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Spain Approves New Insolvency and Procedural Measures to Mitigate COVID-19 Impact

The new measures seek to overcome the expected high rate of insolvency, refinancing, and corporate disputes arising from the COVID-19 crisis.

The Spanish government approved Royal Decree-Law 16/2020 on 28 April, which adopts several measures in the insolvency, refinancing, corporate, and procedural fields to address the high rate of disputes and financial difficulties that are expected due to the COVID-19 crisis. The purpose of these measures is twofold: (i) avoiding the collapse of the Spanish legal system upon the reopening of courts and (ii) ensuring the economic feasibility and access to liquidity of companies that, under standard market conditions, would not be facing insolvency scenarios.

The measures include:

1. Insolvency petition and mandatory dissolution

Until 31 December 2020, debtors are released from their obligation to file for insolvency and insolvency judges will not process any creditor's insolvency request that is filed prior to that date.

The 2020 year-end corporate results will not be taken into account for the purposes of determining if a company is under mandatory dissolution cause. However, if 2021 financial year results show losses that reduce the net equity (*patrimonio neto*) below half of the share capital, the General Shareholders' Meeting must be convened by the directors or at the request of any shareholder within two months from financial year-end, in order to wind up and liquidate the company, unless the share capital is sufficiently increased or reduced.

2. Composition agreements

Debtors are entitled to apply for an amendment to the composition agreement under two scenarios:

- Within 12 months of the declaration of the state of alarm. The amended composition agreement will not affect (i) claims accrued during the period of performance of the original composition agreement and (ii) privileged creditors, unless they vote in favor of or expressly adhere to the amended composition amendment.
- Within three months of the expiration of the six-month period after the declaration of the state of alarm, during which creditors could request a declaration of breach of the composition agreement.

During the year after the declaration of the state of alarm, the debtor is released from its obligation to request the liquidation due to the infringement of a composition agreement, provided that the debtor requests an amendment of the composition agreement.

3. Refinancing agreements

During the year following the declaration of the state of alarm, a debtor bound by a homologated refinancing agreement is entitled to communicate to the insolvency court that it has initiated negotiations with its creditors to amend the existing refinancing agreement or to reach a new refinancing agreement, even if a year had not elapsed since the previous request.

4. New money provided by specially related persons

Loans granted by specially related persons (*personas especialmente relacionadas*) after the declaration of the state of alarm will rank as (i) super privileged claims (*créditos contra la masa*) in case of infringement of a composition agreement within the two years following the declaration of the state of alarm and (ii) as ordinary claims in case of insolvency proceedings declared within two years following the declaration of the state of alarm. In this case, payment of ordinary or privileged claims made by a specially related person on behalf of the debtor will also rank as ordinary claims.

5. Mandatory out-of-court sale of assets

For insolvency proceedings declared within one year following the declaration of the state of alarm and those already being processed as of 14 March 2020, any asset should be sold out-of-court except for business units which should be sold in accordance with the liquidation plan.

6. Procedural measures

Terms and deadlines suspended due to the state of alarm's declaration will be recalculated and parties will be granted, again, the full term set out in law. Notwithstanding, terms and deadlines will remain stayed until the state of alarm is finally lifted.

The time limit to file an appeal against judgments notified during the state of alarm and those notified within the next 20 business days upon its termination will be double that provided for under the applicable laws.

In addition, 11 to 31 (both included) August 2020 are exceptionally declared as business days for urgent matters.

Finally, during the state of alarm and up to three months after its termination, trials, witness declarations, and hearings will be preferably held by videoconference.

7. Transition regime

The Royal Decree-Law provides for a specific transition regime that will apply in the following terms:

- Royal Decree-Law enters into force the day after its publication in the Spanish Official Gazette.
- Insolvency provisions will also apply to insolvency requests filed during the declaration of the state of alarm and the entry into force of the Royal Decree-Law.

- Procedural measures will apply to all procedural steps adopted since the entry into force of the Royal Decree-Law.

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