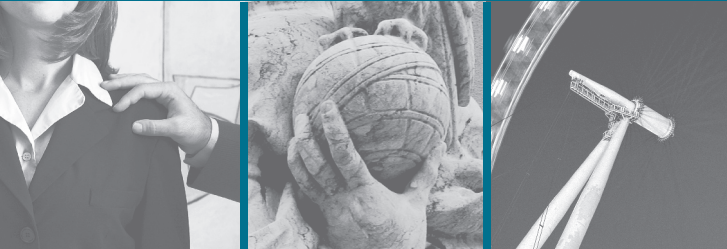


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Should you require any copies of the legislation herein referred or wish us to respond to any questions you may have on any of the matters raised in this newsletter, please contact this law firm or send an email to any of the lawyers named above.

CONTENTS

1. NEW LEGISLATION (page 1)

Selection of the most important legislation published in the last months.

2. LAW NR. 14/2012, OF MARCH 26, CONCERNING THE TERMINATION OF CONTRACTS FOR FINANCIAL SERVICES PROVIDED TO CONSUMERS CONCLUDED BY MEANS OF COMMUNICATION AT A DISTANCE (page 2)

This law amends the legal regime regarding the termination of the above referred contracts, which now expressly includes the annexed contracts. These amendments have come into force on March 27, 2012.

3. AMENDMENTS TO THE INSOLVENCY AND BUSINESS RECOVERY CODE (page 3)

The purpose of the present amendments is the implementation of a set of measures aiming, essentially, two main objectives: simplify formalities and procedures, as well as, create the *Special Procedures of Revitalization*. These amendments have entered into force on May 20, 2012.

4. NEW COMPETITION LEGAL REGIME APPLICABLE IN PORTUGAL (page 4)

Law nr 19/2012, May 8, which shall enter in force on July 7, 2012, foresees a new legal regime for the defence and promotion of the competition in Portugal, and revokes the previous Competition Law.

1 - NEW LEGISLATION

- **Social Security - Unemployment protection** - Decree Law 64/2012 - March 15 - Amends the Unemployment Protection Legal Regime applicable to employees hired by a third party, and approves, also, a provisional and exceptional regime to assist unemployed people with children to support.
- **Social Security - Unemployment protection** - Decree Law 65/2012 - March 15 - Creates the Social Protection Legal Regime in Case of Unemployment for independent employees and that supply services mainly to a sole contractor.
- **Early retirement pension** - Decree Law 85-A/2012 - April 5 - Suspend several legal dispositions of the Protection in the Event of Invalidity and Old Age Legal Regime, regarding the early retirement pension age flexibility access regime.
- **Taxation - Madeira** - Law 14-A/2012 - March 30 - Amends the VAT Code, the Consumption Special Taxes Code and the legal diploma that fixed the reduced VAT rates applicable in the Madeira Autonomous Region.
- **IRS - Azores** - Order 3568-A/2012 - March 9 - Approves the withholding tax rates to be in force in the Azores Autonomous Region during 2012.
- **Assembly of the Republic - European Union** - Law 21/2012 - May 17 - Amends the law that foresees the powers of the Assembly of the Republic within the scope of the European Union construction process.
- **2012 State Budget - Financial stability** - Law 20/2012 - May 14 - Amends the 2012 State Budget, to reinforce the financial stability and subsequently amends several codes and other related legislation.

- **Financial guarantees** - Rule 80/2012 - March 27 - Amends the diploma regulating the extraordinary concession of personal guarantees by the State within the financial sector.
- **Credit institutions** - Rule 150-A/2012 - May 17 - Regulates the reinforcement measures for the credit institutions financial soundness and consequent stability of the financial markets, including, the capitalization operations of the referred institutions with public investment.
- **Public-private partnerships** - Decree Law 111/2012 - May 23 - Defines the State intervention in the public-private partnerships and creates the Projects Follow Up Technical Unit. Revokes the diploma and several legal dispositions regarding this matter.
- **Energy sector** - Decree Law 112/2012 - May 23 - Amends the diplomas regulating the electricity and natural gas internal market, changing the legal limits on shareholdings in the share capital of the relevant operators and concessionaire companies.

2 - LAW NR. 14/2012, OF MARCH 26, CONCERNING THE TERMINATION OF CONTRACTS FOR FINANCIAL SERVICES PROVIDED TO CONSUMERS CONCLUDED BY MEANS OF COMMUNICATION AT A DISTANCE

It was approved, on February 24, 2012, Law Nr. 14/2012, which executes the third amendment in relation to termination of contracts relating to financial services provided to consumers concluded by means of communication at a distance and partially transposes Directive Nr. 2002/65/EC of September 23, concerning the marketing at a distance of financial services provided to consumers.

