



RESTRUCTURING & FINANCIAL LITIGATION

DEBT RECOVERY IN CROSS-BORDER INSOLVENCY PROCEEDINGS

Regulation no. 2015/848 recognises that it is not practical to introduce insolvency proceedings with universal scope in the European Union.

Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on cross-border insolvency proceedings came into force on 26 June 2017.

This regulation establishes new measures aimed at making it easier to recover debts international insolvency proceedings. It introduces more effective mechanisms for corporate restructuring and for recovery of debts by creditors.

Regulation no. 2015/848 recognises that it is not practical to introduce insolvency proceedings with universal scope in the European Union. Therefore, it addresses the resolution of disputes about jurisdiction and rules in cross-border insolvency proceedings, and regulates the recognition of judgments issued in insolvency proceedings in Member States.

The main measures introduced by this legislation are:

- **Broadening the scope of application:** Regulation no. 2015/848 makes it possible for a set of more efficient national mechanisms for company restructuring to apply in all Member States, as the use of these mechanisms had been excluded in cross-border insolvency proceedings.
- **Prevention of abusive forum shopping:** the Regulation introduces judicial control by creating the notion of the “centre of main interest”, as the place in which the debtor usually carries on the administration of its interests, which is known to 3rd parties. The court will have to check whether the debtor relocated its activity shortly before applying for insolvency, in order to benefit from more flexible insolvency rules.
- **Greater possibilities to rescue businesses:** the Regulation places restrictions on “secondary proceedings”, in other words, proceedings opened by the courts in a country of the European Union other than the one where the company has its registered office. The aim of this measure is to make it easier to rescue businesses and they got the interests of domestic creditors.

■ **Group insolvency proceedings:** Regulation no. 2015/48 allows greater cooperation between insolvency practitioners and judicial bodies when the insolvency proceedings relate to two or more members a group of companies. In these cases, the insolvency practitioner appointed in the proceedings relating to one member of the group will cooperate with any other insolvency practitioner appointed in proceedings relating to other members of the same group.

■ **Interconnection of insolvency registers:** National insolvency registers will appear in a common database accessible at the level of the European Union, to be set up by the summer of 2019. This will make the process of obtaining information on insolvency proceedings in other Member States much more efficient.

In summary, the aim of Regulation no. 2015/848 is to bring greater dynamism to the restructuring of companies and to making investments, by providing greater legal certainty and eliminating procedural obstacles and, in the words of European Commissioner for Justice Vera Jourová, “supporting honest business people”.

In summary, the aim of Regulation no. 2015/848 is to bring greater dynamism to the restructuring of companies and to making investments, by providing greater legal certainty and eliminating procedural obstacles and, in the words of European Commissioner for Justice Vera Jourová, “supporting honest business people”.

This Informative Note is intended for general distribution to clients and colleagues and the information contained herein is provided as a general and abstract overview. It should not be used as a basis on which to make decisions and professional legal advice should be sought for specific cases. The contents of this Informative Note may not be reproduced, in whole or in part, without the express consent of the author. If you should require further information on this topic, please contact **Nuno Libano Monteiro** (nuno.libanomonteiro@plmj.pt) or **Francisco da Cunha Matos** (francisco.cunhamatos@plmj.pt).

 Iberian Law Firm of the Year
The Lawyer European Awards, 2015-2012

 Portuguese Law Firm of the Year
Who's Who Legal, 2016, 2015, 2011-2006
Chambers European Excellence Awards, 2014, 2012, 2009

 Top 50 - Most Innovative Law Firm in Continental Europe
Financial Times - Innovative Lawyers Awards, 2014-2011