

# NEW RULES FOR THE SPECIAL REVITALISATION PROCESS - CAIADO GUERREIRO

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**A new ruling has introduced a few changes to the Special Revitalisation Process (*Processo Especial de Revitalização – PER*), approved by the Decree-Law nº 79/2017, on the 30<sup>th</sup> of June.**

PER was implemented, by the Portuguese Government in 2012, as a legal mechanism for the Insolvency and Corporate Recovery Code in order to prevent viable companies from becoming insolvent and to allow the economic recovery of natural persons. By removing the idea of immediate asset liquidation, PER could keep the company working, avoiding unemployment, but protecting the interests of the creditors. This mechanism was created to be applied only in situations where the natural or legal persons would be able to recover economically, excluding situations of current and demonstrated insolvency.

This legislative initiative emerges within the scope of a programme approved by the Council of Ministers that seeks to implement measures to stimulate the Portuguese economy, promoting investment and companies' capitalisation. This aimed to improve PER by giving it more sustainability and credibility as a recovery instrument.

The fundamental modification is that, from now on, PER is only applied to legal persons and there are more requirements to initiate the proceedings. One of them being that the company should provide a declaration where it states its financial and economic conditions, followed by a recovery plan proposition and a certificate from a proper entity, for instance a certified public accountant, assuring that the company is not insolvent at the moment. To initiate the proceedings, the company should obtain the agreement of creditors that own at least 10 per cent of non-lower ranking claims.

As an alternative to PER, a specific institute was created to be applied to natural persons that relies on a special procedure to reach an agreement with every creditor. In general, there are many similarities with PER. It allows the debtor to establish a negotiation process with his creditors, with the purpose of settling the debts, needing only the agreement of one of the creditors.

In both cases the appointment of the interim judicial administrator determines the suspension of expiry or prescription terms and assures that contracts regarding essential public services such as energy, water and gas supply are maintained during the entire negotiation.

Even though PER was planned to be applied mainly to legal persons, Portuguese statistics demonstrate that this mechanism was used mostly by indebted families, because it easily promotes economic rehabilitation. Consequently, the recent amendments were well-received by lawyers who claim that due to the overuse of this mechanism by natural persons, they were witnessing an increasing slowing of procedures. In addition, with these modifications, the Portuguese Government is trying to decrease the number of companies to which PER is applied, while increasing its effectiveness. The amendments entered into force on 1 July, producing all its effects at pending procedures.

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