The amended Decree-Law Nr. 95/2006, of May 29, sets out the arrangements for the pre-contractual information and contracts relating to financial services provided to consumers by means of communication at a distance by providers authorized to conduct business in Portugal.

This Decree-Law introduced in our legal system duties of pre-contractual information specific to financial services providers at a distance, notwithstanding the imposition that such information and the terms of the contract are afterwards communicated to consumers on paper copies, or other durable media, before the later is bound by the contract.

For purposes of this Decree-Law, “contract at a distance” is any contract which formation and conclusion are made exclusively by means of communication at a distance, which integrate an organized system of sale or provision of services, for that purpose, by the provider; “means of communication at a distance” is any mean that can be used without the simultaneous physical presence of the provider and the consumer; and “financial services” means any banking, credit, insurance, investment or payment services and those services related to individual membership of open pension funds.

Under this Decree-Law, the consumer has the right to terminate, within a specified period, the contract concluded at a distance, without invoking any cause that justifies this termination and without any penalty imposed on the consumer. This right of free termination does not preclude the application of the general regime of contracts termination. However, the right of free termination does not apply to some situations, particularly when the contract involves the provision of services regarding financial instruments which price depends on market fluctuations, such as, for example, services related to foreign exchange transactions, money market instruments or securities. The right to free termination does not preclude the possibility of request by consumers, before the term of the period for exercising such right, of the beginning of the execution of the contract, in which case they are required to pay for the services that were actually provided.

Law Nr. 14/2012 has added to the faculty of free termination of the contract by the consumer (without giving any reason and without compensation or penalty thereof), the automatic and simultaneous termination of any contract which is annex to a contract at a distance when the annex contract is also a contract at a distance concerning financial services provided by a provider or a third party under an agreement settled with them, and provided that the consumer exercises his right of free termination under the law.

The said amendment is the only amendment made by this Law Nr. 14/2012 to the Decree-Law. Moreover, remains applicable the regime foreseen in the Decree-Law, and that, broadly speaking, is as follows: the deadline for exercising the right of free termination is of 14 days, except for contracts of life insurance and related to individual membership of open pension funds, where the deadline is of 30 days; the deadline is counted from the date of conclusion of the contract or the date of receipt by the consumer of the terms and pre-contractual information, if later; the free termination must be notified to the provider by any mean susceptible of proof; the right to free termination shall expire when the contract has been fully complied with, after the request of the consumer for such purposes, before expiring the deadline for the exercise of the right of termination; the right of termination extinguishes the obligations and rights under the contract or transaction, with effect from its conclusion; in cases where the provider has received any money as payment for services, the provider has the obligation to reimburse it to the consumer within 30 days as from the reception of the notification of the free termination; the consumer may not waive the rights conferred to him by this legislation.

The law provides certain exceptions to the right of free resolutions, such as short term insurance, lasting less than one month.

It is considered an infraction punishable by a fine, amongst others: the practice of acts that, in any way, hinder or prevent the normal exercise of freedom of termination or the imposition of any compensations or penalties to consumers who le-

gally exercise this right; the failure to reimburse the amounts received by the provider as payment for services within 30 days of receipt of the notification of the free termination; and the collection of any amounts from the consumer that exercises his right of free termination. Along with the fines, accessory penalties may be applied.

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3 - AMENDMENTS TO THE INSOLVENCY AND BUSINESS RECOVERY CODE

On April, 20, was published in the Portuguese Official Gazette, Law nr 16/2012, approving the sixth amendment to the Insolvency and Business Recovery Code, hereinafter the C.I.R.E., approved by Decree-Law nr 53/2004, March, 18.

This legislation amendment has two main objectives: the first one is the implementation of a set of measures to simplify formalities and procedures; and, the second is the creation of the Special Procedures of Revitalization.

• SIMPLIFICATION OF FORMALITIES AND PROCEDURES

In order to make the insolvency procedures more effective and smooth, some of the steps that were mandatory are now under the Judge sole discretion.

Resulting on the change imposed on the need to held the Creditors Assemblies to assess the insolvency report; now and upon a grounded declaration, the Judge may waive the same, except in the following cases: (i) when the debtor requesting insolvency has also required the exoneration of the remaining debts; (ii) if the presentation of an insolvency plan is expectable; (iii) when the insolvency administration is allocated to the debtor.

Also the conciliation attempt foreseen within the verification and graduation of credits stage has now an optional nature.

The powers of the Judge have also been increased, imposing to the same the duty to decide immediately if the insolvency has a fortuitous nature, whenever the Public Prosecutor and the Insolvency Administrator have also proposed such qualification. Notwithstanding, this decision is subject to appeal.

