

## Portugal

# Rescue procedures in insolvency

<b>Phase</b>	Insolvency and business recovery code; Decree Law 53/2004 of 18 March, amended by Law 6/2018 of 22 February - establishes the business recovery mediator and by Law 8/2018 of 2 March - Extrajudicial recovery procedure
<b>Native name</b>	Código da Insolvência e da Recuperação de Empresas (CIRE); Decreto-Lei 53/2004 de 18 de março, alterado pela Lei 6/2018 de 22 de Fevereiro - estabelece o estatuto do mediador de recuperação de empresas e pela Lei 8/2018 de 2 de Março - Regime Extrajudicial de Recuperação de Empresas
<b>Type</b>	Rescue procedures in insolvency
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## Article

17, 215 and 216 of CIRE; Law 6/2018 of 22 February - whole regulation; Law 8/2018 of 2 March - whole regulation

## Description

The special process of revitalisation (PER) can be started by a company in financial difficulties or facing imminent insolvency. The special revitalisation process is intended to allow the debtor to prove that, even if in a difficult economic situation or imminent insolvency, there are ways in which the business could be recovered. If permission is given, the company can establish negotiations with its creditors in order to plan a restructuring process.

The special process of revitalisation begins with a written declaration to enter into negotiations with at least one creditor, leading to the adoption of a recovery plan.

The debtor must immediately report to the court that the company wants to start restructuring negotiations. The debtor must make available a list of its creditors, its

accounts' documents and remaining information and documentation as required under the relevant provisions of the insolvency and business recovery code (CIRE).

Once the rescue procedure starts, the enforcement and insolvency proceedings that may have been brought against the debtor are suspended (insofar as no decision of insolvency has been declared by the court). In addition, it is not possible to bring enforcement and insolvency proceedings against the debtor for as long as the rescue procedure is running.

Once the application is received, the court immediately appoints a provisional judicial administrator and issues a judicial order which is published in the litigation portal run by the government which is known as 'Citius', and, by registered letter, notified to the debtor and to the creditors. The creditors who did not sign the negotiation agreement initially submitted to the court are granted 20 days as of the publication of the said judicial order to claim their credits and the provisional judicial administrator must prepare a provisory list of credits within 5 days. This list is published in Citius and may be challenged within 5 business days, after which the judge has another 5 business days to decide on the challenges submitted.

Once the term for challenging the credits elapses, the debtor and the creditors have two months to conclude the negotiations. This deadline may be extended for an additional one month by prior written agreement between the appointed provisional judicial administrator and the debtor. The provisional judicial administrator participates in the negotiations, guiding and supervising the works and their adequacy, and must ensure that the parties do not adopt any actions that delay the negotiation process or that are useless or prejudicial for its progression.

The recovery plan must be approved by the same majority required for the approval of the insolvency plan: the creditors who represent at least 1/3 of the total receivables with voting rights must participate in the approval and the approval votes must represent more than 2/3 of the total of the votes cast and more than 1/2 of the votes cast corresponding to non subordinated credits, abstentions not being considered.

The judge must validate the approval of the plan within 10 days as of receiving the documentation evidencing the respective approval. The validation of the approval may be refused in accordance to the same rules applicable to the insolvency procedure.

#### Extrajudicial Recovery Procedure (Law 8/2018 of 2 March)

If creditors represent at least 15% of the debtor non-subordinated debt, they may, together with the debtor, subject negotiations to a extrajudicial recovery procedure (Regime Extrajudicial de Recuperação de Empresas - RERE), signing for this purpose a memorandum of negotiation. With RERE, the intervention of IAPMEI in the

negotiation process is no longer required. The negotiations may now take place between the debtor and the creditors. However, a business recovery mediator ([Law 6/2018 of 22 February](#)) can be appointed to provide assistance to the debtor, particularly in the negotiations with the creditor. A declaration from a statutory auditor certifying that the debtor is not the subject of insolvency proceedings, on the date the agreement is executed, and confirming the total liabilities of the debtor, has to be attached to the restructuring agreement. If the restructuring agreement is currently or eventually subscribed by creditors that represent the majorities required by the special revitalisation procedure, the debtor has the possibility of initiating this proceedings in order to obtain the restructuring agreement's approval by the court.

The extrajudicial recovery procedure (Regime Extrajudicial de Recuperação de Empresas, RERE) is a mechanism that replaces the out-of-court business recovery system (Sistema de Recuperação de Empresas por Via Extrajudicial, SIREVE) and seeks to enable entities in a difficult financial situation or that are in a situation of imminent insolvency to negotiate a restructuring agreement with their creditors, in order to guarantee their economic recovery. This procedure is part of the 'Capitalizar Programme'.

RERE applies to all entities that may be subject to insolvency procedures (with the exception of natural persons who are not holders of companies), thus having a wider scope of application than SIREVE, which only applied to companies and to sole traders with organised accounts. Exceptionally, and only during the first 18 months of RERE implementation, entities that are already in a situation of insolvency may also make use of these legal regime.

## Commentary

Revitalisation processes have been available since 2012. For revitalisation data, visit [Justice Statistics.](#), which also provides data on bankruptcies. The RERE procedure allows the negotiations to take place between the debtor and the creditors, since the intervention of the Agency for Competitiveness and Innovation (IAPMEI) in the negotiation process is no longer required.

## Additional metadata

<b>Cost covered by</b>	None
<b>Involved actors other than national government</b>	Other Court

<b>Involvement (others)</b>	Court or business recovery mediator, creditors
<b>Thresholds</b>	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

## Sources

- [Special revitalisation process](#)~~~ [Insolvency and business recovery code \(Código da Insolvência e da Recuperação de Empresas -CIRE\)](#)~~~ [Law 8/2018 of 2 March](#)~~~ [Law 6/2018 22 February](#)~~~ [Insolvency statistics 2007-2023 - 1st quarter](#)~~~ [Dados da Justiça - Processos de falência, insolvência e recuperação de empresas](#)~~~

## Citation

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