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Spain: Rescue procedures in insolvency

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Spain

Phase:

Management

Type:

Rescue procedures in insolvency

Last modified: 10 December, 2021

Native name:

Ley Concursal (Real Decreto Legislativo 1/2020)

English name:

Insolvency Law (Legislative Royal Decree Law 1/2020)

Article

Chapter 1 and 2 of Insolvency Law (Law 22/2003 of 9 July 2003); Article 1 of the Law on urgent measures on insolvency proceeding (Law 9/2015 of 25 May 2015)

Description

A company or an individual person may apply for insolvency procedures before reaching the stage of insolvency ('concurso voluntario'). If the company is already insolvent, the procedure before the court can be started by the company, a creditor or a shareholder ('concurso necesario').

The court responsible for the judgement is the court of the district ('juzgado mercantil') where the debtor is registered (not applicable if the debtor has moved its residency/registration in the previous six months). A company must file for insolvency within two months from reaching insolvency, that is, the condition of being not able to pay **creditors**.

The company must present a set of documents to the court:

- declaration stating that the claimant has the right to appeal to the court;
- balance sheets and financial report;
- inventory of the debtor's assets;
- a list of the creditors.

Once the procedure is open, the judge appoints an administrator who must ensure collaboration with the judge, protection of the creditors' interests and, where possible, the return of the company to a normal activity regime.

There are two possible solutions to an insolvency procedure: agreement or liquidation. If the company reaches an agreement with the creditors, the debt reduction must be no more than 50% and the timeline no longer than five years. If the agreement is not fulfilled, the company can be wound up. The second solution is liquidation which may imply sale of assets, winding up, or acquisition **by third parties**.

The insolvency declaration must be published in the Official state journal ('Boletín Oficial del Estado') and registered with the Registry for insolvency procedures ('Registro de Procedimientos de Insolvencia').

The Insolvency Law (Law 22/2003 of 9 July 2003) was reformed in 2015 (Law 9/2015), introducing clauses aiming to make the transmission of the business activity, or part of it, of the company that is under insolvency procedure more flexible. The goal of these clauses is to facilitate viable companies to maintain their activity or at least some sections, after the insolvency agreement.

In May 2020, the Royal Decree 1/2020 repealed chapters 1 and 2 of Insolvency Law (Law 22/2003 of 9 July 2003) and the Law on urgent measures on insolvency proceeding (Law 9/2015 of 25 May 2015) in order to establish the new insolvency law. This new regulation introduces modifications on appeals against the rejection of the insolvency application, extension of the judge's powers and the possibility of modifying the judicially approved liquidation plan (as well as a description of the necessary formalities).

Comments

In 2016, there were 4,080 companies applying for insolvency procedures. This means a drop of 20% compared to 2015. Moreover, it is the lowest figure recorded since the onset of the financial crisis in 2008. Some experts note that the causes behind insolvency procedures have recently changed. While during the crisis these were mostly associated with the construction crisis and the lack of loans provided by the financial institutions, recently they are more closely linked to the business evolution (competence among companies, lack of innovation of the products, etc.).

The number of companies in undergoing insolvency in 2017 was 4,261, while in 2018 it was 4,332, and 4,789 in 2019. In 2020, the number of companies undergoing insolvency procedure was 4,097, most of them in the commercial sector (23%) as a result of the COVID-19 pandemic.

Cost covered by

Not applicable

Involved actors other than national government

Other









Involvement others

Court, creditors

Thresholds

No, applicable in all circumstances

Sources

-  European Commission, 'Bankruptcy - Spain'
-  Infoautonomos/elEconomista.es, 'El concurso de acreedores'
-  Thomson Reuters, 'Restructuring and insolvency in Spain: overview'
-  El País, 'Las empresas y familias en quiebra bajan un 17,3% en 2016'
-  Law 22/2003
-  Law 9/2015
-  Law 1/2020
-  Estadística del Procedimiento Concursal

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