Still within the scope of the insolvency qualification stage, the differences implemented are enormous, now this incident relies on the assumption that there are evidences that the insolvency was originated by the debtor or any of its representatives misconduct. This amendment reflects a huge difference in relation to the regime in force until now; in fact it eliminates the opening of this stage for the insolvency qualification from the initial sentence declaring the insolvency, and eliminates also the assumption that only after this stage is started it is possible to ascertain the existence or not of facts determining the insolvency as culpable.

Indeed, this legislation amendment reflects what had been shown in practice, i.e. the total inadequacy of the opening of this incident on the moment when the insolvency is declared. This incident is only adequate and justifiable when there are in fact evidences that the insolvency situation was originated by misconduct.

Thus, in the new law wording, only upon a request from the Insolvency Administrator or any other interested party to qualify the insolvency as culpable, the Judge, upon analysing the alleged facts, may declare the insolvency qualification stage to be opened. The referred request must be grounded, appended to the main proceedings, and refer the persons to be affected by such qualification.

If the insolvency is qualified as culpable, the Judge must in the same sentence, condemned those affected by such decision, to compensate the insolvent debtor creditors in an amount corresponding to the unpaid credits, within their assets limits, the liability being jointly.

We also note the amendment implemented regarding the publication of the acts. The acts that were previously published in the Official Gazette are now published in the *Citius Site*. And within the subsequent verification of credits procedures, the traditional citation notice is now effected through electronic means.

Regarding the anticipated sale of goods, the present law amendment foresees that the insolvency administrator, upon prior notice to the debtor, the creditors committee and the Judge, has sufficient powers under his sole discretion to decide the anticipated sale of goods, which are at risk of deterioration or depreciation.

On the other hand, the deadline for the debtor to request insolvency is reduced from 60 to 30 days, as of the date when the insolvency situation is acknowledged.

Upon the request of any interested party, the Judge is also granted with the powers to appoint more than one insolvency administrator. Such party must in a grounded manner propose the administrator to be appointed, and will be liable for his remuneration in case the insolvent estate is not sufficient.

It is also foreseen the termination of acts for the benefit of the insolvent estate, provided that such acts have been performed within the two preceding years, and not four, to the beginning of the insolvency proceedings. On another hand, the limitation period regarding the right to appeal is of tree months, and no longer of six months.

Regarding the insolvency administrator liability, the present amendment specifically foresees that the insolvency administrator will be liable only for damaging conducts or omissions occurring upon its appointment. The tax liability and regarding the deposit of the accounts shall rely on the insolvent's directors.

Upon the insolvency declaration, the corporate bodies members shall remain in office, however, by rule, they will not be remunerated and will be able to resign only after the annual accounts are deposited, as of the liquidation decision date within the insolvency proceedings.

The deadline to start the procedures for the subsequent verification of credits is reduced from one year to six months. Furthermore, these procedures can now be extinguished if due to the claimant negligence no action takes place during 30 days and no longer 3 months.

Please also note the amendment of the name given to the plan intended to provide for the insolvent's recovery, which is now designated by "Recovery Plan" and is differentiated from the "Insolvency Plan".

• THE SPECIAL PROCEDURES OF REVITALIZATION

The aim of the special procedures of revitalization is to avoid the insolvency proceedings direct resource, providing smoothness and efficiency to cases in which companies, even if in a difficult economic situation or merely imminent insolvency situation, are still capable of being recovered.

The procedures begin with a written statement from the debtor and, at least, one of its creditors, in which are foreseen possible negotiations leading to the debtor revitalization through the approval of a recovery plan.

The special procedures of revitalization may also start with the filing of an extrajudicial recovery agreement by the debtor, which must be signed by the same and by a significant majority of its creditors.

The debtor must communicate the above referred statement immediately to the Judge of the Court competent to declare its insolvency, in which case the Judge must order the appointment of an interim insolvency administrator.

Upon the appointment of the interim insolvency administrator, any relevant acts of the debtor must be previously authorised by the same.

The debtor must also inform all other creditors of these procedures, in order to allow the same to participate in the same in case they wish so.

Upon the publication in the *Citius Site* of the beginning of the special procedures of revitalization, the creditors have 20 days to claim their credits, after which the interim insolvency administrator shall prepare a provisional list of creditors.

After a period of 5 business days for appeals, the parties will have a further period of two months to conclude the negotiations, which may be extended for one more month.

The interim insolvency administrator is responsible, among other functions, to monitor and guide the negotiations, and supervise the development and regularity of the works.

