

***Urgent measures in
Insolvency matters
approved in Royal
Decree Law 16/2020***

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Royal Decree Law 16/2020 regulates new procedural and organizational measures in the field of the Administration of Justice, which came into force on 30 April 2020.

This Royal Decree Law contains, among other things, measures in the field of insolvency proceedings to maintain economic activity, to promote and encourage the financing of companies and to avoid an increase in the processing of insolvency proceedings.

These measures are undoubtedly as necessary as insufficient, since they should include measures to repeal the privileges of public administrations in both the insolvency and pre-insolvency areas, which in many cases are those that make the viability of companies or the sale of productive units difficult or impossible.

The suspension of the impact of the 2020 results on corporate companies

Firstly, this regulation modifies the Spanish Corporate Enterprises Act in relation to the concurrence of the cause for dissolution. In this sense, the results of the financial year closed in 2020 are not considered for the purposes of the compulsory reduction of share capital and of the compulsory dissolution. Therefore, it is as if the financial year 2020 did not exist for such purposes.

This means that the entrepreneur may not be aware that the company is in the process of being dissolved until the formulation of the 2021 annual accounts, i.e. in March 2022. The aim is to make it easier for companies to restructure their debt, obtain liquidity and offset losses, either through the recovery of their ordinary business or through access to credit or public aid.

Out-of-court settlement agreements, refinancing agreement and voluntary tendering

Out-of-court settlement and the approval of the refinancing agreement are possible. In addition, a new application under Article 5 may be submitted within one year of the submission of the previous application. This is a reasonable and favourable solution for companies, as it allows them to assess and re-dimension the economic impact on their business that the state of alert has had and is having.

The deadline for the application for insolvency proceedings is extended to 31 December 2020 for the debtor who is in a state of insolvency. This will undoubtedly help to prevent the collapse of the courts and allow companies greater room for manoeuvre to recover after the end of the state of alert period. The application for voluntary insolvency proceedings will not be admitted for processing until 31 December 2020, preference being given to voluntary insolvency proceedings, even if they are submitted later.

The classification of the claims of partners and administrators of the insolvent in the insolvency proceedings declared in the 2 years following the state of alarm is tempered, going from being considered subordinated to ordinary. This measure is intended to provide an incentive for investment in the company itself by the controlling shareholders or companies in the group.

In short, the aim is for companies that are really viable and are in specific difficulties as a result of COVID-19 to have a few months' margin to try to refinance their debt, try to reach an agreement with their creditors or adapt their activity, and avoid the collapse of the courts.

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In this context, the advisability or necessity of adopting any of these measures will depend on economic developments after the state of alert is lifted. Recovery from the coronavirus crisis is expected to take several months. In principle, it seems that it will take at least seven months from the time the containment is lifted until the key sectors of the economy of this country are close to normal, so that the criterion of prudence should govern the adoption of any type of decision.

The reagreements

Another measure adopted is the possibility of renegotiating the creditors' agreements for one year from the declaration of the state of alert only in relation to the claims subject to the initial agreement.

The reagreements can facilitate the maintenance of businesses and jobs. However, in the current exceptional circumstances, it should be provided that the scope of the reagreements should also be extended to claims against the aggregate assets and not only to claims covered by the original agreement.

In the event of failure to comply with the agreement approved or amended within two years of the declaration of the state of alert, any income obtained by the insolvent party, including loans granted by the partners and administrators, will be considered claims against the aggregate assets.

This measure will facilitate the possibility of approving insolvency agreements with the provision of financial support for their fulfilment, mainly control partners and group companies.

Likewise, in one of the drafts of the Royal Decree Law was considered the possibility of a 6-month moratorium on the terms of the agreement that would expire from the declaration of the state of alert until 31 December 2020. Such a measure would also have provided an important boost to the companies with the approved agreement.

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Acceleration of the Insolvency procedure

A series of rules are established for the acceleration of the insolvency procedure, such as the preferential processing of incidents in labour matters, sales of productive units, of elements of the asset or actions for reintegration, among others, as well as the simplification of certain acts (out-of-court auctions or approval of liquidation plans).

In relation to the sale of productive units, it would have been advisable to have eliminated the succession of companies for labour and social security purposes, the obstacles to the purchase of productive units by persons especially related to the insolvent party and by eliminating the right of veto of creditors with special privileges. All of this is to make this type of operation more attractive as it helps to save jobs and maintain businesses.

In short, this Royal Decree Law introduces interesting and very necessary modifications to avoid the disappearance of an important part of the business and the judicial collapse.

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Marimón Abogados is a law firm founded in 1931 that offers legal services in all areas of law and has offices in Barcelona, Madrid and Seville.

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