

SPANISH BANKRUPTCY LAW REFORM

1- Introduction

The Spanish Congress of Deputies approved the new Bankruptcy Law for the **Transposition of Directive 2019/1023**, on preventive restructuring frameworks, debt waivers, looking for to increase the efficiency of restructuring, insolvency and debt waiver proceedings, known as the Restructuring and Insolvency Directive.

2- Main novelties

The new Bankruptcy Law goes beyond the simple transposition of the EU Directive. In general, it introduces new mechanisms for greater efficiency in insolvency proceedings and strengthens preinsolvency measures .

Summary of Key points:

- 1) Refinancing agreements, which only concerned financial creditors, **are replaced by restructuring plans**, which will affect all types of creditors, and which may also contain aspects relating to companies' assets, and not only to liabilities. This is intended to make restructuring procedures more efficient. In practice, however, these processes are likely to be used only by large companies, and not by small and medium-sized companies, because of their complexity.
- 2) **Out-of-court preliminary payment agreements are no longer requested** because they are of little practical use. Generally, they were only used as a mere formality to enter into the Bankruptcy proceeding and thus obtain exoneration of the unpaid debts.
- 3) **New insolvency pre-pack formula** by means of which the process of searching for bidders who wish to purchase the production unit to save all or part of the debtor's business assets is carried out prior to the declaration of insolvency. For this purpose, an independent expert is appointed to search for bidders, and to guarantee the fulfillment of all the requirements of publicity, transparency and competition before the creditors and before the Bankruptcy judge.
- 4) **New special procedure for micro-companies**, in which the assistance of a lawyer and solicitor will be mandatory. It will apply to companies with less than 10 employees and a turnover of less than 750,000 euros or liabilities of less than 350,000 euros.
- 5) **The Second Chance – insolvency- procedure-which applies only for natural persons is reformed**. From our point of view, the new regulation is significantly restricted by increasing the requirements to benefit of it, with greater prohibitions, and introducing a completely unjustified overprotection of public credit, which goes against the spirit and purpose of the European Directive.

- 6) New regulation of **insolvency proceedings without assets**, in which creditors may request the appointment of an Bankruptcy administrator.

Firstly, a first bankruptcy order will be issued, with the liabilities resulting from the documentation provided. It will then be published in the BOE and RPC with a call to creditors to request the appointment of the Bankruptcy administrator within 15 days to submit a reasoned report on:

- a) Recommendations to execute actions for voidness
- b) Recommendations to execute Corporate liability actions.
- c) Recommendations as to whether the insolvency proceedings are at fault.

Secondly, if 5% of the liabilities request an Bankruptcy administrator, the judge issues an order appointing the Bankruptcy administrator who will be in charge of issuing an interim report as well as to exercise the termination actions and the Corporate liability action. If these actions are not exercised, the creditors who have requested the appointment of the Bankruptcy administrator have subsidiary legal standing to exercise them.

7) **The intervention of creditors in the Qualification Section is reinforced**, which will now always be opened, not only in the event of liquidation or a burdensome agreement, in which they may have the status of party under the same conditions as the Insolvency Administration. Creditors representing at least 10% of the liabilities, creditors with claims over 1,000,000 Euros according to the provisional list, or public creditors, may submit a report on the qualification of guilt within 15 days of the submission of the provisional report.

- 8) **The Liquidation Plan** is no longer required in ordinary insolvency proceedings, but not in special proceedings for microenterprises.

The judge must establish the special liquidation rules, taking into account the composition of the premises, facilities and other tangible assets, the foreseeable liquidation difficulties or other concurrent circumstances, and in the event that he does not establish them, the new law regulates the supplementary general rules.

September 2022.