

New pre-enforcement out-of-court procedure

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The Portuguese Official Journal (*Diário da República*) published last 30 May Act no. 32/2014, approving the new pre-enforcement out-of-court procedure.

The above referred procedure will come into force on 1st September 2014 and will be available to creditors with enforceable instruments that may be relied on in summary enforcement proceedings (judgments, orders for payment and extrajudicial instruments regarding overdue pecuniary obligations).

Such procedure is optional and is designed to enable the creditor to find out whether the debtor has any seizable assets before making an application for enforcement proceedings.

The tracing of seizable assets may be specifically requested by the creditor to the enforcement agent or officer, through an IT platform of the Ministry of Justice that will be created for this purpose.

The enforcement agent will then provide a report on the findings of the inquiry that has been carried out, mentioning in particular:

- a) The existence of seizable assets or, instead, the fact that no seizable assets have been identified;
- b) If the debtor is mentioned in any public list of debtors;
- c) If the debtor was held insolvent;
- d) The fact that the debtor has died or, where a legal person, has been wound up or liquidated; and

- e) If the debtor is a party (as judgment creditor or as judgment debtor) in any pending enforcement proceedings.

Once notified of the enforcement agent's report, the creditor is entitled, within a 30-day period, to request (i) this procedure be carried on as enforcement proceedings or (ii) in the event of no seizable assets being identified, notice to the debtor to pay the amount owed, to conclude a settlement, to identify seizable assets or to file an objection to the procedure (applying, with the necessary changes, the rules of the Portuguese Code of Civil Procedure on the objection to enforcement proceedings, particularly, the grounds or reasons for such objection).

In the first scenario – carrying on this procedure as enforcement proceedings – a repetition of the steps taken to identify seizable assets is dispensed with; however, the enforcement agent's report must be submitted along with the application for enforcement proceedings.

In the second scenario, if the debtor does not pay the amount owed, does not conclude a settlement, does not identify seizable assets or file an objection to the procedure, the enforcement agent shall include the debtor in the public list of debtors, within a 30-day period. In addition, the creditor is entitled to request a bad debt electronic certificate issued by the enforcement agent, the debt being regarded as uncollectible for tax purposes and communicated electronically to the tax administration.

The enforcement agent and the entities involved in this pre-enforcement out-of-court procedure will

be paid in accordance with the terms of the law that approves the procedure.

Throughout the procedure here discussed, creditors are provided with reliable information

regarding the existence of assets and the debtor's solvency, which allows them to anticipate a successful recovery of their claims and to make use of the most suitable judicial means for such purpose.

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