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COMMISSION FOR THE EFFICIENCY OF ENFORCEMENT PROCEDURES

INTERNATIONAL CONFERENCE PROMOTE EFFICIENCY OF ENFORCEMENT PROCEDURES

*THE ROLE OF FREQUENT LITIGANT IN THE  
PORTUGUESE JUDICIAL SYSTEM*

INÊS CAEIROS

MEMBER OF THE EXECUTIVE BOARD  
OF THE COMMISSION FOR THE EFFICIENCY OF THE ENFORCEMENT PROCEDURES

SUPERIOR INSTITUTE OF POLITICAL AND SOCIAL SCIENCES – LISBON UNIVERSITY

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# SUMMARY

1. **THE IMPACT OF FREQUENT LITIGANTS IN COMMON PORTUGUESE JUDICIAL SYSTEM**
  - THE FREQUENT LITIGANT / CREDITOR
  - THE NR. OF LEGAL ACTIONS BY FREQUENT LITIGANT
  - CREDIT AVERAGE AMOUNT
  
2. **THE AWARENESS AND EMPOWERMENT OF CREDITOR**
  - PREVENT THE GRANT OF IRRECOVERABLE DEBT
  - AVOID UNNECESSARY LEGAL ACTIONS
  - CONSULTATION:
    - ENFORCEMENT PROCEDURES PUBLIC LIST
    - DEBTOR'S BANKRUPCY SITUATION
    - ENFORCEMENT PROCEDURES INFORMATICS REGISTRY
  
3. **PRACTICAL / OPERATIONAL STEPS**
  
4. **POINTS OF REFLECTION: LEGISLATIVE POLICY MEASURES**

# 1. THE IMPACT OF FREQUENT LITIGANTS IN COMMON PORTUGUESE JUDICIAL SYSTEM

- ❑ FREQUENT LITIGANT IN 2009
- ❑ THE NR. OF LEGAL ACTIONS BY FREQUENT LITIGANT
- ❑ CREDIT AVERAGE AMOUNT BY FREQUENT LITIGANT

# 1. THE IMPACT OF FREQUENT LITIGANTS IN COMMON PORTUGUESE JUDICIAL SYSTEM

## THE FREQUENT LITIGANT IN ENFORCEMENT PROCEDURES BROUGHT IN 2009

- 31 FREQUENT LITIGANTS
- REPRESENTING 104.204 ENFORCEMENT PROCEDURES
- WHICH CORRESPONDS TO 30% OF THE TOTAL 2009 ENFORCEMENT PROCEDURES
- CORRESPOND TO 4 TYPES OF BUSINESSES

(Source: Ministry of Justice)

# 1. THE IMPACT OF FREQUENT LITIGANTS IN COMMON PORTUGUESE JUDICIAL SYSTEM

## THE FREQUENT LITIGANT IN 2009

- ESSENTIAL PUBLIC SERVICES PROVIDERS
- CREDIT INSTITUTIONS (BANKS)
- CONSUMER CREDIT FINANCIAL INSTITUTIONS
- INSURANCE COMPANIES

# 1. THE IMPACT OF FREQUENT LITIGANTS IN COMMON PORTUGUESE JUDICIAL SYSTEM

## THE NR. OF ENFORCEMENT PROCEDURES BY FREQUENT LITIGANT

- ❑ ESSENTIAL PUBLIC SERVICES PROVIDERS: > 20.000 PROCEDURES
- ❑ CREDIT INSTITUTIONS (BANKS): > 5.000 AND < 10.000 PROCEDURES
- ❑ CONSUMER CREDIT FINANCIAL INSTITUTIONS: > 5.000 AND < 10.000 PROCEDURES
- ❑ INSURANCE COMPANIES: > 1.000 AND < 5.000 PROCEDURES

# 1. THE IMPACT OF FREQUENT LITIGANTS IN COMMON PORTUGUESE JUDICIAL SYSTEM

## CREDIT AVERAGE AMOUNT

ACCORDING TO THE TYPE OF BUSINESS:

AMOUNT < € 3 000:

