**Portuguese Insolvency and Company Recovery Code**

Article 1

1 - Insolvency is a process of universal execution of assets which purpose is the satisfaction of creditors in the manner in the manner provided for in an insolvency plan, based, in particular, on the recovery of the company included in the insolvent estate, or, where this the liquidation of the assets of the insolvent debtor and the debtor's assets and the distribution of the proceeds to the creditors.

 2 - In a difficult economic situation, or in a situation of imminent insolvency, the company may apply to the court for the special revitalization procedure, in accordance with the provisions of articles 17-A to 17-J.

3 - In the case of a debtor of any other nature in economic economic difficulties or in a situation of imminent insolvency, the debtor may apply to the court for a special payment agreement procedure, provided for in articles 222-A to 222-J.

Article 2

1 - Insolvency proceedings may be initiated against:

a) Any natural or legal person;

b) An inheritance;

c) Associations without legal personality and special committees;

d) Civil corporations;

e) Commercial corporations and civil corporations in commercial form until the date of final registration of the contract by which they are constituted;

f) Cooperatives, prior to the registration of their incorporation;

g) Individual limited liability establishments;

h) Any other autonomous assets.

2 - The provisions of the previous paragraph are excepted:

a) Public legal persons and public business entities;

b) Insurance companies, credit institutions, financial companies, investment companies that provide services involving the holding of funds or securities of third parties and collective investment undertakings, insofar as being subject to insolvency proceedings is incompatible with the special regimes provided for such entities.

Article 3

1 - A debtor who is unable to meet his obligations as they fall due shall be considered insolvent.

2 - Legal persons and autonomous estates for whose debts no natural person is personally and unlimitedly liable, directly, or indirectly, are also regarded as insolvent when their liabilities are manifestly greater than their assets, assessed in accordance with the applicable accounting standards.

3 - The provisions of the previous paragraph shall cease to apply when assets exceed liabilities, assessed in accordance with the following rules:

a) Assets and liabilities shall include identifiable items, even if they are not included in the balance sheet, at their fair value;

b) When the debtor is the owner of a company, the valuation is based on the prospect of continuity or liquidation, whichever is more likely, but in any case, excluding the trespass item;

c) Liabilities do not include debts that will only be paid out of distributable funds or remaining assets after the rights of the debtor's other creditors have been satisfied or safeguarded.

4 - A situation of current insolvency is equivalent to one that is merely imminent, if the debtor files for insolvency.

Article 5

For the purposes of this Code, a company is any organization of capital and labour aimed at carrying out any economic activity.

Article 6

1 - For the purposes of this Code, the following are considered managers/directors:

a) If the debtor is not a natural person, those who are responsible for the management or the liquidation of the organization or assets in question, namely the members of the corporate body that is competent for this purpose;

b) If the debtor is a natural person, their legal representatives, and representatives with general powers of management.

2 - For the purposes of this Code, persons who, under the terms of the law, are personally and unlimitedly liable for all the insolvent's debts, even if on a subsidiary basis, are deemed to be legally responsible for the company.

Article 18

1 - The debtor must request a declaration of insolvency within 30 days of becoming aware of the insolvency situation, as described in article 3(1), or the date on which he should have become aware of it.

2 - The following are exempt from the duty to file for insolvency:

a) Companies that have filed for special revitalization proceedings during the period of suspension of enforcement measures provided for in Article 17-E(1) and (2);

b) Natural persons who do not own a company on the date they become insolvent.

3 - When the debtor is the owner of a company, knowledge of the insolvency situation shall be unquestionably presumed at least three months after the generalized breach of obligations of any of the types referred to in Article 20(1)(g).

Article 19

If the debtor is not a capable natural person, the initiative to file for insolvency lies with the corporate body responsible for its administration or, if this is not the case, with any of its directors.

