Preliminary remark:

The legal basis of the information provided in this file is laid down in the Código da Insolvência e da Recuperação de Empresas (Code of Business Insolvency and Recovery) [hereinafter referred to by its Portuguese abbreviation, CIRE], approved by Decree-Law No 53/2004 of 18 March 2004 and most recently amended by Decree-Law No 57/2022 of 25 August 2022 .

1 Who may insolvency proceedings be brought against?

Insolvency proceedings may be opened against any natural or legal person, and against the estate in abeyance; associations having no legal personality and special commissions; civil law companies; commercial companies or civil law companies having a commercial form up to the date of final registration of the contract by which they are incorporated cooperatives, prior to the registration of their incorporation; individual limited liability entities; and any other autonomous assets (Article 2(1)(a) to (h) CIRE).

Public legal persons and corporate public entities; insurance undertakings, credit institutions, financial corporations, investment firms providing services that entail holding funds or securities belonging to third parties and collective investment undertakings may not be subject to insolvency proceedings since they are incompatible with the special arrangements governing such entities (Article 2(2) CIRE).

2 What are the conditions for opening insolvency proceedings?

When debtors are unable to fulfil all of their outstanding obligations (Article 3 CIRE).

The purpose of insolvency proceedings is to satisfy creditors with the procedure provided for in an insolvency plan (in the absence of which, the liquidation of the insolvent debtor's assets) and to distribute the proceeds accrued by the creditors (Article 1(1) CIRE).

Where a debtor undertaking is experiencing economic difficulties or is at imminent risk of insolvency, it may ask the court to launch a **special revitalisation procedure** (Articles 17-A to 17-I CIRE).

Where any other type of debtor is experiencing economic difficulties or is at imminent risk of insolvency, it may ask the court to launch a **special payment agreement procedure** (Articles 222-A to 222-J).

3 Which assets form part of the insolvency estate? How are the assets treated which are acquired by or which devolve on the debtor after the opening of the insolvency proceedings?

The insolvency estate is made up of all the debtor’s assets at the time of the declaration of insolvency.

Any property-related assets and rights **acquired during the course of the insolvency proceedings** - for example, property rights, rights of use, retention of title, etc. (Article 46(1) CIRE) - that can be converted into money also form part of the insolvency estate.

In cases where the insolvent party is married and has joint ownership of assets, the insolvency estate also includes the marital portion of the couple’s assets.

4 What powers do the debtor and the insolvency practitioner have, respectively?

Under the insolvency judgment, in cases where an undertaking is included in the insolvency, **the debtor may themselves be responsible for handling the insolvency estate** (Article 223 CIRE) provided that the requirements laid down in Article 224 CIRE have been met.

The insolvency administrator, appointed by the judge (Article 52(1) CIRE), handles, and plays a central role in, insolvency proceedings.

The insolvency administrator is responsible for, inter alia:

- preparing for the payment of the insolvent party’s debts to the insolvency estate; and - overseeing the sale of assets forming part of the insolvency estate in order to distribute the proceeds to creditors and to ensure that the insolvent party’s rights are preserved and enjoyed, and that the undertaking does not cease operations; and where possible preventing the economic situation from becoming any worse (Article 55(1) CIRE);

5 Under which conditions may set-offs be invoked?

Claims against the insolvent estate may be set off against debts to the said insolvent estate, should the requirements of Article 99 CIRE be met.

This arrangement allows insolvency creditors to set off their claim against debts owed to the insolvency estate, so that the reciprocal claims can be wiped out. Thus, the creditor’s claim is recovered without their debt having to be paid to the estate, thereby avoiding the pool of concurrent creditors.

This is a means of facilitating payment and preventing cross-payment.

In addition to the general rule laid down in Article 99 of CIRE, there are other legal provisions that provide for the possibility of set-offs, namely Articles 102(3)(e), 154(1), 242(3) and 286 CIRE.

6 What effect do insolvency proceedings have on current contracts the debtor is a party to?

The effects of insolvency on current contracts to which the debtor is party depend on the nature of the contract. They are set out in Articles 102 to 119 of CIRE.

As a rule, bilateral contracts (which give rise to obligations between both parties) **are performed in the same way**, and the terms agreed between the parties are maintained.

However, if, at the date of the declaration of insolvency, the contract has not been complied with in full, its implementation is suspended until the insolvency administrator has issued a statement regarding implementation or non-implementation (Article 102(2) CIRE). Where the insolvency administrator refuses to implement the contract, neither party is entitled to restitution of what they have already put in (Article 102(3) CIRE).

