

# Recent key developments in the area of Spanish financial regulation

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## Law on the second-chance mechanism, reduction of financial burden, and other social measures (Law 25/2015, published in the State Official Gazette (BOE) on July 29<sup>th</sup>, 2015)

This Law, which confirms Royal-Decree Law 1/2015, February 27<sup>th</sup>, 2015, on the second-chance mechanism, reduction of financial burden, and other social measures (discussed in the May 2015 edition of *SEFO*), aims to allow parties that have liquidated their entire estate to settle their debts to their creditors to be released from the bulk of any debts remaining after this process.

### I. URGENT MEASURES TO REDUCE FINANCIAL BURDEN

#### ■ Amendment of Law 22/2003 of July 9<sup>th</sup>, 2003, on insolvency

- Amendments regarding the second-chance mechanism:

In cases of **insolvency ending in liquidation or insufficient assets**, where the debtor is a natural person, the outstanding debt will be cancelled provided the debtor has acted in good faith. The Law defines the requirements for the debtor to be considered to have acted in **good faith**.

**Creditors' rights** remain intact vis-à-vis other parties jointly and severally bound with the bankrupt and vis-à-vis his/her guarantors, who may not invoke the benefit of cancellation of the outstanding liabilities obtained by the bankrupt or subrogate the rights that the creditor may have against the bankrupt over the subsequent payment of the settlement, unless the cancellation granted is revoked.

Moreover, if the bankrupt is married and holds **property in common** with his/her spouse and this joint ownership arrangement has not been dissolved, the benefit of cancellation of the outstanding liabilities shall extend to the bankrupt's spouse, even if not personally declared bankrupt, in respect of the debts prior to the declaration of bankruptcy to be settled out of the common assets.

Nevertheless, there exists the possibility that any creditor in the bankruptcy proceedings may apply for the **revocation of the benefit of cancellation of the outstanding** liabilities when, during the five years subsequent to its being granted, the existence of concealed income, assets or rights of the debtor emerge (with the exception of assets that may not be seized).

- Amendments regarding the out-of-court payments agreement:

The cases in which **proceedings to reach an out-of-court payments agreement** may be

begun have been modified: such proceedings may be begun not only by business-people that are natural persons, but also by other natural persons finding themselves insolvent, or envisage that they will be unable to meet their obligations, provided the initial estimate of their liabilities does not exceed five million euros. It is also provided that parties having been convicted by a final judgement of certain crimes, and persons who have reached an out-of-court payments agreement, legal endorsement of a refinancing agreement, or been declared bankrupt in the last five years, may not apply for an out-of-court payments agreement.

It should be noted that the application for the **appointment of a bankruptcy mediator in proceedings to reach an out-of-court payments agreement** must be made using standard forms, accompanied by an inventory of assets and expected regular income, and the list of creditors.

Once the **opening of the dossier** has been applied for, the debtor may continue his/her employment but must refrain from any act of management or disposal exceeding the operations intrinsic to his/her occupation. Similarly, from the time of the notification of opening of the negotiations at the court competent to declare bankruptcy, creditors that may be affected by the possible out-of-court payments agreement may not commence or continue foreclosure proceedings against the debtor's assets while the agreement is being negotiated, up to a maximum period of three months.

The **mediator in bankruptcy must send** the creditors, with the debtor's consent, a **proposed out-of-court payments agreement**, with the measures he/she wishes to propose.

In order for the **out-of-court payments agreement to be considered accepted**, it needs to be adopted by majorities of 60% or 75%, as applicable, calculated according to the volume of the liabilities.

Creditors who have not accepted or who have expressed their **disagreement with the out-of-court payments agreement** and who are affected, will maintain their rights vis-à-vis other parties jointly and severally bound with the debtor and vis-à-vis their guarantors, who may not invoke the approval of the out-of-court payments agreement to their detriment. In the case of creditors who have **signed the out-of-court payments agreement**, the maintenance of their rights vis-à-vis other debtors or guarantors will depend on what has been agreed in the respective legal relationship.

In the case of so-called **consecutive bankruptcy proceedings**, it is established that these will be governed by the summary procedure, with the special features established in the law.

It is also provided that, in the case of debtors who are natural persons, if the bankruptcy is classed as fortuitous, the judge concluding the bankruptcy proceedings will declare the cancellation of the outstanding liabilities, provided that the requirements are met, in the terms envisaged in the Bankruptcy Law. In the case of **natural persons not engaged in business**, there are certain special features in the out-of-court payments agreement.