ESSENTIAL PUBLIC SERVICES PROVIDERS

PARTICULARLY THE NR. OF ACTIONS WITH AMOUNT < €500

AMOUNT > € 3.000 e < € 15.000:

INSURANCE COMPANIES

CONSUMER CREDIT FINANCIAL INSTITUTIONS

AMOUNT > € 15.000:

CREDIT INSTITUTIONS (BANKS)

CONSUMER CREDIT FINANCIAL INSTITUTIONS

# 1. THE IMPACT OF FREQUENT LITIGANTS IN COMMON PORTUGUESE JUDICIAL SYSTEM

## NR. OF ENFORCEMENT PROCEDURES AND AVERAGE AMOUNT BY FREQUENT LITIGANT

- ESSENTIAL PUBLIC SERVICES PROVIDERS:**
  - NR. OF ACTIONS: > 20.000 PROCEDURES**
  - AMOUNT: < € 3 000**
  
- CREDIT INSTITUTIONS (BANKS):**
  - NR. OF ACTIONS: > 5.000 AND < 10.000 PROCEDURES**
  - AMOUNT: > € 15.000**
  
- CONSUMER CREDIT FINANCIAL INSTITUTIONS:**
  - NR. OF ACTIONS: > 5.000 AND < 10.000 PROCEDURES**
  - AMOUNT: > € 3.000 AND < € 15.000**
  
- INSURANCE COMPANIES:**
  - NR. OF ACTIONS: > 1.000 AND < 5.000 PROCEDURES**
  - AMOUNT: > € 3.000 AND < € 15.000**

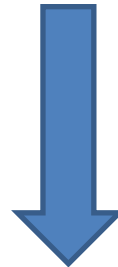
## 2. THE AWARENESS AND EMPOWERMENT OF CREDITOR

- PREVENT THE GRANT OF IRRECOVERABLE DEBT
- AVOID UNNECESSARY LITIGATION
- CONSULTATION:
  - ENFORCEMENT PROCEDURES PUBLIC LIST
  - DEBTOR'S BANKRUPTCY SITUATION
  - ENFORCEMENT PROCEDURES INFORMATICS  
REGISTRY

## 2. THE AWARENESS AND EMPOWERMENT OF CREDITOR

### THE IMPACT OF FREQUENT LITIGANTS IN COMMON PORTUGUESE JUDICIAL SYSTEM (30% ACTIONS)

- ❑ COURTS OVERFLOW
- ❑ INCREASED PENDING OF ACTIONS
- ❑ ACTIONS PROCESSING DELAYS



REPERCUSSIONS ON THE COUNTRY'S ECONOMIC DEVELOPMENT

## 2. THE AWARENESS AND EMPOWERMENT OF CREDITOR

**THE OPERATION OF AN EFFECTIVE JUDICIAL SYSTEM DEPENDS ESSENTIALLY ON THE PERFORMANCE OF THE CREDITOR**

- BEFORE GRANTING THE CREDIT**
- BEFORE THE ESTABLISHMENT OF ENFORCEMENT PROCEDURE**
- DURING ENFORCEMENT PROCEDURE**

**THE CREDITOR HAS A DUTY NOT TO INITIATE UNNECESSARY ENFORCEMENT PROCEDURES**

## 2. THE AWARENESS AND EMPOWERMENT OF CREDITOR

**HOW TO AVOID UNVIABLE ENFORCEMENT PROCEDURES AND DETRIMENTAL TO THE PROPER COURSE OF OTHER PROCEDURES?**

BEFORE GRANTING THE CREDIT AND ESTABLISHMENT OF ENFORCEMENT PROCEDURES:

STEP 1 – CONSULTATION OF THE ENFORCEMENT PROCEDURES PUBLIC LIST

<http://www.citius.mj.pt/Portal/execucoes/ListaPublicaExecucoes.aspx>

- PUBLIC ACCESS – FREE ACCESS
- CONTAINS ENFORCEMENT PROCEDURES EXTINGUISHED BY
  - PARTIAL PAYMENT OF DEBT
  - LACK OF ASSETS

