

Spanish bankruptcy reforms in practice

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In March, Spain passed a limited reform of its insolvency regulations (the *Ley Concursal*). The aim of these reforms is to tackle some of the most important problems detected during the current crisis, which has in Spain caused an exponential increase the number of bankruptcy cases, mainly related to the construction sector. Although the reforms have been expected for a long time, they have been limited in scope and, in some respects, controversial.

The most significant changes are as follows:

- A provision is introduced to protect **refinancing agreements**, with a series of requirements which, if met, mean that they cannot be rescinded by creditors in the case of subsequent bankruptcy. Such agreements must be the result of a viability plan, be authorised by an independent expert appointed by the Mercantile Register and approved by three-fifths of the creditors at the time. In our opinion the requirements to be met will made almost impossible to take advantage of this regulation in most of the cases.
- They establish the **possibility of negotiating in advance an agreement with creditors before filing for the bankruptcy**. Only debtors in actual insolvency can file for it, not those who may foresee becoming insolvent in the near future, and the debtor must inform the court of the commencement of these negotiations, and has three months from the date of informing the court to submit the filing, whether or not it has secured this agreement. In practice, this means that the deadline for applying for voluntary bankruptcy (*concurso voluntario*) is extended from two to six months in the case of advanced

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negotiation of the proposal, with the business being protected during this time from any third-party petition for bankruptcy (*concurso necesario*). One remarkable fact is after this period of time has expired, whether the agreement has been reached, or not, the debtor must file for insolvency. In practical terms this means a rejection of out of Court agreements as any agreement reached must be examined and approved by the Court, through the insolvency proceeding.

- It introduces the possibility of the debtor filing an **early liquidation proposal** within the 15 days following the submission of the administrator's report. This early proposal will allow assets to be liquidated without having to wait for the conclusion of the claims made against said report.

- **The amount up to which a bankruptcy procedure is considered abbreviated is changed.** From now on, it will be when the debtor has liabilities of less than ten million euros and has, according to Spanish law, a duty to file abbreviated accounts. In such cases, a single administrator is appointed and the time periods for the bankruptcy are cut in half.

- **The basis for remunerating insolvency administrators has been changed.** To begin with, the current calculation methods have been changed to (i) bring them into line with the actual reality of proceedings in which, previously, excessive importance had been attached to assets and (ii) avoid situations of businesses with very high liability levels, which led to exaggerated remuneration. It also creates, much as is the case in other jurisdictions, a minimum retribution in cases of bankruptcy without sufficient assets, and creates a common fund so that a minimum remuneration can always be paid.

In our opinion, there was a pressing need to provide a solution for cases of insolvencies with no economic resources to provide administrators with any remuneration for their work. On the other hand, it is likely that the reductions in remuneration for significant insolvencies will make professionals more reluctant to take on such jobs.