Article 20

1 - The declaration of insolvency of a debtor may be requested by whoever is legally responsible for his debts, by any creditor, even if conditional and whatever the nature of his claim, or by the Public Prosecutor's Office, representing the entities whose interests are legally entrusted to it, if any of the following facts are verified:

a) General suspension of payment of overdue obligations;

b) Non-fulfillment of one or more obligations which, due to their amount or the circumstances of the non-fulfillment, make it impossible for the debtor to meet all his obligations on time;

c) The company owner or the debtor's directors fleeing or abandoning the place where the company has its headquarters or carries out its main activity, in connection with the debtor's lack of solvency and without appointing a suitable replacement;

d) Dissipation, abandonment, hasty or ruinous liquidation of assets and fictitious constitution of claims;

e) Insufficiency of attachable assets for payment of the creditor's claim, as verified in enforcement proceedings brought against the debtor;

f) Failure to comply with obligations set out in an insolvency plan or payment plan, under the conditions set out in Article 218(1)(a) and (2);

g) Generalized non-compliance, in the last six months, with debts of any of the following types:

*i*) Tax;

*ii*) Social security contributions;

*iii*) Debts arising from an employment contract, or from the breach or termination of this contract;

*iv*) Rents from any type of lease, including financial leases, installments of the purchase price or loans guaranteed by the respective mortgage, in relation to the place where the debtor carries out his business or has his registered office or residence;

h) If the debtor is one of the entities referred to in Article 3(2), there is a clear excess of liabilities over assets according to the last approved balance sheet, or a delay of more than nine months in approving and filing the accounts, if legally obligated to do so.

2 - The provisions of the previous paragraph are without prejudice to the possibility of public entities being represented under the terms of article 13.

Article 47

1 - Once insolvency has been declared, all holders of claims of a patrimonial nature against the insolvent person, or guaranteed by assets forming part of the insolvent estate, whose grounds precede the date of that declaration, are considered creditors of the insolvency, regardless of their nationality and domicile.

2 - The claims referred to in the previous paragraph, as well as those equivalent to them, and the debts corresponding to them, are referred to in this Code as insolvency claims and insolvency debts, respectively.

3 - Holders of insolvency claims on the date of the declaration of insolvency are treated in the same way as those who show that they have acquired them during the proceedings.

4 - For the purposes of this Code, insolvency claims are:

a) 'Secured' and 'privileged' claims benefiting, respectively, from in rem guarantees, including special credit privileges, and general credit privileges over assets forming part of the insolvent estate, up to the amount corresponding to the value of the assets subject to the guarantees or general privileges, taking into account any prevailing encumbrances;

b) 'Subordinated' the claims listed in the following article, except when they benefit from general or special credit privileges or legal mortgages that are not extinguished by the declaration of insolvency;

c) 'Common' other claims.

Article 48

Claims that meet the following requirements are considered subordinate and are ranked after the other insolvency claims:

a) Claims held by persons specially related to the debtor, provided that the special relationship already existed at the time of their constitution, and by those to whom they have been transferred in the two years prior to the start of the insolvency proceedings;

b) Interest on non-subordinated claims arising after the declaration of insolvency, with the exception of those covered by a guarantee in rem and general credit privileges, up to the value of the respective assets;

c) Claims whose subordination has been agreed by the parties;

d) Claims relating to gratuitous services provided by the debtor;

e) Insolvency claims which, as a result of the resolution for the benefit of the insolvent estate, result for the third party in bad faith;

f) Interest on subordinated claims arising after the declaration of insolvency;

g) Credits for shareholder loans.

Article 49

1 - The following are exclusively considered to be specially related to the natural person debtor:

a) His or her spouse and the persons from whom he or she has been divorced in the two years preceding the commencement of the insolvency proceedings;

b) The ascendants, descendants or siblings of the debtor or of any of the persons referred to in the previous paragraph;

c) Spouses of ascendants, descendants or siblings of the debtor;

d) Persons who have habitually lived with the debtor on a joint basis for a period of two years prior to the start of the insolvency proceedings.

2 - The following are exclusively considered to be specially related to the debtor as a legal person:

a) Partners, associates or members who are legally liable for its debts, and persons who have had this status in the two years prior to the start of insolvency proceedings;

b) Persons who, where applicable, have been in a control or group relationship with the insolvent company, under the terms of article 21 of the Securities Code, during the two years prior to the start of the insolvency proceedings;

c) The debtor's directors, in law or in fact, and those who have been directors at any time in the two years prior to the start of the insolvency proceedings;

d) Persons related to any of those mentioned in the preceding paragraphs in any of the ways referred to in paragraph 1.