UP TO 16/06/2010 – 1322 REGISTERED DEBTORS

<http://www.cpee.pt>

## 2. THE AWARENESS AND EMPOWERMENT OF CREDITOR

### CREDITOR:

- ❑ IF BEFORE GRANTING CREDIT, THE BORROWER HAS ENTERED THE ENFORCEMENT PROCEDURES PUBLIC LIST OR THE ENFORCEMENT PROCEDURES INFORMATICS REGISTRY CARRIED OUT WITHOUT GOODS SEIZED:
  - ACCOUNTABILITY OF THE CREDITOR FOR GRANTING HIGH RISK IRRECOVERABLE DEBT
  - THE PUBLIC LIST OF ENFORCEMENT PROCEDURES WORKS AS A STRONG DETERRENT TO INFRINGEMENT, BUT ALSO AS A WARNING TO THE CREDITOR, IDENTIFYING WHO NO LONGER MEETS THEIR RESPONSIBILITIES
  
- ❑ IF BEFORE TAKING ENFORCEMENT PROCEDURES THE DEBTOR WAS ALREADY INCLUDED IN THE ENFORCEMENT PROCEDURES PUBLIC LIST CARRIED OUT WITHOUT ATTACHABLE ASSETS:
  - THE LENDER CAN PRINT FROM INTERNET THE ENFORCEMENT PROCEDURES PUBLIC LIST WHICH BORE THE NAME OF THE DEBTOR AND RECOVER VAT ON DEBTS UP TO € 8 000 (NO NEED TO BRING ENFORCEMENT PROCEDURE)

## 2. THE AWARENESS AND EMPOWERMENT OF CREDITOR

### CREDITOR:

- ❑ IF AFTER SETTING UP THE ENFORCEMENT PROCEDURE, THE DEBTOR CEASES TO HAVE ASSETS:
  - NOTIFICATION TO THE EXECUTED TO PAY WITHIN 30 DAYS OR JOIN A PAYMENT PLAN WITH THE AID OF AN ENTITY FULLY RECOGNIZED BY THE MINISTRY OF JUSTICE
  - IF WITHIN 30 DAYS THE EXECUTED DOES NOTHING – HE WILL BE INCLUDED IN THE ENFORCEMENT PROCEDURES PUBLIC LIST
- ❑ EXCLUSION FROM THE PUBLIC ENFORCEMENT ACTIONS LIST: RECORDS OVER FIVE YEARS OLD

## 2. THE AWARENESS AND EMPOWERMENT OF CREDITOR

### STEP 2 - QUERY THE STATE OF BANKRUPTCY OF THE DEBTOR / EXECUTED

<http://www.citius.mj.pt/Portal/consultas/ConsultasCire.aspx>

- PUBLIC ACCESS – FREE ACCESS
- CONTAINS INFORMATION REGARDING BANKRUPTCY DECLARATIONS

[\*http://www.cpee.pt\*](http://www.cpee.pt)

## 2. THE AWARENESS AND EMPOWERMENT OF CREDITOR

### STEP 3 - ENFORCEMENT PROCEDURES INFORMATICS REGISTRY

- FREE ACCESS FOR:
  - ENFORCEMENT AGENTS (THROUGH ELECTRONIC SOFTWARE SISAAE)
  - LAWYER (THROUGH ELECTRONIC SOFTWARE CITIUS)
  
- MANAGEMENT BY THE ENFORCEMENT AGENT THROUGH SISAAE: REGISTRATION, UPDATING, CORRECTION AND DISPOSAL
  
- CONTAINS THE LIST OF PENDING ENFORCEMENT PROCEDURES, SUSPENDED OR ENDED, AND THE LIST OF DEBTORS / EXECUTED THAT NO LONGER HAVE ASSETS TO BE SEIZED
  