For example:

- **Sale and purchase agreement, with retention of title** (where the seller is the insolvent party): the other party may require them to perform the contract if the item has already been delivered to them at the time of the declaration of insolvency (Article 104(1) CIRE);
- **Promissory contract** (where the insolvent party is the promissory seller): performance of the contract cannot effectively be refused if the item has a history in favour of the promissory purchaser (i.e. where the promissory seller has delivered the keys to a particular property to the promissory purchaser) - Article 106(1) CIRE.

If the debtor has carried out acts detrimental to the insolvency estate (i.e. acts that diminish, hamper, impede or place at risk the satisfaction of creditors) in **the two years preceding the date of the declaration of insolvency**, they may be settled in accordance with the provisions of Article 120 et seq. CIRE.

7 What effect does an insolvency proceeding have on proceedings brought by individual creditors (with the exception of pending lawsuits)?

The declaration of insolvency leads, inter alia, to **the suspension of any enforcement proceedings or measures brought by insolvency creditors** that may affect the assets of the insolvency estate and prevents the instigation or pursuit of any enforcement proceeding brought by the insolvency creditors (Article 88 (1) CIRE): for example, if the insolvent party has an attachment against their earnings, this is suspended at the time of the insolvency declaration.

In turn, suspended actions are removed for the insolvent debtor, when they have been declared insolvent and once the insolvency proceedings are closed, by final apportionment or due to insufficient assets (Article 88(3) CIRE).

The declaration of insolvency results in all obligations of the insolvent party that are not subject to a suspensive condition becoming immediately payable (Article 91(1) CIRE).

The judgement of declaration of insolvency will lead to the suspension of all limitation and prescription periods which can be challenged by the debtor, during the course of proceedings (Article 100(1) CIRE).

8 What effect does an insolvency proceeding have on the continuation of lawsuits pending at the moment of the opening of the insolvency proceeding?

Once insolvency has been declared, all proceedings brought against the debtor and relating to the assets included in the insolvency estate may be attached to the insolvency proceedings, as requested by the insolvency administrator, citing procedural expediency (Article 85(1) of the CIRE). The insolvency administrator will therefore be responsible for standing in for the insolvent party in all actions, even without the consent of the opposing party (Article 85(3) CIRE).

9 What are the main features of the participation of the creditors in the insolvency proceeding?

Insolvency creditors actively participate in the proceedings and must lodge their claims **within 30 days**, the time limit set in the judgment (Articles 36(1)(j) and 128(1) CIRE).

Any holders of claims of a financial nature against the insolvent party or claims guaranteed by assets forming part of the insolvency estate and whose establishment predates the declaration are considered insolvency creditors.

From the date of the insolvency declaration onwards, **all payments must be made to creditors in the context of the insolvency proceedings**, which ensures that no enforcement action may be launched and pursued against the insolvency estate.

Creditors are therefore entitled to take part in the creditors' meeting in accordance with Article 72(1) CIRE.

Claims confer one vote per euro or fraction thereof if such claims have already been recognised by a final decision handed down in the attachment verifying and ranking the claims, or in a later verification measure, or when both of the conditions laid down in Article 73(1)(a) and (b) CIRE are met by the creditor.

10 In which manner may the insolvency practitioner use or dispose of assets of the estate?

The insolvency administrator may use or dispose of assets from the insolvent estate pursuant to Articles 149, 150, 157 and 158 CIRE.

The sale of the assets of the insolvency estate is an essential transaction for the satisfaction of claims. This is the responsibility of the insolvency administrator, who has freedom of choice in that regard.

After the insolvency judgment has become final and the creditors' meeting has been held to examine the report by the insolvency administrator, the latter sells all the assets seized for the insolvency estate, provided that the creditors have not opposed such a sale at the abovementioned meeting (Article 158(1) of the CIRE).

Creditors with a security in rem over the assets to be sold must have their say regarding the type of sale and must be informed about the base value set and the price of the proposed disposal; subject to certain requirements, they may propose that they themselves, or a third party, acquire the assets (Article 164 (2) and (3) CIRE).

The proceeds from the disposal of assets, excluding sums essential to day-to-day expenses, must be paid into a current account of the insolvency estate's management, with a credit institution chosen by the administrator (Articles 150 (6) and 167 (1) of the CIRE).

11 Which claims are to be lodged against the debtor's insolvency estate and how are claims arising after the opening of insolvency proceedings treated?

