

Newsletter

Extended liability for wage claims

19 July 2021



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The recently published Ruling of the Constitutional Court ("CC") no. 272/2021 declared the unconstitutionality, with mandatory general force, of the combined interpretation of the provisions set forth in article 334 of the Labour Code ("LC") and in first section of article 481, no. 2, of Portuguese Companies Code ("PCC"), where it prevents the joint and several liability of a company with head offices outside the national territory, in a relation of reciprocal participations, dominium or group participations with a Portuguese company, for credits arising from the employment contract with the latter, or from its termination.

The Ruling was based on three previous decisions on specific cases submitted to the TC, which ruled in the same sense.

With the publication of this decision, it has been definitely clarified the dispute about the joint and several liability of a company with reciprocal participations, dominium or group, even if headquartered outside national territory, for a credit arising from a labour contract, or from its breach or termination, due for more than 3 months.

According to the CC, the distinction made by the legislator (excluding companies headquartered outside national territory from the joint and several liability for salary claims) is deemed an unequal treatment between employees, whose greater or lesser protection would depend on the fact that their employer being in a reciprocal holding, dominium or group relationship with a Portuguese or foreign company, which could not be deemed sufficient material grounds for this.

On the other hand, the CC also understood that attracting foreign investment was not a sufficiently strong and ponderous reason to justify different guarantees for credits arising from the breach of the employment contract to employees of controlled, dependent or grouped companies, depending on whether the company with which it is related has its headquarters located abroad or in national territory.

After this decision by the CC, employees who are or have been employed by companies that are in a reciprocal participation, dominium or group relationship with foreign companies, will now have greater protection of their credit rights vested at more than 3 months, since these entities are based abroad which will not prevent them from being jointly and severally liable for the payments due to the employees.

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