- INFORMATION REGARDING DOCUMENTAL NOTIFICATION

### 3. PRACTICAL / OPERATIONAL STEPS

**THE CREDIT RECOVERY - LAST ACT OF A CHAIN THAT BEGINS WITH THE CREDIT ATTRIBUTION.**

**TO SOLVE A PROBLEM DOWNSTREAM, WE MUST PREVENT IT THE BEST WAY POSSIBLE, UPSTREAM.**

**HOW?**

**BY CREATING LEGISLATIVE MEASURES FOR A RESPONSIBLE CREDIT LENDING**

**RISK ANALYSIS**  **DEBT LEVEL FROM THE DEBTOR**

**CONTRACTUAL FORMS**  **TRADE POLICIES**

**GUARANTEES**  **CREDITOR EMPOWERMENT**

# 3. PRACTICAL / OPERATIONAL STEPS

- ❑ AWARENESS OF THE CREDITOR TO QUESTION THE VIABILITY OF CREDIT TO RECOVER
- ❑ EFFECTIVENESS OF GENERAL DETERRENCE: ACCESS TO INSIDE INFORMATION LEADS TO REAL SAVINGS IN THE RECOVERY OF OTHER DEBTS
- ❑ PAYMENT OF PHASE ONE OF THE EXECUTIVE PROCESS (AVERAGE OF € 150): WHETHER THERE ARE ECONOMIC SOLVENCY TO PROCEED WITH ENFORCEMENT PROCEDURE
- ❑ EXTINCTION OF ENFORCEMENT PROCEDURE : NO MORE COSTS



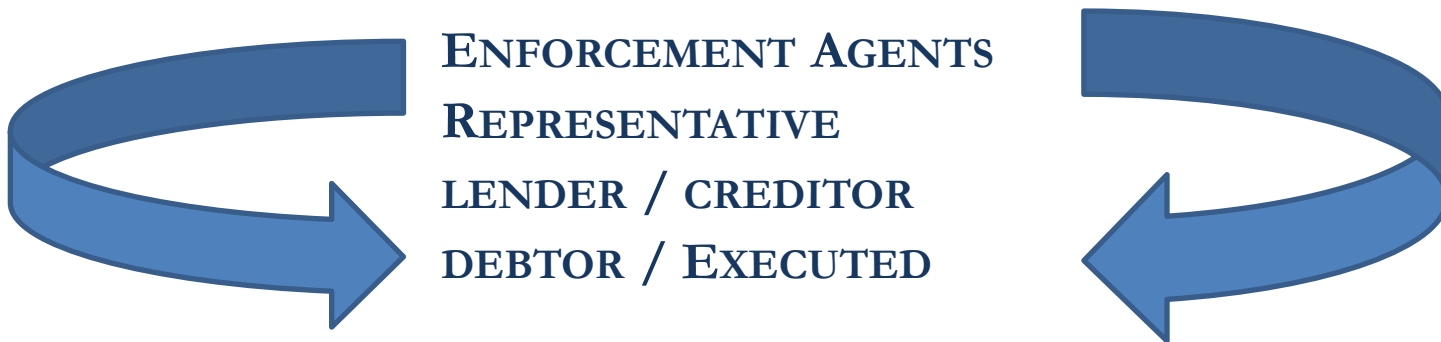
- ❑ CONTINUATION OF ACTION: INCREASED COST / INCREASED DIFFICULTY OF RECOVERY FOR THE LENDER
- ❑ LOW VALUE CLAIMS:
  - MINIMUM CHARGE CEILINGS
  - TRADE POLICY: TAKING AS LOSSES / BAD DEBTS
- ❑ CLAIMS OF GREATER VALUE: THE PREVENTIVE PSYCHOLOGICAL EFFECT / MORALIZATION OF THE DEBTOR

