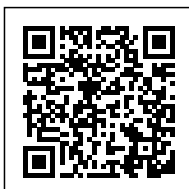


RECAPITALISING PORTUGUESE COMPANIES - CAIADO GUERREIRO

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The Portuguese government has promoted various economic and legislative initiatives under the 'Programa Capitalizar' (Capitalise Programme), which was created by the EMCE (Estrutura de Missão para a Capitalização de Empresas – Mission Structure for the Capitalisation of Companies), with the aim of facilitating the recapitalisation of companies.

One of the products of this effort was the elaboration of Law n. ° 7/2018, establishing the Regulatory Regime for the Conversion of Credit Claims into Capital. This legislation aims to boost the recovery and restructuring of companies that may have excessive debt and liabilities, but that can still be profitable if a timely intervention is performed.

It is exactly the necessity of creating adequate and timely tools to help companies sustain themselves in the face of liabilities that has driven the creation of this law, as other government efforts have made the access to credit harder for small and medium companies (which constitute 99 per cent of the total number of companies currently operating in Portugal).

Additionally, the adoption of stricter risk evaluation guidelines and the need for greater guarantees have made the survival of companies and their access to bank loans harder. To counteract the negative effects of these measures, Law n. ° 7/2018 now makes it possible for creditors to convert their credits into share capital, thus helping companies restructure their finances and capital structures. It also prevents companies with little access to multiple funding sources from going out of business, thus helping to maintain and create jobs and maintain competitiveness.

The conversion into capital may happen only under strict circumstances, when it is proven that the degradation of the company's equity, and delay in paying their creditors, is verified by a competent and independent entity and the creditors must hold claims that, under different circumstances, will have legitimate power to approve a recovery plan in the case of insolvency.

The process of conversion begins with a proposal being delivered to the company, with the requirement that the creditors requesting the conversion must hold at least two-thirds of the company's liabilities and the majority of unsubordinated credits.

The legislator took care to safeguard the interest of shareholders, giving them the opportunity to analyse the proposal and the possibility of negotiating the proposal, if they so desire, with the creditors. The legislation also states that shareholders retain the right of preference in the equity increase, if it occurs through cash influx, as credits are converted into capital.

This law effects not only the way creditors may get their investment in a company back, but also allows for faster procedures, while allowing the company to survive. It is clearly a significant change for small and medium-sized companies, as well as investors and creditors, who now have a faster alternative to judicial routes, while not being mandatory for either party to accept the conversion; and the process seems, for now, to be relatively painless.

This legislation may impact a significant proportion of Portuguese companies, as it will apply to nearly all situations with the exception of public entities (but including companies operating in the public business sector) and credit institutions. And while one of the requirements is that the company in question has at least one million euros, as per their last annual accounts, this still covers a significant range of Portuguese companies.

This is a rather innovative measure in Portugal and its effects can be very positive for the country's economy. This new step in the restructuring of how companies operate also interacts with the process of insolvency (becoming a credible alternative to an insolvency or a recovery procedure), but it also provides some assurance to national and foreign investors in regards to the way the Portuguese market operates, thus facilitating access to financing.

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