3 - In cases where the insolvency concerns only autonomous assets, the respective owners and administrators, as well as those connected to them in any of the ways provided for in the preceding paragraphs, and also, in the case of a vacant inheritance, those connected to the author of the succession in any of the ways provided for in paragraph 1, on the date of the opening of the succession or within the previous two years, shall be considered specially related persons.

4 - For the purposes of this article, a privileged or secured creditor who appoints a natural person to administer the debtor shall not be considered a de facto administrator, provided that the latter does not have special powers to dispose of elements of the debtor's assets on their own.

Article 81

1 - Without prejudice to the provisions of Title X, the declaration of insolvency immediately deprives the insolvent, by himself or by his administrators, of the powers of administration and disposal of the assets comprising the insolvent estate, which shall be vested in the insolvency administrator.

2 - The debtor shall be prohibited from transferring income or disposing of future assets that may be seized, regardless of their nature, even in the case of income he obtains or assets he acquires after the proceedings have been closed.

3 - Limitations on the debtor's power of disposal established by judicial or administrative decision, or imposed by law only in favor of specific persons, shall not apply to the insolvency administrator.

4 - The insolvency administrator shall represent the debtor for all purposes of a patrimonial nature that are of interest to the insolvency.

5 - Representation does not extend to intervention by the debtor within the scope of the insolvency proceedings themselves, their incidents and appendices, unless expressly provided otherwise.

6 - Acts carried out by the insolvent in breach of the provisions of the preceding paragraphs shall be ineffective, and the insolvent estate shall be liable for the restitution of what has been provided to it only in accordance with the rules of unjust enrichment, unless such acts cumulatively:

a) Were entered into for consideration with bona fide third parties prior to the registration of the judgment declaring insolvency carried out pursuant to Article 38(2) or (3), as the case may be;

b) They are not of any of the types referred to in Article 121(1).

7 - Payments of debts to the estate made to the insolvent after the declaration of insolvency will only be released if they were made in good faith on a date prior to the registration of the judgment, or if it is shown that the respective amount has actually entered the insolvent estate.

8 - The following rules shall apply to acts carried out by the insolvent person after the declaration of insolvency which do not contravene the provisions of paragraph 1:

a) Only the insolvent's assets that are not part of the insolvency estate shall be liable for the insolvent's debts;

b) The provision made to the insolvent extinguishes the obligation of the counterparty;

c) The counterparty may oppose to the estate any means of defense it is entitled to invoke against the insolvent.

Article 82

1 - The debtor's governing bodies shall remain in operation after the declaration of insolvency and their members shall not be remunerated, except in the case provided for in article 227.

2 - The members of the corporate bodies may resign as soon as they file their annual accounts with reference to the date of the liquidation decision in insolvency proceedings.

3 - During the pendency of insolvency proceedings, the insolvency administrator is exclusively entitled to bring and enforce:

a) Actions for liability that are legally due, in favor of the debtor itself, against the founders, de jure and de facto administrators, members of the debtor's supervisory body and partners, associates or members, regardless of the agreement of the debtor or its governing bodies, partners, associates or members;

b) Actions aimed at compensating the losses caused to the generality of insolvency creditors by the reduction in the assets of the insolvent estate, both before and after the declaration of insolvency;

c) Actions against those legally responsible for the insolvent's debts.

4 - The insolvency administrator is solely responsible for demanding deferred capital contributions and outstanding ancillary payments from the debtor's partners, associates or members as soon as he deems it appropriate, regardless of the due dates that have been stipulated, bringing any necessary actions to this end.

5 - Any action brought against the insolvency administrator for the purpose set out in paragraph 3(b) may only be brought by a successor administrator.

6 - The actions referred to in paragraphs 3 to 5 shall be joined to the insolvency proceedings.

Article 83

1 - The insolvent debtor is obliged to:

a) Provide all information relevant to the proceedings that is requested of him by the insolvency administrator, the creditors' meeting, the creditors' committee or the court;

b) Appear in person before the court, whenever this is ordered by the judge or the insolvency administrator, except in the event of legitimate impediment or express permission to be represented by a representative;

c) Provide any assistance requested by the insolvency administrator for the purposes of carrying out his duties.

2 - The judge shall order the debtor who has failed to appear without justification to appear in custody, without prejudice to the applicable fine.

3 - The refusal to provide information or cooperate is freely assessed by the judge, namely for the purpose of classifying the insolvency as culpable.