1. There are three types of insolvency claim:

i) secured and privileged;

ii) lower-ranking and

iii) common claims.

Secured claims are those enjoying collateral, including preferential rights, and incorporating capital and interest up to the value of the assets secured (Article 47(1) CIRE). There are, however, certain guarantees that are removed by a declaration of insolvency. The holders of such guarantees lose their status as secured creditors (Article 97 CIRE).

Privileged claims are those carrying general preferential rights over assets forming part of the insolvency estate, which may be movable and immovable property (Article 47(4)(a) CIRE).

Lower-ranking claims are those listed in Article 48 CIRE, 'except when they carry general or special preferential rights, or legal mortgages, that do not expire following the declaration of insolvency' (Article 47(4)(b) CIRE).

All other claims are referred to as **common claims** (Article 47(4)(c) CIRE).

12 What are the rules governing the lodging, verification and admission of claims?

Insolvency creditors, including the Public Prosecutor's Office, must - within the time limit laid down in the insolvency judgment - submit an application to have their claims verified. Such applications must be accompanied by any supporting documents they may have (Article 128(1) CIRE).

The rules applying to the submission, verification and admission of claims are laid down in Articles 128 to 140 CIRE.

13 What are the rules governing the distribution of proceeds? How are claims and the rights of creditors ranked?

The rules applicable to the payment of creditors provide for differences in treatment depending on whether claims are secured, privileged, common or lower-ranking, pursuant to Articles 172 to 184 CIRE.

Also provided for in these provisions are: the possibility of third-party debt payment being subject to subrogation; and arrangements applicable when there is joint liability of debtors.

14 What are the conditions for, and the effects of closure of insolvency proceedings (in particular by composition)?

Insolvency proceedings may be closed:

- after the final apportionment;
- after the judgment approving the insolvency plan;
- at the request of the debtor (provided the latter has ceased to be in a state of insolvency) - Article 231 CIRE;
- where the insolvency administrator concludes that the insolvency estate is insufficient to meet the debts – Article 232 CIRE.

Once insolvency proceedings are closed, all the effects of the insolvency declaration cease, and the debtor regains the right to dispose of their assets, which they may sell or give away. They are then free to manage their business and assets (Article 233(1) CIRE).

Most importantly, insolvency creditors no longer face restrictions on the exercise of their rights against the debtor, other than set out in insolvency or payment plans.
The conditions and the effects of closure of the insolvency proceedings are laid down in Articles 231 to 234 CIRE.

15 What are the creditors' rights after the closure of insolvency proceedings?

In principle, after closure of proceedings, insolvency creditors may exercise their rights against the debtor without any restrictions other that those set out in possible insolvency and payment plans and in Article 242(1) of CIRE.
To exercise their rights, the enforceable instrument will be the judgement approving the payment plan and the judgement verifying the claim or, if applicable, the decision handed down in a later verification action, together with the judgement approving the insolvency plan.
Article 242(1) of CIRE states that, in the event of exoneration of a natural person's liabilities, no enforcements will be allowed on the debtor's assets which are intended to meet insolvency claims during the assignment period.

16 Who is to bear the costs and expenses incurred in the insolvency proceedings?

The costs and the expenses of the insolvency proceedings are deemed to be debts of the insolvent estate (Article 51 CIRE).
Before paying any insolvency claims, **the insolvency administrator will deduct from the estate any assets or entitlements necessary to pay the costs and expenses of the proceedings** including those expected to arise before the closure of the proceedings.
The payment of the costs and expenses of proceedings is assigned in accordance with Article 172 CIRE.
In the event of exoneration of the natural person's liabilities, the trustee will use the sums received at the end of each year during the assignment period, firstly, to pay the costs and expenses of the proceedings, in accordance with Article 241 CIRE.

17 What are the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the general body of creditors?

Articles 120 to 127 CIRE provide for the possibility of resolving acts detrimental to the creditors' collective interests (acts which diminish, hamper, impede, place at risk or delay the satisfaction of the insolvency creditors), provided that the circumstances set out therein have been met.

Applicable legislation

Insolvency and Business Recovery Code (CIRE)
Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings
Code of Civil Procedure (Código de Processo Civil)

Warning: The content of this information file does not bind the contact point or the courts and does not preclude consultation of legislation in force or any amendments thereof. The legal provisions of the CIRE referred to above take into consideration the version of Decree-Law No 53/2004 of 18 March 2004, up to and including the revision enacted by Decree-Law No 57/2022 of 25 August 2022.

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