- **Amendment of Royal Decree-Law 6/2012 of March 9<sup>th</sup>, 2012, on urgent measures to protect mortgage debtors without resources**

Law 25/2015 **expands the definition of the exclusion threshold** provided in Royal Decree-Law 6/2012.

- **Amendment of Law 1/2013 of May 14<sup>th</sup>, 2013, on measures to strengthen the protection of mortgage borrowers, debt restructuring, and rented social housing**

The **moratorium on evictions** of persons belonging to vulnerable groups from their primary

residence as defined in Law 1/2013 has been extended from two to four years, *i.e.* until 2017.

## II. OTHER SOCIAL MEASURES

Title II of the Law introduces various tax measures applicable as of January 1<sup>st</sup>, 2015, affecting, in particular, personal income tax, corporate tax and legal expenses.

## III. ADDITIONAL, TRANSITIONAL AND FINAL PROVISIONS

### • Bankruptcy intermediation functions

The Official Chamber of Commerce, Industry, Services and Navigation and the Official Chamber of Commerce, Industry, Services and Navigation of Spain can provide bankruptcy mediation services and additional services supporting merchants' activities.

This mediation system must be transparent and ensure that there are no conflicts of interest. The possibility of setting up an **Over-indebtedness Commission** is envisaged.

### • Remuneration of the bankruptcy mediator

The bankruptcy mediator's remuneration will be calculated on the basis of assets and liabilities applying certain percentages with certain reductions depending on whether the debtor is a natural person not exercising an economic activity, natural person engaged in business, or a company. If the out-of-court payments agreement is approved, a complementary compensation will be applied.

### • Representation of the debtor in consecutive bankruptcy proceedings

Debtors who are natural persons need not be represented by a lawyer in consecutive bankruptcy proceedings.

### • Solvency gauge

The Ministry of Economic Affairs and Competitiveness will set up a free application on its website allowing confidential access where any interested parties may determine their **solvency status** with regard to the application of urgent financial burden reduction measures.

### **Bank of Spain Circular amending central credit register (CIRBE) Circular and Circular 5/2014 (amending the accounting Circular, Circular on interest rate statistics and on the CIRBE) (Circular 3/2015, published in the BOE on August 12<sup>th</sup>, 2015)**

The forwarding and receipt of financial statements as provided in Circular 5/2014 (FINREP), in relation to the statistical requirements of the Economic and Monetary Union, has presented operational difficulties both for the Bank of Spain and reporting credit institutions. On top of this must be added the risk of future ECB regulations on credit risk information (AnaCredit), and the amendment of the accounting Circular, causing the statements and modules to differ from those that entities will be required to send under the current Bank of Spain regulations.

Therefore, Circular 3/2015 **modifies, postpones and, in some cases, even repeals the criteria for the adoption and submission of accounting statements and of some modules of CIRBE**, in order to conduct an in-depth analysis of certain conceptual, technical and operational issues allowing measures to reinstate the information currently abrogated as soon as possible, facilitating the tasks of financial institutions and the Bank of Spain and reducing their costs.

Moreover, it reminds significant groups of the date by which they are to submit individual financial information on subsidiaries established in European Union Member States not belonging

to the Single Supervisory Mechanism or in third countries. Lastly, it modifies the periodicity of certain statements in the accounting Circular.

The timetable for the entry into force of this Circular will depend on the timetable set for each of the amendments mentioned here.

### **Bank of Spain Circular amending the accounting Circular, CIRBE and the transparency Circular (Circular 4/2015, published in the BOE on August 13<sup>th</sup>, 2015)**

The main changes introduced by this Circular come from the technical competences conferred upon the Bank of Spain by Royal Decree 579/2014, July 4<sup>th</sup>, 2014, implementing certain aspects of Law 14/2013, September 27<sup>th</sup>, 2013, supporting entrepreneurs and their internationalisation, on the subject of internationalisation bonds.

Broadly, the modifications are the **following**:

- ✓ The accounting Circular is modified in order to establish: (i) the minimum content of the special accounting record of territorial bonds and the special accounting register of internationalisation bonds; and (ii) the information that should be published and incorporated in the report accompanying the annual accounts of the issuing institution. Certain errors detected have also been corrected.
- ✓ CIRBE has been modified to incorporate financing business internationalisation among operational objectives.
- ✓ The amendment of the **transparency Circular** concerns the definition and means of calculating the official reference rate in the mortgage market referred to as the “Average mortgage lending rate over terms of one to five years for the purchase of free-market housing granted by credit institutions in the euro area” as the two sources that were previously used to obtain it are no longer available.