4 - The provisions of the previous paragraphs shall apply to the debtor's directors and members of its supervisory body, if applicable, as well as to persons who have held these positions within the two years prior to the start of the insolvency proceedings.

5 - The provisions of points a) and b) of paragraph 1 and paragraph 2 shall also apply to the debtor's employees and service providers, as well as to persons who have been such employees and service providers within the two years prior to the start of the insolvency proceedings.

Article 185

Insolvency is classified as culpable or fortuitous, but the classification attributed is not binding for the purposes of deciding criminal cases or actions referred to in Article 82(3).

Article 186

1 - Insolvency is culpable when the situation has been created or aggravated as a result of the willful misconduct or serious misconduct of the debtor or its directors, in law or in fact, in the three years prior to the commencement of insolvency proceedings.

2 - The insolvency of a debtor who is not a natural person is always considered to be culpable when its directors, in law or in fact, have:

a) Destroyed, damaged, rendered useless, concealed or caused to disappear, in whole or in considerable part, the debtor's assets;

b) Artificially created or aggravated liabilities or losses, or reduced profits, in particular by causing the debtor to enter into ruinous transactions for his own benefit or for that of persons specially connected with him;

c) Purchased goods on credit, reselling them or delivering them in payment at a price appreciably lower than the current price, before the obligation has been satisfied;

d) Disposed of the debtor's assets for personal gain or for the benefit of third parties;

e) Carried on an activity for personal gain or for the benefit of third parties and to the detriment of the company, under cover of the company's legal personality, if applicable;

f) Making use of the debtor's credit or assets contrary to the debtor's interests, for their own personal benefit or that of a third party, in particular to favor another company in which they have a direct or indirect interest;

g) Pursued, in their personal interest or that of a third party, a loss-making operation, even though they knew or ought to have known that this would very likely lead to insolvency;

h) Substantially failed to comply with the obligation to keep organized accounts, kept fictitious accounts or double-entry accounts or committed an irregularity which significantly impaired the understanding of the debtor's assets and financial situation;

i) Repeatedly failed to comply with their filing and cooperation obligations under article 83 until the date on which the opinion referred to in article 188(6) is drawn up.

3 - Serious fault shall only be presumed when the directors, in law or in fact, of the debtor who is not a natural person have failed to comply:

a) The duty to request a declaration of insolvency;

b) The obligation to draw up annual accounts within the legal time limit, to submit them to due inspection or to file them with the commercial registry office.

4 - The provisions of paragraphs 2 and 3 shall apply, with the necessary adaptations, to the actions of an insolvent natural person and its directors, where the diversity of situations does not prevent this.

5 - If the insolvent natural person is not obliged to file for insolvency, the insolvency shall not be considered culpable by virtue of the mere omission or delay in filing, even if this causes a worsening of the insolvent's economic situation.

Article 189

1 - The judgment shall classify insolvency as culpable or fortuitous.

2 - In the judgment classifying the insolvency as culpable, the judge must:

a) Identify the persons, namely administrators, whether de jure or de facto, chartered accountants and statutory auditors, affected by the classification, establishing, where appropriate, the respective degree of guilt;

b) Decree that the persons affected are disqualified from managing third party assets for a period of between 2 and 10 years;

c) Declare such persons disqualified from exercising trade for a period of between 2 and 10 years, as well as from holding any position as a board member of a commercial or civil company, private economic association or foundation, public company or cooperative;

d) Order the forfeiture of any claims against the insolvency or the insolvent estate held by the persons affected by the qualification and order them to return the assets or rights already received in payment of those claims.

e) Order the persons affected to compensate the creditors of the debtor declared insolvent up to the maximum amount of the unsatisfied claims, taking into account the strength of their respective assets, such liability being joint and several between all those affected.

3 - Disqualification from exercising trade and disqualification from administering other people's property shall be registered ex officio at the civil registry office, as well as, when the person affected is a sole trader, at the commercial registry office, on the basis of electronic or telematic communication from the registry office, accompanied by an extract from the judgment.

4 - When applying the provisions of point e) of paragraph 2, the judge must set the amount of compensation due or, if this is not possible because the court does not have the necessary elements to calculate the amount of damage suffered, the criteria to be used for its quantification, to be carried out in liquidation of the judgment.