# 3. PRACTICAL / OPERATIONAL STEPS

- ❑ **RECOVERABILITY OF VAT WITHOUT NEEDING TO BRING ENFORCEMENT PROCEDURE - ART. 78. OF THE VAT CODE**
  - ❑ **FOR DEBTS >€ 750 AND <€ 8,000, INCLUDING VAT, WHEN THERE HAS BEEN AFFIXED IN THE PROCESS TO ENFORCEMENT OR RECOGNITION IN ORDER TO CONDEMN THE ACTION AND THE DEBTOR IS PRIVATE OR TAXPAYER WHO PERFORMS EXCLUSIVELY EXEMPT TRANSACTIONS THAT DO NOT CONFER THE RIGHT TO DEDUCT;**
  - ❑ **WHEN A COMPANY ENTERS INTO A CONTRACT WITH SOMEONE WHO DID NOT PAY, AND THE DEBTOR IS AN INDIVIDUAL OR A TAXABLE PERSON WHO:**
    - **PERFORMS EXCLUSIVELY EXEMPT TRANSACTIONS THAT DO NOT CONFER THE RIGHT TO DEDUCT VAT**
    - **APPEARS ON THE ENFORCEMENT PROCEDURES INFORMATICS REGISTRY AS AN EXECUTED WHOSE PREVIOUS ENFORCEMENT PROCEDURE WAS SUSPENDED OR TERMINATED DUE TO LACK OF SIZEABLE ASSETS**

### 3. PRACTICAL / OPERATIONAL STEPS

- ❑ IT IS NECESSARY AN EFFECTIVE DIALOGUE BETWEEN ALL PARTIES INVOLVED:



ALLOWING GREATER CONTROL OF ALL PROCEEDINGS BEFORE THE ENFORCEMENT PROCEDURE, AND THE ACTIONS OF THEIR PLAYERS IN PURSUIT OF THE EFFECTIVENESS OF THE ENFORCEMENT PROCEDURES



**CPEE**

## 4. POINTS OF REFLECTION: LEGISLATIVE POLICY MEASURES

### ❑ ABOLISHMENT OF "*FALSE PENDING PROCEDURES*":

EXTINCTION OF PENDING ENFORCEMENT PROCEDURES, WHEN THE EXECUTED NO LONGER HAS SIZEABLE ASSETS / RIGHTS

### ❑ THE CREATION OF ARBITRATION CENTRES, UNDER LAW-DECREE NO. 226/2008 20 NOVEMBER 20TH FOR:

- JUDGE AND MEDIATE CONFLICTS
- CARRY OUT ENFORCEMENT ACTS

### ❑ MEASURES FOR RELIEVING THE COURTS: EFFICIENCY, SPEED AND JUST SETTLEMENT OF DISPUTES ON ENFORCEMENT PROCEDURES

## 4. POINTS OF REFLECTION: LEGISLATIVE POLICY MEASURES

- ❑ **AMENDMENT OF THE LAW OF PROTECTION TO USERS OF ESSENTIAL PUBLIC SERVICES (LAW 23/96 OF 26/07, AS AMENDED BY LAW NO. 12/2008 OF 26/02)**
  - **IN 2009, PROVIDERS OF BASIC PUBLIC SERVICES WERE RESPONSIBLE FOR MORE THAN 20 000 ACTIONS, WITH AN AMOUNT LESS THAN € 3 000.00**
  - **THE PERIOD OF SIX MONTHS OF LIMITATION OF THE RIGHT TO RECEIVE THE PRICE OF SERVICE RENDERED INCREASE OF THE NUMBER OF INJUNCTIONS, FUTURE ENFORCEMENT PROCEDURES**

**SOLUTION: THE LIMITATION PERIOD DOES NOT OCCUR IN THE EVENT OF RECOURSE TO ALTERNATIVE DISPUTE RESOLUTION (E.G. ARBITRATION)**

- ❑ **EMPOWERMENT OF THE CREDITOR THAT ENTERS INTO LENDING CONTRACTS WITH A PARTICULAR APPEARING AS DEBTOR ON THE ENFORCEMENT PROCEDURES PUBLIC LIST**
- ❑ **EFFECTIVE COORDINATION BETWEEN CIVIL AND ACTIONS BANKRUPTCY PROCEEDINGS.**

# Inês Caeiros

MEMBER OF THE EXECUTIVE BOARD  
OF THE COMMISSION FOR THE EFFICIENCY OF THE ENFORCEMENT PROCEDURES

Tel. (+351) 21 330 14 60 Fax: (+351) 21 315 65 42

<http://www.cpee.pt>

[cpee@cpee.pt](mailto:cpee@cpee.pt)