The debtor and its directors in law or in fact are jointly and civilly liable for damages caused to the creditors in case of lack or inaccuracy of the communications or information provided. Any legal actions to determine such liability will be autonomous in relation to the special procedures of revitalization.

During the negotiations inherent to these revitalization procedures, no other debt recovery actions can be started, and all similar pending procedures will be suspended. Unless the recovery plan foresees otherwise, such procedures will be terminated with the approval of the recovery plan.

Upon the conclusion of the negotiations and approval of the recovery plan, the latter must be signed by all the parties involved, and immediately sent to the Court for approval or refusal by the Judge. The Judge decision is binding on all creditors, even when they have not attended the negotiations.

If no agreement is reached with the negotiations and no plan is prepared, the negotiations procedures are terminated and the effects of the revitalization procedures are all extinguished. However, being the debtor already in an insolvency situation, upon the termination of these procedures the Judge shall declare the insolvency, within 3 business days as of the communication regarding the inability of the creditors to reach an agreement.

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4 - NEW COMPETITION LEGAL REGIME APPLICABLE IN PORTUGAL

Law nr 19/2012 that foresees the new competition legal regime applicable in Portugal, and revokes Law nr 18/2003, June 11, was published on May 8, 2012.

The main amendments introduced by this new law are the following:

1. Alteration of the thresholds for the notification of concentration operations;
2. Enlargement of liability for infractions;
3. Attribution of powers to a Specialised Court to settle the appeals of the Competition Authority decisions;
4. Effects of the appeals of the Competition Authority decisions;
5. Reinforcement of the investigation powers;
6. Waiving or reduction of fines.

1. ALTERATION OF THE THRESHOLDS FOR THE NOTIFICATION OF CONCENTRATION OPERATIONS

Prior notification of concentration operations is mandatory whenever one of the following limits is met:

a) Creation or reinforcement of a market share equal or higher than 50% in the national market of a certain good or service, or in a substantial part of the same (the previous threshold was 30%);

b) Creation or reinforcement of a market share equal or higher than 30% and inferior to 50% in the national market of a certain good or service, or in a substantial part of the same, as long as the turnover attained individually in Portugal, during the last year, by at least two of the companies participating in the concentration operation, is higher than five millions euros, not including directly related taxes;

c) The set of the companies involved in the concentration has attained in Portugal, within the last year, a turnover higher than 100 millions euros (the previous limit was 150 millions euros), net of taxes directly related, as long as the turnover attained individually in Portugal, by at least two of such companies, is higher than 5 millions euros (the previous limit was 2 millions euros).

2. ENLARGEMENT OF LIABILITY FOR INFRACTIONS

Besides the administration corporate bodies' members, the persons responsible for the direction or auditing of the activity areas in which a violation is performed are also personally liable or, when knowing or having the duty to know the infraction, the same have not adopted the necessary measures to stop the same.

Unless a larger penalty is applicable, the fine applicable to these responsible persons may reach 10% of the relevant annual remuneration earned in relation to the performance of their functions in the company, in the last full year during which the infraction has occurred.

3. ATTRIBUTION OF POWERS TO A SPECIALISED COURT TO SETTLE THE APPEALS OF THE COMPETITION AUTHORITY DECISIONS

The appeals of the Competition Authority decisions are now settled by the Competition, Regulation and Supervision Court. This Court, recently created, has powers to settle the appeals, revise and execute the decisions, orders and other measures within procedures regarding infractions related to the Competition Authority, ICP-Anacom, Bank of Portugal, Securities Market Committee, Insurance Institute of Portugal and Regulatory Authority for the Media.

4. EFFECTS OF THE APPEALS OF THE COMPETITION AUTHORITY DECISIONS

The appeal does no longer suspend the effectiveness of decisions except in relation to decisions applying measures with a structural nature and when the decision addressee requests the suspension of the decision alleging that the execution shall cause him a considerable damage, and to such end pays a guarantee within the deadline determined by the court.

5. REINFORCEMENT OF THE INVESTIGATION POWERS

Within the scope of the inspections and audits performed by the Competition Authority, its employees may have ac-

cess to all premises, lands and means of transportation of the companies or companies associations, examine books or other records despite of its supporting mean, obtain copies or extracts of the controlled documents, request to any legal representative, employee or collaborator clarifications regarding facts or documents.

6. WAIVING OR REDUCTION OF FINES

The possibility of reducing or waiving fines to a company involved in a concerted practice is foreseen, as long as such company is the first to supply elements of proof and information and/or as long as other legal requisites are fulfilled.

The same possibility is extendable to the members of the administration corporate bodies, as well as to the responsible for the direction or auditing of the activity areas within which the infraction took place, as long as the same cooperate in full and in a continuous manner with the Competition Authority.

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