese companies at present relates to financing. Money does not flow into the economy because the legal system is good, it flows because the projects are good and profitable and the competence of the people in charge is recognised. Of course, the existence of a sound legal system helps to attract businesses and investment. But, for a legal system to be sound, it is necessary that such a system is stable and not subjected to constant changes. In order to achieve this, the government should avoid constant changes. Just to provide an example the Portuguese Securities Code has been changed 28 times. As to the Companies Code it has already been changed twice in a period of 30 days.

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